

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

No. S ECI



Case: S ECI 2022 00739

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BETWEEN:

TINA LOMBARDO and others according to the schedule

Plaintiffs

and

**DERMATOLOGY AND COSMETIC SURGERY SERVICES PTY LTD
(ACN 055 927 618) and others according to the schedule**

Defendants

AMENDED STATEMENT OF CLAIM

Date of document: 7 November 2024

Filed on behalf of: The Plaintiffs

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A. PARTIES

A.1 Group Proceeding

1. The Plaintiffs bring this proceeding as a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1984* (Vic) on behalf of themselves and all persons who have claims for loss or damage based on negligence, breach of contract or consumer law breaches in the context of cosmetic surgery being performed on them (Group Members) by one or more of the Second Defendant (**Lanzer**), Third Defendant (**Aronov**), ~~Fourth Defendant~~ Dr Daniel Darbyshire (Darbyshire), Fifth Defendant (**Wells**), Sixth Defendant (**Fallahi**), and/or Seventh Defendant (**Wong**) for payment made to the First Defendant (**DCSS**)~~(Group Members)~~.

1A. The Fourth Defendants:

- a. are and were at all material times appointed by Darbyshire as co-executors of his will and trustees of his estate and his next of kin, and

b. are named in this proceeding in their capacity as legal personal representatives of the estate of Darbyshire having been appointed so pursuant to rule 16.03 of the *Supreme Court (General Civil Procedure) Rules 2015*.

2. As at the date of the commencement of this proceeding, there are more than seven Group Members as against each Defendant.

A.2 The First Defendant – Dermatology and Cosmetic Surgery Services Pty Ltd

3. At all relevant times, DCSS was:
- a. a corporation incorporated under the *Corporations Act 2001* (Cth) (***Corporations Act***), and capable of being sued;
 - b. engaged in trade or commerce;
 - c. in the business of providing cosmetic surgery and other services incidental to cosmetic surgery, including advice about cosmetic surgery (together, **cosmetic surgery services**);
 - d. provided its cosmetic surgery services from various locations including at:
 - i. 30-32 Glenferrie Road, Malvern, Victoria (**Malvern Clinic**);
 - ii. 3/276-278 Pitt Street, Sydney, New South Wales (**Sydney Clinic**);
 - iii. 573 Crown Street, Surry Hills, New South Wales (**Surry Hills Day Hospital**);
 - iv. 11 Hayling Street, Salisbury, Queensland (**Brisbane Clinic**);
 - v. Shop 3/2633 Gold Coast Highway, Broadbeach, Queensland (**Gold Coast Clinic**);
 - vi. 1/863 Wellington Street, West Perth, Western Australia;
 - vii. 38 Meadowvale Avenue, South Perth in Western Australia (**Southbank Day Hospital**);
 - viii. 1A/1 Roydhouse Street, Subiaco, Western Australia (**Academy Day Hospital**);
and
 - ix. other such premises that DCSS utilised from time to time,

(together, the **Lanzer Clinics**);

- e. a supplier within the meaning of, and subject to, the *Australian Consumer Law* (Cth) (**ACL**) comprising schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**), whether in force by virtue of section 131 of the CCA, section 8 of the *Australian Consumer and Fair Trading Act 2012* (Vic), section 28 of the *Fair Trading Act 1987* (NSW), section 16 of the *Fair Trading Act 1989* (Qld) and section 19 of the *Fair Trading Act 2010* (WA).

A.3 The Second Defendant – Dr Lanzer

- 4. At all relevant times, Lanzer ~~the Second Defendant~~ (**Lanzer**):
 - a. was a director and an officer of DCSS;
 - b. together with Lanzer's wife, were the only directors and secretaries of DCSS;
 - c. by reason of the composition of the board of DCSS referred to above, controlled DCSS;
 - d. was the only professional employee of DCSS; and
 - e. was a servant and/or agent of DCSS.

Particulars

The composition of the board of DCSS and employment arrangements of DCSS and Lanzer, as alleged above, meant that Lanzer was able to determine, either of his own motion or together with his wife, what DCSS did or failed to do as described in this Statement of Claim.

Further particulars may be provided after discovery.

- 5. By reason of the matters in paragraph 4:
 - a. the knowledge of Lanzer in relation to the conduct described in this Statement of Claim is to be attributed to DCSS; and
 - b. the knowledge of DCSS in relation to the conduct described in this Statement of Claim is to be attributed to Lanzer.
- 6. Further, at all relevant times, Lanzer:
 - a. was a registered medical practitioner with specialist qualifications as a dermatologist;
 - b. was in the business of providing cosmetic surgery services;

- c. provided cosmetic surgery services from one or more of the Lanzer Clinics;
- d. was engaged in trade or commerce;
- e. was a supplier within the meaning of, and was subject to, the ACL in respect of the cosmetic surgery services that Lanzer personally provided to the Plaintiffs and the Group Members.

A.4 The Other Cosmetic Doctor Defendants

7. Each of Aronov, Darbyshire, Wells, Fallahi and Wong (together, the **Other Cosmetic Doctor Defendants**) were trained by Lanzer in the provision of cosmetic surgery services.

A.4.1 Liability of Other Cosmetic Doctor Defendants directly

8. At all relevant times, each of the Other Cosmetic Doctor Defendants were registered general medical practitioners without any specialist qualifications.

Particulars

Particulars are provided in Schedule B.

9. Further, at all relevant times, each of the Other Cosmetic Doctor Defendants:
- a. was in the business of providing cosmetic surgery services;
 - b. provided cosmetic surgery services to the Plaintiffs and Group Members from one or more of the Lanzer Clinics;
 - c. was engaged in trade or commerce;
 - d. was a supplier within the meaning of, and was subject to, the ACL in respect of the cosmetic surgery services that each of them personally provided to the Plaintiffs and the Group Members.

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

10. Each of the Other Cosmetic Doctor Defendants was directed and advised by Lanzer in the provision of cosmetic surgery services to the Plaintiffs and Group Members.

Particulars

The direction by Lanzer to the Other Cosmetic Doctor Defendants included direction that the Other Cosmetic Doctor Defendants, in the circumstances outlined in paragraphs 4 to 5:

- (i) comply with policies and procedures that had been established by DCSS;
- (ii) use the medical record systems supplied by DCSS;
- (iii) disclose complaints made by persons against them to DCSS;
- (iv) disclose events or circumstances known to them which could reasonably be expected to give rise to a claim against DCSS;
- (v) disclose to DCSS their sickness, subsequent unavailability and the expected time off work;
- (vi) make available their records for DCSS's inspection and audit.

Further particulars may be provided after discovery.

11. Further or in the alternative to paragraph 9, by reason of the matters in paragraph 10 each of the Other Cosmetic Doctor Defendants was a servant and/or agent of DCSS, or alternatively Lanzer, for the purposes of providing cosmetic surgery services to the Plaintiffs and the Group Members.

A.5 Wainstein

12. At all relevant times, the Eighth Defendant (**Wainstein**):
 - a. was a psychologist registered with the Psychology Board of Australia;
 - b. was in the business of providing psychology services;
 - c. was married to Aronov;
 - b. provided psychology services and/or was arranged to provide psychology services to the Plaintiffs and the various Group Members pursuant to referrals to her by:
 - i. DCSS; further or alternatively
 - ii. Lanzer or one of the Other Cosmetic Doctor Defendants.

13. Further, at all relevant times, Wainstein was:
 - a. engaged in trade or commerce;
 - b. a supplier within the meaning of, and subject to, the ACL.

B. THE PLAINTIFFS

B.1 First Plaintiff – Tina Lombardo

14. On a date not known to the First Plaintiff (**Lombardo**), but on or prior to 5 February 2021, Lombardo made an inquiry with DCSS and/or Lanzer using a web-form on the website www.drlanzer.com.au (the **Lanzer Website**).
15. On or about 5 February 2021, a Patient Liaison named Dhayne, who was an employee, servant or agent of DCSS, emailed Lombardo in response to her online inquiry and explained how Lombardo could book in for a free consultation.

Particulars

Dhayne sent the email to Lombardo on 5 February 2021 at 2:47pm with the subject line “Tina Lombardo”.

16. On or about 18 March 2021, Lombardo attended at the Sydney Clinic and:
 - a. consulted with a Cosmetic Nurse by the name of Maria, who was an employee, servant or agent of DCSS; and
 - b. received advice from Lanzer which was communicated by Maria in respect of treatment, being an abdominoplasty and liposuction

(Lombardo’s Pre-Engagement Consultation).

Particulars

The nurse is identified as ‘MT’ on DCSS’s medical file pertaining to Lombardo.

17. Following Lombardo’s Pre-Engagement Consultation, on 18 March 2021 Maria provided Lombardo with documents including an advice from Dr Lanzer (**Standard Advice**) which enclosed documents including:
 - a. a quote for the cost of the surgery;

- b. a document titled ‘OPEN DISCLOSURE – “We Care”’ (**‘We Care’ Form**); and
- c. a standard consent form (**Consent Form**), for the abdominoplasty and tumescent liposuction procedures.

Particulars

Maria sent the documents to Lombardo by email dated 18 April 2021 at 3:46pm with the subject line “Tina Lombardo”.

18. On or about 9 November 2021, Lombardo paid the sum of \$29,411.50 to DCSS, in payment for:
- a. the services associated with the abdominoplasty and liposuction procedures including the procedures; and
 - b. post-surgery garments, being a binder and body suit.

Particulars

Payment was made by Electronic Funds Transfer to DCSS’s bank account (**DCSS’s Bank Account**).

The details of DCSS’s Bank Account are as follows:

Bank – ANZ

BSB – 013 445

Account Number – 8368 50929

19. By reason of the matters in the previous two paragraphs, on or about 9 November 2021 Lombardo and DCSS entered into a contract for the provision of cosmetic surgery services (**Surgery Contract**).

Particulars

The Standard Advice and enclosed documents (which contained a quote for the cost of the surgery) and the payment constituted the contract and its acceptance.

20. On or about 12 November 2021, an employee, servant or agent of DCSS named Louie sent Lombardo an ‘After Info Pack’ (the **Aftercare Info Pack**) which contained a letter from “Dr Daniel Lanzer & Team” addressed to “Valued Patient” (the **Thank You Letter**).
21. On or about 15 November 2021, Lombardo attended at the Surry Hills Day Hospital and:
- a. consulted with Aronov, during which consultation:
 - i. Aronov provided advice in respect of treatment, being an abdominoplasty and liposuction;
 - ii. Aronov advised Lombardo that, or words to the effect that, he had “never had an issue” and that she “had nothing to worry about”

(Lombardo’s Pre-Surgery Consultation); and
 - b. underwent surgery performed by Aronov, being an abdominoplasty or full tummy tuck and liposuction to her stomach, flanks, upper back and lower back (**Lombardo’s Surgery**).

Particulars

Particulars are provided in Schedule B.

22. Following Lombardo’s Surgery, and on or about 16 November 2021, Lombardo lost consciousness and Aronov verbally instructed paramedics to take her to Liverpool Hospital where he said that he had colleagues, instead of a closer hospital being St Vincent’s Hospital.

Particulars

Particulars are provided in Schedule B.

B.2 Second Plaintiff – Tina Bonnici

23. On a date not known to the Second Plaintiff (**Bonnici**), but on or prior to 8 February 2021, Bonnici made an inquiry with DCSS and/or Lanzer using a web-form on the Lanzer Website (~~the Lanzer Website~~).
24. 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 Lanzer.

Particulars

Ying sent the email to Bonnici on 8 February 2021 at 1:35pm with the subject line “Tina Bonnici”.

25. On or about 8 April 2021, Bonnici attended at the Gold Coast Clinic and consulted with a nurse, who was an employee, servant or agent of DCSS, and Wells (**Bonnici’s Pre-Engagement Consultation**).

Particulars

The nurse is identified as ‘CO’ on DCSS’s medical file pertaining to Bonnici.

26. During Bonnici’s Pre-Engagement Consultation:
- a. Wells provided advice in respect of treatment, being tumescent liposuction;
 - b. Wells provided a quote for such treatment.

Particulars

Particulars are provided in Schedule B.

27. On or about 8 April 2021, a Cosmetic Nurse named Kae, who was an employee, servant or agent of DCSS, provided Bonnici with documents including the Standard Advice, the ‘We Care’ Form and the Consent Form for the tumescent liposuction procedure.

Particulars

Kae sent the documents to Bonnici by email dated 8 April 2021 at 3:55pm with the subject line “Tina Bonnici”.

28. On or about 6 June 2021, Bonnici paid the sum of \$10,000 to DCSS, in final payment for the services associated with the tumescent liposuction procedure.

Particulars

Payment was made by Electronic Funds Transfer to DCSS’s Bank Account.

An earlier payment of \$1,000 was made as a deposit on a date not currently known to Bonnici.

29. By reason of the matters in the previous two paragraphs, on or about 6 June 2021 Bonnici and DCSS entered into a Surgery Contract.

Particulars

The Standard Advice (which contained a quote for the cost of the surgery) and the payment constituted the contract and its acceptance.

- 30A. On or about 7 June 2021, Bonnici had a consultation with Wainstein by way of telephone (**Wainstein's Assessment**).

Particulars of Wainstein's Assessment

- i. The consultation occurred by way of a telephone call by Wainstein on said day to Bonnici.
- ii. It was unscheduled.
- iii. Bonnici understood the situation to be that payment for Wainstein's Assessment was made by Bonnici to DCSS on 6 June 2021 and it was included in the monies paid as described at paragraph 28 above. Bonnici understood that DCSS would organise payment of an unknown sum to Wainstein for Wainstein's Assessment.
- iv. The consultation lasted approximately 5 minutes.
- v. Wainstein did not disclose her marriage to Aronov.
- vi. During said consultation, Wainstein did not take a medical history of Bonnici. Instead, Wainstein gave Bonnici verbal advice to the effect that she should eat clean after the surgery, keep fit afterwards and maintain the weight loss. She further gave advice that Bonnici was on the right path and that she approved the surgery. Wainstein did not undertake a psychological assessment of Bonnici's suitability to undergo said surgery or her resources to cope with the recovery. Wainstein did not properly identify Bonnici's reasons for undertaking the surgery or her expectations after surgery.

Particulars are provided in Schedule B.

30. On or around 14 June 2021, an employee, servant or agent of DCSS named Louie sent Bonnici the Aftercare Info Pack which contained the Thank You Letter.

31. On or about 15 June 2021, Bonnici attended at the Brisbane Clinic and:

- a. consulted with Wells and Fallahi, during which consultation:
 - i. Wells and Fallahi provided advice in respect of treatment, being liposuction;
 - ii. Wells stated that, or words to the effect that, he regarded performing liposuction as “like a sport”;
 - iii. Wells stated that, or words to the effect that, he had studied plastic surgery at a tertiary level.

(Bonnici’s Pre-Surgery Consultation);

- b. underwent surgery performed by Wells being liposuction to her upper and lower abdomen, waist, flanks and back **(Bonnici’s Surgery)**.

Particulars

Particulars are provided in Schedule B.

- 32. During Bonnici’s Surgery Wells said words to the effect that he would perform liposuction to Bonnici’s back as an added bonus.
- 33. During Bonnici’s Surgery Wells ran out of tumescent fluid and had insufficient anaesthetic or pain relief while performing liposuction on her mid and lower abdomen.

Particulars

Particulars are provided in Schedule B.

- 34. During Bonnici’s Surgery Wells said to Bonnici words to the effect that the alternative to continuing surgery without adequate pain relief was to have “a mangled, lopsided body and be all bumpy”.
- 35. During Bonnici’s Surgery Wells left Bonnici unattended mid-surgery on approximately 5 occasions including for approximately 30 minutes on a surgery table while she was naked.
- 36. During Bonnici’s Surgery Wells had a FaceTime conversation during which he communicated with Fallahi who was performing surgery in a different room.

- 37A. While in recovery after Bonnici's Surgery, an employee, servant or agent who was a nurse said to Bonnici words to the effect of in response to Bonnici verbally expressing being in pain, 'What do you expect' and 'Beauty is pain'.
37. Subsequent to Bonnici's surgery, and on 15 June 2021, Bonnici was instructed to discharge herself and drive herself home by nurses who were employees, servants or agents of DCSS.

Particulars

Particulars are provided in Schedule B.

- 38A. Subsequent to Bonnici's Surgery but on dates that cannot be identified until discovery of the Instagram account that DCSS made posts from and controlled, unknown employees, servants or agents of DCSS made social media posts on Instagram of photographs of Bonnici which identified Bonnici by way of tattoo without her permission. Further particulars cannot be provided until discovery.

B.3 Third Plaintiff – Simone Russell

38. On or about 26 August 2021, the Third Plaintiff (**Russell**) consulted by telephone with a nurse whose name will be provided following discovery (**Russell's First Pre-Engagement Consultation**).
39. During Russell's First Pre-Engagement Consultation Russell was advised that she was required to speak to a psychologist prior to surgery.
- 39A. On or about 27 August 2021, Lanzer telephoned Russell to ask that she attend at the Malvern Clinic to consult with Aronov.
- 39B. During the telephone call:
- a. Lanzer advised Russell that if she wanted an appointment she would need to attend at the Malvern Clinic straight away; and
 - b. Lanzer stated that, or words to the effect that, Aronov was "part of his team" and that she "would be in great hands" and "Aronov will take great care of you".
40. On or about 27 August 2021, Russell attended at the Malvern Clinic and consulted with Aronov (**Russell's Second Pre-Engagement Consultation**).
41. During Russell's Second Pre-Engagement Consultation:

- a. Aronov provided advice in respect of treatment, being liposuction and a mini thigh lift;
- b. Aronov provided a quote for such treatment;
- c. Aronov advised Russell that she would be able to return to her normal duties three to four days following surgery.

Particulars

Particulars are provided in Schedule B.

- 42. On 27 August 2021, a person named Shieka provided Russell with documents including the Standard Advice, the 'We Care' Form, and the Consent Form, for the tumescent liposuction and thigh lift procedures.

Particulars

Shieka sent the documents to Russell by email dated 27 August 2021 at 4:43pm with the subject line "Simone Russell".

- 43. On or about 6 September 2021, Russell made an appointment with a nurse whose name will be provided following discovery for Wainstein to call her on 13 September 2021 for a psychological assessment.
- 44. On 13 September 2021, Wainstein failed to contact Russell, and did not contact Russell at any time thereafter.
- 45. After Russell's Second Pre-Engagement Consultation, on a date not known to Russell but between 7 September 2021 and 12 September 2021, Russell telephoned the Malvern Clinic and advised that she no longer required the mini thigh lift and would proceed with the liposuction only.
- 46. On or about 9 September 2021, Shieka provided Russell with amended documents including the Standard Advice, the 'We Care' Form and the Consent Form.

Particulars

Shieka sent the documents to Russell by email dated 9 September 2021 at 3:33pm with the subject line "Simone Russell".

47. On or about 10 September 2021, Russell paid the sum of approximately \$20,050 to DCSS, in payment for the services associated with the liposuction and thigh lift surgical procedures.

Particulars

Payment was made by Electronic Funds Transfer to DCSS's Bank Account.

48. By reason of the matters in the preceding two paragraphs, on or about 10 September 2021, Russell and DCSS entered into a Surgery Contract.

Particulars

The Standard Advice (which contained a quote for the cost of the surgery) and the payment constituted the contract and its acceptance.

49. On or around 16 September 2021, a servant or agent of DCSS named Louie sent Russell the Aftercare Info Pack which contained the Thank You Letter.

Particulars

Louie sent the documents to Russell by email dated 16 September 2021 at 10:58am with the subject line "Simone Russell Info Pack Template".

50. On or about 17 September 2021, Russell attended at the Malvern Clinic and:

- a. consulted with Lanzer and Darbyshire, during which consultation:
 - i. Lanzer and Darbyshire provided advice in respect of treatment, being liposuction;
 - ii. Lanzer and Darbyshire each stated that, or words to the effect that, they were "experienced in mega liposuction and the diagnosis and treatment of lipoedema";

(Russell's Pre-Surgery Consultation); and

- b. underwent surgery performed by Lanzer and Darbyshire, being liposuction '360' to her thighs **(Russell's Surgery)**.

51. During Russell's Surgery:

- a. Russell experienced pain;
 - b. Russell was crying;
 - c. Russell communicated that she was in pain to Lanzer and Darbyshire.
52. On or around 19 September 2021, DCSS refunded approximately \$5,000 to Russell.
53. On or about 20 September 2021, Russell attended a follow up appointment at the Malvern Clinic where she was seen by a nurse.
54. On or about 27 September 2021, Russell attended a follow up appointment at the Malvern Clinic where she was seen by a nurse and Darbyshire.
55. During the appointment on 27 September 2021, Darbyshire pressed down on Russell's right leg, causing her to yell out in pain.
56. On or about 4 October 2021, Russell attended a consultation with Lanzer at the Malvern Clinic (**Russell Follow Up Appointment**).
57. During the Russell Follow Up Appointment Lanzer made cuts into Russell's leg.
- 57A. During the Russell Follow Up Appointment:
- a. Russell experienced pain;
 - b. Russell was crying;
 - c. Russell communicated that she was in pain to Lanzer.

B.4 Fourth Plaintiff – Julie Rose Morrison

58. On or about 20 May 2021 the Fourth Plaintiff (**Morrison**) consulted with Wong at Academy Day Hospital (**Morrison's First Pre-Engagement Consultation**).
59. During Morrison's First Pre-Engagement Consultation:
- a. Wong provided advice in respect of '360' liposuction to the abdomen, flanks, waist and neck, a fat transfer to the hips and a Brazilian Butt Lift;
 - b. Wong stated that, or words to the effect that, while there had been problems with Brazilian Butt Lift surgery in the United States, there were "no issues" in Australia;
 - c. Morrison informed Wong of her history of anxiety and depression;

- d. Wong advised Morrison that she should gradually reduce her daily dose of prescription anti-anxiety medication from 100mg of Pristiq to 50mg;
- e. Wong provided a quote in respect of treatment.

Particulars

Particulars are provided in Schedule B.

- 60. Following Morrison's First Pre-Engagement Consultation, on or about 21 May 2021 a Cosmetic Nurse named Kristy sent documents to Morrison including the Standard Advice, the 'We Care' Form, and the Consent Form, for the '360' liposuction to the abdomen, flanks, waist and neck, a fat transfer to the hips and Brazilian Butt Lift procedures.

Particulars

Kristy sent the documents to Morrison by email dated 21 May 2021 at 1:28pm with the subject line "Julie Rose".

- 61. On or around 21 July 2021, a Cosmetic Nurse named Olivia sent documents including the Standard Advice, the 'We Care' Form, and the Consent Form for a liposuction procedure on the arms and bra roll.

Particulars

Olivia sent the documents to Morrison by email dated 21 July 2021 at 8:44pm with the subject line "Julie Morrison".

- 62. On or around 27 July 2021, Morrison consulted with Wong and a nurse at Academy Day Hospital (**Morrison's Second Pre-Engagement Consultation**)
- 63. During Morrison's Second Pre-Engagement Consultation:
 - a. Wong provided advice in respect of treatment, being liposuction of the neck.
 - b. Wong stated words to the effect that he was more than capable of achieving the cosmetic results that Morrison wanted.
 - c. Wong provided a quote in respect of treatment.

64. Following Morrison's Second Pre-Engagement Consultation, on or around 27 July 2021 Morrison paid the sum of \$2,500 to DCSS, in payment for the services associated with the treatment, being liposuction of the neck.

Particulars

Payment was made by Electronic Funds Transfer to DCSS's Bank Account.

65. On or around 28 July 2021, a Cosmetic Nurse named Olivia sent documents including the Standard Advice, the 'We Care' Form, and the Consent Form for liposuction to the neck.

Particulars

Olivia sent the documents to Morrison by email dated 28 July 2021 at 3:48pm with the subject line "Julie Morrison Neck".

66. By reason of the matters in the preceding two paragraphs, on or about 28 July 2021 Morrison and DCSS entered into a Surgery Contract.

Particulars

The Standard Advice (which contained a quote for the cost of the surgery) and the payment constituted the contract and its acceptance.

67. On or around 3 August 2021, a servant or agent of DCSS named Louie sent Morrison the Aftercare Info Pack which contained the Thank You Letter.

Particulars

Louie sent the documents to Morrison by email dated 3 August 2021 at 11:20am with the subject line "Julie Morrison Info Pack Template".

68. On or about 4 August 2021, Morrison attended at Academy Day Hospital and:
- a. consulted with Wong and received advice in respect of treatment, being liposuction of the neck;
 - b. underwent surgery performed by Wong being liposuction of the neck (**Morrison's First Surgery**).
69. Morrison's First Surgery was performed under local anaesthetic.

70. During Morrison's First Surgery:
 - a. Morrison was crying;
 - b. Morrison felt like her face would 'explode';
 - c. Morrison was given Valium.
71. Immediately after Morrison's First Surgery, Morrison:
 - a. struggled with breathing;
 - b. choked on water;
 - c. had numbness in her cervical spine;
 - d. had no control over the movement of her face.
- 71A. Following Morrison's First Surgery, Morrison attended on a nurse at Academy Day Hospital employed by DCSS and/or Lanzer and/or Wong for K40 injections into her neck on multiple occasions.
72. On or about 12 August 2021, Morrison consulted with Wong at Academy Day Hospital, during which:
 - a. Wong provided advice in respect of treatment, being liposuction and a fat transfer to the hips and a Brazilian Butt Lift;
 - b. Morrison showed Wong a photograph of the results which she wanted to achieve;
 - c. Wong said words to the effect that he was more than capable of achieving those results;
 - d. Wong advised Morrison to reduce her dose of prescription anti-depressant medication from 100mg of Pristiq daily to 50 mg,

(Morrison's Third Pre-Engagement Consultation).

Particulars

Particulars are provided in Schedule B.

73. On 12 August 2021, a servant or agent of DCSS named Olivia provided Morrison with documents including the Standard Advice, the ‘We Care’ Form and the Consent Form, for the tumescent liposuction and fat transfer (grafting) procedure.

Particulars

Olivia sent the documents to Morrison by email dated 12 August 2021 at 1:04pm with the subject line “Julie Morrison”.

74. On a date not known to Morrison but between 13 August 2021 and 7 October 2021, Morrison paid the sum of approximately \$20,000 to DCSS, in payment for the services associated with the tumescent liposuction, fat transfer (grafting) and Brazilian Butt Lift.

Particulars

Payment was made by Electronic Funds Transfer to DCSS’s Bank Account.

75. By reason of the matters in the preceding two paragraphs, on or about a date not known to Morrison but between 13 August 2021 and 7 October 2021, Morrison and DCSS entered into a further Surgery Contract.

Particulars

The Standard Advice (which contained a quote for the cost of the surgery) and the payment constituted the contract and its acceptance.

76. On or about 8 October 2021, Morrison attended at Southbank Day Hospital and:
- a. consulted with Wong, during which Wong provided advice in respect of treatment, being liposuction and a fat transfer to the hips and a Brazilian Butt Lift (**Morrison’s Pre-Surgery Consultation**).
 - b. underwent surgery performed by Wong being liposuction of the abdomen, flanks, waist and bra roll, and fat transfer to the hips and a Brazilian butt lift (**Morrison’s Second Surgery**).

Particulars

Particulars are provided in Schedule B.

77. Prior to Morrison's Second Surgery Wong advised Morrison that the Second Surgery was moved to South Bank Day Hospital because of Morrison's anxiety and experience under local anaesthetic during Morrison's First Surgery.
78. During Morrison's Second Surgery, Wong failed to perform liposuction to her back.
79. Following Morrison's Second Surgery Morrison suffered from pain and excessive bleeding.
80. On or about 24 January 2022, Morrison underwent a revision surgery which included liposuction of the back performed by Wong at Academy Day Hospital (**Morrison's Third Surgery**).
81. During Morrison's Third Surgery, Morrison:
 - a. was conscious at times;
 - b. was in pain;
 - c. was yelling out in pain.
82. Morrison was not consulted by a psychologist prior to:
 - a. Morrison's First Surgery.
 - b. Morrison's Second Surgery.
 - c. Morrison's Third Surgery.
83. Following Morrison's Third Surgery, Morrison attended on a nurse at Academy Day Hospital employed by DCSS and/or Lanzer and/or Wong for seroma drainage on multiple occasions.
84. Following Morrison's Third Surgery, Morrison received K10 injections at Academy Day Hospital on multiple occasions.
85. Morrison paid no additional fee for advice and treatment provided during Morrison's Third Surgery save for \$1,000 paid on or about 18 January 2022 by way of direct deposit into the bank account of Facial Plastic Surgery Pty Ltd trading as Academy Face and Body for hospital costs.

C. MISLEADING OR DECEPTIVE CONDUCT

C.1 DCSS Sales System

86. DCSS and Lanzer operated a system for the purpose of selling cosmetic surgery services (**DCSS Sales System**) whereby:
- a. DCSS and/or Lanzer published the Lanzer Website ~~website~~ ‘~~www.drLanzer.com.au~~’ (~~Lanzer Website~~) which advertised cosmetic surgery services performed by Lanzer and the Other Cosmetic Doctor Defendants;
 - b. potential patients were able to make contact with DCSS and/or Lanzer by completing a web-form inquiry via the Lanzer Website which identified the surgical procedure the potential patient was interested in undertaking;
 - c. a servant or agent of DCSS sent an email to such potential patients who completed the web-form inquiry:
 - i. identifying how to book in for a free consultation; and
 - ii. relevantly, containing statements that:
 1. “Dr Lanzer has been perfecting his Liposuction method for over 20 years with the 15,000 cases he has done. He uses a combination of techniques to get the best aesthetic results with the quickest recovery”;
 2. “most of all results are dependent on a good eye, good coordination, experience and judgement”;
 3. Lanzer performed “a new type of tummy tuck called the Tumescant Lip-Tuck [which] Dr Lanzer believes... is a great breakthrough method”.

