

Form 7A (Version 2)
UCPR 14.3

DEFENCE TO THIRD FURTHER AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2011/187125

FILED

28 AUG 2014



TITLE OF PROCEEDINGS

Plaintiff	Einpwy Amom
Defendant	State of New South Wales

FILING DETAILS

Filed for	State of New South Wales, defendant
Legal Representative	I V Knight, Crown Solicitor
Legal Representative Reference	PCN:3321 201101720 T09
Contact name and telephone	J Stevens (02) 9224-5000
Frequent User ID	AG4NSW

HEARING DETAILS

If the proceedings do not already have a listing date, they are to be listed at

PLEADINGS AND PARTICULARS

In reply to the Third Further Amended Statement of Claim filed 30 July 2014, the defendant pleads as follows:

1. In answer to paragraph 1, the defendant:
 - a. Admits that the plaintiff brings the proceedings on his own behalf;
 - b. admits that the plaintiff purports pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) to bring the proceedings on behalf of the Group Members (as defined);
 - c. does not admit that it is appropriate for the claims of group members to be pursued by means of representative proceedings;

- d. otherwise does not admit paragraph 1.
2. The defendant admits the facts and allegations contained in paragraph 2.
3. The defendant admits the facts and allegations contained in paragraph 3.
4. In answer the paragraph 4 the defendant:
 - a. admits that the torts allegedly committed by the police officers names below are torts for which the defendant would be vicariously liable should the plaintiff succeed in proving that those police officers committed the alleged torts:
 - i. Sergeant Andrew Knight;
 - ii. Constable Ian Timms;
 - iii. Constable Dean Pickering;
 - iv. Constable Jamie Tebbenhoff;
 - v. Constable Vaughan Hau;
 - vi. Constable Andrew Brown;
 - vii. Sergeant Rachel Friend;
 - viii. Senior Constable Daniel Hewitt;
 - ix. Senior Constable Orla O'Keefe;
 - x. Constable Damian Blok;
 - xi. Constable Victor Costabile;
 - xii. Constable Hayleigh Berringer;
 - xiii. Constable Marnie Cuy;
 - xiv. Senior Constable Brendan Clark;
 - xv. Senior Constable Patrick Adams;
 - xvi. Senior Constable Karen Clark.
 - b. makes the admission in accordance with Part 4 of the *Law Reform (Vicarious Liability) Act 1983* (NSW) and only for the purpose of these proceedings.
5. In answer to paragraph 5 the defendant:
 - a. admits the allegations with regard to:
 - i. Sugi Heng.

- b. makes the admission only for the purpose of these proceedings.
6. The defendant admits paragraph 6 with respect to the police officers identified in paragraph 4 of this defence, but does not admit paragraph 6 of the Third Further Amended Statement of Claim with regard to any other officers of the NSW Police Force.
7. The defendant admits paragraph 7 with respect to the officer of Corrective Services NSW (DCS Officer) and officers of Juvenile Justice NSW (DJJ Officer) identified in paragraph 5 of this defence, but does not admit paragraph 7 of the Third Further Amended Statement of Claim with regard to any other DCS or DJJ officers.
8. The defendant does not admit the facts and allegations contained in paragraph 8.
9. The defendant does not admit the facts and allegations contained in paragraph 9.
10. The defendant denies the facts and allegations contained in paragraph 10.
11. In answer to paragraph 11 the defendant:
 - a. says that on 10 January 2010 the plaintiff was arrested and charged with one count of larceny contrary to section 117 of the *Crimes Act 1900* (NSW) and one count of unlawful entry into inclosed lands contrary to section 4(1) of the *Inclosed Lands Protection Act 1901* (NSW) (Charge Reference No: H39980871);
 - b. says that on 11 January 2010 the plaintiff was granted Police bail and entered into a Bail Undertaking at Blacktown Police Station with respect to Charge Reference No H39980871 by which he agreed to appear at Parramatta Children's Court on 11 February 2010 and to observe the following requirements as to conduct while at liberty on bail:
 - i. to reside at 26 Elke Way Toongabbie;
 - ii. curfew - to be at home between 6pm and 6 am unless in the company of a parent;
 - iii. to obey all reasonable directions of parents;
 - iv. to attend school regularly;
 - v. not to enter Westpoint Shopping Centre Blacktown; and
 - vi. not to commit any further offences whilst on bail;

