



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Siajj Pty Ltd [ACN: 149 327 211]

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 Siajj Pty Ltd [ACN: 149 327 211] (**Company**).

Commencement of Undertaking

2. This Undertaking comes into effect when:
 - a. the Enforceable Undertaking is executed by the Company; and
 - b. the FWO accepts the Enforceable Undertaking so executed.
3. Upon the commencement of this Undertaking, the Company undertakes to assume the obligations set out below.

Background

4. The Company operates seven hairdressing salons in Victoria under the trading names What's Up Hair and Best Cuts and Colours as listed in Appendix A.
5. The Company currently has a workforce of approximately 150 employees and is covered by the *Hair and Beauty Industry Award 2010* [MA000005] (**Hair and Beauty Award**) in respect of its employees who perform duties commensurate with the classification definitions set out in Schedule B to the Hair and Beauty Award.
6. The FWO conducted a compliance check of the employment practices of the Company in relation to its employees engaged to perform work at the Westfield Knox Shopping Centre, 425 Burwood Highway, Wantirna South, Victoria, 3152 (**Knox Employees**) in response to the receipt of requests for assistance (**RFA**) in May 2016 and July 2016 by two former employees of the Company (**Employee 1** and **Employee 2** respectively listed in Appendix B). The compliance check focused on the months of January 2015, July 2015, January 2016 and July 2016. Employees included in the compliance check are listed in Appendix C.
7. In their RFA, Employee 1 alleged that the Company failed to pay them annual leave upon termination of employment.
8. In their RFA, Employee 2 alleged that the Company failed to pay them the correct amount of annual leave upon termination and penalty rates for work performed on Sundays and public holidays.
9. The FWO found that that Knox Employees engaged as hairdressers were employed as Hair and Beauty Employees Level 3 and Level 5 depending on their level of qualification, pursuant to Schedule B to the Hair and Beauty Award.
10. The FWO has determined, and the Company admits, that the Company has contravened the following in regards to Knox Employees:
 - a. Section 45 of the FW Act which provides that a person must not contravene a term of a Modern Award. The contraventions under the Hair and Beauty Award are as follows:
 - i. Non-provision of a written agreement for part-time employees in accordance with clause 12.2;

- ii. Underpayment of casual loading in accordance with clause 13.2;
 - iii. Underpayment of minimum wage rates in accordance with clause 17;
 - iv. Underpayment of Sunday penalty rates in accordance with clause 31.2(c);
 - v. Non-payment of annual leave loading in accordance with clause 33.3; and
 - vi. Underpayment of public holiday penalty rates in accordance with clause 35.3.
- b. Section 44 of the FW Act which provides that an employer must not contravene a provision of the National Employment Standards (**NES**). The Company has contravened the NES by failing to pay some Knox Employees the correct annual leave and annual leave loading upon termination in accordance with subsection 90(2) of the FW Act.
- c. Subsection 535(2) of the FW Act which provides that employee records must include any information prescribed by the *Fair Work Regulations 2009* (Cth) (**FW Regulations**). The Company contravened subsection 535(2) by:
- i. Failing to keep records of hours worked for casual and part-time employees in accordance with regulation 3.33 of the FW Regulations; and
 - ii. Failing to keep an accurate record of leave balances in accordance with sub-regulation 3.36(1)(b).
- d. Regulation 3.44 of the FW Regulations makes provisions relating to the accuracy of records required to be kept in accordance with s 535(2) of the FW Act. The Company contravened sub-regulation 3.44(1) of the FW Regulations by keeping a record that was false or misleading regarding the hours worked by Employee 1.

11. The FWO recognises that the Company has:

- a. Caused to have performed calculations to determine the quantum of underpayments arising from the above contraventions (specifically, those identified in paragraphs 10(a) to 10(b)) in relation to Knox Employees who performed work for the Company between 1 January 2015 and 7 January 2017;
- b. Made payments totalling \$70,706.74 (gross) to 39 Knox Employees who performed work for the Company between 1 January 2015 and 7 January 2017 prior to the execution of this Undertaking; and
- c. Amended annual leave and personal leave balances of Knox Employees in accordance with the NES.

