



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

Proceeding No. S ECI 2022 00739
Case: S ECI 2022 00739
Filed on: 24/12/2024 02:07 PM

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

FIFTH DEFENDANT'S DEFENCE TO THE AMENDED STATEMENT OF CLAIM

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By way of defence to the putative Amended Statement of Claim, actually a Further Amended Statement of Claim (**FASC**) dated 7 November 2024, and adopting the definitions used in the FASC, the Fifth Defendant, Dr Ryan Wells (**Dr Wells**), says as follows:

A. PARTIES

A.1 Group Proceedings

1. He does not plead to paragraph 1 as it makes no allegation against him.
- 1A. He does not plead to paragraph 1A as it makes no allegation against him.
2. He does not admit any allegation in paragraph 2 which relates to him.

A.2 Dermatology and Cosmetic Surgery Services Pty Ltd

3. He does not plead to paragraph 3 as it makes no allegation against him.

A.3 The Second Defendant – Dr Lanzer

4. He does not plead to paragraph 4 as it makes no allegation against him.
5. He does not plead to paragraph 5 as it makes no allegation against him.
6. He does not plead to paragraph 6 as it makes no allegation against him.

A.4 The Other Cosmetic Doctor Defendants

7. As to paragraph 7 he:
 - a. admits that he was trained by the Second Defendant, Dr Lanzer, in the provision of cosmetic surgery services;
 - b. says further that he was a legally qualified and registered medical practitioner and was also trained by other doctors with experience in performing cosmetic surgery;
 - c. otherwise, does not admit the allegations made in paragraph 7 which relate to him.

A.4.1 Liability of Other Cosmetic Doctor Defendants directly

8. As to paragraph 8, he:
 - a. admits that he was a registered general medical practitioner with training and experience in providing certain cosmetic surgery services;
 - b. admits that at relevant times he:
 - i. was not a member of The Royal Australian College of Surgeons or The Royal Australian College of Physicians and says that he was not required to be such in order to perform cosmetic surgery;
 - ii. did not hold specialist registration in the field of surgery as defined by sections 57 and 58 of the *Health Practitioner Regulation National Law* or any guideline published by the Medical Board of Australia and was not required to hold such registration in order to perform cosmetic surgery;

- c. says that he had undertaken training with:
 - i. the Australasian College of Cosmetic Surgery (as it then was) including specific training in liposuction procedures;
 - ii. other experienced cosmetic surgeons; and
 - iii. Dr Lanzer who at all relevant times was a specialist Dermatologist and experienced cosmetic surgeon;
- d. otherwise, does not admit the allegations made in paragraph 8 which relate to him.

9. As to paragraph 9:

- a. he admits that at all relevant times he practiced in the field of cosmetic surgery and otherwise denies the allegations in paragraph 9(a) insofar as they relate to him;
- b. as to paragraph 9(b) he admits that he performed a liposuction procedure on the upper and lower abdomen, waist, flanks and lower back of the Second Plaintiff, Ms Tina Bonnici, on 15 June 2021 at a clinic operated by the First and/or Second Defendant;
- c. he denies the allegations in paragraph 9(c) and says further that at all relevant times he was an employee of the First Defendant and/or the Second Defendant;

PARTICULARS

- i) Dr Wells was an employee of the First Defendant and the Second Defendant pursuant to a contract of employment made on or about 26 March 2018 (the **Employment Contract**).
- ii) The Employment Contract is partly oral and partly to be implied.

Insofar as it is oral, it is contained in discussions between Dr Wells and the Second Defendant, for himself and on behalf of the First Defendant, and Mr Ilan Hayman and Mr Dovi Spigelman, executive assistants to the First and Second Defendants that occurred between 2016 and 23 March 2018. These discussions

occurred in face-to-face meetings and over the internet were to the effect as alleged in this paragraph.

Insofar as it is implied, it is implied by law so as to give efficacy to the relationship between the Fifth Defendant on the one hand and the First Defendant and Second Defendant on the other.

iii) Alternatively, the Employment Contract is to be implied from all of the facts and circumstances including that:

(a) between 2016 and 2018 there were discussions between Dr Wells and the Second Defendant, for himself and on behalf of the First Defendant and Mr Ilan Hayman and Mr Dovi Spigelman, executive assistants to the First and Second Defendants over telephone and face to face discussions relating to the training Dr Wells would be given, the salary and other remuneration he was to receive, the services he was expected to provide, tasks he was expected to undertake and the commencement of his employment with the First Defendant and/or the Second Defendant.

(b) from about 23 March 2018 Dr Wells attended for work at the First Defendant's business premises in Queensland during normal business hours;

(c) on a weekly or fortnightly basis from about 23 March 2018 Dr Wells' would be paid a salary for services provided to the First Defendant and/or the Second Defendant.

iv) There were terms and conditions of the Employment Contract, amongst others, as follows:

(a) Dr Wells' employment commenced on or about 23 March 2018;

(b) It was a condition of Dr Wells' appointment that he adhere to the Second Defendant's policies and procedure and that he satisfactorily comply with all duties in his job description and the policy and procedures manual;

- (c) Dr Wells was to report to and was accountable to the Second Defendant or to a person at the Second Defendant's direction;
- (d) Although Dr Wells was employed to provide clinical services, he was required to be involved in other areas of the clinic, including administration, and Dr Wells was to report to the Practice Manager for further instructions;
- (e) Dr Wells' salary package (excluding commissions and bonuses) was a base salary of approximately \$300,000 per annum plus superannuation at the normal rate;
- (f) Any annual leave taken outside of the Christmas Period must be discussed and approved by the Second Defendant;
- (g) Dr Wells was subject to an annual performance review which included planning for the future, setting objectives, identifying training needs and new opportunities for career development
- (h) Dr Wells was obliged to follow all lawful and reasonable directions of the First Defendant and the Second Defendant.

The term identified in (a) is contained in a document entitled Training Agreement which provides that 26 March 2018 was the date of commencement of Dr Wells' training by the First Defendant.

The terms identified in (b) and (c) above are evidenced by an email from the Second Defendant to his insurer dated 21 September 2018 wherein the Second Defendant makes admissions to the effect of the terms identified in (b) and (c) above. A copy of this email may be inspected by appointment with the Sixth Defendant's solicitors.

The terms identified in (e) is oral and is contained in the discussions referred to in (iii)(a) above.

