



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

Proceeding No. S ECI 2022 00739

Filed on: 24/12/2024 02:10 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

SIXTH DEFENDANT'S DEFENCE TO THE FURTHER AMENDED STATEMENT OF CLAIM

Date of Document: 24 December 2024
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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 Sixth Defendant, Alireza Fallahi (**Dr Fallahi**), says as follows:

A. PARTIES

A.1 Group Proceeding

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 the allegations in paragraph 2 which relate to him and otherwise does not plead to paragraph 2.

A.2 The First Defendant – 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 before he was trained by the Second Defendant;
- 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 was not required to be in order to perform cosmetic surgery; and
 - 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 and refers to paragraph 89(d);

- c. says that he had undertaken training with a view to being admitted as a Fellow of the Australasian College of Cosmetic Surgery and says he had trained with other experienced cosmetic surgeons and with 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 practised in the field of cosmetic surgery as an employee of the First Defendant and/or Second Defendants and otherwise denies the allegations in paragraph 9(a) insofar as they relate to him;
- b. as to paragraph 9(b) he:
 - i. does not admit that he provided cosmetic surgery services to any of the Plaintiffs;
 - ii. does not know and therefore cannot admit whether he provided cosmetic surgery services to the Group Members from one of more of the Lanzer clinics;
- c. he denies the allegations in paragraph 9(c) and says further that at all relevant times he was employed pursuant to a contract of employment with the First and/or Second Defendant;

PARTICULARS

- i) He was an employee of the First Defendant and the Second Defendant pursuant to a contract of employment made on or about 21 June 2020 (**the Employment Contract**)
- ii) The Employment Contract is partly in writing, partly oral and partly to be implied.

Insofar as it is in writing it is contained in a letter dated 21 June 2020 from the First Defendant and the Second Defendant to the Sixth Defendant. A copy of this letter may be inspected by appointment with the Sixth Defendant's solicitors.

Insofar as it is oral, it is contained in discussions between Dr Faillahi and the Second Defendant, for himself and on behalf of the First Defendant, that occurred in or about June 2020 over telephone and face to face and were to the effect as set out in (i) of the particulars hereto.

Insofar as it is implied, it is implied by law so as to give efficacy to the relationship between the Sixth 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 the facts and circumstances including that:

(a) in or about June 2020 there were discussions between Dr Fallahi and the Second Defendant, for himself and on behalf of the First Defendant over telephone and face to face concerning the training that the Second Defendant would provide to the Sixth Defendant, the wages and remuneration he was to receive, the services he was expected to provide, the tasks he was expected to undertake and the commencement of his employment with the First Defendant and/or the Second Defendant.

(b) from about 21 June 2020 Dr Fallahi attended for work at the First Defendant's business premises in Surry Hills, New South Wales during normal business hours;

(c) on a weekly or fortnightly basis from about 21 June 2020 would be paid a salary for services he 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 Fallahi's employment commenced on or about 21 June 2020;
- (b) It was a condition of Dr Fallahi's 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 Fallahi was to report to and was accountable to the Second Defendant or to any person at the Second Defendant's direction;
- (d) Dr Fallahi's salary package (excluding commissions and bonuses) was a base salary of \$350,000 per annum plus superannuation at the standard rate;
- (e) Any annual leave taken outside of the Christmas Period was to be discussed and approved by the Second Defendant;
- (f) Dr Fallahi was subject to an annual performance review which included planning for the future, setting objectives, identifying training needs and new opportunities for career development
- (g) Dr Fallahi was obliged to follow all lawful and reasonable directions of the First Defendant and the Second Defendant.

The terms identified in (a) and (d) above are contained in the letter dated 21 June 2020 from the First Defendant and the Second Defendant to Dr Fallahi.

The terms identified in (b) and (c) above are evidenced by an exchange of electronic messages between the Sixth Defendant and the Second Defendant on 29 September 2020, a copy of which may be inspected by appointment with the Sixth Defendant's solicitors.

The term identified in (e), (f) and (g) above is 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 Fallahi on the other.

Further particulars may be provided following discovery in this proceeding.

- d. he says that paragraph 9(d) is vague and embarrassing and ought to be struck-out and otherwise denies paragraph 9(d);
- 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. As to paragraph 10 he:

- a. admits that he was directed and supervised by the Second Defendant in the ordinary course of his employment subject to terms and conditions as set out in paragraph 9 and otherwise denies the allegations in paragraph 10 relating to the Plaintiffs;
- b. otherwise does not know and cannot admit whether he provided cosmetic surgery services to the Group Members from one of more of the Lanzer clinics.

11. Except that he admits that he was an employee of the First Defendant and/or 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. He does not plead to paragraph 25 as it makes no allegation against him.
- 26. He does not plead to paragraph 26 as it makes no allegation against him.
- 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 allegations 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 denies that the Second Plaintiff consulted with him but admits that he may have been present at the Brisbane Clinic when the Second Plaintiff consulted with the Fifth Defendant;
 - ii. he otherwise does not plead to paragraph 31(a) as it makes no allegation against him;

- b. he does not plead to paragraph 31(b) as it makes no allegation against him.
- 32. He does not plead to paragraph 32 as it makes no allegation against him.
- 33. He does not plead to paragraph 33 as it makes no allegation against him.
- 34. He does not plead to paragraph 34 as it makes no allegation against him.
- 35. He does not plead to paragraph 35 as it makes no allegation against him.
- 36. He does not admit the allegations in paragraph 36 insofar as they relate to him.
- 37A. He does not plead to paragraph 37A as it makes no allegations 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.
- 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 OR DECEPTIVE CONDUCT

