

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST



Case: S ECI 2022 00739
S ECI 2022 00739
Filed on: 23/12/2024 09:56 AM

BETWEEN

TINA LOMBARDO AND OTHERS (according to the schedule)

Plaintiffs

and

**DERMATOLOGY AND COSMETIC SURGERY SERVICES
PTY LTD AND OTHERS (according to the schedule)**

Defendants

FIRST DEFENDANT'S AMENDED DEFENCE

Date: 23 December 2024

Solicitors Code: CRN109933

Filed on behalf of: the first defendant

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In answer to the amended statement of claim dated 7 November 2024 ~~11 September 2023~~ and filed on 14 November 2014 ~~15 September~~, the first defendant says as follows (adopting terms and headings that the plaintiffs have used in their statement of claim for convenience but not making any admission by that adoption):

A. Parties

A.1 Group Proceeding formalities

1. As to paragraph 1, it:

(a) denies:

- (i) it was negligent, in breach of contract or in breach of consumer law;
and

(ii) that any of the plaintiffs or group members have suffered loss or damage from it having been negligent, in breach of contract or in breach of consumer law;

(b) otherwise, the paragraph makes no allegation against it, and it does not admit the paragraph.

1A. It does not plead to this paragraphs as it makes not allegation against it.

2. Save that it admits that there are more than seven group members in respect of it, the paragraph makes no allegation against it, and it does not admit the paragraph.

A.2 Dermatology and Cosmetic Surgery Services Pty Ltd

3. As to paragraph 3, it:

(a) admits that it was incorporated on 1 May 1992 and has since that date been a corporation but otherwise denies subparagraph (a);

(b) does not admit subparagraph (b) and says further that the pleading is vague and embarrassing as it does not specify what conduct by it is alleged to have been in trade or commerce;

(c) admits that from 1 May 1992 up to about October 2021 it provided services incidental (**incidental services**) to one or more of the second to eighth defendants (referred to hereafter as **Lanzer and the Associates**, the third to eighth defendants referred to hereafter as **the Associates**) in them giving medical advice and treatment related to dermatological, medical, and cosmetic surgery (**dermatological cosmetic surgery services**) and them performing such dermatological cosmetic surgery (**dermatological cosmetic surgery**);

(d) admits that from 1 May 1992 up to about October 2021 at various times it provided incidental services to Lanzer and the Associates in them giving medical advice and treatment related to them providing dermatological cosmetic surgery services and them performing such dermatological

cosmetic surgery from some of the clinics referred to in sub-paragraph (d) and at other places but otherwise denies subparagraph (d); and

- (e) denies subparagraph (e) and says further that the pleading is vague and embarrassing as it does not specify what goods or service it is alleged to have been the supplier of within the meaning of that term in the pleaded legislation.

A.3 Dr Lanzer

4. As to paragraph 4, it:

- (a) admits subparagraph (a);
- (b) in respect of sub-paragraph (a):
 - (i) admits the allegations up to 4 January 2002;
 - (ii) otherwise denies the allegations;
 - (iii) says further that Vivienne Lanzer ceased to be a director of it on or about 7 February 2022 and ceased to be its secretary on or about 4 January 2022;
- (c) admits subparagraph (c);
- (d) admits Lanzer was an employee of it from 1 May 1992 but otherwise denies the sub-paragraph and says further that:
 - (i) Lanzer was not acting in the scope of his employment with it when he was giving medical advice and treatment related to dermatological cosmetic surgery services and him performing dermatological cosmetic surgery;
 - (ii) at times it employed other staff including nursing staff who assisted Lanzer and the Associates in them giving medical advice and treatment related to dermatological cosmetic surgery services and them performing dermatological cosmetic surgery;

(e) does not admit subparagraph (e).

5. As to paragraph 5, it:

(a) denies subparagraph (a); and

(b) as sub- paragraph (b) makes no allegation against it, does not admit it.

6. As to paragraph 6, it:

(a) admits subparagraph (a) up to about 30 November 2021 but otherwise denies and says further that Lanzer:

(i) was a registered medical practitioner from about 1 December 1982 to about 1 December 2021; and

(ii) obtained specialist qualifications as a Fellow of the Australasian College of Dermatologists in about 1988;

(b) in response to sub-paragraph (b), says that Lanzer practised as a dermatologic surgeon and he performed dermatologic cosmetic surgery and provided dermatological cosmetic surgery services;

(c) admits that Lanzer has at various times performed dermatological cosmetic surgery and provided dermatological cosmetic surgery services at some of the Lanzer clinics and at other places but otherwise denies subparagraph (c);

(d) denies subparagraph (d) and says further that the pleading is vague and embarrassing as it does not specify what conduct by Lanzer is alleged to have been in trade or commerce;

(e) denies subparagraph (e).

A.4 Other Cosmetic Doctor Defendants

7. It admits paragraph 7 and says further that the Associates had had training other than the training from Lanzer in relation to dermatological cosmetic surgery services and, also, expertise other than in dermatological cosmetic surgery.

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For example, Wong had the further training and expertise set out at paragraph 7(b) of his defence.

Wong and Darbyshire had training in giving sedation.

Wells had completed a course given by the College of Cosmetic Surgery in cosmetic surgery/medicine including liposuction.

Fallahi had been trained and was experienced in performing liposuction.

Wells had experience in otoplasty, and trained Aronov in otoplasty.

Aronov had theatre experience assisting surgeons.

