

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



S E 2022-00739

Case 2022-00739
Filed on: 24/12/2024 02:15 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

THIRD 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 Third Defendant, Dr Aronov, 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;
 - c. otherwise does not admit the allegations 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 and a specialist general practitioner, a fellow of the Royal Australian College of General Practitioners, with training and experience in providing certain cosmetic surgery services;
 - b. admits that at all 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;
 - 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:
 - iii. Dr Lanzer who at all relevant times was a specialist Dermatologist and experienced cosmetic surgeon; and
 - iv. other experienced cosmetic surgeons;
 - d. has a graduate certificate in primary care -skin cancer medicine;
 - e. has a post graduate certificate in advanced studies in clinical anatomy;
 - f. otherwise, does not admit the allegations 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 9(a) insofar as they relate to him;
 - b. as to paragraph 9(b) he admits that he performed abdominoplasty (removal of excess skin of the lower abdomen) and liposuction procedures to the upper and lower abdomen, upper and lower back, waist, flanks and inner thighs of the First Plaintiff, Ms Tina Lombardo, on 15 November 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 employed pursuant to a contract of employment with the First Defendant and the Second Defendant;

PARTICULARS

The contract of employment between Dr Aronov and the First and Second Defendants is in writing and is dated 6 March 2018 (the **Employment Contract**). A copy of the Employment Contract may be inspected by appointment with Dr Aronov's solicitors. There were terms and conditions of the Employment Contract, amongst others, as follows:

- (a) Dr Aronov's employment commenced on 7 March 2018 (General Conditions (a));
- (b) It was a condition of Dr Aronov'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 (General Conditions (b));
- (c) Dr Aronov was to report to and was accountable to the Second Defendant (Duties (b));
- (d) Although Dr Aronov was employed to provide clinical services, he was required to be involved in other areas of the clinic, including administration. This clause was applicable during a quiet season and Dr Aronov was to report to the Practice Manager for further instructions (Duties (d));
- (e) Dr Aronov's salary package (excluding commissions and bonuses) were a base salary of \$25,000 per month plus superannuation at the normal rate (Clause 1);
- (f) Any annual leave taken outside of the Christmas Period must be discussed and approved by the Second Defendant (Clause 4);
- (g) Religious holidays as defined in the Employment Contract were to be taken by Dr Aronov at the time prescribed by the Second Defendant and were to be deducted from Dr Aronov's annual leave entitlement, and the Second Defendant's permission was required if Dr Aronov wished to work during these periods (Clause 4);
- (h) Dr Aronov was subject to an annual performance review which included planning for the future, setting objectives, identifying training needs and new opportunities for career development (Clause 14);

- (i) Dr Aronov was to comply with all duties specified within his Job Description and acknowledge that he may be asked to perform duties as requested that were outside his job description (Clause 19);
- (j) Dr Aronov was obliged to follow all lawful and reasonable directions of the First Defendant and the Second Defendant.

The terms identified in (a) to (i) above are express and are contained in the Employment Contract.

The term identified on (j) 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 Aronov 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 in paragraph 10, insofar as they relate to him, and refers to and repeats paragraph 9(c) 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 on the terms and conditions of the Employment Contract, he otherwise denies paragraph 11.

A.5 Wainstein

12. Except that he admits that he is the husband of the Eighth Defendant 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. As to paragraph 21:

a. as to paragraph 21(a):

i. as to paragraph 21(a)(i) he admits the allegations in paragraph 21(a)(i) insofar as they relate to him and says further that during the consultation which he carried out in the ordinary course of his employment at the Surry Hills Day Hospital on 15 November 2021:

A. he telephoned the First Plaintiff on 15 November 2021 prior to the First Plaintiff attending at the Surry Hills Day Hospital, and in that telephone conversation he:

I. discussed and explained the nature of recent adverse media coverage regarding the Defendants; and

- II. sought to postpone the procedure following the adverse media coverage regarding the Defendants;
- B. he was aware of and reiterated the advice provided to the First Plaintiff by the Second Defendant on 17 February 2021 and the Sixth Defendant on 18 March 2021 and engaged in a discussion with the First Plaintiff regarding abdominoplasty and the tumescent liposuction procedures, including the material risks inherent in those procedures and advised specifically that the result would not be perfect;
- C. he marked the anatomical areas for the procedures being an abdominoplasty and liposuction to her upper and lower abdomen, upper and lower back, waist, flanks and inner thighs, which were subsequently reviewed, confirmed, and consented to by the First Plaintiff, as being the areas which she agreed would be treated;
- D. following the discussion referred to in A above, the First Plaintiff:
 - I. advised him that she was aware of the adverse media coverage; and
 - II. insisted on proceeding with the procedure described at C above despite the adverse media coverage and despite the third defendant's plan that the procedure should be cancelled;
- E. following the discussion referred to in B and the matters referred to in C above, the First Plaintiff signed a pre-operative consent form dated 15 November 2021 and subsequently reiterated her consent verbally;
- ii. as to paragraph 21(a)(ii) he:
 - A. refers to and repeats the matters set out in paragraph 21(a) above;
 - B. otherwise denies the allegations in paragraph 21(a)(ii);

b. as to paragraph 21(b) he:

- i. admits the First Plaintiff underwent procedures, being abdominoplasty (removal of excess skin of the lower abdomen) and liposuction to her upper and lower abdomen, upper and lower back, waist, flanks, and inner thighs (the “procedures”); and
- ii. otherwise denies the allegations in paragraph 21(b).

22. As to paragraph 22 he:

- a. admits that the First Plaintiff was taken to St Vincent’s Hospital on 16 November 2021;
- b. otherwise denies the allegations in paragraph 22.

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. He does not plead to paragraph 31 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 plead to paragraph 36 as it makes no allegation against 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. As to paragraph 40 he:
 - a. admits that on 27 August 2021 he consulted with the Third Plaintiff at the Malvern Clinic;
 - b. otherwise does not admit the allegations in paragraph 40.
- 41. As to paragraph 41:
 - a. he refers to and repeats his admissions in paragraph 11 and further admits that in the ordinary course of his employment he provided advice to the Third Plaintiff during a consultation on 27 August 2021 in respect of proposed treatment, being tumescent liposuction and mini thigh lift, and provided a quote for such treatment;
 - b. further, he says that, in the course of the consultation on 27 August 2021 he:
 - i. obtained a relevant medical history from the Third Plaintiff;

- ii. undertook an examination;
 - iii. conducted a consultation regarding the tumescent liposuction and mini thigh lift procedures in the context of her presenting condition of lipoedema and during which he explained the proposed procedures and post-operative care in detail;
 - iv. informed the Third Plaintiff of all material risks and potential complications associated with the proposed treatment and advised specifically that the result would not be perfect;
 - v. advised that undertaking these procedures to treat her lipoedema would result in a worsened cosmetic appearance;
 - vi. further, advised the Third Plaintiff that during the recovery period, she would not be able to engage in exercise or vigorous activity for a minimum of two weeks, and in circumstances where complications arose, the duration for the recovery period might extend further;
- c. otherwise he does not admit the allegations in paragraph 41.
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.
- 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

D.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. he admits that there were references to him on the Lanzer Website;
- b. as to paragraph 87(b) he:
 - i. admits that with respect to the First Plaintiff he conducted a pre-surgery consultation referred to in paragraph 21(a) and that he conducted the procedures referred to in paragraph 21(b);
 - ii. admits that with respect to the Third Plaintiff he conducted a pre-surgery consultation referred to in paragraph 41;
- c. he admits that he provided certain 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.

