

FURTHER AMENDED STATEMENT OF CLAIM
Filed pursuant to leave granted by Garling J on 19 June 2020

COURT DETAILS

Court	Supreme Court
Division	Common Law
List	Professional Negligence
Registry	Sydney
Case number	2017/279308

TITLE OF PROCEEDINGS

First plaintiff	AMY RICKHUSS
Number of plaintiffs	<u>5-12</u>
First defendant	THE COSMETIC INSTITUTE PTY LTD (IN LIQUIDATION) (ACN 153 061 155)
Number of defendants	<u>516</u>

FILING DETAILS

Filed for	The plaintiffs
Legal representative	Armando John Gardiman
Legal representative reference	Sally.Gleeson:\M211151.178
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TYPE OF CLAIM

Professional negligence – medical; Commercially misleading conduct.

NOTATION

The proceedings are listed for an initial case conference at 9:00 am on the Wednesday after the expiration of 42 days following the filing of the originating process.

RELIEF CLAIMED

- 1 Common law damages;
- 2 Further or alternatively, damages pursuant to the *Civil Liability Act 2002* (NSW);
- 3 Further or alternatively, as against the fourth defendant, damages pursuant to the *Civil Liability Act 2003* (QLD);
- 4 Further or alternatively, damages pursuant to sections 236, 237, 238, 267(3) and/or (4) of the Australian Consumer Law (**ACL**) comprising schedule 2 of the *Competition & Consumer Act 2010* (Cth) (**CCA**);
- 5 Interest thereon pursuant to s 100 of the *Civil Procedure Act 2005* (NSW); and,
- 6 Costs.

PLEADINGS AND PARTICULARS

Part I. - INTRODUCTION

A. Group Members

1. The plaintiffs bring these representative proceedings pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW):
 - (a) in their own right; and,
 - (b) on behalf of the group members as defined below (**group members**).
2. The group members are persons who:
 - (a) Had breast augmentation surgery (**BAS**) on or before 29 October 2017 at any of the following premises (**TCI Premises**):
 - (i) Smith Street Parramatta, New South Wales (**TCI Parramatta Premises**);
 - (ii) Hollywood Avenue, Bondi Junction, New South Wales (**TCI Bondi Premises**);
 - (iii) Suite 1, 98 Marine Parade, Southport, Queensland (**TCI Southport Premises**);
 - (iv) Burwood Road, Concord, New South Wales (**Concord Private Hospital**);
 - (v) Chetwynd Road, Guildford, New South Wales (**Holroyd Private Hospital**).

- (b) Had BAS performed by, or with the assistance of, one or more of the fifth to sixteenth defendants; surgeons who were the servants and/or agents of the first, second, third or fourth defendants (TCI Surgeons);
- (c) Consulted one or more of the fifth to sixteenth defendants about the performance of BAS at TCI Premises prior to undergoing BAS;
- ~~(e) Had BAS performed by a TCI Surgeon trained by, or under the supervision of, the fifth defendant in accordance with accreditation and training contracts between the TCI Surgeons and the first, second, third and/or fourth defendants;~~
- (d) Had BAS using the "One Size Fits All" Approach (refer to paragraph 21);
- (dd) Consulted one or more of the fifth to sixteenth defendants following BAS;
- (e) Had BAS performed under anaesthesia administered by anaesthetists who were the servants and/or agents of the first, second, third and/or fourth defendants (**TCI Anaesthetists**); and,
- (f) Suffered injury, loss and damage as a result of undergoing BAS.

2A The group members consist of at least 11 sub-groups of women whose BAS was performed by one or more of the sixth to sixteenth defendants, namely:

- (a) A sub-group of group members including Ms Rickhuss who suffered injury, loss and damage in consequence of undergoing BAS performed by the sixth defendant (the **Sivathasan** Sub-Group).
- (b) A sub-group of group members including Ms Pollock who suffered injury, loss and damage in consequence of undergoing BAS performed by the seventh defendant (the **Nguyen** Sub-Group).
- (c) A sub-group of group members including Ms Bruen who suffered injury, loss and damage in consequence of undergoing BAS performed by the eighth defendant (the **Lee** Sub-Group).
- (d) A sub-group of group members including Ms Rowlands who suffered injury, loss and damage in consequence of undergoing BAS performed by the ninth defendant (the **Duong** Sub-Group).
- (e) A sub-group of group members including Ms Rutherford who suffered injury, loss and damage in consequence of undergoing BAS performed by the tenth defendant (the **Tang** Sub-Group).

- (f) A sub-group of group members including Ms Axen who suffered injury, loss and damage in consequence of undergoing BAS performed by the eleventh defendant (the **Chiu** Sub-Group).
- (g) A sub-group of group members including Ms Zahr who suffered injury, loss and damage in consequence of undergoing BAS performed by the twelfth defendant (the **Kwok** Sub-Group).
- (h) A sub-group of group members including Ms Love who suffered injury, loss and damage in consequence of undergoing BAS performed by the thirteenth defendant (the **Valente** Sub-Group).
- (i) A sub-group of group members including Ms Gielisse who suffered injury, loss and damage in consequence of undergoing BAS performed by the fourteenth defendant (the **Ali** Sub-Group).
- (j) A sub-group of group members including Ms Turner who suffered injury, loss and damage in consequence of undergoing BAS performed by the fifteenth defendant (the **Kenny** Sub-Group).
- (k) A sub-group of group members including Ms Sanchez who suffered injury, loss and damage in consequence of undergoing BAS performed by the sixteenth defendant (the **Darshn** Sub-Group).

3. As at the date of these pleadings, there are seven or more persons who are group members and who have claims against each defendant.

B. The Plaintiffs

4. The first plaintiff (**Ms Rickhuss**):

- (a) was born on [REDACTED]
- (b) lives in ~~Western Australia~~ Victoria;
- (c) is ~~single in a de facto relationship~~ with one dependent child;
- (d) is employed [REDACTED]
- (e) in addition to being a lead plaintiff is the Sivathasan Sub-Group representative plaintiff.

5. The second plaintiff (**Ms Pollock**):

- (a) was born on [REDACTED]

- (b) lives in New South Wales;
- (c) is married with two dependent children;
- (d) is [REDACTED] and;
- (e) in addition to being a lead plaintiff is the Nguyen Sub-Group representative plaintiff.

6. The third plaintiff (**Ms Bruen**):

- (a) was born on [REDACTED]
- (b) lives in New South Wales;
- (c) is married with three children;
- (d) is employed [REDACTED] and;
- (e) in addition to being a lead plaintiff is the Lee Sub-Group representative plaintiff.

7. The fourth plaintiff (**Ms Rowlands**):

- (a) was born on [REDACTED]
- (b) lives in Victoria;
- (c) is single with two dependent child;
- (d) is [REDACTED] and;
- (e) in addition to being a lead plaintiff is the Duong Sub-Group representative plaintiff.

8. The fifth plaintiff (**Ms Knowland**):

- (a) was born [REDACTED]
- (b) lives in ~~Queensland~~ New South Wales;
- (c) is single with no dependent children and;
- (d) is [REDACTED]

8A The sixth plaintiff (**Ms Rutherford**):

- (a) was born [REDACTED]
- (b) lives in New South Wales;
- (c) is single with no dependent children;
- (d) is employed [REDACTED]
and

(e) is the Tang Sub-Group representative plaintiff.

8B. The seventh plaintiff (Ms Axen):

- (a) was born [REDACTED]
- (b) lives in New South Wales;
- (c) is single;
- (d) is currently [REDACTED] and
- (e) is the Chiu Sub-Group representative plaintiff.

8C. The eighth plaintiff (Ms Zahr):

- (a) was born on [REDACTED]
- (b) lives in New South Wales;
- (c) is married with one dependent child;
- (d) is [REDACTED] and
- (e) is the Kwok Sub-Group representative plaintiff.

8D. The ninth plaintiff (Ms Love):

- (a) was born on [REDACTED] ;
- (b) lives in Queensland;
- (c) is single with no dependent children;
- (d) is employed [REDACTED] and
- (e) is the Valente Sub-Group representative plaintiff.

8E. The tenth plaintiff (Ms Gielisse):

- (a) was born on [REDACTED]
- (b) lives in New South Wales;
- (c) is married with three dependent children;
- (d) is employed [REDACTED] and
- (e) is the Ali Sub-Group representative plaintiff.

8F. The eleventh plaintiff (Ms Turner):

- (a) was born on [REDACTED]

- (b) lives in Australian Capital Territory;
- (c) is in a relationship with no children;
- (d) is currently [REDACTED] and
- (e) is the Kenny Sub-Group representative plaintiff.

8G. The twelfth plaintiff (Ms Sanchez):

- (a) was born on [REDACTED]
- (b) lives in Queensland;
- (c) is married with no children;
- (f) is [REDACTED] and
- (e) is the Darshn Sub-Group representative plaintiff.

C. The Defendants

9. At all material times, the first defendant (The Cosmetic Institute):

- (a) Was a company incorporated under the *Corporations Act 2001* (Cth);
- (b) Was a corporation within the meaning of section 4 of the CCA and section 2 of the ACL.
- (c) Carried on, in trade or commerce, the business of providing, and marketing the provision of, BAS services and facilities to women in Australia, being the supply of product-related services within the meaning of section 2 of the ACL;
- (d) Provided BAS services and facilities to the plaintiffs and group members at the TCI Premises, situated at TCI Parramatta Premises;
 - (i) ~~TCI Bondi Premises;~~
 - (ii) ~~TCI Southport Premises;~~
 - (iii) ~~Concord Private Hospital;~~
 - (iv) ~~Holroyd Private Hospital.~~
- (e) In the alternative, controlled and directed the provision of BAS services and facilities, by the second, third and fourth defendants, to the plaintiffs and group members.
- (f) Applied the One Size Fits All Approach to BAS ~~(refer to paragraph 21)~~ to the plaintiffs and group members.