Further particular will be provided.

A.4.1 Liability of Other Cosmetic Doctor Defendants directly

8. It admits paragraph 8.
9. As to paragraph 9:
 - (a) save that it admits that the Associates performed dermatological cosmetic surgery and provided dermatological cosmetic surgery services and that at times they did so at the Lanzer clinics and at other places, it does not admit sub-paragraph (a) and (b);
 - (b) it denies sub-paragraphs (c) and (d).

A.4.2 Liability of DCSS and/or Lanzer as principals

10. Insofar as the allegations in paragraph 10 relate to it, it denies the allegations.
11. It denies paragraph 11 so far as it relates to it and otherwise does not admit the paragraph.

A.5 Wainstein

12. As to paragraph 12, it:
 - (a) admits sub-paragraph (a);
 - (b) admits sub-paragraph (b);
 - (c) admits sub-paragraph (c);
 - (d) denies sub-paragraph [second] (b)(i); and
 - (e) otherwise, does not admit the paragraph.
13. Paragraph 13 makes no allegation against it, and it does not admit the paragraph.

B. The Plaintiffs**B.1 First Plaintiff — Tina Lombardo**

14. As to paragraph 14, it:
 - (a) admits that Lombardo made an inquiry to Lanzer and the Associates on the date alleged via the website; and
 - (b) otherwise denies the allegations.
15. It admits paragraph 15 and says that the offered free consultation was to consult with one of Lanzer and the Associates and not it.
16. As to paragraph 16, it says that:

- (a) Lanzer performed a telehealth consultation with Lombardo on 17 February 2021 in which he:
 - (i) took a history and examined photographs provided by Lombardo **(the information)**;
 - (ii) said based on the information that Lombardo was likely to be a candidate for a mini tuck;
 - (iii) said that a further in-person consultation was necessary;
 - (b) when Lombardo attended the Sydney Clinic on 18 March 2021, she consulted with Fallahi and not Lanzer as alleged; and
 - (c) it otherwise denies the allegations.
17. It admits the allegations in paragraph 17 and says further that:
- (a) where it provided documents to a plaintiff or a group member, those were pro forma documents that one or more of Lanzer and the Associates had prepared the substance of;
 - (b) insofar as the documents contained information that is medical advice or treatment that medical advice was from one or more of Lanzer and the Associates and not from it;
 - (c) it provided the documents to a plaintiff or a group member in accordance with the instruction and direction of one or more of Lanzer and the Associates.
18. As to paragraph 18:
- (a) it admits:
 - (i) Lombardo paid on or about 9 November 2021 \$29,411.50 to its bank account;

(ii) the payment was for Aronov to provide medical advice and treatment to Lombardo being abdominoplasty and liposuction procedures and providing post-surgery garments;

(b) it otherwise denies the allegations in the paragraph.

19. It denies paragraph 19.

20. It admits paragraph 20 and repeats the matters in sub-paragraphs 17 (a) to (c).

21. As to paragraph 21, it:

(a) admits that Lombardo attended at the Surry Hills Day Hospital on or about 15 November 2021;

(b) admits that Lombardo consulted with Aronov;

(c) otherwise, does not admit subparagraph (a);

(d) says that Aronov telephoned Lombardo on 15 November 2021 prior to Lombardo attending at the Surry Hills Day Hospital, during which telephone call:

(i) Aronov sought to postpone Lombardo's planned abdominoplasty and liposuction procedures considering recent adverse media coverage;

(ii) Lombardo insisted on proceeding with her planned procedures;

(e) admits subparagraph (b).

22. As to paragraph 22, it does not admit the paragraph.

22A. Further to paragraphs 14 to 22:

1. the medical advice and treatment referred to in those paragraphs was provided to Lombardo by Lanzer, Fallahi, and Aronov;

2. insofar as Lanzer, Fallahi, and Aronov plead in their defences matters in respect of the medical advice and treatment they provided to Lombardo it adopts those matters.

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Further particulars will be provided after Lanzer, Fallahi and Aronov have filed their defences.

B.2 Second Plaintiff — Tina Bonnici

23. As to paragraph 23, it:
 - (a) admits that Bonnici made an inquiry via the website www.drlanzer.com on or before 8 February 2021; and
 - (b) otherwise denies the allegations.
24. As to paragraph 24, it:
 - (a) admits that on or about 8 February 2021, a cosmetic nurse named Ying emailed Bonnici in response to her inquiry and explained how Bonnici could book in for a free consultation with one or more of Lanzer and the Associates; and
 - (b) otherwise denies paragraph 24.
25. It admits paragraph 25.
26. It admits paragraph 26.
27. It admits paragraph 27 and repeats the matters in sub-paragraphs 17 (a) to (c).
28. As to paragraph 28:
 - (a) it admits:
 - (i) Bonnici paid on or about 6 June 2021 \$10,000 to its bank account;

(ii) the payment was for Wells providing to Bonnici and performing on her tumescent liposuction;

(b) it otherwise denies the allegations in the paragraph.

29. It denies paragraph 29.

30A. As to paragraph 30A, it:

(a) admits that Bonnici attended a telephone consultation with Wainstein on or about 7 June 2021; and

(b) otherwise, does not admit the paragraph.

