

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 26/10/2020 10:49:18 AM ACDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: SAD156/2020  
File Title: CRAIG SCHONEWEISS v THE FOURTH FORCE PTY LTD & ANOR  
Registry: SOUTH AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 26/10/2020 3:25:36 PM ACDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 17

Rule 8.05(1)(a)

Federal Court of Australia

No. of 2020

South Australia Registry

Fair Work Division

**Craig Schoneweiss**

Applicant

**The Fourth Force Pty Ltd (ACN 084 438 773)**

First Respondent

**Dramet Pty Ltd (ACN 109 544 425)**

Second Respondent

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Filed on behalf of  
Law firm (if applicable)  
Tel  
Email  
**Address for service**

The Applicant  
Adero Law  
(02) 6189 1022 Fax n/a  
Rory.Markham@aderolaw.com.au  
5 Torrens Street,  
Braddon ACT 2612

## Statement of claim

### A THE RESPONDENTS

1. At all material times, the First Respondent was:
  - (a) the employer of employees working in each of the First Respondent's Supermarkets (as defined at paragraph 3 below);
  - (b) a national system employer within the meaning of sections 14 and 30N of the *Fair Work Act 2009* (Cth) (**FW Act**);
  - (c) an employer in the general retail industry as defined by the *General Retail Industry Award 2010* (**the Award**); and
  - (d) in the premises, liable to be sued as a national system employer under the FW Act.
  
2. At all material times, the Second Respondent was:
  - (a) the employer of employees working in each of the Second Respondent's Supermarkets (as defined at paragraph 4 below);
  - (b) a national system employer within the meaning of section 14 of the FW Act;
  - (c) an employer in the general retail industry as defined by the Award; and
  - (d) in the premises, liable to be sued as a national system employer under the FW Act.

### B SUPERMARKETS OPERATED BY THE RESPONDENTS

3. At all material times, the First Respondent operated retail supermarkets, being 35 retail supermarkets in South Australia (collectively, the **First Respondent's Supermarkets**).

### Particulars

The stores operated by the First Respondent are identified in Schedule B.

4. At all material times, the Second Respondent operated retail supermarkets, being 23 retail supermarkets in Queensland and South Australia (collectively the **Second Respondent's Supermarkets**).

### Particulars

The stores operated by the Second Respondent are identified in Schedule C.

### C REPRESENTATIVE PROCEEDINGS

5. The Applicant brings this proceeding pursuant to Part IVA of the Federal Court of Australia Act 1976 (Cth):
- (a) for himself; and
  - (b) as the representative of a group constituted by all persons:
    - (i) employed by the First Respondent and/or Second Respondent at any time after the period commencing 6 years prior to the date of the filing of the Originating Application herein (the "**Relevant Period**");
    - (ii) in a position;
      - (1) the title of which was, or the title of which included the word, "manager", including the following positions:
        - (A) Store Manager;
        - (B) Store Assistant Manager;
        - (C) Nightfill Manager;
        - (D) Duty Manager;
        - (E) Department Manager; and
        - (F) Assistant Department Manager,
- (a "**Manager Position**"); and

- (2) which was undertaken as a “full time employee” as defined in the Award;
- (iii) employed in such a Manager Position at one of the First Respondent’s Supermarkets or the Second Respondent’s Supermarkets;
- (iv) paid pursuant to the terms of their contract of employment in such a Manager Position by way of an annualised salary;
- (v) paid weekly in arrears in respect of work performed by them in the preceding week of Monday to Sunday (**Pay Period**);
- (vi) such weekly payments being, in each Pay Period, equal to:
  - (1) a weekly instalment of their annualised salary; and
  - (2) in some Pay Periods, additional payments made where during the Pay Period they had:
    - (A) performed an additional shift on their usual rostered days off; or
    - (B) worked on a public holiday during the Pay Period;(the **Additional Payments**)
- (vii) who, during any Pay Period in the Relevant Period:
  - (1) were rostered to perform hours of work in excess of 38 hours per week and performed such rostered hours; and / or
  - (2) additionally, performed further hours of work in excess of their rostered hours,  
  
(collectively, **Overtime**);
- (viii) who also, during any Pay Period in the Relevant Period, performed work at times which attracted entitlements to penalty rates, overtime rates and loadings under the Award, including:
  - (1) during the evening after 6:00PM;

- (2) on weekends;
- (3) on public holidays; and
- (4) outside the spread of hours during which 'ordinary hours' can be worked in the Award, including:
  - (A) on a Sunday before 9:00AM in the morning, and on all other days before 7:00AM in the morning;
  - (B) during a weekend, after 6:00PM, and on all other days after 9:00PM in the evenings;

(defined collectively as the **Penalty Work**);

- (ix) further, some of whom:
  - (1) were not paid leave loading in accordance with the Award during periods when they took annual leave;
  - (2) were not paid allowances arising from the Award as they became payable;

(defined collectively as the **Loadings and Allowances**);

- (x) who were not paid their entitlements arising from the Award:
  - (1) from performing the Overtime and Penalty Work during the Relevant Period; and
  - (2) where applicable, in respect of the Loadings and Allowances, only being paid weekly payments of their annualised salaries and the Additional Payments which were insufficient to discharge their entitlements arising under the Award;

- (xi) further, at least some of whom also experienced unlawful deductions from their weekly pay purportedly in respect of the cost of their work uniform items (the **Unlawful Deductions**); and

- (xii) have not, as at the date of commencement of this proceeding, commenced proceedings against the First or Second Respondent in respect of:

- (1) the underpayments of their entitlements relating to this Overtime, Penalty Work or Loadings and Allowances; or
- (2) the Unlawful Deductions,

(the “**Group**” and a/the “**Group Member/s**”).

## **D APPLICANT’S UNDERPAYMENT**

### **D-1 APPLICANT’S EMPLOYMENT - EMPLOYMENT PERIODS**

6. From the start of the Relevant Period to on or around 4 October 2015, pursuant to a contract entered into between the Applicant and First Respondent on or around 22 November 2013 (the **First Contract**), the Applicant was a full-time employee of the First Respondent in the position of Grocery Manager at the First Respondent’s supermarket store in Hallett Cove, South Australia (the **Hallett Cove Period**).
7. From the start of the Relevant Period until on or around 22 December 2014 it was a term of the First Contract that the Applicant would be paid an annualised salary of \$48,347.52 (exclusive of superannuation), made by payment of equal weekly instalments.
8. On or around 22 December 2014 the term of the First Contract pleaded in paragraph 7 was varied such that the Applicant’s annualised salary increased to \$49,419.24 (exclusive of superannuation), made by payment of equal weekly instalments.
9. The Applicant’s employment with the First Respondent terminated on or around 5 October 2015.
10. From on or around 5 October 2015 pursuant to a contract entered into between the Applicant and Second Respondent on or around 24 August 2015 (the **Second Contract**), the Applicant was a full-time employee of the Second Respondent in the position of Store Assistant Manager at the Second Respondent’s supermarket store in Parkinson, Queensland (the **Parkinson Period**).
11. It was a term of the Second Contract that the Applicant would be paid an annualised salary of \$60,000 (exclusive of superannuation), made by payment of equal weekly instalments.
12. On or about 8 December 2016, the term of the Second Contract pleaded in paragraph 11 was varied such that the Applicant’s annualised salary increased to \$60,657 (exclusive of superannuation), made by payment of equal weekly instalments.

13. On or around 23 October 2017, the term of the Second Contract pleaded in paragraph 11 was again varied such that the Applicant's annualised salary increased to \$62,712 (exclusive of superannuation), made by payment of equal weekly instalments.
14. On or around 24 August 2018, the Applicant gave notice of his resignation from his employment with the Second Respondent. The Applicant's employment with the Second Respondent terminated on or about 21 September 2018.