10. At all material times, the second defendant (**TCI Parramatta**):
 - (a) Was a company incorporated under the *Corporations Act 2001* (Cth);
 - (b) Was a corporation within the meaning of section 4 of the CCA and section 2 of the ACL;
 - (c) Carried on, in trade or commerce, the business of providing, and marketing the provision of, BAS services and facilities to women in Australia, being the supply of product-related services within the meaning of section 2 of the ACL;
 - (d) Provided BAS services and facilities at TCI Parramatta Premises;
 - (e) Was a subsidiary of The Cosmetic Institute;
 - (f) Provided BAS services and facilities to the plaintiffs and group members;
 - (g) In the alternative, provided BAS services and facilities under the control and direction of The Cosmetic Institute;
 - (h) Applied the One Size Fits All Approach to BAS (~~refer to paragraph 21~~) to the plaintiffs and group members.
11. On or about 5 October 2016, TCI Parramatta entered into a creditors' voluntary winding up pursuant to section 446A of the *Corporations Act 2001*, and Mr Benjamin Carson was appointed liquidator of TCI Parramatta.
12. At all material times, the third defendant (**TCI Bondi**):
 - (a) Was a company incorporated under the *Corporations Act 2001* (Cth);
 - (b) Was a corporation within the meaning of section 4 of the CCA and section 2 of the ACL;
 - (c) Carried on, in trade or commerce, the business of providing, and marketing the provision of, BAS services and facilities to women in Australia, being the supply of product-related services within the meaning of section 2 of the ACL;
 - (d) Provided BAS services and facilities at TCI Bondi Premises;
 - (e) Was a subsidiary of The Cosmetic Institute;
 - (f) Provided BAS services and facilities to the plaintiffs and group members;
 - (g) In the alternative, provided BAS services and facilities under the control and direction of The Cosmetic Institute;

- (h) Applied the One Size Fits All Approach to BAS (~~refer to paragraph 21~~) to the plaintiffs and group members.
13. At all material times, the fourth defendant (**TCI Southport**):
- (a) Was a company incorporated under the *Corporations Act 2001* (Cth);
 - (b) Was a corporation within the meaning of section 4 of the CCA and section 2 of the ACL;
 - (c) Carried on, in trade or commerce, the business of providing, and marketing the provision of, BAS services and facilities to women in Australia, being the supply of product-related services within the meaning of section 2 of the ACL;
 - (d) Provided BAS services and facilities at TCI Southport Premises;
 - (e) Was a subsidiary of The Cosmetic Institute;
 - (f) Provided BAS services and facilities to the plaintiffs and group members;
 - (g) In the alternative, provided BAS services and facilities under the control and direction of The Cosmetic Institute;
 - (h) Applied the One Size Fits All Approach to BAS (~~refer to paragraph 21~~) to the plaintiffs and group members.
14. At all material times, the fifth defendant (**Eddy Dona**):
- (a) Is and was a registered medical practitioner practising as a plastic and reconstructive surgeon;
 - (b) Was a director of TCI Parramatta, TCI Bondi and TCI Southport;
 - (c) ~~Is and w~~Was a director and beneficial shareholder of Dona Family Pty Limited (ACN 123 469 723), which was a company incorporated under the *Corporations Act 2001* (Cth) and a shareholder of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport;
 - (d) ~~Is and W~~Was the surgical director of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport;
 - (e) Devised, ~~designed, implemented, supervised, directed, provided advice and opinions about,~~ and conducted the training of the sixth to sixteenth defendants (TCI Surgeons) ~~doctors who to performed BAS carry out~~ for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport; the following duties or activities in relation to patients:

- (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates.
- (f) ~~Recommended to~~ Advised The Cosmetic Institute, TCI Parramatta, TCI Southport and/or TCI Bondi that the TCI Surgeons were fit to carry out for or on their behalf the following duties or activities:
- (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations ~~be accredited to perform BAS for or on their behalf;~~
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates.
- (g) ~~In the alternative, authorised the accreditation of the TCI Surgeons to perform BAS for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport;~~
- (h) ~~Devised, designed, implemented, performed, and supervised or assisted in the application performance of the One Size Fits All Approach to BAS (refer to paragraph 21) that was performed at the TCI Premises Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital;~~

- (i) Advised or reported to The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport about how to implement, operate and monitor the performance of the One Size Fits All Approach to BAS at the TCI Premises;
- (j) Performed himself, or supervised or assisted the sixth to sixteenth defendants in the performance of, the One Size Fits All Approach to BAS at the TCI Premises;
- (k) Monitored the BAS complications associated with the performance of the One Size Fits All Approach to BAS at the TCI Premises;
- (l) Made himself available to consult with the sixth to sixteenth defendants about BAS complications associated with their performance of the One Size Fits All Approach to BAS at the TCI Premises;
- (m) Treated or assisted in the treatment of BAS complications associated with the sixth to sixteenth defendants' performance of the One Size Fits All Approach to BAS at the TCI Premises;
- (n) Advised The Cosmetic Institute, TCI Parramatta, TCI Bondi, TCI Southport and the sixth to sixteenth defendants of the BAS complications associated with the sixth to sixteenth defendants' performance of the One Size Fits All Approach to BAS at the TCI Premises;
- (o) Advised The Cosmetic Institute, TCI Parramatta, TCI Bondi, TCI Southport and the sixth to sixteenth defendants about what precautions to implement against the risk of the BAS complications associated with the sixth to sixteenth defendants' performance of the One Size Fits All Approach to BAS at the TCI Premises;
- (p) Supervised or directed nursing staff, cosmetic consultants, administrative staff and management at The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport in the provision of services, representations and advice to women about BAS and the implementation of the One Size Fits All Approach to BAS at the TCI Premises.

14A. At all material times, the sixth defendant (**Niroshan Sivathanan**):

- (a) Was a registered medical practitioner without any specialist qualifications, training or experience;
- (b) Was the servant and/or agent of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport;

- (c) Was trained, supervised, or assisted by the fifth defendant to carry out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport the following duties or activities in relation to patients:
- (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (d) Carried out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport the following duties or activities:
- (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates.
- (e) Performed BAS on a sub-group of group members, including Ms Rickhuss, who suffered injury, loss and damage in consequence (the **Sivathanan Sub-Group**).

14B. At all material times, the seventh defendant (**Van Nguyen**):

- (a) Was a registered medical practitioner without any specialist qualifications, training or experience;

- (b) Was the servant and/or agent of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport;
- (c) Was trained, supervised, or assisted by the fifth defendant to carry out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport the following duties or activities in relation to patients:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (d) Carried out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates.
- (e) Performed BAS on a sub-group of group members, including Ms Pollock, who suffered injury, loss and damage in consequence (the **Nguyen Sub-Group**).

14C. At all material times, the eighth defendant (**Victor Lee**):

- (a) Was a registered medical practitioner without any specialist qualifications, training or experience;
- (b) Was the servant and/or agent of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport;
- (c) Was trained, supervised, or assisted by the fifth defendant to carry out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport the following duties or activities in relation to patients:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (d) Carried out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates.
- (e) Performed BAS on a sub-group of group members, including Ms Bruen, who suffered injury, loss and damage in consequence (the **Lee Sub-Group**).

14D. At all material times, the ninth defendant (Chi Vien Duong):

- (a) Was a registered medical practitioner without any specialist qualifications, training or experience;
- (b) Was the servant and/or agent of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport;
- (c) Was trained, supervised, or assisted by the fifth defendant to carry out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport the following duties or activities in relation to patients:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (d) Carried out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates.

- (e) Performed BAS on a sub-group of group members, including Ms Rowlands, who suffered injury, loss and damage in consequence (the **Duong Sub-Group**).

14E. At all material times, the tenth defendant (**Ahn Tang**):

- (a) Was a registered medical practitioner without any specialist qualifications, training or experience;
- (b) Was the servant and/or agent of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport;
- (c) Was trained, supervised, or assisted by the fifth defendant to carry out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport the following duties or activities in relation to patients:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (d) Carried out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and

- (viii) Monitoring and improvement of their BAS complication rates.
- (e) Performed BAS on a sub-group of group members, including Ms Rutherford, who suffered injury, loss and damage in consequence (the **Tang Sub-Group**).

14F. At all material times, the eleventh defendant (**Napoleon Chiu**):

- (a) Was a registered medical practitioner without any specialist qualifications, training or experience;
- (b) Was the servant and/or agent of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport;
- (c) Was trained, supervised, or assisted by the fifth defendant to carry out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport the following duties or activities in relation to patients:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (d) Carried out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;

- (vii) The diagnosis and treatment of BAS complications; and
- (viii) Monitoring and improvement of their BAS complication rates.
- (e) Performed BAS on a sub-group of group members, including Ms Axen, who suffered injury, loss and damage in consequence (the **Chiu Sub-Group**).

14G. At all material times, the twelfth defendant (**Daniel Kwok**):

- (a) Was a registered medical practitioner without any specialist qualifications, training or experience;
- (b) Was the servant and/or agent of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport;
- (c) Was trained, supervised, or assisted by the fifth defendant to carry out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport the following duties or activities in relation to patients:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (d) Carried out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;

- (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates.
- (e) Performed BAS on a sub-group of group members, including Ms Zahr, who suffered injury, loss and damage in consequence (the **Kwok Sub-Group**).

14H. At all material times, the thirteenth defendant (**Pedro Valente**):

- (a) Was a registered medical practitioner without any specialist qualifications, training or experience;
- (b) Was the servant and/or agent of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport;
- (c) Was trained, supervised, or assisted by the fifth defendant to carry out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport the following duties or activities in relation to patients:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (d) Carried out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;

- (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates.
- (e) Performed BAS on a sub-group of group members, including Ms Love, who suffered injury, loss and damage in consequence (the **Valente Sub-Group**).

14I. At all material times, the fourteenth defendant (**Farheen Ali**):

- (a) Was a registered medical practitioner without any specialist qualifications, training or experience;
- (b) Was the servant and/or agent of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport;
- (c) Was trained, supervised, or assisted by the fifth defendant to carry out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport the following duties or activities in relation to patients:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (d) Carried out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;

- (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates.
- (e) Performed BAS on a sub-group of group members, including Ms Gielisse, who suffered injury, loss and damage in consequence (the **Ali Sub-Group**).

14J. At all material times, the fifteenth defendant (**James Kenny**):

- (a) Was a registered medical practitioner and general surgeon;
- (b) Was the servant and/or agent of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport;
- (c) Was trained, supervised, or assisted by the fifth defendant to carry out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport the following duties or activities in relation to patients:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (d) Carried out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;

- (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates.
- (e) Performed BAS on a sub-group of group members, including Ms Turner, who suffered injury, loss and damage in consequence (the **Kenny Sub-Group**).

14K. At all material times, the sixteenth defendant (**Sri Darshn**):

- (a) Was a registered medical practitioner without any specialist qualifications, training or experience;
- (b) Was the servant and/or agent of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport;
- (c) Was trained, supervised, or assisted by the fifth defendant to carry out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport the following duties or activities in relation to patients:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (d) Carried out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;

- (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates.
- (e) Performed BAS on a sub-group of group members, including Ms Sanchez, who suffered injury, loss and damage in consequence (the **Darshn Sub-Group**).

Part II. - THE DEFENDANTS' SYSTEM OF BAS

A. TCI Facilities

15. From about 2012, BAS services and facilities were offered to women by The Cosmetic Institute and/or TCI Parramatta and/or TCI Bondi and/or TCI Southport and BAS was performed by TCI Surgeons at TCI Parramatta Premises, TCI Bondi Premises, TCI Southport premises, Concord Private Hospital and Holroyd Private Hospital at a cost of \$5,990, which included:
- (a) the goods and services tax (GST);
 - (b) a surgical fee;
 - (c) a hospital fee;
 - (d) the cost of implants;
 - (e) an anaesthetic fee;
 - (f) follow-up appointments.

Particulars

www.thecosmeticinstitute.com.au

Versions of this web site were publicly available from about 2012 until the date of commencement of these proceedings.

16. BAS was performed at TCI Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital using facilities with the following characteristics (**the TCI Facilities**):

- (a) Inadequate infection control procedures during BAS;
 - (b) No capacity to access urgent surgical or medical assistance in the event of emergency during BAS;
 - (c) In respect of TCI Parramatta Premises and TCI Bondi Premises, no capacity to legally administer general anaesthesia or convert twilight sedation to general anaesthesia;
 - (d) In respect of TCI Parramatta Premises and TCI Bondi Premises, unlicensed premises:
 - (i) at which persons were admitted, provided with medical, surgical or other prescribed treatment and then discharged; or,
 - (ii) from at least 3 June 2016, at which a person was provided with prescribed services or treatments within the meaning of ss 4(1), 12(2), 33 and 41(1) of the *Private Health Facilities Act 2007* (NSW).
17. The system under which BAS was performed at TCI Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital was:
- (a) Devised, designed and implemented by The Cosmetic Institute and/or Eddy Dona;
 - (b) At all material times under the control and direction of The Cosmetic Institute and/or Eddy Dona.

