Form 7A (version 5)
UCPR 14.3

DEFENCE

COURT DETAILS	
Court	Supreme Court of New South Wales
Division	Common law
List	Professional Negligence
Registry	Sydney
Case number	2017/279308

TITLE OF PROCEEDINGS	
First plaintiff	**AMY RICKHUSS**
Number of plaintiffs (if more than two)	12
First defendant	**THE COSMETIC INSTITUTE PTY LTD A.C.N. 153 061 155 (IN LIQUIDATION)**
Number of defendants (if more than two)	16

FILING DETAILS	
Filed for	**EDDY DONA**, Fifth Defendant
Filed in relation to	Plaintiffs' claim
Legal representative	Andrew Bruce Thorpe, McLachlan Thorpe Partners
Legal representative reference	SP:200305
Contact name and telephone	Samantha Peterson (02) 9229 2222
Contact email	speterson@mtpartners.com.au

HEARING DETAILS

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

PLEADINGS AND PARTICULARS

Defined terms have the meaning given to them in the Further Amended Statement of Claim filed 19 June 2020 (**FASOC**)

Group Members

1 In answer to the allegations in paragraph 1 of the FASOC, the fifth defendant:

(a) says that:

(i) the claims of the plaintiffs and group members do not give rise to a substantial common question of law or fact as pleaded in the FASOC;

(ii) by reason of (i), the proceedings cannot be brought as a representative proceeding; and

(b) does not admit the allegations in paragraph 1.

2 The fifth defendant does not admit the allegations in paragraph 2 of the FASOC.

2A The fifth defendant does not admit the allegations in paragraph 2A of the FASOC.

3 The fifth defendant does not admit the allegations in paragraph 3 of the FASOC.

The Plaintiffs

4 The fifth defendant does not admit the allegations in paragraph 4 of the FASOC.

5 The fifth defendant does not admit the allegations in paragraph 5 of the FASOC.

6 The fifth defendant does not admit the allegations in paragraph 6 of the FASOC.

7 The fifth defendant does not admit the allegations in paragraph 7 of the FASOC.

8 The fifth defendant does not admit the allegations in paragraph 8 of the FASOC.

8A The fifth defendant does not admit the allegations in paragraph 8A of the FASOC.

8B The fifth defendant does not admit the allegations in paragraph 8B of the FASOC.

8C The fifth defendant does not admit the allegations in paragraph 8C of the FASOC.

8D The fifth defendant does not admit the allegations in paragraph 8D of the FASOC.

8E The fifth defendant does not admit the allegations in paragraph 8E of the FASOC.

8F The fifth defendant does not admit the allegations in paragraph 8F of the FASOC.

8G The fifth defendant does not admit the allegations in paragraph 8G of the FASOC.

The Defendants

9 In answer to the allegations in paragraph 9 of the FASOC, the fifth defendant:

(a) admits the allegations in subparagraph 9(a);

(b) admits that the first defendant was at all material times a corporation within the meaning of s 4 of the CCA but otherwise denies the allegations in subparagraph 9(b);

(c) does not admit the allegations in subparagraph 9(c);

(d) admits that BAS services were provided at the TCI Premises and otherwise denies the allegations in subparagraph 9(d);

(e) says that the allegations in subparagraph 9(e) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 9(e); and

(f) denies the allegations in subparagraph 9(f).

10 In answer to the allegations in paragraph 10 of the FASOC, the fifth defendant:

(a) admits the allegations in subparagraph 10(a);

(b) admits that the second defendant was at all material times a corporation within the meaning of s 4 of the CCA but otherwise denies the allegations in subparagraph 10(b);

(c) does not admit the allegations in sub-paragraph 10(c);

(d) admits that BAS services were provided at the TCI Parramatta Premises and otherwise denies the allegations in subparagraph 10(d);

(e) denies the allegations in subparagraph 10(e);

(f) does not admit the allegations in subparagraph 10(f);

(g) says that the allegations in subparagraph 10(g) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 10(g); and

(h) denies the allegations in subparagraph 10(h).

11 The fifth defendant admits the allegations in paragraph 11 of the FASOC.

12 In answer to the allegations in paragraph 12 of the FASOC, the fifth defendant:

(a) admits the allegations in subparagraph 12(a);

(b) admits that the third defendant was at all material times a corporation within the meaning of s 4 of the CCA but otherwise denies the allegations in subparagraph 12(b);

(c) does not admit the allegations in sub-paragraph 12(c);

(d) admits that BAS services were provided at the TCI Bondi Premises and otherwise denies the allegations in subparagraph 12(d);

(e) denies the allegations in subparagraph 12(e);

(f) does not admit the allegations in subparagraph 12(f);

(g) says that the allegations in subparagraph 12(g) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 12(g); and

(h) denies the allegations in subparagraph 12(h).

13 In answer to the allegations in paragraph 13 of the FASOC, the fifth defendant:

(a) admits the allegations in subparagraph 13(a);

(b) admits that the fourth defendant was at all material times a corporation within the meaning of s 4 of the CCA but otherwise denies the allegations in subparagraph 13(b);

(c) does not admit the allegations in subparagraph 13(c);

(d) admits that BAS services were provided at the TCI Southport Premises and otherwise denies the allegations in subparagraph 13(d);

(e) denies the allegations subparagraph 13(e);

(f) does not admit the allegations in subparagraph 13(f);

(g) says that the allegations in subparagraph 13(g) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 13(g); and

(h) denies the allegations in subparagraph 13(h).

14 In answer to the allegations in paragraph 14 of the FASOC, the fifth defendant:

(a) admits the allegations in subparagraph 14(a);

(b) as to subparagraph 14(b):

(i) admits that he was a director of:

1. the second defendant from 20 July 2012 until 8 February 2016;

2. the third defendant from 28 August 2013 until 8 February 2016; and

3. the fourth defendant from 1 May 2015 to 8 February 2016; and

(ii) otherwise denies the allegations in subparagraph 14(b);

(c) as to sub-paragraph 14(c):

(i) admits that he was a director and beneficial shareholder of Dona Family Pty Ltd;

(ii) admits that Dona Family Pty Ltd was a shareholder of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport until 28 September 2016; and

(iii) otherwise denies the allegations in subparagraph 14(c);

(d) as to subparagraph 14(d):

(i) admits that the fifth defendant was the surgical director of the first defendant from about late 2012 to on or about 8 February 2016;

(ii) says that from on or about 8 February 2016 he ceased providing services to the first to fourth defendants; and

(iii) otherwise denies the allegations in subparagraph 14(d);

(e) in answer to subparagraph 14(e):

(i) says that:

1. at all material times the sixth to sixteenth defendants were registered medical practitioners and qualified to perform BAS;

2. decisions in relation to the use of anaesthetics were made by qualified specialist anaesthetists that were present during BAS; and

(ii) otherwise denies the allegations in paragraph 14(e);

(f) in answer to subparagraph 14(f):

(i) says that:

1. at all material times the sixth to sixteenth defendants were registered medical practitioners and qualified to perform BAS;

2. decisions in relation to the use of anaesthetics were made by qualified specialist anaesthetists that were present during BAS; and

(ii) otherwise denies the allegations in paragraph 14(f);

(g) [not used]; and

(h) denies the allegations in subparagraphs 14(h) to 14(p).

