



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: 20/12/2024 05:57 PM

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

DEFENCE TO AMENDED STATEMENT OF CLAIM

Date: 20 December 2024	Solicitors Code: CR114828
Filed on behalf of: the second defendant	DX: 30992 Stock Exchange Melbourne
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In answer to the amended statement of claim filed 14 November 2024, the second defendant says as follows:

A. Parties

A.1 Group Proceeding formalities

1. As to paragraph 1, the second defendant:
 - (a) denies having caused loss or damage to any plaintiff or group member by reason of any alleged negligence, breach of contract or consumer law breach; and
 - (b) otherwise does not admit the paragraph.
- 1A. Paragraph 1A makes no allegation against the second defendant and he does not admit the paragraph.

2. The second defendant does not admit paragraph 2.

A.2 Dermatology and Cosmetic Surgery Services Pty Ltd

3. As to paragraph 3, the second defendant:

- (a) admits subparagraph (a);
- (b) denies subparagraph (b);
- (c) admits that DCSS provided services incidental to cosmetic surgery, but does not admit the balance of subparagraph (c);
- (d) admits that DCSS provided services referred to in the preceding subparagraph from the locations listed in subparagraph (d); and
- (e) denies subparagraph (e).

A.3 Dr Lanzer

4. As to paragraph 4, the second defendant:

- (a) admits subparagraph (a);
- (b) admits subparagraph (b);
- (c) admits subparagraph (c);
- (d) in response to subparagraph (d) says that DCSS employed from time to time other professionals including Dr Braham Goldberg and qualified nursing staff;
- (e) does not admit subparagraph (e); and
- (f) otherwise denies the allegations.

5. As to paragraph 5, the second defendant:

- (a) denies subparagraph (b); and
- (b) otherwise does not admit the paragraph.

6. As to paragraph 6, the second defendant:
 - (a) admits subparagraph (a) and says further that he:
 - (i) was a registered medical practitioner from about 1 December 1982 to about 1 December 2021;
 - (ii) obtained specialist qualifications as a Fellow of the Australasian College of Dermatologists in 1988;
 - (b) in response to sub-paragraph (b), says that he practised as a dermatologic surgeon in the course of which he performed medical, cosmetic, and dermatologic surgery and associated services;
 - (c) admits subparagraph (c);
 - (d) denies subparagraph (d);
 - (e) denies subparagraph (e); and
 - (f) otherwise denies the paragraph.

A.4 Other Cosmetic Doctor Defendants

7. The second defendant admits paragraph 7.

A.4.1 Liability of Other Cosmetic Doctor Defendants directly

8. Save to admit that the Other Cosmetic Doctor Defendants were registered medical practitioners and not members of the Royal Australian College of Surgeons or the Royal Australian College of Physicians, the second defendant otherwise does not admit paragraph 8.
9. Paragraph 9 makes no allegation against the second defendant and he does not admit the paragraph.

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

10. He denies the allegations at paragraph 10 so far as they relate to him and otherwise does not admit the paragraph.
11. The second defendant denies paragraph 11 so far as it relates to him and otherwise does not admit the paragraph.

A.5 Wainstein

12. As to paragraph 12, the second defendant:
 - (a) admits sub-paragraph (a);
 - (b) admits sub-paragraph (c);
 - (c) denies sub-paragraph (b)(ii) so far as it relates to him; and
 - (d) otherwise does not admit the paragraph.
13. Paragraph 13 makes no allegation against the second defendant and he does not admit the paragraph.

B. The Plaintiffs

B.1 First Plaintiff — Tina Lombardo

14. As to paragraph 14, the second defendant:
 - (a) admits that Lombardo made an inquiry through the www.drlanzer.com.au website; and
 - (b) otherwise denies the allegations.
15. The second defendant admits paragraph 15.
16. As to paragraph 16, the second defendant says that:
 - (a) he 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) advised Lombardo, *inter alia*, as to the following:
 - (1) that three surgical options were available, being mini tuck, full abdominoplasty and dermolipectomy;
 - (2) that the surgical options carried risks, including but not limited to risk of bleeding requiring emergency hospitalisation, scarring, asymmetry, imperfect results and need for a repeat surgery with a plastic surgeon;
 - (3) that she would be required to read and sign a consent form and have at least a one week cooling off period before surgery could be performed.
- (iii) said based on the information that Lombardo was likely to be a candidate for a mini tuck;
- (iv) said that a further in-person consultation was necessary;
- (b) when Lombardo attended the Sydney Clinic on 18 March 2021, she consulted with the sixth defendant and not the second defendant as alleged;
- (c) during Lombardo's 18 March 2021 consultation with the sixth defendant, it was specifically recorded that Lombardo was aware of the option not to undergo surgery; and
- (d) he otherwise denies the allegations.