B. TCI Surgeons

18. At all material times, The Cosmetic Institute, TCI Bondi, TCI Parramatta and/or TCI Southport engaged the sixth to sixteenth defendants (TCI Surgeons) to perform BAS at TCI Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital.
19. The TCI Surgeons were engaged to perform BAS pursuant to training and accreditation contracts, which involved The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport:
- (a) Providing surgical training and accreditation to the TCI Surgeons under the control and supervision of Eddy Dona;
 - (b) Providing such facilities, plant and equipment necessary for the TCI Surgeons to provide BAS;

- (c) Maintaining, repairing, cleaning and keeping in good order and condition all equipment, plant, apparatus and instruments used by the TCI Surgeons in providing BAS services;
- (d) Providing materials, drugs and medical requisites reasonably required by the TCI Surgeons in providing BAS;
- (e) Providing all staff reasonably necessary for the TCI Surgeons to provide BAS services, including TCI Anaesthetists;
- (f) Recovering fees on behalf of the TCI Surgeons; and,
- (g) Acting as attorney for the TCI Surgeons;

in return for the TCI surgeons:

- (i) Performing BAS services for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport;
- (ii) Not using the services, staff, facilities, plant and equipment provided by The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport for their own purposes;
- (iii) Paying The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport a fee of \$500,000, in instalments over 3 years;
- (iv) Promoting to the general public the medical and paramedical services, including the BAS services, offered by The Cosmetic Institute and/or TCI Parramatta, TCI Bondi and/or TCI Southport.

Particulars

MJ Jobs “Cosmetic Surgeons wanted” dated 12 August 2015

Accreditation Deed

Training Deed

C. TCI Anaesthetists

20. At all material times, The Cosmetic Institute, TCI Bondi, TCI Parramatta and/or TCI Southport engaged anaesthetists to provide anaesthesia to enable BAS to be performed at TCI Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital.

Particulars

Further particulars to be provided after discovery.

D. The One Size Fits All Approach

21. The BAS performed at the TCI Premises Parramatta, TCI Bondi, TCI Southport, Concord Private Hospital and Holroyd Private Hospital for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport adopted the following approach (**the One Size Fits All Approach**):
- (a) Pre-operative consultations were conducted, and advice provided to plaintiffs and group members, in the absence of an appropriately qualified and trained surgeon;
 - (b) Surgery was performed by TCI Surgeons under anaesthesia provided by TCI Anaesthetists;
 - (c) The surgery was performed using bilateral infra-mammary incisions;
 - (d) Round textured silicone implants were implanted;
 - (e) Implants were inserted into subpectoral pockets and/or using a dual plane approach;
 - (f) The same technique was used irrespective of:
 - (i) Differences in the size or shape of the plaintiffs' and group members' breasts;
 - (ii) Whether plaintiffs' and group members' breasts were tuberous or ptotic; or,
 - (iii) Whether different or additional surgical approaches and techniques were indicated, such as mastopexy.
 - (g) At TCI Parramatta Premises and TCI Bondi Premises:
 - (i) Surgery was performed by TCI Surgeons under local anaesthesia injected by the TCI Surgeons and twilight sedation provided by TCI Anaesthetists;
 - (ii) Surgery was performed without general anaesthesia;
 - (iii) The same surgical technique was used irrespective of whether general anaesthesia was required so as to enable different or additional surgical approaches.
22. By reason of the One Size Fits All Approach to BAS performed on the plaintiffs and group members at the TCI Parramatta-Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital, the plaintiffs and group members were at an increased risk of having the following complications (**the BAS Complications**):

- (a) The creation of inappropriate pockets into which the implants were inserted;
- (b) Malpositioning of the implants;
- (c) Rippling of the implants, waterfall deformity and double bubble deformity;
- (d) Excessive tissue trauma;
- (e) Haemorrhage;
- (f) Infection;
- (g) Scarring;
- (h) Wound dehiscence;
- (i) Contracture of the implant capsule;
- (j) Local anaesthetic toxicity leading to cardiac arrest, pneumothorax and death; and,
- (k) Breast implant-associated anaplastic large-cell lymphoma.

E. The Representations

23. At all material times, the defendants made the following representations to the plaintiffs and group members (**the Representations**):

- (a) The defendants do not compromise on quality;
- (b) TCI Surgeons:
 - (i) Are plastic and reconstructive surgeons;
 - (ii) Are highly skilled;
 - (iii) Are highly experienced;
 - (iv) Are of a high calibre;
 - (v) Have had extensive training;
 - (vi) Are trained in-house by a plastic surgeon, Eddy Dona, which sets them apart from other surgeons;
 - (vii) Are award-winning surgeons with many years of surgical experience specialising in cosmetic and plastic surgery;
 - (viii) Have many years of experience performing complex urological, neurological and pancreatic surgical procedures;
 - (ix) Regularly teach and present at national and international conferences;

- (x) Have a broad skill set acquired over many years of experience;
 - (xi) Are well-respected in the industry; and,
 - (xii) Were already good at surgery, but after being trained by Eddy Dona, were turned into exceptional cosmetic surgeons.
- (c) Patients receive the best possible post-operative care;
 - (d) The defendants use round textured silicone implants which reduce the risk of capsular contracture;
 - (e) The difference between a plastic surgeon and a cosmetic surgeon is that plastic surgeons actually deal with more reconstructive procedures, whereas cosmetic surgeons specialise in procedures such as BAS;
 - (f) The defendants go far and beyond customers' expectations;
 - (g) The defendants receive positive feedback from all of their customers, which is overwhelming and unprecedented;
 - (h) The defendants provide services which are over and above what is required;
 - (i) The defendants' services are affordable because TCI has its own state-of-the-art facilities;
 - (j) The defendants offer high quality procedures at affordable prices;
 - (k) The defendants' services change people's lives;
 - (l) The defendants' services make customers more confident;
 - (m) The defendants provide a first class service;
 - (n) The defendants will make customers feel sexy again;
 - (o) The defendants have a dedicated team of anaesthetists;
 - (p) The defendants uphold professional standards so that each customer gets the same experience;
 - (q) The defendants' nurses are highly trained;
 - (r) The defendants' medical professionals deliver the best results;
 - (s) The defendants' BAS transforms shy girls into confident and happy girls;
 - (t) It is no longer the case that revision BAS will be required after ten to twelve years unless severe capsular contracture or rupture occurs;

- (u) The reason the defendants' services are so affordable is that all facilities are available under the one roof;
- (v) The defendants meet top Australian specifications;
- (w) The defendants offer the highest level of care by providing facilities that are ISO 9001 accredited;
- (x) The defendants offer the most affordable, safe and easy services for all patients; and,
- (y) The defendants' services enhance the appearance and vitality of patients.

Particulars

The Representations were made at www.thecosmeticinstitute.com.au, www.youtube.com, www.facebook.com, www.instagram.com, www.pinterest.com, on radio advertisements and in promotional material published or otherwise disseminated for or on behalf of the defendants.

The Representations were made by the defendants' employees and agents during their interactions with the plaintiffs and group members.

Further particulars will be provided following provision by the defendants of discovery.

23A The fifth defendant advised The Cosmetic Institute, TCI Bondi, TCI Parramatta and/or TCI Southport about the content of the Representations knowing that they would be made to potential patients undergoing BAS at the TCI Premises.

F. Pre-Surgery Consultations

24. Prior to undergoing and agreeing to undergo BAS, each of the plaintiffs and group members attended a pre-surgery consultation with a TCI Surgeon and/or with a cosmetic consultant who was the servant or agent of The Cosmetic Institute, TCI Bondi, TCI Parramatta and/or TCI Southport:

- (a) ~~at the TCI Parramatta Premises;~~
- (b) ~~at the TCI Bondi Premises;~~
- (c) ~~at the TCI Southport Premises;~~
- (d) ~~at Concord Private Hospital; or,~~
- (e) ~~at Holroyd Private Hospital.~~

Particulars

The consultations occurred on average between one day and two months prior to each plaintiff or group member's BAS.

The plaintiffs and group members paid The Cosmetic Institute, or alternatively, paid TCI Parramatta, TCI Bondi or TCI Southport \$150 for the consultation.

The consultations were booked by the plaintiffs and group members contacting the first, second, third or fourth defendants by telephone, email or through the defendants' website accessible at www.thecosmeticinstitute.com.au.

G. Post-Surgery Consultations

24A. Following BAS, each of the plaintiffs and group members attended in person or by videolink, a follow-up consultation with a TCI Surgeon and/or with a cosmetic consultant and/or nurse who was the servant or agent of The Cosmetic Institute, TCI Bondi, TCI Parramatta and/or TCI Southport.

Particulars

The consultations occurred on average at about six weeks and 12 weeks post-operatively.

The consultations occurred in person at the TCI Premises with a TCI post-operative nurse and sometimes the TCI Surgeon was also present. If the plaintiff or group member was unable to attend the TCI Premises in person (due to living interstate for example) the consultations often occurred via telephone or audio-visual link (frequently via Skype) with the TCI Surgeon.

The plaintiffs and group members were not required to pay any additional fees for their consultations six and 12 weeks post operatively. If a revision surgery was required, or if the TCI Surgeon was unable to resolve the complaints of the plaintiff or group member, they were required to wait for the fifth defendant to advise the TCI Surgeon as to the management plan and/or consult with the fifth defendant at the TCI Premises, or at the fifth defendant's private rooms in Bella Vista where an additional consult fee was often required to be paid.

TCI post-operative nurses or cosmetic consultants employed by the first to fourth defendants often contacted the plaintiffs and group members to arrange their post-operative consultation, who it was with and where /when it would occur.

The TCI Surgeons were prohibited or discouraged from contacting or reciprocating contact from the plaintiffs or group members about post-operative concerns which were often addressed by or via the first to fourth defendants' employees, staff, servants and/or agents who sometimes forwarded these complaints to the TCI Surgeons or fifth defendant.

24B. The fifth defendant was available to consult with, and from time to time in fact consulted with, the TCI Surgeons about BAS complications associated with their performance of BAS on the plaintiffs and group members at the TCI Premises.

24C. The fifth defendant was available to treat or assist in the treatment of BAS complications associated with the TCI Surgeons' performance of BAS on the plaintiffs and group members, and from time to time in fact treated or assisted in the treatment of such complications.

Part III. - QUESTIONS COMMON TO CLAIMS OF GROUP MEMBERS

25. The questions of law or fact common to the claims of group members are:

- (a) Whether the TCI Surgeons acted on behalf of, through, or in connection with the first, second, third or fourth defendants?
- (b) Whether the TCI Surgeons made the Representations to the plaintiffs and group members?
- (c) Whether the defendants made the Representations to the plaintiffs and group members?
- (d) Whether BAS was performed negligently by the TCI Surgeons?
- (e) Whether the defendants:
 - (i) contravened s 60 of the ACL;
 - (ii) breached their duty under the common law to exercise due care and skill in performing BAS;
 - (iii) breached a warranty implied by law into the agreement that BAS would be performed with due care and skill;
 - (iv) contravened a guarantee that BAS would be fit for purpose implied into the agreement by s 61(2) of the ACL?
- (f) Whether the representations were misleading representations with respect to future matters for the purposes of s 4 of the ACL?

