



Australian Government

# Fair Work

## OMBUDSMAN

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### ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Prime Enterprise Holdings Pty Ltd (ABN 99 129 588 503)

and

Ms Baorong Jia

## ENFORCEABLE UNDERTAKING

### PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (FWO) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by:
  - a) Prime Enterprise Holdings Pty Ltd (the **Company**), trading as Sushimaster, Prime Wok, Dancin' Wok and Café Maison, ABN 99 129 588 503/ ACN 129 588 503, Unit 1, 12 Brolo Court, O'Connor WA 6163  
and
  - b) Ms Baorong Jia (**Ms Jia**) as Director of Prime Enterprise Holdings Pty Ltd (the **Director**).

### BACKGROUND

2. The Company carries on a business within the wholesale and Asian food restaurant industry.
3. The Company operates a factory that creates sushi for wholesale, provides catering services and operates 10 fast food/restaurant stores in Western Australia. Overall, they employ up to 100 workers.
4. On 16 November 2017, the FWO received a request for assistance from one employee with allegations of flat pay rates of between \$12.00 and \$18.29 per hour and non-payment of penalty entitlements.
5. The employee was covered under the FW Act, the *Fair Work Regulations 2009* (**FW Regulations**) and the *Food, Beverage and Tobacco Manufacturing Award 2010* (the **Award**).
6. The Director admits and agrees that:
  - a. They have been Director of the Company since 7 February 2008;
  - b. They were ultimately responsible for the overall direction, management and supervision of the operations of 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) were responsible in a practical sense for ensuring the Company complied with its legal obligations.
7. The FWO's investigation determined the employee, listed in **Attachment A**, who was employed between 20 November 2016 and 3 September 2017 as a Level 1 employee in accordance with the Award, was underpaid by **\$13,047.88** during 11 months of employment with the Company.
8. The FWO has determined, and the Company admits, that the Company contravened the following provisions of the FW Act:
  - a. Section 45 of the FW Act by contravening a clause of a modern award, being the *Food, Beverage and Tobacco Manufacturing Award 2010*; and



Contravened the following provisions of the Award:

- a. Clause 20.1 of the Award, which provides for adult employee minimum wages;
- b. Clause 13.1 of the Award, which provides that casual employees must be paid a minimum hourly rate plus a casual loading of 25%;
- c. Clause 31.5 of the Award which provides for penalty rates for working on Sunday shifts;
- d. Clause 31.3(d) of the Award which provides for a shift allowance loading for consecutive night shift workers;
- e. The underpayment arising as a result of these contraventions totals **\$13,047.88 (gross)** to the Employee.

#### **COMMENCEMENT OF ENFORCEABLE UNDERTAKING**

- 9. This Undertaking comes into effect when:
  - a. the Undertaking is executed by the Company and the Director; and
  - b. the FWO accepts the Undertaking so executed.

#### **ENFORCEABLE UNDERTAKING**

- 10. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, the Company and the Director undertake the following:

##### ***10.1 Rectify underpayments***

- a) Within **28 days** of the execution of this Undertaking, rectify the contraventions as identified in clause 8 by paying the Employee the amount of \$13,047.88 (gross) less the amounts already paid to the Employee on:
  - (i) 21/02/2018 - \$315.00
  - (ii) 21/02/2018 - \$2,098.63
  - (iii) 23/02/2018 - \$110.92
- b) Payment of the remaining amount of **\$10,523.33 (gross)** to the Employee within **28 days** and provide evidence to the FWO that the payments were made by the same date; and

##### ***10.2 FWO My account registration***

- a) Within **14 days** of the execution of this undertaking:
  - (i) register with the FWO My account portal at [www.fairwork.gov.au/register](http://www.fairwork.gov.au/register) and fully complete the My account profile, including information about the business and the Award, through this portal;
  - (ii) using the FWO Pay Calculator, calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to your My account; and
  - (iii) provide to the FWO the 'My account' Customer Registration Number (CRN); and
- b) Within **28 days** of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to an officer of the FWO knowledge of the use of My account, including saving information within My account from the website and relevant FWO online tools. The Company must also demonstrate how its use of this saved information will contribute towards its compliance with workplace obligations including payment to employees of the correct minimum pay rates and applicable penalty rates; and



- c) Within **28 days** of the execution of the undertaking, subscribe to the FWO's subscription service and provide evidence to the FWO of the subscription:
  - (i) Subscribe to the FWO's 'Subscribe to email updates' function available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>
  - (ii) Choose the relevant State and industry, selecting information updates on the following options:
    - (a) pay rates and entitlements;
    - (b) new products and resources;
    - (c) about us and our work;
    - (d) updates in my industry; and
    - (e) tailored information that's relevant to me.