17. As to paragraph 17, the second defendant:

- (a) admits that on 18 March 2021 Maria provided by email to Lombardo the documents listed at sub-paragraphs a., b, and c; and
- (b) otherwise does not admit the allegations.

18. Paragraph 18 makes no allegation against the second defendant and he does not admit the paragraph.

19. Paragraph 19 makes no allegation against the second defendant and he does not admit the paragraph.
20. The second defendant admits paragraph 20.
21. As to paragraph 21, the second defendant:
 - (a) admits that Lombardo attended at the Surry Hills Day Hospital on or about 15 November 2021;
 - (b) admits that Lombardo consulted with the third defendant;
 - (c) otherwise does not admit subparagraph (a);
 - (d) says that the third defendant telephoned Lombardo on 15 November 2021 prior to Lombardo attending at the Surry Hills Day Hospital, during which telephone call:
 - (i) the third defendant sought to postpone Lombardo's procedure in light of adverse media coverage;
 - (ii) Lombardo insisted on proceeding with Lombardo's procedure;
 - (e) admits subparagraph (b).
22. The second defendant does not admit paragraph 22.

B.2 Second Plaintiff — Tina Bonnici

23. As to paragraph 23, the second defendant:
 - (a) admits that Bonnici made an inquiry with DCSS as alleged; and
 - (b) otherwise denies the allegations.
24. As to paragraph 24, the second defendant:
 - (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; and
 - (b) otherwise denies paragraph 24.

25. The second defendant admits paragraph 25.
26. Paragraph 26 does not make any allegation against the second defendant and he does not admit the paragraph.
27. The second defendant admits paragraph 27.
28. The second defendant admits paragraph 28.
29. Paragraph 29 does not make any allegation against the second defendant and he does not admit the paragraph.
- 30A. As to paragraph 30A, the second defendant:
 - (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. The second defendant admits paragraph 30.
31. Paragraph 31 does not make any allegation against the second defendant and he does not admit the paragraph.
32. Paragraph 32 does not make any allegation against the second defendant and he does not admit the paragraph.
33. Paragraph 33 does not make any allegation against the second defendant and he does not admit the paragraph.
34. Paragraph 34 does not make any allegation against the second defendant and he does not admit the paragraph.
35. Paragraph 35 does not make any allegation against the second defendant and he does not admit the paragraph.
36. Paragraph 36 does not make any allegation against the second defendant and he does not admit the paragraph.

37A. Paragraph 37A does not make any allegation against the second defendant and he does not admit the paragraph.

37. Paragraph 37 does not make any allegation against the second defendant and he does not admit the paragraph.

38A. Paragraph 38A does not make any allegation against the second defendant and he does not admit the paragraph.

B.3 Third Plaintiff — Simone Russell

38. The second defendant admits paragraph 38.

39. The second defendant admits paragraph 39.

39A. The second defendant does not admit paragraph 39A.

39B. The second defendant does not admit paragraph 39B.

40. The second defendant admits paragraph 40.

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

42. The second defendant admits paragraph 42.

43. The second defendant admits paragraph 43 and says further that on 6 September 2021 Russell attended a telehealth consultation with Dr Darbyshire at which Russell was advised of the following matters, *inter alia*:

- (a) that there was a risk of her skin looking worse including increased cellulite, denting, loose skin or poor retraction of skin;
- (b) that the result would not look perfect and was intended for her to look better in clothes only;
- (c) that with surgery came risks including, but not limited to, weeping, scarring, numbness, dimpling, infection, seroma, necrosis and haematoma;
- (d) that surgery was a painful process;

- (e) that some patients are less sensitive to local anaesthetic and she may feel pain during surgery;
- (f) that other pain management options existed; and
- (g) that she had the option not to undergo surgery.

44. The second defendant denies paragraph 44 and says further that:

- (a) Russell spoke with Wainstein on or about 13 September 2021 (**the Wainstein consultation**);
- (b) in the course of the Wainstein consultation, Wainstein noted that Russell appeared well informed, aware of the risks and has realistic expectations; and
- (c) Russell was offered a further pre-operative consultation with a doctor but declined and advised she was comfortable to wait until the presurgical consultation on the day of surgery.

PARTICULARS

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, the second defendant admits paragraph 45.
- 46. The second defendant admits paragraph 46.
- 47. Save to say that Russell paid the sum of \$20,250.00 to DCSS's account, the second defendant admits paragraph 47 and says further that:
 - (a) the total amount transferred comprised:
 - (i) \$15,000 in respect of a thigh liposuction procedure;
 - (ii) \$5000 in respect of a mini thigh lift procedure;
 - (iii) \$50 in respect of the Wainstein Consultation;
 - (iv) \$200 in respect of compression garments;

PARTICULARS

Russell attended a consultation on 27 August 2021 with Brad Dembo at which she informed Dembo that she was on a budget, and she was quoted separate amounts of \$15,000 in respect of a thigh liposuction procedure and a further \$5000 in respect of a mini thigh lift procedure.