- (g) Whether the representations were misleading or deceptive and in contravention of ss 18, 29(1)(b) and 29(1)(m) of the ACL?
- (h) Whether the representations were negligent representations?
- (i) Whether the fifth defendant devised, designed, implemented, supervised and conducted the training of TCI Surgeons?
- (j) Whether the fifth defendant recommended to the first, second, third and/or fourth defendants that the TCI Surgeons be accredited to perform BAS?
- (k) Whether the fifth defendant authorised the accreditation of the TCI Surgeons to perform BAS?
- (l) Whether the fifth defendant devised, designed, supervised and implemented the One Size Fits All Approach to BAS?
- (m) Whether the first defendant controlled and directed the provision of BAS services and facilities to the plaintiffs and group members by the second, third and fourth defendants?
- (n) Whether the adoption of the One Size Fits All Approach to BAS was negligent?

Part IV. - THE PLAINTIFFS' BAS

A. Amy Rickhuss

- 26. Between about March 2014 and January 2015 Ms Rickhuss accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au, www.facebook.com, www.youtube.com and www.instagram.com.
- 27. On or about 29 January 2015 Ms Rickhuss attended at TCI Parramatta Premises for her first and only pre-surgery consultation.

Particulars

Ms Rickhuss consulted with Dr Niroshan Sivathanan.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 91).

- 28. On 29 January 2015 it was agreed that Ms Rickhuss would receive [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

29. On 30 January 2015 Ms Rickhuss underwent BAS at TCI Parramatta Premises performed by ~~Dr~~ Niroshan Sivathanan.

30. During the course of Ms Rickhuss' BAS, [REDACTED]

[REDACTED]

31. [REDACTED]

32. [REDACTED]

[REDACTED]

33. [REDACTED]

[REDACTED]

34. Following Ms Rickhuss' BAS she was conveyed by ambulance to Westmead Hospital.

35. Ms Rickhuss remained an inpatient at Westmead Hospital until her discharge on 10 February 2015.

36. Ms Rickhuss suffered [REDACTED]

B. Kylie Pollock

37. Between January 2014 and July 2014 Ms Pollock accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au, www.youtube.com and www.facebook.com.

38. On or about 7 May 2014 Ms Pollock attended at TCI Bondi Premises for her first and only pre-surgery consultation.

Particulars

Ms Pollock consulted with ~~Dr~~ Van Nguyen.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 91).

39. On 7 May 2014 it was agreed that Ms Pollock would receive [REDACTED]

[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

40. On 3 July 2014 Ms Pollock underwent BAS at TCI Bondi Premises performed by ~~Dr~~ Van Nguyen.

41. [REDACTED]

42. [REDACTED]

43. [REDACTED]

44. At about 1441 hours on 3 July 2014 Ms Pollock was conveyed by ambulance to Prince of Wales Hospital.

45. While Ms Pollock was en route to hospital she suffered [REDACTED]

46. On 4 July 2014 Ms Pollock was discharged from Prince of Wales Hospital.

47. Ms Pollock continued to suffer [REDACTED]

C. Jessica Bruen

48. In June and July 2014 Ms Bruen accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au, www.facebook.com, www.youtube.com and www.instagram.com.

49. On or about 29 July 2014 Ms Bruen attended at TCI Bondi Premises for her first and only pre-surgery consultation.

Particulars

Ms Bruen consulted with ~~Dr~~ Victor Lee.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 91).

50. On 29 July 2014 it was agreed that Ms Bruen would receive [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

51. On 8 August 2014 Ms Bruen underwent BAS at TCI Bondi Premises performed by Victor Lee.

52. Post-operatively, Ms Bruen's [REDACTED]

53. Post-operatively, Ms Bruen's [REDACTED]
[REDACTED]

54. Post-operatively, Ms Bruen [REDACTED]

55. Post-operatively, Ms Bruen [REDACTED]

56. Ms Bruen [REDACTED]

D. Kirsty-Anne Rowlands

57. From July 2014 to December 2014 Ms Rowlands accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au, www.youtube.com and www.facebook.com.

58. On or about 12 December 2014 Ms Rowlands attended at TCI Parramatta Premises for her first and only pre-surgery consultation.

Particulars

Ms Rowlands consulted with Dr-Chi Vien Duong.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 91).

59. On 12 December 2014 it was agreed that Ms Rowlands would receive [REDACTED]
[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

60. On 13 December 2014 Ms Rowlands underwent BAS at TCI Parramatta Premises performed by Chi Vien-Đ#Duong.

61. Post-operatively, Ms Rowlands'

62. Post-operatively, Ms Rowlands'

63. Post operatively, Ms Rowlands'

64. Ms Rowland requires

E. Lily Knowland

65. Between about October 2015 and 13 January 2016 Ms Knowland accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au, www.facebook.com and www.instagram.com.

66. On or about 20 November 2015 Ms Knowland attended at TCI Southport Premises for her first and only pre-surgery consultation.

Particulars

Ms Knowland consulted with Đ#Van Nguyen.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 91).

67. On 20 November 2015 it was agreed that Ms Knowland would receive

(a)

(b)

(c)

(d)

68. Ms Knowland underwent BAS on 13 January 2016 at TCI Southport Premises performed by Van Đ#Nguyen.

69. Post-operatively, Ms Knowland's

- 70. Post-operatively, Ms Knowland developed [REDACTED]
- 71. Post-operatively, Ms Knowland had [REDACTED]
- 72. Post-operatively, Ms Knowland developed [REDACTED]
[REDACTED]
[REDACTED] (the second procedure).

Particulars

- [REDACTED]
- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- 73. Ms Knowland's [REDACTED]
[REDACTED]
- 74. Following her initial BAS and the second procedure, Ms Knowland continued to have [REDACTED]
- 75. On 26 October 2016, [REDACTED]
[REDACTED] (the third procedure).
- 76. Following the third procedure, Ms Knowland:
 - (a) [REDACTED]
 - (b) [REDACTED]
 - (c) [REDACTED]
- 77. Ms Knowland requires [REDACTED]

F. Tiffany Rutherford

- 77FA. Between about June 2016 and June 2017 Ms Rutherford accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au and www.instagram.com.
- 77FB. On 15 June 2017 Ms Rutherford attended at TCI Bondi Premises for her first pre-surgery consultation.

Particulars

- (a) Ms Rutherford consulted with Anh Tang.
- (b) She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).
- (c) She conveyed that she expected to achieve the BAS results (refer to paragraph 91).

77FC. During the consultation on 15 June 2017, it was agreed that Ms Rutherford would receive

[REDACTED]

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]

77FD. On 23 June 2017, Ms Rutherford underwent BAS at Holroyd Private Hospital performed by Dr Tang.

77FE. Post-operatively, Ms Rutherford's [REDACTED]
[REDACTED]

77FF. Post-operatively, Ms Rutherford's [REDACTED]
[REDACTED]

Particulars

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

77FG. In June 2019, Ms Rutherford's [REDACTED]
[REDACTED]

Particulars

- (a) [REDACTED]
- (b) [REDACTED]

77FH. On about 1 October 2019, Ms Rutherford's [REDACTED]
[REDACTED]

Particulars

(a) [REDACTED]

(b) [REDACTED]

77FI. On about 18 February 2020, Ms Rutherford's [REDACTED]
[REDACTED]

Particulars

(a) [REDACTED]

(b) [REDACTED]

77FJ. On or about 10 March 2020, Ms Rutherford's [REDACTED]
[REDACTED]

Particulars

(a) [REDACTED]

77FK. On about 10 March 2020, Ms Rutherford was diagnosed by Professor Anand Deva, plastic surgeon, as having [REDACTED]
[REDACTED]

77FL. On or about 1 April 2020 Ms Rutherford underwent [REDACTED]
[REDACTED]

77FM. Post-operatively, Ms Rutherford suffers from [REDACTED]

77FN. Post-operatively, Ms Rutherford suffers [REDACTED]

77FO. Ms Rutherford [REDACTED]

G. Alysha Axen

77GA. Between about October 2015 and April 2016 Ms Axen accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au and www.facebook.com.

77GB. On 2 April 2016 Ms Axen attended the TCI Parramatta Premises for her first pre-surgery consultation.

Particulars

- (a) Ms Axen consulted with Napoleon Chiu.
- (b) She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).
- (c) She conveyed that she expected to achieve the BAS results (refer to paragraph 91).

77GC. On or about 2 April 2016 it was agreed that Ms Axen would receive [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

77GD. Ms Axen underwent BAS on 21 April 2016 at Concord Private Hospital performed by Napoleon Chiu.

77GE. Ms Axen underwent a bilateral breast ultrasound on 23 May 2017 which [REDACTED]

77GF. Post-operatively, Ms Axen developed [REDACTED]

77GG. Post-operatively, Ms Axen consulted the fifth defendant who referred her [REDACTED]

77GH. Post-operatively Ms Axen's [REDACTED].

77GI. Post-operatively, Ms Axen [REDACTED].

77GJ. On or about 26 March 2018 Ms Axen had [REDACTED]

H. Sherine Zahr

77HA. Between about May 2015 to April 2015 Ms Zahr accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au.

77HB. On 11 April 2015 Ms Zahr attended at TCI Bondi Premises for her first pre-surgery consultation.

Particulars

- (a) Ms Zahr consulted with Sri Darshn.
- (b) She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).
- (c) She conveyed that she expected to achieve the BAS results (refer to paragraph 91).

77HC. On 11 April 2015 it was agreed that Ms Zahr would receive [REDACTED].

77HD. On or about 9 May 2015 Ms Zahr attended at the TCI Bondi Premises for her second pre-surgery consultation with Dr Dash.

77HE. Ms Zahr subsequently telephoned TCI and cancelled her BAS with Sri Darshn.

77HF. On or about 15 May 2015 Ms Zahr attended at the TCI Bondi Premises for a further pre-surgery consultation:

- (a) Ms Zahr consulted with Daniel Kwok.
- (b) She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).
- (c) She conveyed that she expected to achieve the BAS results (refer to paragraph 91).

77HG. On or about 15 May 2015 it was agreed that Ms Zahr would receive [REDACTED]

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]

77HH. Ms Zahr underwent BAS on 4 August 2015 at TCI Bondi Premises performed by Daniel Kwok.

77HI. On or about 28 September 2015 Ms Zahr's mother telephoned TCI and spoke to a TCI staff member, Hannah Hamilton-Cookson in relation to [REDACTED]

77HJ. On 28 September 2015 Ms Zahr consulted with the fifth defendant at Concord Private Hospital who advised that it was premature to advise her about her prognosis and management plan but that the BAS which Dr Kwok had performed was never going to achieve her desired results.

77HK. Post-operatively, Ms Zahr has [REDACTED]

77HL. Post-operatively Ms Zahr's [REDACTED]

77HM. Post-operatively, Ms Zahr's [REDACTED]
[REDACTED]

77HN. Post-operatively, Ms Zahr suffers [REDACTED]

77HO. Ms Zahr requires [REDACTED]

I. Emma Love

77IA. Between about June 2013 and July 2013 Ms Love accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au and www.facebook.com.

77IB. On 12 July 2013 Ms Love attended at TCI Parramatta Premises for her first pre-surgery consultation.

Particulars

- (a) Ms Love consulted with Pedro Velente.
- (b) She conveyed that she wished to have BAS for the BAS purpose (refer to paragraph 89).
- (c) She conveyed that she expected to achieve the BAS results (refer to paragraph 91).

77IC. On or about 12 July 2013 it was agreed that Ms Love would receive [REDACTED]
[REDACTED]

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]

77ID. On 28 April 2014 Ms Love underwent BAS at TCI Parramatta premises performed by Pedro Velente.

77IE. Post-operatively, Ms Love experienced [REDACTED]

77IF. Post-operatively, Ms Love developed [REDACTED]
[REDACTED]
[REDACTED] (the second procedure).

