



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

CHASELINK INTERNATIONAL PTY LTD (ABN 86 122 108 418 / ACN 122 108 418)

and

Mr Zheng Yi (Michael) Zhang

and

Ms Nai Fen (Frances) Pan

Section 715 ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (the **Undertaking**) is given to the Fair Work Ombudsman (the **FWO**) by:
 - (a) Chaselink International Pty Ltd trading as Joyce Homeware (ABN 86 122 108 418 / ACN 122 108 418) (the **Company**);
 - (b) Mr Zheng Yi (Michael) Zhang (**Mr Zhang**), Director, Chaselink International Pty Ltd; and
 - (c) Ms Nai Fen (Frances) Pan (**Ms Pan**), Director, Chaselink International Pty Ltdfor the purposes of section 715 of the *Fair Work Act 2009* (the **FW Act**).

COMMENCEMENT OF UNDERTAKING

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by the Company and Mr Zhang and Ms Pan; and
 - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking, the Company undertakes to assume the obligations set out below.

BACKGROUND

4. The Company operated a retail shop trading as Joyce Homeware located at Level 1, Westfield Liverpool, Macquarie Street NSW, that closed in October 2016. The Company also operates a retail shop trading as Joyce Homeware located at Level 1, Westfield Mt Druitt, Cnr Carlisle Avenue & Luxford Rd Mt Druitt NSW 2770.
5. Mr Zhang admits and agrees that, at all material times, he:
 - (a) was a director of the Company, having been so since 9 October 2006;
 - (b) was ultimately responsible for overall direction, management and supervision of the operations at the Company in relation to engaging staff, setting and adjusting pay rates and determining wages and conditions of employment; and
 - (c) by reason of the matters set out in subparagraphs (a) and (b) was responsible in a practical sense for ensuring the Company complied with its legal obligations.
6. Ms Pan admits and agrees that, at all material times, she:
 - (a) was a director of the Company, having been so since 9 October 2006;
 - (b) was ultimately responsible for overall direction, management and supervision of the operations at the Company in relation to engaging staff, setting and adjusting pay rates and determining wages and conditions of employment; and
 - (c) by reason of the matters set out in subparagraphs (a) and (b) was responsible in a practical sense for ensuring the Company complied with its legal obligations.

7. The FWO commenced an investigation in July 2016 (the **Investigation**), after it received a request for assistance from a former employee identified in Attachment A (the **Employee**), in respect to allegations of underpayments by the Company.
8. The Company employed the Employee on a casual basis from 29 November 2013 until 20 August 2015.
9. The FWO identified contraventions for the Employee between 29 November 2013 and 20 August 2015 (the **Contravention Period**).
10. During the Contravention Period, the Employee's terms and conditions of employment were governed by the FW Act, *Fair Work Regulations 2009* (Cth) (the **FW Regulations**) and the *General Retail Industry Award 2010* (the **General Retail Award**).
11. The Employee's duties included:
 - (a) The receiving and preparation for sale and or display of goods in or about the shop;
 - (b) The display, filling shelves, replenishing or any other method of exposure or presentation for the sale of goods;
 - (c) The sale or hire of goods by any means;
 - (d) The provision of information, advice, and assistance to customers.
12. The Employee was classified as a Level 1 under the General Retail Award.
13. During the Contravention Period, the Company paid the Employee a flat rate of pay for all hours worked, including weekends and public holidays. The employee was paid a flat rate of \$12.00 per hour for the first year from November 2013 until October 2014, and then \$12.50 per hour thereafter until August 2015.
14. The FWO determined that during the Contravention Period, the Company underpaid the Employee a total of \$36,459.46 (gross).

CONTRAVENTIONS

15. The FWO has determined, and the Company admits, that on the basis of the factual matters outlined above, the Company contravened:
 - (a) section 45 of the FW Act, which states a person must not contravene a term of a modern award. Those contraventions were as follows in accordance with the General Retail Award:
 - (i) Underpayment of minimum hourly rate (cl. 17);
 - (ii) Non-payment of casual loading (cl. 13.2);
 - (iii) Non-payment of Saturday penalty rate (cl. 29.4);
 - (iv) Non-payment of Sunday penalty rate (cl. 29.4); and
 - (v) Non-payment of public holiday penalty rate (cl. 29.4).
 - (b) Subsections 535(1) and 535(2) of the FW Act which prescribes an employer must make, and keep for 7 years, employee records of the kind prescribed by the FW Regulations and must contain information as prescribed by the FW Regulations; and

- (c) Subsection 536(1) of the FW Act which states an employer must give a pay slip to each of its employees within one working day of paying an amount to the employee in relation to the performance of work.