Undertakings

12. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, the Company undertakes the following:

Rectification of Underpayments (Knox Employees)

13. Within 14 days of the execution of this Undertaking the Company will make payments to the remaining Knox Employees who performed work for the Company between 1 January 2015 and 7 January 2017 and for whom underpayments were identified, totalling \$17,393.21 as listed in Appendix D. If any such employee identified as having underpayments owing to them arising from the contraventions listed above cannot be located within 60 days of the execution of the Undertaking, the Company will make an application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Consolidated Revenue Fund.

Compliance Review

14. At its own expense, the Company will cause to have performed by an external professional with qualifications in accounting or workplace relations, or an external professional otherwise approved by the FWO, a review of the Company's compliance with all Commonwealth workplace laws and instruments (**Review**), relating to the pay and conditions of the Company's employees as follows:
 - a. The Review will assess the employment conditions of all of the Company's employees, other than the Knox Employees, from the first pay period on or after 1 January 2015 to the date of execution of this Undertaking (**Review Period**);
 - b. The Review will assess the Company's compliance with wages and work related entitlements under applicable workplace laws, including any applicable industrial instrument(s) and the NES, according to each employee's classification, category of employment and hours of work during the Review Period; and
 - c. The Review will be finalised within 30 days of the execution of this Undertaking.
15. The Company will provide to the FWO within 14 days of the finalisation of the Review:
 - a. A copy of the Review report which will include a statement of the methodology used to conduct the Review;
 - b. Details of any contraventions identified in the Review.
16. If requested by the FWO, the Company will provide the FWO with all records and documents used to conduct the Review, including any working documents, within seven days of such a request.

Rectification of Underpayments (Other than Knox Employees)

17. In the event that the Review identifies contraventions of Commonwealth workplace laws, the Company will rectify all such contraventions and make total payments in accordance with the Payment Plan specified in Appendix E.
18. Provide proof of such payment to the FWO by the same day that payments are made as specified in Appendix E.
19. If any employee(s) identified as having underpayments owing to them cannot be located within 365 days after the execution of this Undertaking, the Company will make an application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Consolidated Revenue Fund.

Future Workplace Relations Compliance

20. Within 14 days of the execution of this Undertaking, the Company will:
 - 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 business and industrial instrument coverage;
 - b. Using the FWO's [Pay and Conditions Tool \(PACT\)](#), calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to the Company's My Account profile; and
 - c. Provide to the FWO the My Account Customer Registration Number (**CRN**).
21. The Company will ensure that it complies at all times and in all respects with the FW Act, the FW Regulations, the Hair and Beauty Award and any other Modern Award(s) applicable to its employees.

22. Within 60 days of the execution of this Undertaking, the Company will provide to the FWO details of systems and processes already in place or to be implemented to comply with paragraph 21 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. Ensuring that the employment status of each employee (i.e. whether they are full-time, part-time or casual) is adequately communicated to each employee at the commencement of employment;
 - c. Ensuring that employees meet the definition of full-time, part-time and casual employees as outlined in clauses 11, 12 and 13 of the Hair and Beauty Award;
 - d. Ensuring employees are engaged under the correct classification as per Schedule B to the Hair and Beauty Award, including making appropriate enquiries as to the qualification held by each employee;
 - e. Ensuring that, where applicable, employees receive allowances in accordance with clause 21 of the Hair and Beauty Award;
 - f. Ensuring employees receive their break entitlements in accordance with clause 32 of the Hair and Beauty Award, in particular making a record of any mutual agreements to shorten the length of a meal break pursuant to clause 32.3; and
 - g. Ensuring employees have a direct line of communication with payroll and management to raise issues about their pay and other conditions of employment, such as via a dedicated email address or contact person.

