



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

Uchouten Pty Ltd ACN (169 614 386),

and

Chiiko Minagawa and Moon Yeom in their capacity as partners trading under the registered  
business name 'C Minagawa & M Yeom ABN 53 436 833 295',

and

Chiiko Minagawa,

and

Moon Yeom

**Section 715 ENFORCEABLE UNDERTAKING**

**PARTIES**

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (FWO) by:

- (a) Uchouten Pty Ltd – ACN: 169614386 (**the Company**);
- (b) Chiiko Minagawa and Moon Yeom in their capacity as partners trading under the registered business name 'C Minagawa & M Yeom ABN 53 436 833 295' (**the Partnership**);
- (c) Chiiko Minagawa; and
- (d) Moon Yeom,

for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

**BACKGROUND**

***The Company***

- 2. Since around June 2014, the Company has operated a restaurant in Surfers Paradise, Queensland, trading as 'Uchouten Japanese Restaurant'.
- 3. Moon Yeom is the sole Director of the Company.
- 4. During the period from 15 June 2014 to 15 October 2014 (**Employment Period**), the Company engaged employees as listed in **Attachment A** in either Kitchen-hand or Food and Beverage roles (**Employees**).
- 5. From 1 January 2010, the terms and conditions of the Employees' employment were governed by the *Restaurant Industry Award 2010* (**MA**) and the *Fair Work Act 2009* (**FW Act**).
- 6. In or around October 2014, the FWO commenced an investigation into the Company's compliance with Commonwealth Workplace laws during the Employment Period.
- 7. As a result of the investigation, the FWO determined that:
  - (a) 6 Employees as listed in Attachment A were affected by the Company's contravention of the FW Act and the MA;
  - (b) The Employees' classifications ranged between Introductory level and Food and Beverage Grade II as listed in Attachment A; and
  - (c) The Employees were entitled to be paid the minimum casual rates of pay and penalties as specified in Attachment A.
- 8. The FWO has determined that the Company failed to provide the Employees with the ordinary base rate of pay, casual loading, Saturday penalty rates, Sunday penalty rates and public holiday penalty rates.
- 9. The Company also failed to issue payslips to the Employees.
- 10. Moon Yeom and Chiiko Minagawa had actual knowledge of, and were intentionally and deliberately involved in, failing to provide the Employees with ordinary base rate of pay, casual loading, Saturday penalty rates, Sunday penalty rates and public holiday penalty rates, and failing to issue payslips to the Employees.
- 11. The FWO has determined that during the Employment Period, the Company underpaid the Employees an aggregate total of **\$11,793.29**.

12. The Company has made back payment to one of the Employees, in the amount of **\$686.25**.
13. The total wages underpayment of **\$11,107.04** remains owing to the Employees.

### **Contraventions**

14. The FWO has determined, and the Company admits, that the Company contravened:
  - (a) Section 45 of the FW Act, by failing to comply with the following provisions of the MA:
    - (i) Clause 20 by failing to pay the minimum ordinary base rate;
    - (ii) Clause 13.1 by failing to pay employees the casual loading;
    - (iii) Clause 34.1 by failing to pay employees the Saturday penalty;
    - (iv) Clause 34.1 by failing to pay employees the Sunday penalty; and
    - (v) Clause 34.1 by failing to pay employees the public holiday penalty; and
  - (b) Section 536(1) of the FW Act, by failing to issue payslips to employees,  
(collectively, the **Contraventions**).
15. The FWO has determined, and Moon Yeom and Chiiko Minigawa admit, that Moon Yeom and Chiiko Minigawa were involved (within the meaning of subsection 550(2) of the FW Act) in the Company's contraventions of the FW Act set out in paragraph 14 above, and by reason of subsection 550(1) of the FW Act, is taken to have committed those contraventions.

