



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

S E C I 2022 00739

Filed on: 02/07/2025 12:23 PM

BETWEEN

TINA LOMBARDO

Plaintiff

and

**DERMATOLOGY AND COSMETIC SURGERY SERVICES
PTY LTD AND OTHERS**

Defendants

EIGHTH DEFENDANT'S AMENDED DEFENCE

Date of document: 2 July 2025 ~~20~~

~~December 2023~~

Filed on behalf of: The Eighth Defendant

Prepared by:

Colin Biggers & Paisley

Level 23

181 William Street

Melbourne VIC 3000

Solicitors' code: 108866

Telephone: (03) 8624 2028

Email: laura.tulloch@cbp.com.au

Ref: Laura Tulloch

VEK.LJT.2208173

To the Plaintiffs' Further Amended Statement of Claim filed on 16 April 2025 ~~15 September~~
~~2023~~, the Eighth Defendant (**Wainstein**) says as follows:

A. PARTIES

A.1 Group Proceeding

1. She does not plead to paragraph 1 because it makes no allegation relevant to the claims against her.

1A. She does not plead to paragraph 1A because it makes no allegation relevant to the claims against her.

2. She does not plead to paragraph 2 because it makes no allegation relevant to the claims against her.

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

3. With respect to paragraph 3, she:

- (a) admits paragraphs 3.a to 3.d; and
- (b) does not admit paragraph 3.e.

A.3 The Second Defendant – Dr Lanzer

4. With respect to paragraph 4, she:

- (a) admits paragraphs 4.a to 4.c as well as 4.e; and
 - (b) does not admit paragraph 4.d.
- 5. She does not plead to paragraph 5 because it makes no allegation relevant to the claims against her.
- 6. She does not plead to paragraph 6 because it makes no allegation relevant to the claims against her.

A.4 The Other Cosmetic Doctor Defendants

- 7. She does not plead to paragraph 7 because it makes no allegation relevant to the claims against her.
- 8. She does not plead to paragraph 8 because it makes no allegation relevant to the claims against her.
- 9. She does not plead to paragraph 9 because it makes no allegation relevant to the claims against her.
- 10. She does not plead to paragraph 10 because it makes no allegation relevant to the claims against her.
- 11. She does not plead to paragraph 11 because it makes no allegation relevant to the claims against her.
- 11A. She does not plead to paragraph 11A because it makes no allegation relevant to the claims against her.

A.5 Wainstein

- 12. With respect to paragraph 12:
 - (a) she admits paragraph 12.a to 12.c;
 - (b) admits that:
 - (i) subject to paragraph 12(b)(ii) below, between 27 March 2018 and 4 October 2021, Lanzer, on DCSS's behalf, engaged her to consult with DCSS's patients (described in paragraph 134(a)(i) below) as arranged from time to time with DCSS staff;
 - (ii) between November 2020 and May 2021, she took maternity leave;
 - (iii) under those arrangements, she was to be paid per consultation; and
 - (c) she otherwise denies paragraph 12.
- 13. She does not admit paragraph 13.

B. PLAINTIFFS

B.1 First Plaintiff – Tina Lombardo

- 14. She does not plead to paragraphs 14 to 16 because they make no allegation relevant to the claims against her.
- 17. She does not admit paragraph 17.
- 18. She does not plead to paragraphs 18 to 22 because they make no allegation relevant to the claims against her.

B.2 Second Plaintiff – Tina Bonnici

- 23. She does not admit paragraph 23.
- 24. She does not admit paragraph 24.
- 25. She does not admit paragraph 25.
- 26. She does not admit paragraph 26.
- 27. She does not admit paragraph 27.
- 28. She does not admit paragraph 28.
- 29. She does not admit paragraph 29.
- 30A. She admits paragraph 30A (but for the avoidance of doubt denies the *Particulars of Wainstein's Assessment* attached to paragraph 30A).

Particulars

Wainstein refers to:

- A. an email from Sophie, a nurse at DCSS, to Wainstein dated 2 June 2021;
 - B. Wainstein's letter to Lanzer dated 7 June 2021; and
 - C. Wainstein's undated written notes of the consultation.
- 30. She does not admit paragraph 30.
 - 31. She does not admit paragraph 31.
 - 32. She does not admit paragraph 32.
 - 33. She does not admit paragraph 33.
 - 34. She does not admit paragraph 34.
 - 35. She does not admit paragraph 35.
 - 36. She does not admit paragraph 36.
 - 37A. She does not admit paragraph 37A.
 - 37. She does not admit paragraph 37.