Workplace Relations Training

23. Within 120 days of the execution of this Undertaking, the Company will:
- a. At its own cost, organise and ensure training is provided to all persons who have managerial responsibility for human resource, recruitment or payroll functions (**Training**);
 - b. Ensure that the Training relates to compliance with applicable workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Hair and Beauty Award;
 - 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. Ensure that the Training is conducted by a person approved by the FWO.
24. Within seven days of the delivery of the Training, the Company will provide to the FWO:
- a. The method of delivery of the training; and
 - b. Evidence of attendance at the training, including the name and job title of all attendees and the date of attendance.
25. For a period of three years following the execution of this Undertaking, the Company will ensure that training is conducted in the manner prescribed in paragraph 23 in relation to any new or existing employees or contractors, who, after the commencement of this Undertaking acquire managerial responsibilities that include human resources, recruitment or payroll functions on behalf of the Company.

Apology

26. Within 14 days of the execution of this Undertaking, the Company will send a letter of apology (**Apology Letter**) to current and former Knox Employees of the Company affected by the identified contraventions in paragraph 10 above in the form of Appendix F to this Undertaking and provide a copy to the FWO.

Future Audit Activity

27. The Company will cause to have performed by an external professional with qualifications in accounting or workplace relations or an external professional otherwise approved by the FWO, at the Company's expense, audits of the Company's compliance with all Commonwealth workplace laws and instruments (**Audits**), relating to the pay and conditions of the Company's employees as follows:
- a. The Audits will assess a sample of at least 25% of the Company's workforce at the relevant time, with the sample to be representative of the different work locations, classifications and types or categories of work that apply across the Company's business;
 - b. The Audits will be conducted for all full pay periods where part of the period falls within the following dates:
 - I. 1 May 2017 – 31 May 2017 - to be finalised by 31 July 2017;
 - II. 1 May 2018 – 31 May 2018- to be finalised by 31 July 2018; and
 - III. 1 May 2019 – 31 May 2019 - to be finalised by 31 July 2019.
 - c. The Audits will assess the Company's compliance with the following obligations according to each employees' classification of work, category of employment and hours worked during the Audit period:
 - IV. Wages or work related entitlements under the applicable industrial instrument and the National Employment Standards; and
 - V. Record keeping and pay slip obligation listed within Division 3 of Part 3-6 of the FW Act and within the FW Regulations.
28. In the event that an Audit identifies contraventions of Commonwealth workplace laws, the Company will rectify all such contraventions and provide evidence of such rectification to the FWO.
29. The Company will provide to the FWO within 14 days of each of the finalisation dates specified in subclause 27(b):
- a. A copy of the Audit report which will include a statement of the methodology used to conduct the Audit;
 - b. Details of any contraventions identified in the Audit.
30. The Company will rectify any underpayments arising from contraventions identified in the Audit within 30 days of the completion of the Audit.
31. If requested by the FWO, the Company will provide the FWO with all records and documents used to conduct the Audit, including any working documents, within seven days of such a request.
32. If any employee(s) identified as having underpayments owing to them cannot be located, within 60 days of each of the finalisation dates specified in subclause 27(b) above, the Company will make an application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Consolidated Revenue Fund.

Publish Acknowledgement

33. Within 14 days of the FWO publishing a Media Release on its website in respect to the Undertaking, the Company will:

- a. Place a post on the Company Facebook Page at <https://www.facebook.com/BestCutsAndColors> (**Facebook Post**) in the form of Appendix G to this Undertaking and which will:
 - i. Be posted on the homepage in public view;
 - ii. Remain on the Company Facebook page for at least 28 days; and
 - iii. Contain a html link to the executed Undertaking.
- b. Provide a screenshot of the Facebook Post to the FWO within seven days of posting.

Workplace Notice

34. Within 14 days of the execution of this Undertaking, the Company will:

- a. Display within all workplaces where work is performed by its employees a notice in the form of Appendix H to this Undertaking (**Workplace Notice**) and provide photographic evidence to the FWO of its display; and
- b. Ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed;
 - I. In a location to which all employees of the Company have access;
 - II. 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
 - III. For a period of 14 continuous days.

