



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

T J D SAYOCO PTY LTD (ACN 609 985 015), trading as Han's Cafe Mandurah

and

MR THEO JOSE DOMINIC SAYOCO

and

MRS GRACE BELA-ONG SAYOCO

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) T J D SAYOCO PTY LTD ACN 609 985 015 (**Company**), trading as Han's Cafe Mandurah;
 - (b) Theo Jose Dominic Sayoco (**Mr Sayoco**); and
 - (c) Grace Bela-Ong Sayoco (**Mrs Sayoco**).

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by the Company, Mr Sayoco and Mrs Sayoco; and
 - (b) the FWO accepts the Undertaking so executed.

BACKGROUND

3. The Company was registered on 24 December 2015 and operates Han's Cafe at 41 Ormsby Terrace, Mandurah, Western Australia 6210 (**Han's Cafe**).
4. Mr Sayoco has been the director of the Company since 24 December 2015.
5. Mrs Sayoco, at all relevant times:
 - (a) has been responsible for payroll and setting the rates of pay for employees of the Company who worked at Han's Cafe; and
 - (b) has participated in making decisions that affected the whole, or a substantial part of the Company's business.
6. Han's Cafe is primarily a sit down restaurant operating within the restaurant industry.
7. At various times during the period from 25 September 2017 to 25 March 2018 (**Relevant Period**), the Company employed the individuals listed in **Attachment A** to work in Han's Cafe (**Employees**). The Employees were engaged on a full time, part time and casual basis.
8. The *Restaurant Industry Award 2010* (**Award**) covered and applied to the employment of the Employees who, during the Relevant Period, performed duties at Han's Cafe in accordance with the classifications set out in Schedule B of the Award.
9. The Employees worked in Han's Cafe performing duties commensurate with Level 1 and 2 classifications (Food and Beverage Attendant, Kitchen Attendant and Cook), and a Level 5 – Food and Beverage Supervisor classification, under the Award.
10. An audit of the company conducted by the FWO, determined that, during the Relevant Period, the Company underpaid the Employees a total of **\$27,086.85 (gross)**.
11. Mr Sayoco admits and agrees that:
 - (a) as a result of his office as Director, he was ultimately responsible for the 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;

(b) he was responsible in a practical sense for ensuring the Company complied with its obligations under the FW Act.

12. Mrs Sayoco admits and agrees that:

(a) as a result of her responsibility in relation to payroll and setting rates of pay, and as a result of her making decisions that affected the whole or a substantial part of the Company's business, she was ultimately responsible for the operations at the Company in relation to setting and adjusting pay rates and determining wages and conditions of employment; and

(b) she was responsible in a practical sense for ensuring the Company complied with its obligations under the FW Act.

CONTRAVENTIONS

13. The FWO has determined, and the Company admits that, during the Relevant Period, the Company contravened the following provisions of the FW Act:

(a) section 45 of the FW Act, by failing to comply with the following terms of the Award:

(i) clause 20.1 – minimum wages;

(ii) clause 20.3 – juniors – minimum wages;

(iii) clause 13.1 – casual loading;

(iv) clause 33.2 – overtime rates for hours worked in excess of 38 hours per week;

(v) clause 34.1 – penalty rates for work on weekends and public holidays;

(vi) clause 34.2 – additional payment for work done between the hours of 10.00pm and midnight Monday to Friday;

(vii) clause 24.2 – split shift allowance;

(viii) clause 35.2 – annual leave loading; and

(b) section 44(1) of the FW Act, by failing to pay an employee their personal leave entitlements, pursuant to section 99 of the FW Act.

14. The underpayments to the Employees arising as a result of the contraventions set out in clause 13 of this Undertaking total **\$27,086.85 (gross)**.

15. The FWO has found, and Mr Sayoco admits, that by reason of the matters set out in clauses 4 and 11 above, he was involved (as defined by section 550 of the FW Act) in the contraventions of the Company set out in clause 13 of this Undertaking.

16. The FWO has found, and Mrs Sayoco admits, that by reason of the matters set out in clauses 5 and 12 above, she was involved (as defined by section 550 of the FW Act) in the contraventions of the Company set out in clause 13 of this Undertaking.

