

~~SECOND~~ FOURTH FURTHER AMENDED STATEMENT OF CLAIM

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	12

First defendant	THE COSMETIC INSTITUTE PTY LTD (IN LIQUIDATION) (ACN 153 061 155)
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Number of defendants	19
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FILING DETAILS

Filed for	The plaintiffs
Legal representative	Armando John Gardiman
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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.

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RELIEF CLAIMED

In relation to the plaintiffs:

- 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), whether in force by virtue of section 131 of the CCA; section 28 of the *Fair Trading Act 1987* (NSW); or section 16 of the *Fair Trading Act 1989* (QLD);
- 5 Interest thereon pursuant to s 100 of the *Civil Procedure Act 2005* (NSW);
6. Costs;
- 6A With respect to the first to fourth, ninth and eleventh plaintiffs, damages, interest and costs against the seventeenth defendant (**Newline**), whether at common law, pursuant to the *Civil Liability Act 2002* (NSW) or its Queensland equivalent or under the ACL by reason of the operation of the *Civil Liability (Third Party (Claims Against Insurers) Act 2017* (NSW);
- 6B. With respect to the fifth to eighth, tenth and twelfth plaintiffs, damages, interest and costs against the eighteenth defendant (**Allied World**), whether at common law, pursuant to the *Civil Liability Act 2002* (NSW) or its Queensland equivalent or under the ACL by reason of the operation of the *Civil Liability (Third Party (Claims Against Insurers) Act 2017* (NSW);
- 6C. With respect to the nineteenth defendant (**MDANI**), damages, interest and costs, whether at common law, pursuant to the *Civil Liability Act 2002* (NSW) or its Queensland equivalent or under the ACL by reason of the operation of the *Civil Liability (Third Party (Claims Against Insurers) Act 2017* (NSW).

In relation to group members other than the plaintiffs:

7. With respect to the first to sixteenth defendants, declarations that:

- (a) The first to fourth defendants breached their duties of care to the group members as particularised in paragraph 81;
- (b) The fifth defendant breached his duty of care to the group members as particularised in paragraph 81A;
- (c) The sixth defendant breached his duty of care to the Sivathasan sub-group members as particularised in paragraph 81B;
- (d) The seventh defendant breached his duty of care to the Nguyen sub-group members as particularised in paragraph 81C;
- (e) The eighth defendant breached his duty of care to the Lee sub-group members as particularised in paragraph 81D;
- (f) The ninth defendant breached his duty of care to the Duong sub-group members as particularised in paragraph 81E;
- (g) The tenth defendant breached his duty of care to the Tang sub-group members as particularised in paragraph 81F;
- (h) The eleventh defendant breached his duty of care to the Chiu sub-group members as particularised in paragraph 81G;
- (i) The twelfth defendant breached his duty of care to the Kwok sub-group members as particularised in paragraph 81H;
- (j) The thirteenth defendant breached his duty of care to the Valente sub-group members as particularised in paragraph 81I;
- (k) The fourteenth defendant breached her duty of care to the Ali sub-group members as particularised in paragraph 81J;
- (l) The fifteenth defendant breached his duty of care to the Kenny sub-group members as particularised in paragraph 81K;
- (m) The sixteenth defendant breached his duty of care to the Darshn sub-group members as particularised in paragraph 81L;
- (n) The defendants breached the statutory guarantees under sections 60, 61(1) and 61(2) of the ACL for the reasons set out in paragraphs 82 to 92 ~~89~~;

- (o) The defendants' breaches of the guarantees under sections 60, 61(1) and 61(2) of the ACL were major failures within the meaning of sections 268(a), (d) and (e) of the ACL;
- (p) The Representations particularised in ~~paragraph 23~~ Part IIA below were false, misleading or deceptive, or likely to mislead or deceive, in contravention of section 18 of the ACL; within the meaning of sections 4, 18, 29(1)(b), 29(1)(m) or 34 of the ACL.
- (r) The Representations particularised in Part IIA below were false or misleading representations about services in contravention of section 29(1)(b) and/or 29(1)(m) of the ACL;
- (s) The Representations particularised in Part IIA below amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose of services, in contravention of section 34 of the ACL.

8. With respect to Newline, declarations that:

- (a) Newline is liable to indemnify the first to ~~fourth~~ fifth defendants for claims made by group members which were notified to it during the policy periods for the 2014/15 Policy and the 2015/16 Policy;
- (b) Further or in the alternative to 8(a), declarations that:
 - (i) The breaches of duty of care referred to in 7(a) and 7(b) above fall within the definition of Malpractice in the Provision of Healthcare Services as those terms are defined in the 2014/15 Policy and the 2015/16 Policy;
 - (ii) The ~~false, misleading or deceptive representations~~ contraventions of the ACL referred to in 7(p)-(s) above fall within the indemnity cover in Clause 1C 'Misleading and Deceptive Conduct' in the 2014/15 Policy and the 2015/16 Policy;
 - (iii) The injuries and damages suffered by the group members fall within the definition of Loss as those terms are defined in the 2014/15 Policy and the 2015/16 Policy.

9. With respect to Allied World, declarations that:

- (a) Allied World is liable to indemnify the first to ~~fourth~~ fifth defendants for claims made by group members which were notified to it during the policy period for the Allied World Policy;
- (b) On 12 May 2017 and/or during the policy period for the Allied World Policy, Allied World was notified of claims for damages and costs to be pursued against the first to ~~fourth~~ fifth defendants by way of Statement of Claim in the Supreme Court of New South Wales by Ms Rickhuss, Ms Pollock, Ms Zahr, Ms Rowlands and Ms Knowland in their own right and on behalf of group members;
- (c) Further or in the alternative to 9(a), declarations that:
 - (i) The breaches of duty of care referred to in 7(a) and 7(b) above fall within the definition of Incident as that term is defined in the Allied World Policy;
 - (ii) The ~~false, misleading or deceptive representations~~ contraventions of the ACL referred to in 7(p)-(s) above fall within the definition of Incident as that term is defined in the Allied World Policy;
 - (iii) The injuries and damages suffered by the group members fall within the definitions of Patient Injury and Damages as those terms are defined in the Allied World Policy.

10. With respect to MDANI, declarations that:

- (a) MDANI is liable to indemnify the fifth defendant for claims made by group members which were notified by the fifth defendant to it during the policy period for the MDANI Policy;
- (b) Further or in the alternative to 10(a), declarations that:
 - (i) The breaches of duty of care referred to in 7(b) above occurred during the provision of Healthcare Services as that term is defined in the MDANI Policy;

- (ii) The ~~false, misleading or deceptive representations~~ contraventions of the ACL referred to in 7(p)-(s) above occurred during the provision of Healthcare Services as that term is defined in the MDANI Policy;
- (iii) The claims for injuries and damages made by the group members arose directly out of the fifth defendant's provision of Healthcare Services and are Claims as those terms are defined in the MDANI Policy.