Donation

35. Within 14 days of the execution of this Undertaking, the Company will:

- a. Make a donation of \$10,000.00 to the Springvale Monash Legal Service Inc. [ABN: 96 206 448 228] of 5 Osborne Avenue Springvale, VIC 3171, with the objective of assisting the promotion of compliance with Commonwealth workplace laws in the community; and
- b. Provide evidence of the donation to the FWO within seven days of payment.

Acknowledgements

36. The Company acknowledges that:

- a. The FWO may make this Undertaking (and any of the Appendices hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
- b. The FWO may release a copy of this Undertaking (and any of the Appendices 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 and from time to time, publicly refer to this Undertaking (and any of the Appendices hereto) and its terms;
- d. The FWO may rely upon the admissions made by the Company set out in paragraph 10 above in respect of decision making concerning any future non-compliance with the Company's workplace relations obligations.
- 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 herein;
- f. 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; and

g. If the Company 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 in paragraph 10 above, and also in respect of the question of costs.

No Inconsistent Statements

37. The Company:

- a. must not; and
- b. must ensure that each of its officers, employees or agents, do not:

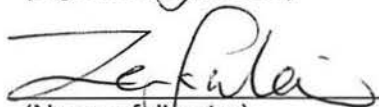
make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this Undertaking.

Executed as an undertaking

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


(Signature of director)


(Signature of director/company secretary)

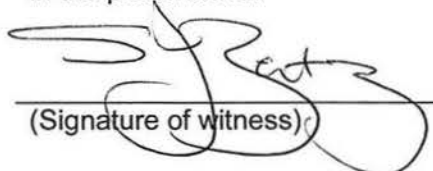

(Name of director)

Zena Suleiman
(Name of director/company secretary)

31.3.17
(Date)


31.3.17
(Date)

in the presence of:


(Signature of witness)

SUSAN ZEITZ
(Name of witness)

in the presence of:


(Signature of witness)

SUSAN ZEITZ
(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 Dispute Resolution and
Compliance

3 APRIL 2017
(Date)


(Signature of witness)

LISA-MARIE OLIVER
(Name of Witness)

Appendix A: Salons Operated by Siajj Pty Ltd

What's Up Hair
Westfield Knox Shopping Centre
425 Burwood Highway Wantirna South Vic 3152

Best Cuts and Colours
Westfield Knox Shopping Centre
425 Burwood Highway Wantirna South Vic 3152

Best Cuts and Colours
Shop 1056 Eastland Shopping Centre
171-175 Maroondah Highway Ringwood Vic 3134

Best Cuts and Colours
Shop 1239 Westfield Shopping Centre Southland
1156 Nepean highway Cheltenham Vic 3192

Best Cuts and Colours
Shop 20, 415 McDonalds Road
Mill Park Vic 3082

Best Cuts and Colours
Shop G110 Westfield Shopping Centre Doncaster
619 Doncaster Road Doncaster Vic 3108

Best Cuts and Colours
Shop 1011 Westfield Shopping Centre Fountain Gate
352 Princess Highway Fountain Gate Vic 3805

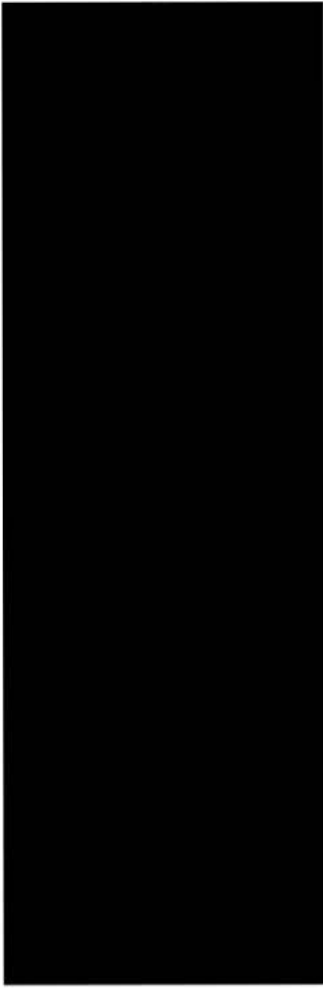
Appendix B – Employees who Lodged RFAs with the FWO