#### **D-2 APPLICANT'S EMPLOYMENT DUTIES AND AWARD COVERAGE**

15. During the Hallett Cove Period, when the Applicant was employed as Grocery Manager the Applicant's duties were:
  - (a) attending to the supervision of at least 5 staff per shift working in the Hallett Cove supermarket's grocery department;
  - (b) store promotional activity;
  - (c) implementing relays in the store;
  - (d) visual merchandising;
  - (e) cross-merchandising;
  - (f) liaising with sales representatives in the store;
  - (g) investment buying;
  - (h) decision making in relation to deleting lines at store level if having issues;
  - (i) profit and loss of grocery department;
  - (j) overseeing night-fill including investigating stock discrepancies where required; and
  - (k) spot checks on inventory management.
16. During the Parkinson Period, when the Applicant was employed as Store Assistant Manager the Applicant's duties were:
  - (a) attending to the supervision of 30 staff working in the Parkinson supermarket;
  - (b) running the store in the absence of the store manager;



- (c) accountability alongside the store manager;
  - (d) store wages and wastage;
  - (e) recruiting;
  - (f) investigating departments making a loss;
  - (g) assisting refits;
  - (h) attending alarm callouts;
  - (i) store maintenance (e.g. dealing with electricians etc.);
  - (j) terminating staff employment where necessary;
  - (k) customer complaints;
  - (l) productivity evaluations;
  - (m) daily store walks;
  - (n) overseeing ticketing compliance;
  - (o) overseeing food safety programs and compliance, dealing with council on the same;
  - (p) Work Health and Safety meetings;
  - (q) assist in loading and unloading dairy products, delicatessen products and fresh produce to and from refrigerated display cabinets;
  - (r) return to work programs; and
  - (s) store banking (financials and transactions).
17. By reason of the matters alleged at paragraphs 1 to 4 and 6 to 16 above, the Applicant was, throughout his employment in both the Hallett Cove Period and Parkinson Period, covered by the Award as a full-time employee, and classified as a "Retail Employee Level 6" employee under the Award.

### **D-3 APPLICANT'S REGULAR HOURS OF WORK**

18. During each of the Hallett Cove Period and Parkinson Period, the Applicant was rostered to work pursuant to a roster being:
- (a) for the Hallett Cove Period, a single-week roster pattern; and
  - (b) for the Parkinson Period, a fortnightly roster pattern (made up of Week A and Week B respectively).

### **Particulars**

Full particulars of the Applicant's rosters to be provided after discovery.

19. The Applicant's rostered working hours in the respective roster pattern included his being rostered to perform the following hours of work in the following periods:
- (a) for the Hallett Cove Period, 41 hours per week (accounting for scheduled unpaid breaks of 60 minutes on each shift); and
  - (b) for the Parkinson Period, from the start of the Parkinson Period to about 1 February 2016, 90 hours per fortnight, and from about 1 February 2016, 45 hours per week (accounting for scheduled unpaid breaks of 60 minutes on each shift),
- (collectively, the **Rostered Hours**).
20. Throughout the Hallett Cove Period and Parkinson Period the Applicant worked the Rostered Hours of work.
21. Further, during the Hallett Cove Period and Parkinson Period the Applicant performed work in addition to the Rostered Hours which involved the pattern of work pleaded in paragraphs 22 to 26 below (his **Actual Hours**).
22. The regular pattern of Rostered Hours and Actual Hours worked by the Applicant throughout the Hallett Cove Period was (subject to the exception in paragraph 26 below):
- (a) Monday, Tuesday, Thursday, and Friday:
    - (i) Rostered Hours: 8:00AM to 5:00PM, less a scheduled unpaid break of 60 minutes; and
    - (ii) Actual Hours: commencing at approximately 7:30AM and finishing at approximately 5:00PM, less an unpaid break of on average 30 minutes.

- (b) Wednesday:
- (i) Rostered Hours: 6:00AM to 4:00PM, less a scheduled unpaid break of 60 minutes; and
  - (ii) Actual Hours: commencing at approximately 5:50AM and finishing at approximately 4:15PM, less an unpaid break of on average 30 minutes.

(c) Saturday and Sunday:

- (i) Rostered Hours: Not rostered; and
- (ii) Actual Hours: Not worked.

23. The regular pattern of Rostered Hours and Actual Hours worked by the Applicant throughout the Parkinson Period was (subject to the exceptions in paragraph 24, 25 and 26 below):

(a) For the period from the start of the Parkinson Period to about 1 February 2016:

- (i) a "6-4" fortnightly roster, the "6" day week being roster days Monday to Saturday and the "4" day week being roster days Monday to Thursday, with Friday off, during which the following hours were rostered / worked:

(1) Weekdays:

- (A) Rostered Hours: 6:00AM to 4:00PM, less a scheduled unpaid break of 60 minutes; and
- (B) Actual Hours: commencing at approximately 5:30AM and finishing at approximately 4:15PM, less an unpaid break of on average 30 minutes.

(2) Saturday (in the "6" week only):

- (A) Rostered Hours: 6:00AM to 4:00PM, less a scheduled unpaid break of 60 minutes; and
- (B) Actual Hours: commencing at approximately 5:30AM and finishing at approximately 5:00PM, less an unpaid break of on average 30 minutes.

(3) Sunday: not rostered or worked.

(b) For the period following 1 February 2016, a Week A / Week B fortnightly pattern as follows:

(i) Week A:

(1) Monday, Tuesday, Wednesday, Thursday and Friday:

(A) Rostered Hours: 6:00AM to 4:00PM, less a scheduled unpaid break of 60 minutes; and

(B) Actual Hours: commencing at approximately 5:30AM and finishing at approximately 4:15PM, less an unpaid break of on average 30 minutes.

(2) Saturday and Sunday: not rostered or worked.

(ii) Week B:

(1) Monday through to Saturday with one weekday off, that weekday generally being:

(A) in the period of about 1 February 2016 to about 1 January 2018, Tuesday; and

(B) from about 1 January 2018, Thursday.

(2) On such working weekdays:

(A) Rostered Hours: 6:00AM to 4:00PM, less a scheduled unpaid break of 60 minutes; and

(B) Actual Hours: commencing at approximately 5:30AM and finishing at approximately 4:15PM, less an unpaid break of on average 30 minutes.

(3) Saturday:

(A) Rostered Hours: 6:00AM to 4:00PM, less a scheduled unpaid break of 60 minutes; and

(B) Actual Hours: commencing at approximately 5:30AM and finishing at approximately 5:00PM, less an unpaid break of on average 30 minutes.

- (4) Sunday: not rostered or worked.

### **Particulars**

The dates and times worked by the Applicant are recorded in the Applicant's Kronos record for the period up to 30 June 2017. From 1 July 2017 the Applicant continued to work in the pattern pleaded above however his working hours were not accurately recorded in the Kronos record.

24. In the period from about 1 February 2016 to about 1 January 2018, on those occasions the Applicant was rostered a Thursday shift in Week B, he was rostered to work, and did work, a 'late shift', instead of those hours pleaded at paragraph 23 above, such a late shift being:
- (a) Rostered Hours: 11:00AM to 9:00PM, less a scheduled unpaid break of 60 minutes;  
and
- (b) Actual Hours: commencing at approximately 10:30AM and finishing at approximately 9:15PM, less an unpaid break of on average 30 minutes;
25. From time to time in the Parkinson Period, on those occasions when the Applicant would ordinarily have been rostered 6:00AM to 4:00PM, he was alternatively rostered from 8:00AM to 6:00PM (less a scheduled unpaid break of 60 minutes) and would work from 7:30AM to 6:00PM (less an unpaid break of, on average, 30 minutes).

### **Particulars**

Such occasions being those days when the Store Manager, being either Mr Whitehouse or Ms Wendy Evans elected to work the shift commencing at 6:00AM, the Applicant agreed to work the shift commencing at 8:00AM.