(the **Post-Inquiry Email**);
 - d. Lanzer, an Other Cosmetic Doctor Defendant and/or an employee, servant or agent of DCSS conducted a consultation with potential patients prior to being engaged to perform surgery (the **Pre-Engagement Consultation**), during which the person conducting the consultation:

- i. provided advice to the potential client in relation to the relevant cosmetic surgery procedure(s);
 - ii. provided the potential client with a quote for the relevant cosmetic surgery procedure(s);
- e. following and as a result of the Pre-Engagement Consultation, an employee, servant or agent of DCSS sent to the potential client by email documents including:
 - i. the Standard Advice which relevantly:
 - 1. was a letter addressed to the Plaintiff or Group Member under Lanzer's letterhead;
 - 2. enclosed a quote for the relevant cosmetic surgery procedure;
 - 3. referred to "Candice" (being a reference to Wainstein) as "our psychologist";
 - 4. stated that "Dr Lanzer requires all patients to speak to a psychologist; he will refer you to Candice after you have read the surgical consent form";
 - 5. stated that it was a "compulsory requirement that you speak to the psychologist well before your procedure";
 - 6. stated "please do not hesitate to ask them or Dr Lanzer, any questions you may have".
 - ii. the 'We Care' Form which relevantly:
 - 1. was enclosed in the Standard Advice;
 - 2. described Lanzer as "a Dermatologist Surgeon with 3 decades of experience";
 - 3. stated that Lanzer "has chosen associate surgeons";
 - 4. stated that "despite being very busy [Lanzer] will always have time for you";

5. stated that Lanzer “also communicates directly to patients from his personal mobile if required. NEVER HESITATE TO COMMUNICATE WITH HIM”.
- iii. the Consent Form for the relevant procedure, which relevantly:
 1. was enclosed in the Standard Advice;
 2. stated that “Dr. Lanzer has personally trained surgical associates in his cosmetic surgical procedures”, those associates being or including the Other Cosmetic Doctor Defendants;
 3. stated “I agree to have a consultation with a psychologist that Dr Lanzer recommends”;
 4. ~~stated in some cases that “Dr Lanzer works with his chosen plastic surgeons”;~~
 - f. following receipt of the Standard Advice and enclosed documents, the client paid the sum quoted into DCSS’s bank account;
 - g. prior to the performance of cosmetic surgery, a servant or agent of DCSS sent an email to patients attaching a the Thank You Letter from “Dr Lanzer and Team” which relevantly stated “throughout our 30 years of pioneering cosmetic surgery, we are so proud of our work and are delighted that you have been a part of that history with us. We cannot wait to see your amazing results!” (~~Thank You Letter~~);
 - h. following payment of the sum into DCSS’s bank account, the client attended a Lanzer Clinic for cosmetic surgery services;
 - i. immediately prior to the cosmetic surgery, whichever of Lanzer or the Other Cosmetic Doctor Defendants was to perform the cosmetic surgery conducted a consultation with the client (**Pre-Surgery Consultation**);
 - j. immediately following the Pre-Surgery Consultation, Lanzer or the Other Cosmetic Surgeon Defendant responsible provided cosmetic surgery services, including the cosmetic surgery.
- ~~(the DCSS Sales System).~~

87. The Other Cosmetic Doctor Defendants participated in the DCSS Sales System by:

- a. being personally advertised on the Lanzer Website (save for Darbyshire);
- b. conducting Pre-Engagement Consultations;
- c. conducting Pre-Surgery Consultations; and
- d. performing cosmetic surgery services within the DCSS Sales System;

C.2 Representations

C.2.1 The Representations

88. At all material times, the following representations were made to potential patients, the public, including each of the Plaintiffs and Group Members:

aa. that

(a) Lanzer; and/or

(b) the Other Cosmetic Doctor Defendants

were specialist surgeons who had specialist surgical training and qualifications (the **Specialist Surgeon Representation**);

- a. Lanzer and the Other Cosmetic Doctor Defendants were pre-eminent and highly skilled in the performance of cosmetic surgery (**Pre-Eminence Representation**);
- b. Lanzer and the Other Cosmetic Doctor Defendants were plastic surgeons (**Plastic Surgeon Representation**);
- c. Lanzer was personally contactable by each cosmetic surgery client of DCSS, Lanzer and the Other Cosmetic Doctor Defendants on his personal mobile phone (the **Personal Line to Lanzer Representation**);
- d. Wainstein was a psychologist exercising independent judgement from each of DCSS, Lanzer and the Other Cosmetic Doctor Defendants (the **Independent Psychologist Representation**);
- e. DCSS, Lanzer and the Other Cosmetic Doctor Defendants provided a service that was consistently excellent and apt to achieve consistently excellent results (the **Excellent Service Representation**),

(together, the **Representations**).

Particulars

Particulars are provided at Schedule B.

88A The Specialist Surgeon Representation was misleading or deceptive, or likely to mislead or deceive, because:

- a. Lanzer was registered as a medical practitioner and had obtained specialist qualifications as a Fellow of the Australasian College of Dermatologists;
- b. the Other Cosmetic Doctor Defendants were registered as general medical practitioners;
- c. Lanzer and the Other Cosmetic Doctor Defendants were not specialist surgeons, had not undertaken any specialist or advanced surgical training and had not otherwise completed the study requirements or satisfied the criteria for registration as a specialist health practitioner in a specialty of surgery under the *Health Practitioner Regulation National Law*.

89. The Pre-Eminence Representation was misleading or deceptive, or likely to mislead or deceive, because:

- a. Lanzer was registered as a dermatologist medical practitioner;
- b. the Other Cosmetic Doctor Defendants were registered as general medical practitioners;
- c. Lanzer and the Other Cosmetic Doctor Defendants were not specialist surgeons, had not undertaken any specialist or advanced surgical training and had not otherwise completed the study requirements or satisfied the criteria for registration as a specialist health practitioner in the speciality of surgery under the *Health Practitioner Regulation National Law*.

90. The Plastic Surgeon Representation was misleading or deceptive, or likely to mislead or deceive, because Lanzer and the Other Cosmetic Doctor Defendants were not qualified to perform plastic surgery and/or were not qualified plastic surgeons.

91. The Personal Line to Lanzer Representation was misleading or deceptive, or likely to mislead or deceive, because:

- a. Lanzer was not contactable by each cosmetic surgery client on his personal mobile phone; and
 - b. the mobile phone number held out to patients as Lanzer's personal mobile phone number was connected to a device that was operated by servants or agents of DCSS other than Lanzer.
92. The Independent Psychologist Representation was misleading or deceptive, or likely to mislead or deceive, because Wainstein was not independent in circumstances where Wainstein did not disclose she was married to Aronov.
93. The Excellent Service Representation was misleading or deceptive, or likely to mislead or deceive, because the cosmetic surgery offered by DCSS, Lanzer and the Other Cosmetic Doctor Defendants was not consistently excellent or apt to achieve consistently excellent results.

C.2.2 How the Representations were made to potential patients ~~Making the Representations to the Public~~

94. At all material times, in trade or commerce DCSS and Lanzer made the Specialist Surgeon, Pre-Eminence, Plastic Surgeon and Excellent Service Representations to potential patients (including the Plaintiffs and Group Members as alleged in paragraphs 96A to 100 below) the public who accessed the Lanzer Website and Lanzer's social media accounts (which included the Plaintiffs and Group Members members of the public who might wish to improve the aesthetic appearance of their body through cosmetic surgery), by their conduct in:
- a. maintaining and operating the Lanzer Website, which conveyed the Specialist Surgeon, Pre-Eminence and Excellent Service Representations as particularised below;
 - b. publishing content on Lanzer's social media accounts, including Instagram (under the username @drlanzer); and Tik Tok (under the username @drlanzerandassociates) ~~and~~ YouTube which conveyed the Pre-Eminence, Plastic Surgeon and Excellent Service Representations as particularised below.

Particulars

The Specialist Surgeon Representation was partly express and partly implied and conveyed by each single reference to "surgeon" on the Lanzer Website, including the description of:

- (i) Lanzer as an "expert surgeon";

- (ii) Lanzer as a “leading Laser and Liposuction Surgeon”;
 - (iii) Lanzer as being “regarded as one of the leading Cosmetic Surgeons in Australia”;
 - (iv) Lanzer as “your surgeons”;
 - (v) Lanzer as “one of the first surgeons to become an expert in tumescent liposuction”;
 - (vi) Lanzer as “one of the most renowned cosmetic surgeons in the country so you can be sure you’re going to get some great results by choosing this man”;
 - (vii) Lanzer as being “one of the first surgeons to have performed the tumescent liposuction (fat removal) technique in Australia”;
 - (viii) Lanzer as “Australia’s Top Surgeon”;
 - (ix) the Other Cosmetic Doctor Defendants as “personally trained associate surgeons”
 - (x) the Other Cosmetic Doctor Defendants as “his surgical associates”;
 - (xi) the Other Cosmetic Doctor Defendants as a “handpicked, exclusively trained team of surgical associates”;
- ((i)-(xi) together being the **Specialist Surgeon Website Statements**).

The Specialist Surgeon Representation was further conveyed by the failure to provide any information on the Lanzer Website clarifying that Lanzer and the Other Cosmetic Doctor Defendants:

- (i) were not specialist surgeons and did not have specialist surgical training;

- (ii) had not completed the study requirements for registration as a specialist health practitioner in a specialty of surgery under the Health Practitioner Regulation National Law;
- (iii) had not satisfied the criteria for registration as a specialist health practitioner in a specialty of surgery under the Health Practitioner Regulation National Law; or
- (iv) were not registered as a specialist health practitioner in a specialty of surgery under the Health Practitioner Regulation National Law

(the Specialist Surgeon Clarification).

The Pre-Eminence Representation was partly express and partly implied and conveyed by ~~is to be inferred from~~ the references on the Lanzer Website to:

- (i) Lanzer being “an Australian expert”, “at the forefront of innovation”, having “extensive experience and expertise”, being “viewed as one of industry’s benchmarks in his specialised field”, and being a “recognised world pioneer” in cosmetic surgery;
- (ii) Lanzer carrying on a “mission now embodied by his handpicked, exclusively trained team of surgical associates”;
- (iii) Lanzer and his “surgical associates... (being) synonymous with what’s current, innovative and exciting in the field of Cosmetic Surgery”;
- (iv) the “Lanzer Way processes”;
- (v) Aronov being a “perfectionist with a strong attention to detail”, an “experienced medical educator” and as having “special skills in research”;
- (vi) Wells being “an awarded and accomplished cosmetic surgery (sic)”;

(vii) Wong being “a highly skilled and accomplished cosmetic surgery (sic)” who has “trained with leading specialists across Australia, Asia, Europe, and America to finesse his skills and now work (sic) as a hand-picked and personally trained Dr Lanzer Associate”;

(viii) the matters set out in Schedule B at paragraph 94,

(together, the **Pre-Eminence Website Statements**).

Each of the Pre-Eminence, Plastic Surgeon and Excellent Service Representations were made to potential patients ~~the public~~ through posts on Lanzer’s social media accounts including Instagram (under the username @drlanzer), Tik Tok (under the username @drlanzerandassociates) and Youtube. Lanzer has removed his social media accounts from the internet and the Plaintiffs are no longer able to access them. However, the Plaintiffs have retained ~~access to~~ a number of Lanzer’s social media posts and provide the following by way of example. These examples are not intended to be exhaustive and further particulars may be provided after discovery or subpoena.

Examples of posts made by Lanzer on social media which conveyed the Pre-Eminence Representation made on social media include:

- On 5 October 2018 on Instagram, Lanzer posted “we probably do more of these than anyone in the world #plasticsurgery”;
- On 23 April 2020 on Instagram, Lanzer made a post in which he described the Other Cosmetic Doctor Defendants as “4 really fantastic surgeons who I have taught everything... my secrets the last couple of years”
- On 24 October 2018 on Instagram, Lanzer made a post in which he described Wells as a “talented surgical associate” who used “conventional techniques”
- On 9 June 2021 on Instagram, Lanzer made a post in which he described Wong as “my magnificent associate surgeon”.

Examples of posts made by Lanzer on social media which conveyed the Plastic Surgery Representation include:

- On 5 October 2018 on Instagram, Lanzer posted “we probably do more of these than anyone in the world #plasticsurgery”;
- On 18 and 21 June 2020 on Instagram, Lanzer posted “#plasticsurgery”
- On 25 November 2020 on Instagram and Tik Tok, Lanzer posted a before and after of a mini tuck with 360 liposculpture and the words “#plasticsurgery”.

Examples of posts made by Lanzer on social media which conveyed the Excellent Service Representation:

- On various dates, including 18 and 21 June 2021, Lanzer posted ‘before and after’ images or videos of his patients.
- On 5 October 2018 Instagram, Lanzer posted “we probably do more of these than anyone in the world #plasticsurgery”;

The Lanzer Website contained links to Lanzer’s social media profiles.

The Excellent Service Representation was partly express and partly implied and was further conveyed by each of the Pre-Eminence Website Statements, the abovementioned references on the Lanzer Website which carry the implication that the pre-eminence of Lanzer and his “surgical associates” was such that cosmetic surgery performed by them was consistently excellent and apt to achieve consistently excellent results (the **Excellent Service Statements**).

Further particulars are provided in Schedule B.

95. At all material times, in trade or commerce Aronov and Wells made the Pre-Eminence, Excellent Service Representations and Plastic Surgeon Representations, and Wong made the Pre-Eminence and Excellent Service Representations to potential patients ~~the public~~ (which

included the Plaintiffs and Group Members as alleged at paragraphs 103 and 104 below) ~~members of the public~~ who might wish to improve the aesthetic appearance of their body through cosmetic surgery), by their conduct in:

- a. publishing content on their social media accounts, including Instagram and Tik Tok;
- b. ~~acquiescing to the Pre Eminence, Plastic Surgeon and Excellent Service Representations being made to the public by DCSS and Lanzer as pleaded at paragraph 95-94 in circumstances where Aronov, Wells and Wong:~~
 - i. ~~were held out to potential patients to the public as “associates” of Lanzer;~~
 - ii. ~~performed cosmetic surgery services at a Lanzer Clinic and as part of the DCSS Sales System; and~~
 - iii. ~~commercially benefited from DCSS and Lanzer making the Pre Eminence, Plastic Surgeon and Excellent Service Representations to potential patients being made to the public by DCSS and Lanzer;~~
- c. ~~not resiling from the Pre Eminence, Plastic Surgeon and Excellent Service Representations as made to potential patients to the public by DCSS and Lanzer in circumstances where the Other Cosmetic Doctor Defendants:~~
 - i. ~~were held out to potential patients to the public as “associates” of Lanzer;~~
 - ii. ~~performed cosmetic surgery services at a Lanzer Clinic and as part of the DCSS Sales System; and~~
 - iii. ~~commercially benefited from DCSS and Lanzer making the Pre Eminence, Plastic Surgeon and Excellent Service Representations to potential patients being made to the public by DCSS and Lanzer;~~

Particulars

Aronov operated social media accounts on Instagram at @drdanielaronov and Tik Tok at @dr.danielaronov. Wells operated a social media account on Instagram at “@drryanwells”. Wong operated a social media account on Instagram at “@dr.george.wong”.

Each of the Pre-Eminence, Plastic Surgeon and Excellent Service Representations were made to the public through posts on Aronov’s

and, separately, Wells's social media profiles, and each of the Pre-Eminence and Excellent Service Representations were made to the public through posts on Wong's social media profile. , Aronov, Wells and Wong have each removed their social media profiles from the internet and the Plaintiffs are no longer able to access them. However, the Plaintiffs have retained ~~access to~~ access to a number of Aronov's, Wells's and Wong's social media posts and provide the following by way of example. These examples are not intended to be exhaustive and further particulars may be provided after discovery.

Examples of posts made by Aronov, Wells and Wong on social media which conveyed the Pre-Eminence Representation made on social media include:

- On 1 September 2020 on Instagram, Wong posted an image with text which stated "we use a special technique which minimises the number of keyhole incisions to accentuate one's natural physique,, and give the best aesthetic result possible".
- On 8 April 2019 on Instagram, Wells posted an image in which he described his liposuction procedure as an "advanced technique".
- On 29 November 2019, Aronov posted a video on Instagram in which he stated "get rid of this fat with our special technique".
- On 29 November 2019, Aronov posted a video on Instagram in which he stated "We have a lot of people come from other people and they don't get the deep fat. We work really hard to get that deep fat. I call it the Lanzer Way".
- On 4 June 2020, Aronov posted a video to Instagram in which he referred to "our famous mini tuck procedure".
- On 25 August 2020, Wong posted an image on Instagram with the text "I'm currently practicing Australia-wide with renowned cosmetic pioneer Dr Daniel Lanzer and the fantastic team... I also have a specialised interest in Asian upper eyelid procedures... I was trained personally in this procedure by a Japanese plastic

surgeon, and was one of a very select few doctors to learn this unique technique”.

Examples of posts made by Aronov and Wells on social media which conveyed the Plastic Surgeon Representation made on social media include:

- On or about 18 February 2020 on Instagram and Tik Tok, , Aronov made a post which contained the words “#plasticsurgeon #plasticsurgery”;
- On various dates, including 6 and 8 December 2020 on Instagram, Wells made a post which contained the words “#plasticsurgery”

Examples of posts made by Aronov, Wells and Wong on social media which conveyed the Excellent Service Representation made on social media include:

- On various dates on Instagram and Tik Tok, Aronov posted ‘before and after’ images or videos of his patients.
- On various dates on Instagram, Wells posted ‘before and after’ images or videos of his patients.
- On various dates on Instagram, Wong posted ‘before and after’ images or videos of his patients.
- On an unknown date on Tik Tok, Aronov posted a video in which he said “I remove excess fat and skin from people to make them feel better about their bodies”.
- On an unknown date Tik Tok, Aronov posted a video which contained the text “What I actually do is 1. Make people FEEL better about their body 2. Improve self esteem 3. Improve pain and function”
- On 10 May 2018 on Instagram, Wells posted “New Non-Incision Otoplastic (NIO) procedure, which requires no cutting, fast recovery (no head bandages) and immediate results”;
- On 4 April 2019 on Instagram, Wells posted text which stated “Incisionless Otoplasty... Benefits include: - quick procedure

(45mins or less) – Minimally invasive, no cutting, no scars – Quick recovery (no head bandages) – Immediate and permanent result”;

- On 8 April 2019 on Instagram, Wells posted a video in which he referred to his “advanced technique”.
- On 9 December 2020 on Instagram, Wong posted a video in which he referred to his “special technique”.
- On 1 September 2020 on Instagram, Wong posted a video of before and after photos with text which stated “we use a special technique which minimises the number of keyhole incisions to accentuate one’s natural physique,, and give the best aesthetic result possible”.
- On 5 December 2019, Aronov posted an image to Instagram of a naked female patient with the text “Notice how lipo to the love handles helps create an hourglass shape (when done by a good liposuctionist)”.

96. Further, each of the Other Cosmetic Doctor Defendants were directly or indirectly knowingly concerned in or party to DCSS and Lanzer making the Specialist Surgeon, Pre-Eminence and Excellent Service Representations to potential patients ~~to the public~~ through the Lanzer Website, in circumstances where:

- a. the Other Cosmetic Doctor Defendants (save for Darbyshire) were advertised on the Lanzer Website;
- b. the Other Cosmetic Doctor Defendants made a commercial gain or were to commercially gain from the Lanzer Website because the Lanzer Website generated customers;
- c. the Other Cosmetic Doctor Defendants knew that the Specialist Surgeon, Pre-Eminence and Excellent Service Representations were being made to potential patients on the Lanzer Website ~~to the public~~.
- d. the Other Cosmetic Doctor Defendants knew that the Specialist Surgeon, Pre-Eminence and Excellent Service Representations were false, misleading or deceptive in the ways pleaded at paragraphs 88A, 89 and 94 above.

Particulars of knowledge

The knowledge of the Other Cosmetic Doctor Defendants is to be inferred from the following:

- A. That the Other Cosmetic Doctor Defendants (save for Darbyshire) were personally advertised on the Lanzer Website;
- B. That the Other Cosmetic Doctor Defendants engaged in trade or commerce and at the Lanzer Clinics in the circumstances identified in paragraph 9;
- C. That the Other Cosmetic Doctor Defendants had a commercial interest in the quality of promotional content on the Lanzer Website;
- D. That the profiles of Aronov, Wells and Wong that appeared on the Lanzer Website appear to be based on information personally provided by Aronov, Wells and Wong;
- E. That the Representations concerned the capabilities and competencies of the Other Cosmetic Doctor Defendants personally and the cosmetic surgery services that the Other Cosmetic Doctor Defendants provided.
- F. That the Lanzer Website formed part of the DCSS Sales System, within which the Other Cosmetic Doctor Defendants performed cosmetic surgery services.

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

96A. DCSS and Lanzer made the Representations to Group Members in circumstances where:

- a. DCSS and Lanzer operated and maintained the DCSS Sales System pursuant to which:
 - ii. Group Members who completed the web-form inquiry on the Lanzer Website were sent the Post-Inquiry Email;
 - iii. Group Members were sent the Standard Advice enclosing the 'We Care' Form and the Consent Form; and

- ~~iv. — Group Members were sent the Aftercare Documents Thank You Letter;~~
- b. DCSS and Lanzer failed to resile from the Representations as made to potential patients the public via the Lanzer Website and Lanzer’s social media posts, as pleaded at paragraph 94 above;
- c. some or all of the Group Members accessed material published on the Lanzer Website which conveyed the Specialist Surgeon, Pre-Eminence and Excellent Service Representations;
- d. some or all of the Group Members accessed Lanzer’s social media posts which conveyed the Pre-Eminence, Plastic Surgeon and Excellent Service Representations.

Particulars

~~Particulars will be provided following the initial trial of the Plaintiffs’ claims.~~

1. the Specialist Surgeon Representation was partly express and partly implied and was conveyed by:
 - i. the Specialist Surgeon Website Statements;
 - ii. the words in the ‘We Care’ Form that described Lanzer as “a Dermatologist Surgeon”;
 - iii. the words in the ‘We Care’ Form that described the Other Cosmetic Doctor Defendants as “associate surgeons”;
 - iv. the words in the Consent Form that described the Other Cosmetic Doctor Defendants as “surgical associates”;
 - v. the failure to provide the Specialist Surgeon Clarification to Group Members;
2. the Pre-Eminence Representation was partly express and partly implied and was conveyed by:
 - i. the Pre-Eminence Website Statements;

- ii. content published on Lanzer's Instagram and Tik Tok accounts, further particulars of which will be provided after discovery or subpoena;
 - iii. for those group members who received the Post-Inquiry Email, the words in the Post-Inquiry email that stated "Dr Lanzer has been perfecting his Liposuction method for over 20 years with the 15,000 cases he has done. He uses a combination of techniques to get the best aesthetic results with the quickest recovery", that "most all results are dependent on a good eye, good coordination, experience and judgement" and that "Lanzer performed "a new type of tummy tuck called the Tumescant Lip-Tuck [which] Lanzer believes... is a great breakthrough method";
 - iv. the words in the 'We Care' Form that described Lanzer as a "Dermatologist Surgeon with 3 decades of experience" who "has chosen associate surgeons... and his entire staff based on this [caring] approach", and the implication that Lanzer and his surgical associates worked together.
 - v. the words in the Consent Form that stated "Dr Lanzer has personally trained surgical associates in his cosmetic surgical procedures" and the implication that Lanzer and his surgical associates worked together.
 - vi. the failure to provide the Specialist Surgeon Clarification to Group Members.
3. the Plastic Surgeon Representation was implied and was conveyed by content published on Lanzer's social media accounts that stated "#plasticsurgery".
 4. the Personal Line to Lanzer Representation was partly express and partly implied and was conveyed by the words in the Standard Advice and the 'We Care' Form that stated "Dr Lanzer... spends many hours a day on charity work and despite being very busy will always have time for you", "he also communicates directly to patients from his personal mobile

phone if required. NEVER HESITATE TO COMMUNICATE WITH HIM”, and “please do not hesitate to ask them or Dr Lanzer, any questions you may have”.

5. The Independent Psychologist Representation was partly express and partly implied and was conveyed by:

- i. the Standard Advice and Consent Form, which referred to “Candice” (being a reference to Wainstein) as “our psychologist” and that it was a “compulsory requirement that you speak to the psychologist well before your procedure”, and that “Dr Lanzer requires all patients to speak to a psychologist; he will refer you to Candice after you have read the surgical consent form”.
- ii. the failure to inform patients that Wainstein was married to Aronov.
- iii. the implication that Wainstein was independent, which arose from:
 - A. the words in the Standard Advice and Consent form which referred to the “compulsory requirement” that patients speak to a psychologist before their cosmetic surgery procedure;
 - B. the ‘Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures’ issued by the Medical Board of Australia, which all registered medical practitioners were required to comply with, Clauses 1, 2 and 3 of which described the requirement for patients to undergo a consultation with an independent psychologist prior to any cosmetic surgery.

6. the Excellent Service Representation was partly express and partly implied and was conveyed by:

- i. the Excellent Service Website Statements;

- ii. content published on Lanzer's Instagram and Tik Tok accounts, further particulars of which will be provided after discovery or subpoena;
- iii. for those group members who received the Post-Inquiry Email, the words in the Post-Inquiry Email that stated that Dr Lanzer obtained "the best aesthetic results with the quickest recovery";
- iv. the words in the Post-Inquiry Email, 'We Care' Form and Consent Form that conveyed the Pre-Eminence Representation (as set out in Particular (2) above), in that those words carried the implication that the pre-eminence and skill of Lanzer and the Other Cosmetic Doctor Defendants was such that cosmetic surgery performed by them was itself pre-eminent and apt to achieve excellent results;
- v. the failure to provide the Specialist Surgeon Clarification to Group Members.

97. DCSS and Lanzer made the Representations to Lombardo by the following conduct:

- a. making the Specialist Surgeon Representation on the Lanzer Website, the Pre-Eminence, ~~Plastic Surgeon~~ and Excellent Service Representations on the Lanzer Website and on Lanzer's social media accounts, and further the Plastic Surgeon Representation on Lanzer's social media accounts, in circumstances where prior to entering the Surgery Contract and/or undergoing Lombardo's Surgery:
 - i. Lombardo accessed material published on the Lanzer Website;
 - ii. Lombardo accessed material published on Lanzer's social media accounts; and
 - iii. by reason of the two preceding sub-paragraphs, the Specialist Surgeon, Pre-Eminence, Plastic Surgeon and Excellent Service Representations were conveyed to Lombardo in writing;

Particulars

[These particulars have been moved below subparagraph (h).]

- b. DCSS and Lanzer operated and maintained the DCSS Sales System;

- c. on 5 February 2021, an employee or agent of DCSS emailed Lombardo the Post-Inquiry Email, and this conduct:
 - i. conveyed the Pre-Eminence and Excellent Service Representation as particularised below;
 - ii. was attributable to DCSS by operation of section 139B of the CCA, because the email was sent within the scope of the employee's or agent's actual or apparent authority;
 - iii. constituted a representation by Lanzer, because the email was sent pursuant to the DCSS Sales System which was under Lanzer's ultimate control and direction;
- d. on 18 March 2021, an employee or agent of DCSS emailed Lombardo the Standard Advice enclosing the 'We Care' Form and the Consent Form, and this conduct:
 - i. conveyed the Specialist Surgeon, Pre-Eminence, Independent Line to Lanzer, Independent Psychologist and Excellent Service Representation as particularised below;
 - ii. was attributable to DCSS by operation of section 139B of the CCA, because the email was sent within the scope of the employee's or agent's actual or apparent authority;
 - iii. constituted a representation by Lanzer because the Standard Advice was under Lanzer's letterhead, and the 'We Care' Form and the Consent Forms were enclosed in the Standard Advice.
- e. ~~[Not Used] on 12 November 2021, an employee or agent of DCSS emailed Lombardo the Thank You Letter, and this conduct:~~
 - ~~i. — was attributable to DCSS by operation of section 139B of the CCA, because the email was sent within the scope of the employee's or agent's actual or apparent authority;~~
 - ~~ii. — constituted a representation by Lanzer because the Thank You Letter was from Lanzer.~~
- f. [Not Used] ~~during Lombardo's Pre-Surgery Consultation:~~

- i. ~~Aronov stated that he had “never had an issue” and that Lombardo had “nothing to worry about”; and~~
- ii. ~~this conduct was attributable to Lanzer and/or DCSS because Aronov was a servant or agent of Lanzer and/or DCSS in the circumstances referred to in paragraphs 10 and 11.~~
- g. failing to resile from the Representations as made ~~to the public via~~ on the Lanzer Website and Lanzer’s social media posts, as pleaded at paragraph 94 above.
- h. failing to make the Specialist Surgeon Clarification to Lombardo.

Particulars

As to the allegation at (a)(i), Lombardo visited the Lanzer Website on a several occasions on dates that she cannot recall, but between around September 2020 and November 2021 ~~prior to her Pre-Engagement Consultation~~. Lombardo read the information presented on the website, ~~and looked at the ‘before and after’ images presented on the website.~~

As to the allegation at (a)(ii), Lombardo maintained an Instagram account and commenced ‘following’ Dr Lanzer’s Instagram profile at “@drlanzer” from around September 2020 onwards. Lombardo was exposed to Dr Lanzer’s Instagram posts repeatedly thereafter. Lombardo did not ‘follow’ Lanzer’s Tik Tok account but Dr Lanzer re-posted on Instagram videos that had been posted on Tik Tok, which was apparent to Lombardo because of the ‘Tik Tok’ emblem that appeared on such videos. Further particulars of the posts that Lombardo read will be provided after discovery.