The terms identified in (f) to (h) above are implied by law so as to give efficacy to the relationship of employer and employee as between the First and Second Defendants, on the one hand, and Dr Wells on the other.

Further particulars may be provided following discovery in this proceeding.

- d. he denies paragraph 9(d) and says further that paragraph 9(d) is vague and embarrassing and ought to be struck out;
- e. he otherwise does not admit the allegations in paragraph 9 which relate to him.

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

- 10. He admits the allegations made in paragraph 10, insofar as they relate to him, and refers to and repeats paragraph 9(c) hereof and says further that pursuant to the terms of the Employment Contract, he was supervised and instructed by the First Defendant and the Second Defendant.
- 11. Except to say that he admits that he was an employee of the First Defendant and the Second Defendant and refers to and repeats paragraph 9 above, he otherwise denies paragraph 11.

A.5 Wainstein

- 12. He does not plead to paragraph 12 as it makes no allegation against him.
- 13. He does not plead to paragraph 13 as it makes no allegation against him.

B. THE PLAINTIFFS

B.1 First Plaintiff – Tina Lombardo

- 14. He does not plead to paragraph 14 as it makes no allegation against him.
- 15. He does not plead to paragraph 15 as it makes no allegation against him.
- 16. He does not plead to paragraph 16 as it makes no allegation against him.
- 17. He does not plead to paragraph 17 as it makes no allegation against him.

18. He does not plead to paragraph 18 as it makes no allegation against him.
19. He does not plead to paragraph 19 as it makes no allegation against him.
20. He does not plead to paragraph 20 as it makes no allegation against him.
21. He does not plead to paragraph 21 as it makes no allegation against him.
22. He does not plead to paragraph 22 as it makes no allegation against him.

B.2 Second Plaintiff – Tina Bonnici

23. He does not plead to paragraph 23 as it makes no allegation against him.
24. He does not plead to paragraph 24 as it makes no allegation against him.
25. Insofar as paragraph 25 relates to him, he admits that on 8 April 2021 he consulted with the Second Plaintiff at the Gold Coast Clinic in the presence of a nurse employed by the First Defendant or the Second Defendant and whose initials were recorded as “CO” in the DCSS medical record. He otherwise he does not plead to paragraph 25.
26. As to paragraph 26:
 - a. he admits that he provided advice to the Second Plaintiff during a consultation on 8 April 2021, about proposed treatment, being tumescent liposuction, and provided a quote as a servant and agent of the First Defendant for such treatment, which he carried out in the ordinary course of his employment with the First and/or Second Defendant;
 - b. further, he says that, during the consultation on 8 April 2021 he:
 - i. obtained a relevant medical history from the Second Plaintiff;
 - ii. undertook an examination of all areas in respect of which treatment was being contemplated;
 - iii. educated the Second Plaintiff regarding the tumescent liposuction procedure;

- iv. informed the Second Plaintiff of all material risks and potential complications associated with the proposed treatment;
 - v. informed the Second Plaintiff that he was a cosmetic practitioner and an associate of Dr Lanzer;
 - vi. did not inform the Second Plaintiff that he was a qualified plastic surgeon;
 - vii. likely informed the Second Plaintiff of alternative treatment options and that she should seek further opinion from another practitioner concerning the proposed procedure;
- c. he otherwise does not admit the allegations in paragraph 26.
27. He does not plead to paragraph 27 as it makes no allegation against him.
28. He does not plead to paragraph 28 as it makes no allegation against him.
29. He does not plead to paragraph 29 as it makes no allegation against him.
- 30A. He does not plead to paragraph 30A as it makes no allegation against him.
30. He does not plead to paragraph 30 as it makes no allegation against him.
31. As to paragraph 31:
- a. as to paragraph 31(a):
 - i. he admits the allegations made in paragraph 31(a)(i) insofar as they relate to him and says further that during the consultation at Brisbane Clinic on 15 June 2021, which he carried out in the ordinary course of his employment:
 - A. he reiterated the advice provided during consultation with the Second Plaintiff on 8 April 2021 and engaged in a comprehensive discussion with the Second Plaintiff regarding the tumescent liposuction procedure, including the material risks inherent in the procedure;

- B. he marked the anatomical areas for the liposuction procedure, being the Second Plaintiff's upper and lower abdomen, waist, flanks, and lower back, which were subsequently reviewed, confirmed, and consented to by the Second Plaintiff as being the areas which she agreed would be treated;
- C. following the discussion referred to in A and the matters referred to in B above, the Second Plaintiff signed a pre-operative consent form dated 15 June 2021;

ii. as to paragraph 31(a)(ii):

- A. he denies the allegations made in paragraph 31(a)(ii);
- B. he says further that he informed the Second Plaintiff that at times, a liposuction procedure necessitates two medical practitioners to perform the procedure jointly because inter alia it can be a physically demanding procedure for the practitioner;

iii. as to paragraph 31(a)(iii):

- A. he refers to and repeats the matters set out in paragraphs 7 and 8 above;
- B. he otherwise denies the allegations made in paragraph 31(a)(iii).

b. he admits that the Second Plaintiff underwent a procedure, being liposuction to her upper and lower abdomen, waist, flanks and lower back and otherwise does not admit the allegations in paragraph 31(b).

c. otherwise denies the allegations in paragraph 31.

32. As to paragraph 32 he:

a. refers to and repeats the matters set out at paragraph 31(a) above;

b. says that during the preoperative consent discussion he offered to perform liposuction on the Second Plaintiff's lower back without additional charge and she accepted that offer;

c. otherwise denies the allegations in paragraph 32.

33. He denies the allegations made in paragraph 33.

34. He denies the allegations made in paragraph 34.

35. He denies the allegations made in paragraph 35.

36. He denies the allegations made in paragraph 36 insofar as they relate to him, otherwise does not plead to paragraph 36.

37A. He does not plead to paragraph 37A as it makes no allegation against him.

37. He does not plead to paragraph 37 as it makes no allegation against him.

38A. He does not plead to paragraph 38A as it makes no allegation against him.

B.3 Third Plaintiff – Simone Russell

38. He does not plead to paragraph 38 as it makes no allegation against him.

38A. He does not plead to paragraph 38A as it makes no allegation against him.

39. He does not plead to paragraph 39 as it makes no allegation against him.

39A. He does not plead to paragraph 39A as it makes no allegation against him.

39B. He does not plead to paragraph 39B as it makes no allegation against him.