26. From time to time in the Hallett Cove and Parkinson Periods the Applicant performed one of his weekday rostered shifts on a weekend day. On such occasions, the Applicant would have a day off during the week instead. These occasions occurred on:
- (a) Saturday 30 May 2015, when the Applicant worked his Actual Hours from 5:44AM to 5:30PM (less a 30-minute unpaid break), being the Applicant's fifth rostered workday within the Pay Period starting Monday 25 May 2015;

- (b) Sunday 5 July 2015, when the Applicant worked his Actual Hours from 8:36AM to 5:32PM (less a 30-minute unpaid break), being the Applicant's fifth rostered workday within the Pay Period starting Monday 29 June 2015;
  - (c) Sunday 24 December 2017, when the Applicant worked 10 hours (less a 30-minute unpaid break) being the Applicant's fifth rostered workday within the Pay Period starting Monday 18 December 2017; and
  - (d) Sunday 31 December 2017, when the Applicant worked 10 hours (less a 30-minute unpaid break) being the Applicant's fifth rostered workday within the Pay Period starting Monday 25 December 2017.
27. Save for the exceptions noted in paragraphs 24, 25 and 26 above, the Applicant worked the Actual Hours pleaded in paragraph 22 and 23 above in each of the Hallett Cove Period and Parkinson Period,
- (collectively, the **Applicant's Regular Hours**).
28. In the premises, the Actual Hours of the Applicant's Regular Hours totalled, in any given Pay Period:
- (a) during the Hallett Cove Period: approximately 46 hours per week; and
  - (b) during the Parkinson Period: approximately 52 hours per week.
29. During the Relevant Period, each of the First Respondent and Second Respondent had a common or general practice of directing and requiring Group Members to:
- (a) work rostered hours being approximately 45 hours per week; and
  - (b) work beyond their rostered hours in a manner similar to that which the Applicant was required to perform in the Applicant's Regular Hours, including:
    - (i) additional hours performed before and / or at the end of their rostered shifts; and
    - (ii) time worked through their scheduled shifts (their not having an opportunity to take breaks or taking shorter than scheduled breaks).

#### **D-4 APPLICANT'S ADDITIONAL HOURS OF WORK**

30. In addition to the Applicant's Regular Hours, the Applicant, from time to time, worked additional hours on a Saturday:
- (a) during the Hallett Cove Period; and
  - (b) during the Parkinson Period, on any Saturday other than by way of the Applicant's Regular Hours as alleged in paragraph 23 above,
- (the **Additional Saturday Hours**).

**Particulars**

On the dates in Schedule D.

31. In addition to the Applicant's Regular Hours, the Applicant, from time to time, worked additional hours on a Sunday:
- (a) during the Hallett Cove Period; and
  - (b) during the Parkinson Period,
- (the **Additional Sunday Hours**).

**Particulars**

On the dates in Schedule E.

32. During the Relevant Period, each of the First Respondent and Second Respondent had a common or general practice of directing and requiring Group Members to work additional shifts on days when they were not rostered to work (including on weekends) to cover the absence of other employees or otherwise meet their staffing requirements.
33. In addition to the Applicant's Regular Hours, the Applicant worked additional hours between the hours of 9:30PM and 6:00AM in circumstances where, as part of his employment duties, he was required to attend the supermarket to deal with equipment breakdowns or alarm callouts which occurred outside of the supermarket's trading hours, specifically:
- (a) during the Hallett Cove Period, approximately once every four months; and
  - (b) during the Parkinson Period, approximately one every two months,
- and when upon each occasion he would work until the material issue was resolved,

(the **Additional Call Out Hours**).

### **Particulars**

Such Additional Call Out Hours were performed on those occasions when the Applicant received a call from the security company monitoring the alarm systems of the security system, or refrigeration system, who would call to advise him of a fault, the Applicant then being required to attend the store to facilitate repairs to defective refrigeration machinery, or to troubleshoot the relevant alarming system.

Full particulars of the dates and times upon which the Applicant performed such additional night work to be provided after discovery.

34. During the Relevant Period, each of the First Respondent and Second Respondent had a common or general practice of directing and requiring Group Members in the positions of Store Manager, Store Assistant Manager, Duty Manager and Grocery Manager to remain on call to deal with equipment breakdowns or alarm callouts and to attend work to perform additional hours upon the occurrence of such breakdowns or callouts in a similar way to the Applicant in his performance of the Additional Call Out Hours.
35. In addition to the Applicant's Regular Hours, throughout his employment the Applicant, from time to time, worked on a public holiday,

(the **Public Holiday Hours**).

### **Particulars**

Those occasions upon which the Applicant performed such work on a public holiday are particularised insofar as is possible in Schedule F.

## **D-5 APPLICANT'S ENTITLEMENT TO ALLOWANCES**

36. When performing the Applicant's Regular Hours throughout the Parkinson Period the Applicant was required by the Second Respondent to 'act up' as the Store Manager of the Parkinson Store.
37. When doing so, the Applicant would perform duties consistent with a Level 8 Employee, being those of a 'Store Manager' as that term is defined in the Award.
38. The facts alleged at paragraph 36 occurred on the following occasions:



- (a) on every second Saturday when he was rostered to be working and the Store Manager was not; and
- (b) from time to time, on an occasion when the Store Manager was absent from work by reason of sickness or a period of annual leave,

(the **Higher Duties**).

### **Particulars**

Specific dates of the occasions during the Parkinson Period when the Applicant was 'acting up' in the Store Manager position in the absence of the Store Manager will be provided after discovery of the Applicant's roster.

39. During the Relevant Period, each of the First Respondent and Second Respondent had a common or general practice of directing and requiring Group Members in the following positions and circumstances to act as Store Manager:
- (a) Store Assistant Manager, in circumstances of the Store Manager's absence;
  - (b) Grocery Manager, in circumstances of the absence of the Store Manager and the Store Assistant Manager;
  - (c) Duty Manager, in circumstances of the absence of the Store Manager, Store Assistant Manager and Grocery Manager; and
  - (d) Nightfill Manager, in circumstances of the absence of the Store Manager, Store Assistant Manager, Grocery Manager and Duty Manager.
40. When performing the Applicant's Regular Hours, the Applicant was occasionally required to stay back at work later than his Rostered Hours to perform additional hours of work with less than 24 hours' notice that he was to be required to perform such overtime.
41. When the Applicant was required to do so he was not provided with a meal by the First Respondent or Second Respondent,

(the **Overtime Without Meal**).

### **Particulars**

Such Overtime Without Meal was performed, from time to time, when the Applicant was required to remain at work for the following reasons:

- (i) in situations of a late delivery to the store;
- (ii) during stock-take; and
- (iii) on occasions when refrigeration equipment suffered a breakdown prior to the conclusion of his shift, and the Applicant was required by virtue of his position to supervise the repair work until the refrigeration equipment was returned to service.

42. During the Relevant Period, each of the First Respondent and Second Respondent had a common or general practice of similarly requiring Group Members to work beyond 6:00PM, without more than 24 hours' notice and without a meal, in a similar way as the Applicant in his performance of the Overtime Without Meal.
43. Shortly after commencing employment with the First Respondent, the Applicant attended training organised by the First Respondent which caused him to obtain a First Aid Qualification.
44. After obtaining this qualification, the Applicant was then appointed to perform first aid duty by the First Respondent throughout the Hallett Cove Period.
45. The Applicant was subsequently appointed to first aid duty by the Second Respondent, with such duty continuing throughout the Parkinson Period.

(the **First Aid Duty**)

46. During the Relevant Period, each of the First Respondent and Second Respondent had a common or general practice of requiring, between two and five Group Members per each of the First Respondent's Supermarkets and Second Respondent's Supermarkets to:
- (a) obtain a First Aid Qualification; and
  - (b) be appointed to perform first aid duty when at work.
47. In performing his duties as alleged at paragraph 16 throughout the Parkinson Period the Applicant was required to assist for an average of 2.5 hours per week in loading and unloading of dairy products, delicatessen products, and fresh produce to and from refrigerated display cabinets, which were refrigerated to between 0 and 4 degrees Celsius.