- (b) Russell subsequently elected not to undertake the mini thigh lift procedure;
 - (c) \$5,000 was refunded to Russell on 19 September 2021; and
 - (d) that refund was by reason of the fact that Russell had elected not to undertake the mini thigh lift procedure.
48. Paragraph 48 makes no allegation against the second defendant and the paragraph is not admitted.
49. The second defendant admits paragraph 49.
50. As to paragraph 50, the second defendant:
- (a) admits that he consulted with Russell but does not admit the balance of sub-paragraph (a) so far as it relates to him; and
 - (b) admits paragraph (b) so far as it relates to him.
51. As to paragraph 51, the second defendant:
- (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) does not admit sub-paragraph (c), says further that routine questions as to pain levels were asked by nursing staff, and otherwise refers to and repeats sub-paragraph (a) above.
52. The second defendant admits paragraph 52 and says further that the refund was by reason of the matters at paragraph 47 above.
53. The second defendant admits paragraph 53.
54. The second defendant admits paragraph 54.
55. The second defendant does not admit paragraph 55.
56. The second defendant admits that Russell attended a follow-up consultation with the second defendant but otherwise does not admit paragraph 56.
57. As to paragraph 57, the second defendant says that during the follow-up consultation the second defendant:
- (1) observed swelling;
 - (2) administered local anaesthetic and made a single 2mm incision with a No. 11 scalpel blade to ensure there was no seroma present;
- and otherwise does not admit the paragraph.
- 57A. The second defendant denies paragraph 57A and repeats paragraph 57 above.

B.4 Fourth Plaintiff — Julie Rose Morrison

58. The second defendant admits paragraph 58.
59. The second defendant does not admit paragraph 59.
60. The second defendant admits paragraph 60.
61. The second defendant admits paragraph 61.
62. The second defendant admits paragraph 62.

63. Save not to admit sub-paragraph (b), the second defendant otherwise admits paragraph 63.
64. Paragraph 64 makes no allegation against the second defendant and he does not admit the paragraph.
65. The second defendant admits paragraph 65.
66. Paragraph 66 makes no allegation against the second defendant and he does not admit the paragraph.
67. The second defendant admits paragraph 67.
68. The second defendant admits paragraph 68.
69. Paragraph 69 makes no allegation against the second defendant and he does not admit the paragraph.
70. Paragraph 70 makes no allegation against the second defendant and he does not admit the paragraph.
71. Paragraph 71 makes no allegation against the second defendant and he does not admit the paragraph.
- 71A. Insofar as the allegations relate to him, the second defendant denies the allegations contained in paragraph 71A.
72. Save to admit sub-paragraph (a), the second defendant does not admit paragraph 72.
73. The second defendant admits paragraph 73.
74. Paragraph 74 makes no allegation against the second defendant and he does not admit the paragraph.
75. Paragraph 75 makes no allegation against the second defendant and he does not admit the paragraph.
76. Paragraph 76 makes no allegation against the second defendant and he does not admit the paragraph.

77. Paragraph 77. makes no allegation against the second defendant and he does not admit the paragraph.
78. Paragraph 78 makes no allegation against the second defendant and he does not admit the paragraph.
79. Paragraph 79 makes no allegation against the second defendant and he does not admit the paragraph.
80. Paragraph 80 makes no allegation against the second defendant and he does not admit the paragraph.
81. Paragraph 81 makes no allegation against the second defendant and he does not admit the paragraph.
82. The second defendant denies paragraph 82 and says further the pre-admission checklist dated 1 October 2021 records that Morrison had spoken to Wainstein.
83. Insofar as the allegations relate to him, the second defendant denies the allegations contained in paragraph 83.
84. Paragraph 84 makes no allegation against the second defendant and he does not admit the paragraph.
85. Paragraph 85 makes no allegation against the second defendant and he does not admit the paragraph.

C. Alleged Misleading or Deceptive Conduct

C.1 DCSS Sales System

86. As to paragraph 86, the second defendant says that:
 - (a) the first defendant published the website ‘www.drlanzer.com.au’ (**the website**);
 - (b) persons were able to make an initial inquiry using a form on the website or contact information on the website;

- (c) the second defendant's qualifications, experience and training were set out on the website;
- (d) the second defendant and Other Cosmetic Doctor Defendants consulted with and provided advice to prospective patients;
- (e) where appropriate, the second defendant or Other Cosmetic Doctor Defendants provided or arranged for quotes to be provided to prospective patients;
- (f) he otherwise denies the paragraph so far as it relates to him; and
- (g) he otherwise does not admit the paragraph.

87. Paragraph 87 makes no allegation against the second defendant and it is not admitted.

C.2 Representations

C.2.1 The Representations

88. The second defendant denies paragraph 88.

88A. The second defendant denies paragraph 88A and says further that the second defendant and Other Cosmetic Doctor Defendants were qualified to perform cosmetic surgery procedures.