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;

- (c) Consulted one or more of the fifth to sixteenth defendants about the performance of BAS at TCI Premises prior to undergoing BAS;
- (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 Victoria;
- (c) is single with one dependent child;
- (d) is [REDACTED] and
- (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 on [REDACTED];
- (b) lives in New South Wales;
- (c) is single with no dependent children; and
- (d) is [REDACTED].

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

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

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

8B. The seventh plaintiff (**Ms Axen**):

- (a) was born on [REDACTED];
- (b) lives in New South Wales;
- (c) is single;
- (d) is [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 employed [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;
- (d) 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;
- (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;
- (e1) In the further alternative, controlled and directed the provision of BAS services by the sixth to sixteenth defendants to the plaintiffs and the group members;
- (f) Applied the One Size Fits All Approach to BAS 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;
 - (d1) In the alternative, provided BAS services and facilities at TCI Parramatta Premises, Concord Private Hospital and Holroyd Private Hospital;
 - (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;
 - (g1) In the further alternative, controlled and directed the provision of BAS services by the sixth to sixteenth defendants to the first, fourth, sixth, seventh, ninth, tenth and eleventh plaintiffs and some of the group members at TCI Parramatta Premises or alternatively at TCI Parramatta Premises, Concord Private Hospital and Holroyd Private Hospital;
 - (h) Applied the One Size Fits All Approach to BAS 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;
 - (g1) In the further alternative, controlled and directed the provision of BAS services by the sixth to sixteenth defendants to the second, third and eighth plaintiffs and some of the group members at TCI Bondi Premises;
 - (h) Applied the One Size Fits All Approach to BAS 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;
 - (g1) In the further alternative, controlled and directed the provision of BAS services by the sixth to sixteenth defendants to the fifth and twelfth plaintiffs and some of the group members at TCI Southport Premises;

- (h) Applied the One Size Fits All Approach to BAS 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) 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) Was the surgical director of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport;
 - (e) Devised, and conducted the training of the sixth to sixteenth defendants (**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.
 - (f) 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;
 - (vii) The diagnosis and treatment of BAS complications; and
 - (viii) Monitoring and improvement of their BAS complication rates.
- (g) Devised, designed, implemented, performed, supervised or assisted in the performance of the One Size Fits All Approach to BAS at the TCI Premises;
 - (h) 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;
 - (i) 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;
 - (j) Monitored the BAS complications associated with the performance of the One Size Fits All Approach to BAS at the TCI Premises;
 - (k) 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;
 - (l) 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;
 - (m) 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;

- (n) 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;
- (o) 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 Sivathasan**):

- (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/or 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/or 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 **Sivathasan 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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/or 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**).
- 14L. The seventeenth defendant (**Newline**) is a Lloyds Syndicate made up of Certain Members at Lloyds subscribing to policy number 04012, and:
- (a) Is able to be sued in its own name; and
 - (b) Is entitled to carry on the business of underwriting insurance in Australia via its coverholder Newline Syndicate 1218 at Lloyd's via Newline Australia Insurance Pty. Ltd.
- 14M. The eighteenth defendant (**Allied World**) is a duly incorporated company carrying on business as a general insurer and is entitled to provide insurance products in Australia.
- 14N. The nineteenth defendant (**MDANI**) is a duly incorporated company carrying on business as an insurer offering professional liability insurance to healthcare professionals.

Part II. - THE ~~FIRST TO FIFTH 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 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) The Ssurgery was performed by TCI Surgeons under either twilight sedation or general anaesthesia, which in either case was provided by TCI Anaesthetists;
 - (b1) Whether the surgery was performed under twilight sedation or general anaesthesia, the surgery was performed using local anaesthesia injected not by an anaesthetist, but by Eddy Dona or the TCI Surgeon in attendance;
 - (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;
- (h) The surgery was performed using the TCI Facilities; and
- (i) The surgery was performed by Eddy Dona or the TCI Surgeons.
22. By reason of the System of BAS, including the One Size Fits All Approach to BAS performed on the plaintiffs and group members at TCI Premises, the plaintiffs and group members were at an increased risk of having the following complications compared with BAS not performed in accordance with the One Size Fits All Approach to BAS (the BAS Complications):
- (a) The creation of inappropriate pockets into which the implants were inserted;
 - (b) Malpositioning of the implants;
 - (b1) Poor aesthetic outcome;
 - (c) Disfigurement including rRippling 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, seizures, pneumothorax and death;
- (k) Breast implant-associated anaplastic large-cell lymphoma (BIA-ALCL);
- (l) Rupture and tear of the implants;
- (m) Revision surgery to treat any of the above complications.

~~E. The Representations~~

23. ~~Not used. At all material times, the defendants made the following representations to the plaintiffs and group members (the Representations) in order to generate customers to have BAS performed by the TCI Surgeons:~~

- ~~(a) The first to sixteenth 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;~~
- (e) ~~Patients receive the best possible post-operative care;~~
- (d) ~~The first to sixteenth 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 first to sixteenth defendants go far and beyond customers' expectations;~~
- (g) ~~The first to sixteenth defendants receive positive feedback from all of their customers, which is overwhelming and unprecedented;~~
- (h) ~~The first to sixteenth defendants provide services which are over and above what is required;~~
- (i) ~~The first to sixteenth defendants' services are affordable because TCI has its own state of the art facilities;~~
- (j) ~~The first to sixteenth defendants offer high quality procedures at affordable prices;~~
- (k) ~~The first to sixteenth defendants' services change people's lives;~~
- (l) ~~The first to sixteenth defendants' services make customers more confident;~~
- (m) ~~The first to sixteenth defendants provide a first class service;~~
- (n) ~~The first to sixteenth defendants will make customers feel sexy again;~~
- (o) ~~The first to sixteenth defendants have a dedicated team of anaesthetists;~~
- (p) ~~The first to sixteenth defendants uphold professional standards so that each customer gets the same experience;~~
- (q) ~~The first to sixteenth defendants' nurses are highly trained;~~
- (r) ~~The first to sixteenth defendants' medical professionals deliver the best results;~~
- (s) ~~The first to sixteenth 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 first to sixteenth defendants' services are so affordable is that all facilities are available under the one roof;~~
- ~~(v) The first to sixteenth defendants meet top Australian specifications;~~
- ~~(w) The first to sixteenth defendants offer the highest level of care by providing facilities that are ISO 9001 accredited;~~
- ~~(x) The first to sixteenth defendants offer the most affordable, safe and easy services for all patients; and,~~
- ~~(y) The first to sixteenth 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 first to fourth defendants' employees and agents, and by or on behalf of the fifth to sixteenth defendants during their interactions with the plaintiffs and group members.~~

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

- 23A. ~~Not used. 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.~~

FE. 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:

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 or the TCI Surgeon directly \$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 first to fourth defendants' website accessible at www.thecosmeticinstitute.com.au.