(the **Cold Work**)

48. During the Relevant Period, each of the First Respondent and Second Respondent had a common or general practice to direct and require Group Members to perform work in a refrigerated area and / or walk-in freezer or stock refrigerated cabinets and display cases; either by virtue of the employees' positions or by the First and Second Respondent's requirement that Group Members assist in departments where there was a 'surge' of work, including in circumstances of stock delivery. Such Group Members being those employed in the positions of:

- (a) Store Manager;
- (b) Store Assistant Manager;
- (c) Duty Manager; or
- (d) Department Manager, being a:
  - (i) Dairy Manager;
  - (ii) Fruit and Vegetable Manager;
  - (iii) Meat Manager;
  - (iv) Deli Manager;
  - (v) Seafood Manager;
  - (vi) Grocery Manager;
  - (vii) Bakery Manager;

but not those in the positions of:

- (e) Front of House/Customer Service Manager; or
- (f) Scanning Manager.

#### **D-6 REMUNERATION RECEIVED BY THE APPLICANT**

49. It was a term of the Award and each of the First and Second Contracts that the Applicant's salary and any other monetary entitlements to which he might become entitled to under either the Award or such contracts would be paid to him at the conclusion of each weekly Pay Period via electronic funds transfer.

50. Such payments were made on the Tuesday in the week which followed the Pay Period.
51. The first Pay Period in the Hallett Cove Period started on 25 November 2013 and ended on 1 December 2013.
52. Save for the deductions alleged at paragraph 53 below, for each Pay Period in the Hallett Cove Period, the Applicant was paid by the First Respondent:
- (a) From the first Pay Period in the Hallett Cove Period to 14 December 2014
    - (i) \$929.76 by way of the payment of his annualised salary; and
    - (ii) \$86.00 in superannuation.
  - (b) From 15 December 2014 to 4 October 2015
    - (i) \$950.37 by way of the payment of his annualised salary; and
    - (ii) 90.29 in superannuation,
- (the **Hallett Cove Period Ordinary Weekly Pay**).
53. In each of the following Pay Periods in the Hallett Cove Period, the Applicant had deducted from his pay the following respective amounts, purportedly for the cost of uniform items:
- (a) in the pay period from 2 June to 8 June 2014, being \$51.50, such deduction then subject to a partial refund in the pay period from 9 June to 15 June 2014 of \$39.50;
  - (b) in the pay period from 30 June to 6 July 2014, being \$20.00;
  - (c) in the pay period from 7 July to 13 July 2014, being \$20.00; and
  - (d) in the pay period from 14 July to 20 July 2014, being \$8.20.
54. The first Pay Period in the Parkinson Period started on 5 October 2015 and ended on 11 October 2015.
55. Save for the deductions alleged at paragraph 56 below, in each Pay Period in the Parkinson Period the Applicant was paid by the Second Respondent:
- (a) From 5 October 2015 to 11 December 2016:
    - (i) \$1,153.85 by way of the payment of his annualised salary; and

(ii) \$109.62 in superannuation.

(b) From 12 December 2016 to 15 October 2017:

(i) \$1,166.48 by way of the payment of his annualised salary; and

(ii) \$110.82 in superannuation.

(c) From 16 October 2017 to 23 September 2018:

(i) \$1,206 by way of the payment of his annualised salary; and

(ii) \$114.57 in superannuation,

(the **Parkinson Period Ordinary Weekly Pay**).

56. In each of the following Pay Periods in the Parkinson Period, the Applicant had deducted from his pay the following respective amounts, purportedly for the cost of a uniform item:

(a) in the pay period from 17 October to 23 October 2016, being \$10.00;

(b) in the pay period from 12 June to 18 June 2017, being \$12.00; and

(c) in the pay period from for 4 June to 10 June 2018, being \$12.00,

(together with the deductions in paragraph 53 above, collectively the **Applicant's Deductions**).

57. In addition to the Hallett Cove Period Ordinary Weekly Pay, the Applicant was paid additional amounts for the Additional Saturday Hours worked during the Hallett Cove Period, being:

(a) on 17 February 2015, \$277.11, which appears to be for Additional Saturday Hours performed on 14 February 2015,

(the **Hallett Cove Period Additional Saturday Pay**).

58. In addition to the Hallett Cove Period Ordinary Weekly Pay, the Applicant was paid additional amounts for the Additional Sunday Hours worked during the Hallett Cove period, being:

(a) on 30 September 2014, \$420.23, which appears to be for Additional Sunday Hours performed on 28 September 2014;

- (b) on 4 November 2014, \$300.00, which appears to be for Additional Sunday Hours performed on 2 November 2014;
- (c) on 10 March, \$250.00, which appears to be for Additional Sunday Hours performed on 8 March 2015;
- (d) on 17 March 2015, \$250.00, which appears to be for Additional Sunday Hours performed on 15 March 2015;
- (e) on 24 March 2015, \$250.00, which appears to be for Additional Sunday Hours performed on 22 March 2015;
- (f) on 31 March 2015, \$250.00, which appears to be for Additional Sunday Hours performed on 29 March 2015;
- (g) on 14 April 2015, \$250.00, which appears to be for Additional Sunday Hours performed on 12 April 2015;
- (h) on 26 May 2015, \$250.00, which appears to be for Additional Sunday Hours performed on 24 May 2015;
- (i) on 2 June 2015, \$250.00, which appears to be for Additional Sunday Hours performed on 31 May 2015;
- (j) on 14 July 2015, \$250.00, which appears to be for Additional Sunday Hours performed on 12 July 2015;
- (k) on 21 July 2015, \$250.00, which appears to be for Additional Sunday Hours performed on 19 July 2015;
- (l) on 4 August 2015, \$250.00, which appears to be for Additional Sunday Hours performed on 2 August 2015;
- (m) on 11 August 2015, \$300.00, which appears to be for Additional Sunday Hours performed on 9 August 2015;
- (n) on 25 August 2015, \$300.00, which appears to be for Additional Sunday Hours performed on 23 August 2015; and
- (o) on 8 September 2015, \$300.00, which appears to be for Additional Sunday Hours performed on 6 September 2015,

(the **Hallett Cove Period Additional Sunday Pay**).

59. In addition to the Parkinson Period Ordinary Weekly Pay, the Applicant was paid additional amounts for the Additional Saturday Hours worked during the Parkinson Period, being:

- (a) on 10 October 2017, \$233.30, which appears to be for Additional Saturday Hours performed on 7 October 2017,

(the **Parkinson Period Additional Saturday Pay**).

60. In addition to the Parkinson Period Ordinary Weekly Pay, the Applicant was paid additional amounts for the Additional Sunday Hours worked during the Parkinson period, being:

- (a) on 21 June 2016, \$230.77, which appears to be for Additional Sunday Hours performed on 19 June 2016,

(the **Parkinson Period Additional Sunday Pay**).

61. In both the Hallett Cove Period and Parkinson Period the Applicant was paid additional amounts, in respect of the Public Holiday Hours performed during that period (the **Public Holiday Pay**).

62. The Public Holiday Pay was sufficient to discharge the Applicant's entitlements under the Award in respect of the Public Holiday Hours.

63. In the Hallett Cove Period, the total remuneration received by the Applicant for his performance of the Applicant's Regular Hours, the Additional Saturday Hours, the Additional Sunday Hours, the Additional Call Out Hours, the Overtime Without Meal, the First Aid Duty and the Cold Work was the:

- (a) Hallett Cove Period Ordinary Weekly Pay;
- (b) Hallett Cove Period Additional Saturday Pay; and
- (c) Hallett Cove Period Additional Sunday Pay.

64. In the Parkinson Period, the total remuneration received by the Applicant for his performance of the Applicant's Regular Hours, the Additional Saturday Hours, the Additional Sunday Hours, the Additional Call Out Hours, the Higher Duties, the Overtime Without Meal, the First Aid Duty and the Cold Work was the:

- (a) Parkinson Period Ordinary Weekly Pay;

- (b) Parkinson Period Additional Saturday Pay; and
- (c) Parkinson Period Additional Sunday Pay.