40. He does not plead to paragraph 40 as it makes no allegation against him.

41. He does not plead to paragraph 41 as it makes no allegation against him.

42. He does not plead to paragraph 42 as it makes no allegation against him.

- 43. He does not plead to paragraph 43 as it makes no allegation against him.
- 44. He does not plead to paragraph 44 as it makes no allegation against him.
- 45. He does not plead to paragraph 45 as it makes no allegation against him.
- 46. He does not plead to paragraph 46 as it makes no allegation against him.
- 47. He does not plead to paragraph 47 as it makes no allegation against him.
- 48. He does not plead to paragraph 48 as it makes no allegation against him.
- 49. He does not plead to paragraph 49 as it makes no allegation against him.
- 50. He does not plead to paragraph 50 as it makes no allegation against him.
- 51. He does not plead to paragraph 51 as it makes no allegation against him.
- 52. He does not plead to paragraph 52 as it makes no allegation against him.
- 53. He does not plead to paragraph 53 as it makes no allegation against him.
- 54. He does not plead to paragraph 54 as it makes no allegation against him.
- 55. He does not plead to paragraph 55 as it makes no allegation against him.
- 56. He does not plead to paragraph 56 as it makes no allegation against him.
- 57. He does not plead to paragraph 57 as it makes no allegation against him.
- 57A. He does not plead to paragraph 57A as it makes no allegation against him.

B.4 Fourth Plaintiff – Julie Rose Morrison

- 58. He does not plead to paragraph 58 as it makes no allegation against him.
- 59. He does not plead to paragraph 59 as it makes no allegation against him.
- 60. He does not plead to paragraph 60 as it makes no allegation against him.

- 61. He does not plead to paragraph 61 as it makes no allegation against him.
- 62. He does not plead to paragraph 62 as it makes no allegation against him.
- 63. He does not plead to paragraph 63 as it makes no allegation against him.
- 64. He does not plead to paragraph 64 as it makes no allegation against him.
- 65. He does not plead to paragraph 65 as it makes no allegation against him.
- 66. He does not plead to paragraph 66 as it makes no allegation against him.
- 67. He does not plead to paragraph 67 as it makes no allegation against him.
- 68. He does not plead to paragraph 68 as it makes no allegation against him.
- 69. He does not plead to paragraph 69 as it makes no allegation against him.
- 70. He does not plead to paragraph 70 as it makes no allegation against him.
- 71. He does not plead to paragraph 71 as it makes no allegation against him.
- 71A. He does not plead to paragraph 71A as it makes no allegation against him.
- 72. He does not plead to paragraph 72 as it makes no allegation against him.
- 73. He does not plead to paragraph 73 as it makes no allegation against him.
- 74. He does not plead to paragraph 74 as it makes no allegation against him.
- 75. He does not plead to paragraph 75 as it makes no allegation against him.
- 76. He does not plead to paragraph 76 as it makes no allegation against him.
- 77. He does not plead to paragraph 77 as it makes no allegation against him.
- 78. He does not plead to paragraph 78 as it makes no allegation against him.
- 79. He does not plead to paragraph 79 as it makes no allegation against him.

- 80. He does not plead to paragraph 80 as it makes no allegation against him.
- 81. He does not plead to paragraph 81 as it makes no allegation against him.
- 82. He does not plead to paragraph 82 as it makes no allegation against him.
- 83. He does not plead to paragraph 83 as it makes no allegation against him.
- 84. He does not plead to paragraph 84 as it makes no allegation against him.
- 85. He does not plead to paragraph 85 as it makes no allegation against him.

C. MISLEADING AND DECEPTIVE CONDUCT

C.1 DCSS Sales System

- 86. Except to say that he admits that in the ordinary course of his employment from time to time he conducted:

- a. Pre-Engagement Consultations as alleged in paragraph 86(d)
- b. Pre-Surgery Consultations as alleged in paragraph 86(i); and
- c. Performed Cosmetic Surgery Services as alleged in paragraph 86(j);

he otherwise does not plead to paragraph 86 as it makes no allegation against him.

- 87. As to paragraph 87:

- a. he admits that there were references to him on the Lanzer Website;
- b. he admits that with respect to the Second Plaintiff he conducted a Pre-Engagement consultation and refers to and repeats paragraph 26, a Pre-Surgery consultation and refers to and repeats paragraph 31 and that he conducted the procedure referred to in paragraph 31(b);

- c. he admits that he provided cosmetic surgery services in the ordinary course of his employment with the First Defendant and Second Defendant pursuant to the Employment Contract;
- d. he otherwise denies the allegations against him in paragraph 87.

C.2 Representations

C.2.1 The Representations

88. As to paragraph 88:

- aa. insofar as it relates to him, he denies the allegation in paragraph 88 (aa) and refers to and repeats the matters alleged at paragraph 8(b) above;
- a. he:
 - i. he admits that he made representations to the patients of the First Defendant and Second Defendant that he was experienced in the performance of certain cosmetic surgery procedures in accordance with his actual experience at the time;
 - ii. he otherwise denies the allegations in paragraph 88(a) that relate to him;
- b. as to paragraph 88(b):
 - i. he denies the allegations made in paragraph 88(b) insofar as they relate to him;
 - ii. he says further that the Second Plaintiff was informed that he was a registered medical practitioner and refers to and repeats paragraph 26(b), (v) and (vi);
- c. he does not plead to paragraph 88(c) as it makes no allegation against him;
- d. he does not plead to paragraph 88(d) as it makes no allegation against him;
- e. as to paragraph 88(e):

- i. he say that it was his usual and ordinary practice to inform each patient that he treated of the risks and complications that were inherent in a procedure; and
- ii. he otherwise denies the allegations made in paragraph 88(e), insofar as they relate to him.

88A. As to paragraph 88A, insofar as it relates to him:

- a. he does not plead to paragraph 88A(a) as it makes no allegation against him;
- b. admits that he 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 and refers to paragraph 89(b) herein;
- c. refers to and repeats paragraphs 8 and 88 (aa) herein; and
- d. otherwise denies the allegations in paragraph 88A.

89. As to paragraph 89 he:

- a. does not plead to paragraph 89(a) as it makes no allegation against him;
- b. As to paragraph 89(b) he refers to and repeats paragraphs 8, 26, and 88A above;
- c. As to paragraph 89(c) he refers to and repeats his plea to paragraph 88A;
- d. otherwise denies the allegations made in paragraph 89.