D.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. 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. otherwise denies the allegations in paragraph 88(a) that relate to him;
- b. he denies the allegation 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. refers to and repeats the matters at paragraphs 21(a)(i)(A) and (B), and 41(b)(iv) above and paragraph 164(a)(iii) and (iv) below, and says further 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 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 relating to membership of the Royal Australian College of Surgeons 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 paragraphs 8 and 88 (aa) herein; 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) he refers to and repeats the matters set out in paragraphs 8 and 88A above;
 - c. as to paragraph 89(c) he refers to and repeats the matters alleged at paragraph 88A above;
 - d. otherwise denies the allegations in paragraph 89.
 - 90. As to paragraph 90 he:
 - a. admits that he is not a qualified plastic surgeon;
 - b. refers to and repeats paragraph 89;
 - 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 the matters set out in paragraphs 88(e) and 164 and otherwise denies the allegations 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) he:
 - i. refers to and repeats the matters set out in paragraph 93;
 - ii. otherwise denies the allegations 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. refers to and repeats paragraph 88A (above);
- c. admits that the Lanzer website was accessible by any member of the public;
- d. 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;
- e. otherwise denies the allegations in paragraph 96 insofar as they relate to him.

C.2.3 How the Representations were made to the Plaintiffs and the 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;
- a. he denies the allegations in paragraph 102(a), insofar as it relates to him;
- b. as to paragraph 102(b):
 - i. he refers to and repeats the matters set out in paragraphs 9(c), 87(a) and 96(d) above;
 - ii. he admits that:

A. the First Plaintiff attended a pre-surgery consultation with him on 15 November 2021 and that in the ordinary course of his employment with the

First Defendant and Second Defendant he provided cosmetic surgery services to her; and

- B. the Third Plaintiff attended a pre-surgery consultation with him on 27 August 2021;
- C. pursuant to the terms and conditions of the Employment Contract, his image and a professional profile was supplied to the First Defendant and the Second Defendant for the purpose of advertising on the First Defendant's website;
- D. 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);

- c. save to admit that he received a salary from the First Defendant and 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;
- d. 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;
- e. 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;
- f. he denies the allegations in paragraph 102(f) which relate to him;

- g. he otherwise denies paragraph 102 and says further 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. as to paragraph 103(e) he:
 - i. refers to and repeats the matters set out in paragraphs 21(a)(i)(A) and (B) and 88(e)(i) above and paragraph 164(a)(iii) and (iv) below;
 - ii. says further that he does not know and cannot admit that the First Plaintiff accessed material published by him;
 - iii. otherwise denies the allegations in paragraph 103(e) insofar as they relate to him;
- f. He does not plead to paragraph 103(f) as it makes no allegation against him;
- g. he does not plead to paragraph 103(g) as it makes no allegation against him.

104. As to paragraph 104 he:

- a. refers to and repeats 88(e)(i) above;
- b. 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;
- c. 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 in paragraph 109 insofar as they relate to him and refers to and repeats the matters alleged at 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(b) and 87(c);
 - 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 in paragraph 111 above;

- b. admits that the First Plaintiff and Third Plaintiff paid less than \$40000 to the First Defendant and/or Second Defendant for the services provided to them and that the services were for their personal use;
 - c. otherwise does not admit the allegations in paragraph 112.
- 113. He denies the allegations in paragraph 113 insofar as they relate to the First Plaintiff and Third 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, he:
 - a. denies the allegations in paragraph 114(a);
 - b. says that:
 - i. the First Plaintiff informed him that she was seeking to undertake an abdominoplasty and liposuction to improve her lifestyle, self-esteem and self-confidence;
 - ii. the Third Plaintiff informed him that she was seeking tumescent liposuction and mini thigh lift as treatment for her lipoedema;
 - 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 to 114 above;
 - b. says that each of his patients, including the First Plaintiff and the Third Plaintiff, was advised of the inherent risks of cosmetic procedures and that the results could not be guaranteed;
 - c. says that he advised the First Plaintiff of the risks of the outcome of her treatment and refers to and repeats the matters at paragraph 164(a)(iii) and (iv) below;

- d. says that he advised the Third Plaintiff of the risks of the outcome of her treatment and refers to and repeats the matters at paragraph 166(a)(ii) below;
- e. says that he told the First Plaintiff and Third Plaintiff that he was not promising perfection and it was not realistic to expect this outcome;
- f. 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. he otherwise denies the allegations in paragraph 116.