14A In answer to the allegations in paragraph 14A of the FASOC, the fifth defendant:

(a) as to subparagraph 14A(a):

(i) admits that the sixth defendant was a registered medical practitioner;

(ii) says that the sixth defendant had specialised qualifications, training and experience; and

Particulars

Prior to the sixth defendant's association with the first to fourth defendants, the sixth defendant had performed plastic surgeries as a registrar in the United Kingdom.

From about January 2014, the sixth defendant was registered as a trainee with the Australian College of Cosmetic Surgeons.

Further particulars may be provided following service of the sixth defendant's evidence.

(iii) otherwise denies the allegations in subparagraph 14A(a); and

(b) does not admit the allegations in subparagraph 14A(b);

(c) says that the allegations in subparagraph 14A(c) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 14A(c);

(d) does not admit the allegations in subparagraph 14A(d); and

(e) does not admit the allegations in subparagraph 14A(e).

14B In answer to the allegations in paragraph 14B of the FASOC, the fifth defendant:

(a) as to subparagraph 14B(a):

(i) admits that the seventh defendant was a registered medical practitioner;

(ii) says that the seventh defendant had specialised qualifications, training and experience; and

Particulars

Prior to the seventh defendant's association with the first to fourth defendants, the seventh defendant had general surgical experience working as a surgical registrar including in plastic surgery and performing BAS in private clinics.

Further particulars may be provided following service of the seventh defendant's evidence.

(iii) otherwise denies the allegations in subparagraph 14B(a); and

(b) does not admit the allegations in subparagraph 14B(b);

(c) says that the allegations in subparagraph 14B(c) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 14B(c);

(d) does not admit the allegations in subparagraph 14B(d); and

(e) does not admit the allegations in subparagraph 14B(e).

14C In answer to the allegations in paragraph 14C of the FASOC, the fifth defendant:

(a) as to subparagraph 14C(a):

(i) admits that the eighth defendant was a registered medical practitioner;

(ii) says that the eighth defendant had specialised qualifications, training and experience; and

Particulars

Prior to the eighth defendant's association with the first to fourth defendants, the eighth defendant was an Advanced General Surgical Trainee and had general surgical experience.

Further particulars may be provided following service of the eighth defendant's evidence.

(iii) otherwise denies the allegations in subparagraph 14c(a); and

(b) does not admit the allegations in subparagraph 14C(b);

(c) says that the allegations in subparagraph 14C(c) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 14C(c);

(d) does not admit the allegations in subparagraph 14C(d); and

(e) does not admit the allegations in subparagraph 14C(e).

14D In answer to the allegations in paragraph 14D of the FASOC, the fifth defendant:

(a) as to subparagraph 14D(a):

(i) admits that the ninth defendant was a registered medical practitioner;

(ii) says that the ninth defendant had specialised qualifications, training and experience; and

Particulars

Prior to the ninth defendant's association with the first to fourth defendants, the ninth defendant had general surgical experience including as an Advanced Trainee in Plastic Surgery.

Further particulars may be provided following service of the ninth defendant's evidence.

(iii) otherwise denies the allegations in subparagraph 14D(a); and

(b) does not admit the allegations in subparagraph 14D(b);

(c) says that the allegations in subparagraph 14D(c) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 14D(c);

(d) does not admit the allegations in subparagraph 14D(d); and

(e) does not admit the allegations in subparagraph 14D(e).

14E In answer to the allegations in paragraph 14E of the FASOC, the fifth defendant:

(a) as to subparagraph 14E(a):

(i) admits that the tenth defendant was a registered medical practitioner;

(ii) says that the tenth defendant had specialised qualifications, training and experience; and

Particulars

Prior to the tenth defendant's association with the first to fourth defendants, the tenth defendant had general surgical experience, including 2 years as a Surgical Registrar.

Further particulars may be provided following service of the tenth defendant's evidence.

(iii) otherwise denies the allegations in subparagraph 14E(a); and

(b) does not admit the allegations in subparagraph 14E(b);

(c) says that the allegations in subparagraph 14E(c) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 14E(c);

(d) does not admit the allegations in subparagraph 14E(d); and

(e) does not admit the allegations in subparagraph 14E(e).

14F In answer to the allegations in paragraph 14F of the FASOC, the fifth defendant:

(a) as to subparagraph 14F(a):

(i) admits that the eleventh defendant was a registered medical practitioner;

(ii) says that the eleventh defendant had specialised qualifications, training and experience; and

Particulars

Prior to the eleventh defendant's association with the first to fourth defendants, the eleventh defendant had general surgical experience, including 3 years as a Surgical Registrar.

Further particulars may be provided following service of the eleventh defendant's evidence.

(iii) otherwise denies the allegations in subparagraph 14F(a); and

(b) does not admit the allegations in subparagraph 14F(b);

(c) says that the allegations in subparagraph 14F(c) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 14F(c);

(d) does not admit the allegations in subparagraph 14F(d); and

(e) does not admit the allegations in subparagraph 14F(e).

14G In answer to the allegations in paragraph 14G of the FASOC, the fifth defendant:

(a) as to subparagraph 14G(a):

(i) admits that the twelfth defendant was a registered medical practitioner;

(ii) says that the twelfth defendant had specialised qualifications, training and experience; and

Particulars

Prior to the twelfth defendant's association with the first to fourth defendants, the twelfth defendant had general surgical experience, including as a General Surgical Registrar.

Further particulars may be provided following service of the twelfth defendant's evidence.

(iii) otherwise denies the allegations in subparagraph 14G(a); and

(b) does not admit the allegations in subparagraph 14G(b);

(c) says that the allegations in subparagraph 14G(c) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 14G(c);

(d) does not admit the allegations in subparagraph 14G(d); and

(e) does not admit the allegations in subparagraph 14G(e).