ENFORCEABLE UNDERTAKING

17. Upon the execution of this Undertaking and for the purposes of section 715 of the FW

Act, the Company, Mr Sayoco and Mrs Sayoco undertake to take the following actions as specified at clauses 18 to 45 below.

Rectify underpayments

18. Within 60 days of the execution of this Undertaking, the Company, Mr Sayoco and Mrs Sayoco, jointly and severally, will rectify the underpayments identified in clause 14 by paying the Employees the amounts listed in Attachment A and, within seven days of doing so, provide evidence to the FWO that the payments were made.
19. If any of the Employees cannot be located, the Company, Mr Sayoco and Mrs Sayoco, jointly and severally:
 - (a) within 90 days of the execution of this Undertaking, will 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; and
 - (b) will complete and return the required documents supplied by the FWO within 14 days of being provided the documentation by the FWO.

FWO My account registration

20. Within 21 days of the execution of this Undertaking, the Company, Mr Sayoco and Mrs Sayoco will each:
 - (a) register with the FWO My account portal at www.fairwork.gov.au/register and fully complete the My account profile, including information about the Company and award/agreement coverage, through this portal;
 - (b) using the FWO Pay Calculator, calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to their My account; and
 - (c) provide to the FWO the 'My account' Customer Registration Number.
21. Within 28 days of the execution of the Undertaking, at a mutually agreed time and location, Mr Sayoco and Mrs Sayoco will each 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. Mr Sayoco and Mrs Sayoco will also demonstrate how their use of this saved information will contribute toward the Company's and their compliance with workplace obligations including payment to employees of the correct minimum pay rates and public holiday penalty rates;

Subscription to the FWO email updates

22. Within 21 days of the execution of this Undertaking, the Company, Mr Sayoco and Mrs Sayoco will each:
 - (a) 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> and, within seven days of doing so, provide evidence to the FWO of the subscription; and

(b) in subscribing to the FWO's email updates choose the relevant State/s and industry, selecting information updates on the following options:

- (i) pay rates and entitlements;
- (ii) new products and resources;
- (iii) about us and our work;
- (iv) updates in my industry; and
- (v) tailored information that's relevant to me.

Workplace relations systems and processes

23. The Company, Mr Sayoco and Mrs Sayoco will each comply at all times in all respects with the FW Act, the *Fair Work Regulations 2009* (Cth) and the Award.
24. The Company, Mr Sayoco and Mrs Sayoco will provide the FWO, within 60 days of the date of execution of this Undertaking, details of the Company's systems and processes already in place or to be implemented to comply with clause 23 above. Without limitation, such systems and processes will relate to:
- (a) ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - (b) issuing pay slips to employees within one working day of payment; and
 - (c) keeping accurate and complete records to ensure employees receive their correct wages and entitlements.
25. The Company, Mr Sayoco and Mrs Sayoco will develop and provide to the FWO, within 90 days of the execution of this Undertaking, an induction pack for employees of the Company engaged to work at Han's Cafe.
26. The Company, Mr Sayoco and Mrs Sayoco will provide one copy of the induction pack referred to in clause 25 to all new employees of the Company engaged to work at Han's Cafe, within one day of commencing their employment with the Company, and will include in the induction pack the following as a minimum;
- (a) a copy of the Fair Work Information Statement;
 - (b) a template letter of offer which specifies at least:
 - (i) the employee's agreed status (full-time, part-time or casual) and agreed number of ordinary hours each roster cycle;
 - (ii) the employee's classification according to the relevant industrial instrument;
 - (iii) the employee's roster cycle (if applicable);
 - (iv) the ordinary hourly rate of pay that applies to their position, and
 - (v) encourages all employees to download and use the Record My Hours App and sign-up for My account.

Workplace relations training

27. Within 180 days of the execution of this Undertaking, the Company, Mr Sayoco and Mrs Sayoco will organise and ensure that training is provided to Mr Sayoco and Mrs Sayoco

and all other persons who have responsibility for human resource, recruitment or payroll functions at the Company (**Training**).

28. The Company, Mr Sayoco and Mrs Sayoco will:
- (a) 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 Award;
 - (b) 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;
 - (c) 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; and
 - (d) provide evidence of attendance at the Training to the FWO within seven days of the Training being provided (including the name and position of all attendees and the date on which the training was attended).