GF. Post-Surgery Consultations

24A. Following BAS, each of the plaintiffs and group members attended in person, by telephone 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 IIA. REPRESENTATIONS

A. Representations made to the public

24D. At all material times, the first to fourth defendants made the following representations to the public (which included female members of the public who might wish to enlarge their breasts, improve the aesthetic appearance of their breasts, restore the anatomy of their breasts or increase their self-esteem and confidence by enlarging, improving the aesthetic appearance of, or restoring the anatomy of, their breasts), in order to generate customers to have BAS performed by the TCI Surgeons at TCI Premises (the Representations):

- (a) TCI Surgeons have the following attributes:
 - (i) They are plastic and reconstructive surgeons;
 - (ii) They are highly skilled in performing BAS;
 - (iii) They are highly experienced in performing BAS;
 - (iv) They have had extensive training in performing BAS;

- (v) They are trained in-house by a plastic surgeon, Eddy Dona, to perform BAS which sets them apart from other surgeons;
- (vi) They do not compromise on quality in performing BAS;
- (b) TCI Surgeons offer and perform high quality BAS procedures at TCI Premises;
- (c) TCI Surgeons are assisted by nurses who are highly trained;
- (d) Patients receive excellent post-operative care at TCI Premises under TCI Surgeons;
- (e) TCI Surgeons conducting BAS at TCI Premises deliver results which:
 - (i) are excellent;
 - (ii) enhance the appearance of patients;
 - (iii) will make patients feel more confident.
- (f) TCI Surgeons' services at TCI Premises are affordable;
- (g) TCI Facilities are state-of-the-art.

Particulars

The Representations were made to the public 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, including on social media, for or on behalf of the first to fourth defendants.

The Representations were also made to the public by the first to fourth defendants' conduct in operating the TCI Premises to promote and to conduct the System of BAS as described in Part II above.

24E. The first to fourth defendants made the Representations to the public in trade or commerce.

24F. The fifth defendant made the Representations to the public, by his conduct in:

- (a) Devising and implementing the System of BAS for commercial gain;
- (b) Advising The Cosmetic Institute, TCI Bondi, TCI Parramatta and/or TCI Southport about the content of the Representations (including through writing,

amending and approving the marketing material) knowing that they would be made to potential patients undergoing BAS at the TCI Premises;

- (c) Promoting himself, and/or acquiescing in himself being promoted, as the “surgical director” or in-house trainer for TCI Surgeons for the System of BAS;
- (d) Obtaining Australian Society of Plastic Surgeons (ASPS) brochures about BAS and making them available to the TCI Surgeons for the purpose of obtaining consent from patients for the System of BAS;
- (e) Implementing and maintaining the System of BAS by carrying out the activities of “surgical director”, including:
 - (i) preparing, updating and maintaining the surgical training program;
 - (ii) implementing the surgical training program;
 - (iii) participating in quality improvement programs;
 - (iv) assisting with recruitment, orientation, training and ongoing management of TCI Surgeons;
 - (v) conducting medical committee meetings;
 - (vi) providing reports to the first to fourth defendants in relation to TCI Surgeons’ performance levels;
 - (vii) reviewing the outcomes of internal audits of a medical nature;
 - (viii) occasionally supervising the performance of BAS by the TCI Surgeons;
 - (ix) providing revision surgery for cases with BAS Complications.
- (f) Not resiling from the Representations as made to the public through the first to fourth defendants’ marketing.

24G. The fifth defendant made the Representations to the public in trade or commerce.

24H. Each of the sixth to sixteenth defendants made the Representations to the public, by his or her conduct in:

- (a) Adopting and applying the System of BAS to their patients;
- (b) Undertaking BAS at the TCI Premises as TCI Surgeons;
- (c) Acquiescing to the Representations being made to the public by the first to fourth defendants, and the fifth defendant, on their behalf as “TCI Surgeons”;

(d) Participating in the first to fourth defendants' marketing and promotion of the System of BAS; and

(e) Not resiling from the Representations as made to the public through the first to fourth defendants' marketing.

24I. Each of the sixth to sixteenth defendants made the Representations to the public in trade or commerce.

B. Representations made to individual group members

24J. The first to fourth defendants made the Representations to the plaintiffs and the group members, by the first to fourth defendants' conduct in:

(a) Promoting the System of BAS when contacted about BAS, TCI Surgeons and/or TCI Premises;

(b) Booking and then charging the plaintiffs and the group members for a pre-surgery consultation at the TCI Premises about undergoing BAS with a TCI Surgeon;

(c) In the pre-surgery consultation, promoting the System of BAS through the attending TCI Surgeon and/or a "cosmetic consultant" who was a servant or agent of the first to fourth defendants;

(d) Having available at TCI Premises, for dissemination by TCI Surgeons for the purpose of obtaining consent from patients, ASPS brochures about BAS;

(e) Not warning or advising the plaintiffs and the group members that undergoing BAS under the System of BAS increases the risk of having BAS Complications; and

(f) Not resiling from the Representations as made to the public through the first to fourth defendants' marketing.

24K. The first to fourth defendants made the Representations to the plaintiffs and the group members in trade or commerce.

24L. The sixth defendant made the Representations to the first plaintiff and the Sivathanan Sub-Group members, by his conduct in:

(a) As a TCI Surgeon, receiving them for a pre-surgery consultation about undergoing BAS at TCI Premises;

- (b) Promoting the System of BAS in the pre-surgery consultation;
- (c) Not warning or advising the first plaintiff and the Sivathanan Sub-Group members that undergoing BAS under the System of BAS increases the risk of having BAS Complications;
- (d) Not resiling from the Representations as made to the public through the first to fourth defendants' marketing; and
- (e) Proceeding to carry out their BAS in accordance with the System of BAS.

24M. The sixth defendant made the Representations to the first plaintiff and the Sivathanan Sub-Group members in trade or commerce.

24N. The seventh defendant made the Representations to the second and fifth plaintiffs and the Nguyen Sub-Group members, by his conduct in:

- (a) As a TCI Surgeon, receiving them for a pre-surgery consultation about undergoing BAS at TCI Premises;
- (b) Promoting the System of BAS in the pre-surgery consultation;
- (c) Not warning or advising the second and fifth plaintiffs and the Nguyen Sub-Group members that undergoing BAS under the System of BAS increases the risk of having BAS Complications;
- (d) Not resiling from the Representations as made to the public through the first to fourth defendants' marketing; and
- (e) Proceeding to carry out their BAS in accordance with the System of BAS.

24O. The seventh defendant made the Representations to the second and fifth plaintiffs, and the Nguyen Sub-Group members, in trade or commerce.

24P. The eighth defendant made the Representations to the third plaintiff and the Lee Sub-Group members, by his conduct in:

- (a) As a TCI Surgeon, receiving them for a pre-surgery consultation about undergoing BAS at TCI Premises;
- (b) Promoting the System of BAS in the pre-surgery consultation;

- (c) Not warning or advising the third plaintiff and the Lee Sub-Group members that undergoing BAS under the System of BAS increases the risk of having BAS Complications;
- (d) Not resiling from the Representations as made to the public through the first to fourth defendants' marketing; and
- (e) Proceeding to carry out their BAS in accordance with the System of BAS.