Particulars

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

77IG. On 2 February 2015 Ms Love consulted with the fifth defendant and Stephanie Vukasanovic (TCI Floor Manager) to discuss [REDACTED]
[REDACTED]

77IH. Post-operatively, Ms Love's [REDACTED]
[REDACTED]

77II. On or about 22 November 2018 Ms Love underwent [REDACTED]
[REDACTED]

77IJ. Post-operatively, Ms Love suffers [REDACTED]
[REDACTED]

J. Candiece Gielisse

77JA. Between about May 2013 and July 2013 Ms Gielisse accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au and www.facebook.com.

77JB. On or about 11 March 2013 Ms Gielisse attended at TCI Parramatta Premises for her first pre-surgery consultation.

Particulars

- (a) Ms Gielisse consulted with Farheen Ali.
- (b) She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).
- (c) She conveyed that she expected to achieve the BAS results (refer to paragraphs 91).

77JC. On 11 March 2013 it was agreed that Ms Gielisse would have the option of [REDACTED]
[REDACTED]

77JD. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

77JE. On 16 July 2013 Ms Gielisse underwent BAS at TCI Parramatta Premises performed by Farheen Ali.

77JF. Post-operatively, Ms Gielisse developed [REDACTED]
[REDACTED]
[REDACTED] **(the second procedure).**

77JG. Post-operatively, Ms Gielisse's [REDACTED]
[REDACTED]
[REDACTED] **(the third procedure).**

77JH. On or about 20 January 2014, Ms Gielisse underwent a further procedure at TCI Parramatta Premises by Farheen Ali and the fifth defendant (the fourth procedure) which according to the consent form involved [REDACTED]
[REDACTED]

77JI. Post-operatively, Ms Gielisse's [REDACTED]
[REDACTED]
[REDACTED] **(the fifth procedure).**

77JJ. On 10 November 2014 Ms Gielisse underwent [REDACTED]
[REDACTED]
(the sixth procedure).

Particulars

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(d) [REDACTED]

77JK. Post-operatively, Ms Gielisse has [REDACTED]

77JL. Post-operatively, Ms Gielisse continues to experience [REDACTED]

77JM. Post-operatively, Ms Gielisse [REDACTED]

77JN. Post-operatively, Ms Gielisse suffers [REDACTED]

77JO. Ms Gielisse requires [REDACTED]

K. Ali Turner

77KA. Between about January 2015 and June 2015 Ms Turner accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au and www.facebook.com.

77KB. On 18 June 2015 Ms Turner attended TCI Parramatta Premises for her first pre-surgery consultation.

Particulars

(a) Ms Turner consulted with James Kenny.

(b) She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).

(c) She conveyed that she expected to achieve the BAS results (refer to paragraph 91).

77KC. On 18 June 2015 it was agreed that Ms Turner would receive [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

77KD. Ms Turner underwent BAS on 19 June 2015 at TCI Parramatta performed by James Kenny.

77KE. Ms Turner received [REDACTED]

77KF. Post-operatively, Ms Turner's [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77KG. Post-operatively, Ms Turner has [REDACTED]

77KH. Post-operatively, Ms Turner suffers [REDACTED]

77KI. Ms Turner requires [REDACTED]

L. Stefanie Sanchez

77LA. Between about April 2016 and January 2017 Ms Sanchez accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au and www.facebook.com and www.instagram.com.

77LB. On 25 October 2016 Ms Sanchez attended TCI Southport Premises for a pre-surgery consultation.

Particulars

- (a) Ms Sanchez consulted with James Kenny.
- (b) She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).
- (c) She conveyed that she expected to achieve the BAS results (refer to paragraph 91).

77LC. On or about 25 October 2016 it was agreed that Ms Sanchez would receive [REDACTED]
[REDACTED]

77LD. Prior to Ms Sanchez's scheduled BAS she was contacted by TCI and advised that James Kenny was unavailable to perform the BAS and she needed to consult with another TCI Surgeon.

77LE. On or about 11 January 2017 Ms Sanchez attended at TCI Southport Premises for a further pre-surgery consultation.

Particulars

- (a) Ms Sanchez consulted with Sri Darshn.
- (b) She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).
- (c) She conveyed that she expected to achieve the BAS results (refer to paragraphs 91).

77LF. On or about 11 January 2017 it was agreed that Ms Sanchez would receive a [REDACTED]
[REDACTED]

- (a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

77LG. On 14 January 2017 Ms Sanchez underwent BAS at TCI Southport Premises performed by Sri Darshn who was assisted by James Kenny.

77LH. Post-operatively, Ms Sanchez's [REDACTED]
[REDACTED]
[REDACTED]

77LI. Post-operatively, Ms Sanchez developed [REDACTED]

77LJ. Post-operatively, Ms Sanchez has [REDACTED]

77LK. Post-operatively, Ms Sanchez suffers [REDACTED]

77LL. Ms Sanchez requires [REDACTED]

Part V. - Negligence

78. The defendants owed the plaintiffs and group members a duty to exercise reasonable care and skill in the provision of advice about, and in the performance of, BAS.

79. The defendants knew or ought to have known that there was a not insignificant risk that the plaintiffs and group members would suffer the BAS Complications if reasonable care and skill in the provision of advice about, and in the performance of, BAS, was not provided.

80. The defendants breached their duty of care to the plaintiffs and group members by failing to exercise reasonable care and skill to avoid the BAS Complications.

81. The first to fourth ~~The~~ defendants breached their duties of care to the plaintiffs and group members by:

- (a) Recommending BAS in accordance with the One Size Fits All Approach;
- (b) Performing BAS in accordance with the One Size Fits All Approach;
- (c) Failing to inform the plaintiffs and group members that they were at an increased risk of requiring revision surgery in the future;
- (d) Failing to engage adequately qualified, trained, experienced and accredited surgeons to perform BAS;
- (e) Failing properly to train the TCI Surgeons;

- (f) Failing properly to supervise the TCI Surgeons;
- (g) Devising and implementing the Defendants' System of BAS;
- (h) Devising and implementing the Defendants' System of BAS including the TCI Facilities, TCI Surgeons, TCI Anaesthetists, the One Size Fits All Approach to BAS, and the Pre-Surgery Consultations;
- (i) Failing to properly supervise the TCI Anaesthetists;
- (j) Failing to regularly review and/or revise the Defendants' System of BAS;
- (k) Failing to implement adequate infection control procedures for BAS;
- (l) Failing to maintain and review infection control procedures for BAS;
- (m) Failing in the planning and performance of BAS to consider differences in the anatomy of the plaintiffs and group members;
- (n) Failing to provide adequate review and follow up of the plaintiffs and group members following BAS;
- (o) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (p) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (q) Recommending and/or performing BAS when they knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;
- (r) Failing to inform the plaintiffs and group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;
- (s) Recommending and/or performing BAS when they knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;
- (t) Failing to inform the plaintiffs and group members that performing the surgery without general anaesthetic and under twilight sedation and local anaesthetic would

result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;

- (u) Continuing to implement the Defendants' System of BAS and the One Size Fits All Approach to BAS when they knew or ought to have known that it would, had and would continue to produce BAS Complications and harm to patients;
- (v) Failing to cease the implementation of the Defendants' System of BAS and the One Size Fits All Approach to BAS when they knew or ought to have known that it had produced and was continuing to produce BAS Complications and harm to patients;
- (w) Making the Representations to the plaintiffs and the group members when they knew or ought to know that the plaintiffs and group members would rely on them to undergo BAS and that they were untrue or inaccurate.

81A. The fifth defendant breached his duty of care to the plaintiffs and group members by:

- (a) Recommending to The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport that BAS be performed on women in accordance with the One Size Fits All Approach;
- (b) Devising, designing, implementing, performing, supervising or assisting in the performance of BAS in accordance with the One Size Fits All Approach;
- (c) Failing to inform, or advise the TCI Surgeons to inform, the plaintiffs and group members of the risk of the BAS Complications;
- (d) Failing to inform, or advise the TCI Surgeons to inform, the plaintiffs and group members that they were at an increased risk of requiring revision surgery in the future;
- (e) Failing to advise the first to fourth defendants to engage adequately qualified, trained, experienced and accredited surgeons to perform BAS;
- (f) Advising the first to fourth defendants to implement the Defendants' System of BAS including the TCI Facilities, TCI Surgeons, TCI Anaesthetists, the One Size Fits All Approach to BAS, the Pre-Surgery Consultations and the Post-Surgery Consultations;
- (g) Failing to properly supervise the TCI Anaesthetists;
- (h) Failing to regularly review and/or revise the Defendants' System of BAS;

- (i) Failing to devise, and advise the first to fourth defendants to implement, adequate infection control procedures for BAS;
- (j) Failing to seek advice from an infectious diseases expert about infection control procedures to implement for BAS at the TCI Premises;
- (k) Failing adequately to review and advise the first to fourth defendants and the TCI Surgeons about changes to infection control procedures for BAS at the TCI Premises so as to minimise the risk of post-operative infection;
- (l) Failing in the planning and performance of BAS, or in the training of the TCI Surgeons, to consider differences in the anatomy of the plaintiffs and group members;
- (m) Failing to provide, or advise the first to fourth defendants and the TCI Surgeons about, adequate review and follow up of the plaintiffs and group members following BAS;
- (n) Failing to decline to perform BAS, or advise the TCI Surgeons not to perform BAS, in circumstances where BAS was considered technically difficult;
- (o) Failing to decline to perform BAS, or advise the TCI Surgeons not to perform BAS, in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (p) Recommending to the first to fourth defendants and the TCI Surgeons to perform and/or performing BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;
- (q) Failing to inform, or advise the first to fourth defendants and the TCI Surgeons to inform, the plaintiffs and group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;
- (r) Recommending to the first to fourth defendants and the TCI Surgeons to perform and/or performing BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which

would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;

- (s) Failing to inform, or advise the first to fourth defendants and the TCI Surgeons to inform, the plaintiffs and group members that performing the surgery without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;
- (t) Failing adequately to devise, implement, supervise, and conduct the training of the TCI Surgeons to carry out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport the following duties or activities in relation to patients:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (u) Wrongly advising The Cosmetic Institute, TCI Parramatta, TCI Southport, TCI Bondi and the TCI Surgeons that the TCI Surgeons were fit to carry out for or on their behalf the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;

- (vi) Post-BAS follow-up consultations;
- (vii) The diagnosis and treatment of BAS complications; and
- (viii) Monitoring and improvement of their BAS complication rates;
- (v) Failing to advise The Cosmetic Institute, TCI Parramatta, TCI Southport, TCI Bondi and the TCI Surgeons that the Defendants' System of BAS would expose the plaintiffs and group members to an increased risk of the BAS Complications;
- (w) Failing to advise The Cosmetic Institute, TCI Parramatta, TCI Southport, TCI Bondi not to implement the One Size Fits All Approach to BAS at the TCI Premises;
- (x) Failing adequately to advise or report to The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport about how to implement, operate and monitor the performance of the One Size Fits All Approach to BAS at the TCI Premises;
- (y) Failing adequately to monitor the BAS complications associated with the performance of the One Size Fits All Approach to BAS at the TCI Premises;
- (z) Failing adequately to treat or assist in the treatment of BAS complications associated with the sixth to sixteenth defendants' performance of the One Size Fits All Approach to BAS at the TCI Premises;
- (aa) Failing adequately to advise The Cosmetic Institute, TCI Parramatta, TCI Bondi, TCI Southport and the sixth to sixteenth defendants of the BAS complications associated with the sixth to sixteenth defendants' performance of the One Size Fits All Approach to BAS at the TCI Premises;
- (bb) Failing adequately to advise The Cosmetic Institute, TCI Parramatta, TCI Bondi, TCI Southport and the sixth to sixteenth defendants about what precautions to implement against the risk of the BAS complications associated with the sixth to sixteenth defendants' performance of the One Size Fits All Approach to BAS at the TCI Premises;
- (cc) Wrongly considering he could provide adequate supervision or direction to nursing staff, cosmetic consultants, administrative staff and management at The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport in the provision of services, representations and advice to women about BAS and the implementation of the One Size Fits All Approach to BAS at the TCI Premises;

- (dd) Failing to advise the first to fourth defendants and the TCI Surgeons to cease the Defendants' System of BAS and the One Size Fits All Approach to BAS when he knew or ought to have known that it had and would continue to produce BAS Complications and harm to patients;
- (ee) Failing to advise the first to fourth defendants to refrain from making the Representations;
- (ff) Wrongly advising the first to fourth defendants to make the Representations;
- (gg) Making the Representations to the plaintiffs and the group members when he knew or ought to know that the plaintiffs and group members would rely on them to undergo BAS and that they were untrue or inaccurate;
- (hh) Obtaining the Australian Society of Plastic Surgeons (ASPS) brochures about BAS and making them available to the TCI Surgeons for the purpose of obtaining consent from the plaintiffs and group members knowing that the use of such brochures could mislead the plaintiffs and group members into believing that the TCI Surgeons were plastic surgeons.