D.2 Non-compliance with guarantees

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

118. He denies the allegations 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 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 allegations in paragraph 122 and repeats the matters alleged at paragraphs 193, 196 and 217 below.

123. He denies the allegations in paragraph 123 and repeats the matters alleged at paragraphs 193, 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 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. As to paragraph 129 he:

- a. admits that he owed a duty of care to the First Plaintiff and the Third 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 provision of said services;
- b. otherwise denies the allegations in paragraph 129.

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. 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. As to paragraph 139 he:

- a. denies the allegations in paragraph 139(a) relating to him;
 - b. says that the allegations in paragraph 139(b) are matters of law to be determined in accordance with the section 32 of the *Civil Liability Act* (NSW);
 - c. otherwise 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 know and cannot plead to paragraph 151 as it refers to unspecified matters relating to Group Members.
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 denies the allegations in paragraph 161.

162. As to paragraph 162:

a. as to paragraph 162(a) he:

i. says that questions of negligence arising from the First Plaintiff's claim are to be determined in accordance with s 50 of the *Civil Liability Act* (NSW);

ii. otherwise denies the allegations in paragraph 162(a) insofar as they relate to him;

b. he denies the allegations in paragraph 162(b) which relate to him and says that if, which is denied, he is liable for any failure in giving or omitting to give any information or advice or warning to Russell, section 60 of the *Wrongs Act 1958* (Vic) applies in determining the relevant standard of care;

c. as to paragraph 162(c) he does not know and therefore cannot admit the allegations in paragraph 162(c).

163. As to paragraph 163:

a. he refers to and repeats the matters in paragraph 139 above;

b. he otherwise denies the allegations in paragraph 163 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 s 32 of the *Civil Liability Act* (NSW);

164. As to paragraph 164 he refers to and repeats the matters set out in paragraph 21 and 161 above and:

a. he admits that competent medical practice required that the First Plaintiff should be warned prior to surgery of the matters set out paragraphs 164(a)(i) – (vi) and (ix) – (x) and further says:

- i. that he was aware from the medical record that Dr Lanzer had a consultation with the First Plaintiff on 17 February 2021 with the First Plaintiff and had noted that he warned her of the matters set out in a paragraph 164(a)(i) – (vi) and (ix) - (x);
- ii. that he was aware from the medical record that Dr Fallahi had a consultation with the First Plaintiff on 18 March 2021 and had noted that he warned her of the risks referred to at paragraph 164(a)(i) – (vi) and (ix) – (x) as well as other risks;
- iii. he was aware that the patient had signed consent forms on 9 November 2021, which included the following warnings of risks:

- A. Infection;
- B. Bleeding;
- C. Scarring;
- D. Seroma;
- E. Asymmetry;
- F. Numbness or nerve damage;
- G. Indentation or irregularities;
- H. Loose skin;
- I. Blood loss and blood clots;
- J. Bruising;
- K. Deep vein thrombosis.

iv. that he warned the First Plaintiff prior to her procedures being undertaken on 15 November 2021 that the abdominoplasty and liposuction procedures carried risks including:

- A. Weeping
- B. Numbness
- C. Hard swelling;
- D. Fibrosis;
- E. Scar tissue:
- F. Lumpiness;
- G. Uneven skin;
- H. Irregularities
- I. Necrosis;
- J. Seroma requiring drainage;
- K. Infection
- L. Scarring (including that it can thicken, darken, stretch, be crooked);
- M. Skin flaps resembling dog ears at each side of the abdominal scar;
- N. Unnatural appearance of her belly button;
- O. Belly button being off-centre;
- P. Bleeding;
- Q. haematoma;
- R. Blood clots (Deep Vein Thrombosis and Pulmonary Embolism);
- S. Death