24Q. The eighth defendant made the Representations to the third plaintiff, and the Lee Sub-Group members, in trade or commerce.

24R. The ninth defendant made the Representations to the fourth plaintiff and the Duong Sub-Group members, by his conduct in:

- (a) As a TCI Surgeon, receiving them for a pre-surgery consultation about undergoing BAS at TCI Premises;
- (b) Promoting the System of BAS in the pre-surgery consultation;
- (c) Not warning or advising the fourth plaintiff and the Duong Sub-Group members that undergoing BAS under the System of BAS increases the risk of having BAS Complications;
- (d) Not resiling from the Representations as made to the public through the first to fourth defendants' marketing; and
- (e) Proceeding to carry out their BAS in accordance with the System of BAS.

24S. The ninth defendant made the Representations to the fourth plaintiff and the Duong Sub-Group members in trade or commerce.

24T. The tenth defendant made the Representations to the sixth plaintiff and the Tang Sub-Group members, by his conduct in:

- (a) As a TCI Surgeon, receiving them for a pre-surgery consultation about undergoing BAS at TCI Premises;
- (b) Promoting the System of BAS in the pre-surgery consultation;
- (c) Not warning or advising the sixth plaintiff and the Tang Sub-Group members that undergoing BAS under the System of BAS increases the risk of having BAS Complications;

(d) Not resiling from the Representations as made to the public through the first to fourth defendants' marketing; and

(e) Proceeding to carry out their BAS in accordance with the System of BAS.

24U. The tenth defendant made the Representations to the sixth plaintiff and the Tang Sub-Group members in trade or commerce.

24V. The eleventh defendant made the Representations to the seventh plaintiff and the Chiu Sub-Group members, by his conduct in:

(a) As a TCI Surgeon, receiving them for a pre-surgery consultation about undergoing BAS at TCI Premises;

(b) Promoting the System of BAS in the pre-surgery consultation;

(c) Not warning or advising the seventh plaintiff and the Chiu Sub-Group members that undergoing BAS under the System of BAS increases the risk of having BAS Complications;

(d) Not resiling from the Representations as made to the public through the first to fourth defendants' marketing; and

(e) Proceeding to carry out their BAS in accordance with the System of BAS.

24W. The eleventh defendant made the Representations to the seventh plaintiff and the Chiu Sub-Group members in trade or commerce.

24X. The twelfth defendant made the Representations to the eighth plaintiff and the Kwok Sub-Group members, by his conduct in:

(a) As a TCI Surgeon, receiving them for a pre-surgery consultation about undergoing BAS at TCI Premises;

(b) Promoting the System of BAS in the pre-surgery consultation;

(c) Not warning or advising the eighth plaintiff and the Kwok Sub-Group members that undergoing BAS under the System of BAS increases the risk of having BAS Complications;

(d) Not resiling from the Representations as made to the public through the first to fourth defendants' marketing; and

(e) Proceeding to carry out their BAS in accordance with the System of BAS.

24Y. The twelfth defendant made the Representations to the eighth plaintiff and the Kwok Sub-Group members in trade or commerce.

24Z. The thirteenth defendant made the Representations to the ninth plaintiff and the Valente Sub-Group members, by his conduct in:

(a) As a TCI Surgeon, receiving them for a pre-surgery consultation about undergoing BAS at TCI Premises;

(b) Promoting the System of BAS in the pre-surgery consultation;

(c) Not warning or advising the ninth plaintiff and the Valente Sub-Group members that undergoing BAS under the System of BAS increases the risk of having BAS Complications;

(d) Not resiling from the Representations as made to the public through the first to fourth defendants' marketing; and

(e) Proceeding to carry out their BAS in accordance with the System of BAS.

24AA. The thirteenth defendant made the Representations to the ninth plaintiff and the Valente Sub-Group members in trade or commerce.

24AB. The fourteenth defendant made the Representations to the tenth plaintiff and the Ali Sub-Group members, by his conduct in:

(a) As a TCI Surgeon, receiving them for a pre-surgery consultation about undergoing BAS at TCI Premises;

(b) Promoting the System of BAS in the pre-surgery consultation;

(c) Not warning or advising the tenth plaintiff and the Ali Sub-Group members that undergoing BAS under the System of BAS increases the risk of having BAS Complications;

(d) Not resiling from the Representations as made to the public through the first to fourth defendants' marketing; and

(e) Proceeding to carry out their BAS in accordance with the System of BAS.

24AC. The fourteenth defendant made the Representations to the tenth plaintiff and the Ali Sub-Group members in trade or commerce.

24AD. The fifteenth defendant made the Representations to the eleventh plaintiff and the Kenny Sub-Group members, by his conduct in:

- (a) As a TCI Surgeon, receiving them for a pre-surgery consultation about undergoing BAS at TCI Premises;
- (b) Promoting the System of BAS in the pre-surgery consultation;
- (c) Not warning or advising the eleventh plaintiff and the Kenny Sub-Group members that undergoing BAS under the System of BAS increases the risk of having BAS Complications;
- (d) Not resiling from the Representations as made to the public through the first to fourth defendants' marketing; and
- (e) Proceeding to carry out their BAS in accordance with the System of BAS.

24AE. The fifteenth defendant made the Representations to the eleventh plaintiff and the Kenny Sub-Group members in trade or commerce.

24AF. The sixteenth defendant made the Representations to the twelfth plaintiff and the Darshn Sub-Group members, by his conduct in:

- (a) As a TCI Surgeon, receiving them for a pre-surgery consultation about undergoing BAS at TCI Premises;
- (b) Promoting the System of BAS in the pre-surgery consultation;
- (c) Not warning or advising the twelfth plaintiff and the Darshn Sub-Group members that undergoing BAS under the System of BAS increases the risk of having BAS Complications;
- (d) Not resiling from the Representations as made to the public through the first to fourth defendants' marketing; and
- (e) Proceeding to carry out their BAS in accordance with the System of BAS.

24AG. The sixteenth defendant made the Representations to the twelfth plaintiff and the Darshn Sub-Group members in trade or commerce.