UNDERTAKINGS

16. For the purposes of Section 715 of the FW Act, the Company and Mr Zhang and Ms Pan give the following undertakings:

Rectify Underpayments

- (a) The Company will rectify the contraventions by paying the Employee the individual underpayment amounts in accordance with the Payment Plan specified in Attachment A via electronic funds transfer; and
- (b) provide proof of such payment to the FWO on the same day that each payment is made.

FWO MyAccount Registration

- (c) Within 14 days of the execution of this Undertaking the Company will:
- (i) Register with the FWO 'My Account' portal at www.fairwork.gov.au and have completed the profile, minimum pay rates and Award options; and
 - (ii) Provide to the FWO the Company's 'My Account' Customer Registration Number (CRN).
- (d) Within 14 days of the execution of the Undertaking, the Company will subscribe, and provide evidence to the FWO of the subscriptions, to the following:
- (i) FWO's 'General information' email alerts relating to the General Retail Award, available at <http://www.fairwork.gov.au/websiteinformation/staying-up-to-date/subscribe-to-email-updates>; and
 - (ii) FWO's Employer newsletter for the relevant State and industry, available at <http://www.fairwork.gov.au/about-us/news-and-media-releases/newsletter>, selecting at least the following options:
 - (i) pay updates;
 - (ii) award updates;
 - (iii) holiday updates;
 - (iv) working hours and breaks; and
 - (v) annual leave/sick leave.
- (e) Within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Officer by using the 'Pay Calculator' in 'My Account' via www.fairwork.gov.au the current General Retail Award minimum rates of pay for casual, part time and full time employees for all levels for work performed:
- (i) Monday to Friday;
 - (ii) Saturday;
 - (iii) Sunday; and
 - (iv) Public Holidays.

Future Workplace Relations Compliance

- (f) The Company and Mr Zhang and Ms Pan will comply at all times and in all respects with the FW Act, FW Regulations and the General Retail Award.
- (g) In addition to the requirement to provide a Fair Work Information Statement (FWIS) to new employee(s) under the FW Act, the Company will provide the FWIS in the first language of new employee(s) (where available from the FWO website) at the commencement of their employment. Where the FWIS is not available from the FWO website in the first language of the employee(s), it must be provided in English, and the employee must be told that it is an important document providing information about their rights at work. The Company must also tell the new employee(s) that they can contact the Fair Work Ombudsman through fairwork.gov.au or through the Fair Work Infoline on 13 13 94 by first calling the Translating and Interpreting Service on 131 450 if they have questions about their pay or conditions at work.
- (h) The Company will provide to the FWO a copy of the 'Acknowledgement of Receipt – Fair Work Information Statement' (Attachment C) for current and future employees employed from:
- (i) 30 June 2016 to 15 January 2017 to be provided by 1 February 2017;
 - (ii) 16 January 2017 to 15 July 2017 by 1 August 2017;
 - (iii) 16 July 2017 to 15 January 2018 by 1 February 2018; and
 - (iv) 16 January 2018 to 15 July 2018 by 1 August 2018.
- (i) The Company will provide to the FWO demonstrable evidence of systems and processes that have been implemented to comply with all applicable workplace relations obligations as under the Fair Work Act, Fair Work Regulations, and the relevant Modern Award applicable to its employees. This will be completed within 60 days of the date of the execution of this Undertaking, Specifically, the Company must:
- (i) Determine the correct status for each employee, whether they are full-time, part-time, or casual. Keep a record of this for each employee;
 - (ii) Determine the applicable Modern Award for each employee and the applicable classification for each employee. Keep a record of this for each employee;
 - (iii) Determine the correct entitlements for each employee including the base rate, casual loading, Saturday penalty rates, Sunday penalty rates, Public Holiday penalty rates, overtime rates and any allowances. Keep a record of this for each employee;
 - (iv) Call the Fair Work Infoline on 13 13 94 if there are any questions or concerns or if help is needed to determine any employer obligations. If an interpreter is required, call the Translating and Interpreting Service on 13 14 50 and ask the operator to call the Fair Work Infoline on 13 13 94. Keep a detailed record of any conversation with the Fair Work Infoline.
 - (v) Read the information on payslip requirements and access the Fair Work Ombudsman's Payslip Template on <https://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/pay-slips>. Complete all required details on the Payslip Template and provide this to all employees within 1 working day of every payment to each employee. Should the payslip be provided to the employee by hand, the Company

must keep a record of this by keeping a document that identifies each payslip provided to each employee with the employee's signature upon receipt. Should the payslip be provided electronically, the Company must keep this electronic record. These payslip records must be kept at the business' principal place of business for 7 years.