**D-7 THE APPLICANT'S AWARD ENTITLEMENTS AND THE FIRST AND SECOND RESPONDENT'S CONTRAVENTIONS**

*Underpayment Contraventions*

65. During each relevant Pay Period of the Hallett Cove Period and Parkinson Period, the Applicant was not paid:

- (a) a penalty payment of an additional 25% loading for working ordinary hours on Saturdays during the Applicant's Regular Hours as required by clause 29.4 of the Award;
- (b) a penalty payment of an additional loading of between 80% and 100% for working ordinary hours on Sundays during the Applicant's Regular Hours as required by clause 29.4 of the Award;
- (c) a penalty payment of an additional 25% loading for working ordinary hours after 6:00PM during the Applicant's Regular Hours, as required by clause 29.4 of the Award;

(the entitlements in Award clause 29.4 referred to in (a) to (c) above being, collectively, the **Penalty Rate Entitlements**);

- (d) an overtime rate being:
  - (i) time and a half for the first three hours and double time thereafter for hours worked in excess of 7.6 hours per day on Mondays to Saturdays during the Applicant's Regular Hours and Additional Saturday Hours, as required by clause 29.2 of the Award; and
  - (ii) double time for overtime performed on Sundays during the Additional Sunday Hours, as required by clause 29.2 of the Award; or
  - (iii) time and a half for the first three hours and double time thereafter for hours worked outside the spread of hours during which 'ordinary hours' can be worked in the Award, being:



- (1) on a Sunday before 9:00AM in the morning, and on all other days before 7:00AM in the morning; and
- (2) during a weekend, after 6:00PM, and on all other days after 9:00PM in the evenings,

as required by clauses 27.2 and 29.2 of the Award.

- (e) an overtime rate being time and a half or double time (paid for at least three hours) in respect of overtime worked when the Applicant was recalled to work during the Additional Call Out Hours, as required by clauses 20.10 and 29.2 of the Award;

(the entitlements derived from Award clauses 20.10 and 29.2 in (d) to (e) above being, collectively, the **Overtime Entitlements**);

- (f) a meal allowance for each occasion where he performed the Overtime Without Meal, as required by clause 20.1 of the Award;
- (g) a first aid allowance in connection with his performance of the First Aid Duty, as required by clause 20.9 of the Award;
- (h) a cold work disability allowance in connection with his performance of the Cold Work, as required by clause 20.8 of the Award; and
- (i) in respect of the Parkinson Period only, additional remuneration for performing the Higher Duties as required by clause 20.12 of the Award.

(the entitlements derived from Award clauses 20.1, 20.8, 20.9 and 20.12 in (f) to (h) above being, collectively, the **Allowance Entitlements**)

66. The amounts paid to the Applicant by the Hallett Cove Period Ordinary Weekly Pay (and where applicable, the Hallett Cove Additional Saturday Pay and Hallett Cove Additional Sunday Pay) in each Pay Period of the Hallett Cove Period, were less than that which he was entitled to be paid under the Award for the:

- (a) Applicant's Regular Hours;
- (b) Additional Saturday Hours;
- (c) Additional Sunday Hours;
- (d) Additional Call Out Hours;

- (e) Overtime Without Meal;
  - (f) First Aid Duty; and
  - (g) Cold Work.
67. In the premises, in each Pay Period of the Hallett Cove Period the First Respondent failed to comply with:
- (a) clause 29.4 of the Award in relation to the Penalty Rate Entitlements;
  - (b) clauses 29.2 and 20.10 of the Award in relation to the Overtime Entitlements;
  - (c) where the entitlement to the allowance arose in a Pay Period as alleged in section D5 of this claim, clauses 20.1, 20.8 and 20.9 of the Award in relation to the Allowance Entitlements.
68. In the premises, in each Pay Period of the Hallett Cove Period the First Respondent contravened section 45 of the FW Act in respect of each of the failures identified in paragraph 67 above.
69. In the premises, in each Pay Period of the Hallett Cove Period the First Respondent contravened section 323 of the FW Act by failing to pay the full amount due to the Applicant in respect of the matters pleaded in paragraphs 65 to 68 above.
70. The amounts paid to the Applicant in the Parkinson Period Ordinary Weekly Pay in each Pay Period (and where applicable, the Parkinson Additional Saturday Pay and Parkinson Additional Sunday Pay) in the Parkinson Period, were less than what he was entitled to be paid under the Award for the:
- (a) Applicant's Regular Hours;
  - (b) Additional Saturday Hours;
  - (c) Additional Sunday Hours;
  - (d) Additional Call Out Hours;
  - (e) Higher Duties;
  - (f) Overtime Without Meal;

- (g) First Aid Duty; and
  - (h) Cold Work.
71. In the premises, in each Pay Period of the Parkinson Period the Second Respondent failed to comply with:
- (a) clause 29.4 of the Award in relation to the Penalty Rate Entitlements;
  - (b) clauses 29.2 and 20.10 of the Award in relation to the Overtime Entitlements; and
  - (c) where the entitlement to the allowance arose in a Pay Period as alleged in section D5 of this claim, clauses 20.1, 20.8, 20.12 and 20.9 of the Award in relation to the Allowance Entitlements.
72. In the premises, in each Pay Period of the Parkinson Period the Second Respondent contravened section 45 of the FW Act in respect of each of the failures identified in paragraph 71 above.
73. In the premises, in each Pay Period of the Parkinson Period the Second Respondent contravened section 323 of the FW Act by failing to pay the full amount due to the Applicant in respect of the matters pleaded in paragraphs 70 to 73 above,
- (collectively, the contraventions described in paragraphs 68, 69, 72 and 73 above are the **Underpayment Contraventions**).

#### *Leave Loading Contraventions*

74. Throughout his employment with the Second Respondent the Applicant took periods of annual leave (the **Annual Leave**).

#### **Particulars**

The periods of annual leave taken by the Applicant are particularised at Schedule G.

75. In the Parkinson Period, the Applicant was not paid annual leave loading in accordance with clause 32.3 of the Award when he took the Annual Leave (the **Leave Loading Entitlement**).
76. In the premises, on each occasion when the Applicant took Annual Leave in the Parkinson Period the Second Respondent failed to comply with clause 32.3 of the Award in relation to the Leave Loading Entitlement.

77. In the premises, on each occasion when the Applicant took Annual Leave in the Parkinson Period the Second Respondent contravened section 45 of the FW Act in respect of the failure identified in paragraph 76 above.
78. In the premises, in each Pay Period during which the Applicant took Annual Leave in the Parkinson Period the Second Respondent contravened section 323 of the FW Act by failing to pay the full amount due to the Applicant in respect of the matters pleaded in paragraphs 74 to 77 above
79. Upon the termination of the Applicant's employment with the Second Respondent, the Applicant had 22.87 days of accrued but untaken annual leave arising from his employment with the Second Respondent.
80. On or around 25 September 2018 the Second Respondent paid the Applicant \$5,515.98 in lieu of such days of accrued but untaken annual leave.
81. Such a payment equals the Applicant's base rate of pay for such accrued but untaken annual leave and does not include an amount paid in satisfaction of the Leave Loading Entitlement.
82. Had the Applicant taken such periods of accrued but untaken annual leave, rather than had such accrued leave paid out upon the termination of his employment, the Leave Loading Entitlement would have been payable to the Applicant when he took such leave.
83. In the premises, by failing to pay the Leave Loading Entitlement to the Applicant in respect of his accrued leave on the termination of his employment the Second Respondent contravened section 90 of the FW Act.

(collectively, the contraventions alleged in paragraphs 77, 78 and 83 above are the **Leave Loading Contraventions**).

*Deduction Contravention*

84. In respect of the Applicant's Deductions, such deductions were not:
- (a) authorised in writing by the Applicant before they were made;
  - (b) principally for the Applicant's benefit; and
  - (c) authorised by the Award or otherwise authorised by law.

85. In the premises, the Applicant's Deductions were not permitted deductions from the Applicant's wages pursuant to section 324 of the FW Act.
86. In the premises, by making such deductions and not paying the Applicant in full, the First Respondent and Second Respondent respectively contravened section 323 of the FW Act on each occasion of the Applicant's Deductions (the **Deduction Contravention**).
87. By reason of the Underpayment Contraventions, the Leave Loading Contravention and the Deduction Contravention the Applicant has suffered loss.