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 defendants owed the plaintiffs and group members a duty of care?~~

- ~~(b) — 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 defendants made the Representations to the plaintiffs and group members?~~
- ~~(c) — Whether the first to sixteenth defendants made the Representations to the plaintiffs and group members?~~
- ~~(d) — Whether BAS was performed negligently by the fifth defendant and/or the TCI Surgeons?~~
- ~~(e) — Whether the first to fifth defendants' System of BAS was negligent?~~
- ~~(f) — Whether the TCI Surgeons were negligent by participating in the first to fifth defendants' System of BAS;~~
- ~~(g) — Whether the defendants:~~
- ~~(xiii) contravened s 60 of the ACL;~~
 - ~~(xiv) breached their duty under the common law to exercise due of care and skill in informing the plaintiffs and group members about BAS, assessing them for BAS, performing BAS, and in managing them after they had undergone BAS;~~
 - ~~(iii) — breached a warranty implied by law into the agreement that BAS would be performed with due care and skill;~~
 - ~~(iii) — contravened a guarantee under s 61(1) of the ACL that BAS would be reasonably fit for the BAS Ppurpose implied into the agreement by s61(2) of the ACL;~~
 - ~~(iv) — contravened a guarantee under s 61(2) of the ACL that BAS would be of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results?~~
- ~~(h)(f) — Whether the Representations were misleading representations with respect to future matters for the purposes of s 4 of the ACL?~~
- ~~(i)(g) — Whether the Representations were false, misleading or deceptive and in contravention of ss 18, 29(1)(b), and 29(1)(m) and 34 of the ACL?~~

~~(j)(h) Whether the Representations were negligent representations?~~

~~(k)(i) Whether the fifth defendant devised, designed, implemented, supervised and conducted the training of TCI Surgeons?~~

~~(l)(j) Whether the fifth defendant recommended to the first, second, third and/or fourth defendants that the TCI Surgeons be accredited to perform BAS?~~

~~(m)(k) Whether the fifth defendant authorised the accreditation of the TCI Surgeons to perform BAS?~~

~~(n)(l) Whether the fifth defendant devised, designed, supervised and implemented the One Size Fits All Approach to BAS?~~

~~(o)(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?~~

~~(p) Whether the adoption of the One Size Fits All Approach to BAS was negligent?~~

~~(q) Whether the adoption of the One Size Fits All Approach increased the risk of the plaintiffs and group members suffering from the BAS Complications?~~

~~(r) Whether the seventeenth to nineteenth defendants are liable to indemnify any of the defendants for their liabilities to the plaintiffs and/or group members?~~

25. As presently known, the questions of law or fact common to the claims of group members and the plaintiffs are as set out in the document attached and marked - "Attachment 1 - List of common questions", dated 30 April 2021.

Part IV. - THE PLAINTIFFS' BAS

A. Amy Rickhuss

26. Between about ~~March~~ October 2014 and January 2015 Ms Rickhuss accessed material published or otherwise disseminated by or on behalf of the defendants at www.thecosmeticinstitute.com.au, www.facebook.com, and www.youtube.com ~~and~~ www.instagram.com.

26A. Website www.thecosmeticinstitute.com.au conveyed the Representations in writing to Ms Rickhuss when she read the material on it.

Particulars of material conveying the Representations to Ms Rickhuss during the period pleaded at [26]

- (a) “Experienced Hands”, accessed at www.thecosmeticinstitute.com.au;
- (b) “Affordable quality”, accessed at www.thecosmeticinstitute.com.au;
- (c) “Australia’s largest and most trusted cosmetic surgery clinic”, accessed at www.thecosmeticinstitute.com.au;
- (d) “We’re passionate about providing everyday Australians with superior cosmetic surgery”, accessed at www.thecosmeticinstitute.com.au;
- (e) “State of the Art – Our Facilities”, accessed at www.thecosmeticinstitute.com.au;
- (f) “Our highly skilled and friendly team”, accessed at www.thecosmeticinstitute.com.au/team;
- (g) “Our cosmetic surgeons have refined their surgical skills through further training with our resident Plastic Surgeon and Surgical Director, Dr Eddy Dona. Dr Dona trains each of our cosmetic surgeons in advanced surgical techniques such as ‘under the muscle’ placement in breast augmentation”, accessed at www.thecosmeticinstitute.com.au/plastic-surgeons-cosmetic-surgeons/
- (h) “You should have peace of mind knowing that all our processes and procedures are quality assured and certified, allowing you to experience expert and affordable treatment here in Australia”, accessed at www.thecosmeticinstitute.com.au/facilities/;
- (i) “Our purpose-built flagship clinic is fitted with state of the art equipment, and is fully accredited to the highest international standards of patient safety and surgical care,” accessed at www.thecosmeticinstitute.com.au/about/facilities/;
- (j) “We’re different from other clinics because we’ve already invested in our own purpose-built ISO9001 accredited day facility. We have a dedicated surgical team, anaesthetic team and support staff to conduct all our consultations, procedures and follow up care. This means you won’t have to pay any hospital fees, facility fees, or agency nurse fees, greatly reducing the cost of your surgery. Other surgeons are usually required to hire agency nurses and surgical suites in private hospitals or clinics to conduct the same procedures and the use of the theatre alone can increase the cost by \$5000 or more”, accessed at www.thecosmeticinstitute.com.au/affordable;

- (k) “This allows us to offer the highest standards of surgical care at highly competitive prices”, accessed at www.thecosmeticinstitute.com.au/affordable;
- (l) “This allows our cosmetic surgeons to provide exceptionally high standards of surgery at highly competitive rates”, accessed at www.thecosmeticinstitute.com.au/plastic-surgeons-cosmetic-surgeons/;
- (m) “We’ve already helped thousands of patients feel sexier and more confident in their appearance, so you can rest assured that you’re in safe hands”, accessed at www.thecosmeticinstitute.com.au/about/about-us/.

26B. A video on YouTube further conveyed the Representations to Ms Rickhuss by presenting a video walk-through of TCI Premises and then recorded interviews with women who had undergone BAS at TCI Premises.

26C. The Cosmetic Institute’s advertising, which appeared on Ms Rickhuss’s screen while she was using Facebook, also conveyed the Representations to her in writing when she read them.

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 Niroshan Sivathasan.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 85).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 87).

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

28A. The first and second defendants further made the Representations to Ms Rickhuss in their conduct in arranging and carrying out the consultation on 29 January 2015, in that:

- (a) They booked and then charged Ms Rickhuss for the pre-surgery consultation about undergoing BAS with a TCI Surgeon;
- (b) In the pre-surgery consultation, they promoted the System of BAS through Niroshan Sivathasan, who was (or was presented as) a servant or agent of the first and second defendants;
- (c) They had available for provision to Ms Rickhuss ASPs brochures about BAS;
- (d) They did not warn or advise Ms Rickhuss that the System of BAS posed an increased risk of suffering the BAS Complications;
- (e) They did not resile from the Representations.

28B. Niroshan Sivathasan conveyed the Representations to Ms Rickhuss by his conduct in that:

- (a) He received her at the pre-surgery consultation on 29 January 2015 about undergoing BAS at TCI Premises;
- (b) He promoted the System of BAS in the pre-surgery consultation by his attendance as a TCI Surgeon;
- (c) He did not warn or advise Ms Rickhuss that the System of BAS posed an increased risk of suffering the BAS Complications;
- (d) He did not resile from the Representations; and
- (e) He agreed to and proceeded to carry out BAS for Ms Rickhuss the following day in accordance with the System of BAS.

28C. In reliance upon the Representations, Ms Rickhuss agreed to undergo BAS at TCI Parramatta Premises, to be performed by Niroshan Sivathasan.

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

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

[REDACTED]

31.