30. It admits paragraph 30.

31. As to paragraph 31:

(a) it admits that Wells and Fallahi consulted with Bonnici on or about 15 June 2021 at the Brisbane Clinic and that one or both provided advice to her about tumescent liposuction and otherwise does not admit sub-paragraph (a);

(b) it admits sub-paragraph (b) save that it was to Bonnici's lower back rather than her back generally.

32. It does not admit paragraph 32.

33. It denies paragraph 33.

34. It denies paragraph 34.

35. It denies paragraph 35.

36. It denies paragraph 36.

37A. It does not admit paragraph 37A.

37. It does not admit paragraph 37.

38A. It does not admit paragraph 38A.

38B. Further to paragraphs 23 to 38A:

- (a) the medical advice and treatment referred to in those paragraphs was provided to Bonnici by Lanzer, Wells, Fallahi, and Wainstein;
- (b) insofar as Lanzer, Wells, Fallahi and Wainstein plead in their defences matters in respect of the medical advice and treatment they provided to Bonnici it adopts those matters.

PARTICULARS

Further particulars will be provided after Lanzer, Wells, Fallahi and Wainstein have filed their defences.

B.3 Third Plaintiff — Simone Russell

38. It admits paragraph 38.

39. It admits paragraph 39.

39A. It does not admit paragraph 39A.

39B. It does not admit paragraph 39B.

40. It admits paragraph 40.

41. Save to not admit subparagraph (c), it admits the balance of paragraph 41.

42. It admits paragraph 42 and repeats the matters in sub-paragraphs 17 (a) to (c).

43. It admits paragraph 43 and says further than on that date Russell spoke with Darbyshire by telephone.

44. It denies paragraph 44 and says further that:

- (a) Russell spoke with Wainstein on or about 13 September 2021 (**the Wainstein consultation**); and

- (b) Russell was offered but declined a further consultation.

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Wainstein's notes of Russell's consultation on 13 September 2021 are recorded on Russell's file.

45. Save to say that Russell advised that she no longer required the mini thigh lift on or after 10 September 2021, it admits paragraph 45.
46. It admits paragraph 46 and repeats the matters in sub-paragraphs 17 (a) to (c).
47. As to paragraph 47:
- (a) it admits:
- (i) Russell paid on or about 10 September 2021 \$20,250 to its bank account;
 - (ii) the payment was for services associated with Lanzer and Darbyshire providing to Russell and performing on her dermatological cosmetic surgery and dermatological cosmetic surgery services, and post-surgery garments;
 - (iii) the payment was for the provision and performance of the following:
 - 1. \$15,000 in respect of a thigh liposuction procedure;
 - 2. \$5,000 in respect of a mini thigh lift procedure;
 - 3. \$50 in respect of the Wainstein Consultation;
 - 4. \$200 in respect of compression garments;

- (iv) after she made the payment, Russell decided not to undertake the mini thigh lift procedure;
 - (v) \$5,000 was refunded to Russell on 19 September 2021 on account of her decision not to undertake the mini thigh lift procedure.
- (b) it otherwise denies the allegations in the paragraph.
48. It denies paragraph 48.
49. It admits paragraph 49 and repeats the matters in sub-paragraphs 17 (a) to (c).
50. As to paragraph 50, it:
- (a) admits that Lanzer and Darbyshire consulted with Russell;
 - (b) does not admit the balance of sub-paragraph (a); and
 - (c) does not admit paragraph (b) so far as it relates to it.
51. As to paragraph 51, it:
- (a) admits sub-paragraph (a) and says further that Russell's pain:
 - (i) was at the level expected for the type and duration of surgery;
 - (ii) was reported as not exceeding 4/10 at any time;
 - (iii) was managed with local anaesthesia and intravenous analgesia at dosages appropriate for her weight;
 - (b) does not admit sub-paragraph (b);
 - (c) admits sub-paragraph (c) and says further that routine questions as to pain levels were asked during the performance of the procedure and refers to and repeats sub-paragraph 51(a).
52. As to paragraph 52:
- (a) it admits that \$5,000 was refunded to Russell from DCSS's bank account;

- (b) otherwise denies the paragraph;
- (c) says further that the refund was by reason of the matters in subparagraph 47(a).

53. It admits paragraph 53.

54. It admits paragraph 54.

55. It does not admit paragraph 55.

56. It does not admit paragraph 56 and says further that:

- (a) Russell postponed a follow-up consultation;
- (b) Russell attended a further follow-up consultation on 22 November 2021 during which Russell indicated that she was worried about:
 - (i) a bulge on her right knee;
 - (ii) hardness in her right thigh; and
 - (iii) news reports in relation to the clinic.

57. It denies paragraph 57.

57A. It denies paragraph 57A and refers to and repeats paragraphs 56 and 57 above.

57B. Further to paragraphs 39 to 57A:

- (a) the medical advice and treatment referred to in those paragraphs was provided to Russell by Lanzer, Aronov, and Darbyshire;
- (b) insofar as Lanzer, Aronov and Darbyshire plead in their defences matters in respect of the medical advice and treatment they provided to Russell it adopts those matters.

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Further particulars will be provided after Lanzer, Aronov and Darbyshire have filed their defences.