C.1 DCSS Sales System

86. Except to say that he admits that in the ordinary course of his employment that 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. as to paragraph 87 (a) save that he admits that he was named as a member of the Second Defendant's team on the Lanzer website for a short period, he denies the allegations against him in paragraph 87(a);
- b. he refers to and repeats the matters in paragraphs 9 and 86 above;
- c. he admits that he provided cosmetic surgery services in the ordinary course of his employment with the First Defendant and/or the Second Defendant;
- 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)(ii) above;

a. he:

i. admits that he made representations to the patients of the First Defendant and the 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 paragraphs 88 (aa) and (a) insofar as they relate to him;

b. he denies the allegations made in paragraph 88(b) insofar as they relate to him;

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) he:

i. says 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. 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, he

a. 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(d) herein;

b. refers to and repeats paragraph 8; and

c. 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) refers to and repeats paragraphs 88A above;
- c. as to paragraph 89(c) 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 and repeats his plea in paragraph 88A;
- 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 paragraph 88(e) and 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. He does not plead to paragraph 95 as it makes no allegation against him.

96. As to paragraph 96:

- a. he refers to and repeats paragraph 87(a) above;
- b. he admits that the Lanzer website was accessible by any member of the public;
- c. admits that his personal profile appeared on the website operated by the First and Second Defendants who determined its contents;

d. he 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. his image and a professional profile was 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 101 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. He does not plead to paragraph 103 as it makes no allegation against him.
104. He does not plead to paragraph 104 as it makes no allegation against 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.

109. He denies the allegations 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) he:
 - i. denies that he was a supplier, within the meaning of the ACL, of cosmetic surgery services;
 - ii. refers to and repeats the matters set out in paragraphs 9 and 87 above;
 - iii. 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 set out in paragraphs 9 and 111 above;
- b. otherwise does not admit to the allegations in paragraph 112 insofar as it relates to him.

113. As to paragraph 113 he:

- a. refers to and repeats the matters set out in paragraph 9 above;
- b. says further that he does not know the purpose for which any Plaintiff or Group Member acquired the services of any of the Defendants;
- c. otherwise denies the allegations in paragraph 113 insofar as it relates to him.

114. As to paragraph 114 he:

- a. he refers to and repeats the matters set out in paragraph 9 above;
- b. says further that he does not know the purpose for which any Plaintiff or Group Member acquired the services of any of the Defendants;
- 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 matter set out in paragraphs 9 and 111 above;
- b. says that each of his patients was advised of the inherent risks of cosmetic procedures and that the results could not be guaranteed;
- c. he otherwise denies paragraph 115.

116. As to paragraph 116:

- a. he says that he rendered every procedure he conducted with due care and skill of a medical practitioner experienced in the procedure;
- b. otherwise denies the allegations made in paragraph 116.

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:

- a. refers to and repeats the matters set out in paragraph 181 below; and
- b. otherwise 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 and refers to and repeats the matters alleged at paragraphs 191, 196 and 217 below.

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, 196 and 217 below.
122. He denies the allegation in paragraph 122 insofar as they relate to him and repeats the matters alleged at paragraphs 193, 196 and 217 below.
123. He denies the allegation in paragraph 123 insofar as they relate to him and repeats the matters alleged at paragraphs 194, 196 and 217 below
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. He does not plead to paragraph 131 as it makes no allegation against him.
132. As to paragraph 132 he:
- a. refers to and repeats the matters in paragraph 9(b) above;
 - b. admits that he owed a duty to patients at DCSS 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;

c. otherwise denies the allegations in paragraph 132.

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 does not plead to paragraph 173 as it makes no allegation against him.

174. He does not plead to paragraph 174 as it makes no allegation against him.

175. He does not plead to paragraph 175 as it makes no allegation against him.

176. He does not plead to paragraph 176 as it makes no allegation against him.

177. He does not plead to paragraph 177 as it makes no allegation against him.

178. He does not plead to paragraph 178 as it makes no allegation against him.

179. He denies the allegations in paragraph 179.

180. As to paragraph 180:

a. as to paragraph 180(a) he;

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 180(a) insofar as they relate to him;

b. as to paragraph 180(b) he does not know and therefore cannot admit the allegations made in paragraph 180(b).

181. As to paragraph 181:

a. he refers to and repeats the matters set out in paragraphs 9(b) above;

b. he does not admit that the matters set out in paragraphs 181 (a) to (l) were required as there was no patient doctor relationship between him and the Second Plaintiff.

182. As to paragraph 182:

a. As to subparagraph (a) he:

- i. refers to and repeats the matters at paragraph 9(b);
- ii. denies that he failed to engage in competent medical practice of a medical practitioner performing cosmetic surgery services;
- iii. refers to and repeats paragraph 181(b).

b. as to subparagraph (b) he:

- i. does not admit the Second Plaintiff has suffered a recognised psychiatric illness and/or other injury loss and damage because of the treatment provided by him or at all;
- ii. says further 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 subparagraph (c) the Second 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 Sixth Defendant had not been in breach of duty (which breach is expressly denied), save as to the extent that it is against her interest.

183. He does not know and cannot plead to paragraph 183 as it refers to unspecified matters relating to Group Members.

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 Act.

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 he:

- a. 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 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 denies paragraph 205.

205A. He 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 paragraph 208 insofar as it relates 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 paragraph 210 insofar as it relates 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-Compliances

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 and s 27D 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.

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 of Actions Act 1969(NSW).

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

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;

PARTICULARS

Limitation Act 2005 (WA).

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

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 Fallahi 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 Fallahi 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 Fallahi 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 Fallahi's responsibility for the claimed loss and judgment must not be given against Dr Fallahi 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 Sixth 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