Employee A:

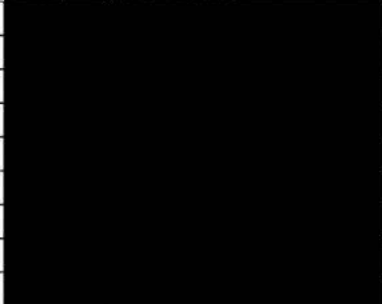
Employee B:



Appendix C – Employees Covered by the Compliance Check



Appendix D – Amounts Outstanding for Knox Employees

Employee Name	Amount Owed (Gross)
	\$243.13
	\$3591.74
	\$82.39
	\$380.75
	\$2235.23
	\$6239.65
	\$3246.22
	\$191.37
	\$1182.73

Appendix E – Payment Plan

Payment date (on or before)	Amount Paid in Total
Within 120 days of the execution of this EU	At least 25% of the total amount owing
Within 200 days of the execution of this EU	At least 50% of the total amount owing
Within 300 days of the execution of this EU	At least 75% of the total amount owing
Within 400 days of the execution of this EU	Full payment to be completed

Appendix F – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Siajj Pty Ltd trading as What's Up Hair and Best Cuts and Colours (**Company**) 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 had contravened the *Fair Work Act 2009* (Cth) and the [Hair and Beauty Industry Award 2010 \[MA000005\]](#) in respect of full-time, part-time and casual employees by:

- Failing to provide part-time employees with a written agreement of hours;
- Failing to pay the correct minimum wage;
- Failing to pay a 25% casual loading;
- Failing to pay the correct Sunday penalty rate;
- Failing to pay the correct public holiday rate;
- Failing to pay annual leave loading; and
- Failing to pay annual leave upon termination.

The Company has taken steps to remedy the contraventions, including providing back payments and making a donation of \$10,000.00 to fund education about workplace rights and entitlements.

The Company 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 will be available on the FWO's 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.

The Company expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact [party to include contact details].

Yours sincerely

[Chief Executive Officer/Director]

Appendix G – Form of Facebook Post

The Fair Work Ombudsman (FWO) conducted a compliance check of our wages and we've identified that we have underpaid 48 employees at our Knox stores by \$88,099.95. The underpayments occurred between January 2015 and January 2017.

We have already apologised to some staff by way of a personal letter. To ensure affected staff are repaid and no future underpayments occur, we have entered into an Enforceable Undertaking with the FWO. You can view a copy of the Enforceable Undertaking here: <LINK TO EU>

If you believe you, or someone you know has been underpaid – first check minimum award pay rates using the Fair Work Ombudsman's Calculator: www.fairwork.gov.au/pact

Appendix H – Form of Workplace Notice

Contraventions of *Fair Work Act 2009* (Cth) by Siajj Pty Ltd

Siajj Pty Ltd trading as What's Up Hair and Best Cuts and Colours (**Company**) employs approximately 150 employees in the hairdressing industry.

As a result of a review of our wage records, the Company has identified circumstances in which it failed to provide the correct rate of pay to employees between 2015 and 2016. These underpayments amount to contraventions of the *Fair Work Act 2009* (Cth) and the [Hair and Beauty Industry Award 2010 \[MA000005\]](#).

The Company has formally admitted to the Fair Work Ombudsman (**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:

- Making a donation of \$10,000 to fund education about workplace rights and entitlements; and
- Providing training and conducting future audits, to ensure employees are paid correct rates of pay.

The Company expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, the Company gives a commitment to ensuring future compliance with Commonwealth workplace relations laws.

If you are a current or former employee of the Company and you have questions regarding this notice, please contact us via [insert appropriate email address].

If you have general questions regarding conditions of employment, please refer to the FWO website at www.fairwork.gov.au or call the Infoline on 13 13 94.