90. As to paragraph 90 he:

- a. admits that at all relevant times he was not a qualified plastic surgeon;
- b. refers to and repeats paragraphs 88(b) and 89 above;
- c. otherwise denies the allegations in paragraph 90 insofar as they relate to him.

91. He does not plead to paragraph 91 as it makes no allegation against him.

92. He does not plead to paragraph 92 as it makes no allegation against him.
93. He refers to and repeats paragraphs 88(e) and 176 otherwise denies the allegations made in paragraph 93 insofar as they relate to him.

C.2.2 How the Representations were made to potential patients

94. He does not plead to paragraph 94 as it makes no allegation against him.
95. As to paragraph 95:
- a. as to paragraph 95(a):
 - i. he refers to and repeats the matters set out in paragraphs 8, 88(e) and 176;
 - ii. he does not plead to the allegations relating to Group Members as he does not know of their wishes with respect to surgery;
 - iii. he otherwise denies the allegations made in paragraph 95(a) insofar as they relate to him;
96. As to paragraph 96 he:
- a. refers to and repeats paragraph 87(a) above;
 - b. admits that the Lanzer website was accessible by any member of the public;
 - c. admits that pursuant to the terms and conditions of the Employment Contract he supplied personal profile information to the First and Second Defendants who operated the Lanzer website and determined its contents;
 - d. admits that he received a salary from the First Defendant and/or the Second Defendant pursuant to the terms and conditions of the Employment Contract;
 - e. otherwise denies the allegations made in paragraph 96 insofar as they relate to him.

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

96A. He does not plead to paragraph 96A as it makes no allegation against him.

97. He does not plead to paragraph 97 as it makes no allegation against him.

98. He does not plead to paragraph 98 as it makes no allegation against him.

99. He does not plead to paragraph 99 as it makes no allegation against him.

100. He does not plead to paragraph 100 as it makes no allegation against him.

101. Not used.

102. As to paragraph 102:

a. he refers to and repeats paragraphs 96A to 100 hereof;

b. he denies the allegations in paragraph 102(a), insofar as it relates to him;

c. as to paragraph 102(b):

i. he refers to and repeats the matters set out in paragraphs 9(b), 9(c), 87(a) and 96(d) above;

ii. he admits that:

A. pursuant to the terms and conditions of his Employment Contract his image and a professional profile was supplied to the First Defendant and the Second Defendant and used on the First Defendant's website;

B. it was a requirement of his employment pursuant to the terms and conditions of his Employment Contract that he conduct pre-engagement consultations and pre-surgery consultations and that he provide cosmetic surgery services;

iii. he otherwise denies the allegations in paragraph 102(b);

- d. save to admit that he received a salary from the First Defendant and/or the Second Defendant as an employee for performing services pursuant to the terms and conditions of the Employment Contract, he denies the allegations in paragraph 102(c) which relate to him;
- e. he refers to and repeats paragraph 88(e)(i) and 96A to 100 above and otherwise denies the allegations in paragraph 102(d) which relate to him;
- f. he admits that he was aware that there was information on social media sites relating to him and the other Defendants (excluding the Eighth Defendant) and otherwise refers to and repeats paragraphs 96A to 100 above and denies the allegations in paragraph 102(e) that relate to him;
- g. he denies the allegations in paragraph 102(f) which relate to him;
- h. he otherwise denies the allegations in paragraph 102 and says that paragraph 102 fails to disclose a cause of action and/or is embarrassing and ought to be summarily dismissed or struck out.

103. As to paragraph 103:

- a. Not used;
- b. Not used;
- c. Not used;
- d. he does not plead to paragraph 103(d) as it makes no allegation against him;
- e. he does not plead to paragraph 103(e) as it makes no allegation against him;
- f. he denies the allegations in paragraph 103(f) which relate to him;
- g. he does not plead to paragraph 103(g) as it makes no allegation against him.

104. As to paragraph 104:

- a. he says further that that he does not know and therefore cannot admit the allegation that any Group Members accessed material published by him on social media;
- b. he otherwise denies the allegations in paragraph 104 insofar as they relate to him.

105. He does not plead to paragraph 105 as it makes no allegation against him.

C.2.4 Contraventions

106. Insofar as the matters alleged at paragraph 106 are alleged to be the principal acts upon which it is alleged that he aided, abetted, counselled, procured or was otherwise knowingly concerned in or party to, he denies paragraph 106.

107. Insofar as the matters alleged at paragraph 107 are alleged to be the principal acts upon which it is alleged that he aided, abetted, counselled, procured or was otherwise knowingly concerned in or party to, he denies paragraph 107.

108. He denies the allegations in paragraph 108 insofar as they relate to him.

109. He denies the allegations made in paragraph 109 insofar as they relate to him and otherwise refers to and repeats the matters alleged at paragraph 96 and 102 above.

110. He does not plead to paragraph 110 as it makes no allegation against him.

D. STATUTORY GUARANTEES

D.1 Statutory guarantees

111. As to paragraph 111:

- a. he does not plead to paragraph 111(a) as it makes no allegation against him;
- b. as to paragraph 111(b):
 - i. he denies that he was a supplier, within the meaning of the ACL, of cosmetic surgery services;
 - ii. he refers to and repeats the matters set out in paragraph 9(b) and 87(c) above;

- iii. he otherwise does not admit to the allegations in paragraph 111(b) insofar as they relate to him.

112. As to paragraph 112, he:

- a. refers to and repeats the matters in paragraph 87(c) and 111 above;
- b. admits that the Second Plaintiff paid less than \$40000 to the First Defendant and/or Second Defendant for the services provided to her and that the services were for her personal use;
- c. otherwise, he does not admit the allegations in paragraph 112.

113. He denies the allegations in paragraph 113 insofar as they relate to the Second Plaintiff and otherwise says that he does not know the purpose for which any other Plaintiff or Group Member acquired the services of any of the Defendants.

114. As to paragraph 114:

- a. He denies that each of the Plaintiffs and Group Members acquired cosmetic surgery services for achieving the results of enhancing their appearance;
- b. he says that:
 - i. the Second Plaintiff informed him that she was seeking liposuction to improve her lifestyle, self-esteem and self-confidence;
 - ii. Further, any liposuction procedure carries with it the consequences of scarring and all of the risks inherent in the procedure of which the Second Plaintiff was advised;
- c. Otherwise denies the allegations in paragraph 114, insofar as it relates to him.