89. The second defendant 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) he had completed appropriate training and qualifications to perform cosmetic surgery procedures.

90. As to paragraph 90, the second defendant:

- (a) says that he was qualified to perform cosmetic surgery procedures;
- (b) says that each of the Third to Seventh Defendants was qualified to perform cosmetic surgery procedures;

- (c) admits that neither he nor the Other Cosmetic Doctor Defendants were specialist plastic surgeons; and
- (d) otherwise denies the allegations.

- 91. The second defendant denies paragraph 91.
- 92. The second defendant denies paragraph 92 and says further that disclosure of Wainstein's marriage to Aronov had no bearing on her independence.
- 93. The second defendant 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 potential patients

- 94. The second defendant denies paragraph 94 so far as it relates to him and otherwise he does not admit the paragraph.
- 95. Paragraph 95 makes no allegation against the second defendant and he does not admit the paragraph.
- 96. Paragraph 96 makes no allegation against the second defendant and he does not admit the paragraph.

C.2.3 How the Representations were allegedly made to the Plaintiffs and the Group Members

- 96A. The second defendant denies paragraph 96A as far as it relates to him and otherwise he does not admit the paragraph.
- 97. The second defendant denies paragraph 97 so far as it relates to him and otherwise does not admit the allegation.
- 98. The second defendant denies paragraph 98 so far as it relates to him and otherwise does not admit the allegation.
- 99. The second defendant denies paragraph 99 so far as it relates to him and otherwise does not admit the allegation.

100. The second defendant denies paragraph 100 so far as it relates to him and otherwise does not admit the allegation.
101. Not Used.
102. Paragraph 102 makes no allegation against the second defendant and he does not admit the paragraph.
103. Paragraph 103 makes no allegation against the second defendant and he does not admit the paragraph.
104. The second defendant denies paragraph 104 so far as it relates to him and otherwise does not admit the paragraph.
105. Insofar as paragraph 105 makes any allegation against the second defendant it is denied, and he otherwise does not admit the paragraph.

C.2.4 Contraventions

106. Paragraph 106 makes no allegation against the second defendant and he does not admit the paragraph.
107. The second defendant denies paragraph 107.
108. Paragraph 108 makes no allegation against the second defendant and he does not admit the paragraph.
109. Paragraph 109 makes no allegation against the second defendant and he does not admit the paragraph.
110. Paragraph 110 makes no allegation against the second defendant and he does not admit the paragraph.

D. STATUTORY GUARANTEES

D.1 Statutory guarantees

111. As to paragraph 111, the second defendant:

- (a) specifically denies that he was a supplier within the meaning of ss 60 or 61 of the ACL in respect of cosmetic surgery services provided to Plaintiffs or Group Members for payment made to DCSS;
- (b) denies paragraph 111 so far as it relates to him; and
- (c) otherwise does not admit the paragraph.

112. As to paragraph 112, the second defendant:

- (a) admits that where a Plaintiff or Group Member acquired cosmetic surgery services, those services were acquired by them as consumers within the meaning of section 3(3) of the ACL;
- (b) repeats paragraph 111 above; and
- (c) otherwise does not admit the paragraph.

113. As to paragraph 113, the second defendant:

- (a) denies paragraph 113 so far as it relates to him;
- (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

PARTICULARS

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, the second defendant:

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

- (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

PARTICULARS

The second defendant repeats to the particulars to paragraph 113 above.

- (e) otherwise does not admit the paragraph.

115. The second defendant denies paragraph 115.

116. The second defendant denies paragraph 116.

D.2 Non-compliance with guarantees

117. As to paragraph 117, the second defendant:

- (a) denies paragraph 117 so far as it relates to him;
- (b) refers to and repeats the matters at paragraphs 153–158 below; and
- (c) otherwise does not admit the paragraph.

118. The second defendant denies paragraph 118.

119. The second defendant denies paragraph 119.

120. The second defendant denies paragraph 120.

121. Paragraph 121 makes no allegation against the second defendant and he does not admit the paragraph.

122. The second defendant denies paragraph 122.

123. Paragraph 123 makes no allegation against the second defendant and he does not admit the paragraph.

124. The second defendant does not admit paragraph 124.

124A. The second defendant denies paragraph 124A so far as it relates to him and otherwise does not admit the paragraph.

125. The second defendant denies paragraph 125 so far as it relates to him and otherwise does not admit the paragraph.

E. NEGLIGENCE

E.1 Alleged Duties

126. Paragraph 126 makes no allegation against the second defendant and he does not admit the paragraph.

127. Paragraph 127 makes no allegation against the second defendant and he does not admit the paragraph.

128. As to paragraph 128, the second defendant:

(a) admits that he owed a non-delegable duty to exercise the degree of care and skill expected of a reasonably competent cosmetic surgeon to each of the named Plaintiffs whom he personally treated in respect of consultations and/or treatment he was engaged to undertake for each Plaintiff;

(b) cannot admit that he owed a duty of care to presently unidentified persons; and

(c) otherwise denies paragraph 128.