### **10.3 Workplace relations systems and processes**

- a) Ensure that it complies at all times and in all respects with the FW Act, the FW Regulations and the *Food, Beverage and Tobacco Manufacturing Award 2010*, *Restaurant Industry Award 2010* and the *Fast Food Industry Award 2010 (the Awards)* where relevant; and
- b) Provide the FWO, within **60 days** of the date of execution of this Undertaking, details of systems and processes already in place to comply with paragraph a) above. Without limitation, such systems and processes relating to:
  - (i) Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates, overtime rates and shift penalties;
  - (ii) Providing accurate payslips to employees within one day of payment of wages; and
  - (iii) Keeping accurate and complete records regarding hours worked by employees receive their correct wages and entitlements.

### **10.4 Workplace relations training**

- a) Within **90 days** of the execution of this Undertaking, organise and ensure Workplace relations training (the **Training**) is undertaken by the Director, General Managers and Deputy General Managers of the Company and provided to all persons who have responsibility for human resources, recruitment or payroll functions;
- b) Ensure the Training relates to compliance with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Awards;
- c) Ensure that the Training incorporates the seriousness of giving false and misleading information under the *Criminal Code (Cth)* as well as information regarding the systematic conduct of underpayment that affects one or more employees;
- d) Ensure the Training is conducted by a workplace trainer, such person or organisation to be approved by the FWO and paid for by the Company;
- e) Provide the training materials to be used in the Training to the FWO no later than **14 days** before the Training is to be conducted;
- f) Provide evidence of attendance at the Training to the FWO **within 7 days** of the Training being provided (including the name and position of all attendees and the date on which the training was attended);



- g) Ensure that Training is conducted in the manner prescribed in paragraphs 10.4 b) and c) for a period of **12 months** from the execution of this Undertaking, for any new or existing employees or contractors who acquire responsibilities that include human resources, recruitment or payroll functions on behalf of the Company. Evidence of the Training must be provided to the FWO, **within 90 days** of the relevant employee or contractor taking on responsibility for the functions.

#### **10.5 FWO Online Training**

- a) Within 60 days of execution of this undertaking ensure that all persons responsible for management, payroll and human resources complete all Online education courses (**Online Training**) designed for employers available on the FWO online learning centre via <http://www.fairwork.gov.au/how-we-will-help/online-training> and provide certificates of completion to the FWO;
- b) For each person required to complete the Online Training, enter all of the required information in **Attachment C** and provide copies of the completed attachment to the FWO **within 90 days** of the execution of this Undertaking;
- c) For any persons taking on any of the functions or responsibilities in para 10.4 (g), complete **Attachment C** and submit to the FWO **within 28 days** of taking responsibility for these functions.

#### **10.6 Apology**

- a) Send a letter of apology (**Apology Letter**) to the Employee in the form of **Attachment B** to this undertaking and provide a copy to the FWO **within 14 days** of the execution of this Undertaking.

#### **10.7 Audit Activity**

- a) Cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at the Company's expense, audits of the Company's compliance with all Commonwealth workplace laws and instruments (**Audits**), including but not limited to the clauses of the Awards and sections of the FW Act relating to part time agreements, casual loadings, ordinary hours of work for shift workers, overtime rates of pay, annual leave and annual leave loading and record keeping and payslip content requirements.
- b) Two (2) Audits will be completed and will include the pay and conditions of 50% of employees and include two full pay periods, include a range of classifications and employment types (full time, part time and casual employees), and include employees from a range of sites; and
- c) Will ensure that the following requirements are met:
- (i) 21 days prior to the Audit due date/s, as specified below, the Company will provide for the FWO's approval, details of the methodology to be used to conduct the Audit;
  - (ii) Audit 1 is to be finalised by **31 December 2018** and is to include:
    - a. An audit of one (1) full pay period between 1 July 2018 and 31 December 2018 in respect of pay rates, conditions, pay slips and record keeping in relation to all employees audited. The pay period must include at least one public holiday;