81B. The sixth defendant breached his duty of care to the first plaintiff and the Sivathasan Sub-Group members by:

- (a) Performing BAS on the first plaintiff and Sivathasan Sub-Group members in an incompetent manner;
- (b) Performing, or assisting in the performance of, BAS in accordance with the One Size Fits All Approach on the first plaintiff and the Sivathasan Sub-Group members;
- (c) Failing adequately to inform the first plaintiff and the Sivathasan Sub-Group members of the BAS Complications;
- (d) Failing to inform the first plaintiff and the Sivathasan Sub-Group members that they were at an increased risk of requiring revision surgery in the future;
- (e) Failing to carry out adequate infection control procedures for BAS on the first plaintiff and the Sivathasan Sub-Group members;
- (f) Failing in the planning and performance of BAS to consider differences in the anatomy of the first plaintiff and the Sivathasan Sub-Group members;

- (g) Failing to provide adequate review and follow up of the first plaintiff and the Sivathasan Sub-Group members following BAS;
- (h) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (i) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (j) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;
- (k) Failing to inform the first plaintiff and the Sivathasan Sub-Group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;
- (l) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;
- (m) Wrongly considering that he was fit to carry out the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;

- (n) Failing to inform the first plaintiff and the Sivathasan Sub-Group members that the Defendants' System of BAS put them at an increased risk of the BAS Complications;
- (o) Failing adequately to monitor the BAS complications associated with the performance of the One Size Fits All Approach to BAS on the first plaintiff and the Sivathasan Sub-Group members;
- (p) Failing adequately to treat or assist in the treatment of BAS complications associated with the performance of the One Size Fits All Approach to BAS on the first plaintiff and the Sivathasan Sub-Group members;
- (q) Failing to advise the first to fifth defendants to cease the Defendants' System of BAS and the One Size Fits All Approach to BAS when he knew or ought to have known that it had and would continue to produce BAS Complications and harm to patients, including the first plaintiff and the Sivathasan Sub-Group members;
- (r) Failing to cease performing BAS using the Defendants' System of BAS when he knew or ought to have known that he had and would continue to produce BAS Complications and harm to patients, including the first plaintiff and the Sivathasan Sub-Group members
- (s) Making the Representations to the first plaintiff and the Sivathasan Sub-Group members;
- (t) Making the Representations to the first plaintiff and the Sivathasan Sub-Group members when he knew or ought to know that the first plaintiff and the Sivathasan Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

81C. The seventh defendant breached his duty of care to the second plaintiff and the Nguyen Sub-Group members by:

- (a) Performing BAS on the second plaintiff and Nguyen Sub-Group members in an incompetent manner;
- (b) Performing, or assisting in the performance of, BAS in accordance with the One Size Fits All Approach on the Second plaintiff and the Nguyen Sub-Group members;
- (c) Failing adequately to inform the second plaintiff and the Nguyen Sub-Group members of the BAS Complications;

- (d) Failing to inform the second plaintiff and the Nguyen Sub-Group members that they were at an increased risk of requiring revision surgery in the future;
- (e) Failing to carry out adequate infection control procedures for BAS on the second plaintiff and the Nguyen Sub-Group members;
- (f) Failing in the planning and performance of BAS to consider differences in the anatomy of the second plaintiff and the Nguyen Sub-Group members;
- (g) Failing to provide adequate review and follow up of the second plaintiff and the Nguyen Sub-Group members following BAS;
- (h) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (i) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (j) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;
- (k) Failing to inform the second plaintiff and the Nguyen Sub-Group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;
- (l) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;
- (m) Wrongly considering that he was fit to carry out the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;

- (v) The One Size Fits All Approach to BAS;
- (vi) Post-BAS follow-up consultations;
- (vii) The diagnosis and treatment of BAS complications; and
- (viii) Monitoring and improvement of their BAS complication rates;
- (n) Failing to inform the second plaintiff and the Nguyen Sub-Group members that the Defendants' System of BAS put them at an increased risk of the BAS Complications;
- (o) Failing adequately to monitor the BAS complications associated with the performance of the One Size Fits All Approach to BAS on the second plaintiff and the Nguyen Sub-Group members;
- (p) Failing adequately to treat or assist in the treatment of BAS complications associated with the performance of the One Size Fits All Approach to BAS on the second plaintiff and the Nguyen Sub-Group members;
- (q) Failing to advise the first to fifth defendants to cease the Defendants' System of BAS and the One Size Fits All Approach to BAS when he knew or ought to have known that it had and would continue to produce BAS Complications and harm to patients, including the second plaintiff and the Nguyen Sub-Group members;
- (r) Failing to cease performing BAS using the Defendants' System of BAS when he knew or ought to have known that he had and would continue to produce BAS Complications and harm to patients, including the second plaintiff and the Nguyen Sub-Group members
- (s) Making the Representations to the second plaintiff and the Nguyen Sub-Group members;
- (t) Making the Representations to the second plaintiff and the Nguyen Sub-Group members when he knew or ought to know that the second plaintiff and the Nguyen Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

81D. The eighth defendant breached his duty of care to the third plaintiff and the Lee Sub-Group members by:

- (a) Performing BAS on the third plaintiff and Lee Sub-Group members in an incompetent manner;

- (b) Performing, or assisting in the performance of, BAS in accordance with the One Size Fits All Approach on the third plaintiff and the Lee Sub-Group members;
- (c) Failing adequately to inform the third plaintiff and the Lee Sub-Group members of the BAS Complications;
- (d) Failing to inform the third plaintiff and the Lee Sub-Group members that they were at an increased risk of requiring revision surgery in the future;
- (e) Failing to carry out adequate infection control procedures for BAS on the third plaintiff and the Lee Sub-Group members;
- (f) Failing in the planning and performance of BAS to consider differences in the anatomy of the third plaintiff and the Lee Sub-Group members;
- (g) Failing to provide adequate review and follow up of the third plaintiff and the Lee Sub-Group members following BAS;
- (h) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (i) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (j) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;
- (k) Failing to inform the third plaintiff and the Lee Sub-Group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;
- (l) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;
- (m) Wrongly considering that he was fit to carry out the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;

- (ii) Obtaining consent from women to undergo BAS;
- (iii) BAS under conscious sedation or general anaesthesia;
- (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
- (v) The One Size Fits All Approach to BAS;
- (vi) Post-BAS follow-up consultations;
- (vii) The diagnosis and treatment of BAS complications; and
- (viii) Monitoring and improvement of their BAS complication rates;
- (n) Failing to inform the third plaintiff and the Lee Sub-Group members that the Defendants' System of BAS put them at an increased risk of the BAS Complications;
- (o) Failing adequately to monitor the BAS complications associated with the performance of the One Size Fits All Approach to BAS on the third plaintiff and the Lee Sub-Group members;
- (p) Failing adequately to treat or assist in the treatment of BAS complications associated with the performance of the One Size Fits All Approach to BAS on the third plaintiff and the Lee Sub-Group members;
- (q) Failing to advise the first to fifth defendants to cease the Defendants' System of BAS and the One Size Fits All Approach to BAS when he knew or ought to have known that it had and would continue to produce BAS Complications and harm to patients, including the third plaintiff and the Lee Sub-Group members;
- (r) Failing to cease performing BAS using the Defendants' System of BAS when he knew or ought to have known that he had and would continue to produce BAS Complications and harm to patients, including the third plaintiff and the Lee Sub-Group members
- (s) Making the Representations to the third plaintiff and the Lee Sub-Group members;
- (t) Making the Representations to the third plaintiff and the Lee Sub-Group members when he knew or ought to known that the third plaintiff and the Lee Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

81E. The ninth defendant breached his duty of care to the fourth plaintiff and the Duong Sub-Group members by:

- (a) Performing BAS on the fourth plaintiff and Duong Sub-Group members in an incompetent manner;
- (b) Performing, or assisting in the performance of, BAS in accordance with the One Size Fits All Approach on the fourth plaintiff and the Duong Sub-Group members;
- (c) Failing adequately to inform the fourth plaintiff and the Duong Sub-Group members of the BAS Complications;
- (d) Failing to inform the fourth plaintiff and the Duong Sub-Group members that they were at an increased risk of requiring revision surgery in the future;
- (e) Failing to carry out adequate infection control procedures for BAS on the fourth plaintiff and the Duong Sub-Group members;
- (f) Failing in the planning and performance of BAS to consider differences in the anatomy of the fourth plaintiff and the Duong Sub-Group members;
- (g) Failing to provide adequate review and follow up of the fourth plaintiff and the Duong Sub-Group members following BAS;
- (h) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (i) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (j) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;
- (k) Failing to inform the fourth plaintiff and the Duong Sub-Group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;
- (l) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing

cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;

- (m) Wrongly considering that he was fit to carry out the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (n) Failing to inform the fourth plaintiff and the Duong Sub-Group members that the Defendants' System of BAS put them at an increased risk of the BAS Complications;
- (o) Failing adequately to monitor the BAS complications associated with the performance of the One Size Fits All Approach to BAS on the fourth plaintiff and the Duong Sub-Group members;
- (p) Failing adequately to treat or assist in the treatment of BAS complications associated with the performance of the One Size Fits All Approach to BAS on the fourth plaintiff and the Duong Sub-Group members;
- (q) Failing to advise the first to fifth defendants to cease the Defendants' System of BAS and the One Size Fits All Approach to BAS when he knew or ought to have known that it had and would continue to produce BAS Complications and harm to patients, including the fourth plaintiff and the Duong Sub-Group members;
- (r) Failing to cease performing BAS using the Defendants' System of BAS when he knew or ought to have known that he had and would continue to produce BAS Complications and harm to patients, including the fourth plaintiff and the Duong Sub-Group members
- (s) Making the Representations to the fourth plaintiff and the Duong Sub-Group members;

- (t) Making the Representations to the fourth plaintiff and the Duong Sub-Group members when he knew or ought to know that the fourth plaintiff and the Duong Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

81F. The tenth defendant breached his duty of care to the sixth plaintiff and the Tang Sub-Group members by:

- (a) Performing BAS on the sixth plaintiff and Tang Sub-Group members in an incompetent manner;
- (b) Performing, or assisting in the performance of, BAS in accordance with the One Size Fits All Approach on the sixth plaintiff and the Tang Sub-Group members;
- (c) Failing adequately to inform the sixth plaintiff and the Tang Sub-Group members of the BAS Complications;
- (d) Failing to inform the sixth plaintiff and the Tang Sub-Group members that they were at an increased risk of requiring revision surgery in the future;
- (e) Failing to carry out adequate infection control procedures for BAS on the sixth plaintiff and the Tang Sub-Group members;
- (f) Failing in the planning and performance of BAS to consider differences in the anatomy of the sixth plaintiff and the Tang Sub-Group members;
- (g) Failing to provide adequate review and follow up of the sixth plaintiff and the Tang Sub-Group members following BAS;
- (h) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (i) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (j) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;
- (k) Failing to inform the sixth plaintiff and the Tang Sub-Group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;

- (l) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;
- (m) Wrongly considering that he was fit to carry out the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (n) Failing to inform the sixth plaintiff and the Tang Sub-Group members that the Defendants' System of BAS put them at an increased risk of the BAS Complications;
- (o) Failing adequately to monitor the BAS complications associated with the performance of the One Size Fits All Approach to BAS on the sixth plaintiff and the Tang Sub-Group members;
- (p) Failing adequately to treat or assist in the treatment of BAS complications associated with the performance of the One Size Fits All Approach to BAS on the sixth plaintiff and the Tang Sub-Group members;
- (q) Failing to advise the first to fifth defendants to cease the Defendants' System of BAS and the One Size Fits All Approach to BAS when he knew or ought to have known that it had and would continue to produce BAS Complications and harm to patients, including the sixth plaintiff and the Tang Sub-Group members;
- (r) Failing to cease performing BAS using the Defendants' System of BAS when he knew or ought to have known that he had and would continue to produce BAS

Complications and harm to patients, including the sixth plaintiff and the Tang Sub-Group members

- (s) Making the Representations to the sixth plaintiff and the Tang Sub-Group members;
- (t) Making the Representations to the sixth plaintiff and the Tang Sub-Group members when he knew or ought to know that the sixth plaintiff and the Tang Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

81G. The eleventh defendant breached his duty of care to the seventh plaintiff and the Chiu Sub-Group members by:

- (a) Performing BAS on the seventh plaintiff and Chiu Sub-Group members in an incompetent manner;
- (b) Performing, or assisting in the performance of, BAS in accordance with the One Size Fits All Approach on the seventh plaintiff and the Chiu Sub-Group members;
- (c) Failing adequately to inform the seventh plaintiff and the Chiu Sub-Group members of the BAS Complications;
- (d) Failing to inform the seventh plaintiff and the Chiu Sub-Group members that they were at an increased risk of requiring revision surgery in the future;
- (e) Failing to carry out adequate infection control procedures for BAS on the seventh plaintiff and the Chiu Sub-Group members;
- (f) Failing in the planning and performance of BAS to consider differences in the anatomy of the seventh plaintiff and the Chiu Sub-Group members;
- (g) Failing to provide adequate review and follow up of the seventh plaintiff and the Chiu Sub-Group members following BAS;
- (h) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (i) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (j) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;

- (k) Failing to inform the seventh plaintiff and the Chiu Sub-Group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;
- (l) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;
- (m) Wrongly considering that he was fit to carry out the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (n) Failing to inform the seventh plaintiff and the Chiu Sub-Group members that the Defendants' System of BAS put them at an increased risk of the BAS Complications;
- (o) Failing adequately to monitor the BAS complications associated with the performance of the One Size Fits All Approach to BAS on the seventh plaintiff and the Chiu Sub-Group members;
- (p) Failing adequately to treat or assist in the treatment of BAS complications associated with the performance of the One Size Fits All Approach to BAS on the seventh plaintiff and the Chiu Sub-Group members;
- (q) Failing to advise the first to fifth defendants to cease the Defendants' System of BAS and the One Size Fits All Approach to BAS when he knew or ought to have

known that it had and would continue to produce BAS Complications and harm to patients, including the seventh plaintiff and the Chiu Sub-Group members;

- (r) Failing to cease performing BAS using the Defendants' System of BAS when he knew or ought to have known that he had and would continue to produce BAS Complications and harm to patients, including the seventh plaintiff and the Chiu Sub-Group members
- (s) Making the Representations to the seventh plaintiff and the Chiu Sub-Group members;
- (t) Making the Representations to the seventh plaintiff and the Chiu Sub-Group members when he knew or ought to know that the seventh plaintiff and the Chiu Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

81H. The twelfth defendant breached his duty of care to the eighth plaintiff and the Kwok Sub-Group members by:

- (a) Performing BAS on the eighth plaintiff and Kwok Sub-Group members in an incompetent manner;
- (b) Performing, or assisting in the performance of, BAS in accordance with the One Size Fits All Approach on the eighth plaintiff and the Kwok Sub-Group members;
- (c) Failing adequately to inform the eighth plaintiff and the Kwok Sub-Group members of the BAS Complications;
- (d) Failing to inform the eighth plaintiff and the Kwok Sub-Group members that they were at an increased risk of requiring revision surgery in the future;
- (e) Failing to carry out adequate infection control procedures for BAS on the eighth plaintiff and the Kwok Sub-Group members;
- (f) Failing in the planning and performance of BAS to consider differences in the anatomy of the eighth plaintiff and the Kwok Sub-Group members;
- (g) Failing to provide adequate review and follow up of the eighth plaintiff and the Kwok Sub-Group members following BAS;
- (h) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;

- (i) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (j) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;
- (k) Failing to inform the second plaintiff and the Kwok Sub-Group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;
- (l) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;
- (m) Wrongly considering that he was fit to carry out the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (n) Failing to inform the eighth plaintiff and the Kwok Sub-Group members that the Defendants' System of BAS put them at an increased risk of the BAS Complications;
- (o) Failing adequately to monitor the BAS complications associated with the performance of the One Size Fits All Approach to BAS on the eighth plaintiff and the Kwok Sub-Group members;

- (p) Failing adequately to treat or assist in the treatment of BAS complications associated with the performance of the One Size Fits All Approach to BAS on the eighth plaintiff and the Kwok Sub-Group members;
- (q) Failing to advise the first to fifth defendants to cease the Defendants' System of BAS and the One Size Fits All Approach to BAS when he knew or ought to have known that it had and would continue to produce BAS Complications and harm to patients, including the eighth plaintiff and the Kwok Sub-Group members;
- (r) Failing to cease performing BAS using the Defendants' System of BAS when he knew or ought to have known that he had and would continue to produce BAS Complications and harm to patients, including the second plaintiff and the Kwok Sub-Group members
- (s) Making the Representations to the eighth plaintiff and the Kwok Sub-Group members;
- (t) Making the Representations to the eighth plaintiff and the Kwok Sub-Group members when he knew or ought to know that the second plaintiff and the Kwok Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

811. The thirteenth defendant breached his duty of care to the ninth plaintiff and the Valente Sub-Group members by:

- (a) Performing BAS on the ninth plaintiff and Valente Sub-Group members in an incompetent manner;
- (b) Performing, or assisting in the performance of, BAS in accordance with the One Size Fits All Approach on the ninth plaintiff and the Valente Sub-Group members;
- (c) Failing adequately to inform the ninth plaintiff and the Valente Sub-Group members of the BAS Complications;
- (d) Failing to inform the ninth plaintiff and the Valente Sub-Group members that they were at an increased risk of requiring revision surgery in the future;
- (e) Failing to carry out adequate infection control procedures for BAS on the ninth plaintiff and the Valente Sub-Group members;
- (f) Failing in the planning and performance of BAS to consider differences in the anatomy of the ninth plaintiff and the Valente Sub-Group members;

- (g) Failing to provide adequate review and follow up of the ninth plaintiff and the Valente Sub-Group members following BAS;
- (h) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (i) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (j) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;
- (k) Failing to inform the ninth plaintiff and the Valente Sub-Group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;
- (l) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;
- (m) Wrongly considering that he was fit to carry out the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;

- (n) Failing to inform the second plaintiff and the Valente Sub-Group members that the Defendants' System of BAS put them at an increased risk of the BAS Complications;
- (o) Failing adequately to monitor the BAS complications associated with the performance of the One Size Fits All Approach to BAS on the ninth plaintiff and the Valente Sub-Group members;
- (p) Failing adequately to treat or assist in the treatment of BAS complications associated with the performance of the One Size Fits All Approach to BAS on the ninth plaintiff and the Valente Sub-Group members;
- (q) Failing to advise the first to fifth defendants to cease the Defendants' System of BAS and the One Size Fits All Approach to BAS when he knew or ought to have known that it had and would continue to produce BAS Complications and harm to patients, including the ninth plaintiff and the Valente Sub-Group members;
- (r) Failing to cease performing BAS using the Defendants' System of BAS when he knew or ought to have known that he had and would continue to produce BAS Complications and harm to patients, including the ninth plaintiff and the Valente Sub-Group members
- (s) Making the Representations to the ninth plaintiff and the Valente Sub-Group members;
- (t) Making the Representations to the ninth plaintiff and the Valente Sub-Group members when he knew or ought to know that the second plaintiff and the Valente Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

81J. The fourteenth defendant breached her duty of care to the tenth plaintiff and the Ali Sub-Group members by:

- (a) Performing BAS on the tenth plaintiff and Ali Sub-Group members in an incompetent manner;
- (b) Performing, or assisting in the performance of, BAS in accordance with the One Size Fits All Approach on the tenth plaintiff and the Ali Sub-Group members;
- (c) Failing adequately to inform the tenth plaintiff and the Ali Sub-Group members of the BAS Complications;

- (d) Failing to inform the tenth plaintiff and the Ali Sub-Group members that they were at an increased risk of requiring revision surgery in the future;
- (e) Failing to carry out adequate infection control procedures for BAS on the tenth plaintiff and the Ali Sub-Group members;
- (f) Failing in the planning and performance of BAS to consider differences in the anatomy of the tenth plaintiff and the Ali Sub-Group members;
- (g) Failing to provide adequate review and follow up of the tenth plaintiff and the Ali Sub-Group members following BAS;
- (h) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (i) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (j) Performing, or assisting in the performance of, BAS when she knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;
- (k) Failing to inform the tenth plaintiff and the Ali Sub-Group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;
- (l) Performing, or assisting in the performance of, BAS when she knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;
- (m) Wrongly considering that she was fit to carry out the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;

- (v) The One Size Fits All Approach to BAS;
- (vi) Post-BAS follow-up consultations;
- (vii) The diagnosis and treatment of BAS complications; and
- (viii) Monitoring and improvement of their BAS complication rates;
- (n) Failing to inform the tenth plaintiff and the Ali Sub-Group members that the Defendants' System of BAS put them at an increased risk of the BAS Complications;
- (o) Failing adequately to monitor the BAS complications associated with the performance of the One Size Fits All Approach to BAS on the second plaintiff and the Ali Sub-Group members;
- (p) Failing adequately to treat or assist in the treatment of BAS complications associated with the performance of the One Size Fits All Approach to BAS on the tenth plaintiff and the Ali Sub-Group members;
- (q) Failing to advise the first to fifth defendants to cease the Defendants' System of BAS and the One Size Fits All Approach to BAS when she knew or ought to have known that it had and would continue to produce BAS Complications and harm to patients, including the tenth plaintiff and the Ali Sub-Group members;
- (r) Failing to cease performing BAS using the Defendants' System of BAS when she knew or ought to have known that she had and would continue to produce BAS Complications and harm to patients, including the tenth plaintiff and the Ali Sub-Group members
- (s) Making the Representations to the tenth plaintiff and the Ali Sub-Group members;
- (t) Making the Representations to the tenth plaintiff and the Ali Sub-Group members when she knew or ought to know that the tenth plaintiff and the Ali Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