[REDACTED]

[REDACTED]

[REDACTED]

[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 or on behalf of the defendants at www.thecosmeticinstitute.com.au, www.youtube.com and www.facebook.com.

37A. Website www.thecosmeticinstitute.com.au conveyed the Representations in writing to Ms Pollock when she read the material on it.

Particulars of material conveying the Representations to Ms Pollock during the period pleaded at [37]

- (a) "Meet our specialised & experienced medical team", accessed at www.thecosmeticinstitute.com.au;
- (b) "... they [TCI Surgeons] come from extensive surgical backgrounds and have been selected to have their existing skill sets further refined under the intensive training of our Surgical Director and prominent Sydney Plastic Surgeon", accessed at www.thecosmeticinstitute.com.au/plastic-surgeons-cosmetic-surgeons;
- (c) "Our state-of-the-art surgical facilities have been purpose built to the highest international standards and are subject to rigorous ISO9001 accreditation", accessed at www.thecosmeticinstitute.com.au/our-facilities/;
- (d) "So you can stay here in Australia for expert and affordable treatment within easy reach of your friends, family and home", accessed at www.thecosmeticinstitute.com.au/our-facilities/;

- (e) “Our team of highly trained and experienced surgeons are supported and mentored by our surgical director”, accessed at www.thecosmeticinstitute.com.au/dr-eddy-dona/;
- (f) “His [Eddy Dona’s] knowledge, experience and mentorship ensure our surgeons remain at the forefront of cosmetic surgery’s best practice”, accessed at www.thecosmeticinstitute.com.au/dr-eddy-dona/;
- (g) “Dr Nguyen is a well-practiced, caring and highly skilled cosmetic surgeon”, accessed at www.thecosmeticinstitute.com.au/team/dr-van-nguyen/;
- (h) “He’s [Van Nguyen] spent the past 20 years specialising in the detection and surgical treatment of skin cancer. This has allowed him to build up a successful career in public and private medicine, performing plastic, reconstructive, ENT, cardiothoracic and orthopaedic surgery”, accessed at www.thecosmeticinstitute.com.au/team/dr-van-nguyen/;
- (i) “He [Van Nguyen] is adept at enhancing both beauty and femininity and always ensures superior results for each of his patients”, accessed at www.thecosmeticinstitute.com.au/team/dr-van-nguyen/;
- (j) “You can rest assured that you are in the safe, experienced hands with Dr Nguyen”, accessed at www.thecosmeticinstitute.com.au/team/dr-van-nguyen/.

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 Van Nguyen.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 85).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 87).

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

■ [REDACTED]

39A. The first and third defendants further made the Representations to Ms Pollock in their conduct in arranging and carrying out the consultation on 7 May 2014, in that:

- (a) They booked and then charged Ms Pollock for the pre-surgery consultation about undergoing BAS with a TCI Surgeon;
- (b) In the pre-surgery consultation, they promoted the System of BAS through Van Nguyen, who was (or was presented as) a servant or agent of the first and third defendants;
- (c) They had available for provision to Ms Pollock ASPS brochures about BAS;
- (d) They did not warn or advise Ms Pollock that the System of BAS posed an increased risk of suffering the BAS Complications;
- (e) They did not resile from the Representations.

39B. Van Nguyen conveyed the Representations to Ms Pollock by his conduct in that:

- (a) He received her at the pre-surgery consultation on 7 May 2014 about undergoing BAS at TCI Premises;
- (b) He promoted the System of BAS in the pre-surgery consultation by his attendance as a TCI Surgeon;
- (c) He did not warn or advise Ms Pollock that the System of BAS posed an increased risk of suffering the BAS Complications;
- (d) He did not resile from the Representations; and
- (e) He agreed to and proceeded to carry out BAS for Ms Pollock on 3 July 2014 in accordance with the System of BAS.

39C. In reliance upon the Representations, Ms Pollock agreed to undergo BAS at TCI Bondi Premises, to be performed by Van Nguyen.

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

41. [REDACTED]

42.

[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~~ Between June and July–August 2014 Ms Bruen accessed material published or otherwise disseminated by or on behalf of the defendants at www.thecosmeticinstitute.com.au; and www.facebook.com; ~~www.youtube.com and www.instagram.com~~.

48A. Website www.thecosmeticinstitute.com.au conveyed the Representations in writing to Ms Bruen when she read the material on it.

Particulars of material conveying the Representations to Ms Bruen during the period pleaded at [48]

- (a) “Experienced Hands”, accessed at www.thecosmeticinstitute.com.au;
- (b) “Affordable quality”, accessed at www.thecosmeticinstitute.com.au;
- (c) “Australia’s largest and most trusted cosmetic surgery clinic”, accessed at www.thecosmeticinstitute.com.au;
- (d) “We’re passionate about providing everyday Australians with superior cosmetic surgery”, accessed at www.thecosmeticinstitute.com.au;
- (e) “State of the Art – Our Facilities”, accessed at www.thecosmeticinstitute.com.au;
- (f) “Our highly skilled and friendly team”, accessed at www.thecosmeticinstitute.com.au/team/;
- (g) “Our purpose-built flagship clinic is fitted with state of the art equipment, and is fully accredited to the highest international standards of patient safety

and surgical care”, accessed at www.thecosmeticinstitute.com.au/about/facilities/;

- (h) “You should have peace of mind knowing that all our processes and procedures are quality assured and certified, allowing you to experience expert and affordable treatment here in Australia”, accessed at www.thecosmeticinstitute.com.au/about/facilities/;
- (i) “We’re reshaping the industry, bringing you superior cosmetic surgery at a price you can afford, all with the comfort of knowing your procedures are performed by experienced local surgeons in our state of the art facilities here in Australia”, accessed at www.thecosmeticinstitute.com.au/about/about-us/;
- (j) “Our caring, understanding and experienced surgeons and staff...”, accessed at www.thecosmeticinstitute.com.au/about/about-us/;
- (k) “We’ve already helped thousands of patients feel sexier and more confident in their appearance, so you can rest assured that you’re in safe hands”, accessed at www.thecosmeticinstitute.com.au/about/about-us/;
- (l) “For too long the industry’s prices have been inaccessible to everyday Australians, forcing many people to take the unnecessary risk of having surgery performed abroad in unfamiliar and unhygienic medical environments with inadequate aftercare practices”, accessed at www.thecosmeticinstitute.com.au/about/about-us/;
- (m) “Our purpose-built flagship clinic is fitted with state of the art equipment, and is fully accredited to the highest international standards of patient safety and surgical care.” accessed at www.thecosmeticinstitute.com.au/about/facilities/;
- (n) “We’re different from other clinics because we’ve already invested in our own purpose-built ISO9001 accredited day facility. We have a dedicated surgical team, anaesthetic team and support staff to conduct all our consultations, procedures and follow up care. This means you won’t have to pay any hospital fees, facility fees, or agency nurse fees, greatly reducing the cost of your surgery. Other surgeons are usually required to hire agency nurses and surgical suites in private hospitals or clinics to conduct the same procedures and the use of the theatre alone can increase the cost by \$5000 or more”, accessed at www.thecosmeticinstitute.com.au/affordable/;
- (o) “This allows us to offer the highest standards of surgical care at highly competitive prices”, accessed at www.thecosmeticinstitute.com.au/affordable/;

- (p) “This allows our cosmetic surgeons to provide exceptionally high standards of surgery at highly competitive rates”, accessed at www.thecosmeticinstitute.com.au/plastic-surgeons-cosmetic-surgeons/;

48B. The Cosmetic Institute’s Facebook page also conveyed the Representations to her in writing when she accessed that page, where the Representations were displayed.