- (vi) Read the information on record-keeping requirements and access the following Fair Work Ombudsman's templates on <https://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/record-keeping>:

- a) Weekly time and wage records,
- b) Employment Records – employer and employee details,
- c) Employment Records – leave,
- d) Rosters,
- e) Timesheets

Keep complete and accurate records on each template and keep these records at the business' principal place of business for 7 years. Provide any employee records upon request by an employee to that employee as soon as practicable but no later than 3 business days.

- (vii) Within 60 days of the execution of this Undertaking, provide all of the above records listed in (i), (ii), (iii), (iv), (v), (vi) to the Fair Work Ombudsman.

Workplace Relations Training

- (j) Within 90 days of the execution of this Undertaking, the Company will:

- (i) at its own expense, organise and ensure training is provided to Mr Zhang and Ms Pan and any and all persons who conduct human resources, recruitment, employee entitlements or payroll functions on behalf of the Company (**Training**) that relates to:
 - a) obligations under the Fair Work Act, Fair Work Regulations, and the General Retail Award and at minimum must cover the obligations to provide employees with their minimum entitlements, provision of payslips, and keeping records;
 - b) the systems and processes developed and implemented in accordance with paragraph 16(i) above to comply with these obligations;
- (ii) Ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by the Company;

- (k) Within seven days of delivery of the Training, the Company will provide to the FWO:

- (i) a copy of the content of the Training;
- (ii) the name and contact details of the specific person and of the organisation providing the Training;
- (iii) the method of delivery of the Training;
- (iv) record of attendance at the Training as provided by the training organisation (including the name and position title for all attendees and the date the training was attended); and

- (v) receipt for payment of the Training.
- (l) Within fourteen days of any person acquiring human resources, recruitment, employee entitlements, or payroll functions on behalf of the Company, this person must also undertake Training as described in paragraph 16(j) above.

Audit Activity

- (m) The Company will cause to have performed by a qualified Accountant or an Employment Lawyer, at the Company's expense, audits of the Company's compliance with all Commonwealth workplace laws and instruments (**Audits**), relating to the pay and conditions of all employees.
- (n) The Audits will be conducted for the following periods with the following finalisation dates:
 - (i) The Audit period of 15 December 2016 – 15 January 2017 is to be finalised by 1 February 2017;
 - (ii) The Audit period of 15 June 2017 – 15 July 2017 is to be finalised by 1 August 2017;
 - (iii) The Audit period of 15 December 2017 – 15 January 2018 is to be finalised by 1 February 2018; and
 - (iv) The Audit period of 15 June 2018 – 15 July 2018 is to be finalised by 1 August 2018.
- (o) The Company will provide to the FWO within 14 days of each of the finalisation dates:
 - (i) a copy of the audit report which will include a statement of the methodology used in the audit;
 - (ii) details of each obligation under the Fair Work Act, Fair Work Regulations, and General Retail Award required to be complied with and details of how the Company has complied with the obligation and at minimum must cover the obligations to provide employees with their minimum entitlements, provision of payslips, and keeping records; and
 - (iii) written details of any contraventions identified in the audit and the steps the Company will take to rectify any identified contravention(s) and by when the rectification will occur.
- (p) In the event an audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, the Company will rectify all such contraventions within 14 days of each of the finalisation dates specified in subclause (n) above, including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO;
- (q) If any Employee(s) identified as having underpayments owing to them cannot be located, within 60 days of each of the finalisation dates specified in subclause (n) above, make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund. The Company will complete the required documents supplied by the FWO.

Notices

- (r) The company will place a public notice (**Public Notice**) in Sydney's Australian Chinese Daily within 28 days of the FWO publishing a Media Release on its website in respect of this Undertaking, in the form of Attachment B translated into the Chinese language, bearing the Company logo (if any) and the trading name of the company. The company must provide a copy of the Public Notice to the FWO within seven days of the publication;
- (s) Within 28 days of the execution of this Undertaking, the Company will display within all workplaces controlled by the Company a notice in the form of Attachment B to this Undertaking (**Workplace Notice**) and provide photographic evidence of its display;
- (t) The Company will ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:
 - (i) In a location to which all employees who work at the Company have access;
 - (ii) In a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard); and
 - (iii) For a period of 90 continuous days.

No Inconsistent Statements

- (u) the Company and Mr Zhang and Ms Pan:
 - (i) must not; and
 - (ii) must ensure that each of its officers, employees or agents, do not, make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this agreement.

