

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Katjen Enterprise Pty Ltd (ABN 20 093 141 318)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This Enforceable Undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) Katjen Enterprise Pty Ltd (**Katjen**); and
 - (b) Mr Ly Khuong Chau (**Mr Chau**)for the purposes of section 715 of the *Fair Work Act 2009 (Cth)* (**FW Act**).

Background

2. Katjen is located at 47 Healey Road, Dandenong South in Victoria and is primarily involved in the manufacturing of vehicle components (the **Manufacturing Operation**), specifically the sewing and gluing of small pieces of vinyl fabric which are later used in the interior trim of new vehicles.
3. Katjen employs people directly to work in the Manufacturing Operation.
4. An employee of Katjen requested assistance from the FWO on 26 May 2014 (the **Employee**).
5. Katjen employed the Employee at the Manufacturing Operation, on a casual basis from 25 January 2008 to 27 May 2010, on a full time basis from 28 May 2010 to 8 May 2014 and then again on a casual basis from 9 May 2014 to 22 May 2014 (the **Employment Period**).
6. During the Employment Period, the Employee's terms and conditions of employment were governed by the FW Act and the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (**Modern Award**). Transitional rates of pay in the Modern Award were calculated by reference to the transitional award.
7. Mr Chau admits and agrees that, at all material times, he was:
 - (a) the Director of Katjen since 1 June 2000;
 - (b) principally responsible for the overall direction, management and supervision of the operations of Katjen in relation to setting and adjusting pay rates and determining wages and conditions of employment;
 - (c) aware that employees are entitled to be paid for work performed in accordance with applicable industrial instruments and Commonwealth workplace laws; and
 - (d) at all material times, by reason of the matters set out at subparagraphs 7(a) to (c) above, responsible in a practical sense for ensuring Katjen complied with its legal obligations to its employees.

8. The FWO has determined that Katjen contravened the FW Act and Modern Award by:
 - (a) failing to pay the Employee the correct minimum wage;
 - (b) failing to pay the Employee the applicable casual loading;
 - (c) failing to pay the Employee the applicable overtime rates for additional hours worked;
 - (d) failing to pay the Employee the applicable penalty rates for hours worked on a public holiday;
 - (e) failing to pay the Employee the applicable annual leave loading;
 - (f) failing to pay the Employee untaken annual leave upon termination; and
 - (g) failing to keep proper employee records.
9. The Investigation has also determined that Mr Chau was involved in each of the contraventions for the purposes of section 550(1) of the FW Act.
10. The FWO has calculated that the underpayments arising from these contraventions specified in subparagraphs 8(a) to (f) totalled \$15,962.85.

Commencement of Undertaking

11. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Katjen and Mr Chau; and
 - (b) the FWO accepts the Undertaking so executed.
12. Upon the commencement of this Undertaking (the **Commencement Date**), Katjen and Mr Chau undertakes to assume the obligations as set out below.

Undertakings

13. For the purposes of section 715 of the FW Act:

Rectify Underpayments

- (a) As at the date of signing this Undertaking, Katjen has made rectification payment to the Employee totalling \$15,962.85 (gross). No rectification payments to the Employee remain outstanding;
- (b) Katjen undertakes that, in relation to any future complaints received by the FWO from employees or former employees of Katjen alleging contraventions of Commonwealth workplace laws or instruments, Katjen will:
 - (i) use all reasonable endeavours to resolve the complaint, including rectifying any identified contraventions, within 60 days of being notified by the FWO of the complaint;

- (ii) where a complaint has been resolved, provide the FWO with evidence of resolution of the complaint; and
- (iii) where a complaint has not been resolved by agreement with the complainant within the period specified in subparagraph 13(b)(i), report to the FWO about the nature of the complaint and the steps taken to try to resolve it;

FWO MyAccount Registration

- (c) within 14 days of the execution of this Undertaking, register with the FWO 'My Account' portal at 'www.fairwork.gov.au' and have completed the profile, minimum pay rates and Award options:
 - (i) within 15 days of the execution of the Undertaking provide to the FWO the Katjen 'My Account' registration number.
 - (ii) within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a Fair Work Inspector through MyAccount, knowledge of the current Modern Award minimum pay rates, overtime rates and Saturday, Sunday and Public Holiday penalty rates.

