



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

APPLE HOLDINGS PTY LTD (ABN 53 009 448 211)

Section 715 ENFORCEABLE UNDERTAKING

Parties

This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Apple Holdings Pty Ltd (ACN 009 448 211) (**the Company**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

1. The Company is in the restaurant industry and operates the Senoji Japanese Restaurant at 1/885 Albany Highway, Victoria Park, Perth, Western Australia.
2. During the period 1 June 2014 to 2 August 2015 the Company engaged two employees (listed in **Attachment A**) as permanent part time Kitchenhands Grade 1 (**the Employees**).
3. From 1 January 2010 the terms and conditions of the Employees' employment were governed by the *Restaurant Industry Award 2010 (MA000119)* (**the MA**) and the *Fair Work Act 2009 (FW Act)*.
4. The Company recorded the hours worked and gross wages, tax deducted, and net wages, on fortnightly time and wages sheets.
5. The Company did not issue pay slips to employees. An Infringement Notice for an amount of \$850.00 was issued and paid.
6. The FWO found the Employees were underpaid minimum entitlements in the MA.
7. The Company underpaid the Employees by failing to pay the correct rates of pay for ordinary hours, the penalty rates for work performed on Saturday and Sunday, the penalty rate for work between 10.00 pm and midnight Monday to Friday, split shift allowances, the minimum engagement hours, and overtime for time worked outside of ordinary hours, in accordance with the MA.

Contraventions

8. The FWO has determined, and the Company admits, that the Company contravened:

Minimum Wages

- (a) subsection 45 of the FW Act by failing to pay employees the minimum wage for ordinary hours in accordance with clause 12.8 of the MA;

Minimum Engagement

- (b) subsection 45 of the FW Act by failing to pay employees for a minimum of 3 hours for each shift worked in accordance with clause 12.5 of the MA;

Saturday Penalty Rates

- (c) subsection 45 of the FW Act by failing to pay employees penalty rates for time worked on Saturdays in accordance with clause 34.1 of the MA;

Sunday Penalty Rates

- (d) subsection 45 of the FW Act by failing to pay employees the correct penalty rates for time worked on Sundays in accordance with clause 34.1 of the MA;

Public Holiday Penalty Rates

- (e) subsection 45 of the FW Act by failing to pay employees penalty rates for time worked on Public Holidays in accordance with clause 34.1 of the MA;

Penalty Rate for work between 10:00 pm and midnight Monday to Friday

- (f) subsection 45 of the FW Act by failing to pay employees penalty rates for time worked between 10:00 pm and midnight Monday to Friday in accordance with clause 34.2(i) of the MA;

Overtime

- (g) subsection 45 of the FW Act by failing to pay employees overtime rates for time worked outside of ordinary hours in accordance with clause 33 of the MA;

Split Shift Allowance

- (h) subsection 45 of the FW Act by failing to pay a split shift allowance for split shifts worked in accordance with clause 24.2 of the MA.

(collectively the **Contraventions**)

Commencement of Undertaking

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

11. As a result of the Contraventions, two employees were underpaid a total of \$13,822.96 gross. See **Appendix A** for the identified amounts for each employee. The FWO acknowledges that the Company has since rectified the identified underpayments.

Undertakings

12. Upon the commencement of this Undertaking the Company undertakes to assume the obligations set out below.

FWO MyAccount Registration

- (a) 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 MA options.
- (b) Within 15 days of the execution of the Undertaking provide to the FWO the Company's 'My Account' registration number.
- (c) 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 MA minimum pay rates, penalty rates, and allowances.

Future Workplace Relations Compliance

- (d) Ensure the Company complies at all times and in all respects with the FW Act, *Fair Work Regulations 2009* (Cth) and the MA;
- (e) Provide the FWO, within 28 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph 12(b) 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 and overtime rates;
 - (ii) issuing payslips to employees within 1 working day of payment;
 - (iii) keeping accurate and complete records to ensure employees receive their correct wages and entitlements.

Public Notices

- (f) Place a notice within the workplace which is accessible to all employees (**Workplace Notice**) within 28 days of the execution of this Undertaking for a total consecutive period of seven (7) days in the terms set out in **Attachment B**;
- (g) Provide a copy of the Workplace Notice and provide photographic evidence of its display to the FWO within seven (7) days of the display of the notices;

Self- Audit and Reporting Activity

- (h) Have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of the Company), no earlier than 1 September 2016 and no later than 30 September 2016, an audit of its compliance with Commonwealth workplace laws. Specifically:
 - (i) The Company must demonstrate compliance relating to the wages and entitlements of its employees and the Contraventions identified;
 - (j) The Company must demonstrate compliance with clause 30.2 of the MA by providing to the FWO evidence of superannuation contributions to a superannuation fund for the benefit of employees.
 - (k) The audit is to include the two (2) full pay periods; and
 - (l) The Company must provide a copy of the audit, including copies of employee time records and pay advices for the audit period, to the FWO by 31 October 2016.

No inconsistent Statements

- 13. The Company must not, and 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.

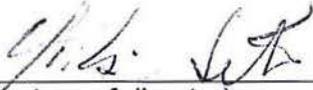
Acknowledgements

14. The Company 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 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) 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 Apple Holdings Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

YUKIHIRO SETA

(Name of director)

(Name of director/company secretary)

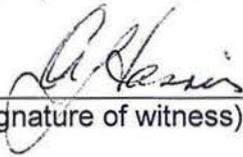
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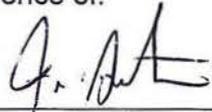
(Date)

in the presence of:

in the presence of:



(Signature of witness)



(Signature of witness)

ANTHONY HARRIS

(Name of witness)

Jacqueline McArthur

(Name of witness)

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



Steven Ronson

21 MARCH 2016

(Date)

Executive Director Dispute Resolution and Compliance

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

PIA MORGAN

(Name of witness)

Attachment A – Affected Employees

Employee Name	Classification	Underpayment
[REDACTED]	Kitchenhand Grade 1	\$5,727.55
[REDACTED]	Kitchenhand Grade 1	\$8,095.41

Attachment B – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* and the *Restaurant Industry MA 2010* by Apple Holdings Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that Apple Holdings Pty Ltd (**Apple Holdings**) contravened the *Fair Work Act 2009* and the *Restaurant Industry MA 2010* by:

- failing to pay employees their lawful minimum hourly rates of pay for time worked Monday to Friday;
- failing to pay employees overtime any work done outside of the spread of hours or rostered hours;
- failing to pay a minimum of three hours per shift;
- failing to pay employees penalty rates for time worked on Saturdays;
- failing to pay employees penalty rates for time working on Sundays;
- failing to pay penalty rates for time worked after 10:00 pm Monday to Friday;
- failing to pay a split shift allowance.

Apple Holdings has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au). Apple Holdings has rectified the underpayments identified by payment to the employees, and has committed to a number of measures to increase its knowledge of, and compliance with, Commonwealth Workplace Laws and the Restaurant Industry Modern Award.

Apple Holdings expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Apple Holdings 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 Apple Holdings and have queries or questions relating to your employment, please contact Mr Yukihide Seta. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.