FWO Online Training

29. Within 30 days of the execution of this Undertaking, the Company, Mr Sayoco and Mrs Sayoco, will ensure that Mr Sayoco, Mrs Sayoco and all persons responsible for management, payroll and human resources complete all education courses designed for employers available on the FWO online learning centre via <http://www.fairwork.gov.au/how-we-will-help/online-training> (**Education Activities**) and provide certificates of completion to the FWO.
30. For a period of 2 years from the execution of this Undertaking, the Company, Mr Sayoco and Mrs Sayoco, will ensure that:
- (a) the Educational Activities are completed by any new or existing employees or contractors who, after the commencement of this Undertaking, acquire managerial, payroll and human resources functions responsibilities, within 28 days of their taking responsibility for these functions; and
 - (b) for each person required to complete the Education Activities, all of the required information in Attachment D is entered and a copy of the completed attachment is provided to the FWO within 28 days of each person completing the Education Activities.

Apology

31. Within 14 days of the execution of this Undertaking, Mr Sayoco and Mrs Sayoco will, on behalf of the Company, send a letter of apology to the Employees in the form of Attachment C to this Undertaking, and provide copies to the FWO within seven days of sending the letters.

Audit Activity

32. At the Company's expense, the Company, Mr Sayoco and Mrs Sayoco will engage an external accounting professional (for example, a Certified Practising Accountant) or

employment law specialist approved by the FWO to perform two audits (**Audits**) of the Company's compliance with Commonwealth workplace laws and instruments, including but not limited to:

(a) the following clauses of the Award:

- (i) clause 20 – base rate of pay, in accordance with the classification structure at Schedule B;
- (ii) clause 13.1 – casual loadings;
- (iii) clause 12 – part time agreements;
- (iv) clause 34.1 – penalty rates of pay;
- (v) clause 33 – overtime rates of pay;
- (vi) clause 35.2 – annual leave loading; and

(b) the following sections of the FW Act:

- (i) section 44(1) – National Employment Standards;
- (ii) section 535 – record keeping; and
- (iii) section 536 – payslips.

33. The Audits will include all employees of the Company and will be completed as follows:

(a) the Audit of the period from 1 November 2019 to 31 December 2019 (**Initial Audit**) is to be finalised and a report on the outcome of the audit is to be provided to the FWO by 28 February 2020;

(b) the Audit of the period from 1 November 2020 to 31 December 2020 (**Second Audit**) is to be finalised and a report on the outcome of the audit is to be provided to the FWO by 26 February 2021;

(c) no later than 21 days prior to the Audit finalisation dates specified in (a) and (b) above, details of the methodology to be used to conduct the Audit will be provided to the FWO for its approval;

(d) in the event that non-compliance is found as a result of either of the Audits, the audit report will:

- (i) identify any Award clause or section of the FW Act that the Company has not complied with; and
- (ii) record any amount found to be owing to an employee of the Company as a result of the non-compliance;

(e) the Company, Mr Sayoco and Mrs Sayoco will:

- (i) ensure that the Company rectifies any underpayments identified by the Audits within 30 days of the finalisation dates for the Initial Audit and Second Audit; and
- (ii) provide evidence of rectification to the FWO no more than 7 days later;

(a) where the Audits identify an employee as having an underpayment and the Company, Mr Sayoco and Mrs Sayoco cannot locate the employee, the Company, Mr Sayoco and Mrs Sayoco will ensure that, within 60 days of the finalisation dates

- for the Initial Audit and Second Audit, the Company makes an application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay the amount identified into the Consolidated Revenue Fund. The Company will complete and return the required documents supplied by the FWO within 14 days of being provided the documentation by the FWO; and
- (b) if requested, the Company, Mr Sayoco and Mrs Sayoco, will provide the FWO with all records and documents used to conduct the Audits, including the calculations or working documents, within 7 days of such a request being made.