14H In answer to the allegations in paragraph 14H of the FASOC, the fifth defendant:

(a) as to subparagraph 14H(a):

(i) admits that the thirteenth defendant was a registered medical practitioner;

(ii) says that the thirteenth defendant had specialised qualifications, training and experience; and

Particulars

Prior to the thirteenth defendant's association with the first to fourth defendants, the thirteenth defendant was an Advanced Trainee in Plastic Surgery and had experience assisting on plastic surgeries.

Further particulars may be provided following service of the thirteenth defendant's evidence.

(iii) otherwise denies the allegations in subparagraph 14H(a); and

(b) does not admit the allegations in subparagraph 14H(b);

(c) says that the allegations in subparagraph 14H(c) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 14H(c);

(d) does not admit the allegations in subparagraph 14H(d); and

(e) does not admit the allegations in subparagraph 14H(e).

14I In answer to the allegations in paragraph 14I of the FASOC, the fifth defendant:

(a) as to subparagraph 14I(a):

(i) admits that the fourteenth defendant was a registered medical practitioner;

(ii) says that the fourteenth defendant had specialised qualifications, training and experience; and

Particulars

Prior to the fourteenth defendant's association with the first to fourth defendants, the fourteenth defendant had 2 years of surgical experience and worked as a Surgical Senior Resident.

Further particulars may be provided following service of the fourteenth defendant's evidence.

(iii) otherwise denies the allegations in subparagraph 14I(a); and

(b) does not admit the allegations in subparagraph 14I(b);

(c) says that the allegations in subparagraph 14I(c) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 14I(c);

(d) does not admit the allegations in subparagraph 14I(d); and

(e) does not admit the allegations in subparagraph 14I(e).

14J In answer to the allegations in paragraph 14J of the FASOC, the fifth defendant:

(a) as to subparagraph 14J(a):

(i) admits that the fifteenth defendant was a registered medical practitioner;

(ii) says that the fifteenth defendant had specialised qualifications, training and experience; and

Particulars

Prior to the fifteenth defendant's association with the first to fourth defendants, the fifteenth defendant was a Fellow of the Royal Australasian College of Surgeons and had practised as a surgeon since 1991.

Further particulars may be provided following service of the fifteenth defendant's evidence.

(iii) otherwise denies the allegations in subparagraph 14J(a); and

(b) does not admit the allegations in subparagraph 14J(b);

(c) says that the allegations in subparagraph 14J(c) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 14J(c);

(d) does not admit the allegations in subparagraph 14J(d); and

(e) does not admit the allegations in subparagraph 14J(e).

14K In answer to the allegations in paragraph 14K of the FASOC, the fifth defendant:

(a) as to subparagraph 14K(a):

(i) admits that the sixteenth defendant was a registered medical practitioner;

(ii) says that the sixteenth defendant had specialised qualifications, training and experience; and

Particulars

Prior to the sixteenth defendant's association with the first to fourth defendants, the sixteenth defendant had general surgical experience, including 3 years as a Plastic Surgical Registrar in England and Australia.

Further particulars may be provided following service of the sixteenth defendant's evidence.

(iii) otherwise denies the allegations in subparagraph 14K(a); and

(b) does not admit the allegations in subparagraph 14K(b);

(c) says that the allegations in subparagraph 14K(c) are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in subparagraph 14K(c);

(d) does not admit the allegations in subparagraph 14K(d); and

(e) does not admit the allegations in subparagraph 14K(e).

TCI Facilities

15 In answer to the allegations in paragraph 15 of the FASOC, the fifth defendant:

(a) admits that BAS was performed by TCI Surgeons at the TCI Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital at a cost of $5,990; and

(b) otherwise denies the allegations in paragraph 15.

16 In answer to the allegations in paragraph 16 of the FASOC, the fifth defendant:

(a) denies the allegations in subparagraph 16(a);

(b) denies the allegations in subparagraph 16(b);

(c) admits the allegations in subparagraph 16(c); and

(d) denies the allegations in subparagraph 16(d).

17 The fifth defendant denies the allegations in paragraph 17 of the FASOC.

TCI Surgeons

18 The fifth defendant does not admit the allegations in paragraph 18 of the FASOC.

19 In answer to the allegations in paragraph 19 of the FASOC, the fifth defendant:

(a) relies upon each of the accreditation deeds and the training deeds to which the TCI Surgeons were a party for their full terms, meaning and effect; and

(b) does not admit the allegations in paragraph 19.

TCI Anaesthetists

20 The fifth defendant admits the allegations in paragraph 20 of the FASOC.

The One Size Fits All Approach

21 In answer to the allegations in paragraph 21 of the FASOC, the fifth defendant:

(a) says that:

(i) the plaintiffs had a variety of different sized implants, and the twelfth plaintiff had two different implant sizes;

(ii) the profile of the plaintiffs' implants varied between moderate and full/high;

(iii) the insertion of the implants in the plaintiffs varied between sub-pectoral and dual plane approach;

(iv) the brand of implant varied between the plaintiffs; and

(v) by reason of (i) to (iv) above, there were no 'one size fits all' approach to BAS; and

(b) denies the allegations in paragraph 21.

22 The fifth defendant denies the allegations in paragraph 22 of the FASOC.

The Representations

23 The allegations in paragraph 23 of the FASOC are embarrassing and liable to be struck out and under the cover of that objection the fifth defendant denies the allegations in paragraph 23.

23A The allegations in paragraph 23A of the FASOC are embarrassing and liable to be struck out and under the cover of that objection the fifth defendant denies the allegations in paragraph 23A.

Pre-Surgery Consultations

24 The fifth defendant does not admit the allegations in paragraph 24 of the FASOC.

Post-Surgery Consultations

24A The fifth defendant does not admit the allegations in paragraph 24A of the FASOC.

24B In answer to the allegations in paragraph 24B of the FASOC, the fifth defendant:

(a) admits that he was available to consult with, and from time to time, consulted with the TCI Surgeons; and

(b) otherwise does not admit the allegations in paragraph 24B.

24C In answer to the allegations in paragraph 24C of the FASOC, the fifth defendant:

(a) admits that from time to time he treated, or assisted the TCI Surgeons in the treatment of, complications arising from initial BAS performed by TCI Surgeons on patients; and

(b) otherwise does not admit the allegations in paragraph 24C.

Questions Common to Claims of Group Members

25 In answer to the allegations in paragraph 25 of the FASOC, the fifth defendant:

(a) says that:

(i) subparagraphs 25(a) to 25(n) are not substantial questions of law or fact common to the claims of group members; and

(ii) by reason of (i) the proceedings cannot be brought as representative proceedings; and

(b) denies the allegations in paragraph 25 of the FASOC.

Amy Rickhuss

26 In answer to the allegations in paragraph 26 of the FASOC, the fifth defendant says that the allegations in paragraph 26 are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 26.