B.4 Fourth Plaintiff — Julie Rose Morrison

58. It admits paragraph 58.
59. It does not admit paragraph 59.
60. It admits paragraph 60 and repeats the matters in sub-paragraphs 17 (a) to (c).
61. It admits paragraph 61 and repeats the matters in sub-paragraphs 17 (a) to (c).
62. It admits paragraph 62.
63. Save not to admit sub-paragraph (b), it otherwise admits paragraph 63.
64. As to paragraph 64:
 - (a) it admits:
 - (i) Morrison paid on or about 27 July 2021 \$2,500 to its bank account;
 - (ii) the payment was for services associated with Wong providing to Morrison and performing on her dermatological cosmetic surgery being liposuction of the neck;
 - (b) it otherwise does not admit the paragraph.
65. It admits paragraph 65 and repeats the matters in sub-paragraphs 17 (a) to (c).
66. It denies paragraph 66.
67. It admits paragraph 67 and repeats the matters in sub-paragraphs 17 (a) to (c).
68. It admits paragraph 68.
69. It admits paragraph 69.
70. It denies paragraph 70.

71. It does not admit paragraph 71.
- 71A. It denies paragraph 71A.
72. Save to admit that on or about 12 August 2021 Morrison consulted Wong at Academy Day Hospital and Wong provided advice to her about 360 Liposuction and Brazilian Butt Lift procedures, it does not admit paragraph 72.
73. It admits paragraph 73 and says further the matters in sub-paragraphs 17 (a) to (c).
74. As to paragraph 74:
- (a) it admits:
 - (i) Morrison paid about \$19,000 to its bank account sometime;
 - (ii) the payment was for services associated with Wong performing dermatological cosmetic surgery procedures on Morrison being 360 Liposuction and Brazilian butt lift;
 - (b) it otherwise does not admit the paragraph.
75. It denies paragraph 75.
76. It admits paragraph 76 in respect of the procedures known as 360 Liposuction and Brazilian butt lift but other it denies that paragraph.
77. It does not admit paragraph 77.
78. It denies paragraph 78.
79. It does not admit paragraph 79.
80. As to paragraph 80:
- (a) it admits that Morrison underwent further surgery performed by Wong at the Academy Day Hospital on or about 24 January 2022;
 - (b) otherwise, it does not admit the paragraph.

81. It does not admit paragraph 81.
82. It denies paragraph 82 and says further that on about 28 July 2021 Morrison consulted with Wainstein and she decided that Morrison was a suitable candidate for dermatological cosmetic surgery.
83. It admits that Morrison attended at the Academy Day Hospital on 25 January, and 1, 7 and 8 February 2022 and had seroma drainage on her last two attendances but otherwise does not admit paragraph 83.
84. It does not admit paragraph 84.
85. It does not admit paragraph 85.
- 85A. Further to paragraphs 58 to 85:
- (a) the medical advice and treatment referred to in those paragraphs was provided to Morrison by Lanzer and Wong;
 - (b) insofar as Lanzer and Wong plead in their defences matters in respect of the medical advice and treatment they provided to Morrison it adopts those matters.

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Further particulars will be provided after Lanzer and Wong have filed their defences.

C. Alleged Misleading or Deceptive Conduct

C.1 DCSS Sales System

86. As to paragraph 86, it says that:
- (a) it admits at times there was a website 'www.drLanzer.com.au' (**the website**);
 - (b) potential patients of one or more of Lanzer and the Associates were able to make an initial inquiry to Lanzer and the Associates via the website to

Lanzer and the Associate about dermatological cosmetic surgery using a form on the website or contact information on the website;

- (c) where a potential patient had made an inquiry via the website, under the instruction or direction of one or more of Lanzer and the Associates, an employee of it sent information to the inquirer about dermatological cosmetic surgery performed by Lanzer and the Associates and how to book for a free consultation;
- (d) refers to and repeats the matters in sub-paragraphs 17 (a) to (c);
- (e) where a potential patient took up to the offer of a free consultation the usual practice was that the potential patient consulted with either one or more of Lanzer and the Associates, though sometimes the free consultation was with a nurse employed by it acting under the instruction and direction of Lanzer and the Associates;
- (f) at the consultation referred to in the previous sub-paragraph the usual practice was that one or more of Lanzer and the Associates gave advice and information about and related to the proposed dermatological cosmetic surgery including examining and assessing whether the person was a suitable candidate for the proposed dermatological cosmetic surgery, explaining the risks, complications, range of possible outcome and recovery time for the proposed dermatological cosmetic surgery and giving a quote for the proposed dermatological cosmetic surgery;
- (g) after the consultation, under the instruction or direction of one or more of Lanzer and the Associates an employee of it sent documents to the inquirer about the proposed dermatological cosmetic surgery performed by Lanzer and the Associates;

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The information generally included the nature of the proposed dermatological cosmetic surgery including the risks associated with the proposed dermatological cosmetic surgery, a quote for one or more of

Lanzer and the Associates to perform the proposed dermatological cosmetic surgery; a consent form for the proposed dermatological cosmetic surgery that set out the risks for the proposed dermatological cosmetic surgery; a checklist of steps that would need to be taken before the proposed dermatological cosmetic surgery including the taking of bloods.

- (h) if a person paid the fees for the proposed dermatological cosmetic surgery, which was normally done by making payment via its bank account, provided their signed written consent form, steps were taken for one or more of Lanzer and the Associates to perform the proposed dermatological cosmetic surgery including:
 - (i) an employee of it organising a time for the performance of the proposed dermatological cosmetic surgery;
 - (ii) the person attending before the proposed dermatological cosmetic surgery with one or more of Lanzer and the Associates to discuss further the proposed dermatological cosmetic surgery including examining and assessing whether the person was a suitable candidate for the proposed dermatological cosmetic surgery, explaining the risks, complications, range of possible outcome and recovery time for the proposed dermatological cosmetic surgery;
 - (iii) one or more of Lanzer and the Associates performing the dermatological cosmetic surgery including medical advice and treatment after the dermatological cosmetic surgery as appropriate;
- (i) it otherwise denies the paragraph.