129. Paragraph 129 makes no allegation against the second defendant and he does not admit the paragraph.

130. Paragraph 130 makes no allegation against the second defendant and he does not admit the paragraph.

131. Paragraph 131 makes no allegation against the second defendant and he does not admit the paragraph.
132. Paragraph 132 makes no allegation against the second defendant and he does not admit the paragraph.
133. Paragraph 133 makes no allegation against the second defendant and he does not admit the paragraph.
134. Paragraph 134 makes no allegation against the second defendant and he does not admit the paragraph.
135. Paragraph 135 makes no allegation against the second defendant and he does not admit the paragraph.

E.2 DCSS alleged breaches

136. Paragraph 136 makes no allegation against the second defendant and he does not admit the paragraph.
137. Paragraph 137 makes no allegation against the second defendant and he does not admit the paragraph.
138. Paragraph 138 makes no allegation against the second defendant and he does not admit the paragraph.
139. Paragraph 139 makes no allegation against the second defendant and he does not admit the paragraph.
140. Paragraph 140 makes no allegation against the second defendant and he does not admit the paragraph.
141. Paragraph 141 makes no allegation against the second defendant and he does not admit the paragraph
142. Paragraph 142 makes no allegation against the second defendant and he does not admit the paragraph.

143. Paragraph 143 makes no allegation against the second defendant and he does not admit the paragraph.
144. Paragraph 144 makes no allegation against the second defendant and he does not admit the paragraph.
145. Paragraph 145 makes no allegation against the second defendant and he does not admit the paragraph.
146. Paragraph 146 makes no allegation against the second defendant and he does not admit the paragraph.
147. Paragraph 147 makes no allegation against the second defendant and he does not admit the paragraph.
148. Paragraph 148 makes no allegation against the second defendant and he does not admit the paragraph.
149. Paragraph 149 makes no allegation against the second defendant and he does not admit the paragraph.
150. Paragraph 150 makes no allegation against the second defendant and he does not admit the paragraph.
151. Paragraph 151 makes no allegation against the second defendant and he does not admit the paragraph.
152. Paragraph 152 makes no allegation against the second defendant and he does not admit the paragraph.

E.3 Lanzer alleged breaches

153. The second defendant denies paragraph 153.
154. The second defendant denies paragraph 154.
155. The second defendant denies paragraph 155, refers to paragraph 16 above and says further that:
 - (a) the correct standard of care is reasonable medical practice;

- (b) reasonable medical practice in the circumstances did not require the second defendant to examine Lombardo in person before providing her with advice as to surgical options;
- (c) he did in fact consult with Lombardo personally prior to providing her with advice as to surgical options;
- (d) Lombardo was provided with a range of treatment options and was aware of the option not to undergo surgery.

156. The second defendant denies paragraph 156 so far as it relates to him, refers to and repeats paragraphs 16 and 153–155 above and says further:

- (a) by at least 18 March 2021, Lombardo was aware of the option not to undergo surgery and nevertheless elected to undergo the treatment;
- (b) prior to undergoing Lombardo’s surgery with Aronov, Lombardo completed a questionnaire and answered the question “*is this surgery an important decision to you? Have you considered this appropriately?*” by writing that “*its hugely important & something Ive wanted for 25 years*” [sic].

157. The second defendant denies paragraph 157.

158. The second defendant denies paragraph 158 and says further that:

- (a) the correct standard of care is reasonable medical practice;
- (b) Russell was examined by both Aronov and Darbyshire before the day of Russell’s surgery;
- (c) Russell was offered and declined the option of a further pre-surgical consultation prior to the day of Russell’s surgery;
- (d) Russell was aware of the option not to undergo surgery;
- (e) 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;
- (f) during Russell’s surgery, she received 4500mcg of xylocaine, being at or near the recommended dose;
- (g) routine observations taken by nursing staff following the surgery recorded Russell’s pain level as “minimal”;
- (h) 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**);
- (i) Russell was provided with instructions regarding managing her pain after the surgery and analgesia use;
- (j) Russell was warned of the risk of pain;
- (k) Russell was warned of the risk of poor aesthetic outcome, bleeding and scarring;
- (l) Russell was warned of a range of risks and potential complications including but not limited to weeping, scarring, numbness, dimpling, infection, seroma, necrosis, haematoma, poor retraction of skin and imperfect aesthetic outcome; and
- (m) Russell was referred to Wainstein for psychological assessment and noted to be well informed and aware of the risks of surgery;

159. The second defendant denies paragraph 159 so far as it relates to him and refers to and repeats paragraphs 153, 154 and 158 above.