### ***The Partnership***

16. Prior to 31 May 2014, the Partnership operated a restaurant in Surfers Paradise, Queensland trading as 'Uchouten Japanese Restaurant'.
17. During the period from 15 December 2013 to 31 May 2014, the Partnership engaged employees as listed in **Attachment B** in either Kitchen-hand or Food and Beverage roles (**Partnership Employees**).
18. From 1 January 2011, the terms and conditions of the Partnership Employees' employment were governed by the MA and FW Act.
19. On or around October 2014 the FWO commenced an investigation into the Partnership's compliance with Commonwealth Workplace laws during the Partnership Employment Period.
  - (a) As a result of the investigation, the FWO determined that:
    - (b) 11 Partnership Employees as listed in Attachment B were affected by the Partnership's contravention of the FW Act and the MA;
    - (c) The Partnership Employees' classifications ranged between Introductory level and Food and Beverage grade II, as listed in attachment B; and
    - (d) The Partnership Employees were entitled to be paid the minimum casual rates of pay and penalties as specified in Attachment B.
20. The FWO has determined that the Partnership failed to provide the Partnership Employees with the ordinary base rate of pay, casual loading, Saturday penalty rates, Sunday penalty rates and public holiday penalty rates.

21. The Partnership also failed to issue payslips to the Partnership Employees.
22. Chiiko Minagawa and Moon Yeom had actual knowledge of, and were intentionally and deliberately involved in, failing to provide the Employees with ordinary base rate of pay, casual loading, Saturday penalty rates, Sunday penalty rates and public holiday penalty rates, and failing to issue payslips to the Employees.
23. The FWO has determined that during the Employment Period, the Partnership underpaid the Employees an aggregate total of **\$19,756.31**.
24. The Partnership has made back-payments totalling **\$9,310.16** to five Partnership Employees.
25. The total wages underpayment of **\$10,446.15** remains owing to the Partnership Employees.
26. Chiiko Minagawa and Moon Yeom have agreed to pay this outstanding amount in instalments of **\$1,500** per month.

### **Contraventions**

27. The FWO has determined, and the Partnership admits, that the Partnership contravened:
  - (a) Section 45 of the FW Act by failing to comply with the following provisions of the MA;
    - (i) Clause 20 by failing to pay the ordinary base rates of pay;
    - (ii) Clause 13.1 by failing to pay employees the casual loading;
    - (iii) Clause 34.1 by failing to pay employees the Saturday penalty;
    - (iv) Clause 34.1 by failing to pay employees the Sunday penalty; and
    - (v) Clause 34.1 by failing to pay employees the public holiday penalty; and
  - (b) Section 536(1) of the FW Act by failing to issue payslips to employees,  
(collectively, the **Contraventions**).
28. The FWO has determined, and Chiiko Minagawa and Moon Yeom admit, that Chiiko Minagawa and Moon Yeom were each involved (within the meaning of subsection 550(2) of the FW Act) in the Partnership's contraventions of the FW Act set out in paragraph 27 above, and by reason of subsection 550(1) of the FW Act, are each taken to have committed those contraventions.

### **COMMENCEMENT OF UNDERTAKING**

29. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by the Company,
  - (b) the Undertaking is executed by Chiiko Minagawa and Moon Yeom; and
  - (c) the FWO accepts the Undertaking so executed.
30. Upon the commencement of this Undertaking, the Company, the Partnership, Chiiko Minagawa and Moon Yeom undertake to assume the obligations set out below.

### **UNDERTAKINGS**

31. For the purposes of section 715 of the FW Act, the Company, the Partnership, Chiiko Minagawa and Moon Yeom undertake to:

### **Rectify the underpayments**

- (a) within 14 days of the execution of this Undertaking, rectify the underpayments to the Employees by paying to the Employees the amounts identified at **Attachment C**;
- (b) rectify the underpayments to the Partnership Employees by paying to the Partnership Employees the amounts identified at **Attachment D**, with such amounts to be paid in the following manner:
  - (i) within 14 days of the execution of this Undertaking (**Payment Date**), a minimum of \$1500 total to be paid to the Partnership Employees; and
  - (ii) each 30 days following the Payment Date, a minimum of \$1500 to be paid to the Partnership Employees, until such time as the amounts identified at **Attachment D** have been fully paid to the Partnership Employees;
- (c) where any of the Employees or Partnership Employees identified in **Attachment C** or **Attachment D** cannot be located, any underpayment required to be paid to such persons pursuant to this Undertaking must be paid into a trust account managed by Cabot Square Accountants. Upon locating any such person, any underpayment must be paid to them from the monies held in the trust account managed by Cabot Square Accountants;
- (d) On 31 May 2017, pay any and all remaining monies held in the trust account managed by Cabot Square Accountants held as prescribed in paragraph 31(c) above, as a donation to the Queensland Working Women's Service Inc. (ABN 32 927 953 573);
- (e) within 7 days of any amounts being paid in accordance with this Undertaking, including any payments made in accordance with clause 31, provide the FWO with evidence of such amounts having been paid;

### **FWO MyAccount Registration**

- (f) within 14 days of the execution of this Undertaking, register with the FWO 'My Account' portal at '[www.fairwork.gov.au](http://www.fairwork.gov.au)' and have completed the profile, minimum pay rates and Award options and provide the registration number to the FWO;
- (g) within 28 days of the execution of this Undertaking, at a mutually agreed time and location, demonstrate to a FWO employee through MyAccount, knowledge of the current *Restaurant Industry Award 2010* minimum ordinary rates, casual, Saturday, Sunday and public holiday pay rates of pay;

### **Future Workplace Relations Compliance**

- (g) ensure that the Company, and any entities in which Chiiko Minagawa or Moon Yeom hold the role of Director, comply at all times and in all respects with applicable Commonwealth workplace laws and instruments, including the FW Act, *Fair Work Regulations 2009* and the *Restaurant Industry Award 2010* (MA 000028), by developing systems and processes to promote ongoing compliance with those requirements;
- a) Provide the FWO, within 60 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 (g) above. Without limitation, such systems and processes to include:
- (i) Keeping accurate time records of all hours worked by all employees;
  - (ii) Obtain a copy of the pay guide for the *Restaurant Industry Award 2010* showing pay rates effective from 1 July 2015 to ensure employees receive the correct minimum rates of pay and penalty rates for hours worked on Saturday, Sunday and Public holidays;
  - (iii) Issuing payslips to employees within 1 working day of payment; and
  - (iv) Ensure the payslips issued contain all of the required information as per the FWO payslip fact sheet.

## Public Notice & Workplace Notice

- (h) place a public notice in the Saturday edition of the Gold Coast Bulletin (**Public Notice**) within 28 days of the FWO publishing a Media Release on its website in respect of this Undertaking in the form set out in **Attachment E**, which:
  - a) bears the name of each of the parties giving this Undertaking, as identified at paragraph 1 above;
  - b) appears on the first page in the Public Notice section of the Gold Coast Bulletin; and
  - c) is in the size of at least 8cm x 10cm,with a copy of the Public Notice to be provide to the FWO on the date of publication.
- (i) place a notice within the Company's workplace in the terms set out in **Attachment E** which is accessible to all employees of the Company (**Workplace Notice**), within 28 days of the execution of this Undertaking, and for a total consecutive period of 7 days;
- (j) provide a copy of the **Workplace Notice**, and provide photographic evidence of its display to the FWO, within 7 days of the display of the Workplace Notice.