87. Save to refer to the matters in paragraph 86 of its defence, it does not admit paragraph 87.

C.2 Representations

C.2.1 The Representations

88. It denies paragraph 88.

88A. It denies paragraph 88A.

89. It denies paragraph 89 and says further that:

- (a) the facts alleged are rationally incapable of rendering the alleged Pre-Eminence Representation misleading or deceptive; and
- (b) Lanzer and the Associates had completed appropriate training and qualifications to perform the dermatological cosmetic surgery that they performed.

90. As to paragraph 90, it:

- (a) says that Lanzer was qualified to perform the dermatological cosmetic surgery that he performed;
- (b) says that each of the Associates was qualified to perform the dermatological cosmetic surgery that they performed;
- (c) admits that neither Lanzer nor the Associates were specialist plastic surgeons; and
- (d) otherwise denies the allegations.

91. It denies paragraph 91.

92. It denies paragraph 92 and says further that disclosure of Wainstein's marriage to Aronov had no bearing on her independence.

93. It denies paragraph 93 and says further that the alleged fact is rationally incapable of rendering the alleged Excellent Service Representation misleading or deceptive.

C.2.2 Making the Representations to the Public

94. It denies paragraph 94 so far as it relates to it and otherwise it does not admit the paragraph.
95. It denies paragraph 95 so far as it relates to it and otherwise it does not admit the paragraph.
96. It denies paragraph 96 so far as it relates to it and otherwise it does not admit the paragraph.

96A. It denies paragraph 96 so far as it relates to it and otherwise it does not admit the paragraph.

C.2.3 Making the Representations to the Plaintiffs and Group Members

97. It denies paragraph 97 so far as it relates to it and otherwise does not admit the allegation.
98. It denies paragraph 98 so far as it relates to it and otherwise does not admit the allegation.
99. It denies paragraph 99 so far as it relates to it and otherwise does not admit the allegation.
100. It denies paragraph 100 so far as it relates to it and otherwise does not admit the allegation.
101. It denies paragraph 101.
102. It denies paragraph 102 so far as it relates to it and otherwise does not admit the allegation.
103. It denies paragraph 103 so far as it relates to it and otherwise does not admit the allegation.
104. It denies paragraph 104 so far as it relates to it and otherwise does not admit the paragraph.

105. It denies paragraph 105 so far as it relates to it and otherwise does not admit the allegation.

C.2.4 Contraventions

106. It denies paragraph 106.
107. It denies paragraph 107.
108. It denies paragraph 108 so far as it relates to it and otherwise does not admit the allegation.
109. It denies paragraph 109 so far as it relates to it and otherwise does not admit the allegation.
110. It denies paragraph 110 so far as it relates to it and otherwise does not admit the allegation.

D. STATUTORY GUARANTEES

D.1 Statutory guarantees

111. As to paragraph 111, it:
- (a) denies that it was a supplier within the meaning of ss 60 or 61 of the ACL in respect of dermatological cosmetic surgery services performed or provided by one or more of Lanzer and the Associates on a plaintiff or group member;
 - (b) denies paragraph 111 so far as it relates to it; and
 - (c) otherwise, does not admit the paragraph.
112. As to paragraph 112, it:
- (d) admits that where a plaintiff or group member acquired dermatological cosmetic surgery services in the context of having one or more of Lanzer and the Associates perform dermatological cosmetic surgery on them they

acquired the dermatological cosmetic surgery services as consumers within the meaning of section 3(3) of the ACL;

- (e) repeats paragraph 111 above; and
- (f) otherwise, does not admit the paragraph.

113. As to paragraph 113, it:

- (a) denies paragraph 113 so far as it relates to it;
- (b) repeats paragraph 111 above;
- (c) says that plaintiffs and group members acquired services for varied purposes;
- (d) says that patients including Russell and potential unidentified group members acquired services for purposes other than the particular purpose of enhancing their body's appearance; and

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Russell had been referred by a general practitioner for treatment to address lipoedema of the thighs.

- (e) otherwise, does not admit the paragraph.

114. As to paragraph 114, it:

- (a) denies the paragraph so far as it relates to it;
- (b) repeats paragraph 111 above;
- (c) says that plaintiffs and group Members acquired services to achieve a variety of results;
- (d) says that patients including Russell and potential unidentified Group Members acquired services for purposes other than for the particular purpose of enhancing their body's appearance; and

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It repeats to the particulars to paragraph 113 above.

(e) otherwise, does not admit the paragraph.

115. It denies paragraph 115.

116. It denies paragraph 116.

D.2 Non-compliance with guarantees

117. As to paragraph 117, it:

(a) denies the paragraph so far as it relates to it;

(b) refers to and repeats the matters at paragraphs 153 to 158 below; and

(c) otherwise, does not admit the paragraph.

118. It denies paragraph 118.

119. It denies paragraph 119.

120. It denies paragraph 120.

121. It denies paragraph 121.

122. It denies paragraph 122.

123. It denies paragraph 123.

124. It admits paragraph 124 and says further that a condition of membership of the group is that a person had dermatological cosmetic surgery performed on them by one or more of Lanzer and the Associates.