*Record Keeping Contravention*

88. It was a requirement of the FW Act and *Fair Work Regulations 2009* (Cth) that the First Respondent and Second Respondent make and retain records of:
- (a) the number of overtime hours worked by the Applicant during each day; or
- (b) when the Applicant started and ceased working overtime hours,
- (the **Record Keeping Obligation**).

**Particulars**

Section 535 FW Act. Regulation 3.34, *Fair Work Regulations 2009* (Cth).

89. From the start of the Relevant Period to 30 June 2017 the First Respondent and Second Respondent directed the Applicant to record his Actual Hours by way of recording his start and finish times in the 'Kronos' site attendance record keeping system.
90. During this period, the Applicant recorded his Actual Hours by recording his start and finish times in the 'Kronos' site attendance record keeping system.
91. From on or about 1 July 2017 the Second Respondent directed the Applicant that he was not to continue to record his Actual Hours by way of the 'Kronos' site attendance record keeping system.

**Particulars**

Such a direction being a verbal direction during the Parkinson Period given by the Applicant's Store Supervisor Mr Craig Carman and the Applicant's Store Manager Mr David Whitehouse and Ms Wendy Evans.

92. In the premises, in contravention of the Record Keeping Obligation, the Second Respondent did not record, in respect of any Pay Period from on or about 1 July 2017:
- (a) the number of overtime hours worked by the Applicant during each day; or
  - (b) when the Applicant started and ceased working overtime hours.
93. By failing to keep such a record in each Pay Period of the Applicant's employment, the Second Respondent contravened section 535 of the FW Act (the **Record Keeping Contraventions**).
94. In respect of the Record Keeping Contraventions, the Applicant relies on section 557C of the FW Act.

## **E GROUP MEMBERS' CLAIMS**

95. The Award as amended from time to time applied to the Applicant and each Group Member in respect of their employment with the First Respondent and/or Second Respondent.
96. Each Group Member during the Relevant Period was:
- (a) employed by the First Respondent and/or the Second Respondent during the Relevant Period in a Manager Position identified in paragraph 5 above;
  - (b) paid an annualised salary (and additional payments for performing additional shifts in the same way as the Applicant in respect of the Hallett Cove Additional Saturday Pay, Hallett Cove Additional Sunday Pay, Parkinson Additional Saturday Pay and Parkinson Additional Sunday Pay) purportedly in satisfaction of all entitlements arising from the Award;
  - (c) not paid any additional amounts in any given Pay Period in further satisfaction of entitlements arising from the Award;
  - (d) covered by and employed pursuant to the Award and classified either as a "Retail Employee Level 6" or "Retail Employee Level 8" employee under the Award; and
  - (e) performed duties which were substantially the same as those performed by the Applicant and described in paragraphs 15 to 16 above.
97. Each Group Member during the Relevant Period performed work being:

- (a) his or her ordinary hours; and
- (b) regular additional work outside of these ordinary hours (both by way of additional rostered work and further work additional to that contemplated by their roster) pursuant to the common or general practices pleaded in paragraphs 29, 32 and 34 above,

such that the Overtime Entitlements applied to such additional hours.

- 98. Each Group Member was not paid for such additional hours in accordance with the Overtime Entitlements provided for in clauses 29.2 and 20.10 of the Award.
- 99. Each Group Member during the Relevant Period performed work at times and on days which attracted the Penalty Rate Entitlements pursuant to the common or general practices pleaded in paragraphs 29, 32 and 34 above.
- 100. Each Group Member was not paid for such work attracting penalty rates in accordance with the Penalty Rate Entitlements provided for in clause 29.4 of the Award.
- 101. Some Group Members during the Relevant Period worked at times and in ways which attracted some or all of the Allowance Entitlements pursuant to the common or general practices pleaded in paragraphs 39, 42, 46 and 48 above.
- 102. Such Group Members were not paid such allowances in accordance with the Allowance Entitlements provided for in clauses 20.1, 20.8, 20.9 and 20.12 of the Award.
- 103. Each Group Members during the Relevant Period took periods of annual leave such that they were entitled to be paid the Leave Loading Entitlement.
- 104. Each Group Member employed by the Second Respondent was not paid leave loading in accordance with the Leave Loading Entitlement provided for in clause 32.3 of the Award.
- 105. Each Group Member employed by the Second Respondent whose employment with the Second Respondent had terminated prior to the filing of the originating application had, upon the termination of their employment, their accrued but untaken annual leave paid out by the Second Respondent.
- 106. In making such payments, the Second Respondent did not pay such Group Members the Leave Loading Entitlement provided for in clause 32.3 of the Award and section 90(2) of the FW Act.
- 107. In the premises, by failing to pay each Group Member their entitlements in connection with the Overtime Entitlements, Penalty Rate Entitlements and, where applicable, Allowance

Entitlements and Leave Loading Entitlement the First Respondent and Second Respondent each respectively contravened section 45 of the FW Act in respect of each of the failures identified in paragraphs 98, 100, 102, and 104 above.

108. In the premises, the First Respondent and the Second Respondent respectively contravened section 323 of the FW Act by failing to pay the full amount due to each Group Member in respect of the matters pleaded in paragraphs 97 to 107 above.
109. In the premises, by failing to pay each Group Member identified in paragraph 105 above the Leave Loading Entitlement, the Second Respondent contravened sections 90 and 44 of the FW Act in respect of the failures identified in paragraph 106 above.

(collectively the contraventions described in paragraphs 107, 108 and 109 above are the **Group Underpayment Contraventions**)

110. By reason of the Group Underpayment Contraventions, each Group Member suffered loss.

#### **Particulars**

Particulars in relation to Group Members' loss will be provided if and when it is necessary for a determination to be made on the individual claims of those Group Members and after discovery.

111. Some Group Members during the Relevant Period had deductions taken from their wages by the First and Second Respondent, purportedly for the costs of uniforms they were required to wear.
112. Such deductions, like the Applicant's Deductions, were not authorised by the Group Members in writing, principally for their benefit or otherwise permitted by operation of section 324 of the FW Act.
113. In the premises, by making such deductions and not paying each Group Member in full, the First Respondent and the Second Respondent respectively contravened section 323 of the FW Act on each occasion of such deductions (the **Group Deduction Contraventions**).
114. The Record Keeping Obligation required the First Respondent and Second Respondent to make and retain records of the overtime worked by each Group Member pleaded in paragraph 97 above.
115. The Second Respondent did not record, in respect of any Pay Period which occurred after 1 July 2017:



- (a) the number of overtime hours worked by each Group Member employed by the Second Respondent during each day of their employment; or
  - (b) when each Group Member employed by the Second Respondent started and ceased working overtime.
116. In the premises, the Second Respondent contravened section 535 of the FW Act in respect of the overtime performed by each Group Member employed by the Second Respondent in each Pay Period (the **Group Record Keeping Contraventions**).
117. The Group Members rely on section 557C of the FW Act.

## F COMMON ISSUES

118. The questions of law or fact common to the claims of the Group Members in these proceedings are:
- (a) Whether it was a common or general practice of the First Respondent and Second Respondent during the Relevant Period to direct and require Group Members to:
    - (i) work rostered hours being approximately 45 hours per week; and
    - (ii) work beyond their rostered hours in a manner similar to that which the Applicant was required to perform in the Applicant's Regular Hours, including:
      - (1) additional hours performed before and / or at the end of their rostered shifts; and
      - (2) time worked through their scheduled shifts (their not having an opportunity to take breaks or taking shorter than scheduled breaks).
  - (b) Whether it was a common or general practice of the First Respondent and Second Respondent during the Relevant Period to direct and require Group Members to work additional shifts on days when they were not rostered to work (including on weekends) to cover the absence of other employees or otherwise meet their staffing requirements.
  - (c) Whether it was a common or general practice of the First Respondent and Second Respondent during the Relevant Period to direct and require Group Members in the

positions of Store Manager, Store Assistant Manager, Duty Manager and Grocery Manager to remain on call to deal with equipment breakdowns or alarm callouts and to attend work to perform additional hours upon the occurrence of such breakdowns or callouts in a similar way to the Applicant in his performance of the Additional Call Out Hours.