- c. says that on 25 January 2010 the plaintiff breached his bail undertaking in that he was absent from his home between the times of 7:55pm and 8:55pm otherwise than in the company of a parent;
- d. says that on 7 February 2010 the plaintiff was arrested for breaching his bail undertaking on 25 January 2010 and was brought before the Parramatta Children's Court on 8 February 2010 whereupon his previous bail conditions were continued, with the plaintiff to appear again before the Court on 11 February 2010;
- e. says that the plaintiff appeared before Parramatta Children's Court on 11 February 2010 on which date the plaintiff was granted conditional bail and entered into an undertaking to observe the following requirements as to conduct while at liberty on bail;
 - i. to be of good behaviour;
 - ii. to reside at 26 Elke Way, Toongabbie NSW 2146;
 - iii. not to be absent from these premises between the hours of 6.00pm and 6.00am unless in the company of a parent or carer Friday to Sunday.
 - iv. not to enter Westfield Shopping Centre at Blacktown;
 - v. to reside at 26 Elke Way Toongabbie Friday to Sunday nights and at Boys Town Engadine Monday to Thursday nights.
 - vi. to obey all house rules of that residential accommodation.
 - vii. to obey all reasonable directions of parents or carers.
 - viii. to attend school every school day.
- f. says that on 26 February 2010 the plaintiff breached his bail undertaking in that he was absent from his home between the times of 10pm and 10:10pm otherwise than in the company of a parent and further had entered Westpoint Shopping Centre at Blacktown;
- g. says that on 26 February 2010 the plaintiff was arrested for breaching his bail undertaking on 26 February 2010 and was brought before the Parramatta Children's Court on 27 February 2010 whereupon bail was refused and the plaintiff was remanded to appear again on 2 March 2010;
- h. says that on 2 March 2010 the plaintiff appeared before Parramatta Children's Court in relation to the breach of bail on 26 February 2010 whereupon the plaintiff was

readmitted to his previous bail (in accordance with the conditions and undertaking given on 11 February 2010);

- i. says that on 12 March 2010 the plaintiff breached his bail undertaking in that he was absent from his home at 6:25pm otherwise than in the company of a parent;
- j. says that on 13 March 2010 the plaintiff appeared before Parramatta Children's Court in relation to the breach of bail on 12 March 2010 whereupon bail was continued;
- k. otherwise does not admit the paragraph.

12. In answer to paragraph 12 the defendant:

- a. admits that the plaintiff appeared before Magistrate Murphy at Parramatta Children's Court on 25 March 2010 and the Court:
 - i. referred the charges against the plaintiff to a Youth Justice Conference;
 - ii. adjourned the proceedings in respect of Charge Reference No H39980871 against the plaintiff to 14 May 2010; and
 - iii. dispensed with the plaintiff's bail.
 - iv. otherwise does not admit the balance of the paragraph.

13. The defendant admits the facts and allegations contained in paragraph 13.

14. The defendant admits the facts and allegations contained in paragraph 14.

15. In answer to paragraph 15 the defendant:

- a. says that at approximately 11 pm on 26 March 2010, Sergeant Andrew Knight, Constable Ian Timms and Constable Dean Pickering were patrolling Patrick Street, Blacktown outside Westpoint Shopping Centre;
- b. admits that the plaintiff was arrested and detained for an alleged breach of his bail undertaking;
- c. admits that the plaintiff was deprived of his liberty;
- d. does not admit the balance of the paragraph.