160. Paragraph 160 makes no allegation, and the second defendant does not admit the paragraph.

E.4 Aronov alleged breaches

161. Paragraph 161 makes no allegation against the second defendant and he does not admit the paragraph.

162. Paragraph 162 makes no allegation against the second defendant and he does not admit the paragraph.

163. Paragraph 163 makes no allegation against the second defendant and he does not admit the paragraph.

164. Paragraph 164 makes no allegation against the second defendant and he does not admit the paragraph.

165. Paragraph 165 makes no allegation against the second defendant and he does not admit the paragraph.

166. Paragraph 166 makes no allegation against the second defendant and he does not admit the paragraph.

167. Paragraph 167 makes no allegation against the second defendant and he does not admit the paragraph.

168. Paragraph 168 makes no allegation against the second defendant and he does not admit the paragraph.

E.5 Darbyshire alleged breaches

169. Paragraph 169 makes no allegation against the second defendant and he does not admit the paragraph.

170. Paragraph 170 makes no allegation against the second defendant and he does not admit the paragraph.

171. Paragraph 171 makes no allegation against the second defendant and he does not admit the paragraph.

172. Paragraph 172 makes no allegation against the second defendant and he does not admit the paragraph.

E.6 Wells alleged breaches

173. Paragraph 173 makes no allegation against the second defendant and he does not admit the paragraph.

174. Paragraph 174 makes no allegation against the second defendant and he does not admit the paragraph.

175. Paragraph 175 makes no allegation against the second defendant and he does not admit the paragraph.

176. Paragraph 176 makes no allegation against the second defendant and he does not admit the paragraph.

177. Paragraph 177 makes no allegation against the second defendant and he does not admit the paragraph.

178. Paragraph 178 makes no allegation against the second defendant and he does not admit the paragraph.

E.7 Fallahi alleged breaches

179. Paragraph 179 makes no allegation against the second defendant and he does not admit the paragraph.

180. Paragraph 180 makes no allegation against the second defendant and he does not admit the paragraph.

181. Paragraph 181 makes no allegation against the second defendant and he does not admit the paragraph.

182. Paragraph 182 makes no allegation against the second defendant and he does not admit the paragraph.

E.8 Wong alleged breaches

183. Paragraph 183 makes no allegation against the second defendant and he does not admit the paragraph.

184. Paragraph 184 makes no allegation against the second defendant and he does not admit the paragraph.

185. Paragraph 185 makes no allegation against the second defendant and he does not admit the paragraph.

186A. Paragraph 186A makes no allegation against the second defendant and he does not admit the paragraph.

186. Paragraph 186 makes no allegation against the second defendant and he does not admit the paragraph.

187. Paragraph 187 makes no allegation against the second defendant and he does not admit the paragraph.

E.9 Wainstein alleged breaches

188. Paragraph 188 makes no allegation against the second defendant and he does not admit the paragraph.

189. Paragraph 189 makes no allegation against the second defendant and he does not admit the paragraph.

190. Paragraph 190 makes no allegation against the second defendant and he does not admit the paragraph.

E.10 Loss

191. The second defendant denies paragraph 191 so far as it relates to him and further denies that Lombardo has suffered injury, loss and damage as alleged.

192. Paragraph 192 makes no allegation against the second defendant and he does not admit the paragraph.

193. The second defendant denies paragraph 193 so far as it relates to him and further denies that Russell has suffered injury, loss and damage as alleged.

194. Paragraph 194 makes no allegation against the second defendant and he does not admit the paragraph.

195. The second defendant denies paragraph 195 and says further that aggravated damages are not available in respect of the plaintiffs' and group members' claims.

F. Contract

196. Paragraph 196 makes no allegation against the second defendant and he does not admit the paragraph.

196A. The second defendant denies paragraph 196A so far as it relates to him and otherwise does not admit the paragraph.

196B. The second defendant does not admit paragraph 196B and says further:

(a) in respect of Lombardo, the second defendant refers to paragraph 16 and 155 above and says that Lombardo was aware of the possibility of asymmetry, scarring, need for a repeat procedure and imperfect results;

(b) in respect of Russell, the second defendant refers to paragraph 43 and 158 above and says that Russell was aware of the possibility of scarring, dimpling, poor retraction of skin, imperfect outcome and that the surgery was intended to make her look better whilst wearing clothes.

197. Paragraph 197 makes no allegation against the second defendant and he does not admit the paragraph.

198. Paragraph 198 makes no allegation against the second defendant and he does not admit the paragraph.

199. Paragraph 199 makes no allegation against the second defendant and he does not admit the paragraph.

200. Paragraph 200 makes no allegation against the second defendant and he does not admit the paragraph.

201. Paragraph 201 makes no allegation against the second defendant and he does not admit the paragraph.

202. Paragraph 202 makes no allegation against the second defendant and he does not admit the paragraph.

202A. The second defendant denies paragraph 202A so far as it relates to him and otherwise does not admit the paragraph.

