



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Viplus Dairy Pty Ltd

ABN: 78 160 148 434

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (the **Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Viplus Dairy Pty Ltd (ABN: 78 160 148 434) (**Viplus Dairy**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Commencement of Undertaking

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Viplus Dairy; and
 - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking (the **Commencement Date**), Viplus Dairy undertake to assume the obligations set out below.

Background

4. Viplus Dairy operates a dairy factory that produces milk formula products. The factory is located at 67 Toora Jetty Road Toora Victoria 3962.
5. The factory operates Monday to Sunday between 9:00 am and 5:00 pm.
6. The FWO commenced an investigation on 16 July 2015 (the **Investigation**) regarding allegations of underpayment of hourly rates of pay for two former Employees (refer to Schedule A) of Viplus Dairy.
7. Viplus Dairy employed the Employees between 12 January 2015 and 14 April 2015 (**Employment Period**).
8. The Employees were employed on a casual basis. The duties performed by the Employees included packing of milk products after the manufacturing process by adding additives to the raw milk powder product.
9. During the Employment Period, the Employees' terms and condition of employment were governed by the FW Act, *Fair Work Regulations 2009* (**FW Regulations**) and the *Food, Beverage and Tobacco Manufacturing Award 2010* [MA000073] (**Food Manufacturing Award**).
10. Viplus Dairy underpaid the Employees a total of \$7,392.98 less taxation for the hours worked by failing to pay the correct minimum hourly rates of pay in accordance with the Modern Award. The underpayments arose as a result of underpaying hourly rates of pay including all hours worked Monday to Sunday.

Contraventions

11. The FWO has determined, and Viplus Dairy admits, that on the basis of the factual matters outlined above, Viplus Dairy contravened:
 - (a) Section 45 of the FW Act, which states a person must not contravene a term of a modern award. Those contraventions were as follows:
 - Underpayment of base hourly rate (cl. 20.1(a));
 - Non-payment of casual loading (cl. 13.1);

- Non-payment of Saturday penalty rates (cl. 33.6);
 - Non-payment of Sunday penalty rates (cl. 33.7);
 - Non-payment of public holiday penalty rates (cl. 33.8(a)) and
 - No-payment of overtime (cl. 33.1(a)).
- (b) Section 535(2) of the FW Act provides for employer obligations in relation to making and keeping employee records, in the form prescribed by the FW Regulations. Based on the available evidence, the Company failed to make and keep employee records of the kind prescribed by FW Regulations; 3.32 – Content, 3.33 Records – pay, 3.37 Records – superannuation contributions and 3.40 records – termination of employment.
- (c) Section 536(1) of the FW Act which states an employer must give a pay slip to each of its employees within one working day of paying an amount to the employee in relation to the performance of work.

Undertakings

12. Upon the commencement of this Undertaking and the purposes of section 715 of the FW Act, Viplus Dairy undertakes to:

Rectify Underpayments

- (a) Within 21 days of the commencement of this Undertaking, pay the amounts of \$3,696.58 and \$3,696.40 less taxation to the Employees (refer to Schedule A) arising from the Contraventions.
- (b) Providing proof of such payment to the FWO on the day the payment is made.

Future Workplace Relations Compliance

- (c) Ensure that it complies at all times and in all respects with the FW Act, FW Regulations and the Food Manufacturing Award.
- (d) 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 (c) above. Without limitation, such systems and processes will include 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 pay slips to employees within 1 working day of payment; and
 - (iii) Keeping accurate and complete records to ensure employees receive their correct wages and entitlements

FWO My Account Registration

- (d) 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 14 days of the execution of the Undertaking provide to the FWO the Viplus Dairy 'My Account' registration number.
 - (ii) within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Officer by using the 'Pay Calculator' in 'My Account' via www.fairwork.gov.au the current Food Manufacturing Award

minimum base ordinary pay rates, Saturday, Sunday and public holiday rates of pay.