124A. It denies paragraph 124A so far as it relates to it and otherwise does not admit the paragraph.

125. It denies paragraph 125 so far as it relates to it and otherwise does not admit the paragraph.

E. NEGLIGENCE

E.1 Alleged Duties

126. As to paragraph 126:

(a) it denies the paragraph;

(b) says further that:

(i) one or more of Lanzer and the Associate provided dermatological cosmetic surgery services to each of the plaintiffs and the group members and in doing so each of them was not acting within the scope of any employment with it or within the scope of any agency;

(ii) it did not independently provide dermatological cosmetic surgery services to a plaintiff or a group member relating to dermatological cosmetic surgery;

(iii) if its staff provided documents to a plaintiff or group member that contained medical advice or constituted medical treatment its staff did so in the circumstances set out in paragraph 17(a) to (c) hereof and thereby it was merely acting as a conduit for the provision of the medical advice and treatment by one or more of Lanzer and the Associates.

127. It denies paragraph 127 and says further that insofar as:

(a) one or more of the Associates was providing medical advice and treatment to a plaintiff or a group member relating to cosmetic surgery, they were not doing so as a servant or agent of it;

- (b) Lanzer was providing medical advice and treatment to a plaintiff or a group member relating to cosmetic surgery he was not doing so in the scope of any employment with it.

128. As to paragraph 128, it:

- (a) admits that Lanzer owed a ~~non-delegable~~ duty to each plaintiff or group member on whom he performed dermatological cosmetic surgery to exercise the degree of care and skill expected of a reasonably competent medical practitioner carrying out such dermatological cosmetic surgery services; and
- (b) otherwise denies paragraph 128.

129. As to paragraph 129, it:

- (a) admits that Aranov owed a ~~non-delegable~~ duty to each plaintiff or group member on whom he performed dermatological cosmetic surgery to exercise the degree of care and skill expected of a reasonably competent medical practitioner carrying out such dermatological cosmetic surgery services; and
- (b) otherwise denies paragraph 129.

130. As to paragraph 130, it:

- (a) admits that Darybyshire owed a ~~non-delegable~~ duty to each plaintiff or group member on whom he performed dermatological cosmetic surgery to exercise the degree of care and skill expected of a reasonably competent medical practitioner carrying out such dermatological cosmetic surgery services; and
- (b) otherwise denies paragraph 130.

131. As to paragraph 131, it:

- (a) admits that Wells owed a ~~non-delegable~~ duty to each plaintiff or group member on whom he performed dermatological cosmetic surgery to

exercise the degree of care and skill expected of a reasonably competent medical practitioner carrying out such dermatological cosmetic surgery services; and

(b) otherwise denies paragraph 131.

132. As to paragraph 132, it:

(a) admits that Fallahi owed a ~~non-delegable~~ duty to each plaintiff or group member on whom he performed dermatological cosmetic surgery to exercise the degree of care and skill expected of a reasonably competent medical practitioner carrying out such dermatological cosmetic surgery services; and

(b) otherwise denies paragraph 132.

133. As to paragraph 133, it:

(a) admits that Wong owed a ~~non-delegable~~ duty to each plaintiff or group member on whom he performed dermatological cosmetic surgery to exercise the degree of care and skill expected of a reasonably competent medical practitioner carrying out such dermatological cosmetic surgery services; and

(b) otherwise denies paragraph 133.

134. Paragraph 134 makes no allegation against it, and it does not admit the paragraph.

135. Paragraph 135 makes no allegation against it, and it does not admit the paragraph and says further that it did not provide treatment or cosmetic surgery service to any of the plaintiffs or group members.

E.2 DCSS alleged breaches

136. It denies paragraph 136.

137. It denies paragraph 137.

- 138. It denies paragraph 138.
- 139. It does not admit paragraph 139.
- 140. It does not admit paragraph 140.
- 141. It denies paragraph 141.
- 142. It denies paragraph 142.
- 143. It does not admit paragraph 143.
- 144. It does not admit paragraph 144.
- 145. It denies paragraph 145.
- 146. It does not admit paragraph 146.
- 147. It denies paragraph 147.
- 148. It denies paragraph 148.
- 149. It does not admit paragraph 149.
- 150. It denies paragraph 150.
- 151. Paragraph 151 makes no allegation against it, and it does not admit the paragraph.
- 152. It denies paragraph 152 and says further that insofar as one or more of Lanzer and the Associate provided medical advice and treatment to a plaintiff or a group member they did so not as a servant or agent of it.

E.3 Lanzer alleged breaches

- 153. It denies paragraph 153.
- 154. It denies paragraph 154.
- 155. It does not admit paragraph 155.

156. It denies paragraph 156 so far as it relates to Lanzer and refers to and repeats paragraphs 153 to 155 above.
157. It denies paragraph 157.
158. It denies paragraph 158 and says further that:
- (a) at the commencement of Russell's surgery on 17 September 2021:
 - (i) 10mg of morphine was administered, being at or near the recommended dose;
 - (ii) 100mcg of fentanyl was administered, being at or near the recommended dose;
 - (b) during Russell's surgery, she received 4500mcg of xylocaine, being at or near the recommended dose;
 - (c) routine observations taken by nursing staff following the surgery recorded Russell's pain level as "minimal";
 - (d) at the time of discharge:
 - (i) Russell's pain was recorded as "minimal 0 to 3 on pain scale";
 - (ii) Russell was provided with prescriptions for Paracetamol, Tramadol and Endone (**the analgesia**);
 - (e) Russell was provided with instructions regarding managing her pain after the surgery and analgesia use.
159. It denies paragraph 159 so far as it relates to Lanzer and refers to and repeats paragraphs 153, 154 and 158 above.
160. Paragraph 160 makes no allegation against it, and it does not admit the paragraph.