38A. She does not admit paragraph 38A.

B.3 Third Plaintiff – Simone Russell

38. She does not plead to paragraphs 38 to 41 because they make no allegation relevant to the claims against her.

42. She does not admit paragraph 42.

43. She does not admit paragraph 43.

44. With respect to paragraph 44:

(a) she consulted with Russell on 13 September 2021; and

(b) she denies paragraph 44.

Particulars

Wainstein refers to:

A. an email from Gagan, a nurse at DCSS, to Wainstein dated 6 September 2021, requesting Wainstein consult with Russell;

B. Wainstein's letter to Lanzer dated 13 September 2021;

C. Wainstein's "Treatment Notes" dated 13 September 2021; and

D. Wainstein's undated written notes of the consultation.

45. She does not plead to paragraph 45 because it makes no allegation relevant to the claims against her.

46. She does not admit paragraph 46.

47. She does not plead to paragraphs 47 to 57A because they make no allegation relevant to the claims against her.

B.4 Fourth Plaintiff – Julie Rose Morrison

58. She does not plead to paragraphs 58 and 59 because they make no allegation relevant to the claims against her.

60. She does not admit paragraph 60.

61. She does not admit paragraph 61.

62. She does not plead to paragraphs 62 to 64 because they make no allegation relevant to the claims against her.

65. She does not admit paragraph 65.

66. She does not plead to paragraphs 66 to 72 because they make no allegation relevant to the claims against her.

73. She does not admit paragraph 73.

74. She does not plead to paragraphs 74 to 85 because they make no allegation relevant to the claims against her.

C. MISLEADING AND DECEPTIVE CONDUCT

C.1 DCSS Sales System

86. With respect to paragraph 86:

- (a) she does not admit paragraph 86.e.i; and
- (b) she otherwise does not plead to paragraph 86 because it makes no allegation relevant to the claims against her.

87. She does not plead to paragraph 87 because it makes no allegation relevant to the claims against her.

C.2 Representations

88. With respect to paragraph 88:

- (a) she denies paragraph 88.d; and
- (b) she otherwise does not plead to paragraph 88 because it makes no allegation relevant to the claims against her.

- 88A. She does not plead to paragraph 88A because it makes no allegation relevant to the claims against her.

89. She does not plead to paragraph 89 because it makes no allegation relevant to the claims against her.

90. She does not plead to paragraph 90 because it makes no allegation relevant to the claims against her.

91. She does not plead to paragraph 91 because it makes no allegation relevant to the claims against her.

92. She denies paragraph 92.

93. She does not plead to paragraph 93 because it makes no allegation relevant to the claims against her.

94. She does not plead to paragraph 94 because it makes no allegation relevant to the claims against her.

95. She does not plead to paragraph 95 because it makes no allegation relevant to the claims against her.

96. She does not plead to paragraph 96 because it makes no allegation relevant to the claims against her.

- 96A. With respect to paragraph 96A:

- (a) she does not admit any Standard Advice contained the words in paragraphs 86.e.i;
- (b) she denies paragraph 96A so far as it concerns the Independent Psychologist Representation; and
- (c) she otherwise does not plead to the remainder of paragraph 96A because it makes no allegation relevant to the claims against her.

97. With respect to paragraph 97:

- (a) she does not admit any Standard Advice provided to Lombardo contained the words in paragraphs 86.e.i;
- (b) she denies paragraph 97 so far as it concerns the Independent Psychologist Representation; and
- (c) she otherwise does not plead to the remainder of paragraph 97 because it makes no allegation relevant to the claims against her.

98. With respect to paragraph 98:

- (a) she does not admit any Standard Advice provided to Bonnici contained the words in paragraphs 86.e.i;
- (b) she denies paragraph 98 so far as it concerns the Independent Psychologist Representation; and
- (c) she otherwise does not plead to the remainder of paragraph 98 because it makes no allegation relevant to the claims against her.

99. With respect to paragraph 99:

- (a) she does not admit any Standard Advice provided to Russell contained the words in paragraphs 86.e.i;
- (b) she denies paragraph 99 so far as it concerns the Independent Psychologist Representation; and
- (c) she otherwise does not plead to the remainder of paragraph 99 because it makes no allegation relevant to the claims against her.

100. With respect to paragraph 100:

- (a) she does not admit any Standard Advice provided to Morrison contained the words in paragraphs 86.e.i;
- (b) she denies paragraph 100 so far as it concerns the Independent Psychologist Representation; and
- (c) she otherwise does not plead to the remainder of paragraph 100 because it makes no allegation relevant to the claims against her.