27 The fifth defendant admits Ms Rickhuss consulted with Dr Sivathasan on 29 January 2015 and otherwise does not admit the allegations in paragraph 27 of the FASOC.

28 The fifth defendant does not admit the allegations in paragraph 28 of the FASOC.

29 The fifth defendant admits the allegations in paragraph 29 of the FASOC.

30 The fifth defendant does not admit the allegations in paragraph 30 of the FASOC.

31 The fifth defendant does not admit the allegations in paragraph 31 of the FASOC.

32 The fifth defendant does not admit the allegations in paragraph 32 of the FASOC.

33 The fifth defendant does not admit the allegations in paragraph 33 of the FASOC.

34 The fifth defendant does not admit the allegations in paragraph 34 of the FASOC.

35 The fifth defendant does not admit the allegations in paragraph 35 of the FASOC.

36 The fifth defendant does not admit the allegations in paragraph 36 of the FASOC.

Kylie Pollock

37 In answer to the allegations in paragraph 37 of the FASOC, the fifth defendant says that the allegations in paragraph 37 are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 37.

38 The fifth defendant admits Ms Pollock consulted with Dr Nguyen on 7 May 2014 and otherwise does not admit the allegations in paragraph 38 of the FASOC.

39 The fifth defendant does not admit the allegations in paragraph 39 of the FASOC.

40 The fifth defendant admits the allegations in paragraph 40 of the FASOC.

41 The fifth defendant does not admit the allegations in paragraph 41 of the FASOC.

42 The fifth defendant does not admit the allegations in paragraph 42 of the FASOC.

43 The fifth defendant does not admit the allegations in paragraph 43 of the FASOC.

44 The fifth defendant does not admit the allegations in paragraph 44 of the FASOC.

45 The fifth defendant does not admit the allegations in paragraph 45 of the FASOC.

46 The fifth defendant does not admit the allegations in paragraph 46 of the FASOC.

47 The fifth defendant does not admit the allegations in paragraph 47 of the FASOC.

Jessica Bruen

48 In answer to the allegations in paragraph 48 of the FASOC, the fifth defendant says that the allegations in paragraph 48 are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 48.

49 The fifth defendant admits Ms Bruen consulted with Dr Lee on 29 July 2014 and otherwise does not admit the allegations in paragraph 49 of the FASOC.

50 The fifth defendant does not admit the allegations in paragraph 50 of the FASOC.

51 The fifth defendant admits the allegations in paragraph 51 of the FASOC.

52 The fifth defendant does not admit the allegations in paragraph 52 of the FASOC.

53 The fifth defendant does not admit the allegations in paragraph 53 of the FASOC.

54 The fifth defendant does not admit the allegations in paragraph 54 of the FASOC.

55 The fifth defendant does not admit the allegations in paragraph 55 of the FASOC.

56 The fifth defendant does not admit the allegations in paragraph 56 of the FASOC.

Kirsty-Anne Rowlands

57 In answer to the allegations in paragraph 57 of the FASOC, the fifth defendant says that the allegations in paragraph 57 are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 57.

58 The fifth defendant admits Ms Rowlands consulted with Dr Duong on 12 December 2014 and otherwise does not admit the allegations in paragraph 58 of the FASOC.

59 The fifth defendant does not admit the allegations in paragraph 59 of the FASOC.

60 The fifth defendant admits the allegations in paragraph 60 of the FASOC.

61 The fifth defendant does not admit the allegations in paragraph 61 of the FASOC.

62 The fifth defendant does not admit the allegations in paragraph 62 of the FASOC.

63 The fifth defendant does not admit the allegations in paragraph 63 of the FASOC.

64 The fifth defendant does not admit the allegations in paragraph 64 of the FASOC.

Lily Knowland

65 In answer to the allegations in paragraph 65 of the FASOC, the fifth defendant says that the allegations in paragraph 65 are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 65.

66 The fifth defendant admits Ms Knowland consulted with Dr Nguyen on 20 November 2015 and otherwise does not admit the allegations in paragraph 66 of the FASOC.

67 The fifth defendant does not admit the allegations in paragraph 67 of the FASOC.

68 The fifth defendant admits the allegations in paragraph 68 of the FASOC.

69 The fifth defendant does not admit the allegations in paragraph 69 of the FASOC.

70 The fifth defendant does not admit the allegations in paragraph 70 of the FASOC.

71 The fifth defendant does not admit the allegations in paragraph 71 of the FASOC.

72 The fifth defendant does not admit the allegations in paragraph 72 of the FASOC.

73 The fifth defendant does not admit the allegations in paragraph 73 of the FASOC.

74 The fifth defendant does not admit the allegations in paragraph 74 of the FASOC.

75 The fifth defendant does not admit the allegations in paragraph 75 of the FASOC.

76 The fifth defendant does not admit the allegations in paragraph 76 of the FASOC.

77 The fifth defendant does not admit the allegations in paragraph 77 of the FASOC.

Tiffany Rutherford

77FA In answer to the allegations in paragraph 77FA of the FASOC, the fifth defendant:

(a) says that:

(i) on or about 8 February 2016 (being before the date that the sixth plaintiff is alleged to have accessed unspecified material "published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au and www.instagram.com" the fifth defendant:

1. had resigned as a director of the first to fourth defendants; and

2. had ceased providing services to the first to fourth defendants; and

(ii) the allegations in paragraph 77FA are embarrassing and liable to be struck out; and

(b) under the cover of that objection, denies the allegations in paragraph 77FA.

77FB In answer to the allegations in paragraph 77FB of the FASOC, the fifth defendant:

(a) says that on or about 8 February 2016 (being before the date that the sixth plaintiff is alleged to have attended at TCI Bondi Premises for her first pre-surgery consultation) the fifth defendant:

(i) had resigned as a director of the first to fourth defendants; and

(ii) had ceased providing services to the first to fourth defendants; and

(b) does not admit the allegations in paragraph 77FB.

77FC In answer to the allegations in paragraph 77FC of the FASOC, the fifth defendant:

(a) says that on or about 8 February 2016 (being before the date that the sixth plaintiff is alleged to have attended at TCI Bondi Premises for her first pre-surgery consultation) the fifth defendant:

(i) had resigned as a director of the first to fourth defendants; and

(ii) had ceased providing services to the first to fourth defendants; and

(b) does not admit the allegations in paragraph 77FC.

77FD In answer to the allegations in paragraph 77FD of the FASOC, the fifth defendant:

(a) says that on or about 8 February 2016 (being before the date that the sixth plaintiff is alleged to have undergone surgery) the fifth defendant:

(i) had resigned as a director of the first to fourth defendants; and

(ii) has ceased providing services to the first to fourth defendants; and

(b) does not admit the allegations in paragraph 77FD.