- A. The Specialist Surgeon Representation was partly express and partly implied and was conveyed by:
 - i. the Specialist Surgeon Website Statements, which Lombardo read when she accessed the Lanzer Website on several occasions that she cannot recall between September 2020 and November 2021;

- ii. the words in the ‘We Care’ Form that described Lanzer as “a Dermatologist Surgeon”;
 - iii. the words in the ‘We Care’ Form that described the Other Cosmetic Doctor Defendants as “associate surgeons”;
 - iv. the words in the Consent Form that described the Other Cosmetic Doctor Defendants as “surgical associates”;
 - v. the failure to provide the Specialist Surgeon Clarification to Lombardo.
1. the Pre-Eminence Representation was partly express and partly implied and was conveyed by:
- i. the Pre-Eminence Website Statements, which Lombardo read when she accessed the Lanzer Website on several occasions between September 2020 and November 2021;
 - ii. content published on Lanzer’s Instagram and Tik Tok accounts, particulars of which will be provided after discovery or subpoenas;
 - iii. the words in the Post-Inquiry Email that stated “Dr Lanzer has been perfecting his Liposuction method for over 20 years with the 15,000 cases he has done. He uses a combination of techniques to get the best aesthetic results with the quickest recovery”, that “most all results are dependent on a good eye, good coordination, experience and judgement” and that “Lanzer performed “a new type of tummy tuck called the Tumescant Lip-Tuck [which] Lanzer believes... is a great breakthrough method”;
 - iv. the words in the ‘We Care’ Form that described Lanzer as a “Dermatologist Surgeon with 3 decades of experience” who “has chosen associate surgeons... and his entire staff based on this [caring] approach”, and the implication that Lanzer and his surgical associates worked together.

- v. the words in the Consent Form that state “Dr Lanzer has personally trained surgical associates in his cosmetic surgical procedures” and that ~~“Dr Lanzer works with his chosen plastic surgeons”~~ and the implication that Lanzer and his surgical associates worked together.
 - ~~vi. the words in the Thank You Letter which referred to “our 30 years of pioneering cosmetic surgery” and stated “we cannot wait to see your amazing results!”.~~
 - ~~vii. the words stated by Aronov to Lombardo in Lombardo’s Pre Surgery Consultation.~~
 - viii. the failure to resile from the Representations as made to potential patients, as alleged at paragraph 94 above the ~~publie.~~
 - ix. the failure to provide the Specialist Surgeon Clarification to Lombardo.
2. the Plastic Surgeon Representation partly express and partly implied and was conveyed by:
- i. ~~[Not Used]the words in the Consent Form that stated that “Dr Lanzer works with his chosen plastic surgeons”;~~
 - ii. content published on Lanzer’s social media accounts which stated “#plasticsurgery”;
 - iii. the failure to resile from the Plastic Surgeon Representation as made to potential patients, as alleged at paragraph 94 above the ~~publie.~~
3. the Personal Line to Lanzer Representation was conveyed by the words in the Standard Advice and the ‘We Care’ Form that stated “Dr Lanzer... spends many hours a day on charity work and despite being very busy will always have time for you”, “he also communicates directly to patients from his personal mobile phone if required. NEVER HESITATE TO COMMUNICATE

WITH HIM”, and “please do not hesitate to ask them or Dr Lanzer, any questions you may have”.

4. the Independent Psychologist Representation was conveyed by:
 - i. the Standard Advice and Consent Form, which referred to “Candice” (being a reference to Wainstein) as “our psychologist” and that it was a “compulsory requirement that you speak to the psychologist well before your procedure”, and that “Dr Lanzer requires all patients to speak to a psychologist; he will refer you to Candice after you have read the surgical consent form”.
 - ii. the failure to inform patients that Wainstein was married to Aronov.
 - iii. the implication that Wainstein was independent, which arose from:
 - A. the words in the Standard Advice and Consent form which referred to the “compulsory requirement” that patients speak to a psychologist before their cosmetic surgery procedure;
 - B. the ‘Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures’ issued by the Medical Board of Australia, which all registered medical practitioners were required to comply with, Clauses 1, 2 and 3 of which described the requirement for patients to undergo a consultation with an independent psychologist prior to any cosmetic surgery.
5. the Excellent Service Representation was partly express and partly implied and was conveyed by:
 - i. the Excellent Service Website Statements words on the Lanzer Website, as set out in the particulars to paragraph 95 above, which Lombardo read when she accessed the

Lanzer Website on several occasions between September 2020 and November 2021;

- ii. content published on Lanzer's social media accounts, particulars of which will be provided after discovery or subpoena;
- iii. the words in the Post-Inquiry Email that stated that Dr Lanzer obtained "the best aesthetic results with the quickest recovery".
- iv. ~~[Not Used] the words in the Thank You Letter that stated that Lombardo would obtain "amazing results".~~
- v. ~~[Not Used] the words stated by Aronov to Lombardo in Lombardo's Pre-Surgery Consultation.~~
- vi. the words which conveyed the Pre-Eminence Representation as set out in particular 1 of paragraph 97, which carried the implication that the pre-eminence and skill of Lanzer and his "surgical associates" was such that cosmetic surgery performed by them was itself pre-eminent, apt to achieve excellent results, of an excellent standard, quality or grade and apt to achieve the purpose of significantly enhancing the appearance of Lombardo's body.
- vii. the failure to resile from the Representations as made to potential patients, as alleged at paragraph 94 above the public.
- viii. the failure to provide the Specialist Surgeon Clarification to Lombardo.

Further particulars are provided at Schedule B.

Further particulars may be provided after discovery.

98. DCSS and Lanzer made the Specialist Surgeon, Pre-Eminence, Direct Line to Lanzer, Independent Psychologist and Excellent Service Representations to Bonnici by the following conduct:

- a. making the Specialist Surgeon, Pre-Eminence and Excellent Service Representations on the Lanzer Website, and the Pre-Eminence and Excellent Service Representations on Lanzer's social media accounts, in circumstances where prior to entering the Surgery Contract and/or undergoing Bonnici's Surgery:
 - i. Bonnici accessed material published on the Lanzer Website;
 - ii. Bonnici accessed material published on Lanzer's Instagram and Tik Tok accounts; and
- b. by reason of the preceding sub-paragraph, the Specialist Surgeon, Pre-Eminence and Excellent Service Representations were conveyed to Bonnici in writing;

Particulars

[These particulars have been moved below subparagraph (h).]

- c. DCSS and Lanzer operated and maintained the DCSS Sales System;
- d. on 8 February 2021, an employee or agent of DCSS emailed Bonnici the Post-Inquiry Email, and this conduct:
 - i. conveyed the Pre-Eminence and Excellent Service Representation as set out in the particulars below;
 - ii. was attributable to DCSS by operation of section 139B of the CCA, because the email was sent within the scope of the employee's or agent's actual or apparent authority;
 - iii. constituted a representation by Lanzer, because the email was sent pursuant to the DCSS Sales System which was under Lanzer's ultimate control and direction;
- e. on 8 April 2021, an employee or agent of DCSS emailed Bonnici the Standard Advice enclosing the 'We Care' Form and the Consent Form, and this conduct:

- i. conveyed the Specialist Surgeon, Pre-Eminence, Direct Line to Lanzer, and Independent Psychologist Representations, as set out in the particulars below;
 - ii. was attributable to DCSS by operation of section 139B of the CCA, because the email was sent within the scope of the employee's or agent's actual or apparent authority;
 - iii. constituted a representation by Lanzer because the Standard Advice was under Lanzer's letterhead, and the 'We Care' Form and the Consent Forms were enclosed in the Standard Advice.
- f. ~~on 14 June 2021, an employee or agent of DCSS emailed Bonnici the Thank You Letter, and this conduct:~~
 - i. ~~was attributable to DCSS by operation of section 139B of the CCA, because the email was sent within the scope of the employee's or agent's actual or apparent authority;~~
 - ii. ~~constituted a representation by Lanzer because the Thank You Letter was from Lanzer.~~
- g. ~~during Bonnici's Pre-Surgery Consultation:~~
 - i. ~~Wells stated words to the effect that he regarded performing liposuction as "like a sport";~~
 - ii. ~~Wells stated words to the effect that he had studied tertiary training in plastic surgery; and~~
 - iii. ~~this conduct was attributable to Lanzer and/or DCSS because Wells was a servant or agent of Lanzer and/or DCSS in the circumstances referred to in paragraphs 10 and 11.~~
- h. failing to resile from the Representations as made ~~to the public~~ on via the Lanzer Website and Lanzer's social media posts, as pleaded at paragraph 94 above.

Particulars

As to the allegation at (a)(i), Bonnici visited the Lanzer Website on a several occasions on dates that she cannot recall, but between February 2020 and June 2021 ~~prior to her Pre-Engagement Consultation.~~

Bonnici read the information presented on the website ~~and looked at the 'before and after' images presented on the website.~~

As to the allegation at (a)(ii), Bonnici commenced 'following' Dr Lanzer's Instagram account at "@drlanzer" from around January 2020 onwards". Bonnici did not 'follow' Lanzer's Tik Tok account but Dr Lanzer re-posted on Instagram videos that had been posted on Tik Tok, which was apparent to Bonnici because of the 'Tik Tok' emblem that appeared on such videos. Further particulars of the posts that Bonnici read will be provided after discovery or subpoena.

A. the Specialist Surgeon Representation was partly express and partly implied and was conveyed by:

- i. the Specialist Surgeon Website Statements, which Bonnici read when she accessed the Lanzer Website on several occasions between February 2020 and June 2021;
- ii. the words in the 'We Care' Form that described Lanzer as "a Dermatologist Surgeon";
- iii. the words in the 'We Care' Form that described the Other Cosmetic Doctor Defendants as "associate surgeons";
- iv. the failure of DCSS and Lanzer to provide the Specialist Surgeon Clarification to Bonnici.

1. the Pre-Eminence Representation was partly express and partly implied and was conveyed by:

- i. the Pre-Eminence Website Statements, which Bonnici read when she visited the Lanzer Website between February 2020 and June 2021; words on the Lanzer Website, as set out in the particulars to paragraph 94 above;
- ii. the words in the Post-Inquiry Email, the 'We Care' Form, and the Consent Form and the Thank You Letter, that are materially identical to those referred to in Particular 1 to paragraph 97 above, save that the Consent Form did not

~~contain the words “Dr Lanzer works with his chosen plastic surgeons”.~~

- iii. ~~the failure to resile from the Representations as made to potential patients, as alleged at paragraph 94 above. the public.~~
 - iv. the failure to provide the Specialist Surgeon Clarification to Bonnici.
2. [Not Used] ~~the Plastic Surgeon Representation was conveyed by:~~
- ~~v. the words stated by Wells in Bonnici’s Pre Surgery Consultation.~~
 - ~~vi. the failure to resile from the Plastic Surgeon Representation as made to the public.~~
3. the Personal Line to Lanzer Representation was conveyed by: the words in the Standard Advice and the ‘We Care’ Form that were materially identical to those referred to in Particular ~~3~~ 4 to paragraph 98 above.
4. the Independent Psychologist Representation was conveyed by the same matters referred to in Particular 4 to paragraph 97 above.
5. the Excellent Service Representation was conveyed by:
- i. the Excellent Service Website Statements, which Bonnici read when she visited the Lanzer Website between February 2020 and June 2021; words on the Lanzer Website, as set out in the particulars to paragraph 94 above;
 - ii. the words in the Post-Inquiry Email that stated that Dr Lanzer obtained “the best aesthetic results with the quickest recovery”.
 - iii. the words in the Thank You Letter that stated that Bonnici would obtain “amazing results”.

- iv. ~~[Not Used] the words stated by Wells to Bonnici in Bonnici's Pre-Surgery Consultation.~~
- v. the words which conveyed the Pre-Eminence Representation as set out in particular 1 of paragraph 98, which carried the implication that the pre-eminence and skill of Lanzer and his "surgical associates" was such that cosmetic surgery performed by them was itself pre-eminent, apt to achieve excellent results, of an excellent standard, quality or grade and apt to achieve the purpose of significantly enhancing the appearance of Bonnici's body.
- vi. the failure to resile from the Representations as made to potential patients, as alleged at paragraph 94 above. ~~the public.~~
- vii. the failure to provide the Specialist Surgeon Clarification to Bonnici.

Further particulars are provided at Schedule B.

Further particulars may be provided after discovery.

99. DCSS and Lanzer made the Specialist Surgeon, Pre-Eminence, Direct Line to Lanzer, Independent Psychologist and Excellent Service Representations to Russell by the following conduct:
- a. making the Specialist Surgeon, Pre-Eminence and Excellent Service Representations on the Lanzer Website, in circumstances where prior to entering the Surgery Contract and/or undergoing Russell's Surgery:
 - i. Russell accessed material published on the Lanzer Website; and
 - ii. by reason of the preceding sub-paragraph, the Specialist Surgeon, Pre-Eminence and Excellent Service Representations were conveyed to Russell in writing;

Particulars

[These particulars have been moved below subparagraph (f)]

- b. DCSS and Lanzer operated and maintained the DCSS Sales System;

- c. on 27 August 2021, an employee or agent of DCSS emailed Russell the Standard Advice enclosing the 'We Care' Form and the Consent Form, and this conduct:
 - i. conveyed the Specialist Surgeon, Pre-Eminence, Direct Line to Lanzer, Independent Psychologist and Excellent Service Representations, as particularised below;
 - ii. was attributable to DCSS by operation of section 139B of the CCA, because the email was sent within the scope of the employee's or agent's actual or apparent authority;
 - iii. constituted a representation by Lanzer because the Standard Advice was under Lanzer's letterhead, and the 'We Care' Form and the Consent Forms were enclosed in the Standard Advice.
- d. ~~[Not Used] on 16 September 2021, an employee or agent of DCSS emailed Russell the Thank You Letter, and this conduct:~~
 - i. ~~was attributable to DCSS by operation of section 139B of the CCA, because the email was sent within the scope of the employee's or agent's actual or apparent authority;~~
 - ii. ~~constituted a representation by Lanzer because the Thank You Letter was from Lanzer.~~
- e. ~~[Not Used] during Russell's Pre-Surgery Consultation:~~
 - i. ~~Lanzer and Darbyshire each stated words to the effect that they were "experienced in mega liposuction and the diagnosis and treatment of lipoedema".~~
 - ii. ~~One of Lanzer or Darbyshire, in relation to numbing liquid being injected into her legs, stated words to the effect that there was "nothing to worry about. Done this hundreds of time. So so many people each day. Its all fine";~~
 - iii. ~~this conduct was attributable to DCSS because Darbyshire was a servant or agent of DCSS in the circumstances referred to in paragraphs 10 and 11, and because the conduct of Lanzer is attributable to DCSS under section 139B of the CCA.~~

- f. failing to resile from the Representations as made ~~to the public on~~ the Lanzer Website, as pleaded at paragraph 94 above.

Particulars

As to the allegation at (a)(i), Russell visited the Lanzer Website on a several occasions on dates that she cannot recall, but between July 2021 and September 2021 ~~prior to her Pre-Engagement Consultation~~. Russell read the information presented on the website, ~~and looked at the ‘before and after’ images presented on the website.~~

A. The Specialist Surgeon Representation was partly express and partly implied and was conveyed by:

- i. the Specialist Surgeon Website Statements, which Russell read when she accessed the Lanzer Website on several occasions between July and September 2021;
- ii. the words in the ‘We Care’ Form that described Lanzer as “a Dermatologist Surgeon”;
- iii. the words in the ‘We Care’ Form that described the Other Cosmetic Doctor Defendants as “associate surgeons”;
- iv. the words in the Consent Form that described the Other Cosmetic Doctor Defendants as “surgical associates”;
- v. the failure of DCSS and Lanzer to provide the Specialist Surgeon Clarification to Russell.

1. the Pre-Eminence Representation was partly express and partly implied and was conveyed by:

- i. the Pre-Eminence Website Statement, which Russell read when she accessed words on the Lanzer Website between July and September 2021, as set out in the particulars to paragraph 94 above;
- ii. the words in the ‘We Care’ Form, and the Consent Form and the Thank You Letter, that are materially identical to those referred to in Particular 1 to paragraph 97 above.

- iii. the failure to resile from the Representations as made to potential patients, as alleged at paragraph 94 above ~~as made to the public.~~
 - iv. the failure of DCSS and Lanzer to provide the Specialist Surgeon Clarification to Russell.
2. ~~[Not used] the Plastic Surgeon Representation was conveyed by:~~
 - i. ~~the words in the Consent Form that stated that “Dr Lanzer works with his chosen plastic surgeons”.~~
 - ii. ~~the failure to resile from the Representations as made to the public.~~
 3. the Personal Line to Lanzer Representation was conveyed by: the words in the Standard Advice and the ‘We Care’ Form that were materially identical to those referred to in Particular 3 to paragraph 97 above.
 4. the Independent Psychologist Representation was conveyed by the same matters referred to in Particular 4 to paragraph 97 above.
 5. the Excellent Service Representation was conveyed by:
 - i. the Excellent Service Website Statements, which Russell read when she accessed the words on the Lanzer Website between July and September 2021, as set out in the particulars to paragraph 97 above;
 - ii. ~~[Not used] the words in the Thank You Letter that stated that Russell would obtain “amazing results”.~~
 - iii. ~~[Not used] the words stated by Lanzer and Darbyshire in Russell’s Pre-Surgery Consultation.~~
 - iv. the words which conveyed the Pre-Eminence Representation carried the implication that the pre-eminence and skill of Lanzer and his “surgical associates” was such that cosmetic surgery performed by them was itself pre-eminent, apt to achieve excellent results, of an

excellent standard, quality or grade and apt to achieve the purpose of significantly enhancing the appearance of Russell's body.

- v. the failure to resile from the Representations as made to potential patients, as alleged at paragraph 94 above. the public.
- vi. the failure to provide the Specialist Surgeon Clarification to Russell.

Further particulars are provided at Schedule B.

Further particulars may be provided after discovery.

100. DCSS and Lanzer made the Representations to Morrison by the following conduct:

- a. making the Specialist Surgeon, Pre-Eminence, Plastic Surgeon and Excellent Service Representations on the Lanzer Website, and the Pre-Eminence, Plastic Surgeon and Excellent Service Representations on Lanzer's social media accounts, in circumstances where prior to entering the Surgery Contract and undergoing Lombardo's Surgery:
 - i. Morrison accessed material published on the Lanzer Website;
 - ii. Morrison accessed material published on Lanzer's social media accounts; and
 - iii. by reason of the two preceding sub-paragraphs, the Specialist Surgeon, Pre-Eminence, Plastic Surgeon and Excellent Service Representations were conveyed to Morrison in writing;

Particulars

[These particulars have been moved below subparagraph (i)]

- b. DCSS and Lanzer operated and maintained the DCSS Sales System;
- c. on or around 20 May 2021, during Morrison's First Pre-Engagement Consultation:
 - i. Wong stated words to the effect that there had been problems with Brazilian Butt Lift surgery in America, but there were no issues in Australia;

- ii. this conduct was attributable to DCSS and Lanzer because Wong was a servant or agent of DCSS and/or Lanzer in the circumstances referred to in paragraphs 10 and 11;
 - iii. this conduct conveyed the Pre-Eminence and Excellent Service Representation.
- d. on or around 27 July 2021, during Morrison's Second Pre-Engagement Consultation:
 - i. Wong stated words to the effect that he was more than capable of achieving the results that Morrison wanted;
 - ii. this conduct was attributable to DCSS and Lanzer because Wong was a servant or agent of DCSS and/or Lanzer in the circumstances referred to in paragraphs 10 and 11; and
 - iii. this conduct conveyed the Pre-Eminence and Excellent Service Representation.
- e. on or around 12 August 2021, during Morrison's Third Pre-Engagement Consultation:
 - i. After Morrison showed Wong a photograph of the cosmetic results she wanted to achieve, Wong stated words to the effect that he was more than capable of achieving those results;
 - ii. this conduct was attributable to DCSS and Lanzer because Wong was a servant or agent of DCSS and/or Lanzer in the circumstances referred to in paragraphs 10 and 11; and
 - iii. this conduct conveyed the Pre-Eminence and Excellent Service Representation.
- f. on or around 21 May 2021, 21 July 2021, 28 July 2021, 12 August 2021 and 1 October 2021, an employee or agent of DCSS emailed Morrison the Standard Advice enclosing the 'We Care' Form and the Consent Form, and this conduct:
 - ia. conveyed the Specialist Surgeon, Pre-Eminence, Direct Line to Lanzer, Independent Psychologist and Excellent Service Representation, as set out in the particulars below;
 - i. was attributable to DCSS by operation of section 139B of the CCA, because the email was sent within the scope of the employee's or agent's actual or apparent authority; and

- ii. constituted a representation by Lanzer because the Standard Advice was under Lanzer's letterhead, and the 'We Care' Form and the Consent Forms were enclosed in the Standard Advice.
- g. ~~[Not Used] on or around 3 August 2021, an employee or agent of DCSS emailed Morrison the Thank You Letter, and this conduct:~~
 - i. ~~was attributable to DCSS by operation of section 139B of the CCA, because the email was sent within the scope of the employee's or agent's actual or apparent authority;~~
 - ii. ~~constituted a representation by Lanzer because the Thank You Letter was from Lanzer.~~
- h. failing to resile from the Representations as made to potential patients on the public via the Lanzer Website and Lanzer's social media posts, as pleaded at paragraph 94 above.
- i. failing to provide the Specialist Surgeon Clarification to Morrison.

Particulars

As to the allegation at (a)(i), Morrison visited the Lanzer Website on several occasions on a dates that she cannot recall, but between September 2020 and 8 October 2021. prior to her initial appointment. Morrison read the information presented on the website. ~~and looked at the 'before and after' images presented on the website.~~

As to the allegation at (a)(ii), Morrison commenced 'following' Dr Lanzer's Instagram account at "@drlanzer" from around September 2020 onwards. Morrison did not 'follow' Lanzer's Tik Tok account but Dr Lanzer re-posted on Instagram videos that had been posted on Tik Tok, which was apparent to Morrison because of the 'Tik Tok' emblem that appeared on such videos. Further particulars of the posts that Morrison read will be provided after discovery.

A. The Specialist Surgeon Representation was partly express and partly implied and was conveyed by:

- i. the Specialist Surgeon Website Statements, which Morrison read when she accessed the Lanzer Website on several occasions between September 2020 and 8 October 2021;
 - ii. the words in the ‘We Care’ Form that described Lanzer as “a Dermatologist Surgeon”;
 - iii. the words in the ‘We Care’ Form that described the Other Cosmetic Doctor Defendants as “associate surgeons”;
 - iv. the words in the Consent Form that described the Other Cosmetic Doctor Defendants as “surgical associates”;
 - v. the failure to provide the Specialist Surgeon Representation to Morrison.
1. the Pre-Eminence Representation was conveyed by:
- i. the Pre-Eminence Website Statements, which Morrison read when she accessed the Lanzer Website between September 2020 and 8 October 2021.~~words on the Lanzer Website, as set out in the particulars to paragraph 95 above.~~
 - ii. content published on Lanzer’s social media accounts, particulars of which will be provided after discovery or subpoena.
 - iii. the words in the ‘We Care’ Form, the Consent Form and the Thank You Letter, that are materially identical to those referred to in Particular 1 to paragraph 97 above,~~save that the Consent Form did not contain the words “Dr Lanzer works with his chosen plastic surgeons”.~~
 - iv. the failure to resile from the Representations as made to potential patients, as alleged at paragraph 94 above the public.
 - v. the failure to provide the Specialist Surgeon Qualification to Morrison.
2. The Plastic Surgeon Representation was conveyed by:

- i. content published on Lanzer's social media accounts which stated "#plasticsurgery"; and-
 - ii. the failure to resile from the ~~Representations~~ Plastic Surgeon Representation as made to potential patients, as alleged at paragraph 94 above. ~~the public.~~
3. the Personal Line to Lanzer Representation was conveyed by: the words in the Standard Advice and the 'We Care' Form that were materially identical to those referred to in Particular 3 to paragraph 97 above.
4. the Independent Psychologist Representation was conveyed by the same matters referred to in Particular 4 to paragraph 97 above.
5. the Excellent Service Representation was conveyed by:
 - i. the Excellent Service Website Statements, which Morrison read when she accessed the Lanzer Website between September 2020 and 8 October 2021; words on the Lanzer Website, as set out in the particulars to paragraph 94 above;
 - ii. content published on Lanzer's social media accounts as pleaded at paragraph 94 above, particulars of which will be provided after discovery or subpoena;
 - iii. [Not Used] the words in the Thank You Letter that stated that Morrison would obtain "amazing results";
 - iv. the words stated by Wong to Morrison in Morrison's First, Second and Third Pre-Engagement Consultation.
 - v. the words which conveyed the Pre-Eminence Representation carried the implication that the pre-eminence and skill of Lanzer and his "surgical associates" was such that cosmetic surgery performed by them was itself pre-eminent, apt to achieve excellent results, of an excellent standard, quality or grade and apt to achieve the

purpose of significantly enhancing the appearance of Morrison's body.

- vi. the failure to resile from the Representations made to potential patients, as alleged at paragraph 94 above ~~as made to the public.~~
- vii. the failure to provide the Specialist Surgeon Clarification to Morrison.

Further particulars are provided in Schedule B.

Further particulars may be provided after discovery.

101. [This paragraph has been moved to 96A]

102. Each of the Other Cosmetic Doctor Defendants aided, abetted or procured, or alternatively were knowingly concerned in or party to, DCSS and Lanzer making the Representations to the Plaintiffs and the Group Members (as alleged in paragraphs 96A to 100), and consequently were 'involved' in making the Representations within the meaning of section 2 of the ACL, in circumstances where:

- a. the Other Cosmetic Doctor Defendants provided cosmetic surgery services within the DCSS Sales System;
- b. the Other Cosmetic Doctor Defendants participated in the DCSS Sales System, including by:
 - i. being personally advertised on the Lanzer Website (save for Darbyshire);
 - ii. conducting Pre Engagement Consultations, which caused the Standard Advice, 'We Care' Form and Consent Form to be sent to Plaintiffs and the Group Members;
 - iii. conducting Pre-Surgery Consultations;
 - iv. providing cosmetic surgery services;
- c. the Other Cosmetic Doctor Defendants had a commercial interest in potential patients becoming fee-paying patients through the DCSS Sales System;
- d. the Other Cosmetic Doctor Defendants did not resile from the Representations;

- e. the Other Cosmetic Doctor Defendants knew that the Representations were being made to the Plaintiffs and Group Members;
- f. the Other Cosmetic Doctor Defendants knew that the Representations were false, misleading or deceptive in the ways pleaded at paragraphs 89 to 94 above.

Particulars

The knowledge of the Other Cosmetic Doctor Defendants is to be inferred from the following:

- A. That the Representations were made as part of the DCSS Sales System, being the system through which the Other Cosmetic Doctor Defendants performed cosmetic surgery services.
- B. That potential patients became fee-paying patients through the DCSS Sales System.
- C. That the Other Cosmetic Doctor Defendants had a commercial interest in potential patients becoming fee-paying patients.
- D. That the Representations concerned the capabilities and competencies of the Other Cosmetic Doctor Defendants personally and the cosmetic surgery services that the Other Cosmetic Doctor Defendants provided.
- E. That the Other Cosmetic Doctor Defendants worked alongside each other and Lanzer at the Lanzer Clinics.

103. Further:

- a. ~~[Not Used] Aronov made the Pre-Eminence Representation and the Excellent Service Representation to Lombardo by his conduct at Lombardo's Pre-Surgery Consultation, as pleaded at paragraph 21 above, being that he advised Lombardo that, or words to the effect that, he had "never had an issue" and that she "had nothing to worry about";~~
- b. ~~[Not Used] Wells made the Pre-Eminent Representation, the Plastic Surgeon Representation and the Excellent Service Representation to Bonnici by his conduct at Bonnici's Pre-Surgery Consultation as pleaded at paragraph 31 above, being that he advised Bonnici that, or words to the effect that, he regarded performing liposuction as "like a sport" and that he had studied plastic surgery at a tertiary level;~~

- c. ~~[Not Used]Darbyshire made the Pre-Eminent Representation and the Excellent Service Representation to Russell by his conduct at Russell's Pre-Surgery Consultation as pleaded at paragraph 50 above, being that he stated that, or words to the effect that, he and Lanzer were "experienced in mega liposuction and the diagnosis and treatment lipoedema";~~
- d. Wong made the Pre-Eminent Representation and the Excellent Service Representation by his conduct at Morrison's First, Second and Third Pre-Engagement Consultations, as pleaded at paragraphs 59, 63, and 72 respectively being that:
 - i. at Morrison's First Pre-Engagement Consultation, he stated words, or words to the effect that, while there had been no problems with Brazilian Butt Lift surgery in the United States, there were "no issues" in Australia;
 - ii. at Morrison's Second Pre-Engagement Consultation, he stated words to the effect that he was more than capable of achieving the cosmetic results that Morrison wanted;
 - iii. at Morrison's Third Pre-Engagement Consultation, after Morrison showed him a photograph of the results which she wanted to achieve, he stated words to the effect that he was more than capable of achieving those results
- e. Lombardo accessed material published by Aronov on social media, read that material and the Pre-Eminence, Plastic Surgeon and Excellent Service Representations that Aronov made to potential patients the public (as alleged at paragraph 95 above) were thereby conveyed to Lombardo; and
- f. Bonnici accessed material published by Aronov and, separately, Wells on social media, read that material, and the Pre-Eminence, Plastic Surgeon and Excellent Service Representations that Aronov and, separately, Wells made to potential patients the public (as alleged at paragraph 95 above) were thereby conveyed to Bonnici.
- g. Morrison accessed material published by Wong on social media, read that materials, and the Pre-Eminence and Excellent Service Representations that Wong made to potential patients the public (as alleged at paragraph 95 above) were thereby conveyed to Morrison.

Particulars

As to the allegation at subparagraph (e) ean, Lombardo maintained an Instagram account and commenced ‘following’ Dr Aronov’s Instagram profile at “@drdanielaronov” in or around 18 March 2021. Lombardo was exposed to Dr Aronov’s Instagram posts repeatedly thereafter until around 4 November 2021. Lombardo did not ‘follow’ Aronov’s Tik Tok account but Dr Aronov re-posted on Instagram videos that had been posted on Tik Tok, which was apparent to Lombardo because of the ‘Tik Tok’ emblem that appeared on such videos. Further particulars of the posts that Lombardo read will be provided after discovery.