Matters notified to the FWO

34. Where the FWO receives a request for assistance (**RFA**) from an employee or former employee regarding non-compliance with the relevant award or legislative requirement, and the FWO, at its discretion and subject to the below clause regarding non-compliance, notifies the Company of the RFA and provides relevant details, the Company, Mr Sayoco and Mrs Sayoco will fully co-operate with the FWO to ensure compliance by the Company. This includes:
- (a) determining an appropriate outcome for the matter within 45 days of the FWO's notification to the Company, Mr Sayoco or Mrs Sayoco; and
- (b) advising the FWO of the Company's determination and actions in relation to the matter including:
- (i) the reasons for the determination and any compliance issues identified;
 - (ii) the details of any underpayments and amounts rectified;
 - (iii) steps taken to address compliance issues identified, including for any similarly affected employees; and
 - (iv) if any matter remains unresolved, the steps taken by the Company to facilitate the resolution of any such matter.
35. Where the Company, Mr Sayoco and Mrs Sayoco undertake to cooperate with the FWO, in accordance with clause 34 above, the FWO reserves the right to investigate any allegations. Where the Company, Mr Sayoco or Mrs Sayoco is notified by the FWO of any such active investigations, the Company, Mr Sayoco and Mrs Sayoco will:
- (a) provide all requested employment records and other documentation relevant to the investigation to the FWO;
- (b) participate fully in any subsequent requests for information relevant to the investigation, including participation in any formal records of interview; and
- (c) fully co-operate in FWO's investigative processes.

Workplace Notice

36. Within 30 days of the execution of this Undertaking, the Company, Mr Sayoco and Mrs Sayoco will display a notice at Han's Cafe in the form of Attachment B to this Undertaking (**Workplace Notice**) and provide the FWO with photographic evidence of its display and the location of the notice in the workplace. The Workplace Notice must be:
- (a) printed on at least A3 size paper and be clearly displayed;
 - (b) in a location where all employees who work at Han's Cafe have access;
 - (c) displayed 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);
 - (d) displayed for a period of 28 continuous days; and
 - (e) displayed in the most commonly spoken language(s) in the workplace.
37. At the end of the period of 28 days referred to in clause 36(d), the Company, Mr Sayoco and Mrs Sayoco will provide confirmation to the FWO that the Workplace Notice was continuously displayed for the required period.

Social Media Notice

38. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of this Undertaking, the Company, Mr Sayoco and Mrs Sayoco will place a post on the Company's Facebook Page, which will:
- (a) be posted and pinned to the top of the homepage in public view;
 - (b) remain on the Facebook page for a continuous period of at least 28 days; and
 - (c) be in the form of the Public Notice set out at Attachment B.
39. Within seven days of posting the notice on the Company's Facebook page, the Company, Mr Sayoco and Mrs Sayoco will provide to the FWO evidence of the posting of the notice to the Company's Facebook Page.

Record Keeping

40. Within 30 days of the execution of this Undertaking, the Company, Mr Sayoco and Mrs Sayoco will provide to the FWO a copy of time and wage records and pay slips for one employee for the first full pay period following the execution of this Undertaking. Such records are to comply with Commonwealth workplace laws.

Contribution Payment

41. Within 28 days of the execution of this Undertaking, the Company, Mr Sayoco and Mrs Sayoco will cause the Company to make a contribution payment of \$2,000 to the Consolidated Revenue Fund and provide evidence of the payment to the FWO.

Reporting

42. The Company, Mr Sayoco, and Mrs Sayoco each will notify the FWO of any changes of circumstances that could potentially impact on the Company, Mr Sayoco and Mrs Sayoco's ability to comply with the undertakings contained in this Undertaking, as soon as they become aware of such circumstances. Such circumstances shall include but not be limited to:
- (a) sale or potential sale of the Han's Cafe business, or part of the business;
 - (b) change of or change in details of the Company directors, or other officeholder positions;
 - (c) change in engagement of workers, for example engaging contractors, labour hire or family members in lieu of employees;
 - (d) the Company or its director(s) (including but not limited to Mr and Mrs Sayoco) opening any new establishments or businesses, or acquiring any existing businesses establishments, whether alone or in partnership with another entity;
 - (e) ceasing or an expectation of ceasing to trade;
 - (f) Han's Cafe or any new business going into administration or liquidation; and
 - (g) Mr Sayoco or Mrs Sayoco becoming bankrupt.
43. In the event that there are any events or circumstances, as described in clauses 42(a) to (g) above, that are required to be reported to the FWO, the Company, Mr Sayoco and Mrs Sayoco will provide any documentation or other evidence requested by the FWO to confirm the event/s that have transpired.