Workplace Notice

- (d) Katjen undertakes to:
 - (i) within 28 days of the Commencement Date, place a notice (**Workplace Notice**) within the Manufacturing Operation in a location which is accessible to all persons employed at the Manufacturing Operation in the terms set out in Attachment A, such notice to remain in place for a total period of 7 consecutive days; and
 - (ii) provide a copy of the Workplace Notice and photographic evidence of its display to the FWO within 7 days of the display of the notice.

Future Workplace Relations Compliance

- (e) Katjen undertakes to:
 - (i) ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Modern Award;
 - (ii) implement systems and processes to ensure ongoing compliance with the obligations referred to in subparagraph 13(e)(i) above, including obligations relating to rates of pay, loadings, penalties, taxation, superannuation and record keeping; and

- (iii) provide to the FWO, within 28 days of the Commencement Date, details of systems and processes implemented in satisfaction of the undertakings in subparagraphs 13(e)(i) and (ii) above;

Self-audits and Reporting

- (f) Katjen undertakes to have completed by an external accounting professional (e.g. Certified Practicing Accountant), audit specialist or employment law specialist, at Katjen's expense, an audit (**Audit**) of compliance with Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Modern Award, in respect of pay, conditions and record keeping in relation to all of Katjen's employees, according to the following schedule:
 - i. an Audit of the first complete pay cycle following 1 July 2015, which is to be finalised within 28 days of the last day of the pay cycle;
 - ii. an Audit of the first complete pay cycle following 1 January 2016, which is to be finalised within 28 days of the last day of the pay cycle;
 - iii. an Audit of the first complete pay cycle following 1 July 2016, which is to be finalised within 28 days of the last day of the pay cycle;
- (ii) within 7 days of the completion of each Audit, to provide the FWO with details of the methodology used to conduct the Audit and a copy of the certified audit report;
- (iii) in the event that an Audit discloses contraventions of any applicable Commonwealth workplace laws or instruments, to rectify all such contraventions within 14 days of receipt of the Audit results by Katjen; and
- (iv) Katjen to provide evidence of rectification of all contraventions disclosed by an Audit to the FWO within 14 days of rectification.

Subsidiary Companies & Transferees

- (g) Katjen undertakes to take all reasonable steps to:
 - (i) ensure that all Associated Entities of Katjen conducting a manufacturing business (within the meaning of section 50AAA of the *Corporations Act 2001* (Cth)) comply at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Modern Award and the FW Act;
 - (ii) monitor the compliance by its Associated Entities with applicable Commonwealth workplace laws and instruments and take all reasonable steps to ensure that any identified contraventions of such laws or instruments are rectified by the relevant Associated Entity;

- (h) on a six (6) monthly basis for a period of 18 months following the Commencement Date, to report to the FWO in writing of the steps taken by Katjen to comply with the obligations in subparagraphs 13(g)(i) and (ii) above;
- (i) in the event that Katjen sells or otherwise transfers some or all of its business to another entity (**Transferee**) (whether an Associated Entity or otherwise) within 18 months of the Commencement Date, to:
 - (i) provide a copy of this Undertaking to the Transferee prior to the sale or transfer; and
 - (ii) provide to the FWO, within 7 days of the sale or transfer of business details of the sale or transfer, including the identity of the Transferee and the business functions or operations that have been sold or transferred.

Workplace Relations Training

- (j) Katjen and Mr Chau undertakes to:
 - (i) within 90 days of the Commencement Date, implement a training program (**Training**) so that:
 - i. all persons responsible for human resource, recruitment or payroll functions for or on behalf of Katjen; and
 - ii. all other persons responsible, either directly or indirectly, for Katjen's compliance with Commonwealth workplace laws and instruments, including Mr Chau and all of Katjen's officers and directors;

are made aware of Katjen's obligations under Commonwealth workplace laws and instruments. At Katjen's election, they may each comply with their separate undertakings under this clause by the delivery of joint training;
 - (ii) provide training material to participants in the Training including material on:
 - i. compliance with the FW Act, Fair Work Regulations, and the Modern Award;
 - ii. employer obligations in respect to record keeping and pay slips;
 - iii. options available to persons to make complaints and FWO contact information; and
 - iv. how to access FWO resources to calculate rates of pay;
 - (iii) ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved in advance by the FWO and paid for by Katjen;