As to the allegation at (f), Bonnici maintained an Instagram account. Bonnici commenced ‘following’ Dr Aronov’s Instagram profile at “@drdanielaronov” on a date that she can’t recall but prior to around April 2021, and commenced ‘following’ Dr Wells’s Instagram profile “@drryanwells” from around 8 April 2021. Bonnici was exposed to Dr Aronov’s and Dr Wells’s Instagram posts repeatedly at all material times thereafter. Bonnici did not ‘follow’ Aronov’s Tik Tok account but Dr Aronov re-posted on Instagram videos that had been posted on Tik Tok, which was apparent to Bonnici because of the ‘Tik Tok’ emblem that appeared on such videos. Further particulars of the posts that Bonnici read will be provided after discovery.

As to the allegation at (g), Morrison maintained an Instagram account and commenced ‘following’ Dr Wong’s Instagram profile on or about 20 May 2021. Morrison was exposed to Dr Wong’s Instagram posts repeatedly at all material times thereafter. Further particulars of the posts that Morrison read will be provided after discovery.

104. Some or all of the Group Members accessed material published by:

- a. [this allegation has been moved to paragraph 96A(c) and (d)] Lanzer on the Lanzer Website and on social media;
- b. Aronov on social media;
- c. Wells on social media;

- d. Wong on social media;

and the Pre-Eminence, Excellent Service and Plastic Surgeon Representations were thereby conveyed to Group Members.

Particulars

Particulars will be provided following the initial trial of the Plaintiffs' claims.

105. Wainstein was knowingly concerned in or party to, DCSS and Lanzer making the Independent Psychologist Representation to the Plaintiffs and the Group Members, and consequently was 'involved' in making the Representations within the meaning of section 2 of the ACL, in circumstances where:

- a. Wainstein obtained a commercial gain by having patients referred to her by DCSS, Lanzer and/or the Other Cosmetic Doctor Defendants;
- b. Wainstein provided psychological services to patients referred to her by DCSS, Lanzer and/or the Other Cosmetic Doctor Defendants;
- c. Wainstein knew that the Independent Psychologist Representation was made to the Plaintiffs and Group Members;
- d. Wainstein knew that the Independent Psychologist Representation was false, misleading or deceptive in the manner pleaded at paragraph 93 above.

Particulars

Wainstein's knowledge is to be inferred from the following:

- A. That Wainstein obtained a commercial gain through referrals by DCSS, Lanzer and/or the Other Cosmetic Doctor Defendants;
- B. That Wainstein received referrals by DCSS, Lanzer and/or the Other Cosmetic Doctor Defendants;
- C. That the purported purpose of Wainstein attending to patients referred to her by DCSS, Lanzer and/or the Other Cosmetic Doctor Defendants was to assess them for the purposes of undergoing cosmetic surgery;

- D. That Wainstein's husband Aronov, and therefore Wainstein, had a commercial interest in potential patients becoming fee-paying patients through the DCSS Sales System;
- E. That through the DCSS Sales System, potential patients became fee-paying patients after they received the Standard Advice and Consent Form.

C.2.4 Contraventions

106. By making the Representations to ~~the public~~ potential patients, including the Plaintiffs and the Group Members as pleaded above, DCSS:
 - a. engaged in conduct in trade or commerce which was misleading or deceptive or likely to mislead or deceive, and consequently contravened section 18 of the ACL;
 - b. made a false or misleading representation in connection with the supply or possible supply of services, or in connection with the promotion by any means of the supply of services, that services are of a particular standard, quality, value or grade, and consequently contravened section 29(1) of the ACL; and/or
 - c. engaged in conduct in trade or commerce which was liable to mislead the public as to the nature, characteristics and suitability for their purpose of services, and consequently contravened section 34 of the ACL.
107. By making the Representations to ~~the public~~ potential patients, including the Plaintiffs and the Group Members as pleaded above, Lanzer:
 - a. engaged in conduct in trade or commerce which was misleading or deceptive or likely to mislead or deceive, and consequently contravened section 18 of the ACL;
 - b. made a false or misleading representation in connection with the supply or possible supply of services, or in connection with the promotion by any means of the supply of services, that services are of a particular standard, quality, value or grade, and consequently contravened section 29(1) of the ACL; and/or
 - c. engaged in conduct in trade or commerce which was liable to mislead the public as to the nature, characteristics and suitability for their purpose of services, and consequently contravened section 34 of the ACL.

108. By making the Representations to ~~the public~~ potential patients, the Plaintiffs and the Group Members as pleaded above, Aronov and Wellsthe Other Cosmetic Doctor Defendants:
- a. engaged in conduct in trade or commerce which was misleading or deceptive or likely to mislead or deceive, and consequently contravened section 18 of the ACL;
 - b. made a false or misleading representation in connection with the supply or possible supply of services, or in connection with the promotion by any means of the supply of services, that services are of a particular standard, quality, value or grade, and consequently contravened section 29(1) of the ACL; and/or
 - c. engaged in conduct in trade or commerce which was liable to mislead the public as to the nature, characteristics and suitability for their purpose of services, and consequently contravened section 34 of the ACL.
109. By reason of the matters in paragraphs 96 and 102 above, the Other Cosmetic Doctor Defendants were ‘persons involved’, within the meaning of section 2 of the ACL, in the contraventions of DCSS and Lanzer as pleaded in paragraphs 106 and 107 above.
110. By reason of the matters in paragraph 105 above, Wainstein was a ‘person involved’, within the meaning of section 2 of the ACL, in the contraventions of DCSS and Lanzer as pleaded in paragraph 106 and 107 above, insofar as those contraventions arise in respect of the Independent Psychologist Representation.

D. STATUTORY GUARANTEES

D.1 Statutory guarantees

111. Further or in the alternative to Part C:
- a. DCSS was a supplier, within the meaning of the ACL, of the cosmetic surgery services to the Plaintiffs and the Group Members;
 - b. Lanzer and the Other Cosmetic Doctor Defendants were suppliers, within the meaning of the ACL, of the cosmetic surgery services that they each personally provided to the Plaintiffs and the Group Members.
112. Each of the Plaintiffs and Group Members acquired the cosmetic surgery services supplied by DCSS, Lanzer and the Other Cosmetic Doctor Defendants as a consumer within the meaning of section 3(3) of the ACL.

Particulars

The amount paid or payable by the Plaintiffs and Group Members for the cosmetic surgery services did not exceed \$40,000.

The services were of a kind ordinarily acquired for personal use.

113. Each of the Plaintiffs and Group Members acquired from DCSS, Lanzer and/or the Other Cosmetic Doctor Defendants cosmetic surgery services:
- a. for the purpose of achieving the particular purpose of enhancing rather than diminishing their body's appearance (the **Cosmetic Surgical Purpose**);
 - b. made known by implication to the Defendants that they were acquiring the services for that purpose.

Particulars

The implication of the purpose is inherent in the Defendants offering the cosmetic surgery services for sale.

114. Further, each of the Plaintiffs and Group Members acquired from DCSS, Lanzer and/or the Other Cosmetic Doctor Defendants cosmetic surgery services:
- a. for achieving the result of enhancing rather than diminishing their body's appearance (the **Cosmetic Surgical Result**);
 - b. made known by implication to the Defendants that they were acquiring the services to achieve that result.

Particulars

The implication of the result is inherent in the Defendants offering the cosmetic surgery services for sale.

115. By reason of the matters in paragraphs 111 to 114, DCSS, Lanzer and the Other Cosmetic Doctor Defendants guaranteed pursuant to section 61 of the ACL that the cosmetic surgery services they themselves supplied would be:
- a. reasonably fit for the Cosmetic Surgical Purpose; and

- b. of such a nature, and quality, state or condition, that they might reasonably be expected to achieve the Cosmetic Surgical Result;

(Fitness for Purpose Guarantee).

- 116. Further, by reason of the matters in paragraph 111, DCSS, Lanzer and the Other Cosmetic Doctor Defendants guaranteed pursuant to section 60 of the ACL that the cosmetic surgery services they themselves supplied would be rendered with due care and skill of a medical practitioner expert in such procedure **(Due Care and Skill Guarantee).**

D.2 Non-compliance with guarantees

- 117. In the circumstances identified in paragraph 111 above, DCSS, Lanzer and the Other Cosmetic Doctors Defendants supplied cosmetic surgery services to the Plaintiffs and the Group Members that:
 - a. were not reasonably fit for the Cosmetic Surgical Purpose or the Cosmetic Surgical Result; and
 - b. were not rendered with due care and skill.

Particulars

Lombardo refers to paragraphs 21 and 22 above, and paragraphs 136, 153 below. Lombardo also refers to the particulars to paragraph 202A. Further particulars may be provided prior to the initial trial.

Bonnici refers to paragraphs 31 to 37 above, and paragraphs 136, 173, 179 below. Bonnici also refers to the particulars to paragraph 202A. Further particulars may be provided prior to the initial trial.

Russell refers to paragraphs 50, 51, 55, and 57 above, and paragraphs 136, 153, 161, 169 below. Russell also refers to the particulars to paragraph 202A. Further particulars may be provided prior to the initial trial.

Morrison refers to paragraphs 59, 68, 69, 70, 71, 73, 76, 77, 78, 79, 80, 81, 83 and 84 above, and paragraphs 136, 184 below. Morrison also refers to the particulars to paragraph 202A. Further particulars may be provided prior to the initial trial.

Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs' individual claims.

118. By reason of the matters in paragraph 117, DCSS, Lanzer and the Other Cosmetic Doctor Defendants:

- a. did not comply with the Fitness for Purpose Guarantee in section 61 of the ACL; and
- b. did not comply with the Due Care and Skill Guarantee in section 60 of the ACL

(Statutory Guarantee Non-Compliances).

119. The Statutory Guarantee Non-Compliances were major failures within the meaning of section 268 of the ACL in that the cosmetic surgery supplied:

- a. would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure;
- b. was substantially unfit for a purpose for which services of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose;
- c.
 - i. was unfit for the Cosmetic Surgical Purpose; and
 - ii. cannot, easily and within a reasonable time, be remedied to make them fit for such purpose;
- d.
 - i. was not of such a nature, or quality, state or condition, that it might reasonably be expected to achieve the result identified in Cosmetic Surgical Result;
 - ii. cannot, easily and within a reasonable time, be remedied to achieve such result;
- e. created an unsafe situation.

Particulars

Lombardo refers to paragraphs 21 and 22 above, and paragraphs 136, 153 below.

Bonnici refers to paragraphs 31 to 37 above, and paragraphs 136, 173, 179 below.

Russell refers to paragraphs 50, 51, 55, and 57 above, and paragraphs 136, 153, 161, 169 below.

Morrison refers to paragraphs 59, 68, 69, 70, 71, 73, 76, 77, 78, 79, 80, 81, 83 and 84 above, and paragraphs 136, 184 below.

120. Because of the Statutory Guarantee Non-Compliance, and as a result of Lombardo's Surgery, Lombardo suffered:
- a. Lombardo's Injury, Loss and Damage as pleaded at paragraph 191 below; further, or alternatively
 - b. loss and damage in that the value of Lombardo's Surgery was worthless or alternatively worth less than the amount Lombardo paid; further, or alternatively
 - c. Dillon damages in the nature of distress, inconvenience and disappointment at the poor aesthetic outcome of the cosmetic surgery services, and loss of enjoyment of the expected improvement to her appearance.

Particulars

The value of the cosmetic surgery performed on Lombardo is determined by what a fully informed customer would have been prepared to pay for those services. A fully informed customer would either not have paid at all for the cosmetic surgery or alternatively would have paid a significantly reduced amount. Further particulars may be provided prior to trial including the provision of an expert report.

As to the Dillon damages, Lombardo refers to the particulars to paragraph 202A.

121. Because of the Statutory Guarantee Non-Compliance, and as a result of Bonnici's Surgery, Bonnici suffered:
- a. Bonnici's Injury, Loss and Damage as set out at paragraph 192 below; further, or alternatively

- b. loss and damage in that the value of Bonnici's Surgery was worthless or alternatively worth less than the amount Bonnici paid; further, or alternatively
- c. Dillon damages in the nature of distress, inconvenience and disappointment at the poor aesthetic outcome of the cosmetic surgery services, and loss of enjoyment of the expected improvement to her appearance.

Particulars

The value of the cosmetic surgery performed on Bonnici is determined by what a fully informed customer would have been prepared to pay for those services. A fully informed customer would either not have paid at all for the cosmetic surgery or alternatively would have paid a significantly reduced amount. Further particulars may be provided prior to trial including the provision of an expert report.

As to the Dillon damages, Bonnici refers to the particulars to paragraph 202A.

122. Because of the Statutory Guarantee Non-Compliance, and as a result of Russell's Surgery, Russell suffered:
- a. Russell's Injury, Loss and Damage as set out at paragraph 193 below; further or alternatively
 - b. loss and damage in that the value of Russell's Surgery was worthless or alternatively worth less than the amount Russell paid; further, or alternatively
 - c. Dillon damages in the nature of distress, inconvenience and disappointment at the poor aesthetic outcome of the cosmetic surgery services, and loss of enjoyment of the expected improvement to her appearance.

Particulars

The value of the cosmetic surgery performed on Russell is determined by what a fully informed customer would have been prepared to pay for those services. A fully informed customer would either not have paid at all for the cosmetic surgery or alternatively would have paid a significantly reduced amount. Further particulars may be provided prior to trial including the provision of an expert report.

As to the *Dillon* damages, Russell refers to the particulars to paragraph 202A.

123. Because of the Statutory Guarantee Non-Compliance, and as a result of Morrison's Surgeries, Morrison suffered:
- a. Morrison's Injury, Loss and Damage as set out at paragraph 194 below; further, or alternatively
 - b. loss and damage in that the value of Morrison's Surgeries were worthless or alternatively worth less than the amount Morrison paid; further, or alternatively
 - c. *Dillon* damages in the nature of distress, inconvenience and disappointment at the poor aesthetic outcome of the cosmetic surgery services, and loss of enjoyment of the expected improvement to her appearance.

Particulars

The value of the cosmetic surgery performed on Morrison is determined by what a fully informed customer would have been prepared to pay for those services. A fully informed customer would either not have paid at all for the cosmetic surgery or alternatively would have paid a significantly reduced amount. Further particulars may be provided prior to trial including the provision of an expert report.

As to the *Dillon* damages, Lombardo refers to the particulars to paragraph 202A above.

124. On various dates, the Group Members underwent cosmetic surgery services performed by Lanzer and/or the Other Cosmetic Doctor Defendants.

Particulars

Particulars are provided in Schedule B.

Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs' individual claims.

- 124A The Group Members suffered loss and damage as a result of the cosmetic surgery services performed by Lanzer and/or the Other Cosmetic Doctor Defendants.

Particulars

Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs' individual claims.

125. In the circumstances set out above, DCSS, Lanzer and the Other Cosmetic Doctor Defendants are liable for the loss and damage of the Plaintiffs and the Group Members caused by their respective Statutory Guarantee Non-Compliances, pursuant to s 267 of the ACL.

E. NEGLIGENCE

126. At all relevant times DCSS owed a non-delegable duty to each patient that paid DCSS for cosmetic surgery services and to whom DCSS provided cosmetic surgery services including the Plaintiffs and each Group Member:
- a. to exercise the degree of reasonable care and skill to be expected of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services to any patient to avoid injury, and
 - b. to exercise reasonable care and skill in the administration and management of the cosmetic surgery services provided by its servants or agents which included the Second to Seventh Defendants to avoid injury.

Particulars of relationship

- i. The Plaintiffs repeat the material facts alleged at paragraphs 3 to 11 above.
- ii. DCSS was in the business of providing the cosmetic surgery services.
- iii. DCSS provided the cosmetic surgery services to patients including each Plaintiff and each Group Member.
- iv. DCSS provided the cosmetic surgery services from locations including the Lanzer Clinics.
- v. DCSS:
 - 1. employed administrative, medical practitioner including Lanzer and nursing staff, and
 - 2. engaged persons including the Other Doctor Defendants,

to provide cosmetic surgery services at locations including the Lanzer Clinics.

- vi. Payment for cosmetic surgery services was made by a patient to DCSS.
- vii. Subsequent to payment being made, DCSS arranged and managed the provision of said cosmetic surgery services through its employees, servants, agents or contractors.

127. Further and/or in the alternative, DCSS is vicariously liable for the negligence of:

- a. the Other Cosmetic Doctor Defendants who were acting as servants or agents of DCSS; and
- b. Lanzer in his provision of cosmetic surgery services as Lanzer was at all relevant times an employee of the First Defendant.

128. Further and/or in the alternative, at all relevant times Lanzer owed a non-delegable duty to:

- a. Lombardo and Russell (the Plaintiffs to whom he personally provided cosmetic surgery services), and
 - b. each Group Member to whom he personally provided cosmetic surgery services,
- to exercise the degree of reasonable care and skill to be expected of a medical practitioner providing cosmetic surgery services in the provision of said services to avoid injury.

129. Further and/or in the alternative, at all relevant times Aronov owed a ~~non-delegable~~ duty to:

- a. Lombardo and Russell (the Plaintiffs to whom he personally provided cosmetic surgery services), and
 - b. each Group Member to whom he personally provided cosmetic surgery services,
- to exercise the degree of reasonable care and skill to be expected of a medical practitioner providing cosmetic surgery services in the provision of said services to avoid injury.

130. Further and/or in the alternative, at all relevant times Darbyshire owed a ~~non-delegable~~ duty to:

- a. Russell (the Plaintiff to whom he personally provided cosmetic surgery services), and
- b. Each Group Member to whom he personally provided cosmetic surgery services,

to exercise the degree of reasonable care and skill to be expected of a medical practitioner providing cosmetic surgery services in the provision of said services to avoid injury.

131. Further and/or in the alternative, at all relevant times Wells owed a ~~non-delegable~~ duty to:

- a. Bonnici (the Plaintiff to whom he personally provided cosmetic surgery services), and
- b. Each Group Member to whom he personally provided cosmetic surgery services,

to exercise the degree of reasonable care and skill to be expected of a medical practitioner providing cosmetic surgery services in the provision of said services to avoid injury.

132. Further and/or in the alternative, at all relevant times Fallahi owed a ~~non-delegable~~ duty to:

- a. Bonnici (the Plaintiff to whom he personally provided cosmetic surgery services), and
- b. Each Group Member to whom he personally provided cosmetic surgery services,

to exercise the degree of reasonable care and skill to be expected of a medical practitioner providing cosmetic surgery services in the provision of said services to avoid injury.

133. Further and/or in the alternative, at all relevant times Wong owed a ~~non-delegable~~ duty to:

- a. Morrison (the Plaintiff to whom he personally provided cosmetic surgery services), and
- b. each Group Member to whom he personally provided cosmetic surgery services,

to exercise the degree of reasonable care and skill to be expected of a medical practitioner providing cosmetic surgery services in the provision of said services to avoid injury.

134. Further and/or in the alternative, at all relevant times Wainstein owed a ~~non-delegable~~ duty to Bonnici and each Group Member to whom she personally provided advice and treatment by the provision of a psychological assessment to exercise the degree of reasonable care and skill to be expected of a psychologist in the provision of a psychological assessment to evaluate a person's suitability to undergo cosmetic surgery to avoid:

- a. psychological injury caused to a patient from undergoing cosmetic surgery in circumstances where said patient had unrealistic expectations of what said surgery could or would achieve;
- b. psychological injury caused to a patient from undergoing cosmetic surgery as a consequence of said surgery in circumstances where said patient would have poor

psychological resources to cope with the surgery, the possible risks of said surgery and recovery of said surgery.

Particulars

Particulars are provided at Schedule B.

135. It is not alleged that any Defendant owed a duty of care to any Plaintiff or Group Member to whom they did not personally provide treatment or cosmetic surgery services.

136. DCSS in:

- a. the provision of nursing or other non-medical practitioner health services related to the provision of cosmetic surgery services by Lanzer and the Other Doctor Defendants, and
- b. administering and managing the cosmetic surgery services provided by Lanzer and the Other Doctor Defendants,

to Lombardo, Bonnici, Russell, Morrison and Group Members did so negligently and in breach of the duties that it owed at common law as described above at paragraph 126.

Particulars of negligence of DCSS (Lombardo)

- i. Recommending Lombardo undergo surgery during Lombardo's Pre-Engagement Consultation in circumstances where Lombardo had not been examined in person by a medical practitioner and the nurse was not a medical practitioner.
- ii. Failing to arrange a medical practitioner to examine Lombardo prior to the day of surgery.
- iii. Failing to arrange a medical practitioner to consult with Lombardo prior to the day of surgery.
- iv. Failing to arrange the medical practitioner undertaking the surgery to consult with and examine Lombardo prior to the day of surgery.
- v. Failing to arrange adequate pain relief post-surgery.
- vi. Discharging Lombardo that same day after a large volume liposuction and a full abdominoplasty in a day hospital.

- vii. Failing to admit Lombardo post-surgery in a hospital for multiple days for monitoring and treatment.
- viii. Failing to recognise that Lombardo was experiencing haemorrhaging or a hypertensive reaction post-surgery.
- ix. Failing to be contactable overnight after the surgery.
- x. Failing to provide Lombardo with adequate post-operative care, advice or treatment.
- xi. Failing to refer Lombardo to a competent or experienced plastic or cosmetic surgeon for the performance of the treatment.
- xii. Failing to ensure that Lombardo underwent an independent psychological assessment prior to the treatment to determine whether Lombardo was a suitable candidate for the treatment.
- xiii. Displaying video footage of Lombardo's surgery on social media.
- xiv. Failing to deidentify Lombardo in the video footage broadcast on social media.
- xv. Failing to adequately monitor Lombardo after Lombardo's Surgery including overnight.

Particulars of negligence of DCSS (Bonnici)

- xvi. Failing to arrange for each of the medical practitioners undertaking the surgery to consult with and examine Bonnici prior to the day of the surgery.
- xvii. Posting photographs of Bonnici on Instagram without permission.
- xviii. Cancelling post-surgical massages booked by Bonnici.
- xix. Failing to arrange sufficient post-surgical massage for Bonnici and providing only one session of post-surgical massage to Bonnici.
- xx. Failing to provide Bonnici with adequate post-surgical pain relief.
- xxi. Instructing Bonnici to sign a "discharge against medical advice" form despite not requesting to be discharged.

- xxii. Immediately post-surgery an employee of DCSS said to Bonnici in response to complaints of pain 'What do you expect' and 'Beauty is pain'.
- xxiii. Failing to arrange adequate pain relief post-surgery.
- xxiv. Failing to provide Bonnici with adequate post-operative care, advice or treatment.
- xxv. Failing to ensure that Bonnici underwent an independent psychological assessment prior to the treatment to determine whether Bonnici was a suitable candidate for the treatment.
- xxvi. Leaving Bonnici unattended mid-surgery for approximately 30 minutes on the surgery table in a cold room while she was naked and with no blankets and with local anaesthetic leaking out of her incisions.
- xxvii. Discharging Bonnici that same day in lieu of an overnight stay.
- xxviii. Allowing or instructing Bonnici to drive home.
- xxix. Discharging Bonnici the day of surgery.
- xxx. Failing to provide or arrange adequate post-surgical massage.

Particulars of negligence of DCSS (Russell)

- xxxi. Failing to arrange for each of the medical practitioners undertaking Russell's Surgery to consult with and examine Russell prior to the day of the surgery.
- xxxii. Failing to provide anaesthesia, adequate anaesthesia and/or pain relief medication during Russell's Surgery.
- xxxiii. Failing to arrange adequate pain relief post-surgery.
- xxxiv. Failing to provide and/or arrange adequate compression stocking to Russell following Russell's Surgery.
- xxxv. Failing to monitor Russell following Russell's Surgery.
- xxxvi. Failing to ensure that Russell underwent an independent psychological assessment prior to Russell's Surgery to determine whether she was a suitable candidate for the treatment.

xxxvii. Failing to provide Russell with adequate post-operative care, advice or treatment.

xxxviii. Failing to provide anaesthesia and/or pain relief during Russell Follow Up Appointment.

xxxix. Failing to obtain informed consent prior to cutting Russell's leg during Russell Follow Up Appointment.

Particulars of negligence of DCSS (Morrison)

xl. Failing to provide adequate anaesthesia during Morrison's First Surgery.

xli. Failing to provide adequate anaesthesia during Morrison's Third Surgery.

xlii. Failing to ensure that Morrison underwent an independent psychological assessment prior to surgery to determine whether she was a suitable candidate for the treatment.

Particulars of negligence in respect of Group Members

xliii. Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs' individual claims.

137. The allegations of negligence by DCSS in the preceding paragraph constituted conduct (both in the sense of an act and an omission to act):

- a. In respect of Lombardo and at the time the negligence outlined in the preceding paragraph was engaged in, that was not widely accepted in Australia as competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services and the administration of cosmetic surgery services provided by its servants or agents in the circumstances for the purposes of section 59 of the *Wrongs Act 1958* (Vic) or section 500 of the *Civil Liability Act 2002* (NSW);
- b. In respect of Bonnici and at the time the negligence outlined in the preceding paragraph was engaged in, that was not widely accepted in Australia as competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services and the administration of cosmetic surgery services provided by its servants or agents in the circumstances for

the purposes of section 59 of the *Wrongs Act 1958* (Vic) or section 22 of the *Civil Liability Act 2003* (Qld);

- c. In respect of Russell and at the time the negligence outlined in the preceding paragraph was engaged in, that was not widely accepted in Australia as competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services and the administration of cosmetic surgery services provided by its servants or agents in the circumstances for the purposes of section 59 of the *Wrongs Act 1958* (Vic);
 - d. In respect of Morrison and at the time the negligence outlined in the preceding paragraph was engaged in, that was not widely accepted in Australia as competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services and the administration of cosmetic surgery services provided by its servants or agents in the circumstances for the purposes of section 59 of the *Wrongs Act 1958* (Vic) or section 5PB of the *Civil Liability Act 2002* (WA);
 - e. In respect of any Group Member to whom DCSS provided cosmetic surgery services the standard of care is governed by section 59 of the *Wrongs Act 1958* (Vic), or section 509 of the *Civil Liability Act 2002* (NSW), or section 5PB of the *Civil Liability Act 2002* (WA), or section 22 of the *Civil Liability Act 2003* (QLD) depending on what State legislation governs the conduct engaged in. Full particulars of the standard of care to be expected by any Group Member treated by DCSSS will be provided after the trial of the Plaintiffs' individual claims.
138. In respect of DCSS and each of Lombardo, Bonnici, Morrison and Russell, it was reasonably foreseeable that if DCSS failed,
- a. to exercise the degree of reasonable care and skill to be expected of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services to any patient to avoid injury, or
 - b. to exercise reasonable care and skill in the administration and management of the cosmetic surgery services provided by its servants or agents which included Lanzer and the Other Doctor Defendants to avoid injury,
- by acting or failing to act in the ways that are specifically particularised at paragraph 136 above then –

- i. Lombardo may suffer physical injury or consequential mental harm;
- ii. Bonnici may suffer physical injury or consequential mental harm;
- iii. Morrison may suffer physical injury or consequential mental harm;
- iv. Russell may suffer physical injury or consequential mental harm.

139. Further, in respect of DCSS and Lombardo:

- a. Either during or shortly after Lombardo's Surgery, video footage of Lombardo's Surgery was uploaded to social media including Tik Tok by either Aronov or a servant or agent of DCSS;
- b. it was reasonably foreseeable that the posting of video footage of Lombardo's Surgery in circumstances where Lombardo was not de-identified could cause a person of normal fortitude to suffer a recognised psychiatric illness as those terms are defined in section 32 of the *Civil Liability Act 2002* (NSW) or section 72 of the *Wrongs Act 1958* (Vic).

Particulars

Further particulars as to the posting of the video footage of Lombardo's Surgery by Aronov or a servant or agent of DCSS is unable to be provided until discovery of social media accounts that Aronov or DCSS had access to as at the date of Lombardo's Surgery.

140. In respect of DCSS and Lombardo, competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services and the administration of cosmetic surgery services provided by its servants or agents required:

- a. DCSS to de-identify Lombardo in the video footage broadcast on social media or ensure that she was deidentified by the person who posted the footage.
- b. DCSS to not display video footage of Lombardo's Surgery on social media, or ensure that others did not do so.
- c. DCSS to ensure that Lombardo received cosmetic surgery services from a competent medical practitioner providing cosmetic surgery services.

- d. DCSS to ensure that a medical practitioner consulted with and examined Lombardo prior to there being a recommendation that Lombardo undergo surgery.
 - e. DCSS to ensure that a medical practitioner consulted with and examined Lombardo prior to the day of Lombardo's Surgery and prior to payment being made for Lombardo's Surgery.
 - f. DCSS to ensure that Lombardo underwent an independent psychological assessment prior to the treatment to determine whether Lombardo was a suitable candidate for the treatment.
 - g. That a nurse did not recommend Lombardo undergo surgery.
 - h. The provision of additional pain relief post-surgery.
 - i. Lombardo not to be discharged the same day after a large volume liposuction and full abdominoplasty.
 - j. Lombardo to be admitted at least overnight after a large volume liposuction and full abdominoplasty.
 - k. Lombardo's Surgery to not occur in a day hospital.
 - l. DCSS to ensure that Lombardo was able to contact DCSS and obtain medical advice overnight on the day of Lombardo's Surgery.
141. Had DCSS engaged in competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services and the administration of cosmetic surgery services provided by its servants or agents, Lombardo would:
- a. not have suffered a recognised psychiatric illness in the circumstances alleged above at paragraph 139;
 - b. not have undergone the surgery at all insofar as the allegations of negligence relate to a failure to warn or a failure to assess Lombardo as a suitable candidate for the treatment;
 - c. alternatively, have undergone the surgery with a competent medical practitioner providing cosmetic surgery services;

- d. alternatively, have not suffered Lombardo's Injury, Loss and Damage as she would not have been discharged the day of surgery and would have been appropriately monitored.
142. Further, in respect of DCSS and Bonnici and with respect of the material facts as alleged at paragraphs 35-38A above, it was reasonably foreseeable that by DCSS engaging in the conduct alleged at paragraphs 36-78A above (or allowing said conduct to occur) could cause a person of normal fortitude to suffer a recognised psychiatric illness as those terms are defined in section 72 of the *Wrongs Act 1958* (Vic).
143. In respect of DCSS and Bonnici, competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services and the administration of cosmetic surgery services provided by its servants or agents required DCSS to ensure that:
- a. Bonnici was not left unattended during Bonnici's Surgery.
 - b. Photographs of Bonnici were not posted on Instagram without her permission.
 - c. Bonnici was not required to sign a 'discharge against medical advice' form in circumstances where she did not request to be discharged.
 - d. It was not said to Bonnici 'What do you expect' and 'Beauty is pain'.
 - e. DCSS to ensure that Bonnici received cosmetic surgery services from a competent medical practitioner.
 - f. DCSS to ensure that each of the medical practitioners undertaking Bonnici's Surgery consulted with and examined Bonnici prior to the day of surgery.
 - g. Bonnici receive more than one session of post-surgical massage.
 - h. Any necessary cancellations of post-surgical massages to be re-scheduled.
 - i. Bonnici be provided with additional pain relief post-surgery.
 - j. Bonnici not be discharged the day of surgery.
 - k. Bonnici not be allowed or instructed to drive herself home.
144. Had DCSS engaged in competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health

services and the administration of cosmetic surgery services provided by its servants or agents, Bonnici would:

- a. not have suffered a recognised psychiatric illness in the circumstances alleged above at paragraph 143;
- b. alternatively, not have undergone the surgery at all insofar as the allegations of negligence relate to a failure to warn or a failure to assess Bonnici as a suitable candidate for the treatment;
- c. alternatively, have undergone the surgery with a competent medical practitioner providing cosmetic surgery services;
- d. alternatively, have not suffered Bonnici's Injury, Loss and Damage as she would have received adequate post-surgical care.