- (d) Whether it was a common or general practice of the First Respondent and Second Respondent during the Relevant Period to direct and require Group Members in the following positions to act as Store Manager:
- (i) Store Assistant Manager, in circumstances of the Store Manager's absence;
  - (ii) Grocery Manager, in circumstances of the absence of the Store Manager and the Store Assistant Manager;
  - (iii) Duty Manager, in circumstances of the absence of the Store Manager, Store Assistant Manager and Grocery Manager; and
  - (iv) Nightfill Manager, in circumstances of the absence of the Store Manager, Store Assistant Manager, Grocery Manager and Duty Manager.
- (e) Whether it was a common or general practice of the First Respondent and Second Respondent during the Relevant Period to direct and require Group Members to work beyond 6:00PM, without more than 24 hours' notice and without a meal, in a similar way as the Applicant in his performance of the Overtime Without Meal.
- (f) Whether it was a common or general practice of the First Respondent and Second Respondent to direct and require between two and five Group Members per each of the First Respondent's Supermarkets and Second Respondent's Supermarkets to:
- (i) obtain a First Aid Qualification;
  - (ii) be appointed to perform first aid duty when at work.
- (g) Whether it was a common or general practice of the First Respondent and Second Respondent to direct and require Group Members to perform work in a refrigerated area and / or walk-in freezer or stock refrigerated cabinets and display cases; either by virtue of the employees' positions or by the First and Second Respondent's requirement that Group Members assist in departments where there was a 'surge' of work, including in circumstances of stock delivery. Such Group Members being those employed in the positions of:

- (i) Store Manager;
- (ii) Store Assistant Manager;
- (iii) Duty Manager; or
- (iv) Department Manager, being a:
  - (1) Dairy Manager;
  - (2) Fruit and Vegetable Manager;
  - (3) Meat Manager;
  - (4) Deli Manager;
  - (5) Seafood Manager;
  - (6) Grocery Manager;
  - (7) Bakery Manager;

but not those in the positions of:

- (v) Front of House/Customer Service Manager; or
  - (vi) Scanning Manager.
- (h) Whether, on the proper interpretation of the Award and FW Act, the First Respondent and/or the Second Respondent were required to pay each Group Member amounts above the weekly annualised salary payments (and additional payments for additional shifts performed on weekends) that were made to such Members, in satisfaction of these Members' additional entitlements to additional payments by reason of:
- (i) these Members working rostered overtime pursuant to the common or general practice in paragraph 29 above;
  - (ii) these Members working additional overtime in addition to such rostered overtime pursuant to the common or general practices in paragraphs 29, 32 and 34 above;
  - (iii) these Members working further ad-hoc overtime pursuant to the common or general practices in paragraphs 29, 32 and 34 above;

- (iv) these Members working at times and on days which entitled them to penalty rates, namely the Penalty Rate Entitlements pursuant to the common or general practices in paragraphs 29, 32 and 34 above; and
  - (v) these Members working at times and on days which entitled them to allowances, namely the Allowance Entitlements pursuant to the common or general practices in paragraphs 39, 42, 46 and 48 above.
- (i) Whether the First Respondent and/or Second Respondent failed to pay amounts to each Group Member to satisfy these entitlements, if required to do so per the Award.
  - (j) Whether, on the proper interpretation of the Award, the Second Respondent was required to pay each Group Member employed by it amounts of leave loading in relation to each occasion and period when they took annual leave or when accrued but untaken annual leave was paid out upon the termination of such Group Members' employment.
  - (k) Whether the Second Respondent failed to pay such leave loading to each Group Member, if required to do so per the Award.
  - (l) Whether, on the proper interpretation of the FW Act and *Fair Work Regulations 2009* (Cth), the Second Respondent was required to keep records of the overtime hours performed by Group Members employed by it.
  - (m) Whether the Second Respondent failed to keep such records in respect of each Group Member employed by it, including but not limited to overtime hours, if required to do so pursuant to the FW Act and *Fair Work Regulations 2009* (Cth).
  - (n) Whether the First Respondent and/or the Second Respondent made deductions from the Group Members salaries, purportedly to cover the costs of uniforms and whether, on the proper interpretation of the FW Act, such deductions were not permitted or authorised.

## **G REMEDIES**

119. The Applicant seeks a declaration that the First Respondent and the Second Respondent have contravened:
- (a) Sections 45, 90 and 323 of the FW Act in relation to the Applicant and each Group Member in relation to the:

- (i) Underpayment Contraventions;
  - (ii) Leave Loading Contravention; and
  - (iii) Group Underpayment Contraventions.
- (b) Section 323 of the FW Act in relation to the Applicant and each Group Member in relation to the
- (i) Deduction Contravention; and
  - (ii) Group Deduction Contraventions.
- (c) In respect of the Second Respondent only, section 535 of the FW Act in relation to the Applicant and each Group Member in relation to the:
- (i) Record Keeping Contravention; and
  - (ii) Group Record Keeping Contraventions.
120. In the premises, each of the Applicant and each Group Member is entitled to an order pursuant to section 545 of the FW Act that each of the First Respondent and Second Respondent compensate each of them for the underpayment of entitlements owed by reason of the matters pleaded in this claim.
121. The Applicant seeks an order for interest on such amounts of compensation up to the date of judgment pursuant to section 547 of the FW Act.
122. The Applicant seeks an order for the payment of a pecuniary penalty, to be paid to each of the Applicant and each Group Member as a consequence of each of the contraventions of the FW Act by the First Respondent and the Second Respondent, set out in paragraph 119 above.

Date: 26 October 2020

A handwritten signature in black ink, appearing to be 'RM', with a long horizontal stroke extending to the right.

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Signed by Rory Markham

Lawyer for the Applicant

This pleading was prepared by Rory Markham, lawyer and settled by Michael Whitbread and Jamie Darams of Counsel

**Certificate of lawyer**

I, Rory Markham, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 26 October 2020

A handwritten signature in black ink, consisting of the letters 'RM' followed by a horizontal line extending to the right.

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Signed by Rory Markham

Lawyer for the Applicant

**SCHEDULE A**

**Schedule of Parties**

**Applicant:** Mr Craig Schoneweiss

**First Respondent:** The Fourth Force Pty Ltd (ACN 084 438 773)

**Second Respondent:** Dramet Pty Ltd (ACN 109 544 425)



**SCHEDULE B – Stores operated by the First Respondent**

**Particulars**

Those stores operated by the First Respondent:

Ardrossan Foodland located at 6-8 Fifth Street, Ardrossan, SA 5571;

Beverley Storage Solutions located at 15 Alfred Avenue, Beverley SA 5009;

Drakes Aberfoyle Park located at 142 Hub Drive, Aberfoyle Park SA 5159;

Drakes Ardrossan located at 6-8 Fifth Street, Ardrossan SA 5571;

Drakes Ascot Park located at 645 Marion Road, Ascot Park SA 5043;

Drakes Blackwood located at 240 Main Road, Blackwood SA 5051;

Drakes Clovercrest located at Corner Montague Road and Kelly Road, Modbury North SA 5092;

Drakes Collinswood located at 6/31 North East Road, Collinswood SA 5081;

Drakes Elizabeth Park located at 110 Yorktown Road, Elizabeth Park SA 5113;

Drakes Eyre located at Corner Petheron Road and Stebonheath Road, Penfield SA 5121;

Drakes Fulham Gardens located at Corner Tapleys Hill Road & Valetta Road, Fulham Gardens  
SA 5024;

Drakes Gawler located at Corner Reid Street and Jacob Street, Gawler SA 5118;

Drakes Golden Grove located at Corner The Golden Way and The Grove Way, Golden Grove  
SA 5127;

Drakes Hallett Cove located at 246 Lonsdale Road, Hallett Cove SA 5158;