115. As to paragraph 115, to the extent it relates to him, he:

- a. refers to and repeats the matters in paragraph 111 above;

- b. says that each of his patients, including the Second Plaintiff, was advised of the inherent risks of cosmetic procedures and that the results could not be guaranteed.
- c. says that he advised the Second Plaintiff of the inherent risks of the outcome of her treatment and refers to and repeats the matters at paragraph 176 below;
- d. says that he told the Second Plaintiff that he was not promising perfection;
- e. he otherwise denies paragraph 115.

116. As to paragraph 116:

- a. he says that he rendered every procedure he conducted on the Second Plaintiff with due care and skill of a medical practitioner experienced in the procedure of tumescent liposuction;
- b. he otherwise denies paragraph 116 insofar as it relates to him; and
- c. he otherwise does not plead as it does not relate to him;

D.2 Non-compliance with guarantees

117. He denies the allegations made in paragraph 117 insofar as they relate to him.

118. He denies the allegations made in paragraph 118 insofar as they relate to him.

119. He denies the allegations made in paragraph 119 insofar as they relate to him.

120. He denies the allegations in paragraph 120 insofar as they relate to him..

121. He denies the allegations in paragraph 121 insofar as they relate to him and refers to and repeats the matters alleged at paragraphs 192, 195 and 217 below.

122. He denies the allegations paragraph 122 insofar as it relates to him.

123. He denies the allegations in paragraph 123 insofar as it relates to him.

124. He does not know and cannot plead to unspecified matters relating to Group Members.

124A. He does not know and cannot plead to unspecified matters relating to Group Members

125. He denies the allegations made in paragraph 125 insofar as they relate to him.

E. NEGLIGENCE

126. He does not plead to paragraph 126 as it makes no allegation against him.

127. He does not plead to paragraph 127 as it makes no allegation against him.

128. He does not plead to paragraph 128 as it makes no allegation against him.

129. He does not plead to paragraph 129 as it makes no allegation against him.

130. He does not plead to paragraph 130 as it makes no allegation against him.

131. As to paragraph 131:

a. he admits that he owed a duty of care to the Second Plaintiff and to patients 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 provisions of said services;

b. he otherwise denies the allegations made in paragraph 131.

132. He does not plead to paragraph 132 as it makes no allegation against him.

133. He does not plead to paragraph 133 as it makes no allegation against him.

134. He does not plead to paragraph 134 as it makes no allegation against him.

135. He does not plead to paragraph 135 as it makes no allegation against him.

136. He does not plead to paragraph 136 as it makes no allegation against him.

137. He does not plead to paragraph 137 as it makes no allegation against him.

138. He does not plead to paragraph 138 as it makes no allegation against him.

- 139. He does not plead to paragraph 139 as it makes no allegation against him.
- 140. He does not plead to paragraph 140 as it makes no allegation against him.
- 141. He does not plead to paragraph 141 as it makes no allegation against him.
- 142. He does not plead to paragraph 142 as it makes no allegation against him.
- 143. He does not plead to paragraph 143 as it makes no allegation against him.
- 144. He does not plead to paragraph 144 as it makes no allegation against him.
- 145. He does not plead to paragraph 145 as it makes no allegation against him.
- 146. He does not plead to paragraph 146 as it makes no allegation against him.
- 147. He does not plead to paragraph 147 as it makes no allegation against him.
- 148. He does not plead to paragraph 148 as it makes no allegation against him.
- 149. He does not plead to paragraph 149 as it makes no allegation against him.
- 150. He does not plead to paragraph 150 as it makes no allegation against him.
- 151. He does not plead to paragraph 151 as it makes no allegation against him.
- 152. He does not plead to paragraph 152 as it makes no allegation against him.
- 153. He does not plead to paragraph 153 as it makes no allegation against him.
- 154. He does not plead to paragraph 154 as it makes no allegation against him.
- 155. He does not plead to paragraph 155 as it makes no allegation against him.
- 156. He does not plead to paragraph 156 as it makes no allegation against him.
- 157. He does not plead to paragraph 157 as it makes no allegation against him.
- 158. He does not plead to paragraph 158 as it makes no allegation against him.

159. He does not plead to paragraph 159 as it makes no allegation against him.
160. He does not plead to paragraph 160 as it makes no allegation against him.
161. He does not plead to paragraph 161 as it makes no allegation against him.
162. He does not plead to paragraph 162 as it makes no allegation against him.
163. He does not plead to paragraph 163 as it makes no allegation against him.
164. He does not plead to paragraph 164 as it makes no allegation against him.
165. He does not plead to paragraph 165 as it makes no allegation against him.
166. He does not plead to paragraph 166 as it makes no allegation against him.
167. He does not plead to paragraph 167 as it makes no allegation against him.
168. He does not plead to paragraph 168 as it makes no allegation against him.
169. He does not plead to paragraph 169 as it makes no allegation against him.
170. He does not plead to paragraph 170 as it makes no allegation against him.
171. He does not plead to paragraph 171 as it makes no allegation against him.
172. He does not plead to paragraph 172 as it makes no allegation against him.
173. He denies the allegations in paragraph 173.
174. As to paragraph 174:
- a. as to paragraph 174(a);
 - i. refers to and repeats the matters in paragraph 9(b) above;
 - ii. says that questions of negligence arising from the Second Plaintiff's claim are to be determined in accordance with s22 of the *Civil Liability Act* (Qld) and the *Wrongs Act* (Vic) has no application to her claims;

iii. otherwise denies the allegations made in paragraph 174(a) insofar as they relate to him;

b. as to paragraph 174(b) he does not know and therefore cannot admit the allegations made in paragraph 174 (b).

175. He denies the allegations made in paragraph 175 insofar as they relate to him and says that questions of foreseeability and entitlement to damages for psychiatric injury are to be determined in accordance with the *Civil Liability Act* (Qld).