16. In answer to paragraph 16 the defendant:

- a. says that the plaintiff was initially deprived of his liberty in Patrick Street, Blacktown outside of Westpoint Shopping Centre;

- b. admits that the plaintiff was deprived of his liberty while being conveyed from Patrick Street Blacktown to Blacktown Police Station, while at Blacktown Police Station, while being conveyed from Blacktown Police Station to Reiby Juvenile Justice Centre, and while in custody at Reiby Juvenile Justice Centre;
- c. does not admit the balance of the paragraph.

17. In answer to paragraph 17 the defendant:

- a. admits the facts and allegations contained in paragraphs 17(a) and 17(b);
- b. admits that the plaintiff appeared before Magistrate Crawford at the Children's Court of Parramatta on 27 March 2010;
- c. does not admit the balance of the paragraph.

18. The defendant admits the facts and allegations contained in paragraph 18.

19. The defendant does not admit the facts and allegations contained in paragraph 19.

20. In answer to paragraph 20 the defendant:

- a. repeats its defence to paragraphs 18 and 19 of the Third Further Amended Statement of Claim;
- b. otherwise does not admit the paragraph.

21. The defendant does not admit the facts and allegations contained in paragraph 21.

22. The defendant does not admit the facts and allegations contained in paragraph 22.

23. The defendant does not admit the facts and allegations contained in paragraph 23.

24. The defendant does not admit the facts and allegations contained in paragraph 24.

25. The defendant does not admit the facts and allegations contained in paragraph 25.

26. The defendant does not admit the facts and allegations contained in paragraph 26.

27. In answer to paragraph 27, the defendant:

- a. admits that at about 6.30pm on 1 April 2010 at Westpoint Shopping Centre, Blacktown, Constable Jamie Tebbenhoff arrested and detained the plaintiff for breach of his bail undertaking and deprived the plaintiff of his liberty;
- b. does not admit the balance of the paragraph.

28. In answer to paragraph 28, the defendant:

- a. admits that the plaintiff was deprived of his liberty at Westpoint Shopping Centre at Blacktown, while walking from the Westpoint Shopping Centre at Blacktown to Blacktown Police Station, while at Blacktown Police Station, while being conveyed from Blacktown Police Station to Cobham Juvenile Justice Centre, and while in custody at Cobham Juvenile Justice Centre;
 - b. denies that the plaintiff was deprived of his liberty at the Children's Court at Parramatta;
 - c. does not admit the balance of the paragraph.
29. In answer to paragraph 29, the defendant:
- a. admits the facts and allegations contained in paragraphs 29(a) and 29(b);
 - b. does not admit the balance of the paragraph.
30. The defendant admits the facts and allegations contained in paragraph 30.
31. The defendant does not admit the facts and allegations contained in paragraph 31 A.
32. In answer to paragraph 31B the defendant:
- a. repeats its defence to paragraphs 30 and 31A of the Third Further Amended Statement of Claim;
 - b. otherwise does not admit the balance of the paragraph.
33. The defendant does not admit the facts and allegations contained in paragraph 31C.
34. The defendant does not admit the facts and allegations contained in paragraph 31D.
35. The defendant does not admit the facts and allegations contained in paragraph 31E.
36. The defendant does not admit the facts and allegations contained in paragraph 31F.
37. The defendant does not admit the facts and allegations contained in paragraph 31G
38. The defendant does not admit the facts and allegations contained in paragraph 31H.
39. In answer to paragraph 31I the defendant:
- a. says that at or about 9.15pm on 9 April 2010 Constable Jamie Tebbenhoff, Constable Andrew Brown and Constable Vaughan Hau arrested and detained the plaintiff outside of Westpoint Shopping Centre Blacktown, for an alleged breach of the plaintiff's bail undertaking;
 - b. admits that the plaintiff was deprived of his liberty as a consequence of the arrest;