77FE The fifth defendant does not admit the allegations in paragraph 77FE of the FASOC.

77FF The fifth defendant does not admit the allegations in paragraph 77FF of the FASOC.

77FG The fifth defendant does not admit the allegations in paragraph 77FG of the FASOC.

77FH The fifth defendant does not admit the allegations in paragraph 77FH of the FASOC.

77FI The fifth defendant does not admit the allegations in paragraph 77FI of the FASOC.

77FJ The fifth defendant does not admit the allegations in paragraph 77FJ of the FASOC.

77FK The fifth defendant does not admit the allegations in paragraph 77FK of the FASOC.

77FL The fifth defendant does not admit the allegations in paragraph 77FL of the FASOC.

77FM The fifth defendant does not admit the allegations in paragraph 77FM of the FASOC.

77FN The fifth defendant does not admit the allegations in paragraph 77FN of the FASOC.

77FO The fifth defendant does not admit the allegations in paragraph 77FO of the FASOC.

Alysha Axen

77GA In answer to the allegations in paragraph 77GA of the FASOC, the fifth defendant says that the allegations in paragraph 77GA are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 77GA.

77GB In answer to the allegations in paragraph 77GB of the FASOC, the fifth defendant:

(a) says that on or about 8 February 2016 (being before the date that the seventh plaintiff is alleged to have attended at TCI Parramatta Premises for her first pre-surgery consultation) the fifth defendant:

(i) had resigned as a director of the first to fourth defendants; and

(ii) had ceased providing services to the first to fourth defendants; and

(b) does not admit the allegations in paragraph 77GB.

77GC In answer to the allegations in paragraph 77GC of the FASOC, the fifth defendant:

(a) says that on or about 8 February 2016 (being before the date that the seventh plaintiff is alleged to have attended at TCI Parramatta Premises for her first pre-surgery consultation) the fifth defendant:

(i) had resigned as a director of the first to fourth defendants; and

(ii) had ceased providing services to the first to fourth defendants; and

(b) does not admit the allegations in paragraph 77GC.

77GD In answer to the allegations in paragraph 77GD of the FASOC, the fifth defendant:

(a) says that on or about 8 February 2016 (being before the date that the seventh plaintiff is alleged to have undergone surgery) the fifth defendant:

(i) had resigned as a director of the first to fourth defendants; and

(ii) had ceased providing services to the first to fourth defendants; and

(c) does not admit the allegations in paragraph 77GD.

77GE The fifth defendant does not admit the allegations in paragraph 77GE of the FASOC.

77GF The fifth defendant does not admit the allegations in paragraph 77GF of the FASOC.

77GG The fifth defendant does not admit the allegations in paragraph 77GG of the FASOC.

77GH The fifth defendant does not admit the allegations in paragraph 77GH of the FASOC.

77GI The fifth defendant does not admit the allegations in paragraph 77GI of the FASOC.

77GJ In answer to the allegations in paragraph 77GJ of the FASOC, the fifth defendant:

(a) says that the seventh plaintiff consulted with him for the first time as a private patient in his private consulting rooms; and

(b) otherwise admits the allegations in paragraph 77GJ.

Sherine Zahr

77HA In answer to the allegations in paragraph 77HA of the FASOC, the fifth defendant says that the allegations in paragraph 77HA are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 77HA.

77HB The fifth defendant admits Ms Zahr consulted with Dr Darshn on 11 April 2015 and otherwise does not admit the allegations in paragraph 77HB of the FASOC.

77HC The fifth defendant does not admit the allegations in paragraph 77HC of the FASOC.

77HD The fifth defendant admits the allegations in paragraph 77HD of the FASOC.

77HE The fifth defendant does not admit the allegations in paragraph 77HE of the FASOC.

77HF The fifth defendant admits Ms Zahr consulted with Dr Kwok on 15 May 2015 and otherwise does not admit the allegations in paragraph 77HF of the FASOC.

77HG The fifth defendant does not admit the allegations in paragraph 77HG of the FASOC.

77HH The fifth defendant does not admit the allegations in paragraph 77HH of the FASOC.

77HI The fifth defendant does not admit the allegations in paragraph 77HI of the FASOC.

77HJ The fifth defendant does not admit the allegations in paragraph 77HJ of the FASOC.

77HK The fifth defendant does not admit the allegations in paragraph 77HK of the FASOC.

77HL The fifth defendant does not admit the allegations in paragraph 77HL of the FASOC.

77HM The fifth defendant does not admit the allegations in paragraph 77HM of the FASOC.

77HN The fifth defendant does not admit the allegations in paragraph 77HN of the FASOC.

77HO The fifth defendant does not admit the allegations in paragraph 77HO of the FASOC.

Emma Love

77IA In answer to the allegations in paragraph 77IA of the FASOC, the fifth defendant says that the allegations in paragraph 77IA are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 77IA.

77IB The fifth defendant admits Ms Love consulted with Dr Valente on 12 July 2013 and otherwise does not admit the allegations in paragraph 77IB of the FASOC.

77IC The fifth defendant does not admit the allegations in paragraph 77IC of the FASOC.

77ID The fifth defendant does not admit the allegations in paragraph 77ID of the FASOC.

77IE The fifth defendant does not admit the allegations in paragraph 77IE of the FASOC.

77IF The fifth defendant does not admit the allegations in paragraph 77IF of the FASOC.

77IG The fifth defendant admits the allegations in paragraph 77IG of the FASOC.

77IH The fifth defendant does not admit the allegations in paragraph 77IH of the FASOC.

77II The fifth defendant does not admit the allegations in paragraph 77II of the FASOC.

77IJ The fifth defendant does not admit the allegations in paragraph 77IJ of the FASOC.

Candice Gielisse

77JA In answer to the allegations in paragraph 77JA of the FASOC, the fifth defendant says that the allegations in paragraph 77JA are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 77JA.

77JB The fifth defendant does not admit the allegations in paragraph 77JB of the FASOC.

77JC The fifth defendant does not admit the allegations in paragraph 77JC of the FASOC.

77JD The fifth defendant does not admit the allegations in paragraph 77JD of the FASOC.

77JE The fifth defendant does not admit the allegations in paragraph 77JE of the FASOC.

77JF The fifth defendant does not admit the allegations in paragraph 77JF of the FASOC.

77JG The fifth defendant does not admit the allegations in paragraph 77JG of the FASOC.

77JH The fifth defendant does not admit the allegations in paragraph 77JH of the FASOC.