~~101. With respect to paragraph 101:~~

- ~~(a) she does not admit any Standard Advice contained the words in paragraphs 86.e.i;~~
 - ~~(b) she denies paragraph 101 so far as it concerns the Independent Psychologist Representation; and~~
 - ~~(c) she otherwise does not plead to the remainder of paragraph 101 because it makes no allegation relevant to the claims against her.~~
- 102. She does not plead to paragraph 102 because it makes no allegation relevant to the claims against her.
- 103. She does not plead to paragraph 103 because it makes no allegation relevant to the claims against her.
- 104. She does not plead to paragraph 104 because it makes no allegation relevant to the claims against her.
- 105. With respect to paragraph 105:
 - (a) she refers to paragraph 12(b) above;
 - (b) she denies any knowledge of:
 - (i) the existence or contents of the Standard Advice; and
 - (ii) the Independent Psychologist Representation;
 - (c) she otherwise denies paragraph 105.
- 106. With respect to paragraph 106:
 - (a) she refers to paragraph 86, 88, 97 to 101 above; and
 - (b) she denies paragraph 106.
- 107. With respect to paragraph 107:
 - (a) she refers to paragraph 86, 88, 97 to 101 above; and
 - (b) she denies paragraph 107.
- 108. She does not plead to paragraph 108 because it makes no allegation relevant to the claims against her.
- 109. She does not plead to paragraph 109 because it makes no allegation relevant to the claims against her.
- 110. With respect to paragraph 110:
 - (a) she refers to paragraphs 86, 88, 97 to 101, 105 to 107 above; and
 - (b) she denies paragraph 110.

D. STATUTORY GUARANTEES

D.1 Statutory Guarantees

111. She does not plead to paragraphs 111 to 116 because they make no allegation relevant to the claims against her.

D.2 Non-Compliance with guarantees

117. She does not plead to paragraphs 117 to 125 because they make no allegation relevant to the claims against her.

E. NEGLIGENCE

126. She does not plead to paragraphs 126 to 133 because they make no allegation relevant to the claims against her.

134. With respect to paragraph 134:

- (a) she admits that:

- (i) once a patient had consulted with other medical practitioners at DCSS concerning their procedure, she was to:

- (A) assess that patient's:

- (1) understanding of the procedure and its risks,
- (2) expected outcomes from the procedure;
- (3) motivation for the procedure;

- (B) report to Lanzer, on DCSS's behalf, with respect to these matters;

- (ii) she owed a duty of care to do these things with reasonable care and skill;

- (b) she otherwise denies paragraph 134.

135. She does not plead to paragraph 135 because it makes no allegation.

136. She does not plead to paragraphs 136 to 187 because they make no allegation relevant to the claims against her.

188. She denies paragraph 188.

189. She denies paragraph 189.

190. She denies paragraph 190.

191. She does not plead to paragraph 191 because it makes no allegation relevant to the claims against her.

192. She denies paragraph 192 so far as it relates to her.

192A. Further to the denial in paragraph 192 above, she says that:

- (a) by her claim, Bonnici is, for the purposes of s 28LE of the *Wrongs Act*, seeking to recover damages for non-economic loss in respect of an injury;
- (b) Bonnici does not have, for the purposes of s 28LE of the *Wrongs Act*, a significant injury; and
- (c) by reason thereof, Bonnici is not entitled to recover damages pursuant to s 28LE of the *Wrongs Act*.

193. She does not plead to paragraphs 193 to 195 because they make no allegation relevant to the claims against her.

F. CONTRACT

196. She does not plead to paragraphs 196, 196A and 196B because it makes no allegation relevant to the claims against her.

F.1 Lombardo

197. She does not plead to paragraph 197 because it makes no allegation relevant to the claims against her.

F.2 Bonnici

198. She does not plead to paragraph 198 because it makes no allegation relevant to the claims against her.

F.3 Russell

199. She does not plead to paragraph 199 because it makes no allegation relevant to the claims against her.

F.4 Morrison

200. She does not plead to paragraph 200 because it makes no allegation relevant to the claims against her.

F.5 Group Members

201. She does not plead to paragraph 201 because it makes no allegation relevant to the claims against her.

F.6 Breach of contract

202. She does not plead to paragraphs 202 and 202A because it makes no allegation relevant to the claims against her.

G. Causation, Loss and Damage

G.1 Misleading and Deceptive Conduct

203. She denies paragraph 203 so far as it relates to the Independent Psychologist Representation.

203A. She denies paragraph 203A.