- c. does not admit the balance of the paragraph.
40. In answer to paragraph 31J the defendant:
- a. admits that the plaintiff was deprived of his liberty outside of Westpoint Shopping Centre at Blacktown, while being conveyed from Westpoint Shopping Centre at Blacktown to Blacktown Police Station, while at Blacktown Police Station, while being conveyed from Blacktown Police Station to Cobham Juvenile Justice Centre, and while in custody at Cobham Juvenile Justice Centre.
 - b. does not admit the balance of the paragraph.
41. In answer to paragraph 31K the defendant:
- a. admits the facts and allegations contained in paragraphs 31 K(a) and 31 K(b);
 - b. does not admit the facts and allegations contained in paragraph 31 K(c).
42. The defendant admits the facts and allegations contained in paragraph 31L.
43. The defendant does not admit the facts and allegations contained in paragraph 31M.
44. In answer to paragraph 31N the defendant:
- a. repeats its defence to paragraphs 31L and 31M of the Third Further Amended Statement of Claim;
 - b. otherwise does not admit the paragraph.
45. The defendant does not admit the facts and allegations contained in paragraph 31O.
46. The defendant does not admit the facts and allegations contained in paragraph 31 P.
47. The defendant does not admit the facts and allegations contained in paragraph 31Q.
48. The defendant does not admit the facts and allegations contained in paragraph 31R.
49. The defendant does not admit the facts and allegations contained in paragraph 31S.
50. The defendant does not admit the facts and allegations contained in paragraph 31T.
51. The defendant does not admit the facts and allegations contained in paragraph 31U.
52. The defendant denies the facts and allegations contained in paragraph 31V and denies that the plaintiff has any entitlement to aggravated damages.
53. The defendant denies the facts and allegations contained in paragraph 31W and denies that the plaintiff has any entitlement to exemplary damages.
54. The defendant admits the facts and allegations contained in paragraph 32.

55. The defendant admits the facts and allegations contained in paragraph 33.
56. In answer to paragraph 34, the defendant:
- a. Admits that Mr Moffitt was at liberty subject to the varied curfew time of 9:00pm to 7:00am;
 - b. Otherwise does not admit the balance of the paragraph.
57. In answer to paragraph 35, the defendant:
- a. admits that at approximately 11:30pm on 4 November 2010, one or more police officers attended Mr Moffitt's home at 13/2 Flide Street, Caringbah;
 - b. says that the arrest was effected by one or more of the following police officers: Constable Marnie Cuy, Constable Damien Blok, Constable Victor Costabile and Constable Hayleigh Beringer;
 - c. admits that Mr Moffitt was arrested for breach of his bail undertaking;
 - d. says that prior to arresting Mr Moffitt the arresting officer(s) held a belief on reasonable grounds that the plaintiff was at liberty on bail and that the plaintiff had failed to comply with his bail undertaking;
 - e. says that the arrest of the plaintiff was lawful by reason of s.50 of the *Bail Act 1978* (NSW);
 - f. otherwise does not admit the balance of paragraph 35.
58. In answer to paragraph 36, the defendant:
- a. admits that Mr Moffitt was deprived of his liberty by the arresting officers at 13/2 Flide Street, Caringbah at approximately 11:30pm;
 - b. admits that Mr Moffitt was conveyed in a police vehicle from 13/2 Flide Street, Caringbah to Miranda Police Station at 1-7 Willock Avenue, Miranda from approximately 11:35pm to 11:40pm;
 - c. admits that Mr Moffitt entered into custody at Miranda Police Station;
 - d. admits that Mr Moffitt was conveyed by police officers in a police vehicle to Cobham Juvenile Justice Centre between 2:05am and 3:30am on 5 November 2010;
 - e. admits that Mr Moffitt was received by DJJ officers at the Cobham Juvenile Justice Centre and says that Mr Moffitt was entered into custody at 3:30am on 5 November 2010;