145. Further, in respect of DCSS and Russell and with respect of the material facts as alleged at paragraphs 56-57A above, it was reasonably foreseeable that by DCSS engaging in the conduct alleged at paragraphs 56-57A above (or allowing such conduct to occur) could cause a person of normal fortitude to suffer a recognised psychiatric illness as those terms are defined in section 72 of the *Wrongs Act 1958* (Vic).

146. In respect of DCSS and Russell, competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services and the administration of cosmetic surgery services provided by its servants or agents required:

- a. DCSS to ensure that Russell received cosmetic surgery services from a competent medical practitioner providing cosmetic surgery services;
- b. DCSS to ensure that a medical practitioner consulted with and examined Russell prior to the day of the surgery;
- c. DCSS to ensure that Russell underwent an independent psychological assessment prior to surgery to determine whether Russell was a suitable candidate for the surgery;
- d. the arrangement of adequate pain relief post-surgery;
- e. provision and/or arrangement of adequate compression stockings to Russell following surgery;

- f. monitoring of Russell following surgery;
 - g. providing adequate post-operative care, advice and treatment;
 - h. providing anaesthesia and/or pain relief during Russell Follow Up Appointment;
 - i. obtaining Russell's informed consent prior to cutting her leg during Russell's Follow Up Appointment.
147. Had DCSS engaged in competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services and the administration of cosmetic surgery services provided by its servants or agents, Russell would:
- a. not have suffered a recognised psychiatric illness in the circumstances alleged above at paragraph 145;
 - b. not have undergone the surgery at all insofar as allegations of negligence related to a failure to assess Russell as a suitable candidate for treatment;
 - c. alternatively, have undergone surgery with a competent medical practitioner providing cosmetic surgery services;
 - d. alternatively, have not suffered Russell's Injury, Loss and Damage as she would have been appropriately monitored and treated during Russell's Follow Up Appointment.
148. Further, in respect of DCSS and Morrison:
- a. By reason of the material facts alleged at paragraphs 69-71 and 81 above, DCSS failed to provide or ensure was provided adequate anaesthesia during Morrison's First and Third Surgeries; and
 - b. it was reasonably foreseeable that if DCSS failed to do so that could cause a person of normal fortitude to suffer a recognised psychiatric illness as those terms are defined in section 72 of the *Wrongs Act 1958* (Vic) or section 5S of the *Civil Liability Act 2002* (WA).
149. In respect of DCSS and Morrison, competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services and the administration of cosmetic surgery services provided by its servants or agents, required:

- a. DCSS to ensure that Morrison received cosmetic surgery services from a competent medical practitioner providing cosmetic surgery services;
 - b. the provision of adequate anaesthesia during Morrison's First Surgery;
 - c. the provision of adequate anaesthesia during Morrison's Third Surgery;
 - d. DCSS to ensure that Morrison underwent an independent psychological assessment prior to Morrison's First Surgery to determine whether Morrison was a suitable candidate for the surgery.
150. Had DCSS engaged in competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services and the administration of cosmetic surgery services provided by its servants or agents, Morrison would:
- a. not have suffered a recognised psychiatric illness in circumstances alleged above at paragraph 148 above;
 - b. not undergone any surgery in so far as the allegations of negligence relate to a failure to assess Morrison as a suitable candidate for treatment;
 - c. alternatively, have undergone surgery with a competent medical practitioner providing cosmetic surgery services;
 - d. alternatively, have not suffered Morrison's Injury, Loss and Damage as she would have been provided adequate anaesthesia during Morrison's First Surgery and Morrison's Third Surgery.
151. The particulars of:
- a. what competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services would have constituted in respect of each Group Member treated by DCSS; and
 - b. what each Group Member treated by DCSS would have done had competent practice of a medical practice and day hospital providing cosmetic surgery services in the provision of nursing or other non-medical practitioner health services been provided by DCSS,

will be provided after the trial of the Plaintiffs' individual claims.

152. Further DCSS is vicariously liable for the negligence of its servants or agents, being Lanzer and the Other Cosmetic Doctor Defendants as outlined at paragraphs 153 to 185 below.
153. Lanzer in providing the advice and undertaking the treatment of Lombardo, Russell and Group Members did so negligently and in breach of the duties that he owed at common law as described above at paragraph 128.

Particulars of negligence of Lanzer (Lombardo)

- i. Failing to examine Lombardo prior to recommending surgery to her.
- ii. Failing to consult with Lombardo prior to recommending surgery to her.
- iii. Failing to inform Lombardo as to other treatment options, including not having the surgery.
- iv. Providing advice to Lombardo without examining her in person or consulting with her directly.
- v. Operating and maintaining the DCSS Sales System

Particulars of negligence of Lanzer (Russell)

- vi. Advising Russell on 27 August 2021 that if she wanted an appointment she needed to attend at the Malvern Clinic straight away.
- vii. Advising Russell that Aronov would "take great care of [her]" and that she would be in "great hands" during Russell's Second Pre-Engagement Consultation.
- viii. Failing to consult with Russell prior to the day of Russell's Surgery.
- ix. Failing to examine Russell prior to the day of Russell's Surgery.
- x. Failing to inform Russell as to other treatment options, including not having the surgery.
- xi. Failing to provide anaesthesia, adequate anaesthesia and/or pain relief medication during Russell's Surgery.

- xii. Failing to arrange adequate pain relief post-surgery.
- xiii. Failing to provide and/or arrange adequate compression stocking to Russell following Russell's Surgery.
- xiv. Failing to monitor Russell following Russell's Surgery.
- xv. Failing to obtain informed consent for Russell's Surgery.
- xvi. Failing to warn Russell as to the risk of pain.
- xvii. Failing to warn Russell as to the risk of disfigurement, excessive bleeding and scarring.
- xviii. Failing to warn Russell of potential complications of Russell's Surgery.
- xix. Undertaking Russell's Surgery in such a way that increased the risk of complications including excessive bleeding and infection.
- xx. Failing to refer Russell to a competent or experienced plastic or cosmetic surgeon for the performance of the treatment.
- xxi. Failing to inform Russell that she was a poor candidate for Russell's Surgery.
- xxii. Failing to undertake an adequate assessment of whether Russell was a suitable candidate for Russell's Surgery.
- xxiii. Failing to refer Russell for an independent psychological assessment prior to Russell's Surgery to determine whether she was a suitable candidate for the treatment.
- xxiv. Undertaking the treatment in a manner that lacked competent surgical technique.
- xxv. Failing to provide Russell with adequate post-operative care, advice or treatment.
- xxvi. Failing to provide anaesthesia and/or pain relief during Russell Follow Up Appointment.
- xxvii. Failing to obtain informed consent prior to cutting the Plaintiff's leg during Russell Follow Up Appointment.

xxviii. Saying to Russell during surgery to “shoosh”.

xxix. Operating and maintaining the DCSS Sales System

Particulars of negligence in respect of Group Members

xxx. Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs’ individual claims.

154. The allegations of negligence by Lanzer in the preceding paragraph constituted conduct (both in the sense of an act and an omission to act):

- a. In respect of Lombardo and at the time the negligence outlined in the preceding paragraph was engaged in, that was not widely accepted in Australia as competent medical practice of a medical practitioner providing cosmetic surgery services in the circumstances for the purposes of section 59 of the *Wrongs Act 1958* (Vic) or section 509 of the *Civil Liability Act 2002* (NSW); or
- b. In respect of Russell and at the time the negligence outlined in the preceding paragraph was engaged in, that was not widely accepted in Australia as competent medical practice of a medical practitioner providing cosmetic surgery services in the circumstances for the purposes of section 59 of the *Wrongs Act* (Vic); or
- c. In respect of any Group Member to whom Lanzer provided treatment contrary to the standard of care is governed by section 59 of the *Wrongs Act 1958* (Vic), or section 509 of the *Civil Liability Act 2002* (NSW), or section 5PB of the *Civil Liability Act 2002* (WA), or 22 of the *Civil Liability Act 2003* (QLD) depending on what State legislation governs the conduct engaged in. Full particulars of the standard of care to be expected by any Group Member treated by Lanzer will be provided after the trial of the Plaintiffs’ individual claims.

155. In respect of the patient doctor relationship between Lanzer and Lombardo, competent medical practice of a medical practitioner providing cosmetic surgery services required:

- a. Lanzer to examine Lombardo in person prior to recommending surgery to her;
- b. Lanzer to consult with Lombardo personally prior to recommending surgery to her;
- c. Lanzer to inform Lombardo as to other treatment options including not having the surgery;

- d. Lanzer to not engage in the DCSS Sales System.
156. Had Lanzer engaged in competent medical practice of a medical practitioner providing cosmetic surgery services, Lombardo would:
- a. not have undergone the surgery at all insofar as the allegations of negligence relate to a failure to warn or a failure to assess Lombardo as a suitable candidate for the treatment;
 - b. alternatively, have undergone the surgery with a competent cosmetic or plastic surgeon;
 - c. alternatively, would have undergone the treatment but would not have suffered Lombardo's Injury, Loss and Damage.
157. In respect of Lanzer and Russell:
- a. During the surgery performed on Russell he said "shoosh" to her; and
 - b. with respect of the material facts as alleged at paragraphs 56-57A above;
- it was reasonably foreseeable that saying to a person of normal fortitude during surgery to "shoosh", or should the facts alleged at paragraphs 56-57A above have occurred, that these events could cause a person of normal fortitude to suffer a recognised psychiatric illness as those terms are defined in section 72 of the *Wrongs Act 1958* (Vic).
158. In respect of the patient doctor relationship between Lanzer and Russell, competent medical practice of a medical practitioner providing cosmetic surgery services required Lanzer:
- a. to consult with Russell prior to the day of Russell's Surgery;
 - b. to examine Russell prior to the day of Russell's Surgery;
 - c. to inform Russell as to other treatment options, including the option of not having surgery;
 - d. to provide anaesthesia, adequate anaesthesia and/or pain relief medication during Russell's Surgery;
 - e. to arrange adequate pain relief post-surgery;
 - f. to provide and/or arrange adequate compression stockings to Russell following Russell's surgery;

- g. to monitor Russell following Russell's Surgery;
 - h. to obtain informed consent from Russell for Russell's Surgery;
 - i. to warn Russell as to the risk of pain;
 - j. to warn Russell as to the risk of disfigurement, excessive bleeding and scarring;
 - k. to warn Russell of potential complications of Russell's Surgery;
 - l. to undertake Russell's surgery in way that did not increase the risk of complications including excessive bleeding and infection;
 - m. to refer Russell to a competent or experienced plastic or cosmetic surgeon for the performance of treatment;
 - n. to inform Russell that she was a poor candidate for Russell's Surgery;
 - o. to assess whether Russell was a suitable candidate for Russell's Surgery;
 - p. to refer Russell for an independent psychological assessment prior to Russell's surgery to determine whether she was a suitable candidate for the treatment;
 - q. to undertake treatment using competent surgical technique;
 - r. to provide Russell with adequate post-operative care, advice and treatment;
 - s. to provide anaesthesia and/or pain relief to Russell during Russell Follow Up Appointment;
 - t. to obtain informed consent prior to cutting into Russell's leg during the Russell Follow Up Appointment;
 - u. to listen and respond to Russell during surgery, rather than saying "shoosh";
 - v. to not engage in DCSS Sales System.
159. Had Lanzer engaged in competent medical practice of a medical practitioner providing cosmetic surgery services, Russell would:
- a. not have undergone the surgery in so far as the allegations of negligence relate to failure to warn or a failure to assess Russell as a suitable candidate for the treatment;

- b. alternatively, have undergone surgery with a competent cosmetic or plastic surgeon;
- c. alternatively, would have undergone treatment but would not have suffered Russell's Injury, Loss and Damage.

160. The particulars of:

- a. what competent medical practice of a medical practitioner providing cosmetic surgery services would have constituted in respect of each Group Member treated by Lanzer; and
- b. what each Group Member treated by Lanzer would have done had competent medical practice of a medical practitioner providing cosmetic surgery services been provided by Lanzer,

will be provided after the trial of the Plaintiffs' individual claims.

161. Aronov in providing the advice and undertaking the treatment of Lombardo, Russell and Group Members did so negligently and in breach of the duties that he owed to at common law as described above at paragraph 129.

Particulars of negligence of Aronov (Lombardo)

- i. Failing to obtain Lombardo's informed consent in respect of the treatment.
- ii. Failing to inform Lombardo as to other treatment options, including not having the surgery.
- iii. Failing to examine Lombardo prior to the day of surgery.
- iv. Failing to consult with Lombardo prior to the day of surgery.
- v. Failing to arrange adequate pain relief post-surgery.
- vi. Failing specifically to warn Lombardo as to the risk of irregular contouring of the abdomen, or irregular or dimpled skin.
- vii. Failing specifically to warn Lombardo as to the risk of uneven and saggy skin.
- viii. Failing specifically to warn Lombardo as to the risk of skin flaps resembling dog ears at each end of the abdominal scar.

- ix. Failing specifically to warn Lombardo as to the risk of permanent altered skin sensation in the abdominal area.
- x. Failing specifically to warn Lombardo as to the extent and aesthetic of the abdominal scarring.
- xi. Failing specifically to warn Lombardo as to the risk of haemorrhage, blood transfusion and shock including the increased risk in circumstances where anti-inflammatories are taken days before surgery.
- xii. Failing to read Lombardo's pre-operative questionnaire prior to performing surgery in which she disclosed taking Voltaren on 13 November 2021.
- xiii. Failing specifically to warn Lombardo as to the risk of permanent pain including permanent pain.
- xiv. Failing specifically to warn Lombardo as to the risks of undertaking excessive liposuction.
- xv. Failing specifically to warn Lombardo that complication rates are known to increase if one undergoes mega-liposuction.
- xvi. Failing specifically to warn Lombardo as to the risk of subcutaneous fibrosis.
- xvii. Failing specifically to warn Lombardo as to the risks associated with being discharged same day and not remaining in a hospital facility for multiple days post-surgery.
- xviii. Undertaking the surgery in such a way that caused Lombardo irregular contouring of the abdomen, or irregular or hollowed skin in the abdominal and flank areas.
- xix. Undertaking the surgery in such a way that caused Lombardo skin flaps resembling dog ears at each end of the abdominal scar.
- xx. Undertaking the surgery in such a way that caused Lombardo to have excessive abdominal scarring.
- xxi. Undertaking the surgery in such a way that caused Lombardo permanent altered skin sensation in the abdominal area.

- xxii. Undertaking the surgery in such a way that caused Lombardo uneven and saggy skin in the abdominal and inner thigh areas.
- xxiii. Undertaking the surgery in such a way as to cause haemorrhage requiring hospitalisation.
- xxiv. Undertaking the surgery on the day after Lombardo had disclosed in the pre-operative questionnaire that she had taken Diclofenac 3 days prior.
- xxv. Undertaking the surgery utilising a method with an increased the risk of haemorrhage being a tumescent abdominoplasty.
- xxvi. Undertaking the surgery in such a way as to cause Lombardo permanent pain including neuropathic pain.
- xxvii. Undertaking the liposuction in a way which removed excessive volumes of fat being 6 litres.
- xxviii. Undertaking large volume liposuction and a full abdominoplasty in one procedure.
- xxix. Undertaking large volume liposuction and a full abdominoplasty in a day hospital.
- xxx. Undertaking the surgery in an uneven and unanatomical surgical method which caused an uneven plane of flap dissection.
- xxxi. Undertaking the surgery in a way that caused subcutaneous fibrosis.
- xxxii. Discharging Lombardo that same day after a large volume liposuction and a full abdominoplasty in a day hospital.
- xxxiii. Failing to admit Lombardo post-surgery to hospital for multiple days for monitoring and treatment.
- xxxiv. Failing to recognise that Lombardo was experiencing haemorrhaging or a hypertensive reaction post-surgery.
- xxxv. Failing to be contactable overnight after the surgery.
- xxxvi. Failing to provide Lombardo with adequate post-operative care, advice or treatment.

- xxxvii. Failing to refer Lombardo to a competent or experienced plastic or cosmetic surgeon for the performance of the treatment.
- xxxviii. Failing to inform Lombardo that she was a poor candidate for the treatment.
- xxxix. Failing to undertake an adequate assessment of whether Lombardo was a suitable candidate for the treatment.
- xl. Failing to refer Lombardo for an independent psychological assessment prior to the treatment to determine whether Lombardo was a suitable candidate for the treatment.
- xli. Undertaking the treatment in a manner that lacked competent surgical technique.
- xlii. Displaying video footage of Lombardo's surgery on social media.
- xliii. Failing to deidentify Lombardo in the video footage broadcast on social media.

Particulars of negligence in respect of Aronov (Russell)

- xliv. Failing to warn of risks associated with liposuction and a mini thigh lift during Russell's Second Pre-Engagement Consultation.
- xlv. Failing to inform Russell of other treatment options, including not having the surgery.
- xlvi. Failing to provide Russell with a realistic timeframe for recovery from surgery.
- xlvii. Failing to warn Russell of potential complications associated with liposuction and a mini thigh lift.
- xlviii. Failing to warn Russell as to the risk of disfigurement, excessive bleeding and scarring.
- xlix. Failing to undertake an adequate assessment of whether Russell was a suitable candidate for Russell's surgery.
- l. Failing to refer Russell for an independent psychological assessment prior to Russell's surgery to determine whether she was a suitable candidate for the proposed treatment.

Particulars of negligence in respect of Group Members

- li. Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs' individual claims.

- 162. The allegations of negligence by Aronov in the preceding paragraph constituted conduct (both in the sense of an act and an omission to act):
 - a. In respect of Lombardo and at the time the negligence outlined in the preceding paragraph was engaged in, that was not widely accepted in Australia as competent medical practice of a medical practitioner providing cosmetic surgery services in the circumstances for the purposes of section 59 of the *Wrongs Act 1958* (Vic) or section 500 of the *Civil Liability Act 2002* (NSW); or
 - b. In respect of Russell and at the time the negligence outlined in the preceding paragraph was engaged in, that was not widely accepted in Australia as competent medical practice of a medical practitioner providing cosmetic surgery services in the circumstances for the purposes of section 59 of the *Wrongs Act 1958* (Vic); or
 - c. In respect of any Group Member to whom Aronov provided treatment contrary to the standard of care is governed by section 59 of the *Wrongs Act 1958* (Vic), or section 500 of the *Civil Liability Act 2002* (NSW), or section 5PB of the *Civil Liability Act 2002* (WA), or 22 of the *Civil Liability Act 2003* (QLD) depending on what State legislation governs the conduct engaged in. Full particulars of the standard of care to be expected by any Group Member treated by Aronov will be provided after the trial of the Plaintiffs' individual claims.

- 163. In respect of Aronov and Lombardo and in respect of the material facts alleged at paragraph 139(a) above, it was reasonably foreseeable that the posting of video footage of Lombardo's Surgery in circumstances where Lombardo was not de-identified that could cause a person of normal fortitude to suffer a recognised psychiatric illness as those terms are defined in section 72 of the *Wrongs Act 1958* (Vic) or section 32 of the *Civil Liability Act 2002* (NSW).

- 164. In respect of the patient doctor relationship between Aronov and Lombardo, competent medical practice of a medical practitioner providing cosmetic surgery services required:
 - a. Prior to the surgery, Aronov to specifically warn Lombardo as to:
 - i. the risk of irregular contouring of the abdomen, or irregular or dimpled skin;

- ii. the risk of uneven and saggy skin;
 - iii. the risk of skin flaps resembling dog ears at each end of the abdominal scar;
 - iv. the risk of permanent altered skin sensation in the abdominal area;
 - v. the extent and aesthetic of the abdominal scarring;
 - vi. the risk of haemorrhage, blood transfusion and shock including the increased risk in circumstances where anti-inflammatories are taken days before surgery;
 - vii. the risk of permanent pain including permanent pain;
 - viii. the risks of undertaking excessive liposuction;
 - ix. the complication rates are known to increase if one undergoes mega-liposuction;
 - x. the risk of subcutaneous fibrosis;
 - xi. the increased risks associated with being discharged same day and not remaining in a hospital facility for multiple days post-surgery.
- b. Aronov to read Lombardo's pre-operative questionnaire in which she disclosed taking Voltaren on 13 November 2021 prior to performing surgery.
 - c. Aronov to defer the surgery after becoming aware of Lombardo's pre-operative questionnaire prior to performing surgery in which she disclosed taking Voltaren on 13 November 2021.
 - d. Aronov to inform Lombardo as to other treatment options including not having the surgery.
 - e. Aronov to examine Lombardo prior to the day of surgery.
 - f. Aronov to examine Lombardo prior to her paying for the surgery.
 - g. Aronov to arrange adequate pain relief post-surgery.
 - h. Aronov to not undertake the surgery in such a way that caused Lombardo irregular contouring of the abdomen, or irregular or hollowed skin in the abdominal and flank areas.

- i. Aronov to not undertake the surgery in such a way that caused Lombardo skin flaps resembling dog ears at each end of the abdominal scar.
- j. Aronov to not undertake the surgery in such a way that caused Lombardo to have excessive abdominal scarring.
- k. Aronov to not undertake the surgery in such a way that caused Lombardo permanent altered skin sensation in the abdominal area.
- l. Aronov to not undertake the surgery in such a way that caused Lombardo uneven and saggy skin in the abdominal and inner thigh areas.
- m. Aronov to not undertake the surgery in such a way as to cause haemorrhage requiring hospitalisation.
- n. Aronov to not undertake the surgery on the day after Lombardo had disclosed in the pre-operative questionnaire that she had taken Diclofenac 3 days prior.
- o. Aronov to not undertake the surgery utilising a method with an increased the risk of haemorrhage being a tumescent abdominoplasty.
- p. Aronov to not undertake the surgery in such a way as to cause Lombardo permanent pain including neuropathic pain.
- q. Aronov to not undertake the liposuction in a way which removed excessive volumes of fat being 6 litres.
- r. Aronov to not undertake large volume liposuction and a full abdominoplasty in one procedure.
- s. Aronov to not undertake large volume liposuction and a full abdominoplasty in a day hospital.
- t. Aronov to not undertake the surgery by employing an uneven and unanatomical surgical method which caused an uneven plane of flap dissection.
- u. Aronov to not undertake the surgery in a way that caused subcutaneous fibrosis.
- v. Aronov to not discharge Lombardo that same day after a large volume liposuction and a full abdominoplasty in a day hospital.

- w. Aronov to continue to admit Lombardo post-surgery in a hospital for multiple days for monitoring and treatment.
 - x. Aronov to recognise that Lombardo was experiencing haemorrhaging or a hypertensive reaction post-surgery.
 - y. Aronov to be contactable overnight after the surgery.
 - z. Aronov to provide Lombardo with adequate post-operative care, advice or treatment.
 - aa. Aronov to refer Lombardo to a competent or experienced plastic or cosmetic surgeon for the performance of the treatment.
 - bb. Aronov to inform Lombardo that she was a poor candidate for the treatment.
 - cc. Aronov to undertake an adequate assessment of whether Lombardo was a suitable candidate for the treatment.
 - dd. Aronov to refer Lombardo for an independent psychological assessment prior to the treatment to determine whether Lombardo was a suitable candidate for the treatment.
 - ee. Aronov to not display video footage of Lombardo's surgery on social media.
 - ff. Aronov to fail to deidentify Lombardo in the video footage broadcast on social media.
165. Had Aronov engaged in competent medical practice of a medical practitioner providing cosmetic surgery services, Lombardo would:
- a. would not have sustained a recognised psychiatric injury because of the conduct alleged in paragraph 139(a) above;
 - b. not have undergone the surgery at all insofar as the allegations of negligence relate to a failure to warn or a failure to assess Lombardo as a suitable candidate for the treatment;
 - c. alternatively, have undergone the surgery with a competent cosmetic or plastic surgeon;
 - d. alternatively, would have undergone the treatment but would not have suffered Lombardo's Injury, Loss and Damage.
166. In respect of the patient doctor relationship between Aronov and Russell, competent medical practice of a medical practitioner providing cosmetic surgery services required Aronov:

- a. to warn of risks associated with liposuction and a mini thigh lift during Russell's Second Pre-Engagement Consultation;
- b. to inform Russell of other treatment options, including not having the surgery;
- c. to provide Russell with a realistic timeframe for recovery from surgery;
- d. to warn Russell of potential complications associated with liposuction and a mini thigh lift;
- e. to warn Russell as to the risk of disfigurement, excessive bleeding and scarring;
- f. to undertake an adequate assessment of whether Russell was a suitable candidate for Russell's surgery;
- g. to refer Russell for an independent psychological assessment prior to Russell's surgery to determine whether she was a suitable candidate for the proposed treatment.
- h. not to participate in the DCSS Sales System.

167. Had Aronov engaged in competent medical practice of a medical practitioner providing cosmetic surgery services, Russell would:

- a. not have undergone the surgery at all insofar as the allegations of negligence relate to a failure to warn or a failure to assess Russell as a suitable candidate for the treatment;
- b. alternatively, have undergone the surgery with a competent cosmetic or plastic surgeon;
- c. alternatively, would have undergone the treatment but would not have suffered Russell's Injury, Loss and Damage.

168. The particulars of:

- a. what competent medical practice of a medical practitioner providing cosmetic surgery services would have constituted in respect of each Group Member treated by Aronov; and
- b. what each Group Member treated by Aronov would have done had competent medical practice of a medical practitioner providing cosmetic surgery services been provided by Aronov,

will be provided after the trial of the Plaintiffs' individual claims.

169. Darbyshire in providing the advice and undertaking the treatment of Russell and Group Members did so negligently and in breach of the duties that he owed to at common law as described above at paragraph 130.

Particulars of negligence of Darbyshire (Russell)

- i. Failing to provide adequate anaesthesia and/or pain relief medication during Russell's Surgery.
- ii. Failing to arrange adequate pain relief post-surgery.
- iii. Failing to provide and/or arrange adequate compression stockings to Russell following Russell's Surgery.
- iv. Failing to examine Russell prior to the day of Russell's Surgery.
- v. Failing to consult with Russell prior to the day of Russell's Surgery.
- vi. Failing to inform Russell of other treatment options, including not having the surgery.
- vii. Failing to monitor Russell following Russell's Surgery.
- viii. Failing to obtain informed consent for Russell's Surgery.
- ix. Failing to warn Russell as to the risk of pain.
- x. Failing to warn Russell as to the risk of disfigurement, excessive bleeding and scarring.
- xi. Failing to warn Russell of potential complications of Russell's Surgery.
- xii. Undertaking Russell's Surgery in such a way that increased the risk of complications including excessive bleeding and infection.
- xiii. Failing to refer Russell to a competent or experienced plastic or cosmetic surgeon for the performance of the treatment.
- xiv. Failing to inform Russell that she was a poor candidate for Russell's Surgery.
- xv. Failing to undertake an adequate assessment of whether Russell was a suitable candidate for Russell's Surgery.

- xvi. Failing to refer Russell for an independent psychological assessment prior to Russell's Surgery to determine whether she was a suitable candidate for the treatment.
- xvii. Undertaking the treatment in a manner that lacked competent surgical technique.
- xviii. Failing to provide Russell with adequate post-operative care, advice or treatment including monitoring post-discharge.
- xix. Failing to provide anaesthesia and/or pain relief during Russell Follow Up Appointment.