- b. Audit 1 is to be finalised and a report on the outcomes of the audit is to be provided to the FWO within 28 days of the finalisation date being 31 December 2018. The report must include details of the Company's compliance or non-compliance with the clauses as listed in clause a).
  - (iii) Audit 2 is to be finalised by **30 September 2019** and is to include:
    - a. An audit of one (1) full pay period between 1 July 2019 and 30 July 2019 in respect of pay rates, conditions, pay slips and record keeping in relation to all employees audited. The pay period must include at least one public holiday;
    - b. Audit 2 is to be finalised and a report on the outcomes of the audit is to be provided to the FWO within 28 days of the finalisation date being 30 September 2019. The report must include details of Prime Enterprise Holdings Pty Ltd's compliance or non-compliance with the clauses as listed in clause a).
- d) Without limiting paragraph (a) above, ensure that the Audits examine the Company's compliance with any wage rate, penalty or allowance increases arising from the Fair Work Commission's Annual Wage Reviews;
- e) In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions within 14 days of each of the finalisation dates specified in subclauses 10.7(c)(ii)(b) and 10.7(c)(iii)(b) above, including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO;
- f) If requested, provide the FWO with all records and documents used to conduct the Audit, including any working documents, within 7 days of such a request;
- g) 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 subclauses 10.7(c)(ii)(b) and 10.7(c)(iii)(b) 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 (CRF). The Company will complete the required documents supplied by the FWO. (Any employees that have underpayments paid into the CRF can contact the FWO to claim the money).

#### **10.8 Reporting to the FWO**

- a) The following information is to be provided to the FWO
  - (i) Report to the FWO every 3 months from the date of execution of the Undertaking on the details of any establishments or other parts of the Company's business either sold, leased or otherwise assigned to another legal entity;
  - (ii) Report to the FWO every three months from the date of execution whether the Company opens, or acquires any new or additional establishments;
- b) In the event that there are any events required to be reported on, as described in a) above, provide any documentation or other evidence requested by the FWO to confirm the event/s that have transpired.

#### **10.9 Workplace Notice**

- a) Within 28 days of the execution of this Undertaking, cause to be displayed 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 and the location of the notice in the workplace:



- (i) Ensure that each 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 the attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard;
  - iii. For a period of 28 continuous days;
- (ii) At the end of the period of 28 days provide confirmation to the FWO that each Workplace Notice has been continuously displayed for the required period.

#### **10.10 Website Notice**

- a) The Company will place a notification (**Website Notice**) on the front page of its websites (<http://www.sushimaster.com.au/>; <http://www.primeenterpriseholdings.com.au/>) within 28 days of, but not prior to the FWO publishing a Media Release on its website which will:
  - (i) be in the form of the Workplace Notice set out at **Attachment B**;
  - (ii) be displayed in at least size 10 font;
  - (iii) Be displayed in a prominent location on the homepage of the website; and
  - (iv) remain on the website for a period of 28 days.
- b) The Company will provide evidence of the placement of the Website Notice to the FWO on the date it is published.

#### **10.11 Social Media Notice**

- a) The Company will, **within 28 days** of, but not prior to, the FWO publishing a Media Release on its website in respect of this Undertaking, place a post on any and all of its Facebook Page/s (where available), which will:
  - (i) be posted and pinned to the top of the homepage in public view;
  - (ii) remain on the Facebook page/s for a continuous period of at least 28 days; and
  - (iii) be in the form of the Public Notice set out in **Attachment B**.
- b) Within 7 days of posting the notice on the Company's Facebook page/s (where available), provide evidence of the posting of the link to the Company's Facebook Page/s to the FWO.

#### **10.12 Record Keeping**

- a) **Within 28 days** of the execution of this Undertaking provide to the FWO a copy of time and wage records and payslips for one employee for the first full pay period following the execution of this undertaking. Such records are to comply with Commonwealth workplace laws.