- f. otherwise does not admit the balance of paragraph 36.
59. In answer to paragraph 37, the defendant:
- a. admits that the deprivation of Mr Moffitt's liberty commenced at approximately 11:30pm on 4 November 2010;
 - b. says that the deprivation of Mr Moffitt's liberty ceased at approximately 11:10am on 5 November 2010;
 - c. admits that Mr Moffitt was released after his appearance before Magistrate Sbrizzi at Parramatta Children's Court on 5 November 2010;
 - d. otherwise does not admit the balance of paragraph 37.
60. The defendant does not admit the facts and allegations contained in paragraph 38.
61. In answer to paragraph 39, the defendant:
- a. admits that at the time of the arrest of Mr Moffitt, he was 17 years of age;
 - b. repeats paragraphs 9, 10 and 60 of this Defence; and
 - c. otherwise does not admit the facts and allegations contained in paragraph 39.
62. In answer to paragraph 40 the defendant:
- a. says that at the time of the arrest of Mr Moffitt the arresting officers held a belief on reasonable grounds that Mr Moffitt was at liberty on bail and that the plaintiff had failed to comply with his bail undertaking;
 - b. says that the arrest of Mr Moffitt was lawful by reason of s.50(1) of the *Bail Act 1978* (NSW); and
 - c. otherwise denies the allegations in paragraph 40.
63. The defendant does not admit the facts and allegations contained in paragraph 41.
64. The defendant does not admit the facts and allegations contained in paragraph 42.
65. The defendant does not admit the facts and allegations contained in paragraph 43.
66. The defendant does not admit the facts and allegations contained in paragraph 44.
67. The defendant does not admit the facts and allegations contained in paragraph 45.
68. The defendant does not admit the facts and allegations contained in paragraph 46.
69. In answer to paragraph 47, the defendant:

- a. says that any search, handcuffing or touching of Mr Moffitt was authorised by law as a consequence of the lawful arrest and subsequent detention of Mr Moffitt;
- b. denies that any physical contact made to search, handcuff or touch Mr Moffitt constituted an assault or battery of Mr Moffitt;
- c. otherwise denies the facts and allegations contained in paragraph 47.

70. In answer to paragraph 48, the defendant:

- a. says that any physical contact made with Mr Moffitt's body by any police officer or DCS officer was authorised by law as a consequence of the lawful arrest and detention of Mr Moffitt;
- b. denies that any physical contact made with Mr Moffitt's body by any police officer or DCS officer constituted a trespass to the person of Mr Moffitt;
- c. otherwise denies the facts and allegations contained in paragraph 48.

71. In answer to paragraph 49, the defendant:

- a. repeats paragraphs 69 and 70 of this Defence;
- b. otherwise does not admit the facts and allegations contained in the remainder of paragraph 49.

72. The defendant denies the facts and allegations contained in paragraph 50 and denies that Mr Moffitt has any entitlement to aggravated damages.

73. The defendant denies the facts and allegations contained in paragraph 51 and denies that Mr Moffitt has any entitlement to exemplary damages.

74. The defendant does not admit the facts and allegations contained in paragraph 52.

75. The defendant does not admit the facts and allegations contained in paragraph 53.

76. The defendant does not admit the facts and allegations contained in paragraph 54.

77. The defendant does not know and cannot admit the facts and allegations contained in paragraph 55.

78. In answer to paragraph 56, the defendant:

- a. says that on 2 and 3 July 2006 Mr Simpson was at liberty on bail within the meaning of s.50 of the *Bail Act 1978* (NSW);
- b. otherwise does not admit the remainder of paragraph 56.