- T. And he told the First Plaintiff that the outcome of her procedures would not be perfect;
- U. Intra-operative and post-operative pain and bleeding was an obvious risk within the meaning of s 5F of the *Civil Liability Act* (NSW);
- v. that he did not owe a duty to warn the First Plaintiff of any obvious risk, which included intra-operative and/or post operative pain or bleeding by reason of the operation of s 5H(1) of the *Civil Liability Act* (NSW).
- vi. that he otherwise denies the allegations in paragraph 164(a);
- b. he does not admit the allegations in paragraph 164(b);
- c. he denies the allegations in paragraph 164(c) and says further, the First Plaintiff:
 - i. misrepresented that she was not taking non-steroidal anti-inflammatory medications when she was asked by a nurse in the pre-operative checklist;
 - ii. failed to disclose to DCSS staff during her pre-anaesthetic assessment that she was taking non-steroidal anti-inflammatory medications.
- d. as to paragraph 164(d) he:
 - i. he admits that competent medical practice required the First Plaintiff to be advised of other treatment options including not having the procedures; and
 - ii. says further that she was so advised;
- e. as to paragraph 164(e);
 - i. he admits that competent medical practice required examination of the First Plaintiff prior to the day of surgery; and
 - ii. he says further that this occurred on 17 February 2021 when she was assessed by Dr Lanzer on 18 March 2021 and when she was examined by Dr Fallahi on 18 March 2021;

- f. as to paragraph 164(f);
 - i. he admits that competent medical practice required examination of the First Plaintiff prior to her payment for the procedures; and
 - ii. says further that this occurred on 17 February 2021 when she was assessed by Dr Lanzer and on 18 March 2021 when was examined by Dr Fallahi on 18 March 2021.
- g. as to paragraph 164(g);
 - i. he admits that competent medical practice required arrangements for the First Plaintiff to have adequate pain relief post-surgery; and
 - ii. he says further that he did so;
- h. he denies the allegations in paragraph 164(h);
- i. he denies the allegations in paragraph 164(i);
- j. as to paragraph 164(j);
 - i. he admits that he had a duty not to cause excessive abdominal scarring; and
 - ii. says further that he complied with that duty;
- k. he denies the allegations in paragraph 164(k);
- l. he denies the allegations in paragraph 164(l);
- m. he denies the allegations in paragraph 164(m);
- n. as to paragraph 164(n), he:
 - i. denies paragraph 164(n) and says further that:

- A. she did not advise the DCSS nurse that she had consumed non-steroidal anti-inflammatories medications ~~during~~ when she was asked by a nurse in the pre-operative checklist;
 - B. she did not disclose to DCSS staff during her pre anaesthetic assessment that she was taking non-steroidal anti-inflammatory medications;
- o. he denies the allegations in paragraph 164(o);
- p. he denies the allegations in paragraph 164(p);
- q. he denies the allegations in paragraph 164(q);
- r. he denies the allegations in paragraph 164(r);
- s. he denies the allegations in paragraph 164(s);
- t. he denies the allegations in paragraph 164(t);
- u. he denies the allegations in paragraph 164(u);
- v. he denies the allegations in paragraph 164(v);
- w. he denies the allegations in paragraph 164(w);
- x. he denies the allegations in paragraph 164(x);
- y. as to paragraph 164(y);
 - i. he denies the allegations in paragraph 164(y);
 - ii. he says further that the First Plaintiff was provided with a phone number to the Second Defendant's afterhours pager service, however, the First Plaintiff and her partner failed to contact the Second Defendant on his pager service afterhours on 16 November 2021, despite being advised to do so;
- z. as to paragraph 164(z);