Employee Reporting

44. Every six months from the date of execution of this Undertaking, for a period of two years the Company, Mr Sayoco and Mrs Sayoco will report to the FWO on all employees that worked for the Company during the previous six months. In doing so, Mr Sayoco and Mrs Sayoco, on behalf of the Company will:
- (a) complete the declaration at Attachment E, including the employee names, start dates and finish dates (where relevant), the status of employment and the classification under the Award; and
 - (b) make a declaration, per the terms in Attachment E, that employees have received their minimum entitlements under the FW Act and the Award, that the Company has made superannuation payments on behalf of the employee and has submitted PAYG tax withholding to the Australian Taxation Office.

No Inconsistent Statements


45. The Company, Mr Sayoco and Mrs Sayoco each must not, and Mr Sayoco and Mrs Sayoco must ensure that each of the Company's 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

46. The Company, Mr Sayoco and Mrs Sayoco each acknowledge that:
- (a) they may be liable to a civil remedy for giving false or misleading information or producing false or misleading documents;
 - (b) 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;
 - (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 rely upon the admissions made by the Company, Mrs Sayoco and Mrs Sayoco in clauses 11 to 12 above, in respect of decision making concerning any future non-compliance with the Company's workplace relations obligations.
 - (c) 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;
 - (d) consistent with section 715(3) of the FW Act, the Company, Mr Sayoco and Mrs Sayoco may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
 - (e) if the Company, Mr Sayoco or Mrs Sayoco contravenes any of the terms of this 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 Undertaking may be provided to the Court as evidence of the admissions made by the Company, Mr Sayoco and Mrs Sayoco in clauses 11 to 12 above, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by T J D SAYOCO PTY LTD in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)


Theo Sayoco

(Name of director)

5/8/19

(Date)

in the presence of:



(Signature of witness)

Gowri Suppiah

(Name of witness)



(Signature of director/company secretary)

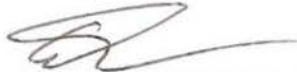
Theo Sayoco

(Name of director/company secretary)

5/8/19

(Date)

in the presence of:



(Signature of witness)

Gowri Suppiah


(Name of witness)

EXECUTED by Theo Jose Dominic Sayoco:



Theo Jose Dominic Sayoco

in the presence of:



(Signature of witness)

5/8/19

(Date)

Gowri Suppiah


(Name of witness)

EXECUTED by Grace Bela-Ong Sayoco:



Grace Bela-Ong Sayoco

in the presence of:



(Signature of witness)

5/8/19

(Date)

Gowri Suppiah

(Name of witness)

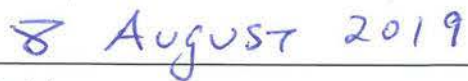
ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on:



Steve Ronson

Executive Director – Proactive Compliance

Delegate for the FAIR WORK
OMBUDSMAN



(Date)

in the presence of:



(Signature of witness)



(Name of Witness)

Attachment A – Underpaid Employees

Employee	Type of Employment	Classification	Underpayment
	Casual	Level 1, Kitchen Attendant Grade 1	- \$ 2,655.76
	Casual	Level 1, Kitchen Attendant Grade 1	- \$ 2,347.93
	Casual	Level 2, Food and Beverage Attendant Grade 2	- \$ 874.81
	Casual	Level 2, Food and Beverage Attendant Grade 2	- \$ 317.79
	Casual	Level 2, Food and Beverage Attendant Grade 2	- \$ 2,765.95
	Casual	Level 2, Food and Beverage Attendant Grade 2	- \$ 1,671.24
	Casual	Level 2, Food and Beverage Attendant Grade 2	- \$ 2,685.93
	Casual	Level 2, Food and Beverage Attendant Grade 2	- \$ 2,731.10
	Casual	Level 2, Food and Beverage Attendant Grade 2	- \$ 485.56
	Casual	Level 2, Food and Beverage Attendant Grade 2	- \$ 899.38
	Casual	Level 2, Food and Beverage Attendant Grade 2	- \$ 465.00
	Casual	Level 2, Food and Beverage Attendant Grade 2	- \$ 30.87
	Casual	Level 2, Food and Beverage Attendant Grade 2	- \$ 1,559.61
	Part time	Level 1, Kitchen Attendant Grade 1	- \$ 1,753.30
	Part time	Level 2, Cook Grade 1	- \$ 2,552.10
	Full time	Level 5, Food and Beverage Supervisor	- \$ 3,290.52
Total			- \$ 27,086.85