## Apology

- (k) within 14 days from the date of execution of this Undertaking, send a letter of apology (**Apology Letter**) to each of the Employees and Partnership Employees, in the form of the letter set out in **Attachment F** and provide to the FWO a copy of the Apology Letter and evidence of it having been sent to the Employees and Partnership Employees;

## Self-Audit and Reporting Activity

- (l) at the Company's expense, engage an external accounting professional (being a Certified Practicing Accountant or employment law specialist), to conduct an audit of the Company's compliance with Commonwealth workplace laws, with:
  - a. such audit to be completed by 30 November 2016;
  - b. the audit to include 2 full pay periods after the commencement of the ninth month of the execution of this undertaking;
  - c. such audit to consider the Company's compliance with the FW Act, *Fair Work Regulations 2009* and the MA, including regarding the payment of award wages and entitlements regarding all employees engaged from the date of execution of this Undertaking;
  - d. such audit to consider the Company's payment of superannuation obligations in relation to all employees engaged from the date of execution of this Undertaking;
  - e. In the event that the audit discloses any contraventions of the FW Act, *Fair Work Regulations 2009* or the MA, rectify all such contraventions within 7 days of the completion of the audit, including rectification of any and all underpayments owing by the Company to any of its employees; and
  - f. Upon completion of the audit, The Company must provide to the FWO by 9 December 2016 a copy of the audit and evidence of rectification of any underpayments owing by the Company to its employees;

## Workplace relations training

- (m) within three months of the execution of this Undertaking, organise and ensure training is provided to all persons engaged by the Company who have managerial responsibility for human resources, recruitment or payroll functions (**Training**);
- (n) ensure the Training addresses compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the Company's obligations and the rights and entitlements owed to all workers engaged by the Company, including under the FW Act and MA;
- (o) 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;
- (p) 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;
- (q) 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); and
- (r) for a period of 2 years from the execution of this Undertaking, ensure that training is conducted in the manner prescribed in paragraphs 31(m) to 31(p) above in relation to any new or existing employees who, after the commencement of this Undertaking, acquire managerial responsibilities that include human resources, recruitment or payroll functions on behalf of the Company.

## NO INCONSISTENT STATEMENTS

32. The Company, the Partnership, Chiiko Minagawa and Moon Yeom:

- (a) must not; and
- (b) the Company must ensure that each of its officers, employees and agents, do not, make any statement, orally or in writing or otherwise imply anything that is inconsistent with the admission or acknowledgements contained in this Undertaking.

## ACKNOWLEDGEMENTS

33. The Company, the Partnership, Chiiko Minagawa and Moon Yeom acknowledge that:

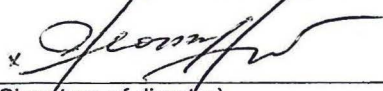
- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at [www.fairwork.gov.au](http://www.fairwork.gov.au) (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (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 or by Chiiko Minagawa or Moon Yeom;
- (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, the Partnership, Chiiko Minagawa or Moon Yeom, has contravened 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;
  - (ii) this Enforceable Undertaking may be provided to the Court as evidence of the admissions made by the Company, the Partnership, Chiiko Minagawa or Moon Yeom in this Undertaking, and also in respect of the question of costs.
- (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.

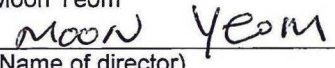


**Executed as an undertaking**

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

  
(Signature of director)

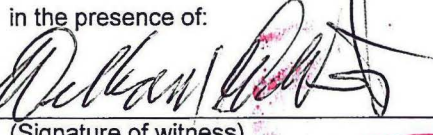
  
(Signature of director/company secretary)

Moon Yeom  
  
(Name of director)

(Name of director/company secretary)

- 3 NOV 2015  
(Date)

(Date)

in the presence of:  
  
(Signature of witness)

in the presence of:  
(Signature of witness)

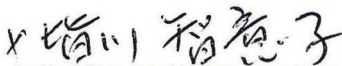
**William Walter WEST**  
Justice of the Peace (Qual)

(Name of witness)

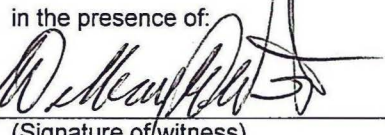


(Name of witness)

EXECUTED by **Chiiko Minagawa and Moon Yeom** in their capacity as partners trading under the registered business name '**C Minagawa & M Yeom ABN 53 436 833 295**':