77JI The fifth defendant does not admit the allegations in paragraph 77JI of the FASOC.

77JJ The fifth defendant does not admit the allegations in paragraph 77JJ of the FASOC.

77JK The fifth defendant does not admit the allegations in paragraph 77JK of the FASOC.

77JL The fifth defendant does not admit the allegations in paragraph 77JL of the FASOC.

77JM The fifth defendant does not admit the allegations in paragraph 77JM of the FASOC.

77JN The fifth defendant does not admit the allegations in paragraph 77JN of the FASOC.

77JO The fifth defendant does not admit the allegations in paragraph 77JO of the FASOC.

Ali Turner

77KA In answer to the allegations in paragraph 77KA of the FASOC, the fifth defendant says that the allegations in paragraph 77KA are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 77KA.

77KB The fifth defendant does not admit the allegations in paragraph 77KB of the FASOC.

77KC The fifth defendant does not admit the allegations in paragraph 77KC of the FASOC.

77KD The fifth defendant does not admit the allegations in paragraph 77KD of the FASOC.

77KE The fifth defendant does not admit the allegations in paragraph 77KE of the FASOC.

77KF The fifth defendant does not admit the allegations in paragraph 77KF of the FASOC.

77KG The fifth defendant does not admit the allegations in paragraph 77KG of the FASOC.

77KH The fifth defendant does not admit the allegations in paragraph 77KH of the FASOC.

77KI The fifth defendant does not admit the allegations in paragraph 77KI of the FASOC.

Stefanie Sanchez

77LA In answer to the allegations in paragraph 77LA of the FASOC, the fifth defendant says that the allegations in paragraph 77LA are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 77LA.

77LB The fifth defendant does not admit the allegations in paragraph 77LB of the FASOC.

77LC The fifth defendant does not admit the allegations in paragraph 77LC of the FASOC.

77LD The fifth defendant does not admit the allegations in paragraph 77LD of the FASOC.

77LE The fifth defendant does not admit the allegations in paragraph 77LE of the FASOC.

77LF The fifth defendant does not admit the allegations in paragraph 77LF of the FASOC.

77LG The fifth defendant does not admit the allegations in paragraph 77LG of the FASOC.

77LH The fifth defendant does not admit the allegations in paragraph 77LH of the FASOC.

77LI The fifth defendant does not admit the allegations in paragraph 77LI of the FASOC.

77LJ The fifth defendant does not admit the allegations in paragraph 77LJ of the FASOC.

77LK The fifth defendant does not admit the allegations in paragraph 77LK of the FASOC.

77LL The fifth defendant does not admit the allegations in paragraph 77LL of the FASOC.

Negligence

78 In answer to the allegations in paragraph 78 of the FASOC, the fifth defendant:

(a) says that he did not, nor is it alleged that he:

(i) provided the plaintiffs with pre-surgery advice about initial BAS; or

(ii) performed initial BAS on the plaintiffs; and

(b) denies the allegations in paragraph 78.

79 In answer to the allegations in paragraph 79 of the FASOC, the fifth defendant:

(a) says that he did not, nor is it alleged that he:

(i) provided the plaintiffs with pre-surgery advice about initial BAS; or

(ii) performed initial BAS on the plaintiffs; and

(b) denies the allegations in paragraph 79.

80 In answer to the allegations in paragraph 80 of the FASOC, the fifth defendant:

(a) says that he did not, nor is it alleged that he:

(i) provided the plaintiffs with pre-surgery advice about initial BAS; or

(ii) performed initial BAS on the plaintiffs; and

(b) denies the allegations in paragraph 80.

81 The fifth defendant does not plead to paragraph 81 of the FASOC as it contains no allegations against him.

81A In answer to the allegations in paragraph 81A of the FASOC, the fifth defendant:

(a) as to subparagraph 81A(a):

(i) repeats paragraph 21 above; and

(ii) denies the allegations in subparagraph 81A(a);

(b) as to subparagraph 81A(b):

(i) repeats paragraph 21 above;

(ii) says that none of the plaintiffs have alleged that the fifth defendant breached his duty of care to them in performing their BAS; and

(iii) denies the allegations in subparagraph 81A(b);

(c) as to subparagraph 81A(c);

(i) repeats paragraphs 14A(a), 14B(a), 14C(a), 14D(a), 14E(a), 14F(a), 14G(a), 14H(a), 14I(a), 14J(a) and 14K(a) above;

(ii) says that none of the plaintiffs have alleged that the fifth defendant breached his duty of care to them by failing to inform them of the risks of BAS Complication; and

(iii) denies the allegations in subparagraph 81A(c);

(d) as to subparagraph 81A(d):

(i) repeats subparagraph 81A(c)(i) above;

(ii) says that none of the plaintiffs have alleged that the fifth defendant breached his duty of care to them by failing to inform them that they were at an increased risk of requiring revision surgery in the future; and

(iii) denies the allegations in subparagraph 81A(d);

(e) as to subparagraph 81A(e):

(i) repeats subparagraph 81A(c)(i) above; and

(ii) denies the allegations in subparagraph 81A(e);

(f) as to subparagraph 81A(f):

(i) repeats paragraph 21 above;

(ii) says that there is no allegation of a "System of BAS"; and

(iii) denies the allegations in subparagraph 81A(f);

(g) as to subparagraph 81A(g):

(i) says that:

1. the TCI Anaesthetists were fully qualified medical doctors with specialty training in anaesthetics, supervised and accredited by the Australian and New Zealand college of Anaesthetists, entitled to practise as a specialist anaesthetists in Australia;

2. TCI had an Anaesthetic Director, Dr Erez Ben, who was responsible for recruiting and supervising the TCI Anaesthetists; and

(ii) denies the allegations in subparagraph 81A(g);

(h) as to subparagraph 81A(h):

(i) says that there is no allegation of a "System of BAS"; and

(ii) denies the allegations in subparagraph 81A(h);

(i) as to subparagraph 81A(i):

(i) says that TCI had a Director of Nursing who was responsible for equipment sterilisation; and

(ii) denies the allegations in subparagraph 81A(i);

(j) denies the allegations in subparagraph 81A(j);

(k) denies the allegations in subparagraph 81A(k);

(l) as to subparagraph 81A(l):

(i) repeats subparagraph 81A(c)(i) above;

(ii) says that none of the plaintiffs have alleged the fifth defendant breached his duty of care to them by failing in the planning and performance of BAS to consider the differences in anatomy of the plaintiffs; and

(iii) denies the allegations in subparagraph 81A(l);

(m) as to subparagraph 81A(m):

(i) repeats subparagraph 81A(c)(i) above;