176. As to paragraph 176, he refers to and repeats the matters set out in paragraphs 26 and 173 above and

a. he admits the allegations in paragraph 176(a)(i) and (ii) and further says:

i. he warned the Second Plaintiff at an initial consultation on 8 April 2021 of the following risks:

A. A lot of weeping for first 24 hours but up to 7 days post-operatively;

B. tenderness;

C. bruising;

D. numbness;

E. that the treated area would feel hard, and/or lumpy;

F. pain;

G. dimpling and/or dents in the fat, or unevenness;

H. loose skin or wrinkling;

I. scarring (noting that everyone sees scars differently and there is no guarantee that residual scarring would not be noticeable);

- J. infection, bleeding, deep vein thrombosis or pulmonary embolism and death, saying that these further risks were unlikely;
 - K. Further, he told the Second Plaintiff that perfection was not promised and that she must have realistic expectations and that;
 - L. it was reasonable to expect that she would look better in clothes.
- ii. he warned the Second Plaintiff during a pre-operative consultation on 15 June 2021 that the liposuction procedure carried risks including:
- A. the 2 sides could look different and that perfection would not be obtained;
 - B. loose skin post-procedure which he said could be managed with a further procedure;
 - C. wrinkles, dents, bumps and folds in the treated areas;
 - D. the fact that there would be residual visceral fat so that the treated areas would not be flat;
 - E. indentations;
 - F. as well as pain,
 - G. Swelling;
- iii. it would have been obvious to the Second Plaintiff, particularly in view of her occupation as a nurse, that any cosmetic procedure carries the risk of intra-operative and post-operative pain;
- iv. intra-operative and post-operative pain was an obvious risk within the meaning of s 13 of the *Civil Liability Act* (Qld);
- v. he did not owe a duty to warn the Second Plaintiff of any obvious risk, including intra-operative and/or post operative pain by reason of the operation of s 15(1) of the *Civil Liability Act* (Qld).

- b. As to paragraph 176(b):
 - i. he admits that he had a duty to inform the Second Plaintiff as to other treatment options including not having the liposuction procedure; and
 - ii. says further that he did so at the initial consultation and the pre-operative consultation;
- c. As to paragraph 176(c):
 - i. he admits that he had a duty to arrange adequate pain relief post-surgery; and
 - ii. says further that he did so;
- d. As to paragraph 176(d) he denies that he had an obligation to refer the Second Plaintiff to any other practitioner, but says that he advised her to seek a second and/or third opinion from an appropriately qualified and experienced health practitioner.
- e. As to paragraph 176(e):
 - i. he denies the allegations in paragraph 176(e):
 - ii. he says further that uneven, asymmetrical, contoured, dimpled or hollowed results were inherent risks of the procedure and as such, he has no liability for any resultant harm by operation of s 16(1) of the *Civil Liability Act* (Qld);
- f. As to paragraph 176(f):
 - i. he denies the allegations in 176(f);
 - ii. he says further that ongoing pain and nerve damage are inherent risks of the procedure and as such, he has no liability for any resultant harm by operation of s 16(1) of the *Civil Liability Act* (Qld);
- g. As to paragraph 176(g):

- i. he admits that he owed a duty to provide adequate anaesthetic and pain relief for the liposuction procedure and says he did so;
 - ii. he says that the Second Plaintiff refused pre-operative analgesia and anxiolytic medication with consequent risk that her pain relief during the procedure was compromised;
 - iii. pain is an inherent risk of the procedure of which the Second Plaintiff was warned before she consented to undergo the procedure;
 - iv. he provided post-discharge medication with instructions for use, in accordance with usual medical practice;
 - v. otherwise he does not admit that the Second Plaintiff had inadequate anaesthetic or pain relief at any other time.
- h. he denies the allegations in paragraph 176(h);
- i. As to paragraph 176(i):
 - i. he denies the allegations in paragraph 176(i);
 - ii. he says further that there was no indication before he undertook the procedure that the Second Plaintiff was a poor candidate for the treatment or such that he should not have allowed her to have undertaken the liposuction procedure;
- j. he admits the allegations the allegations in paragraph 176(j);
- k. As to paragraph 176(k):
 - i. he denies the allegations in in paragraph 176(k);
 - ii. he says further that in any event, he understood that the Second Plaintiff was assessed by a psychologist engaged by the First Defendant who assessed that there was no psychological contra-indication to her undergoing the liposuction procedure:

- l. he admits the allegations in paragraph 176(l) and says that he believes that the Second Plaintiff was not left unattended during the procedure;
- m. he denies the allegations in paragraph 176(m);
- n. he denies the allegations in paragraph 176(n);
- o. he denies the allegations in paragraph 176(o);
- p. he denies the allegations in paragraph 176(p);
- q. As to paragraph 176(q) he admits that he was under a duty to obtain consent to any procedure he performed, including liposuction in the area of the Second Plaintiff's lower back and says that the Second Plaintiff provided consent to that procedure:
- r. he otherwise does not admit paragraph 176.

177. As to paragraph 177:

- a. as to paragraph 177(a) he denies that he failed to engage in competent medical practice of a medical practitioner performing cosmetic surgery services;
- b. as to paragraph 177(b):
 - i. he does not admit the Second Plaintiff has suffered a recognised psychiatric illness and/or other injury loss and damage because of the surgery performed by the Fifth Defendant or at all;
 - ii. he says that any breach of duty must be established as a necessary condition of the causation of harm pursuant to s 11(1)(a) of the *Civil Liability Act* (Qld).
- c. as to paragraphs 177(c) and (d) the Plaintiff is precluded by s 11(3) of the *Civil Liability Act* (Qld) from adducing evidence of any statement she made after suffering harm about what she would have done if the Fifth Defendant had not been in breach of duty (which breach is expressly denied), save as to the extent that it is against her interest.

178. He does not know and cannot plead to paragraph 178 as it refers to unspecified matters relating to Group Members.
179. He does not plead to paragraph 179 as it makes no allegations against him.
180. He does not plead to paragraph 180 as it makes no allegations against him.
181. He does not plead to paragraph 181 as it makes no allegations against him.
182. He does not plead to paragraph 182 as it makes no allegations against him.
183. He does not plead to paragraph 183 as it makes no allegations against him.
184. He does not plead to paragraph 184 as it makes no allegations against him.
185. He does not plead to paragraph 185 as it makes no allegations against him.
- 186A. He does not plead to paragraph 186A as it makes no allegations against him.
186. He does not plead to paragraph 186 as it makes no allegations against him.
187. He does not plead to paragraph 187 as it makes no allegations against him.
188. He does not plead to paragraph 188 as it makes no allegations against him.
189. He does not plead to paragraph 189 as it makes no allegations against him.
190. He does not plead to paragraph 190 as it makes no allegations against him.
191. He does not plead to paragraph 191 as it makes no allegations against him.
192. As to paragraph 192:
 - a. he denies the allegations made in paragraph 192 insofar as they relate to him and says further that the Second Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by *the Civil Liability Act* (Qld) so far as the Second Plaintiff is entitled to any remedies under that Act.