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 Victor Lee.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 85).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 87).

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

50A. The first and third defendants further made the Representations to Ms Bruen by their conduct in arranging and carrying out the consultation on 29 July 2014, in that:

- (a) They booked and then charged Ms Bruen for the pre-surgery consultation about undergoing BAS with a TCI Surgeon;
- (b) In the pre-surgery consultation, they promoted the System of BAS through Victor Lee, who was (or was presented as) a servant or agent of the first and third defendants;
- (c) They had available for provision to Ms Bruen ASPS brochures about BAS;
- (d) They did not warn or advise Ms Bruen that the System of BAS posed an increased risk of suffering the BAS Complications;

(e) They did not resile from the Representations.

50B. Victor Lee conveyed the Representations to Ms Bruen by his conduct in that:

(a) He received her at the pre-surgery consultation on 29 July 2014 about undergoing BAS at TCI Premises;

(b) He promoted the System of BAS in the pre-surgery consultation by his attendance as a TCI Surgeon;

(c) He did not warn or advise Ms Bruen that the System of BAS posed an increased risk of suffering the BAS Complications;

(d) He did not resile from the Representations; and

(e) He agreed to and proceeded to carry out BAS for Ms Bruen on 8 August 2014 in accordance with the System of BAS.

50C. In reliance upon the Representations, Ms Bruen agreed to undergo BAS at TCI Bondi Premises, to be performed by Victor Lee.

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 or on behalf of the defendants at www.thecosmeticinstitute.com.au, www.youtube.com and www.facebook.com.

57A. Website www.thecosmeticinstitute.com.au conveyed the Representations in writing to Ms Rowlands when she read the material on it.

Particulars of material conveying the Representations to Ms Rowlands during the period pleaded at [57]

- (a) “Experienced Hands”, accessed at www.thecosmeticinstitute.com.au;
- (b) “Affordable quality”, accessed at www.thecosmeticinstitute.com.au;
- (c) “Australia’s largest and most trusted cosmetic surgery clinic”, accessed at www.thecosmeticinstitute.com.au;
- (d) “We’re passionate about providing everyday Australians with superior cosmetic surgery”, accessed at www.thecosmeticinstitute.com.au;
- (e) “State of the Art – Our Facilities”, accessed at www.thecosmeticinstitute.com.au;
- (f) “Our highly skilled and friendly team”, accessed at www.thecosmeticinstitute.com.au/team;
- (g) “Our cosmetic surgeons have refined their surgical skills through further training with our resident Plastic Surgeon and Surgical Director, Dr Eddy Dona. Dr Dona trains each of our cosmetic surgeons in advanced surgical techniques such as ‘under the muscle’ placement in breast augmentation”, accessed at www.thecosmeticinstitute.com.au/plastic-surgeons-cosmetic-surgeons/;
- (h) “You should have peace of mind knowing that all our processes and procedures are quality assured and certified, allowing you to experience expert and affordable treatment here in Australia”, accessed at www.thecosmeticinstitute.com.au/facilities/;
- (i) “Our purpose-built flagship clinic is fitted with state of the art equipment, and is fully accredited to the highest international standards of patient safety and surgical care.” accessed at www.thecosmeticinstitute.com.au/about/facilities/;
- (j) “We’re different from other clinics because we’ve already invested in our own purpose-built ISO9001 accredited day facility. We have a dedicated surgical team, anaesthetic team and support staff to conduct all our consultations, procedures and follow up care. This means you won’t have to pay any hospital fees, facility fees, or agency nurse fees, greatly reducing the cost of your surgery. Other surgeons are usually required to hire agency nurses and surgical suites in private hospitals or clinics to conduct the same procedures and the use of the theatre alone can increase the cost by \$5000 or more”, accessed at www.thecosmeticinstitute.com.au/affordable;
- (k) “This allows us to offer the highest standards of surgical care at highly competitive prices”, accessed at www.thecosmeticinstitute.com.au/affordable;

(l) “This allows our cosmetic surgeons to provide exceptionally high standards of surgery at highly competitive rates”, accessed at www.thecosmeticinstitute.com.au/plastic-surgeons-cosmetic-surgeons/;

(m) “We’ve already helped thousands of patients feel sexier and more confident in their appearance, so you can rest assured that you’re in safe hands”, accessed at www.thecosmeticinstitute.com.au/about/about-us/.

57B. The Cosmetic Institute’s videos on YouTube further conveyed the Representations to Ms Rowlands when she viewed them.

57C. The Cosmetic Institute’s advertising, which appeared on Ms Rowlands’ screen while she was using Facebook, also conveyed the Representations to her in writing when she read them.

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 Chi Vien Duong.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 85).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 87).

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

59A. The first and second defendants further made the Representations to Ms Rowlands in their conduct in arranging and carrying out the consultation on 12 December 2014, in that:

(a) They booked and then charged Ms Rowlands for the pre-surgery consultation about undergoing BAS with a TCI Surgeon;

- (b) In the pre-surgery consultation, they promoted the System of BAS through Chi Vien Duong, who was (or was presented as) a servant or agent of the first and second defendants;
- (c) They had available for provision to Ms Rowlands ASPS brochures about BAS;
- (d) They did not warn or advise Ms Rowlands that the System of BAS posed an increased risk of suffering the BAS Complications;
- (e) They did not resile from the Representations.

59B. Chi Vien Duong conveyed the Representations to Ms Rowlands by his conduct in that:

- (a) He received her at the pre-surgery consultation on 12 December 2014 about undergoing BAS at TCI Premises;
- (b) He promoted the System of BAS in the pre-surgery consultation by his attendance as a TCI Surgeon;
- (c) He did not warn or advise Ms Rowlands that the System of BAS posed an increased risk of suffering the BAS Complications;
- (d) He did not resile from the Representations; and
- (e) He agreed to and proceeded to carry out BAS for Ms Rowlands the following day in accordance with the System of BAS.

59C. In reliance upon the Representations, Ms Rowlands agreed to undergo BAS at TCI Parramatta Premises, to be performed by Chi Vien Duong.

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

61. Post-operatively, Ms Rowlands' [REDACTED]
[REDACTED]
[REDACTED]

62. Post-operatively, Ms Rowlands [REDACTED]

63. Post operatively, Ms Rowlands [REDACTED]

64. Ms Rowland requires [REDACTED]

E. Lily Knowland

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

65A. Website www.thecosmeticinstitute.com.au conveyed the Representations in writing to Ms Knowland when she read the material on it.