#### **10.13 Broader Community workplace relations education**

- a) Make a donation **within 90 days** of \$5,000 to the Metropolitan Migrant Resource Centre with the objective of assisting the promotion of compliance with Commonwealth workplace laws in the community, and provide evidence of the donation to FWO.

#### 10.14 Access to the Award and NES

- a) The Company will:
  - (i) Ensure that copies of the applicable Award and the NES are available to all employees to whom they apply in accordance with Clause 5 of the Awards. These will be made available either:
    - (i) On a noticeboard which is conveniently located at or near the workplace;  
or
    - (ii) Through electronic means; and
    - (iii) Notify the FWO within 30 days of how the Award and NES has been made available to employees.

#### NO INCONSISTENT STATEMENTS

- 11. The Company and the Director:
  - a. must not; and
  - b. 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

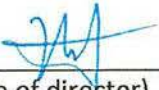
- 12. The Company and the Director acknowledge that:
  - a. The FWO may;
    - (i) make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at [www.fairwork.gov.au](http://www.fairwork.gov.au);
    - (ii) release a copy of this Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
    - (iii) issue a media release in relation to this Undertaking;
    - (iv) from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
    - (v) rely upon the admissions made by Prime Enterprise Holding Pty Ltd set out in paragraph 6 above in respect of decision making concerning any future non-compliance with Prime Enterprise Holdings Pty Ltd's workplace relations obligations.
  - b. 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 herein;
  - c. Consistent with section 715(3) of the FW Act, Prime Enterprise Holdings Pty Ltd and the Director may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO;
  - d. If the Company or the Director contravene any of the terms of this Enforceable Undertaking:
    - (i) 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
    - (ii) This Enforceable Undertaking may be provided to the Court as evidence of the admissions made by the Director in paragraph 6 above, and also in respect of the question of costs.



- e. The *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* makes the following changes to the FW Act:
  - (i) increased penalties for 'serious contraventions' of workplace laws
  - (ii) makes it clear that employers can't ask for 'cashback' from employees or prospective employees
  - (iii) increases penalties for breaches of record-keeping and pay slip obligations
  - (iv) employers who don't meet record-keeping or pay slip obligations and can't give a reasonable excuse will need to disprove wage claims made in a court (this is also referred to as a reverse onus of proof)
  - (v) strengthen our powers to collect evidence in investigations
  - (vi) introduce new penalties for giving us false or misleading information, or hindering or obstructing our investigations.
- f. The above mentioned changes to the FW Act also mean that certain franchisors and holding companies can be held responsible if their franchisees or subsidiaries don't follow workplace laws (if they knew or should have known and could have prevented it).
- g. providing false or misleading information is a contravention of section 718A of the FW Act and is a civil remedy with a maximum penalty of \$630,000 for a body corporate or \$126,000 for an individual.
- h. Providing false or misleading information is also a criminal offense under section 137.1 and 137.2 of the Criminal Code Act 1995, which could result in imprisonment for up to 12 months.

Executed as an undertaking


EXECUTED by Prime Enterprise Holdings Pty Ltd in accordance with section 127(1) of the  
Corporations Act 2001:

  
(Signature of director)

BaoRong Jia  
(Name of director)

29/6/18  
(Date)

in the presence of:

  
(Signature of witness)

XIAO'OU ZHANG  
(Name of witness)

(Signature of director/company secretary)

(Name of director/company secretary)


(Date)

in the presence of:

(Signature of witness)

(Name of witness)

EXECUTED by Ms Baorong Jia

  
Baorong Jia

29/6/18  
(Date)

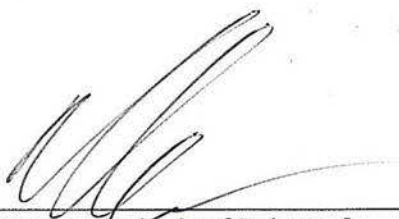
in the presence of:

  
(Signature of witness)

XIAO'OU ZHANG  
(Name of witness)



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



[Insert name and role of Delegate]

29 / 6 / 18

(Date)