- b. for the avoidance of doubt, if the Second Plaintiff's claim is subject to the *Wrongs Act* (Vic) (which is denied) the Second Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by that Act which includes that the Second Plaintiff is not entitled to claim damages for non-pecuniary loss as she has not satisfied the provisions of Part VBA of that.

193. He does not plead to paragraph 193 as it makes no allegations against him.

194. He does not plead to paragraph 194 as it makes no allegations against him.

195. As to paragraph 195:

- a. he denies the allegations made in paragraph 195 insofar as they relate to him; and
- b. says further that:
 - i. pursuant to s 52 of the *Civil Liability Act* (Qld) the Second Plaintiff cannot be awarded aggravated or exemplary damages;
 - ii. pursuant to s 87ZB of the *Competition and Consumer Act 2010* (Cth) the Second Plaintiff cannot be awarded aggravated or exemplary damages.

F. CONTRACT

196. Save to say that he has had no contractual relationship with any of the Plaintiffs or Group Members he does not plead to paragraph 196 as it makes no allegations against him.

196A. He does not plead to paragraph 196A as it makes no allegations against him and refers to and repeats paragraph 196 above.

196B. He does not plead to paragraph 196B as it makes no allegations against him and refers to and repeats paragraph 196 above.

F.1 Lombardo

197. He does not plead to paragraph 197 as it makes no allegations against him.

F.2 Bonnici

198. He does not plead to paragraph 198 as it makes no allegations against him.

F.3 Russell

199. He does not plead to paragraph 199 as it makes no allegations against him.

F.4 Morrison

200. He does not plead to paragraph 200 as it makes no allegations against him.

F.5 Group Members

201. He does not plead to paragraph 201 as it makes no allegations against him.

F.6 Breach of contract

202. He does not plead to paragraph 202 as it makes no allegations against him.

202A. He does not plead to paragraph 202A as it makes no allegations against him.

G. CAUSATION, LOSS AND DAMAGE**G.1 Misleading or deceptive conduct***G.1.1 Lombardo*

203. He denies paragraph 203.

203A. He denies paragraph 203A.

204. He denies the allegations in paragraph 204 insofar as they relate to him and says further that:

- a. the First Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by the *Civil Liability Act* (NSW) and further by the *Competition and Consumer Act 2010 (Cth)* in so far as the First Plaintiff is entitled to any remedies under those Acts.

- b. for the avoidance of doubt, if the First Plaintiff's claim is subject to the *Wrongs Act* (Vic) (which is denied) the First Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by that Act which includes that the First Plaintiff is not entitled to claim damages for non-pecuniary loss as she has not satisfied the provisions of Part VBA of that Act.

G.1.2 Bonnici

205. He refers to and repeats paragraph 196 and otherwise denies paragraph 205.

205A. He refers to and repeats paragraph 196 and otherwise denies paragraph 205A.

206. He denies the allegations in paragraph 206 and says further that:

- a. The Second Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by the Civil Liability Act (Qld) and further by the Competition and Consumer Act 2010 (Cth) in so far as the Second Plaintiff is entitled to any remedies under those Acts.
- b. for the avoidance of doubt, if the Second Plaintiff's claim is subject to the *Wrongs Act* (Vic) (which is denied) the Second Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by that Act which includes that the Second Plaintiff is not entitled to claim damages for non-pecuniary loss as she has not satisfied the provisions of Part VBA of that Act.

G.1.3 Russell

207. He denies paragraph 207.

207A. He denies paragraph 207A.

208. He denies the allegations in paragraph 208 insofar as they relate to him and says further that:

- a. The Third Plaintiff's claim is to be determined by reference to the caps, bars and limitations on damages provided by the *Wrongs Act* (Vic) and further by the *Competition*

and Consumer Act 2010 (Cth) in so far as the Third Plaintiff is entitled to any remedies under those Acts.

- b. for the avoidance of doubt, the Third Plaintiff is not entitled to claim damages for non-pecuniary loss as she has not satisfied the provisions of Part VBA of that Act.

G.1.4 Morrison

209. He denies paragraph 209.

209A. He denies paragraph 209A.

210. He denies the allegations in paragraph 210 insofar as they relate to him and says further that:

- a. The Fourth Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by the *Civil Liability Act* (WA) and further by the *Competition and Consumer Act 2010* (Cth) in so far as the Fourth Plaintiff is entitled to any remedies under those Acts.
- b. For the avoidance of doubt, if the Fourth Plaintiff's claim is subject to the *Wrongs Act* (Vic) (which is denied) the Fourth Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by that Act which includes that the Fourth Plaintiff is not entitled to claim damages for non-pecuniary loss as she has not satisfied the provisions of Part VBA of that Act.

G.1.5 Group Members

211. He denies paragraph 211.

211A. He denies paragraph 211A.

212. He denies paragraph 212 and says further that insofar as any Group Member has a claim for damages pursuant to s 236 of the ACL on the basis of the alleged Representations which arose prior to 9 March 2016, then such claims are barred by reason of s 236(2) of the ACL.

G.1.6 Liability of the Defendants for the Representation Contraventions

213. He denies the allegations made in paragraph 213 insofar as they relate to him and says further that in the circumstances the Plaintiffs and Group Members are not entitled to recover loss or damages for personal injury for the alleged Representation Contraventions pursuant to s 137 of the *Competition and Consumer Act 2010* (Cth)

G.2 Statutory Guarantee Non-Compliance

214. He denies the allegations made in paragraph 214 insofar as they relate to him.
215. He denies the allegations made in paragraph 215 insofar as they relate to him and says further that in the event that a Group Member claims damages or compensation pursuant to s 267(4) of the ACL for an alleged contravention of s 60 and 61 of the ACL:
- a. Such an action is based on alleged failure to comply with a guarantee that applies to a supply of services under Subdivision B of Division 1 of Part 2-3 of the ACL;
 - b. The law of the place of the contract applies to the action by reason of section 275 of the ACL to limit or preclude liability for the alleged failure and recovery of that liability (if any);
 - c. Where the place of the contract that applies to this action is:
 - i. Victoria, then pursuant to s 5 of the *Limitations of Action Act 1958* (Vic);
 - ii. Western Australia, then pursuant to s 13 of the *Limitations Act 2005* (WA);
 - iii. Queensland, then pursuant to s 10 of the *Limitations of Action Act 1974* (Qld);
 - iv. New South Wales, then pursuant to s 14 of the *Limitation Act 1969* (NSW); and

then any claims brought by any Group Member that accrued prior to 9 March 2016 is barred.)