- i. he admits that competent medical practice required the First Plaintiff to be provided with adequate post-operative care, advice or treatment;
 - ii. he says further that in so far as he provided post operative care, advice or treatment he did so.
- aa. he denies the allegations in paragraph 164(aa);
- bb. as to paragraph 164(bb):
 - i. he denies the allegations in paragraph 164(bb);
 - ii. he says further that there was no indication before he undertook the procedures that the First Plaintiff was a poor candidate for the treatment or such that he should not have allowed her to have undertaken the procedures;
- cc. as to paragraph 164(cc) he;
 - i. admits that competent medical practice required that the First Plaintiff be assessed adequately for her suitability for the treatment;
 - ii. says further that she was reasonably assessed as suitable by the Second Defendant and the Sixth Defendant;
 - iii. says that he also assessed the First Plaintiff as suitable for the treatment he provided;
- dd. he denies the allegations in paragraph 164(dd);
- ee. as to paragraph 164(ee);
 - iv. he admits that competent medical practice required he not display video footage of Lombardo's surgery on social media unless she gave her consent;
 - v. he says further that;
 - A. she did give such consent;

B. even though she gave consent, he did not display video footage of Lombardo's surgery on social media;

ff. he does not plead to paragraph 164(ff) as it is embarrassing;

gg. he otherwise does not admit paragraph 164.

165. As to paragraph 165, he:

a. does not admit the First Plaintiff has suffered a recognised psychiatric illness and/or other injury loss and damage because of the surgery performed by the Third Defendant or at all;

b. says that any breach of duty must be established as a necessary condition of the causation of harm pursuant to s 5D(1)(a) of the *Civil Liability Act* (NSW);

c. says the First Plaintiff is precluded by s 5D(3) of the *Civil Liability Act* (NSW) from adducing evidence of any statement she made after suffering harm about what she would have done if the Third Defendant had not been in breach of duty (which breach is expressly denied), save as to the extent that it is against her interest; and

d. otherwise he denies the allegations in paragraph 165.

166. As to paragraph 166, he refers to and repeats the matters set out in paragraph 41 and 161 and says further that he did not discuss or provide advice to the Third Plaintiff regarding cosmetic surgery services but instead provided advice regarding the therapeutic treatment of her condition being lipoedema:

a. As to paragraph 166(a):

i. he admits that competent medical practice required him to advise the Third Plaintiff of all material risks and complications of the contemplated procedure prior to obtaining consent:

ii. he warned the Third Plaintiff at an initial consultation on 27 August 2021 of the following:

- A. the procedures would result in:
 - I. a worsening of her appearance;
 - II. worsened appearance of skin;
 - III. loose skin
 - IV. dents
 - V. worsened appearance of her cellulite;
 - VI. her not wanting to wear miniskirts or shorts following her procedures;
- B. the procedures carried the risks including:
 - I. wrinkling of skin or folds;
 - II. dimpling;
 - III. that the treated area would feel hard, and/or lumpy;
 - IV. that her skin would not retract fully;
 - V. scarring including that keyhole scars may be obvious thicken darken or stretch, unevenness and lumpiness;
 - VI. seroma requiring drainage;
 - VII. necrosis;
 - VIII. haematoma, possibly requiring a second procedure;
 - IX. he told the Third Plaintiff that perfection was not promised and that she must have realistic expectations;

- iii. he otherwise denies the allegations in paragraph 166(a);
- b. as to paragraph 166(b):
 - i. he admits that competent medical practice required the Third Plaintiff to be informed as to other treatment options including not having procedures; and
 - ii. says further that he did so.
- c. as to paragraph 166(c);
 - i. he admits that competent medical practice required the Third Plaintiff to be provided a realistic timeframe for recovery from surgery; and
 - ii. says further that he did so;
- d. as to paragraph 166(d);
 - i. he says that competent medical practice required the Third Plaintiff to be warned of any material complications with the procedures;
 - ii. says further that he did so;
- e. as to paragraph 166(e);
 - i. he admits competent medical practice required that he warn Russell of the risk of disfigurement, bleeding and scarring;
 - ii. says further that he did so;
- f. as to paragraph 166(f):
 - i. he admits competent medical practice required that he undertake an adequate assessment of whether Russell was a suitable candidate for the procedures;
 - ii. says further that he did so;
- g. he denies the allegations in paragraph 166(g);

h. he otherwise denies paragraph 166.