Particulars of negligence in respect of Group Members

- xx. Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs' individual claims.
170. The allegations of negligence by Darbyshire in the preceding paragraph constituted conduct (both in the sense of an act and an omission to act):
- a. In respect of Russell and at the time the negligence outlined in the preceding paragraph was engaged in, was not widely accepted in Australia as competent medical practice of a medical practitioner providing cosmetic surgery services in the circumstances for the purposes of section 59 of the *Wrongs Act 1958* (Vic); or
 - b. In respect of any Group Member to whom Darbyshire provided treatment contrary to the standard of care is governed by section 59 of the *Wrongs Act 1958* (Vic), or section 50A of the *Civil Liability Act 2002* (NSW), or section 5PB of the *Civil Liability Act 2002* (WA), or 22 of the *Civil Liability Act 2003* (QLD) depending on what State legislation governs the conduct engaged in. Full particulars of the standard of care to be expected by any Group Member treated by Darbyshire will be provided after the trial of the Plaintiffs' individual claims.
171. In respect of the patient doctor relationship between Darbyshire and Russell, competent medical practice of a medical practitioner providing cosmetic surgery services required Darbyshire:
- a. to provide adequate anaesthesia and/or pain relief medication during Russell's Surgery;
 - b. to arrange adequate pain relief post-surgery;

- c. to provide and/or arrange adequate compression stockings to Russell following Russell's Surgery;
 - d. to examine Russell prior to the day of Russell's Surgery;
 - e. to consult with Russell prior to the day of Russell's Surgery;
 - f. to inform Russell of other treatment options, including not having the surgery;
 - g. to monitor Russell following Russell's Surgery;
 - h. to obtain informed consent for Russell's Surgery;
 - i. to warn Russell as to the risk of pain;
 - j. to warn Russell as to the risk of disfigurement, excessive bleeding and scarring;
 - k. to warn Russell of potential complications of Russell's Surgery;
 - l. to undertake Russell's Surgery in such a way that did not increase the risk of complications including excessive bleeding and infection;
 - m. to refer Russell to a competent or experienced plastic or cosmetic surgeon for the performance of the treatment;
 - n. to inform Russell that she was a poor candidate for Russell's Surgery;
 - o. to undertake an adequate assessment of whether Russell was a suitable candidate for Russell's Surgery;
 - p. to refer Russell for an independent psychological assessment prior to Russell's Surgery to determine whether she was a suitable candidate for the treatment;
 - q. to provide Russell with adequate post-operative care, advice or treatment including monitoring post-discharge;
 - r. to provide anaesthesia and/or pain relief during Russell Follow Up Appointment;
172. Had Darbyshire engaged in competent medical practice of a medical practitioner providing cosmetic surgery services, Russell would:
- a. not have undergone the surgery at all insofar as the allegations of negligence relate to a failure to warn or a failure to assess Russell as a suitable candidate for the treatment;

- b. alternatively, have undergone the surgery with a competent cosmetic or plastic surgeon;
 - c. alternatively, would have undergone the treatment but would not have suffered Russell's Injury, Loss and Damage.
173. Wells in providing the advice and undertaking the treatment of Bonnici and Group Members did so negligently and in breach of the duties that he owed to at common law as described above at paragraph 131.

Particulars of negligence of Wells (Bonnici)

- i. Failing to obtain Bonnici's informed consent in respect of the treatment.
- ii. Failing to inform Bonnici of other treatment options, including not having the surgery.
- iii. Failing to arrange adequate pain relief post-surgery.
- iv. Failing specifically to warn Bonnici as to risk of uneven, asymmetrical, uncontoured, dimpled and hollowed results.
- v. Performing the surgery in such a way as to cause uneven, asymmetrical, uncontoured, dimpled and hollowed results.
- vi. Failing to provide Bonnici with adequate post-operative care, advice or treatment.
- vii. Failing to refer Bonnici to a competent or experienced plastic or cosmetic surgeon for the performance of the treatment.
- viii. Failing to inform Bonnici that she was a poor candidate for the treatment.
- ix. Failing to undertake an adequate assessment of whether Bonnici was a suitable candidate for the treatment.
- x. Failing to refer Bonnici for an independent psychological assessment prior to the treatment to determine whether she was a suitable candidate for the treatment.
- xi. Undertaking the treatment in a manner that lacked competent surgical technique.

- xii. Failing specifically to warn Bonnici as to the risk of pain including nerve damage caused by the surgery.
- xiii. Undertaking the surgery in such a way as to cause Bonnici ongoing pain including nerve damage.
- xiv. Failing to have or utilise adequate anaesthetic and pain relief for the surgery.
- xv. Continuing the surgery in circumstances where Bonnici had inadequate anaesthetic and pain relief.
- xvi. Saying to Bonnici that the alternative to continuing surgery without adequate pain relief was to have a mangled lopsided body and be all bumpy.
- xvii. Performing liposuction treatment on Bonnici's back and flanks in circumstances where there was inadequate anaesthetic and pain relief to perform this additional procedure.
- xviii. Leaving Bonnici unattended mid-surgery for approximately 30 minutes on the surgery table in a cold room while she was naked and with no blankets and with local anaesthetic leaking out of her incisions.
- xix. Discharging Bonnici that same day in lieu of an overnight stay.
- xx. Communicating, supervising and providing advice to the Sixth Defendant by way of FaceTime while operating on Bonnici in respect of a surgery that the Sixth Defendant was performing concurrently.
- xxi. Allowing or instructing Bonnici to drive home.
- xxii. Discharging Bonnici the day of surgery.
- xxiii. Failing to provide or arrange adequate post-surgical massage.
- xxiv. Undertaking additional liposuction to Bonnici's back without her consent.

Particulars of negligence in respect of Group Members

- xxv. Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs' individual claims.

174. The allegations of negligence by Wells in the preceding paragraph constituted conduct (both in the sense of an act and an omission to act):
- a. In respect of Bonnici and at the time the negligence outlined in the preceding paragraph was engaged in, that was not widely accepted in Australia as competent medical practice of a medical practitioner providing cosmetic surgery services in the circumstances for the purposes of section 59 of the *Wrongs Act 1958* (Vic) or section 22 of the *Civil Liability Act 2003* (Qld); or
 - b. In respect of any Group Member to whom Wells provided treatment contrary to the standard of care is governed by section 59 of the *Wrongs Act 1958* (Vic), or section 500 of the *Civil Liability Act 2002* (NSW), or section 5PB of the *Civil Liability Act 2002* (WA), or 22 of the *Civil Liability Act 2003* (QLD) depending on what State legislation governs the conduct engaged in. Full particulars of the standard of care to be expected by any Group Member treated by Wells will be provided after the trial of the Plaintiffs' individual claims.
175. In respect of Wells and Bonnici, and with respect of the material facts as alleged at paragraphs 35-37A above, it was reasonably foreseeable that by Wells engaging in the conduct alleged at paragraphs 35-37A above (or allowing said conduct to occur) could cause a person of normal fortitude to suffer a recognised psychiatric illness as those terms are defined in section 72 of the *Wrongs Act 1958* (Vic).
176. In respect of the patient doctor relationship between Wells and Bonnici, competent medical practice of a medical practitioner providing cosmetic surgery services required:
- a. Wells to specifically warn Bonnici as to:
 - i. the risk of uneven, asymmetrical, uncountoured, dimpled and hollowed results;
 - ii. the risk of pain including nerve damage caused by the surgery.
 - b. Wells to inform Bonnici as to other treatment options including not having the surgery.
 - c. Wells to arrange adequate pain relief post-surgery.
 - d. Wells to refer Bonnici to a competent or experienced plastic or cosmetic surgeon for the performance of the treatment.
 - e. Wells not to perform the surgery in such a way as to cause uneven, asymmetrical, uncountoured, dimpled and hollowed results.

- f. Wells not to perform the surgery in such a way so as to cause Bonnici ongoing pain including nerve damage.
- g. Wells to have and utilise adequate anaesthetic and pain relief for the surgery or alternatively, Wells to cease surgery in circumstances where Bonnici had inadequate anaesthetic and pain relief.
- h. Wells not to say to Bonnici that the alternative to continuing surgery without adequate pain relief was to have a mangled lopsided body and be all bumpy.
- i. Wells to advise Bonnici that she was a poor candidate for the treatment and not to recommend or perform the surgery.
- j. Wells to undertake an adequate assessment as to whether Bonnici was a suitable candidate for the treatment.
- k. Wells to ensure that Bonnici underwent an independent psychological assessment prior to the treatment to determine whether the plaintiff was a suitable candidate for the treatment.
- l. Wells to not leave Bonnici unattended during the surgery.
- m. Wells to not discharge Bonnici on the day of surgery but to continue to admit her as a patient for an overnight stay.
- n. Wells not to communicate, supervise and provide advice to the Sixth Defendant by way of FaceTime while operating on Bonnici.
- o. Wells to not allow Bonnici to drive home on the day of surgery.
- p. Wells to arrange adequate post-surgical massage.
- q. Wells not to undertake liposuction to Bonnici's back in circumstances where she had not consented to this treatment.

Particulars

Particulars are provided at Schedule B.

177. Had Wells engaged in competent medical practice of a medical practitioner providing cosmetic surgery services, Bonnici would:

- a. not have suffered a recognised psychiatric illness because of the facts alleged at paragraph 175 above;
- b. not have undergone the surgery at all insofar as the allegations of negligence relate to a failure to warn or a failure to assess Bonnici as a suitable candidate for the treatment;
- c. alternatively, have undergone the surgery with a competent cosmetic or plastic surgeon;
- d. or would have undergone the treatment but would not have suffered Bonnici's Injury, Loss and Damage.

178. The particulars of:

- a. what competent medical practice of a medical practitioner providing cosmetic surgery services would have constituted in respect of each Group Member treated by Wells; and
- b. what each Group Member treated by Wells would have done had competent medical practice of a medical practitioner providing cosmetic surgery services been provided by Wells,

will be provided after the trial of the Plaintiffs' individual claims.

179. Fallahi in providing the advice and undertaking the treatment of Bonnici and Group Members did so negligently and in breach of the duties that he owed at common law as described above at paragraph 132.

Particulars of negligence of Fallahi (Bonnici)

- i. Failing to examine Bonnici prior to the day of surgery.
- ii. Failing to consult with Bonnici prior to the day of surgery.
- iii. Failing to inform Bonnici of other treatment options, including not having the surgery.
- iv. Failing to obtain Bonnici's informed consent in respect of the treatment.
- v. Failing to arrange adequate pain relief post-surgery.
- vi. Failing specifically to warn Bonnici as to risk of uneven, asymmetrical, uncontoured, dimpled and hollowed results.

- vii. Failing to provide Bonnici with adequate post-operative care, advice or treatment.
- viii. Failing to refer Bonnici to a competent or experienced plastic or cosmetic surgeon for the performance of the treatment.
- ix. Failing to inform Bonnici that she was a poor candidate for the treatment.
- x. Failing to undertake an adequate assessment of whether Bonnici was a suitable candidate for the treatment.
- xi. Failing to refer Bonnici for an independent psychological assessment prior to the treatment to determine whether she was a suitable candidate for the treatment.
- xii. Undertaking the treatment in a manner that lacked competent surgical technique.
- xiii. Failing specifically to warn Bonnici as to the risk of pain including nerve damage caused by the surgery.
- xiv. Failing to have or utilise adequate anaesthetic and pain relief for the surgery.
- xv. Discharging Bonnici that same day in lieu of an overnight stay.
- xvi. Allowing or instructing Bonnici to drive home.
- xvii. Discharging Bonnici the day of surgery.
- xviii. Failing to provide or arrange adequate post-surgical massage.

Particulars of negligence in respect of Group Members

- xix. Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs' individual claims.

180. The allegations of negligence by Fallahi in the preceding paragraph constituted conduct (both in the sense of an act and an omission to act):

- a. In respect of Bonnici and at the time the negligence outlined in the preceding paragraph was engaged in, that was not widely accepted in Australia as competent medical practice of a medical practitioner providing cosmetic surgery services in the

circumstances for the purposes of section 59 of the *Wrongs Act 1958* (Vic) or section 22 of the *Civil Liability Act 2003* (Qld); or

- b. In respect of any Group Member to whom Fallahi provided treatment contrary to the standard of care is governed by section 59 of the *Wrongs Act 1958* (Vic), or section 500 of the *Civil Liability Act 2002* (NSW), or section 5PB of the *Civil Liability Act 2002* (WA), or 22 of the *Civil Liability Act 2003* (QLD) depending on what State legislation governs the conduct engaged in. Full particulars of the standard of care to be expected by any Group Member treated by Fallahi will be provided after the trial of the Plaintiffs' individual claims.

181. In respect of the patient doctor relationship between Fallahi and Bonnici, competent medical practice of a medical practitioner providing cosmetic surgery services required:

- a. Fallahi to specifically warn Bonnici as to:
 - i. the risk of uneven, asymmetrical, uncountoured, dimpled and hollowed results;
 - ii. the risk of pain including nerve damage caused by the surgery.
- b. Fallahi to inform Bonnici as to other treatment options including not having the surgery.
- c. Fallahi to arrange adequate pain relief post-surgery.
- d. Fallahi to refer Bonnici to a competent or experienced plastic or cosmetic surgeon for the performance of the treatment.
- e. Fallahi to advise Bonnici that she was a poor candidate for the treatment and not to recommend the surgery.
- f. Fallahi to undertake an adequate assessment as to whether Bonnici was a suitable candidate for the treatment.
- g. Fallahi to ensure that Bonnici underwent an independent psychological assessment prior to the treatment to determine whether the plaintiff was a suitable candidate for the treatment.
- h. Fallahi to not discharge Bonnici on the day of surgery but to continue to admit her as a patient for an overnight stay.

- i. Fallahi to not allow Bonnici to drive home on the day of surgery.
- j. Fallahi to arrange adequate post-surgical massage.
- k. Fallahi to examine Bonnici prior to the day of surgery and prior to payment for the surgery.
- l. Fallahi to consult with Bonnici prior to the day of surgery and prior to payment for the surgery.

Particulars

Particulars are provided at Schedule B.

182. Had Fallahi engaged in competent medical practice of a medical practitioner providing cosmetic surgery services, Bonnici would:
- a. not have undergone the surgery at all insofar as the allegations of negligence relate to a failure to warn or a failure to assess Bonnici as a suitable candidate for the treatment;
 - b. alternatively, have undergone the surgery with a competent cosmetic or plastic surgeon;
 - c. or would have undergone the treatment but would not have suffered Bonnici's Injury, Loss and Damage.

Particulars

Particulars are provided at Schedule B.

183. The particulars of:
- a. what competent medical practice of a medical practitioner providing cosmetic surgery services would have constituted in respect of each Group Member treated by Fallahi; and
 - b. what each Group Member treated by Fallahi would have done had competent medical practice of a medical practitioner providing cosmetic surgery services been provided by Fallahi,

will be provided after the trial of the Plaintiffs' individual claims.

184. Wong in providing the advice and undertaking the treatment of Morrison and Group Members did so negligently and in breach of the duties that he owed at common law as described above at paragraph 133.

Particulars of negligence of Wong (Morrison)

- i. Failing to provide adequate anaesthesia during Morrison's First Surgery.
- ii. Failing to provide adequate anaesthesia during Morrison's Third Surgery.
- iii. Failing to inform Morrison of other treatment options, including not having the surgery.
- iv. Failing to refer Morrison to a competent or experienced plastic or cosmetic surgeon for the performance of the treatment.
- v. Failing to inform Morrison that she was a poor candidate for cosmetic surgery.
- vi. Failing to undertake an adequate assessment of whether Morrison was a suitable candidate for surgery.
- vii. Failing to refer Morrison for an independent psychological assessment prior to surgery to determine whether she was a suitable candidate for the treatment.
- viii. Undertaking the treatment in a manner that lacked competent surgical technique.
- ix. Advising Morrison to reduce her anti-depressant medication while holding no expertise in psychiatry and/or without discussing the issue with a psychiatrist and/or without making adequate assessment of the impact it would have on Morrison's psychological condition.

Particulars of negligence in respect of Group Members

- x. Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs' individual claims.

Particulars are provided at Schedule B.

185. The allegations of negligence by Wong in the preceding paragraph constituted conduct (both in the sense of an act and an omission to act):

- a. In respect of Morrison and at the time the negligence outlined in the preceding paragraph was engaged in, that was not widely accepted in Australia as competent medical practice of a medical practitioner providing cosmetic surgery services in the circumstances for the purposes of section 59 of the *Wrongs Act 1958* (Vic) or section 5PB of the *Civil Liability Act 2002* (WA); or
- b. In respect of any Group Member to whom Wong provided treatment contrary to the standard of care is governed by section 59 of the *Wrongs Act 1958* (Vic), or section 5Q0 of the *Civil Liability Act 2002* (NSW), or section 5PB of the *Civil Liability Act 2002* (WA), or 22 of the *Civil Liability Act 2003* (QLD) depending on what State legislation governs the conduct engaged in. Full particulars of the standard of care to be expected by any Group Member treated by Wong will be provided after the trial of the Plaintiffs' individual claims.

186A. Further, in respect of Wong and Morrison:

- a. By reason of the material facts alleged at paragraphs 70-72 and 82 above, Wong failed to provide or ensure was provided adequate anaesthesia during Morrison's First and Third Surgeries; and
- b. it was reasonably foreseeable that if Wong failed to do so that could cause a person of normal fortitude to suffer a recognised psychiatric illness as those terms are defined in section 72 of the *Wrongs Act 1958* (Vic) or section 5S of the *Civil Liability Act 2002* (WA).

186. In respect of the patient doctor relationship between Wong and Morrison, competent medical practice of a medical practitioner providing cosmetic surgery services required Wong:

- a. to provide adequate anaesthesia during Morrison's First Surgery;
- b. to provide adequate anaesthesia during Morrison's Third Surgery;
- c. to inform Morrison of other treatment options, including not having the surgery;
- d. to inform Morrison that she was a poor candidate for cosmetic surgery;
- e. to undertake an adequate assessment of whether Morrison was a suitable candidate for surgery;

- f. to refer Morrison for an independent psychological assessment prior to surgery to determine whether she was a suitable candidate for the treatment;
 - g. to undertake the treatment in a manner that used competent surgical technique;
 - h. advise Morrison to maintain her anti-depressant medication at the same level and/or to discuss her mental health with a psychiatrist and/or to make an adequate assessment of the impact reducing anti-depressant medication would have on Morrison's psychological condition;
187. Had Wong engaged in competent medical practice of a medical practitioner providing cosmetic surgery services, Morrison would:
- a. not have undergone any surgery at all insofar as the allegations of negligence relate to a failure to warn or a failure to assess Morrison as a suitable candidate for the treatment;
 - b. alternatively, have undergone all surgery with a competent cosmetic or plastic surgeon;
 - c. alternatively, would have undergone the treatment but would not have suffered Morrison's Injury, Loss and Damage.
188. Wainstein in conducting a psychological assessment of Bonnici and Group Members did so negligently and in breach of the duties that she owed at common law as described above at paragraph 134.

Particulars of negligence of Wainstein (Bonnici)

- i. Bonnici refers to and repeats the particulars of "Wainstein's Assessment" outlined above.
- ii. Wainstein failed to conduct an adequate psychological assessment in that she failed to identify Bonnici's psychological history, reasons for undertaking the surgery, expectations after surgery or her resources to cope with the recovery.
- iii. Wainstein failed to disclose her relationship with the Third Defendant including pursuant to section "C.3 Conflict of interest" in the Australian Psychological Society's Code of Ethics.
- iv. Further particulars in respect of the Plaintiffs' claims may be provided after discovery.

Particulars of negligence in respect of Group Members

Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs' individual claims.

Particulars are provided at Schedule B.

189. In respect of the patient psychologist relationship between Wainstein and Bonnici, competent practice of a psychologist providing a psychological assessment to evaluate a person's suitability to undergo cosmetic surgery required Wainstein to;
- a. Disclose her relationship with Aronov;
 - b. Enquire into and assess Bonnici's psychological history, reasons for undertaking the surgery, expectations after surgery or her resources to cope with the recovery;
 - c. Subsequently to having undertaken an adequate psychological assessment as identified in the sub-paragraph immediately above, recommend that Bonnici not undergo surgery on the basis that Bonnici:
 - i. had unrealistic expectations as to what liposuction could achieve as to her body shape and general health;
 - ii. was relying on liposuction as a weight loss tool;
 - iii. expected and understood that liposuction to provide the same health benefits as a healthy diet and weight loss would;
 - iv. did not adequately understand the recovery or have the resources to cope with this.
 - d. Alternatively, having disclosed her relationship with Aronov to refer Bonnici for a psychological assessment with some other psychologist prior to surgery to determine whether Bonnici was a suitable candidate for the treatment.

Particulars

Particulars are provided at Schedule B.

190. Had Wainstein engaged in competent practice of a psychologist providing a psychological assessment to evaluate a person's suitability to undergo cosmetic surgery, Bonnici would:

- a. not have undergone any surgery at all as she would not have been assessed as psychologically suitable to undergo cosmetic surgery;
- b. alternatively, would have undergone the treatment but would not have suffered Bonnici's Injury, Loss and Damage.

Particulars

Particulars are provided at Schedule B.

191. As a consequence of the negligence of DCSS (including its servants or agents), Lanzer and/or Aronov Lombardo has suffered injury, loss and damage (**Lombardo's Injury, Loss and Damage**).

Particulars of injury

Significant post-surgical pain, swelling and bleeding including post-surgical haemorrhaging causing loss of consciousness and renal failure, and requiring treatment in ICU and multiple blood transfusions;

Scar tissue in the thigh, abdominal and flank regions;

Disfigurement and skin irregularities including loose skin, lumpy skin, contouring and hollowing in the thigh, abdominal and flank regions;

Pain, numbness and altered sensation in the abdominal and flank regions;

Excessive and irregular scarring including dog ears on abdominal scar;
Injury and pain in the right hip due to fainting in the hotel room post-surgery;
Extensive internal damage including lymphatic damage caused by excessive liposuction;

Psychological injury due to the trauma of and associated with the treatment and consequences thereof including due to the facts as alleged in paragraph 164 above.

Particulars of damages pursuant to order 13.10(4)

Lombardo was born on 17 January 1979.

Particulars of special damages

Lombardo has incurred hospital, medical, clothing and appliance costs as a consequence of the surgery. Lombardo will incur future costs as a consequence of the surgery including the need for remedial treatment. Lombardo also incurred the cost of the Surgery Contract and seeks a refund. Full particulars of Lombardo's claim in this regard will be provided prior to trial.

Particulars of pecuniary loss

As at 15 November 2021, Lombardo was employed by the Department of Communities and Justice as a correctional officer in a casual capacity. In the 12 months prior to 15 November 2021, Lombardo received approximately \$65,000 gross by way of wages plus superannuation at the relevant statutory guarantee rate. As a casual employee, Lombardo during this period worked on average 4-5 days per week.

After the surgery, Lombardo was totally incapacitated for work for about 10 weeks until March 2022. She suffered loss of earnings in the sum of \$1,001 net per week plus superannuation.

Thereafter Lombardo returned to work but remained partially incapacitated for work until May 2022, working 2 days per week. Lombardo claims a loss of wages in the sum of approximately \$556 per week net plus superannuation at the relevant statutory guarantee rate representing a loss of wages of 2.5 days per week.

Since May 2022, Lombardo has taken intermittent days off due to her injuries, a full list of dates will be provided following discovery of wage records. Lombardo has recently suffered two weeks of lost earnings at the rate of approximately \$1,200 net per week and superannuation at the relevant statutory guarantee rate, at the rate of total incapacity, due to recovery following lapband surgery.

Full particulars of Lombardo's claim in particular by way of remedial treatment will be provided prior to trial in this proceeding and subsequent to the service of expert opinion on the nature of the remedial treatment.

192. As a consequence of the negligence of DCSS (including its servants or agents), Wells Fallahi and/or Wainstein Bonnici has suffered injury, loss and damage (**Bonnici's Injury, Loss and Damage**).

Particulars of injury

Undergoing surgery in circumstances where she had unrealistic expectations of said surgery and was psychologically an unsuitable candidate;

Significant post-surgical dizziness, pain and bleeding;

Disfigurement and skin irregularities including loose skin, lumpy skin, contouring, indentations and hollowing in the back, flanks and buttocks;

Asymmetrical shape, results and contouring in the bilateral areas liposuctioned; Ridge of fat around her back and buttocks and indentations around her body where liposuction was performed;

Pain, numbness and altered sensation in the rib, flank and back areas;

Psychological injury due to the trauma of and associated with the treatment and the consequences thereof including due to the facts as alleged in paragraphs 143 and 176 above.

Particulars of damages pursuant to order 13.10(4)

Bonnici was born on 24 October 1991.

Particulars of special damages

Bonnici has incurred hospital, medical, clothing and appliance costs as a consequence of the surgery. Bonnici will incur future costs as a consequence of the surgery including the need for remedial treatment. Bonnici also incurred the cost of the Surgery Contract and seeks a refund.

Full particulars of Bonnici's claim in this regard will be provided prior to trial.

Particulars of pecuniary loss

As at 15 June 2021, Bonnici was employed as an endoscopy nurse and was in received of a salary of approximately \$1064.15 net per week plus superannuation at the then superannuation guarantee rate.

Bonnici has suffered loss of earnings due to the surgery in the form of approximately one week's loss of salary after the surgery.

Bonnici will suffer loss of earnings by way of remedial treatment.

Full particulars of Bonnici's claim in particular by way of remedial treatment will be provided prior to trial in this proceeding and subsequent to the service of expert opinion on the nature of the remedial treatment.

Particulars are provided at Schedule B.

193. As a consequence of the negligence of DCSS (including its servants or agents), Lanzer, Darbyshire and/or Aronov, Russell has suffered injury, loss and damage (**Russell's Injury, Loss and Damage**).

Particulars of injury

Significant post-surgical pain, bleeding, swelling, faintness and an elevated heart rate

Lack of bilateral symmetry, disfigurement and skin irregularities in the legs;

Rectification surgery including right leg corrective liposuction and bilateral thigh skin removal

Excessive and irregular scarring

Disfigurement of the right knee

Restricted movement and pain in the right leg

Psychological injury due to the trauma of and associated with the treatment and the consequences thereof including due to the facts as alleged in paragraphs 146 and 158 above.

Particulars of damages pursuant to order 13.10(4)

Russell was born on 20 October 1983.

Particulars of special damages

Russell has incurred hospital, medical, clothing and appliance costs as a consequence of the surgery and rectification surgery and procedures. Russell will incur future costs as a consequence of the surgery including the need for remedial treatment. Russell also incurred the cost of the Surgery Contract and seeks a refund.

Full particulars of Russell's claim in this regard will be provided prior to trial.

Particulars of pecuniary loss

In the 12 months prior to the injuries, Russell was employed by Dandenong Hospital as a full time psychiatric nurse, earning approximately \$109,000 per annum plus superannuation. Russell has suffered loss of earnings due to the surgery and remedial treatment. Full particulars of Russell's claim will be provided prior to trial.

194. As a consequence of the negligence of DCSS (including its servants or agents) and/or Wong Morrison has suffered injury, loss and damage (**Morrison's Injury, Loss and Damage**).

Particulars of injury

Significant post-surgical pain and bleeding

Disfigurement, skin irregularities, lumps and indentation around the chin and abdomen including a roll of fat on the abdomen

Pain and numbness including loss of sensation in areas liposuctioned

Rectification procedures in the form of K40 injections, K10 injections and seroma drainages

Psychological injury due to the trauma of and associated with the treatment and the consequences thereof including due to the facts as alleged in paragraphs 149 above.

Particulars of damages pursuant to order 13.10(4)

Morrison was born on 26 June 1989.

Particulars of special damages

Morrison has incurred hospital, medical, clothing and appliance costs as a consequence of the surgery and rectification surgery and procedures.

Morrison will incur future costs as a consequence of the surgery including the need for remedial treatment. Morrison also incurred the cost of the Surgery Contract and seeks a refund.

Full particulars of Morrison's claim in this regard will be provided prior to trial.

Particulars of pecuniary loss

In the twelve months prior to her injuries, Morrison was a sole trader operating a hair dressing business, earning approximately \$1,500 gross per week. As a result of the injuries, Morrison suffered a total loss of earning capacity for approximately 6 weeks and a reduced loss of earning capacity for approximately 5 weeks due to reduced hours of work. Full particulars of Morrison's claim will be provided prior to trial.

195. As against each of DCSS, Lanzer and the Other Cosmetic Doctor Defendants each Plaintiff and Group Member claims aggravated and exemplary damages.

Particulars of aggravated damages

The Plaintiffs suffered injury in circumstance of aggravation in that:

- (a) the Plaintiffs' injuries and the injuries of Group Members were caused in circumstances where the Plaintiffs were vulnerable by reason of their status as patients who were unsatisfied with their physical appearance; and
- (b) The Defendants represented to the Plaintiffs that they were experts in the field of cosmetic surgery.

Particulars of exemplary damages

The conduct of the First to Seventh Defendants was a disgrace which demands condign punishment. Those Defendants performed unsafe techniques including on vulnerable patients with low self-esteem as part of a systemic campaign of promotion that exaggerated the Doctors' competence, capabilities and results in the face of complaints and bad results.

Particulars are provided at Schedule B.

F. CONTRACT

196. There were Surgery Contracts between DCSS and each of the Plaintiffs, and DCSS and each of the Group Members, for the provision of cosmetic surgery services.

Particulars

The Plaintiffs refer to paragraphs 19, 29, 48, 66 and 75.

Particulars of the Surgery Contracts between DCSS and the Group Members will be provided after the initial trial of the Plaintiffs' claims.

- 196A It was an object of each of the Surgery Contracts between DCSS and each of the Plaintiffs, and DCSS and each of the Group Members, that the cosmetic surgery services would improve the Plaintiffs' and Group Members' respective appearances.
- 196B Each of the Plaintiffs, and some or all of the Group Members, expected that the cosmetic surgery services would improve their respective appearances.

F.1 Lombardo

197. It was an implied term of the Surgery Contract between Lombardo and DCSS that the cosmetic surgery services would be provided and performed with due care and skill.

Particulars

The term is implied by way of the doctor patient relationship and the duty of care owed at common law from a medical practitioner to their patient. The term had the same content as is pleaded at paragraphs 126 and 128 and 129 above.

F.2 Bonnici

198. It was an implied term of the Surgery Contract between Bonnici and DCSS that the cosmetic surgery services would be provided and performed with due care and skill.

Particulars

The term is implied by way of the doctor patient relationship and the duty of care owed at common law from a medical practitioner to their patient. The term had the same content as is pleaded at paragraphs 126, 131 and 132 above.

F.3 Russell

199. It was an implied term of the Surgery Contract between Russell and DCSS that the cosmetic surgery services would be provided and performed with due care and skill.

Particulars

The term is implied by way of the doctor patient relationship and the duty of care owed at common law from a medical practitioner to their patient. The term had the same content as is pleaded at paragraphs 126 and 128-130 above.