G. CAUSATION, LOSS AND DAMAGE

G.1 Misleading or deceptive conduct

G.1.1 Lombardo

203. The second defendant denies paragraph 203.

203A. The second defendant denies paragraph 203A.

204. In response to paragraph 204, the second defendant:

- (a) denies the paragraph so far as it relates to him;
- (b) says further that if Lombardo has suffered loss and damage by reason of the allegations (which are not admitted but denied), the loss and damage relates to, arises from or constitutes a personal injury within the meaning of applicable civil liability legislation, including Part VB and VBA of the *Wrongs Act 1958* (Vic), Part 2 of the *Civil Liability Act 2002* (NSW), and s 137C of the *Competition and Consumer Act 2010* (Cth); and
- (c) otherwise does not admit the paragraph.

G.1.2 Bonnici

205. The second defendant denies paragraph 205.

205A. The second defendant denies paragraph 205A.

206. In response to paragraph 206, the second defendant:

- (a) denies the paragraph so far as it relates to him;
- (b) says further that if Bonnici has suffered loss and damage by reason of the allegations (which are not admitted but denied), the loss and damage relates to, arises from or constitutes a personal injury within the meaning of applicable civil liability legislation, including Part VB and VBA of the *Wrongs Act 1958* (Vic), Part 2 of the *Civil Liability Act 2002* (NSW), Chapter 3 of the *Civil Liability Act 2003* (Qld) and s 137C of the *Competition and Consumer Act 2010* (Cth); and

- (c) otherwise does not admit the paragraph.

G.1.3 Russell

207. The second defendant denies paragraph 207.

207A. The second defendant denies paragraph 207A.

208. In response to paragraph 208, second defendant:

- (a) denies the paragraph so far as it relates to him;
- (b) says further that if Russell has suffered loss and damage by reason of the allegations (which are not admitted but denied), the loss and damage relates to, arises from or constitutes a personal injury within the meaning of applicable civil liability legislation, including Part VB and VBA of the *Wrongs Act 1958* (Vic), Part 2 of the *Civil Liability Act 2002* (NSW), and s 137C of the *Competition and Consumer Act 2010* (Cth); and
- (c) otherwise does not admit the paragraph.

G.1.4 Morrison

209. The second defendant denies paragraph 209.

209A. The second defendant denies paragraph 209A.

210. In response to paragraph 210, the second defendant:

- (a) denies the paragraph so far as it relates to him;
- (b) says further that if Morrison has suffered loss and damage by reason of the allegations (which are not admitted but denied), the loss and damage relates to, arises from or constitutes a personal injury within the meaning of the applicable civil liability legislation, including Part VB and VBA of the *Wrongs Act 1958* (Vic), Chapter 3 of the *Civil Liability Act 2003* (Qld), Part 2 of the *Civil Liability Act 2002* (WA), and s 137C of the *Competition and Consumer Act 2010* (Cth); and
- (c) otherwise does not admit the paragraph.

G.1.5 Group Members

211. The second defendant denies paragraph 211 so far as it relates to him and otherwise does not admit the paragraph.

211A. The second defendant denies paragraph 211A so far as it relates to him and otherwise does not admit the paragraph.

212. In response to paragraph 212, the second defendant:

- (a) denies the paragraph so far as it relates to him;
- (b) says further that if a Group Member has suffered loss and damage by reason of the allegations (which are not admitted but denied), the loss and damage relates to, arises from or constitutes a personal injury within the meaning of the applicable civil liability legislation, including Part VB and VBA of the Wrongs Act 1958 (Vic), Part 2 of the Civil Liability Act 2002 (NSW), Chapter 3 of the Civil Liability Act 2003 (Qld), Part 2 of the Civil Liability Act 2002 (WA), and s 137C of the Competition and Consumer Act 2010 (Cth); and
- (c) otherwise does not admit the paragraph.

G.1.6 Liability of the Defendants for the Representation Contraventions

213. As to paragraph 213, the second defendant:

- (a) denies the paragraph so far as it relates to him;
- (b) says that the Plaintiffs and Group Members are not entitled to recover any amount of the alleged loss or damage pursuant to s 236(1) of the ACL; and

PARTICULARS

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

- (c) otherwise does not admit the paragraph.