ACKNOWLEDGEMENTS

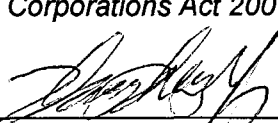
17. The Company and Mr Zhang and Ms Pan acknowledges that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fairwork.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the Freedom of Information Act 1982 (Cth);
- (c) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
- (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by the Company;
- (e) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this Undertaking;

- (f) if the FWO considers that the Company has contravened any of the terms of this this Undertaking the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act; and
- (g) consistent with section 715(3) of the FW Act the Company may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Chaselink International Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)


ZHANG ZHENG YI

(Name of director)

3/01/2017

(Date)

in the presence of:



(Signature of witness)

Edinelle

(Name of witness)



(Signature of director/company secretary)


Nai Fen Pan

(Name of director/company secretary)

3/01/2017

(Date)

in the presence of:



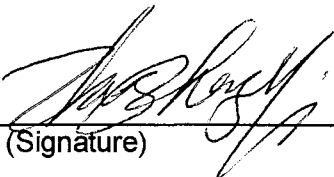
(Signature of witness)

Edinelle

(Name of witness)

KEEP OUT OF REACH OF CHILDREN
Priceline Pharmacy Mt. Druitt 15294Y Shop 19-20 Westfield Shoppingtown, Mt. Druitt NSW 2770. Ph: (02) 9832 0700 Fax: (02) 9675 3930

EXECUTED by Mr Zheng-Yi Zhang:



(Signature)


ZHANG ZHENG YI

(Name)

3/01/2017

(Date)

in the presence of:

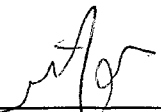


(Signature of witness)

Edinelle

(Name of witness)

EXECUTED by Mr Nai Fen Pan:



(Signature)


Nai Fen Pan

(Name)

3/01/2017

(Date)

in the presence of:



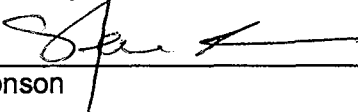
(Signature of witness)

Edinelle

(Name of witness)

KEEP OUT OF REACH OF CHILDREN
Priceline Pharmacy Mt. Druitt 15294Y Shop 19-20 Westfield Shoppingtown, Mt. Druitt NSW 2770. Ph: (02) 9832 0700 Fax: (02) 9675 3930

ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act* 2009 on:



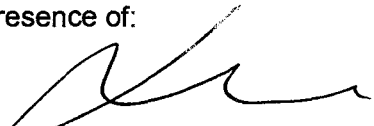
Steve Ronson

23 January 2017
(Date)

Executive Director

Dispute Resolution and Compliance

in the presence of:



(Signature of witness)

LISA-MARIE OLIVER
(Name of Witness)

Attachment A – Payment plan

Employee	Payment date (on or before)	Amount (less taxation)
	5 January 2017	\$10,000.00
	5 February 2017	\$10,000.00
	5 March 2017	\$16,459.46
Total		\$36,459.46

Attachment B – Form of Public and Workplace Notice

Contravention of *Fair Work Act 2009* and the *General Retail Industry Award 2010* by Chaselink International Pty Ltd t/a Joyce Homeware

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Chaselink International Pty Ltd contravened the *Fair Work Act 2009*, *Fair Work Regulations 2009* (Cth) and the *General Retail Industry Award 2010* by:

1. Failure to pay an employee the correct minimum base hourly rate of pay for time worked Monday to Sunday;
2. Failure to pay an employee casual loading;
3. Failure to pay an employee penalty rates for time worked on Saturdays;
4. Failure to pay an employee penalty rates for time worked on Sundays;
5. Failure to pay an employee penalty rates for time worked on a public holiday;
6. Failure to make and keep appropriate employee records; and
7. Failure to issue pay slips.

Chaselink International Pty Ltd and Director Mr Zheng-Yi Zhang and Director Ms Nai Fen Pan have formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, including by rectifying the underpayments of \$36,459.46 less taxation to the employee affected by the contraventions. Chaselink International Pty Ltd and Mr Zhang and Ms Pan express their sincere regret and apologise for the conduct which resulted in the contraventions. Furthermore Chaselink International Pty Ltd gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for Chaselink International Pty Ltd and have queries or questions relating to your employment, please contact **Mr Zhang** on [REDACTED] or **Ms Pan** on [REDACTED]

Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment C – FWIS acknowledgement template.

Acknowledgement of Receipt – Fair Work Information Statement

I,of

agree that I received a copy of the **Fair Work Information Statement** in

..... (state first language).

Signed:

Date:/...../.....