  
Chiiko Minagawa

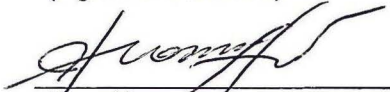
- 3 NOV 2015  
(Date)

in the presence of:  
  
(Signature of witness)

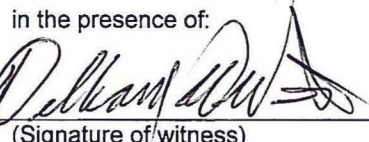
**William Walter WEST**  
Justice of the Peace (Qual)

(Name of witness)



  
Moon Yeom

- 3 NOV 2015  
(Date)

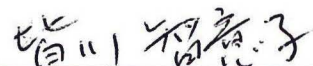
in the presence of:  
  
(Signature of witness)

**William Walter WEST**  
Justice of the Peace (Qual)

(Name of witness)



EXECUTED by Chiiko Minagawa:

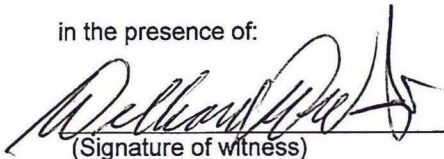


Chiiko Minagawa

9 NOV 2015

(Date)

in the presence of:



(Signature of witness)

William Walter WEST  
Justice of the Peace (Qual)

(Name of witness)



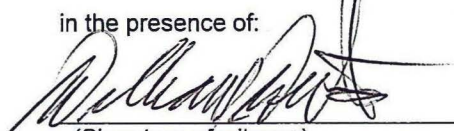
EXECUTED by Moon Yeom:

Moon Yeom

William Walter WEST  
Justice of the Peace (Qual)

(Date)

in the presence of:



(Signature of witness)

William Walter WEST  
Justice of the Peace (Qual)

(Name of witness)



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



Steven Ronson

9 NOVEMBER 2015.

(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**

Employee	Classification level	Award Casual rate	Award Saturday rate	Award Sunday rate	Award Public Holiday	Award Late Work
	Level 1 from 1/7/2013	\$20.94	\$24.30	\$27.66	\$37.74	\$22.47
	Level 1 from 1/7/2014	\$21.69	\$26.03	\$26.03	\$43.38	\$23.66
	Introductory	\$21.09	\$25.31	\$25.31	42.18	\$23.06
	Introductory	\$21.09	\$25.31	\$25.31	42.18	\$23.06
	Introductory	\$21.09	\$25.31	\$25.31	42.18	\$23.06
	Introductory	\$21.09	\$25.31	\$25.31	42.18	\$23.06
	Introductory From - 1/7/2013	\$20.40	\$23.67	\$26.95	\$36.78	\$21.93
	Introductory From - 1/7/2014	\$21.09	\$25.31	\$25.31	\$42.18	\$23.06
	F&B Grade II After 3 months	\$22.53	\$27.04	\$27.04	\$45.05	\$24.50

**Attachment B**

Employee	Classification level	Award Casual rate	Award Saturday rate	Award Sunday rate	Award Public Holiday	Award Late Work
	Introductory	\$19.64	\$22.91	\$26.19	\$36.01	\$21.17
	Introductory	\$19.64	\$22.91	\$26.19	\$36.01	\$21.17
	Introductory	\$19.64	\$22.91	\$26.19	\$36.01	\$21.17
	Level 1	\$20.22	\$23.59	\$26.96	\$37.07	\$21.75
	Introductory	\$19.64	\$22.91	\$26.19	\$36.01	\$21.17
	F&B Grade II	\$20.99	\$24.49	\$27.99	\$38.48	\$22.52
	Introductory	\$19.64	\$22.91	\$26.19	\$36.01	\$21.17
	F&B Grade II	\$20.99	\$24.49	\$27.99	\$38.48	\$22.52
	Introductory	\$19.64	\$22.91	\$26.19	\$36.01	\$21.17
	F&B Grade II	\$20.99	\$24.49	\$27.99	\$38.48	\$22.52
	Introductory	\$19.64	\$22.91	\$26.19	\$36.01	\$21.17
	Introductory	\$19.64	\$22.91	\$26.19	\$36.01	\$21.17
	Introductory	\$19.64	\$22.91	\$26.19	\$36.01	\$21.17