G.3 Negligence

216. As to paragraph 216, he:
- a. does not plead to sub paragraph (a) as it does not relate to him;

- b. does not admit the Plaintiffs or Group Members have suffered loss or damage;
- c. says that if he was negligent (which is denied) he refers to and repeats paragraph 192;
- d. otherwise denies the allegations made in paragraph 216 insofar as they relate to him.

G.4 Contract

- 217. He refers to and repeats paragraph 196 and otherwise denies the allegations in paragraph 217 insofar as they relate to him.

H. COMMON QUESTIONS

- 218. He denies that the proposed common questions raise any substantial common questions of law or fact.
- 219. Further, he says that if he breached any duty or was negligent (which is denied), and if the Second Plaintiff suffered injury (which is not admitted) he says that any injury, loss or damage was caused or contributed to by the Second Plaintiff's contributory negligence.

Particulars of Contributory Negligence of the Second Plaintiff

- a) Representing to the Eighth Defendant, when she knew or ought to have known that the Fifth Defendant would rely on her representation, that she had no prior psychological history that would impact on whether she was a suitable candidate for the procedure;
- b) Failing to seek any further advice or opinion from alternative practitioners, before agreeing to undergo the procedure with him;
- c) If she wished to have plastic surgery treatment, failing to seek same from a plastic surgeon;
- d) Signing a consent form acknowledging that she had been warned of risks particularised on the form and accepted them, if that was not so;

- e) Signing a “discharge against medical advice form” if she did not wish to be discharged at the time;
- f) If she was dissatisfied with any aspect of her post-operative care, failing to discuss same with the Fifth Defendant, alternatively with the first and/or Second Defendant;
- g) Agreeing that he had marked all areas to be treated on 15 June 2021 if she did not wish to have any one of those areas treated;
- h) Failing to reject an offer of treatment to her back if she did not want that treatment;
- i) If her analgesic management was inadequate during the procedure or while she was in the care of the Fifth Defendant, refusing pre-operative medication offered to her;
- j) Reporting minimal pain post-operatively if that was not so.

220. He says further that the law that applies in respect of an action by a Plaintiff or a Group Member is:

- a. the law of the place of the tort for an action in negligence;
- b. the law of the place of the contract for an action for breach of contract;
- c. the law of the place of the contravention for an action based on an alleged representation contravention;
- d. the law of the place of the contract for an alleged statutory guarantee non-compliance.

221. Further to paragraph 220:

- a.the law that applies to substantive issues in Lombardo’s actions is the law of New South Wales;
- b.the law that applies to substantive issues in Bonnici’s actions is the law of Queensland;

c.the law that applies to substantive issues in Russell's actions is the law of Victoria;

d.the law that applies to substantive issues in Morrison's actions is the law of Western Australia.

222. Where the law that applies to an action by a Plaintiff or Group Member is Victorian, Victorian law governs all substantive issues including:

a. the limitation period that applies to the action;

PARTICULARS

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

b. the action and substantive rights in respect of the action;

PARTICULARS

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

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

PARTICULARS

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

223. Where the law that applies to an action by a Plaintiff or Group Member is New South Wales, the law of New South Wales governs all substantive issues including:

a. the limitation period that applies to the action;

PARTICULARS

Limitation Act 1969(NSW).

b. the action and substantive rights in respect of the action;

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

PARTICULARS

Civil Liability Act 2002 (NSW).

224. Where the law that applies to an action by a Plaintiff or Group Member is Western Australian, the law of Western Australia governs all substantive issues including: (a) the limitation period that applies to the action;

e. the limitation period that applies to the action;

PARTICULARS

Limitation Act 2005 (WA).

f. the action and substantive rights in respect of the action;

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

PARTICULARS

Civil Liability Act 2002 (WA).

225. Where the law that applies to an action by a Plaintiff or Group Member is Queensland, the law of Queensland governs all substantive issues including:

a. the limitation period that applied to the action;

PARTICULARS

Limitations of Action Act 1974 (Qld).

b. the action and substantive rights in respect of the action;

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

PARTICULARS

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

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

- a. Part VIA of the *Competition and Consumer Act 2010* (Cth);
- b. Part 4 of the *Civil Liability Act 2002* (NSW);
- c. Part IVAA of the *Wrongs Act 1958* (Vic);
- d. Part 1F of the *Civil Liability Act 2002* (WA); and
- e. Chapter 2 Part 2 of the *Civil Liability Act 2003* (Qld)

(the proportionate liability legislation).

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

PARTICULARS

Dr Wells refers to and repeats the matters alleged at paragraphs 9, 58–85, 87, 95 (and its particulars), 96, 100, 102–104, 117–119, and 123–125, 184–186, 194 and 210 of the FASC.

228. If Dr Wells is liable to a Plaintiff or Group Member as alleged by the misleading and deceptive conduct claims (which is not admitted but expressly denied), then the Seventh Defendant is:

- a. person who is one of 2 or more persons whose acts or omissions caused the alleged loss or damage that is the subject of the misleading and deceptive conduct claims; and
- b. a concurrent wrongdoer within the meaning of the proportionate liability legislation.

229. In the premises, if Dr Wells is liable to any Plaintiff or Group Member in relation to the misleading and deceptive conduct claims (which is not admitted but is expressly denied) then its liability is limited by the proportionate liability legislation to an amount reflecting that proportion of the

claimed loss that the Court considers just having regard to the extent of Dr Wells' responsibility for the claimed loss and judgment must not be given against Dr Wells for more than that amount.

Dated 24 December 2024

MARY ANNE HARTLEY KC

D G GUIDOLIN SC

MORGAN MCLAY

.....*Gilchrist Connell*

GILCHRIST CONNELL

Solicitors for the Fifth Defendant

SCHEDULE OF PARTIES

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

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

Fourth Defendant

and

RYAN WELLS

Fifth Defendant

and

ALIREZA FALLAHI

Sixth Defendant

and

GEORGE SHU-KHIM WONG

Seventh Defendant

and

CANDICE WAINSTEIN

Eighth Defendant