MICHAEL CAMPBELL - DEPUTY FAIR WORK OMBUDSMAN, OPERATIONS  
Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

LOUISE CATO

(Name of Witness)

Attachment A – Underpaid Employees

Employee Name	Amount owed (gross)
	\$13,047.88
Less payments made:  (i) 21/02/2018 - \$315.00  (ii) 21/02/2018 – \$2,098.63  (iii) 23/02/2018 - \$110.92	\$2,524.55
<b>TOTAL AMOUNT OWING</b>	<b>\$10,523.33 (gross)</b>



## Attachment B – Letter of Apology

### FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Baorong Jia and Prime Enterprise Holdings Pty Ltd for non-compliance with Commonwealth Workplace relations laws. The recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that Prime Enterprise Holdings Pty Ltd had contravened the *Fair Work Act 2009* and the *Food, Beverage and Tobacco Manufacturing Award 2010* by:

- Failing to provide the correct rate of pay;
- Failing to pay a casual loading; and
- Failing to pay Sunday and night shift work penalty rates.

Regrettably, the investigation determined that you were affected by the above contraventions.

Prime Enterprise Holdings Pty Ltd is taking steps to remedy the contraventions, by making back payments to you for a total of \$XXXXXX that you have been underpaid.

You will receive payment in X instalments in accordance with the attached payment plan. The first payment will be made on XX XXXX 2018 and the second will be made on XX XXXX 2018. You will be provided with payment advice regarding each payment.

Baorong Jia has formally admitted to the FWO that Prime Enterprise Holdings Pty Ltd did not comply with its obligations under Commonwealth workplace relations laws and has entered into an Enforceable Undertaking with the FWO, a copy of which will be available from the [FWO website](http://www.fairwork.gov.au) at [www.fairwork.gov.au](http://www.fairwork.gov.au). As part of the Enforceable Undertaking we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Prime Enterprise Holdings Pty Ltd expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact [party to include contact details].

Yours sincerely

Baorong Jia

## Attachment C

### TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

I, \_\_\_\_\_ (Enter name and position in the organisation)

have undertaken the following tools:

#### Completed online courses\* including:

- Difficult conversations in the workplace – manager course      date \_\_\_\_\_ completed: \_\_\_\_\_
- Hiring employees      date completed: \_\_\_\_\_
- Managing employees      date completed: \_\_\_\_\_
- Managing performance      date completed: \_\_\_\_\_
- Diversity and discrimination      date completed: \_\_\_\_\_
- Workplace flexibility      date completed: \_\_\_\_\_
- Record-keeping and pay slips      date completed: \_\_\_\_\_

*\* Please provide printout of the Statement/Certificate of Attainment for each course completed*

#### Viewed Videos including:

- Welcome to fairwork.gov.au      date completed: \_\_\_\_\_
- Finding information for your industry      date completed: \_\_\_\_\_
- My account      date completed: \_\_\_\_\_
- Introduction to the Pay and Conditions Tool      date completed: \_\_\_\_\_
- PACT – Award classifications      date completed: \_\_\_\_\_
- PACT – Pay summary      date completed: \_\_\_\_\_
- PACT – Penalty rates      date completed: \_\_\_\_\_
- PACT – Allowances      date completed: \_\_\_\_\_
- PACT – Award Coverage      date completed: \_\_\_\_\_



**Read Factsheets including:**

- Role of the Fair Work Ombudsman date completed: \_\_\_\_\_
- Contractors and employees – what's the difference? date completed: \_\_\_\_\_

**Read information on the following:**

- ***Pay Overview***

- Minimum wages Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_
- Penalty rates & allowances Page Ref No. \_\_\_\_\_ date \_\_\_\_\_ completed: \_\_\_\_\_

- ***Leave Overview***

- Annual leave Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_
- Sick & carer's leave Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

- ***Ending Employment Overview***

- Notice & final pay Page Ref No. \_\_\_\_\_ date \_\_\_\_\_ completed: \_\_\_\_\_
- Unfair dismissal Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

- ***Employee Entitlements Overview***

- Types of employees Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_
- National Employment Standards Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

- ***Awards & Agreements Overview***

- Awards Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

- Date and signature: \_\_\_\_\_