204. She denies paragraph 204.

205. She denies paragraph 205 so far as it relates to the Independent Psychologist Representation.

205A. She denies paragraph 205A.

206. She denies paragraph 206.

207. She denies paragraph 207 so far as it relates to the Independent Psychologist Representation.

207A. She denies paragraph 207A.

208. She denies paragraph 208.

209. She denies paragraph 209 so far as it relates to the Independent Psychologist Representation.

209A. She denies paragraph 209A.

210. She denies paragraph 210.

211. She denies paragraph 211 so far as it relates to the Independent Psychologist Representation.

211A. She denies paragraph 211A.

212. She denies paragraph 212.

213. She denies paragraph 213.

G.2 Statutory Guarantee Non-Compliance

214. She does not plead to paragraphs 214 and 215 because they make no allegation relevant to the claims against her.

G.3 Negligence

216. She does not plead to paragraph 216 because it makes no allegation relevant to the claims against her.

G.4 Contract

217. She does not plead to paragraph 217 because it makes no allegation relevant to the claims against her.

H. COMMON QUESTIONS

218. She does not admit paragraph 218.k is a Common Question.

I. PROPORTIONATE LIABILITY AND OTHER MATTERS

219. With respect to that claim pleaded against Wainstein in paragraphs 105, 110, 213.h, for which damage is claimed in paragraphs 203 to 212 of the Statement of Claim, she says as follows:

- (a) the claim is, for the purposes of s 87CB(1)(a) of the *Competition and Consumer Act 2010* (Cth), a claim for damages made under section 236 of the *Australian Consumer Law* for economic loss caused by conduct that was done in a contravention of s 18 of the *Australian Consumer Law*;
- (b) as pleaded in the Statement of Claim:
- (i) regarding the first defendant (paragraphs 94, 96A, 97, 98, 99, 100, 106, 117-119, 124-125, 196-202A, 203-215 and 217);
 - (ii) regarding the second defendant (paragraphs 94, 96A, 97, 98, 99, 100, 107, 117-119, 124-125 and 203-215);
 - (iii) regarding the third defendant (paragraphs 95, 96, 102, 103.e, 104.b, 108, 109, 117-119, 124-125 and 203-215);
 - (iv) regarding the fourth defendant (paragraphs 96, 102, 109, 117-119, 124-125 and 203-215);
 - (v) regarding the fifth defendant (paragraphs 95, 96, 102, 103.f, 104.c, 108, 109, 117-119, 124-125 and 203-215);
 - (vi) regarding the sixth defendant (paragraphs 96, 102, 109, 117-119, 124-125 and 203-215);
 - (vii) regarding the seventh defendant (paragraphs 95, 96, 102, 103.d, 103.g, 104.d, 109, 117-119, 124-125 and 203-215);

each other defendant to the proceeding is, for the purposes of s 87CB(3) of the *Competition and Consumer Act*, someone whose acts or omissions (or act or omission) caused, independently of each other or jointly, the damage or loss that is the subject of the claim against Wainstein;

- (c) by reason thereof:
- (i) pursuant to s 87CD(1)(a) of the *Competition and Consumer Act*, Wainstein's liability is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent of her responsibility for the damage or loss; and
 - (ii) pursuant to s 87CD(1)(b) of the *Competition and Consumer Act*, the court may give judgment against the defendant for not more than that amount.

2 July 2025 ~~20 December 2023~~

DANIEL B BONGIORNO

COLIN BIGGERS & PAISLEY

SCHEDULE OF PARTIES

| | |
|--|------------------------------|
| TINA LOMBARDO | Plaintiff |
| DERMATOLOGY AND COSMETIC SURGERY SERVICES PTY LTD (CAN 055 927 618) | First Defendant |
| DANIEL LANZER | Second Defendant |
| DANIEL ARONOV | Third Defendant |
| DANIEL DARBYSHIRE | Fourth Defendant |
| JACQUELINE DARBYSHIRE and TONY DARBYSHIRE (in their capacity as the legal personal representatives of the estate of Daniel Darbyshire) | |
| RYAN WELLS | Fifth Defendant |
| ALIREZA FALLAHI | Sixth Defendant |
| GEORGE SHU-KHIM WONG | Seventh Defendant |
| CANDICE WAINSTEIN | Eighth Defendant |