- (iv) provide the training materials to be used in the Training to the FWO no later than 7 days before the Training is to be conducted;
- (v) within 7 days of the Training being conducted, provide the FWO with evidence of attendance at the Training (including the name and position of all attendees and the date on which the Training was attended); and
- (vi) for a period of 18 months following the Commencement Date, ensure that Training is conducted in the manner prescribed by subparagraphs 12(j)(i) to (v) above in relation to any person who acquires responsibilities that include human resource, recruitment or payroll functions for or on behalf of either of Katjen, within 28 days of the person acquiring such responsibilities.

Acknowledgements

14. Katjen 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 law or instruments by Katjen;
- (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 Katjen has contravened any of the terms of 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;
- (g) FWO reserves the right to rely on the terms of this Undertaking and the admissions made herein in respect of any future proceedings brought by the FWO against Katjen in relation to any future contraventions of Commonwealth workplace laws;

- (h) Katjen must not, and must ensure that its respective officers, agents and employees do not, make any statements, orally or in writing or otherwise, which convey or imply anything inconsistent with the admissions and acknowledgements contained in this Undertaking; and
- (i) consistent with section 715(3) of the FW Act, Katjen may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Katjen Pty Ltd (ABN: 20 093 141 318) in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

LY KHUONG CHAU

(Name of director)

(Name of director/company secretary)

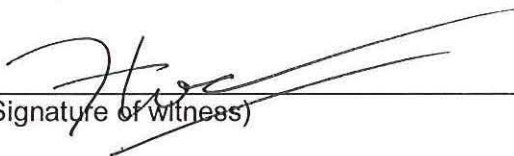
24th FEBRUARY 2015

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

(Signature of witness)

Hoi Ly

(Name of witness)

(Name of witness)

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



Steven Ronson
Executive Director
Dispute Resolution and Compliance
Delegate for the FAIR WORK
OMBUDSMAN

2 MARCH 2015

(Date)

in the presence of:



(Signature of witness)

PIA MORGAN

(Name of Witness)

Attachment A – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* and the *Manufacturing and Associated Industries and Occupations Award 2010* by Katjen Enterprise Pty Ltd, (Katjen).

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Katjen contravened the *Vehicle Industry Award 2000 (Pre-Modern Award)*, the *Fair Work (Transitional and Consequential Amendments) Act 2009*, *Fair Work Act 2009*, the *Fair Work Regulations 2009* and the *Vehicle Manufacturing, Repair, Services and Retail Award 2010 (Applicable Instruments)*.

Katjen owns and operates a manufacturing operation at Dandenong South in Victoria. Katjen employs workers at the manufacturing operation. No previous contraventions of Commonwealth workplace laws have been determined against Katjen.

The FWO has found that Katjen contravened the Applicable Instruments by:

1. failing to pay an employee the correct minimum wage;
2. failing to pay an employee the applicable casual loading;
3. failing to pay an employee the applicable overtime rates for additional hours worked;
4. failing to pay an employee the applicable penalty rates for hours worked on a public holiday;
5. failing to pay an employee the applicable annual leave loading;
6. failing to pay an employee untaken annual leave upon termination; and
7. failing to keep proper employee records.

(Contraventions).

Katjen has formally admitted to the FWO that these Contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fwo.gov.au) committing to a number of measures to remedy the Contraventions and prevent them from occurring in the future, including rectifying the underpayments to affected employees and changing workplace practices.

Katjen express its sincere regret and apologise for the conduct which resulted in the Contraventions. Furthermore, Katjen 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 have worked and/or are currently working for Katjen and have queries or questions relating to your employment, please contact Mr Kon Chau in the first instance on telephone [REDACTED] [REDACTED] [REDACTED]. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

SINCERELY .



LY KHONG CHAU

DIRECTOR - KATJEN ENTERPRISE P/L