(ii) says that none of the plaintiffs have alleged that the fifth defendant breached his duty of care to them by failing to provide adequate review and follow up following their BAS; and

(iii) denies the allegations in subparagraph 81A(m);

(n) as to subparagraph 81A(n):

(i) repeats subparagraph 81A(c)(i) above;

(ii) says that:

1. none of the plaintiffs have alleged that the fifth defendant breached his duty of care to them by failing to decline to perform their BAS where it was considered technically difficult; and

2. the first to fourth defendants and/or the TCI Surgeons declined to perform BAS where it was appropriate do to so; and

(iii) denies the allegations in subparagraph 81A(n);

(o) as to subparagraph 81A(o):

(i) repeats subparagraph 81A(c)(i) above;

(ii) says that:

1. none of the plaintiffs have alleged that the fifth defendant breached his duty of care to them by failing to decline to perform their BAS where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated; and

2. the first to fourth defendants and/or the TCI Surgeons declined to perform BAS where it was appropriate do to so; and

(iii) denies the allegations in subparagraph 81A(o);

(p) as to subparagraph 81A(p):

(i) repeats subparagraphs 81A(c)(i) and 81A(g)(i) above;

(ii) says that:

1. none of the plaintiffs have alleged that the fifth defendant breached his duty of care to them by performing their BAS without general anaesthetic and under twilight sedation and local anaesthetic; and

2. the use of local anaesthetic and twilight sedation in BAS is widely accepted in Australia and internationally by peer professional opinion as competent professional practice; and

(iii) denies the allegations in subparagraph 81A(p);

(q) as to subparagraph 81A(q):

(i) repeats subparagraphs 81A(p)(i) and 81A(p)(ii)(2) above; and

(ii) denies the allegations in subparagraph 81A(q);

(r) as to subparagraph 81A(r):

(i) repeats subparagraphs 81A(p)(i) and 81A(p)(ii)(2) above; and

(ii) denies the allegations in subparagraph 81A(r);

(s) as to subparagraph 81A(s):

(i) repeats subparagraphs 81A(p)(i) and 81A(p)(ii)(2) above;

(ii) says that none of the plaintiffs have alleged that the fifth defendant breached his duty of care to them by failing to inform them that performing surgery without general anaesthetic and under twilight sedation and local anaesthetic would result in some patients experience pain and moving during surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic, thereby increasing the risk of BAS Complications; and

(iii) denies the allegations in subparagraph 81A(s);

(t) as to subparagraph 81A(t):

(i) repeats paragraph 21 and subparagraphs 81A(p)(i) and 81A(p)(ii)(2) above; and

(ii) denies the allegations in subparagraph 81A(t);

(u) as to subparagraph 81A(u):

(i) repeats paragraph 21 and subparagraphs 81A(p)(i) and 81A(p)(ii)(2) above; and

(ii) denies the allegations in subparagraph 81A(u);

(v) as to subparagraph 81A(v):

(i) says that there is no allegation of a "System of BAS"; and

(ii) denies the allegations in subparagraph 81A(u);

(w) as to subparagraph 81A(w):

(i) repeats paragraph 21 above;

(ii) says that there is no allegation of a "System of BAS"; and

(iii) denies the allegations in subparagraph 81A(w);

(x) as to subparagraph 81A(x):

(i) repeats paragraph 21 and subparagraphs 81A(p)(i) and 81A(p)(ii)(2) above; and

(ii) denies the allegations in subparagraph 81A(x);

(y) as to subparagraph 81A(y):

(i) repeats paragraph 21 and subparagraphs 81A(p)(i) and 81A(p)(ii)(2) above;

(ii) says that none of the plaintiffs have alleged that the fifth defendant breached his duty of care to them by failing to adequately monitor their alleged BAS Complications; and

(iii) denies the allegations in subparagraph 81A(y);

(z) as to subparagraph 81A(z):

(i) repeats paragraph 21 and subparagraphs 81A(p)(i) and 81A(p)(ii)(2) above;

(ii) says that none of the plaintiffs have alleged that the fifth defendant breached his duty of care to them by failing to adequately treat or assist in the treatment their alleged BAS Complications; and

(iii) denies the allegations in subparagraph 81A(z);

(aa) as to subparagraph 81A(aa):

(i) repeats paragraph 21 and subparagraphs 81A(p)(i) and 81A(p)(ii)(2) above; and

(ii) denies the allegations in subparagraph 81A(aa);

(bb) as to subparagraph 81A(bb):

(i) repeats paragraph 21 and subparagraphs 81A(p)(i) and 81A(p)(ii)(2) above; and

(ii) denies the allegations in subparagraph 81A(bb);

(cc) as to subparagraph 81A(cc):

(i) repeats paragraph 21 and subparagraphs 81A(p)(i) and 81A(p)(ii)(2) above; and

(ii) denies the allegations in subparagraph 81A(cc);

(dd) as to subparagraph 81A(dd):

(i) repeats paragraph 21 and subparagraphs 81A(p)(i) and 81A(p)(ii)(2) above;

(ii) says that there is no allegation of a "System of BAS"; and

(iii) denies the allegations in subparagraph 81A(dd);

(ee) denies the allegations in subparagraph 81A(ee);

(ff) denies the allegations in subparagraph 81A(ff);

(gg) as to subparagraph 81(gg):

(i) says that:

1. the allegations are embarrassing and liable to be struck out;

2. none of the plaintiffs have alleged that the fifth defendant breached his duty of care by making the Representations to them; and

(ii) denies the allegations in subparagraph 81A(gg); and

(hh) as to subparagraph 81A(hh):

(i) says that none of the plaintiffs have alleged that the fifth defendant breached his duty of care to them by allegedly providing them an ASPS brochure via the TCI Surgeons; and

(ii) denies the allegations in subparagraph 81A(hh); and

(ii) in further answer, says that the allegations in paragraph 81A are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 81A.

81B The fifth defendant does not plead to paragraph 81B of the FASOC as it contains no allegations against him.

81C The fifth defendant does not plead to paragraph 81C of the FASOC as it contains no allegations against him.

81D The fifth defendant does not plead to paragraph 81D of the FASOC as it contains no allegations against him.

81E The fifth defendant does not plead to paragraph 81E of the FASOC as it contains no allegations against him.

81F The fifth defendant does not plead to paragraph 81F of the FASOC as it contains no allegations against him.

81G The fifth defendant does not plead to paragraph 81G of the FASOC as it contains no allegations against him.

81H The fifth defendant does not plead to paragraph 81H of the FASOC as it contains no allegations against him.

81I The fifth defendant does not plead to paragraph 81I of the FASOC as it contains no allegations against him.