167. The allegations in paragraph 167 are to be determined in accordance with s 51 of the *Wrongs Act* (Vic) and he otherwise denies the allegations in paragraph 167.

168. He does not know and cannot plead to paragraph 168 as it refers to unspecified matters relating to Group Members.

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 allegations against him.

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

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

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

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

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

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. As to paragraph 191:

- a. he denies the allegations in paragraph 191 insofar as they relate to him and says further that 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 1958* (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.

192. He does not plead to paragraph 192 as it makes no allegations against him.

193. As to paragraph 193:

- a. he denies the allegations in paragraph 193 insofar as they relate to him and says further that the Third 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 *Wrongs Act 1958* (Vic) which includes that 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 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.

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 in paragraph 195 insofar as they relate to him; and
- b. says further that:
 - i. pursuant to s 21 of the *Civil Liability Act* (NSW) the Third Plaintiff cannot be awarded aggravated or exemplary damages;
 - ii. pursuant to s 87ZB of the *Competition and Consumer Act 2010* (Cth) the First and Third Plaintiffs 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 paragraph 204 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. As to paragraph 206, he denies the allegations in paragraph 206 insofar as they relate to him 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's 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 C of the *Competition and Consumer Act 2010 (Cth)*.

G.2 Statutory Guarantee Non-Compliances

214. As to paragraph 214:

- a. he refers to and repeats paragraphs 120 to 123;
- b. otherwise, he denies the allegations in paragraph 214 insofar as they relate to him.

215. He denies the allegations 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 paragraph 216(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 191;
- 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), with regard to the First Plaintiff and if the First Plaintiff suffered injury (which is not admitted) he says that any injury, loss or damage was caused or contributed to by the First Plaintiff's contributory negligence.

Particulars of Contributory Negligence of First Plaintiff

- (a) If she wished to have plastic surgery treatment, failing to seek same from a plastic surgeon;
- (b) Signing a consent form acknowledging that she had been warned of risks particularised on the form and accepted them, if that was not so;
- (c) Misrepresenting that she was not taking non-steroidal anti-inflammatory medications when she was; and

- (d) Failing to make contact on the pager service for after hours contact when she first noticed the onset of a complication.

220. Further, he says that if he breached any duty or was negligent (which is denied), with regard to the Third Plaintiff and if the Third Plaintiff suffered injury (which is not admitted) he says that any injury, loss or damage was caused or contributed to by the Third Plaintiff's contributory negligence.

Particulars of Contributory Negligence of Third Plaintiff

- (a) Representing to a counsellor employed by the First Defendant whose initials are BD that she had researched and understood the risks of the procedures, and had realistic expectations, when she knew or ought to have known that the Third Defendant would rely on her representations;
- (b) If she wished to have plastic surgery treatment, failing to seek same from a plastic surgeon;
- (c) Signing a consent form acknowledging that she had been warned of risks particularised on the form and accepted them, if that was not so;
- (d) Misrepresenting to the Third Defendant that her purpose for undergoing the procedures was for the treatment of lipoedema rather than cosmetic;
- (e) Misrepresenting to the Third Defendant that she was not concerned with the long-term cosmetic appearance of her legs.

221. 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.

222. 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.

223. 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.

224. 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).

- 225. 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;

- 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).

- 226. 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).

227. 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’).

228. 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 Aronov 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.

229. If Dr Aronov is liable to a Plaintiff or a 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.

230. In the premises, if Dr Aronov 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 Aronov's responsibility for the claimed loss and judgment must not be given against Dr Aronov 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 Third 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