Attachment B – Form of Public and Workplace Notice

Contravention of Fair Work Act by T J D SAYOCO PTY LTD

We refer to the audit conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that T J D SAYOCO PTY LTD ACN 609 985 015 (**Company**) trading as Han's Cafe Mandurah contravened the *Fair Work Act 2009 (FW Act)* and *Restaurant Industry Award 2010* during the period of 25 September 2017 to 25 March 2018 as follows:

- by failing to pay the adult and junior minimum rates of pay for work performed;
- by failing to pay the casual loading;
- by failing to pay overtime for hours worked in excess of 38 hours per week;
- by failing to pay the penalty rates for hours worked on weekends and public holidays;
- by failing to pay the additional evening work loading for work done between the hours of 10.00pm and midnight Monday to Friday;
- by failing to pay the split shift allowance;
- by failing to pay the annual leave loading; and
- by failing to pay the personal leave entitlement.

The Company has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking (**EU**) with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, rectify workplace practices and ensure future compliance. Some of the undertakings include:

- rectifying the underpayments to the employees affected by the contraventions. Where the Company has been unable to pay an employee directly, it has undertaken to 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;
- undertaking an audit of the Company's compliance with all Commonwealth workplace laws and applicable industrial instruments, such as the *Restaurant Industry Award 2010* within 6 months of the execution of the EU and again within 18 months of the execution of the EU;
- ensuring that the workplace systems and processes the Company has implemented or proposes to implement complies with its obligations under the FW Act; and
- the Company will make a contribution of \$2,000 to the Consolidate Revenue Fund in recognition of its contrition for its contraventions of the FW Act.

The Company expresses its sincere regret and apologises for the conduct, which resulted in the contraventions. Furthermore, the Company 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 the Company and have queries or questions relating to your employment, please contact **Theo Jose Dominic Sayoco**.

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

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of T J D SAYOCO PTY LTD ACN 609 985 015 (**Company**) trading as Han's Cafe for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that Han's Cafe had contravened the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* by:

- failing to pay the adult and junior minimum rates of pay for work performed;
- failing to pay the casual loading;
- failing to pay overtime for hours worked in excess of 38 hours per week;
- failing to pay penalty rates for hours worked on weekends and public holidays;
- failing to pay the additional evening work loading for work done between the hours of 10.00pm and midnight Monday to Friday ;
- failing to pay the split shift allowance;
- failing to pay the annual leave loading; and
- failing to pay the personal leave entitlement.

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

The Company is taking steps to remedy the contraventions, including by rectifying the amount that you have been underpaid, the total amount **\$[insert amount]**. You will receive this payment on **[insert date]** and you will be provided with a payment advice regarding the payment.

The Company has formally admitted to the FWO that it did not comply with its obligations under Commonwealth workplace relations laws and have entered into an Enforceable Undertaking with the FWO, a copy of which will be available from the FWO website at 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.

On behalf of the Company, I express sincere regret and apologise to you for the Company's failure to comply with its lawful obligations.

Should you have any questions, please contact **[name of relevant contact person]** on **[insert phone number]**.

Yours sincerely

Theo Jose Dominic Sayoco

Director

T J D SAYOCO PTY LTD

Grace Bela-Ong Sayoco

Attachment D

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: _____

Attachment E

Employee Reporting

During the period ____/____/____ to ____/____/____ the following employees were employed by the Company:

[illegible]

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I, Theo Jose Dominic Sayoco declare that all employees are receiving at least their minimum entitlements under the *Fair Work Act 2009*, and the *Restaurant Industry Award 2010*. Superannuation payments have been made on behalf of all employees and PAYG tax withholding has been submitted to the Australian Taxation Office.

In providing this information, I confirm that the information is true and correct.

I am aware that providing false or misleading information is a contravention of section 718A of the *Fair Work Act 2009* and is a civil remedy with a maximum penalty of \$63,000 for a body corporate or \$12,600 for an individual .

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 12 months.

Name and position of person providing the information: _____

Signature of person providing information: _____

Date: _____

Name of witness: _____

Signature of Witness: _____

Date: _____