**Attachment C**

Employee	Total Underpaid
	\$2595.96
	\$877.65
	\$1800.21
	\$2497.76
	\$3335.46

**Attachment D**

Employee	Total Underpaid
	<u>\$612.40</u>
	<u>\$1005.65</u>
	<u>\$4695.94</u>
	<u>\$343.80</u>
	<u>\$1240.41</u>
	<u>\$2547.95</u>

## ***Attachment E – Form of Public and Workplace Notice***

### **Contraventions of the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* by Uchouten Pty Ltd, and the Partnership between Chiiko Minagawa and Moon Yeom**

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Uchouten Pty Ltd and the Partnership between Chiiko Minagawa and Moon Yeom contravened the *Fair Work Act 2009*, the *Fair Work Regulations 2009* and the *Restaurant Industry Award 2010* by:

- failing to pay employees the correct ordinary base rate;
- failing to pay employees the casual loading;
- failing to pay employees the Saturday penalty;
- failing to pay employees the Sunday penalty;
- failing to pay employees the public holiday penalty; and
- failing to issue payslips to employees.

The Company and the Partnership have formally admitted to the FWO that these contraventions occurred. We, Moon Yeom and Chiiko Minagawa, have also admitted our involvement in these contraventions. We have each, along with the Company and the Partnership, entered into an Enforceable Undertaking with the FWO (available at [www.fairwork.gov.au](http://www.fairwork.gov.au)) committing to a number of measures to remedy the contraventions, including rectifying the underpayments to the employees affected by the contraventions and changing workplace practices.

We express our sincere regret and apologise for the conduct which resulted in the contraventions. Furthermore we give 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 Uchouten Pty Ltd or the Partnership between Chiiko Minagawa and Moon Yeom, and have queries or questions relating to your employment, please contact Ms Chiiko Minagawa on Phone [REDACTED]. Alternatively, anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Infoline on 13 13 94.

Moon Yeom and Chiiko Minagawa

## ***Attachment F – Letter of Apology***

**Date>**

**<Employee Name & Address>**

Dear <Employee Name>

I am writing to apologise on behalf of Uchouten Pty Ltd (the Company) and the Partnership between Chiiko Minagawa and Moon Yeom (the Partnership) for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that the Company and the Partnership contravened the *Fair Work Act 2009* by failing to pay its casual employees the following entitlements under the *Restaurant Industry Award 2010*:

- the minimum ordinary base rate;
- Casual loading
- Saturday penalty;
- Sunday penalty; and
- Public holiday penalty.

In addition, the Company and the Partnership contravened the *Fair Work Act 2009* by failing to issue payslips to employees.

The investigation determined that you were affected by the above contraventions.

The Company and the Partnership has taken steps to remedy the contraventions, including by:

- Paying you the amount that you have been underpaid (Insert amount); and
- Committing to future compliance.

The Company and the Partnership has formally admitted to the FWO that it 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 is available from the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au).

Moon Yeom and Chiiko Minagawa have each also admitted that they were involved in the contraventions, and that they have also entered into the same Enforceable Undertaking.

As part of the Enforceable Undertaking, the Company and the Partnership have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

The Company, the Partnership, Moon Yeom and Chiiko Minagawa each express sincere regret and apologise to you for failing to comply with their lawful obligations.

Should you have any questions, please contact Chiiko Minagawa on Phone [REDACTED].

Yours sincerely

Moon Yeom and Chiiko Minagawa  
Uchouten Pty Ltd / Chiiko Minagawa and Moon Yeom