Workplace Notices

- (e) Within 14 days of the execution of this Undertaking, cause to be displayed a notice in the form of Attachment A to this Undertaking (Workplace Notice):
 - (i) For a period of 28 days, at 67 Toora Jetty Road Toora Victoria 3962; and
 - (ii) Ensure that the Workplace Notice is printed in at least A4 size and is clearly displayed:
 - a. in a location to which all employees who work at Viplus Dairy have access;
 - b. 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); and
- (f) Provide evidence to the FWO of the placement of the Workplace Notice within seven days of its placement.

Public Notice

- (g) place a public notice in The Toora Times Newspaper (**Public Notice**) within 28 days of, but not prior to, the FWO publishing a Media Release on its website in respect of this Undertaking in the terms set out in Attachment A;
 - (i) Bears the name of Viplus Dairy Pty Ltd;
 - (ii) Appears within the first 10 pages of The Toora Times Newspaper;
 - (iii) Must be in the size of 8cm x 10cm; and
 - (iv) Is in the form of Attachment A
- (h) Provide a copy of the Public Notice to the FWO on the day of publication of the Public Notice;

Self-audits and Reporting

- (i) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of Viplus Dairy), an audit of its compliance with Commonwealth workplace laws. Specifically:
 - (i) demonstrate compliance relating to the wages and entitlements of all employees covered by the Food Manufacturing Award and the Contraventions identified.
 - (ii) the audit is to include the first full single pay period of August 2016.
 - (iii) provide a copy of the audit to the FWO within 7 days of its completion and prior to 1 September 2016.

No Inconsistent Statements

13. Viplus Dairy:

- (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

14. Viplus Dairy 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;
- (b) the FWO may 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);
- (c) the FWO may issue a media release in relation to this Undertaking
- (d) the FWO may from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
- (e) the FWO may rely upon the admissions made by Viplus Dairy set out in paragraphs 14 (a) – (d) above in respect of decision making concerning any future non-compliance with Viplus Dairy's workplace relations obligations.

15. 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; and

- (a) if the FWO considers that Viplus Dairy 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; and
- (b) this Undertaking may be provided to the court as evidence of admissions made by the Viplus Dairy in paragraphs 14 (a) – (d) above, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by Viplus Dairy Pty Ltd (ABN: 78 160 148 434) in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)

(Signature of director/company secretary)

MR DAJIAN LI

(Name of director)

(Name of director/company secretary)

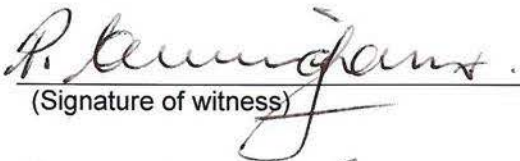
27th January, 2016

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

(Signature of witness)

PETER JOHN CUNNINGHAM

(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

19 FEBRUARY 2016

(Date)

in the presence of:



(Signature of witness)

PIA MORGAN

(Name of Witness)

Attachment A – Form of Public and Workplace Notice

FORM OF PUBLIC AND WORKPLACE NOTICE

Contravention of *Fair Work Act 2009* and the *Food, Beverage and Tobacco Manufacturing Award 2010* by Viplus Dairy Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that Viplus Dairy Pty Ltd contravened the *Fair Work Act 2009* and the *Food, Beverage and Tobacco Manufacturing Award 2010* by:

1. failing to pay two employees the correct minimum base hourly rate of pay for time worked Monday to Sunday;
2. failing to pay two employees penalty rates for time worked on Saturdays;
3. failing to pay two employees penalty rates for time worked on Sundays;
4. failing to pay two employees penalty rates for time worked on a public holiday; and
5. failing to pay two employees relevant overtime rates for time worked.

Viplus Dairy Pty Ltd 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) committing to a number of measures to remedy the contraventions, including by rectifying the underpayments of \$3,696.58 and \$3,396.40 less taxation to the employees affected by the contraventions. Viplus Dairy Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Viplus Dairy Pty Ltd 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 Viplus Dairy Pty Ltd and have queries or questions relating to your employment, please contact **<insert details of internal contact>**.

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

Schedule A

Employee name	Amount to be paid (gross)
[REDACTED]	\$3,696.58
[REDACTED]	\$3,696.40