Drakes Mini Glenunga located at 297 Glen Osmond Rd, Glenunga SA 5061;

Drakes Mini Grange located at 538 Grange Road, Grange SA 5024;

Drakes Mini Para Hills located at 521 Bridge Road, Para Hills SA 5096;

Drakes Mini Sunnybrook located at Corner the Golden Way and Sunnybrook Drive, Wynn Vale SA 5126;

Drakes Mini Walkley Heights located at Corner Wright Road & RM Williams Drive, Walkley Heights SA 5098;

Drakes Mini West Beach located at 693 Burbridge Road, West Beach SA 5024;

Drakes Moonta located at 21 George Street, Moonta SA 5558;

Drakes Newton Newsagency located at Shop 32, 299 Montacute Road, Newton SA 5074;

Drakes Newton located at Corner Gorge Road and Newton Road, Newton Central Shopping Centre, Newton SA 5074;

Drakes North Haven located at 46 Osborne Road, North Haven SA 5018;

Drakes Salisbury North located at 147 Whites Road, Salisbury North SA 5108;

Drakes Seaford located at Corner Commercial Road and The Parade, Seaford SA 5169;

Drakes Semaphore located at 22 Semaphore Road, Semaphore SA 5019;

Drakes Surrey Downs located at Surry Downs Shopping Centre, 246 Golden Grove Rd, Surrey Downs SA 5126;

Drakes Torrensville located at 159 Henley Beach Road Torrensville, Mile End SA 5031;

Drakes Victor Harbor located at Shop 1, 1 Torrens Road, Victor Harbor SA 5211;

Drakes Wallaroo located at 2 Owen Terrace, Wallaroo SA 5556;

Drakes Wayville located at Corner Goodwood Road & Young St, Wayville SA 5034;

Drakes Woodcroft located at Corner Panalatinga Road and Bains Rd, Woodcroft SA 5162;

Seaford Foodland located at 228 Seaford Road, Seaford SA 5169; and

Woodcroft Foodland located at Woodcroft Shopping Centre, 201 Bains Road, Morphett Vale SA 5162.

**SCHEDULE C – Stores operated by the Second Respondent****Particulars**

Those stores operated by the Second Respondent:

Angle Vale Foodland IGA located at Shop 1, 121-129 Heaslip Road, Angle Vale South Australia 5117;

Castle Plaza Foodland located at South Road, Edwardstown SA 5039;

Drakes Aldinga located at Aldinga Central Shopping Center Lot 1 Pridham Boulevard, Aldinga Beach SA 5173;

Drakes Allenby Gardens located at 612 Port Road, Allenby Gardens SA Australia 5009;

Drakes Angle Vale located at 1 121/129 Heaslip Road, Angle Vale SA 5117;

Drakes Ashmore located at Southport Nerang Road and Currumburra Road, Ashmore QLD 4214;

Drakes Castle Plaza located at 992 South Road, Edwardstown South Australia 5039;

Drakes Findon located at 303 Grange Road, Findon SA, Australia 5023;

Drakes Glenmore located at 309/315 Farm Street, Norman Gardens QLD, Australia 4700;

Drakes Gympie located at Corner Reef Street and Monkland Street, Gympie QLD 4750;

Drakes Kingscote located at Commercial Street, Kingscote SA 5223;

Drakes Parkinson located at Corner Nottingham Road and Algester Road, Parkinson QLD 4115;

Drakes Port Lincoln located at 82/100 Liverpool Street, Port Lincoln SA 5606;

Drakes Pumicestone located at 1 Ardrossan Road, Pumicestone Village Shopping Centre, Caboolture QLD 4510;

Drakes Rochedale located at 549 Underwood Road, Rochedale QLD 4123;

Drakes Royal Park located at 16 Tapleys Hill Road, Royal Park SA 5014;

Drakes Toowoomba located at High Street and Meibusch Street, Toowoomba City QLD 4350;

Drakes Winston Glades located at 259 Ash Street, Yamanto QLD 4305;

Gladstone Supa IGA located at 119 Toolooa Street, Gladstone QLD 4680;

Kangaroo Island Foodland IGA located at Lot 149 Middle Terrace, Penneshaw SA 5222;

Ormeau Supa IGA located at Shop 1 Vaughan Drive, Ormeau QLD 4208;

Rosewood Supa - IGA located at 42-44 John Street, Rosewood QLD 4340; and

Sun Valley Supa IGA located at 85 Sun Valley Road, Gladstone QLD 4680.

## **SCHEDULE D – Additional Saturday Hours**

### **Particulars**

In respect of dates within the Hallett Cove Period and the Relevant Period:

On Saturday, 3 January 2015; and

On Saturday, 14 February 2015.

In respect of the Parkinson Period:

On Saturday, 7 October 2017.

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Filed on behalf of  
Law firm (if applicable)  
Tel  
Email  
**Address for service**

The Applicant  
Adero Law  
(02) 6189 1022 Fax n/a  
Rory.Markham@aderolaw.com.au  
5 Torrens Street,  
Braddon ACT 2612

**SCHEDULE E – Additional Sunday Hours**

**Particulars**

In respect of dates within the Hallett Cove Period and the Relevant Period:

On Sunday, 28 September 2014

On Sunday, 2 November 2014, from 8:34AM to 17:33PM;

On Sunday, 15 March 2015;

On Sunday, 22 March 2015;

On Sunday, 29 March 2015;

On Sunday, 12 April 2015;

On Sunday, 24 May 2015;

On Sunday, 31 May 2015;

On Sunday, 12 July 2015;

On Sunday, 19 July 2015;

On Sunday, 2 August 2015;

On Sunday, 9 August 2015;

On Sunday, 23 August 2015; and

On Sunday, 6 September 2015.

In respect of dates within the Parkinson Period:

On Sunday, 19 June 2016;

On Sunday, 30 October 2016 from 9:10AM to 11:56AM; and

On Sunday, 1 April 2018.

**SCHEDULE F – Public Holiday Hours****Particulars**

In the Hallett Cove Period, on at least the public holiday being the:

Easter Sunday Public Holiday on 19 April 2014, from 7:49AM to 5:30PM.

In the Parkinson Period, on at least the public holiday being the:

Boxing Day Public Holiday on 26 December 2015, from 11:09AM to 18:15PM;

Australia Day Public Holiday on 26 January 2016, from 11:37AM to 18:15PM;

Easter Saturday Public Holiday on 26 March 2016, from 8:37AM to 5:39PM;

Easter Monday Public Holiday on 28 March 2016, from 5:48AM to 2:16PM;

Queensland Royal Show ('Ekka') Public Holiday on 10 August 2016, from 9:07AM to 6:39PM;

Queen's Birthday Public Holiday on 3 October 2016, from 10:54AM to 6:34PM;

Christmas Day In Lieu Public Holiday on 27 December 2016, from 9:00AM to 6:23PM; and

The Easter Monday Public Holiday on 17 April 2017, from 6:11AM to 4:48PM.

**SCHEDULE G – Annual Leave****Particulars**

Being the annual leave taken during the following pay periods:

On 5 August 2016, being part of the pay period 1 August to 7 August 2016;

From 5 September to 11 September 2016, for the whole pay period;

From 12 September 2016 to 18 September 2016, for the whole pay period;

From 19 September to 25 September 2016, for the whole pay period;

From 26 September to 2 October 2016, for the whole pay period;

From 8 March to 12 March 2017, being part of the pay period 6 March to 12 March 2017;

From 13 March to 17 March 2017, being part of the pay period 13 March to 19 March 2017;

On 21 July 2017, being part of the pay period 17 July to 23 July 2017;

On 11 August 2017, being part of the pay period 7 August to 13 2017;

From 14 May to 20 May 2018, for the whole pay period;

From 21 to 27 May 2018, for the whole pay period;

From 28 May to 3 June 2018, for the whole pay period;

From 4 June to 10 June 2018, for the whole pay period;

On 20 August 2018, being part of the pay period 20 August to 26 August 2018; and

On 17 September 2018, being part of the pay period 17 September to 23 September 2018.