G.2 Statutory Guarantee Non-Compliances

214. The second defendant denies paragraph 214 so far as it relates to him and otherwise does not admit the paragraph.

215. As to paragraph 215, the second defendant:

- (a) denies the paragraph so far as it relates to him;
- (b) says that, where the law of New South Wales is the proper law of the contract to which the alleged guarantee relates, then by reason of s 275 of the ACL the law of New South Wales applies to limit or preclude liability for the alleged failure, and recovery of that liability (if any) including by reason of:
 - (i) the limitations on liability in Part 2 of the *Civil Liability Act 2002* (NSW);
 - (ii) in respect of any Group Member whose claim accrued more than three years prior to the commencement of their claim in this proceeding, the statutory limitation in s 50C(1), alternatively, s 18A, of the *Limitation Act 1969* (NSW);
- (c) says that, where the law of Victoria is the proper law of the contract to which the alleged guarantee relates, then by reason of s 275 of the ACL the law of Victoria applies to limit or preclude liability for the alleged failure, and recovery of that liability (if any) including by reason of:
 - (i) the limitations on liability in Part VB and Part VBA of the *Wrongs Act 1958*;
 - (ii) in respect of any Group Member whose claim accrued more than three years prior to the commencement of their claim in this proceeding, the statutory limitation in s 27D of the *Limitation of Actions Act 1958*; and
- (d) says that, where the law of Queensland is the proper law of the contract to which the alleged guarantee relates, then by reason of s 275 of the ACL the law of Queensland applies to limit or preclude liability for the alleged failure, and recovery of that liability (if any) including by reason of:
 - (i) the limitations on liability in Chapter 3 of *Civil Liability Act 2003* (Qld);

- (ii) in respect of any Group Member whose claim accrued more than three years prior to the commencement of their claim in this proceeding, the statutory limitation in s 11 of the *Limitation of Actions Act 1974* (Qld); and
- (e) says that, where the law of Western Australia is the proper law of the contract to which the alleged guarantee relates, then by reason of s 275 of the ACL the law of Western Australia applies to limit or preclude liability for the alleged failure, and recovery of that liability (if any) including by reason of:
 - (i) the limitations on liability in Part 2 of the *Civil Liability Act 2002* (WA);
 - (ii) in respect of any Group Member whose claim accrued more than three years prior to the commencement of their claim in this proceeding, the statutory limitation in s 14 of the *Limitation Act 2005* (WA); and
- (f) otherwise does not admit the paragraph.

G.3 Negligence

216. As to paragraph 216, the second defendant:

- (a) denies the paragraph so far as it relates to him;
- (b) to the extent that the law of the alleged tort was the law of Victoria:
 - (i) relies on the limitations on liability in Part VB and Part VBA of the *Wrongs Act 1958*;
 - (ii) says in respect of any Group Member whose claim accrued more than three years prior to the commencement of their claim in this proceeding that their claim is statute barred; and

PARTICULARS

Section 27D of the *Limitation of Actions Act 1958*.

- (c) to the extent that the law of the alleged tort was the law of New South Wales:
 - (i) relies on the limitations on liability in Part 2 of the *Civil Liability Act 2002* (NSW); and

- (ii) says in respect of any Group Member whose claim accrued more than three years prior to the commencement of their claim in this proceeding that their claim is statute barred;

PARTICULARS

Section 50C(1), alternatively, s 18A, of the *Limitation Act 1969* (NSW).

- (d) to the extent that the law of the alleged tort was the law of Queensland:
 - (i) relies on the limitations on liability in Chapter 3 of the *Civil Liability Act 2003* (Qld);
 - (ii) says in respect of any Group Member whose claim accrued more than three years prior to the commencement of their claim in this proceeding that their claim is statute barred;

PARTICULARS

Section 11 of the *Limitation of Actions Act 1974* (Qld)

- (e) to the extent that the law of the alleged tort was the law of Western Australia:
 - (i) relies on the limitations on liability in Part 2 of the *Civil Liability Act 2002* (WA);
 - (ii) says in respect of any Group Member whose claim accrued more than three years prior to the commencement of their claim in this proceeding that their claim is statute barred;

PARTICULARS

Section 14 of the *Limitation Act 2005* (WA).

- (f) otherwise does not admit the paragraph.

G.4 Contract

217. Paragraph 217 makes no allegation against the second defendant and he does not admit the paragraph.

H Common questions

218. The second defendant denies that the proposed common questions raise any substantial common question of law or fact.

I. Proportionate Liability

219. The claims made by the Plaintiffs and Group Members under s 236 of the ACL (**the apportionable 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).

220. If plaintiffs or Group Members have suffered loss and damage as alleged in the apportionable 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.

PARTICULARS

The second 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.

221. If the second defendant is liable to any plaintiff or Group Member as alleged by the apportionable 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 apportionable claims; and
- (b) a concurrent wrongdoer within the meaning of the proportionate liability legislation.

222. In the premises, if the second defendant is liable to any plaintiff or Group Member in relation to the apportionable claims (which is not admitted but is expressly denied) then his 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 second defendant's responsibility for the claimed loss and judgment must not be given against the second defendant for more than that amount.

Date **20 December 2024**

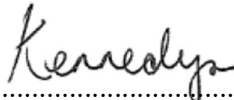
MICHAEL WILSON

ANDREW MCCLELLAND

ANGUS CHRISTOPHERSEN

KAREN LIU

Signed:



.....
KENNEDYS

Solicitors for the second defendant