E.4 Aronov alleged breaches

- 161. It denies paragraph 161.
- 162. It denies paragraph 162.
- 163. It denies paragraph 163.
- 164. It denies paragraph 164.
- 165. It denies paragraph 165.
- 166. It denies paragraph 166.
- 167. It denies paragraph 167.
- 168. Paragraph 168 makes no allegation against it, and it does not admit the paragraph.

E.5 Darbyshire alleged breaches

- 169. It denies paragraph 169.
- 170. It denies paragraph 170.
- 171. It denies paragraph 171.
- 172. It denies paragraph 172.

E.6 Wells alleged breaches

- 173. It denies paragraph 173.
- 174. It denies paragraph 174.
- 175. It denies paragraph 175.
- 176. It does not admit paragraph 176.
- 177. It denies paragraph 177.

178. Paragraph 178 makes no allegation against it, and it does not admit the paragraph.

E.7 Fallahi alleged breaches

179. It denies paragraph 179.

180. It denies paragraph 180.

181. It does not admit paragraph 181.

182. It denies paragraph 182.

183. Paragraph 183 makes no allegation against it, and it does not admit the paragraph.

E.8 Wong alleged breaches

184. It denies paragraph 184.

185. It denies paragraph 185.

186A. It denies paragraph 186A.

186. It does not admit paragraph 186.

187. It denies paragraph 177.

E.9 Wainstein alleged breaches

188. Paragraph 188 makes no allegation against it, and it does not admit the paragraph.

189. Paragraph 189 makes no allegation against it, and it does not admit the paragraph.

190. Paragraph 190 makes no allegation against it, and it does not admit the paragraph.

E.10 Loss

191. It denies paragraph 191 so far as it relates to it and further denies that Lombardo has suffered injury, loss, and damage as alleged.
192. It denies paragraph 192 so far as it relates to it and further denies that Bonnici has suffered injury, loss, and damage as alleged.
193. It denies paragraph 193 so far as it relates to it and further denies that Russell has suffered injury, loss, and damage as alleged.
194. It denies paragraph 194 so far as it relates to it and further denies that Morrison has suffered injury, loss, and damage as alleged.
195. It denies paragraph 195.

F. Contract

196. It denies paragraph 196 and says further that any contract to which a plaintiff or a group member was a party for the performance of cosmetic surgery services was between that plaintiff or group member and one or more of Lanzer and the Associates.
- 196A. Save to refer to the matters in paragraph 114(c) and (d), it denies the matters in paragraph 196A and says further that there was no guarantee that the performance by one or more of Lanzer and the Associates of dermatological cosmetic surgery on a person would in fact enhance the aesthetic appearance of the person.
- 196B. It denies paragraph 196B.
197. It denies paragraph 197 and repeats the matters in paragraph 196 of the defence.
198. It denies paragraph 198 and repeats the matters in paragraph 196 of the defence.
199. It denies paragraph 199 and repeats the matters in paragraph 196 of the defence.

200. It denies paragraph 200 and repeats the matters in paragraph 196 of the defence.

201. It denies paragraph 201 and repeats the matters in paragraph 196 of the defence.

202. It denies paragraph 202.

202A. It denies paragraph 202A.

G. CAUSATION, LOSS, AND DAMAGE

G.1 Misleading or deceptive conduct

G.1.1 Lombardo

203. It denies paragraph 203.

203A. It denies paragraph 203A.

204. It denies paragraph 204 so far as it relates to it and otherwise does not admit the paragraph.

G.1.2 Bonnici

205. It denies paragraph 205.

205A. It denies paragraph 205A.

206. It denies paragraph 206 so far as it relates to it and otherwise does not admit the paragraph.

G.1.3 Russell

207. It denies paragraph 207.

207A. It denies paragraph 207A.

208. It denies paragraph 208 so far as it relates to it and otherwise does not admit the paragraph.

G.1.4 Morrison

209. It denies paragraph 209.

209A. It denies paragraph 209A.

210. It denies paragraph 210 so far as it relates to it and otherwise does not admit the paragraph.

G.1.5 Group Members

211. It denies paragraph 211 so far as it relates to it and otherwise does not admit the paragraph.

211A. It denies paragraph 211A.

212. It denies paragraph 212 so far as it relates to it and otherwise does not admit the paragraph.

G.1.6 Liability of the Defendants for the Representation Contraventions

213. As to paragraph 213, it:

(a) denies the paragraph so far as it relates to it;

(b) says further:

(i) that the plaintiffs and group members are seeking to recover alleged loss and damage for contravention of s 18 (which is in Part 2-1) and ss 29 and 34 (which are in Part 3-1) of the ACL;

(ii) they are not entitled to recover any amount for the alleged loss or damage from any such contravention pursuant to s 236(1) of the ACL; and

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Section 137C of the *Competition and Consumer Act 2010* (Cth).

- (c) otherwise, does not admit the paragraph.