F.4 Morrison

200. It was an implied term of the Surgery Contracts between Morrison and DCSS that the cosmetic surgery services would be provided and performed with due care and skill.

Particulars

The term is implied by way of the doctor patient relationship and the duty of care owed at common law from a medical practitioner to their patient. The term had the same content as is pleaded at paragraphs 126 and 133 above.

F.5 Group Members

201. It was an implied term of the Surgery Contracts between Group Members and DCSS that the cosmetic surgery services would be provided and performed with due care and skill.

Particulars

The term is implied by way of the doctor patient relationship and the duty of care owed at common law from a medical practitioner to their patient. The term had the same content as is pleaded at paragraph 126 above.

F.6 Breach of contract

202. DCSS breached the Surgery Contracts with the Plaintiffs and with the Group Members on each occasion that cosmetic surgery services were not performed in accordance with the implied term of due care and skill.

Particulars

The Plaintiffs refer to paragraphs 117, 136, 153, 161, 169, 173, 179 and 184 above.

Particulars will be provided in respect of the breaches of the Surgery Contracts with Group Members after the initial trial of the Plaintiffs' claims.

- 202A By reason of the breaches of the Surgery Contracts alleged in the preceding paragraph, the cosmetic surgery services provided under those Surgery Contracts failed to improve the aesthetic appearances of each of the Plaintiffs and some or all of the Group Members.

Particulars

Lombardo suffered the following poor aesthetic outcomes:

- Disfigurement and skin irregularities including loose skin, lumpy skin, contouring, indentations and hollowing in the back, flanks and buttocks
- Asymmetrical and disproportioned shape
- Failure to remove stretch marks
- Failure to achieve reduced size in inner hips

Bonnici suffered the following poor aesthetic outcomes:

- Disfigurement and skin irregularities including loose skin, lumpy skin, contouring, indentations and hollowing in the back, flanks and buttocks
- Asymmetrical shape

- Ridge of fat around her back and buttocks and indentations around her body where liposuction was performed
- Failure to achieve a flat stomach

Russell suffered the following poor aesthetic outcomes:

- Lack of bilateral symmetry, disfigurement and skin irregularities in the legs
- Disfigurement of the right knee
- Asymmetrical and disproportioned shape
- Failure to achieve reduced size in thighs
- Excess skin

Morrison suffered the following poor aesthetic outcomes:

- Disfigurement, skin irregularities, lumps and indentation around the chin and abdomen including a roll of fat on the abdomen
- Asymmetrical and uneven shape
- Failure to adequately rectify double chin
- Failure to achieve well-proportioned shape

Further particulars for each of the Plaintiffs may be provided prior to the initial trial.

Particulars will be provided in respect of the Group Members after the initial trial of the Plaintiffs' claims.

G. CAUSATION, LOSS AND DAMAGE

G.1 Misleading or deceptive conduct

G.1.1 Lombardo

203. In reliance on each of the Representations, separately and cumulatively, Lombardo:
- a. entered into the Surgery Contract with DCSS for the cosmetic surgery services to be provided and performed by DCSS, Lanzer or the Other Cosmetic Doctor Defendants, which contract would not have been entered into but for the Representations; and/or
 - b. maintained or did not withdraw her consent to Lombardo's Surgery being performed on her.

Particulars

Particulars are provided at Schedule B.

Further, by reason of the enticing nature of the express statements made constituting the Representations, it should be inferred that the Representations were made to induce, and did in fact induce, entry into the relevant Surgery Contract.

- 203A. In the alternative to 203 above, Lombardo, having entered into the Surgery Contract in reliance on the Representations, entered into a Surgery Contract:
- a. which was worthless, or worth less, than she actually paid having regard to what a fully informed customer would have paid; and
 - b. which could not achieve the aesthetic outcomes she bargained for.
204. Lombardo suffered loss and damage because of the contraventions of section 18, 29 and 34 of the ACL as pleaded above at paragraphs 106 to 108 (the **Representation Contraventions**).

Particulars

But for the Representation Contraventions, Lombardo would not have entered into the Surgery Contract and/or would not have maintained her consent for the surgery, and consequently Lombardo lost the full cost value of her Surgery Contract, and would consequently not have suffered Lombardo's Injury, Loss and Damage.

In the alternative:

1. Lombardo's cosmetic surgery services were either worthless or worth less than the amount she paid having regard to what a fully informed customer would have paid for the services, further particulars of which will be provided prior to trial.
2. Lombardo also suffered *Dillon* damages in the nature of distress, inconvenience and disappointment at the poor aesthetic outcome of the cosmetic surgery services, and loss of the enjoyment of the expected improvement to her appearance. Lombardo relies on the particulars to paragraph 202A above. Further particulars will be provided prior to the initial trial.

Lombardo does not seek damages that are prohibited by section 137C of the *Competition and Consumer Act 2010* (Cth) for this cause of action.

Particulars of special damages

~~Lombardo refers to and repeats the particulars attached to paragraph 191 headed "Particulars of special damages" above.~~

Particulars of pecuniary loss

~~Lombardo refers to and repeats the particulars attached to paragraph 191 headed "Particulars of pecuniary loss".~~

G.1.2 Bonnici

205. In reliance on each of the Representations, separately and cumulatively, Bonnici:
- a. entered into the Surgery Contract with DCSS for the cosmetic surgery services to be provided and performed by DCSS, Lanzer or the Other Cosmetic Doctor Defendants, which contract would not have been entered into but for the Representations; and/or
 - b. maintained or did not withdraw her consent to the surgery being performed on her.

Particulars

Particulars are provided at Schedule B.

Further, by reason of the enticing nature of the express statements made constituting the Representations, it should be inferred that the Representations were made to induce, and did in fact induce, entry into the relevant Surgery Contract.

205A. In the alternative to 205 above, Bonnici, having entered into the Surgery Contract in reliance on the Representations, entered into a Surgery Contract:

- a. which was worthless, or worth less, than she actually paid having regard to what a fully informed customer would have paid; and
- b. which could not achieve the aesthetic outcomes she bargained for.

206. Bonnici suffered loss and damage because of the Representation Contraventions.

But for the Representation Contraventions, Bonnici would not have entered into the Surgery Contract and/or would not have maintained her consent for the surgery, and consequently Bonnici lost the full cost value of her Surgery Contract. ~~would consequently not have suffered Bonnici's Injury, Loss and Damage.~~

In the alternative:

- 1. Bonnici's cosmetic surgery services were either worthless or worth less than the amount she paid having regard to what a fully informed customer would have paid for the services, further particulars of which will be provided prior to trial.
- 2. Bonnici also suffered *Dillon* damages in the nature of distress, inconvenience and disappointment at the poor aesthetic outcome of the cosmetic surgery services, and loss of the enjoyment of the expected improvement to her appearance. Bonnici relies on the particulars to paragraph 202A above. Further particulars will be provided prior to the initial trial.

Bonnici does not seek damages that are prohibited by section 137C of the *Competition and Consumer Act 2010* (Cth) for this cause of action.

Particulars of special damages

~~Bonnici refers to and repeats the particulars attached to paragraph 192 headed "Particulars of special damages" above.~~

Particulars of pecuniary loss

~~Bonnici refers to and repeats the particulars attached to paragraph 192 headed "Particulars of pecuniary loss".~~

G.1.3 Russell

207. In reliance on each of the Representations, separately and cumulatively, Russell:
- a. entered into the Surgery Contract with DCSS for the cosmetic surgery services to be provided and performed by DCSS, Lanzer or the Other Cosmetic Doctor Defendants, which contract would not have been entered into but for the Representations; and/or
 - b. maintained or did not withdraw her consent to the surgery being performed on her.

Particulars

Particulars are provided at Schedule B.

Further, by reason of the enticing nature of the express statements made constituting the Representations, it should be inferred that the Representations were made to induce, and did in fact induce, entry into the relevant Surgery Contract.

207A. In the alternative to 207 above, Russell, having entered into the Surgery Contract in reliance on the Representations, entered into a Surgery Contract:

- a. which was worthless, or worth less, than she actually paid having regard to what a fully informed customer would have paid; and
 - b. which could not achieve the aesthetic outcomes she bargained for.
208. Russell suffered loss and damage because of the Representation Contraventions.

Particulars

But for the Representation Contraventions, Russell would not have entered into the Surgery Contract and/or would not have maintained her consent for the surgery, and consequently Russell lost the full cost value of her Surgery Contract. would consequently not have suffered Russell's Injury, Loss and Damage.

In the alternative:

1. Russell's cosmetic surgery services were either worthless or worth less than the amount she paid having regard to what a fully informed customer would have paid for the services, further particulars of which will be provided prior to trial.
2. Russell also suffered *Dillon* damages in the nature of distress, inconvenience and disappointment at the poor aesthetic outcome of the cosmetic surgery services, and loss of the enjoyment of the expected improvement to her appearance. Russell relies on the particulars to paragraph 202A above. Further particulars will be provided prior to the initial trial.

Russell does not seek damages that are prohibited by section 137C of the *Competition and Consumer Act 2010* (Cth) for this cause of action.

~~Particulars of special damages~~

~~Russell refers to and repeats the particulars attached to paragraph 193 headed "Particulars of special damages" above.~~

Particulars of pecuniary loss

~~Russell refers to and repeats the particulars attached to paragraph 193 headed "Particulars of pecuniary loss".~~

G.1.4 Morrison

209. In reliance on each of the Representations, separately and cumulatively, Morrison:

- a. entered into the Surgery Contract with DCSS for the cosmetic surgery services to be provided and performed by DCSS, Lanzer or the Other Cosmetic Doctor Defendants, which contract would not have been entered into but for the Representations; and/or
- b. maintained or did not withdraw her consent to the surgery being performed on her.

Particulars

Particulars are provided at Schedule B.

Further, by reason of the enticing nature of the express statements made constituting the Representations, it should be inferred that the Representations were made to induce, and did in fact induce, entry into the relevant Surgery Contract.

209A. In the alternative to 209 above, Morrison, having entered into the Surgery Contract in reliance on the Representations, entered into a Surgery Contract:

- a. which was worthless, or worth less, than she actually paid having regard to what a fully informed customer would have paid; and
- b. which could not achieve the aesthetic outcomes she bargained for.

210. Morrison suffered loss and damage because of the Representation Contraventions.

Particulars

But for the Representation Contraventions, Morrison would not have entered into the Surgery Contracts and/or would not have maintained her consent for the surgeries, and consequently Morrison lost the full cost value of her Surgery Contract.– ~~would consequently not have suffered Morrison’s Injury, Loss and Damage.~~

In the alternative:

1. Morrison’s cosmetic surgery services were either worthless or worth less than the amount she paid having regard to what a fully informed customer would have paid for the services, further particulars of which will be provided prior to trial.

2. Morrison also suffered *Dillon* damages in the nature of distress, inconvenience and disappointment at the poor aesthetic outcome of the cosmetic surgery services, and loss of the enjoyment of the expected improvement to her appearance. Morrison relies on the particulars to paragraph 202A above. Further particulars will be provided prior to the initial trial.

Morrison does not seek damages that are prohibited by section 137C of the *Competition and Consumer Act 2010* (Cth) for this cause of action.

Particulars of special damages

~~Morrison refers to and repeats the particulars attached to paragraph 194 headed “Particulars of special damages” above.~~

Particulars of pecuniary loss

~~Morrison refers to and repeats the particulars attached to paragraph 194 headed “Particulars of pecuniary loss”.~~

G.1.5 Group Members

211. In reliance on each of the Representations, separately and cumulatively, Group Members:
 - a. entered into the Surgery Contract with DCSS for the cosmetic surgery services to be provided and performed by DCSS, Lanzer or the Other Cosmetic Doctor Defendants, which contract would not have been entered into but for the representation; and
 - b. maintained or did not withdraw their consent to the surgery being performed on them.

Particulars

Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs’ individual claims.

Further, by reason of the enticing nature of the express statements made constituting the Representations, it should be inferred that the Representations were made to induce, and did in fact induce, entry into the relevant Surgery Contract.

211A. In the alternative to 211 above, the Group Members, having entered into the Surgery Contract in reliance on the Representations, entered into a Surgery Contract:

- a. which was worthless, or worth less, than they actually paid having regard to what a fully informed customer would have paid; and
- b. which could not achieve the aesthetic outcomes the bargained for.

212. Group Members suffered loss and damage because of the Representation Contraventions.

Particulars

Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs' individual claims.

G.1.6 Liability of the Defendants for the Representation Contraventions

213. In the circumstances set out above and by reason of the matters in paragraphs 94 to 110~~150 to 157~~:

- a. DCSS; and/or
- b. Lanzer; and/or
- c. Aronov; and/or
- d. Wells; and/or
- e. Darbyshire; and/or
- f. Fallahi; and/or
- g. Wong; and/or
- h. Wainstein

are liable pursuant to section 236 of the ACL for the loss and damage that the Plaintiffs and the Group Members suffered because of the Representation Contraventions, in respect of those representations that each Defendant made, or alternatively was 'involved' in making for the purposes of section 2 of the ACL.

G.2 Statutory Guarantee Non-Compliances

214. The Plaintiffs and the Group Members have suffered loss and damage because of the Statutory Guarantee Non-Compliances.

Particulars

Lombardo refers to paragraph 120 above. ~~has suffered Lombardo's Injury, Loss and Damage.~~

Bonnici refers to paragraph 121 above. ~~has suffered Bonnici's Injury, Loss and Damage.~~

Russell refers to paragraph 122 above. ~~has suffered Russell's Injury, Loss and Damage.~~

Morrison refers to paragraph 123 above. ~~has suffered Morrison's Injury, Loss and Damage.~~

Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs' individual claims.

215. In the circumstances set out above, DCSS, Lanzer and the Other Cosmetic Doctor Defendants are liable for the loss and damage of the Plaintiffs and the Group Members, pursuant to section 267 of the ACL.

G.3 Negligence

216. As a consequence of the negligence of DCSS, Lanzer and the Other Cosmetic Doctor Defendants, the Plaintiffs and the Group Members have suffered loss and damage, and
- a. DCSS is liable for that loss and damage;
 - b. Lanzer and the Other Cosmetic Doctor Defendants are liable for the loss and damage caused by the cosmetic surgery services that they personally provided.

Particulars

Lombardo has suffered Lombardo's Injury, Loss and Damage.

Bonnici has suffered Bonnici's Injury, Loss and Damage.

Russell has suffered Russell's Injury, Loss and Damage.

Morrison has suffered Morrison's Injury, Loss and Damage.

Particulars in respect of the Group Members will be provided after the trial of the Plaintiffs' individual claims.

G.4 Contract

217. The Plaintiffs and the Group Members have suffered loss and damage because of the breach of the Surgery Contracts.

Particulars

The Plaintiffs and the Group Members suffered the loss of the value of the Surgery Contracts. Alternatively, the plaintiffs and group members also claim:

1. that their cosmetic surgery services were either worthless or worth less than the amount they paid having regard to what a fully informed customer would have paid for the services, further particulars of which will be provided prior to trial.
2. the plaintiffs and group members also suffered *Dillon* damages in the nature of distress, inconvenience and disappointment at the poor aesthetic outcome of the cosmetic surgery services, and loss of the enjoyment of the expected improvement to her appearance. The Plaintiffs rely on the particulars to paragraph 202A above. Further particulars will be provided prior to the initial trial.

30. COMMON QUESTIONS

218. The common questions of fact and law are:

Relationships between the Defendants

- a. Whether any or all of Lanzer and the Other Cosmetic Doctor Defendants were servants or agents of DCSS.
- b. Whether any or all of the Other Cosmetic Doctor Defendants were servants or agents of Lanzer.

The DCSS System

- c. What were the elements of the DCSS Sales System?
- d. Whether DCSS and Lanzer operated the DCSS Sales System.
- e. Whether the Other Cosmetic Doctor Defendants performed cosmetic surgery services as part of the DCSS Sales System.

ACL: misleading or deceptive conduct

- f. Whether DCSS and/or Lanzer made the Representations to the Plaintiffs, Group Members and the public.
- g. Whether any or all of Aronov, Wells and Wong made the Representations to the Plaintiffs, Group Members and the public.
- h. Further or alternatively, whether the Other Cosmetic Doctor Defendants were ‘involved’, within the meaning of section 2 of the ACL, in DCSS and/or Lanzer making the Representations.
- i. If the answer to (f) or (g) is yes, whether any or all of the Representations were:
 - i. misleading or deceptive or likely to mislead or deceive within the meaning of section 18 of the ACL; or
 - ii. false or misleading within the meaning of section 29 of the ACL.
- j. If the answer to (f) or (g) is yes, whether the Representations made to the public were liable to mislead the public within the meaning of section 34 of the ACL.
- k. Whether Wainstein was ‘involved’, within the meaning of section 2 of the ACL, in DCSS and/or Lanzer and/or the Other Cosmetic Doctor Defendants making the Independent Psychologist Representation.
- l. Whether DCSS and Lanzer operated the DCSS Sales System.
- m. Whether the Other Cosmetic Doctor Defendants performed cosmetic surgery services as part of the DCSS Sales System.

ACL: statutory guarantees

- n. Whether, and which of, DCSS, Lanzer and the Other Cosmetic Doctor Defendants were suppliers of the cosmetic surgery to the Plaintiffs and Group Members within the meaning of the ACL;
- o. Whether, and which of, DCSS, Lanzer and the Other Cosmetic Doctor Defendants were required to comply with the Fitness for Purpose and Due Care and Skill Guarantees in carrying out cosmetic surgery services through the DCSS Sales System;

Negligence

- p. Whether, and which of, DCSS, Lanzer and the Other Cosmetic Doctor Defendants owed the Plaintiffs and the Group Members a common law duty of care;

Contract

- q. Was the term of due care and skill implied into the Surgery Contracts?

AND THE PLAINTIFFS CLAIM on their own behalf and on behalf of the Group Members:

A. Damages:

- i. pursuant to the *Wrongs Act 1958 (Vic)*, *Civil Liability Act 2002 (NSW)*, *Civil Liability Act 2003 (Qld)* and *Civil Liability Act 2002 (WA)*;
- ii. pursuant to s 236 of the ACL in respect of the contraventions of the ACL;
- ii. pursuant to s 267 of the ACL in respect of the Statutory Guarantee Non-Compliances; and
- iii. pursuant to common law in respect of the breaches of contracts and common law duty;
- iv. aggravated damages;
- v. exemplary damages.

B. Interest.

C. Costs

D. Such further or other orders as the Court may deem appropriate.

7 November 2024

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C Truong

~~K Popova~~

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A Smietanka

B House

D Murphy

Maddens Lawyers

Solicitors for the Plaintiffs

SCHEDULE A

TINA LOMBARDO First Plaintiff

and

TINA BONNICI Second Plaintiff

and

SIMONE RUSSELL Third Plaintiff

and

JULIE ROSE MORRISON Fourth Plaintiff

and

DERMATOLOGY AND COSMETIC SURGERY SERVICES PTY LTD
(ACN 055 927 618) First Defendant

and

DANIEL LANZER Second Defendant

and

DANIEL ARONOV Third Defendant

and

~~DANIEL DARBYSHIRE~~ ~~Fourth Defendant~~

JACQUELINE DARBYSHIRE and TONY DARBYSHIRE (in their capacity as the legal personal representatives of the estate of Daniel Darbyshire) Fourth Defendants

and

RYAN WELLS

Fifth Defendant

and

ALIREZA FALLAHI

Sixth Defendant

and

GEORGE SHU-KHIM WONG

Seventh Defendant

and

CANDICE WAINSTEIN

Eighth Defendant

SCHEDULE B**Further and Better Particulars**

PARAGRAPH	PARTICULAR
8	The plaintiffs refer to the legal definition of ‘specialist registration’ which is found in sections 57 and 58 of the Health Practitioner Regulation National Law which has been adopted and passed in each Australian jurisdiction.
21	<p>The plaintiff was verbally advised by Aronov as to the proposed procedures in the course of discussions with Aronov.</p> <p>The plaintiffs will provide further particulars in due course which respond to the defendant’s request at paragraph 1(a) upon service of said expert opinion.</p>
22	Aronov gave verbal direction at the scene to the paramedics to the effect of the words pleaded in paragraph 22 of the statement of claim.
26	Wells provided verbal advice to the effect that Bonnici was a suitable candidate for liposuction in the abdomen, waist, flanks, shelf, back and side of breasts.
30A	<p>The plaintiffs are unable to provide further and better particulars prior to serving expert evidence as to liability.</p> <p>The phrase “medical history” is used in a plain English sense. It is used to mean a record of information about a person’s health.</p> <p>The phrase “psychological assessment of Bonnici’s suitability to undergo said surgery” is used in a general and plain English sense to mean an assessment by a psychological to assess one’s mental state.</p>

	<p>The phrase “resources to cope” and “poor psychological resources to cope with the surgery” are used in a plain English sense to refer to psychological resources or coping skills.</p> <p>The words “psychological history”, “reasons for undertaking the surgery”, “expectations after surgery”, “unrealistic expectations as to what liposuction could achieve as to her body shape and general health”, “relying on liposuction as a weight loss tool”. “suitability to undergo cosmetic surgery”, “the possible risks of said surgery” and “recovery of said surgery” are used in a plain English or dictionary definition sense without any technical meaning.</p>
31	<p>As to the consultation and/or advice provided by Fallahi, no advice was provided.</p> <p>Specifically in respect of the fifth defendant, the plaintiffs will provide further particulars in due course which respond to the defendant’s request upon service of expert opinion.</p>
33	Wells had insufficient pain relief or pain relief for the length of the procedure.
37	The instructions were made verbally and in words to the effect of what is pleaded in paragraph 37.
41	<p>Aronov provided Russell with verbal advice to the effect that she was a suitable candidate for liposuction and a mini thigh lift.</p> <p>The advice was verbal and in words to the effect of what is pleaded at paragraph 41(c) of the statement of claim.</p> <p>The quote was both verbal and written.</p>

59	<p>The advice in paragraph 59(a), (b) and (d) was verbal and was conveyed in words to the effect of what is pleaded. Further, Wong verbally said that he recommended that Morrison undergo the treatment outlined in particular (a) to paragraph 59 of the statement of claim and that the treatment could be completed in one surgery.</p> <p>Morrison verbally said to Wong at the First Pre-Engagement Consultation and that she was taking 100mg of Pristiq for anxiety and depression.</p>
63	<p>Wong verbally said that he recommended that Morrison that she undergo the treatment outlined in particular (a) to paragraph 63.</p>
68	<p>On 4 August 2021 and while the plaintiff was dressed in an operative gown and on a hospital bed, Wong provided verbal advice to the effect that post-operatively the wounds would ooze and weep and leak, that post-operatively the plaintiff would feel dizzy, that post-operatively the plaintiff would experience some temporary swelling and bruising and tenderness, that infection was a post-operative risk but he had never had such issue, that a crooked smile was a post-operative risk but that he had never had such issue, and that there would be a very small post-operative scar. It was to be inferred from the fact of Wong performing the First Surgery that he continued to recommend liposuction of the neck as treatment.</p>
72	<p>Wong verbally said that he recommended that the Morrison undergo the treatment outlined in particular (a) to paragraph 73 of the statement of claim.</p> <p>The advice was verbal and was words to the effect of what is pleaded at paragraph 72(d).</p>

76	<p>On 8 October 2021, Wong provided verbal advice to the effect that post-operatively the wounds would ooze and weep and leak, that post-operatively the plaintiff would feel dizzy, that post-operatively the plaintiff would experience some temporary swelling and bruising and tenderness, that post-operative she may temporarily have some hardness which would be resolved by the massages, that loose skin was a possible outcome for women who are really overweight but that it would not occur for the plaintiff, that there would be a very small post-operative scar that was so small that it should fade away, that in respect of the BBL she could lose up to 30% of fat, and that post-operatively there would be an improvement. While he was giving said verbal advice, Wong said repeatedly words to the effect that he has never had any such issues insinuating that the risks would not eventuate for Morrison. It was to be inferred from the fact of Wong performing the Second Surgery that he continued to recommend liposuction of the neck as treatment.</p>
88	<p>In relation to the plaintiffs, the material times are those times at which the plaintiffs accessed the content that conveyed the Representations.</p>
94	<p>In relation to the plaintiffs, the material times are those at which the plaintiffs accessed the content that conveyed the Representations.</p> <p>Lanzer's social media accounts are no longer publicly accessible and the plaintiffs therefore cannot provide further and better particulars at this time. Further and better particulars will be provided once the posts uploaded onto those accounts have been obtained by the plaintiffs through discovery or subpoena.</p>

The references on the Lanzer Website which conveyed the Excellent Service Representation and the Pre-Eminence Representation are:

(a) Home Page – between September 2019 and December 2021

- “25+ years experience”
- The photographs behind the words “FACE” “BODY” “MEN”
- “Dr Lanzer has 25+ years' experience in facial procedures. He introduced revolutionary procedures to Australia from the USA & Europe.
- “Over 20,000 liposuction procedures have been performed by Dr Lanzer.”
- “Dr Lanzer is Australia's pioneer for male procedures...”
- “Dr Lanzer is an Australian expert surgeon with several decades of experience in Cosmetic Surgery and has a recognised National profile as a leading Laser and Liposuction Surgeon. Dr Lanzer has performed thousands of Body, Breast & Mini Face Lift procedures and is trained in the most modern techniques. He has helped pioneer procedures and has developed a revolutionary Cosmetic Bank. Dr Lanzer’s Cosmetic Surgery Clinic has become synonymous with what’s new, innovative and exciting in the field of Cosmetic Surgery for the Face and Body. There are more reasons why patients choose the Dr Lanzer Clinic for

their cosmetic procedures. In addition to having years of experience, Dr Lanzer also has one of the most advanced Australian cosmetic surgery facilities at his disposal; this enables him to provide advanced treatments with numerous benefits for his patients.”

- The layout and presentation of the Lanzer Website.

(b) About Us – between September 2019 and August 2020

- “Dr Daniel Lanzer has over 25 year’s experience and places patient safety and satisfaction as his top priorities. His Cosmetic Day Hospital has been accredited for both his Operating Theatres and his Cosmetic Consulting Practice. This is an International recognised Safety and Standard of Excellence approval awarded to Dr Lanzer. “This involves the careful management of every aspect of service at every level within the organisation to deliver world class care”. View more information About Dr Lanzer below.”
- “A World Recognised Pioneer”
- ““OVER 25 YEARS EXPERIENCE Dr Lanzer, the medical team and the support team at the Dr Lanzer Clinic pride themselves on providing patients with the best patient services...”
- “Dr Lanzer has done over 20,000 liposuction procedures in Australia.”