81K. The fifteenth defendant breached his duty of care to the eleventh plaintiff and the Kenny Sub-Group members by:

- (a) Performing BAS on the eleventh plaintiff and Kenny Sub-Group members in an incompetent manner;

- (b) Performing, or assisting in the performance of, BAS in accordance with the One Size Fits All Approach on the Second plaintiff and the Kenny Sub-Group members;
- (c) Failing adequately to inform the eleventh plaintiff and the Kenny Sub-Group members of the BAS Complications;
- (d) Failing to inform the eleventh plaintiff and the Kenny Sub-Group members that they were at an increased risk of requiring revision surgery in the future;
- (e) Failing to carry out adequate infection control procedures for BAS on the eleventh plaintiff and the Kenny Sub-Group members;
- (f) Failing in the planning and performance of BAS to consider differences in the anatomy of the eleventh plaintiff and the Kenny Sub-Group members;
- (g) Failing to provide adequate review and follow up of the eleventh plaintiff and the Kenny Sub-Group members following BAS;
- (h) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (i) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (j) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;
- (k) Failing to inform the eleventh plaintiff and the Kenny Sub-Group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;
- (l) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;
- (m) Wrongly considering that he was fit to carry out the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;

- (ii) Obtaining consent from women to undergo BAS;
- (iii) BAS under conscious sedation or general anaesthesia;
- (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
- (v) The One Size Fits All Approach to BAS;
- (vi) Post-BAS follow-up consultations;
- (vii) The diagnosis and treatment of BAS complications; and
- (viii) Monitoring and improvement of their BAS complication rates;
- (n) Failing to inform the eleventh plaintiff and the Kenny Sub-Group members that the Defendants' System of BAS put them at an increased risk of the BAS Complications;
- (o) Failing adequately to monitor the BAS complications associated with the performance of the One Size Fits All Approach to BAS on the eleventh plaintiff and the Kenny Sub-Group members;
- (p) Failing adequately to treat or assist in the treatment of BAS complications associated with the performance of the One Size Fits All Approach to BAS on the eleventh plaintiff and the Kenny Sub-Group members;
- (q) Failing to advise the first to fifth defendants to cease the Defendants' System of BAS and the One Size Fits All Approach to BAS when he knew or ought to have known that it had and would continue to produce BAS Complications and harm to patients, including the eleventh plaintiff and the Kenny Sub-Group members;
- (r) Failing to cease performing BAS using the Defendants' System of BAS when he knew or ought to have known that he had and would continue to produce BAS Complications and harm to patients, including the eleventh plaintiff and the Kenny Sub-Group members
- (s) Making the Representations to the eleventh plaintiff and the Kenny Sub-Group members;
- (t) Making the Representations to the eleventh plaintiff and the Kenny Sub-Group members when he knew or ought to know that the eleventh plaintiff and the Kenny Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

81L. The sixteenth defendant breached his duty of care to the twelfth plaintiff and the Darshn Sub-Group members by:

- (a) Performing BAS on the twelfth plaintiff and Darshn Sub-Group members in an incompetent manner;
- (b) Performing, or assisting in the performance of, BAS in accordance with the One Size Fits All Approach on the twelfth plaintiff and the Darshn Sub-Group members;
- (c) Failing adequately to inform the twelfth plaintiff and the Darshn Sub-Group members of the BAS Complications;
- (d) Failing to inform the twelfth plaintiff and the Darshn Sub-Group members that they were at an increased risk of requiring revision surgery in the future;
- (e) Failing to carry out adequate infection control procedures for BAS on the second plaintiff and the Darshn Sub-Group members;
- (f) Failing in the planning and performance of BAS to consider differences in the anatomy of the s twelfth plaintiff and the Darshn Sub-Group members;
- (g) Failing to provide adequate review and follow up of the twelfth plaintiff and the Darshn Sub-Group members following BAS;
- (h) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (i) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (j) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;
- (k) Failing to inform the twelfth plaintiff and the Darshn Sub-Group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;
- (l) Performing, or assisting in the performance of, BAS when he knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing

cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;

- (m) Wrongly considering that he was fit to carry out the following duties or activities:
 - (i) Pre-operative consultations with, and advice to, women about BAS;
 - (ii) Obtaining consent from women to undergo BAS;
 - (iii) BAS under conscious sedation or general anaesthesia;
 - (iv) The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;
 - (v) The One Size Fits All Approach to BAS;
 - (vi) Post-BAS follow-up consultations;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates;
- (n) Failing to inform the second plaintiff and the Darshn Sub-Group members that the Defendants' System of BAS put them at an increased risk of the BAS Complications;
- (o) Failing adequately to monitor the BAS complications associated with the performance of the One Size Fits All Approach to BAS on the twelfth plaintiff and the Darshn Sub-Group members;
- (p) Failing adequately to treat or assist in the treatment of BAS complications associated with the performance of the One Size Fits All Approach to BAS on the twelfth plaintiff and the Darshn Sub-Group members;
- (q) Failing to advise the first to fifth defendants to cease the Defendants' System of BAS and the One Size Fits All Approach to BAS when he knew or ought to have known that it had and would continue to produce BAS Complications and harm to patients, including the twelfth plaintiff and the Darshn Sub-Group members;
- (r) Failing to cease performing BAS using the Defendants' System of BAS when he knew or ought to have known that he had and would continue to produce BAS Complications and harm to patients, including the twelfth plaintiff and the Darshn Sub-Group members
- (s) Making the Representations to the twelfth plaintiff and the Darshn Sub-Group members;

- (t) Making the Representations to the twelfth plaintiff and the Darshn Sub-Group members when he knew or ought to know that the second plaintiff and the Nguyen Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

~~82. Further or in the alternative, the defendants knew or ought to have known that the plaintiffs and group members would act in reliance on the Representations by consenting to and undergoing BAS.~~

~~83. The defendants owed a duty to the plaintiffs and group members to take reasonable care in making the Representations.~~

~~84. By reason of the matters alleged above, the Representations were, at the time they were conveyed to each plaintiff and group member, inaccurate or untrue.~~

~~85. In the premises, the Representations were negligent.~~

Part VI. - COMPETITION AND CONSUMER ACT

86. BAS was ordinarily acquired by the plaintiffs and the group members, for personal use and, as such, was a service within the meaning of s 3 of the ACL.

87. BAS was supplied to the plaintiffs and group members as consumers within the meaning of section 3 of the ACL.

88. Each plaintiff and group member acquired BAS as a consumer within the meaning of s 3(3) of the ACL.

Particulars

The amount paid or payable by the group members for BAS did not exceed \$40,000.

The services were of a kind ordinarily acquired for personal use.

BAS was a service provided in trade or commerce within the meaning of s 4 of the CCA and s 2 of the ACL.

89. BAS was performed to:

- (a) Enlarge a woman's breasts;
- (b) Improve the aesthetic appearance of a woman's breasts;
- (c) Restore the anatomy of a woman's breasts after the effect of conditions or processes such as aging and breastfeeding; and,

- (d) Improve a woman's self-esteem and confidence.

(the BAS Purpose).

90. The BAS Purpose was known by each of the defendants.

Particulars

The defendants marketed and promoted BAS for the BAS Purpose. During their pre-surgery consultations, each of the plaintiffs and group members informed staff that they wished to have BAS for the BAS Purpose.

91. BAS was performed with the reasonable expectation that the result would be:
- (a) Enlargement of a woman's breasts;
 - (b) Improvement in the aesthetic appearance of a woman's breasts;
 - (c) Restoration of the anatomy of a woman's breasts to alleviate the effects of conditions or processes such as aging or breastfeeding;
 - (d) Increased self-esteem and confidence.

(the BAS Results).

92. The BAS Results were known by each of the defendants.

93. By reason of the Defendants' System of BAS referred to in Part II above and/or the matters referred to in paragraph 81 above, BAS acquired by the plaintiffs and group members:

- (a) was provided in breach of the guarantee of due skill and care in s 60 of the ACL;
- (b) was not, within the meaning of s 61(1) of the ACL, reasonably fit for the BAS Purpose;
- (c) was not of a nature, quality, state or condition, that might reasonably be expected to achieve the BAS Results, within the meaning of s 61(2) of the ACL.

94. The defendants' breaches of the guarantees in ss 60, 61(1) and 61(2) of the ACL were:

- (a) failures within the meaning of the ACL.
- (b) major failures within the meaning of s 268(a), (d) and (e) of the ACL.

(the Failures).

Particulars

Acquiring BAS put the plaintiffs and group members in an unsafe situation because it threatened their physical and mental health.

BAS and the effects of it upon the plaintiffs and group members could not be easily remedied.

BAS was not fit for purpose.

95. The plaintiffs and group members would not have acquired BAS had they been fully aware of the nature and extent of the Failures.
96. The BAS supplied by the defendants would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the Failures.
97. In making the Representations the defendants engaged in conduct in trade or commerce.
98. By reason of the Failures:
 - (a) the Representations were misleading representations with respect to future matters for the purposes of s 4 of the ACL;
 - (b) the Representations made by the defendants amounted to misleading or deceptive conduct in contravention of s 18 of the ACL;
 - (c) further and in the alternative, the Representations were false or misleading representations in contravention of s 29(1)(b) of the ACL;
 - (d) further and in the alternative, the Representations were false or misleading representations in contravention of s 29(1)(m) of the ACL;
 - (e) further and in the alternative, the Representations were false or misleading representations in contravention of s 34 of the ACL.
99. The plaintiffs and group members relied upon, and were induced by, the Representations to acquire BAS.

Part VII. - INJURY LOSS AND DAMAGE

100. The plaintiffs and group members suffered injury, loss and damage by reason that:
 - (a) the defendants were negligent;
 - (b) the Representations were negligent;
 - (c) further or in the alternative, the Representations were false, misleading and deceptive pursuant to ss 18, 29 and 34 of the ACL;
 - (d) the defendants' services were not fit for the BAS Purpose; and,

- (e) the defendants' services were not of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results expected by the plaintiffs and group members.

Particulars of Injuries

BAS Complications and in consequence:

- (f) Breast asymmetry;
- (g) Implant wrinkling;
- (h) Loss of sensation;
- (i) Ptosis;
- (j) Difficulties breast feeding;
- (k) Chest wall deformity;
- (l) Implant animation deformity;
- (m) Requirement for revision surgery;
- (n) Pain;
- (o) Discomfort;
- (p) Psychiatric injury.

Particulars of Loss and Damage

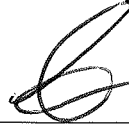
- (q) Costs associated with revision surgery;
- (r) Costs associated with psychiatric or psychological services;
- (s) Health care expenses and medical monitoring;
- (t) Other out-of-pocket expenses;
- (u) Economic loss;
- (v) Need for gratuitous and/or commercial care; and,
- (w) Non-economic loss.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of schedule 2 of 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 claim for damages in these proceedings has reasonable prospects for success.

I have advised the plaintiffs that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Name

Armando Gardiman

Capacity

Solicitor for the plaintiffs by his partner, Sally Gleeson

Date of signature

19 June 2020