G.2 Statutory Guarantee Non-Compliances

214. As to paragraph 214 it denies the paragraph insofar as it relates to it and otherwise does not admit the paragraph.

215. As to paragraph 215:

- (a) it denies the paragraph so far as it relates to it and otherwise does not admit the paragraph;

- (b) it says further that a plaintiff or group member seeking to recover an amount for his or her loss and damage pursuant to ss 267(4) of ACL for an alleged contravention:

- (i) such an action is based on an alleged failure to comply with a guarantee that applies to a supply of services under Subdivision B of Division 1 of Part 3-2 of the ACL;

- (ii) the law of the place of the contract applies to the action pursuant by reason of s 275 of the ACL to limit or preclude liability for the alleged failure, and recovery of that liability (if any).

G.3 Negligence

216. As to paragraph 216, it denies the paragraph so far as it relates to it and otherwise does not admit the paragraph.

G.4 Contract

217. It denies paragraph 217.

H Common questions

218. It denies that the proposed common questions raise any substantial common question of law or fact.
219. It says further that the law that applies in respect of an action by a plaintiff or a group member is:
- (a) the law of the place of the tort for an action in negligence;
 - (b) the law of the place of the contract for an action for breach of contract;
 - (c) the law of the place of the contravention for an action based on an alleged representation contravention;
 - (d) the law of the place of the contract for an alleged statutory guarantee non-compliance.
220. Further to paragraph 219:
- (a) the law that applies to substantive issues in Lombardo's actions is the law of New South Wales;
 - (b) the law that applies to substantive issues in Bonnici's actions is the law of Queensland;
 - (c) the law that applies to substantive issues in Russell's actions is the law of Victoria;
 - (d) the law that applies to substantive issues in Morrison's actions is the law of Western Australia.
221. Where the law that applies to an action by a plaintiff or group member is Victorian, Victorian law governs all substantive issues including:
- (a) the limitation period that applies to the action;

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Limitation of Actions Act 1958 (Vic), Part IIA.

- (b) the action and substantive rights in respect of the action;

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Wrongs Act 1958 (Vic), Parts X and XI.

- (c) any limit on the kind of injury, loss or damage for which damages may be recovered and the assessment of those damages.

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Wrongs Act 1958 (Vic), Parts VA, VB, VBA and XI.

222. Where the law that applies to an action by a plaintiff or group member is New South Wales, the law of New South Wales governs all substantive issues including:

- (a) the limitation period that applies to the action;

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Limitation of Actions Act 1969(NSW).

- (b) the action and substantive rights in respect of the action;
- (c) any limit on the kind of injury, loss or damage for which damages may be recovered and the assessment of those damages.

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Civil Liability Act 2002 (NSW).

223. Where the law that applies to an action by a plaintiff or group member is Western Australian, the law of Western Australia governs all substantive issues including:

- (a) the limitation period that applies to the action;

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Limitation Act 2005 (WA).

- (b) the action and substantive rights in respect of the action;
- (c) any limit on the kind of injury, loss or damage for which damages may be recovered and the assessment of those damages.

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Civil Liability Act 2002 (WA).

224. Where the law that applies to an action by a plaintiff or group member is Queensland, the law of Queensland governs all substantive issues including:

- (a) the limitation period that applies to the action;

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Limitation of Actions Act 1974 (Qld).

- (b) the action and substantive rights in respect of the action;
- (c) any limit on the kind of injury, loss or damage for which damages may be recovered and the assessment of those damages.

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Civil Liability Act 2003 (Qld) and Personal Injuries Proceedings Act 2002 (Qld).

225. The claims made by the plaintiffs and group Members under s 236 of the ACL (**the misleading and deceptive conduct claims**) are apportionable claims within the meaning of:

(a) Part VIA of the *Competition and Consumer Act 2010* (Cth);

(b) Part 4 of the *Civil Liability Act 2002* (NSW);

(c) Part IVAA of the *Wrongs Act 1958* (Vic);

(d) Part 1F of the *Civil Liability Act 2002* (WA); and

(e) Chapter 2 Part 2 of the *Civil Liability Act 2003* (Qld)

(**the proportionate liability legislation**).

226. If a plaintiff or a group member has suffered loss and damage as alleged in the misleading and deceptive conduct claims (which are not admitted but expressly denied), the seventh defendant's acts or omissions caused the claimed loss and damage within the meaning of the proportionate liability legislation.

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The first defendant refers to and repeats the matters alleged at paragraphs 9, 58–85, 87, 95 (and its particulars), 96, 100, 102–104, 117–119, and 123–125, 184–186, 194 and 210 of the amended statement of claim.

227. If the first defendant is liable to a plaintiff or group member as alleged by the misleading and deceptive conduct claims (which is not admitted but expressly denied), then the seventh defendant is:

(a) a person who is one of 2 or more persons whose acts or omissions caused the alleged loss or damage that is the subject of the misleading and deceptive conduct claims; and

(b) a concurrent wrongdoer within the meaning of the proportionate liability legislation.

228. In the premises, if the first defendant is liable to any plaintiff or group member in relation to the misleading and deceptive conduct claims (which is not admitted but is expressly denied) then its liability is limited by the proportionate liability legislation to an amount reflecting that proportion of the claimed loss that the Court considers just having regard to the extent of the first defendant's responsibility for the claimed loss and judgment must not be given against the first defendant for more than that amount.

Patrick Over

Date: 23 December 2024



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L A Warren Lawyers
Solicitors for the first defendant