79. In answer to paragraph 57, the defendant:
- a. admits the facts and allegations contained in paragraph 57(a);
 - b. admits that officers of the NSW Police Force arrested and detained Mr Simpson for breach of bail conditions;
 - c. says that prior to arresting Mr Simpson the arresting officers held a belief on reasonable grounds that Mr Simpson was at liberty on bail and that Mr Simpson had failed to comply with his bail undertaking;
 - d. says that the arrest of Mr Simpson was lawful by reason of s.50(1) of the *Bail Act 1978* (NSW);
 - e. otherwise does not admit the allegations in paragraph 57.
80. In answer to paragraph 58, the defendant:
- a. admits that Mr Simpson was deprived of his liberty as pleaded in subparagraph 80(a);
 - b. says that Mr Simpson was deprived of his liberty from approximately 5.20pm on 2 July 2006 until his appearance before Magistrate Stevenson on 3 July 2006;
 - c. otherwise does not admit the balance of paragraph 58.
81. In answer to paragraph 59, the defendant:
- a. admits that Mr Simpson was deprived of his liberty from approximately 5.20pm on 2 July 2006 until his appearance before Magistrate Stevenson on 3 July 2006;
 - b. otherwise does not admit the balance of paragraph 59.
82. In answer to paragraph 60, the defendant:
- a. repeats paragraph 79 of this defence;
 - b. otherwise denies paragraph 60.
83. In answer to paragraph 61, the defendant:
- a. repeats paragraph 79 of this defence;
 - b. otherwise denies paragraph 61.
84. The defendant denies the allegations contained in paragraph 62.
85. The defendant does not admit the facts and allegations contained in paragraph 63.
86. The defendant does not admit the facts and allegations contained in paragraph 64.

87. The defendant does not admit the facts and allegations contained in paragraph 65.
88. The defendant does not admit the facts and allegations contained in paragraph 66.
89. The defendant does not admit the facts and allegations contained in paragraph 67.
90. In answer to paragraph 68, the defendant:
- a. says that any search, handcuffing or touching of Mr Simpson was authorised by law as a consequence of the lawful arrest and subsequent detention of Mr Simpson;
 - b. denies that any physical contact made in the search, handcuffing or touching of Mr Simpson constituted an assault or battery of Mr Simpson; and
 - c. otherwise denies the facts and allegations contained in paragraph 68.
91. In answer to paragraph 69, the defendant:
- a. says that any physical contact made with Mr Simpson's body by any police officer or DCS officer was authorised by law as a consequence of the lawful arrest and subsequent detention of Mr Simpson;
 - b. denies that any physical contact made with Mr Simpson's body by any police officer or DCS officer constituted a trespass to the person of Mr Simpson; and
 - c. otherwise denies the facts and allegations contained in paragraph 69.
92. In answer to paragraph 70, the defendant:
- a. repeats paragraphs 90 and 91 of this Defence;
 - b. otherwise does not admit the facts and allegations contained in the remainder of paragraph 70.
93. The defendant denies that facts and allegations contained in paragraph 71 and denies that Mr Simpson has any entitlement to aggravated damages.
94. The defendant denies that facts and allegations contained in paragraph 72 and denies that Mr Simpson has any entitlement to exemplary damages.
95. As at the time of preparing this defence, the defendant does not know and cannot admit paragraph 73
96. As at the time of preparing this defence, the defendant does not know and cannot admit paragraph 74.
97. In answer to the whole of the claim by Mr Simpson, the defendant says:

- a. Mr Simpson's claim as pleaded is an action on a cause of action for damages that relate to personal injury to a person resulting from an act and/or omission occurring after 6 December 2002;
 - b. Mr Simpson's cause of action was discoverable more than 3 years prior to the filing of the Amended Statement of Claim on 21 November 2011;
 - c. Mr Simpson's action is not maintainable by reason of Section 50C of the *Limitation Act 1969* (NSW);
 - d. Mr Simpson's cause of action is extinguished by reason of Section 63 of the *Limitation Act 1969* (NSW).
98. The defendant notes that this document contains the names of children connected with criminal proceedings and accordingly the provisions of Part 2 Division 3A of the *Children (Criminal Proceedings) Act 1987* (NSW) apply.

SIGNATURE OF LEGAL REPRESENTATIVE

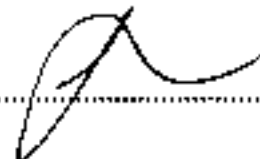
I certify under section 347 of the *Legal Profession Act 2004* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature of legal representative

I V Knight
Solicitor for the defendant

IV KNIGHT

Signed in my capacity as a solicitor
employed in the office of the said
I V Knight



Date of signature 27/08/2014

FURTHER DETAILS ABOUT FILING PARTY

Filing party

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Legal representative for filing party

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