	<ul style="list-style-type: none"> • “All photographs are of actual patients of Dr Lanzer” • The photographs displayed on the page. • <u>The layout and presentation of the Lanzer Website</u> <p>(c) <u>About Us – between August 2020 and October 2021</u></p> <ul style="list-style-type: none"> • The same text identified in (b) above, plus the following: • “... specific Lanzer Way processes purposely implemented to see patients access lowest risk options that produce your best cosmetic results. Dr Lanzer and associates are proud to offer a 100% guarantee in always aiming for absolute patient happiness from their results, that their patients will always receive the best education to feel never ending care and support and that the shared patient practitioner relationship you will experience will continue to be valued throughout your entire patient journey. This is our commitment to you.” • “As a patient here, you will be supported by a 24/7 dedicated team of specialised staff who are expertly trained in your recommended procedure as well as being treated in one of the most advanced cosmetic surgery facilities available, Dr Lanzer’s infrastructure has always had safety as a core value, therefore this unique facility has been purposely built to his requirements and is continuously tailored to play host to the latest Lanzer Way techniques for patients to enjoy.”
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	<ul style="list-style-type: none"> • “DANIEL LANZER at the forefront. Dr Daniel Lanzer MB BS (Hons) FACD, is a specialist qualified Dermatologist with a personal interest in Cosmetic Surgery. Dr Lanzer is an Australian expert with three decades of experience having performed over 25,000 liposuctions to naturally accrue a recognised national and international profile as a leading Laser and Liposuction Surgeon. Dr Lanzer’s name, his surgical associates, as well as his cosmetic clinics and hospitals have become synonymous with what’s current, innovative and exciting in the field of Cosmetic Surgery. He is a long-term public figure with a significant professional accolade, viewed as one of industry’s benchmarks in his specialised field. Dr Lanzer is regularly interviewed by television, newspapers and magazines to teach the public and other healthcare professionals about what’s new and interesting in Cosmetic Surgery. Dr Lanzer was chosen to host 2 television series on channel 7 national free to air TV regarding cosmetic surgery; Cosmetic Coffee and The Cosmetic Surgery Show, featured on www.drlanzer.com.au” • “Dr Lanzer has been at the forefront of innovation within the Australian and International Cosmetic Surgery industry, playing a significant role as a pioneer and critic on best surgical approach to face, breast and full body. Dr Lanzer has also been a regular facilitator of industry-specific conferences, as well as obtaining the professional accolade of regularly serving as a guest key-note speaker to encourage
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	<p>the surgical skills of other surgeons through his extensive experience and expertise. Dr Lanzer has helped many Australian and international clients regain their youthful appearance through meticulous detail orientated appraisal of face and body for over three decades, a mission now fully embodied by his handpicked, exclusively trained team of surgical associates to carry out his exact methods Australia-wide.”</p> <ul style="list-style-type: none"> • “Innovation at a glance <ul style="list-style-type: none"> > Liposuction/Hi Def Liposculpture – First in Australia to train in Vaser hi def liposculpture, over 25,000 cases performed > Mega Liposuction – One of the first in the world to discuss and teach > Breast reduction – First in the world study on large group patients breast reduction liposuction alone > Fat Transfer to Breast – First in Australia to store fat in Cytori Bank and been injecting breasts for decades > Breast Lift – Hands on preceptorship with the pioneer of Staple-first technique > Fat Adivive Transfer – First in Australia to use > Eyelid Rejuvenation/Blepharoplasty – Member of the first group Australian dermatologists to introduce laser c02 blepharoplasty > Laser resurfacing/facial rejuvenation – First in Australia to use Contour Erbium Laser for wrinkles and scars and sun damage
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	<p>> Mini face and neck lift – First in Australia to perform skin suture lift from which Dr Lanzer then developed his method of face and neck lift.</p> <p>> Lipotuck – First in Australia to train in this method in USA</p> <p>> Cellulase for Cellulite treatment – First in Victoria to perform</p> <p>And various other Cosmetic Procedures.”</p> <ul style="list-style-type: none"> • “Dr Ryan Wells is an awarded and accomplished cosmetic surgeon... Safety and supporting clients through their personal surgical journey is of utmost importance to Dr Wells, which is routinely demonstrated through his commitment towards continued professional development on contemporary techniques. Striving for absolute excellence in every procedure he performs, Dr Wells is an outstanding and sought-after practitioner. He is the recipient of a prestigious Fellowship with the Australasian College of Cosmetic Surgery (ACCS) and was invited to be an inaugural member of the Australasian Society of Cosmetic Reconstructive Surgeons (ASCRS). He presented on and performed a live surgical demonstration of a unique surgical otoplasty technique (Incisionless Otoplasty) at a major international cosmetic surgery conference (Asia, 2016). Dr Wells has undertaken advanced liposuction training through the ACCS with Australia’s top liposuction surgeons. A graduate of Griffith University and The University of Notre Dame (Sydney NSW), Dr Wells has over 12 years of rich experience at the forefront of the Australian healthcare
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	<p>industry. It is his passion for cosmetic medicine/surgery that saw him seize the opportunity to complete his formative training alongside a number esteemed surgeons in Sydney from 2015 to 2018... Expertly skilled in Dr Lanzer's hallmark approaches, he has worked alongside Dr Lanzer since 2018.</p> <ul style="list-style-type: none"> • “Dr. Daniel Aronov... He is a perfectionist with a strong attention to detail. Most importantly, he really cares about his patients, their experience and their post operative recovery process. Daniel has special skills in research having won the Peter Mudge Medal and the Alan Chancellor Award in 2018 – These are very prestigious awards in research and Dr. Daniel Aronov was the first and only person to win both awards in one year. His particular passion is to bring down complicated medical concepts and express it in very simple terms for everyone to understand. He has established a very successful social media presence by doing so with educational videos and podcasts. It is this skill which also enables him to navigate patients through the various cosmetic surgery options. This is important so that they can fully understand the options available to achieve their desired result and the pros and cons for each option. ” • “Dr Lanzer' has done over 20,000 liposuction procedures in Australia. View his range of liposuction options and before and after photos.”
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- The photographs displayed on the page.
- The layout and presentation of the Lanzer Website

(d) Meet the Team – between March 2020 and July 2020

- “Dr Lanzer is one of the best-known names in the field of Cosmetic Surgery. He has helped develop many cosmetic techniques and is a respected member of many professional fellowships. Above all, he values the safety of his patients.”
- “Our staff is dedicated to provide their patients with the best possible care in all fields of cosmetic surgery and dermatology. They also strive to provide these services in the best possible environment, so every patient feels comfortable when they step through the door.”
- The layout and presentation of the Lanzer Website

(e) Meet the Team – between August 2020 and October 2021

- The same text identified in (e) above, plus the following:
- “Dr Lanzer is an Australian expert with three decades of experience having performed over 25,000 liposuctions to naturally accrue a recognised national and international profile as a leading Laser and Liposuction Surgeon. Dr Lanzer’s name, his surgical associates, as well as his cosmetic clinics and hospitals have become synonymous with what’s current, innovative and exciting in the field of Cosmetic Surgery. He is a long-term public figure with a

	<p>significant professional accolade, viewed as one of industry's benchmarks in his specialised field. Dr Lanzer is regularly interviewed by television, newspapers and magazines to teach the public and other healthcare professionals about what's new and interesting in Cosmetic Surgery."</p> <ul style="list-style-type: none"> • "Dr. Daniel Aronov... He is a perfectionist with a strong attention to detail. Most importantly, he really cares about his patients, their experience and their post operative recovery process." • "Dr Ryan Wells is an awarded and accomplished cosmetic surgery with a special interest in minimally invasive cosmetic surgical procedures. Safety and supporting clients through their personal surgical journey is of utmost importance to Dr Wells, which is routinely demonstrated through his commitment towards continued professional development on contemporary techniques." • "Dr George Wong is a highly skilled and accomplished cosmetic surgery, known for his friendly bedside manner, attention to detail, and deep passion for cosmetic surgery as both an art form and medical specialty. Dr Wong has trained with leading specialists across Australia, Asia, Europe, and America to finesse his skills and now work as a hand-picked and personally-trained Dr Lanzer Associate."
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- “All of Dr Lanzer’s nurses have been personally trained by Dr Lanzer and Dr Goldberg. Our Nurses are expert injectors of facial fillers, muscle relaxants and use Cosmetic Surgery Lasers. They have the experience and understanding that is required of a cosmetic nurse.”
- “Brooke is a Medication Endorsed Enrolled Nurse who has a background of medical and surgical nursing and has worked at Dr Lanzer’s clinic for over three years. She has expertise in injecting dermal fillers and muscle relaxants, especially in lip fillers. Brooke has a wide range of clients and in consultation with them devises a treatment plan that will be effective, yet natural and individualised.”
- “OUR DERMAL CLINICIANS... They were personally trained by Dr Lanzer and Dr Goldberg in many of the cosmetic laser treatments and laser safety training.”
- “Dr Lanzer has over 30 years of Cosmetic Surgery experience and is regarded as one of the leading Cosmetic Surgeons in Australia.”
- “All photographs are of actual patients of Dr Lanzer.”
- The photographs displayed on the page.
- The layout and presentation of the Lanzer Website

(f) Liposuction for women – between March 2020 and October 2021

- “Dr Daniel Lanzer has participated in many of the advances in female liposuction procedure during his career, which spans over more than two decades. He has executed more than 20,000 liposuction procedures in female patients.”
- Our Dr Lanzer was one of the first surgeons to have performed the tumescent liposuction (fat removal) technique in Australia. He... has enjoyed extensive training overseas. He has personally performed some ten thousand liposuction procedures...
- The photographs displayed on the page.
- The layout and presentation of the Lanzer Website

(g) Liposuction – between February 2019 and October 2021

- “Australia’s Top Surgeon”
- Dr Lanzer is extremely experienced, meticulous and caring. He will work to understand what your goals are and aim to give you a beautiful and “natural” looking result. Over the past 25 years he has performed over 20,000 liposuction procedures at his Melbourne, Sydney and Brisbane theatres and at other locations Australia wide. He remains the pioneer of many new liposculpture procedures”
- “Female Breast Reduction... world pioneering contribution...”

	<ul style="list-style-type: none"> • The photographs displayed on the page. • The layout and presentation of the Lanzer Website <p>(h) <u>Before and After photos</u></p> <ul style="list-style-type: none"> • The photographs displayed on the page. • The layout and presentation of the Lanzer Website
97	<p>Lombardo visited the Lanzer Website between September 2020 and November 2021 and read the material identified at paragraph 2(c) above as having been displayed on the website between those dates. She accessed the Lanzer Website on several dates and times that she cannot recall.</p> <p>The plaintiffs do not allege that the Plastic Surgeon Representation was made on the Lanzer Website.</p> <p>Lanzer’s social media accounts are no longer publicly accessible and the plaintiffs therefore cannot provide further and better particulars at this time. Further and better particulars will be provided once the posts uploaded onto those accounts have been obtained by the plaintiffs through discovery or subpoena.</p>
98	<p>Bonnici visited the Lanzer Website between February 2020 and June 2021 and read the material identified at paragraph 94 above as having been displayed on</p>

	<p>the website between those dates. She accessed the Lanzer Website on several dates and times that she cannot recall.</p> <p>Lanzer's social media accounts are no longer publicly accessible and the plaintiffs therefore cannot provide further and better particulars at this time. Further and better particulars will be provided once the posts uploaded onto those accounts have been obtained by the plaintiffs through discovery or subpoena.</p>
99	<p>Russell visited the Lanzer Website between February 2020 and June 2021 and read the material identified at paragraph 94 above as having been displayed on the website between those dates. She accessed the Lanzer Website on several dates and times that she cannot recall.</p>
100	<p>Morrison visited the Lanzer Website between September 2020 and 8 October 2021 and read the material identified at paragraph 94 above as having been displayed on the website between those dates. She accessed the Lanzer Website on several dates and times that she cannot recall.</p> <p>The plaintiffs do not allege that the Plastic Surgeon Representation was made on the Lanzer Website.</p> <p>Lanzer's social media accounts are no longer publicly accessible and the plaintiffs therefore cannot provide further and better particulars at this time. Further and better particulars will be provided once the posts uploaded onto</p>

	those accounts have been obtained by the plaintiffs through discovery or subpoena.
124	The dates of and the notice of services provided by Lanzer and/or the other cosmetic doctor Defendants will be provided subsequent to full discovery of the Group Members clinical files. The procedures were various cosmetic procedures including inter alia tumescent vaser liposuction, Brazilian butt lifts, body sculpturing, breast and face procedures.
134	The plaintiffs refer and repeat the particulars at paragraph 30A above.
176	<p>Bonnici was a poor candidate for treatment due to the fact that Bonnici sought liposuction for weight loss.</p> <p>As to paragraph 176(j), the plaintiffs will provide further particulars upon receipt of expert opinion.</p>
177	Bonnici was a poor candidate for treatment due to the fact that Bonnici sought liposuction for weight loss.
181	<p>Bonnici was a poor candidate for treatment due to the fact that Bonnici sought liposuction for weight loss.</p> <p>As to paragraph 181(f), the plaintiffs will provide further particulars in upon receipt of expert opinion.</p>

182	Bonnici was a poor candidate for treatment due to the fact that Bonnici sought liposuction for weight loss
184	The plaintiffs refer to preceding paragraphs which detail the interaction between Wong and Morrison in the statement of claim and these particulars, and advice given by Wong to Morrison.
188	The plaintiffs refer and repeat the particulars at paragraph 30A above.
189	The plaintiffs refer and repeat the particulars at paragraph 30A above.
190	The plaintiffs refer and repeat the particulars at paragraph 30A above.
192	The plaintiffs refer and repeat the particulars at paragraph 30A above.
195	<p>The publications on the Lanzer Website are those set out in the particulars to paragraph 94 of the Statement of Claim, paragraph 94 of this schedule, and the Specialist Surgeon Website Statements as that phrase is defined in the Statement of Claim. The dates of the publications relevant to the lead plaintiffs' claims are set out particular 3 to paragraph 94 of this schedule. The 'URL' of the webpage has already been provided at paragraph 86(a) of the Statement of Claim.</p> <p>The written materials identified at paragraph 86 that the plaintiffs rely on as forming part of the systemic campaign of promotion are:</p> <ul style="list-style-type: none"> • the email sent by servants or agents of DCSS to potential patients who completed the web-form inquiry referred to at paragraph 86(c) of the Statement of Claim; • the 'Standard Advice' emailed to potential patients by servants or agents of DCSS following and as a result of the patient's pre-

	<p>engagement consultation, referred to at paragraph 86(e)(i) of the Statement of Claim;</p> <ul style="list-style-type: none"> the ‘We Care’ Form emailed to potential patients by servants or agents of DCSS following and as a result of the patient’s pre-engagement consultation, referred to at paragraph 86(e)(ii) of the Statement of Claim; the ‘Consent Form’ emailed to potential patients by servants or agents of DCSS following and as a result of the patient’s pre-engagement consultation, referred to at paragraph 86(e)(iii) of the Statement of Claim; and the ‘Thank You Letter’ emailed the potential patients by servants or agents of DCSS prior to the performance of cosmetic surgery, referred to at paragraph 86(g) of the Statement of Claim.
203	<p>The plaintiffs refer to and repeat paragraph 97 of the Statement of Claim and the particulars thereof.</p> <p>As to paragraph 97(a)(ii) of the Statement of Claim, the material that Lanzer accessed on Lanzer’s social media accounts will be provided after discovery or subpoenas.</p> <p>The publications or materials on the Lanzer Website are those set out in the particulars to paragraph 94 of the Statement of Claim and above.</p> <p>The ‘URL’ of the Lanzer Website is set out at paragraph 86(a) of the Statement of Claim.</p> <p>Lombardo accessed the said publications on the Lanzer Website on several dates and times that she cannot recall between September 2020 and November 2021.</p>

	<p>The usual details of the Post-Inquiry Email, the ‘We Care’ Form and the Consent Form are set out in the paragraphs 17 and 20 of the Statement of Claim and the particulars subjoined thereto.</p>
205	<p>The plaintiffs refer to and repeat paragraph 98 of the Statement of Claim and the particulars thereof.</p> <p>Bonnici accessed the said publications on the Lanzer Website on several dates and times that she cannot recall between February 2020 and 2021.</p> <p>The usual details of the Post-Inquiry Email, the ‘We Care’ Form and the Consent Form are set out in the paragraphs 27 and 30 of the Statement of Claim and the particulars subjoined thereto.</p>
207	<p>The plaintiffs refer to and repeat paragraph 99 of the Statement of Claim and the particulars thereof.</p> <p>Russell accessed the said publications on the Lanzer Website on several dates and times that she cannot recall between February 2020 and 2021.</p> <p>The usual details of the Post-Inquiry Email, the ‘We Care’ Form, the Consent Form are set out in the paragraphs 42 and 46 of the Statement of Claim and the particulars subjoined thereto.</p>
209	<p>The plaintiffs refer to and repeat paragraph 100 of the Statement of Claim and the particulars thereof.</p> <p>As to paragraph 100(a)(ii) of the Statement of Claim, the material that Morrisson accessed on Lanzer’s social media accounts will be provided after discovery or subpoenas.</p>

SCHEDULE C

Glossary of Defined Terms

Defined Term	Meaning	Para.
Academy Day Hospital	1A/1 Roydhouse Street, Subiaco, Western Australia	3.d.viii.
ACL	<i>Australian Consumer Law</i> (Cth)	3.e.
Aftercare Info Pack	On or about 12 November 2021, an employee, servant or agent of DCSS named Louie sent Lombardo an ‘After Info Pack’...	20.
Aronov	Third Defendant – Daniel Aronov	1.
Bonnici	Second Plaintiff – Tina Bonnici	23.
Bonnici’s Injury, Loss and Damage	As a consequence of the negligence of DCSS (including its servants or agents), Wells Fallahi and/or Wainstein Bonnici has suffered injury, loss and damage.	192.
Bonnici’s Pre-Engagement Consultation	On or about 8 April 2021, Bonnici attended at the Gold Coast Clinic and consulted with a nurse, who was an employee, servant or agent of DCSS, and Wells	25.
Bonnici’s Pre-Surgery Consultation	On or about 15 June 2021, Bonnici attended at the Brisbane Clinic and: a. consulted with Wells and Fallahi, during which consultation: i. Wells and Fallahi provided advice in respect of treatment, being liposuction; ii. Wells stated that, or words to the effect that, he regarded performing liposuction as “like a sport”; iii. Wells stated that, or words to the effect that, he had studied plastic surgery at a tertiary level.	31.a.
Bonnici’s Surgery	b. underwent surgery performed by Wells being liposuction to her upper and lower abdomen, waist, flanks and back.	31.b.
Brisbane Clinic	11 Hayling Street, Salisbury, Queensland	3.d.iv.
CCA	<i>Competition and Consumer Act 2010</i> (Cth)	3.e.
Consent Form	a standard consent form	17.c.
<i>Corporations Act 2001</i> (Cth)	<i>Corporations Act</i>	3.a.
cosmetic surgery services	the business of providing cosmetic surgery and other services incidental to cosmetic surgery, including advice about cosmetic surgery	3.c.

Cosmetic Surgical Purpose	Each of the Plaintiffs and Group Members acquired from DCSS, Lanzer and/or the Other Cosmetic Doctor Defendants cosmetic surgery services: a. for the purpose of achieving the particular purpose of enhancing rather than diminishing their body's appearance;	113.a.
Cosmetic Surgical Result	Further, each of the Plaintiffs and Group Members acquired from DCSS, Lanzer and/or the Other Cosmetic Doctor Defendants cosmetic surgery services: a. for achieving the result of enhancing rather than diminishing their body's appearance;	114.a.
Darbyshire	Dr Daniel Darbyshire	1.
DCSS	First Defendant – Dermatology and Cosmetic Surgery Services Pty Ltd	1.
DCSS Sales System	DCSS and Lanzer operated a system for the purpose of selling cosmetic surgery services whereby:	86.
DCSS's Bank Account	Payment was made by Electronic Funds Transfer to DCSS's bank account. The details of DCSS's Bank Account are as follows: Bank – ANZ BSB – 013 445 Account Number – 8368 50929	Particulars to 18.b.
Due Care and Skill Guarantee	Further, by reason of the matters in paragraph 111, DCSS, Lanzer and the Other Cosmetic Doctor Defendants guaranteed pursuant to section 60 of the ACL that the cosmetic surgery services they themselves supplied would be rendered with due care and skill of a medical practitioner expert in such procedure.	116.
Excellent Service Representation	e. DCSS, Lanzer and the Other Cosmetic Doctor Defendants provided a service that was consistently excellent and apt to achieve consistently excellent results	88.e.
Excellent Service Statements	The Excellent Service Representation was partly express and partly implied and was further conveyed by each of the Pre-Eminence Website Statements, the abovementioned references on the Lanzer Website which carry the implication that the pre-eminence of Lanzer and his "surgical associates" was such that cosmetic surgery	Particulars to 94.

	performed by them was consistently excellent and apt to achieve consistently excellent results.	
Fallahi	Sixth Defendant – Alireza Fallahi	1.
Fitness for Purpose Guarantee	By reason of the matters in paragraphs 111 to 114, DCSS, Lanzer and the Other Cosmetic Doctor Defendants guaranteed pursuant to section 61 of the ACL that the cosmetic surgery services they themselves supplied would be: a. reasonably fit for the Cosmetic Surgical Purpose; and b. of such a nature, and quality, state or condition, that they might reasonably be expected to achieve the Cosmetic Surgical Result;	115.
Gold Coast Clinic	Shop 3/2633 Gold Coast Highway, Broadbeach, Queensland	3.d.v.
Group Members	Plaintiffs and all persons who have claims for loss or damage based on negligence, breach of contract or consumer law breaches in the context of cosmetic surgery being performed on them	1.
Independent Psychologist Representation	d. Wainstein was a psychologist exercising independent judgement from each of DCSS, Lanzer and the Other Cosmetic Doctor Defendants	88.d.
Lanzer	Second Defendant – Daniel Lanzer	1.
Lanzer Clinics	All clinics in 3.d.	3.d.i.-ix.
Lanzer Website	www.drlanzer.com.au	14.
Lombardo	First Plaintiff – Tina Lombardo	14.
Lombardo's Injury, Loss and Damage	As a consequence of the negligence of DCSS (including its servants or agents), Lanzer and/or Aronov Lombardo has suffered injury, loss and damage.	191.
Lombardo's Pre-Engagement Consultation	On or about 18 March 2021, Lombardo attended at the Sydney Clinic and: a. consulted with a Cosmetic Nurse by the name of Maria, who was an employee, servant or agent of DCSS; and b. received advice from Lanzer which was communicated by Maria in respect of treatment, being an abdominoplasty and liposuction	16.

Lombardo's Pre-Surgery Consultation	<p>On or about 15 November 2021, Lombardo attended at the Surry Hills Day Hospital and:</p> <p>a. consulted with Aronov, during which consultation:</p> <p>i. Aronov provided advice in respect of treatment, being an abdominoplasty and liposuction;</p> <p>ii. Aronov advised Lombardo that, or words to the effect that, he had “never had an issue” and that she “had nothing to worry about”</p>	21.a.
Lombardo's Surgery	b. underwent surgery performed by Aronov, being an abdominoplasty or full tummy tuck and liposuction to her stomach, flanks, upper back and lower back	21.b.
Malvern Clinic	30-32 Glenferrie Road, Malvern, Victoria	3.d.i.
Morrison	Fourth Plaintiff – Julie Rose Morrison	58.
Morrison's First Pre-Engagement Consultation	On or about 20 May 2021 the Fourth Plaintiff (Morrison) consulted with Wong at Academy Day Hospital.	58.
Morrison's First Surgery	<p>On or about 4 August 2021, Morrison attended at Academy Day Hospital and:</p> <p>a. consulted with Wong and received advice in respect of treatment, being liposuction of the neck;</p> <p>b. underwent surgery performed by Wong being liposuction of the neck.</p>	68.
Morrison's Injury, Loss and Damage	As a consequence of the negligence of DCSS (including its servants or agents) and/or Wong Morrison has suffered injury, loss and damage.	194.
Morrison's Pre-Surgery Consultation	<p>On or about 8 October 2021, Morrison attended at Southbank Day Hospital and:</p> <p>a. consulted with Wong, during which Wong provided advice in respect of treatment, being liposuction and a fat transfer to the hips and a Brazilian Butt Lift</p>	76.a.
Morrison's Second Pre-Engagement Consultation	On or around 27 July 2021, Morrison consulted with Wong and a nurse at Academy Day Hospital	62.

Morrison's Second Surgery	b. underwent surgery performed by Wong being liposuction of the abdomen, flanks, waist and bra roll, and fat transfer to the hips and a Brazilian butt lift.	76.b.
Morrison's Third Pre-Engagement Consultation	<p>On or about 12 August 2021, Morrison consulted with Wong at Academy Day Hospital, during which:</p> <p>a. Wong provided advice in respect of treatment, being liposuction and a fat transfer to the hips and a Brazilian Butt Lift;</p> <p>b. Morrison showed Wong a photograph of the results which she wanted to achieve;</p> <p>c. Wong said words to the effect that he was more than capable of achieving those results;</p> <p>d. Wong advised Morrison to reduce her dose of prescription anti-depressant medication from 100mg of Pristiq daily to 50 mg,</p>	72.
Morrison's Third Surgery	On or about 24 January 2022, Morrison underwent a revision surgery which included liposuction of the back performed by Wong at Academy Day Hospital	80.
Other Cosmetic Doctor Defendants	Each of Aronov, Darbyshire, Wells, Fallahi and Wong	7.
Personal Line to Lanzer Representation	c. Lanzer was personally contactable by each cosmetic surgery client of DCSS, Lanzer and the Other Cosmetic Doctor Defendants on his personal mobile phone;	88.c.
Plastic Surgeon Representation	b. Lanzer and the Other Cosmetic Doctor Defendants were plastic surgeons;	88.b.
Post-Inquiry Email	<p>c. a servant or agent of DCSS sent an email to such potential patients who completed the web-form inquiry:</p> <p>i. identifying how to book in for a free consultation; and</p> <p>ii. relevantly, containing statements that:</p> <ol style="list-style-type: none"> 1. "Dr Lanzer has been perfecting his Liposuction method for over 20 years with the 15,000 cases he has done. He uses a combination of techniques to get the best aesthetic results with the quickest recovery"; 2. "most of all results are dependent on a good eye, good coordination, experience and judgement"; 	86.c.

	3. Lanzer performed “a new type of tummy tuck called the Tumescant Lip-Tuck [which] Dr Lanzer believes... is a great breakthrough method”.	
Pre-Eminence Representation	a. Lanzer and the Other Cosmetic Doctor Defendants were pre-eminent and highly skilled in the performance of cosmetic surgery;	88.a.
Pre-Eminence Website Statements	<p>The Pre-Eminence Representation was partly express and partly implied and conveyed by is to be inferred from the references on the Lanzer Website to:</p> <p>(ix) Lanzer being “an Australian expert”, “at the forefront of innovation”, having “extensive experience and expertise”, being “viewed as one of industry’s benchmarks in his specialised field”, and being a “recognised world pioneer” in cosmetic surgery;</p> <p>(x) Lanzer carrying on a “mission now embodied by his handpicked, exclusively trained team of surgical associates”;</p> <p>(xi) Lanzer and his “surgical associates... (being) synonymous with what’s current, innovative and exciting in the field of Cosmetic Surgery”;</p> <p>(xii) the “Lanzer Way processes”;</p> <p>(xiii) Aronov being a “perfectionist with a strong attention to detail”, an “experienced medical educator” and as having “special skills in research”;</p> <p>(xiv) Wells being “an awarded and accomplished cosmetic surgery (sic)”;</p> <p>(xv) Wong being “a highly skilled and accomplished cosmetic surgery (sic)” who has “trained with leading specialists across Australia, Asia, Europe, and America to finesse his skills and now work (sic)</p>	Particulars to 94.

	as a hand-picked and personally trained Dr Lanzer Associate”;	
	(xvi) the matters set out in Schedule B,	
Pre-Engagement Consultation	d. Lanzer, an Other Cosmetic Doctor Defendant and/or an employee, servant or agent of DCSS conducted a consultation with potential patients prior to being engaged to perform surgery,	86.d.
Pre-Surgery Consultation	i. immediately prior to the cosmetic surgery, whichever of Lanzer or the Other Cosmetic Doctor Defendants was to perform the cosmetic surgery conducted a consultation with the client;	86.i.
Representation Contraventions	Lombardo suffered loss and damage because of the contraventions of section 18, 29 and 34 of the ACL as pleaded above at paragraphs 106 to 108.	204.
Representations	Each of: aa. the Specialist Surgeon Representation; a. the Pre-Eminence Representation; b. the Plastic Surgeon Representation; c. the Personal Line to Lanzer Representation; d. the Independent Psychologist Representation; and e. the Excellent Service Representation.	88.a.-e.
Russell	Third Plaintiff – Simone Russell	38.
Russell Follow Up Appointment	On or about 4 October 2021, Russell attended a consultation with Lanzer at the Malvern Clinic	56.
Russell’s First Pre-Engagement Consultation	On or about 26 August 2021, the Third Plaintiff (Russell) consulted by telephone with a nurse whose name will be provided following discovery.	38.
Russell’s Injury, Loss and Damage	As a consequence of the negligence of DCSS (including its servants or agents), Lanzer, Darbyshire and/or Aronov, Russell has suffered injury, loss and damage.	193.
Russell’s Pre-Surgery Consultation	On or about 17 September 2021, Russell attended at the Malvern Clinic and: a. consulted with Lanzer and Darbyshire, during which consultation:	50.a.

	<ul style="list-style-type: none"> i. Lanzer and Darbyshire provided advice in respect of treatment, being liposuction; ii. Lanzer and Darbyshire each stated that, or words to the effect that, they were “experienced in mega liposuction and the diagnosis and treatment of lipoedema”; 	
Russell’s Second Pre-Engagement Consultation	On or about 27 August 2021, Russell attended at the Malvern Clinic and consulted with Aronov	40.
Russell’s Surgery	b. underwent surgery performed by Lanzer and Darbyshire, being liposuction ‘360’ to her thighs.	50.b.
Southbank Day Hospital	38 Meadowvale Avenue, South Perth in Western Australia	3.d.vii.
Specialist Surgeon Clarification	<p>The Specialist Surgeon Representation was further conveyed by the failure to provide any information on the Lanzer Website clarifying that Lanzer and the Other Cosmetic Doctor Defendants:</p> <ul style="list-style-type: none"> (v) were not specialist surgeons and did not have specialist surgical training; (vi) had not completed the study requirements for registration as a specialist health practitioner in a specialty of surgery under the <i>Health Practitioner Regulation National Law</i>; (vii) had not satisfied the criteria for registration as a specialist health practitioner in a specialty of surgery under the <i>Health Practitioner Regulation National Law</i>; or (viii) were not registered as a specialist health practitioner in a specialty of surgery under the <i>Health Practitioner Regulation National Law</i>. 	Particulars to 94.
Specialist Surgeon Representation	<ul style="list-style-type: none"> aa. that <ul style="list-style-type: none"> (a) Lanzer; and/or (b) the Other Cosmetic Doctor Defendants 	88.aa.

	were specialist surgeons who possessed specialist surgical training and qualifications;	
Specialist Surgeon Website Statements	<p>The Specialist Surgeon Representation was partly express and partly implied and conveyed by each single reference to “surgeon” on the Lanzer Website, including the description of:</p> <ul style="list-style-type: none"> (i) Lanzer as an “expert surgeon”; (ii) Lanzer as a “leading Laser and Liposuction Surgeon”; (iii) Lanzer as being “regarded as one of the leading Cosmetic Surgeons in Australia”; (iv) Lanzer as “your surgeons”; (v) Lanzer as “one of the first surgeons to become an expert in tumescent liposuction”; (vi) Lanzer as “one of the most renowned cosmetic surgeons in the country so you can be sure you’re going to get some great results by choosing this man”; (vii) Lanzer as being “one of the first surgeons to have performed the tumescent liposuction (fat removal) technique in Australia”; 	Particulars to 94.
Standard Advice	Following Lombardo’s Pre-Engagement Consultation, on 18 March 2021 Maria provided Lombardo with documents including an advice from Dr Lanzer	17.
Statutory Guarantee Non-Compliances	<p>By reason of the matters in paragraph 117, DCSS, Lanzer and the Other Cosmetic Doctor Defendants:</p> <ul style="list-style-type: none"> a. did not comply with the Fitness for Purpose Guarantee in section 61 of the ACL; and b. did not comply with the Due Care and Skill Guarantee in section 60 of the ACL 	118.
Surgery Contract	By reason of the matters in the previous two paragraphs, on or about 9 November 2021 Lombardo and DCSS entered into a contract for the provision of cosmetic surgery services	19.
Surry Hills Day Hospital	573 Crown Street, Surry Hills, New South Wales	3.d.iii.
Sydney Clinic	3/276-278 Pitt Street, Sydney, New South Wales	3.d.ii.
Thank You Letter	...which contained a letter from “Dr Daniel Lanzer & Team” addressed to “Valued Patient”	20.
Wainstein	Eighth Defendant – Candice Wainstein	12.

Wainstein's Assessment	On or about 7 June 2021, Bonnici had a consultation with Wainstein by way of telephone.	30A.
'We Care' Form	a document titled 'OPEN DISCLOSURE – "We Care"'	17.b.
Wells	Fifth Defendant – Ryan Wells	1.
Wong	Seventh Defendant – George Shu-Khim Wong	1.