81J The fifth defendant does not plead to paragraph 81J of the FASOC as it contains no allegations against him.

81K The fifth defendant does not plead to paragraph 81K of the FASOC as it contains no allegations against him.

81L The fifth defendant does not plead to paragraph 81K of the FASOC as it contains no allegations against him.

82 [Not used]

83 [Not used]

84 [Not used]

85 [Not used]

Competition and Consumer Act

86 In answer to the allegations in paragraph 86 of the FASOC, the fifth defendant:

(a) admits the allegations in respect of the plaintiffs; and

(b) otherwise does not admit the allegations in paragraph 86.

87 In answer to the allegations in paragraph 87 of the FASOC, the fifth defendant:

(a) admits the allegations in respect of the plaintiffs; and

(b) otherwise does not admit the allegations in paragraph 87.

88 In answer to the allegations in paragraph 88 of the FASOC, the fifth defendant:

(a) admits the allegations in respect of the plaintiffs; and

(b) otherwise does not admit the allegations in paragraph 88.

89 In answer to the allegations in paragraph 89 of the FASOC, the fifth defendant:

(a) says that the purpose of BAS varies from patient to patient; and

(b) does not admit the allegations in paragraph 89.

90 In answer to the allegations in paragraph 90 of the FASOC, the fifth defendant:

(a) says that:

(i) the purpose of BAS varies from patient to patient;

(ii) the fifth defendant did not attend, nor is it alleged that the fifth defendant attended, initial pre-surgery consultations with any of the plaintiffs;

(b) denies the allegations in paragraph 90.

91 In answer to the allegations in paragraph 91 of the FASOC, the fifth defendant:

(a) says that the reasonable expectation of patients undergoing BAS varies from patient to patient; and

(b) does not admit the allegations in paragraph 91.

92 In answer to the allegations in paragraph 92 of the FASOC, the fifth defendant:

(a) says that:

(i) the reasonable expectation of patients undergoing BAS varies from patient to patient;

(ii) the fifth defendant did not attend, nor is it alleged that the fifth defendant attended, initial pre-surgery consultations with any of the plaintiffs; and

(b) denies the allegations in paragraph 92.

93 In answer to the allegations in paragraph 93 of the FASOC, the fifth defendant:

(a) says that:

(i) there is no allegation of a "System of BAS";

(ii) he did not "supply" services within the meaning of ss 60 and 61 of the ACL to the plaintiffs;

(iii) the plaintiffs did not make known to the fifth defendant the particular purpose for which they were acquiring BAS; and

(iv) the plaintiffs did not make known to the fifth defendant the result that the plaintiffs wished their BAS to achieve; and

(b) denies the allegations in paragraph 93 of the FASOC.

94 In answer to the allegations in paragraph 94 of the FASOC, the fifth defendant:

(a) says that he did not "supply" services within the meaning of ss 267 and 268 of the ACL to the plaintiffs;

(b) denies the allegations in paragraph 94.

95 The fifth defendant denies the allegations in paragraph 95 of the FASOC.

96 The fifth defendant denies the allegations in paragraph 96 of the FASOC.

97 In answer to the allegations in paragraph 97 of the FASOC, the fifth defendant says that the allegations in paragraph 97 are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 97.

98 In answer to the allegations in paragraph 98 of the FASOC, the fifth defendant says that the allegations in paragraph 98 are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 98.

99 In answer to the allegations in paragraph 99 of the FASOC, the fifth defendant says that the allegations in paragraph 99 are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 99.

Injury loss and damage

100 In answer to the allegations in paragraph 100 of the FASOC, the fifth defendant says that the allegations in paragraph 100 are embarrassing and liable to be struck out and under the cover of that objection denies the allegations in paragraph 100.

Limitations defence for negligence

101 If, which is denied, the fifth defendant is found to have breached his duty of care as alleged, and the breach or breaches are found to have caused loss or damage as alleged (which is further denied) then in further answer to the claims for negligence, the fifth defendant pleads as follows.

102 These proceedings were commenced on 14 September 2017.

103 The claims of:

(a) second plaintiff;

(b) third plaintiff;

(c) ninth plaintiff; and

(d) tenth plaintiff,

were discoverable (as defined by section 50D *Limitation Act 1969* (NSW) three or more years before 14 September 2017.

104 In the premises of paragraph 102 and 103 above, the claims of the second plaintiff, the third plaintiff, the ninth plaintiff and the tenth plaintiff and any other group

member whose claim was discoverable three or more years before 14 September 2017 is statute barred.

Particulars

Section 50C *Limitation Act 1969* (NSW).

105 Further and in addition, any of the plaintiffs or group members' claims in negligence which occurred in Queensland which accrued three or more years before 14 September 2017 are statute barred.

Particulars

Section 11 *Limitation Act 1974* (Qld).

Limitations defence for ACL claims

106 If, which is denied, the fifth defendant is found to have contravened the ACL, and his contravention of the ACL is found to have caused loss or damage as alleged (which is further denied) then in further answer to the claims for contravening the ACL, the fifth defendant pleads as follows.

107 These proceedings were commenced on 14 September 2017.

108 The date of discoverability as defined in s 87G of the *Competition and Consumer Act 2010* (Cth) for the second plaintiff, the third plaintiff, the ninth plaintiff and/or the tenth plaintiff was three or more years before 14 September 2017.

109 In the premises of paragraphs 107 and 108 above, the claims of the second plaintiff, the third plaintiff, the ninth plaintiff, the tenth plaintiff and/or any group member whose date of discoverability was three or more years before 14 September 2017 are statute barred.

Particulars

Section 87F of the *Competition and Consumer Act 2010* (Cth).

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* 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	
Capacity	Solicitor on the record, ~~by his partner~~
Date of signature	4 November 2020

AFFIDAVIT VERIFYING

Name	Dr Eddy Dona
Address	Unit 423, 29-31 Lexington Drive, Bella Vista NSW 2153
Occupation	Plastic surgeon
Date	4 November 2020

I say on oath/~~affirm~~:

1 I am the fifth defendant.

2 I believe that the allegations of fact contained in the defence are true.

3 I believe that the allegations of fact that are denied in the defence are untrue.

4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

SWORN /~~AFFIRMED~~ at	Sydney
Signature of deponent	
Name of witness	Tarrek Naji
Address of witness	Level 19, 1 Castlereagh Street, Sydney NSW 2000
Capacity of witness	Solicitor with a current practising certificate

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

1 I saw the face of the deponent.

2 I have confirmed the deponent's identity using the following identification document:

NSW Drivers Licence.

Identification document relied on (may be original or certified copy) †

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[†"Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]