Particulars of material conveying the Representations to Ms Knowland during the period pleaded at [65]

- (a) “Experienced Hands – Meet Our Team”, accessed at www.thecosmeticinstitute.com.au/;
- (b) “Affordable Quality – The TCI Difference”, accessed at www.thecosmeticinstitute.com.au;
- (c) “Australia’s largest and most trusted cosmetic surgery clinic”, accessed at www.thecosmeticinstitute.com.au;
- (d) “We’re passionate about providing everyday Australians with superior cosmetic surgery”, accessed at www.thecosmeticinstitute.com.au;
- (e) “State of the Art – Our Facilities”, accessed at www.thecosmeticinstitute.com.au;
- (f) “There are a number of ways in which a breast augmentation can make you feel sexier, younger and more confident...”, accessed at [“http://www.thecosmeticinstitute.com.au/procedures/breast-implants/”](http://www.thecosmeticinstitute.com.au/procedures/breast-implants/);
- (g) “Our highly skilled and friendly team”, accessed at www.thecosmeticinstitute.com.au/team/;
- (h) “We pride ourselves on exceeding our patients’ expectations in every procedure”, accessed at www.thecosmeticinstitute.com.au/team/;
- (i) “We’re committed to delivering the highest standards of clinical care”, accessed at www.thecosmeticinstitute.com.au/team/;
- (j) “Our team of highly trained and experienced cosmetic surgeons are supported and mentored by our Surgical Director and renowned Plastic and Reconstructive Surgeon, Dr Eddy Dona”, accessed at www.thecosmeticinstitute.com.au/team/dr-eddy-dona/;
- (k) “Dr Dona instils his knowledge and experience in each of our cosmetic surgeons through a rigorous training program on different surgical techniques and procedures and their aesthetic results. This allows our

cosmetic surgeons to remain on the forefront of best practice cosmetic surgery and exceed the expectations of each of our patients”, accessed at www.thecosmeticinstitute.com.au/team/dr-eddy-dona/;

- (l) “We want all our patients to feel safe, secure and well looked after throughout their entire cosmetic journey. You should have peace of mind knowing that all our processes and procedures are quality assured and certified”, accessed at www.thecosmeticinstitute.com.au/about/facilities/;
- (m) “We’re reshaping the industry, bringing you superior cosmetic surgery at a price you can afford, all with the comfort of knowing your procedures are performed by experienced local surgeons in our state of the art facilities here in Australia”, accessed at www.thecosmeticinstitute.com.au/about/about-us/;
- (n) “The Cosmetic Institute offers a wide range of cosmetic procedures designed to make you feel and look better than you ever thought possible”, accessed at www.thecosmeticinstitute.com.au/about/about-us/;
- (o) “At the cornerstone of our business is our belief in providing exceptionally high standards of clinical care that exceeds our patient’s expectation at affordable prices. This is why we offer breast implants at a fixed fee of \$5,990 with no catches”, accessed at www.thecosmeticinstitute.com.au/about/about-us/;

65B. The Cosmetic Institute’s Facebook page also conveyed the Representations to her in writing when she accessed that page, where the Representations were displayed.

65C. The Cosmetic Institute’s Instagram page also conveyed the Representations to her in writing when she accessed that page, where the Representations were displayed.

65D. The Cosmetic Institute’s advertising, which appeared on Ms Knowland’s screen while she was using Instagram, also conveyed the Representations to her in writing when she read them.

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 Van Nguyen.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 85).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 87).

67. On 20 November 2015 it was agreed that Ms Knowland would receive [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

67A. The first and fourth defendants further made the Representations to Ms Knowland in their conduct in arranging and carrying out the consultation on 20 November 2015, in that:

- (a) They booked and then charged Ms Knowland for the pre-surgery consultation about undergoing BAS with a TCI Surgeon;
- (b) In the pre-surgery consultation, they promoted the System of BAS through Van Nguyen, who was (or was presented as) a servant or agent of the first and fourth defendants;
- (c) They had available for provision to Ms Knowland ASPS brochures about BAS;
- (d) They did not warn or advise Ms Knowland that the System of BAS posed an increased risk of suffering the BAS Complications;
- (e) They did not resile from the Representations.

67B. Van Nguyen conveyed the Representations to Ms Knowland by his conduct in that:

- (a) He received her at the pre-surgery consultation on 20 November 2015 about undergoing BAS at TCI Premises;
- (b) He promoted the System of BAS in the pre-surgery consultation by his attendance as a TCI Surgeon;
- (c) He did not warn or advise Ms Knowland that the System of BAS posed an increased risk of suffering the BAS Complications;
- (d) He did not resile from the Representations; and

(e) He agreed to and proceeded to carry out BAS for Ms Knowland on 13 January 2016 in accordance with the System of BAS.

67C. In reliance upon the Representations, Ms Knowland agreed to undergo BAS at TCI Southport Premises, to be performed by Van Nguyen.

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

69. Post-operatively, Ms Knowland's [REDACTED]
[REDACTED]
[REDACTED]

70. Post-operatively, Ms Knowland [REDACTED]

71. Post-operatively, Ms Knowland [REDACTED]

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

Particulars

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [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. [REDACTED]
■ [REDACTED]
■ [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 or on behalf of the defendants at www.thecosmeticinstitute.com.au and www.instagram.com.

77FAA. Website www.thecosmeticinstitute.com.au conveyed the Representations in writing to Ms Rutherford when she read the material on it.

Particulars of material conveying the Representations to Ms Rutherford during the period pleaded at [77FA]

- (a) “Experienced Hands – Meet Our Team”, accessed at www.thecosmeticinstitute.com.au/;
- (b) “State of the Art – Our Facilities”, accessed at www.thecosmeticinstitute.com.au/;
- (c) “Affordable Quality – About Us”, accessed at www.thecosmeticinstitute.com.au/;
- (d) “We’re passionate about providing everyday Australians with superior cosmetic surgery at affordable prices”, accessed at www.thecosmeticinstitute.com.au/;
- (e) “Choose the highly experienced and skilled surgeon you feel most comfortable with for your cosmetic journey”, accessed at www.thecosmeticinstitute.com.au/procedures/breast-implants/;
- (f) “There are a number of ways in which a breast augmentation can make you feel sexier, younger and more confident”, accessed at www.thecosmeticinstitute.com.au/procedures/breast-implants/;
- (g) “Our highly skilled & friendly team”, accessed at www.thecosmeticinstitute.com.au/team/;
- (h) “... we’re committed to delivering the highest standards of clinical care”, accessed at www.thecosmeticinstitute.com.au/team/;
- (i) “You should have peace of mind knowing that all our processes and procedures are quality assured and certified, allowing you to experience

expert and affordable treatment here in Australia”, accessed at www.thecosmeticinstitute.com.au/about/facilities;

- (j) “Our purpose-built flagship clinic is fitted with state of the art equipment, and is fully accredited to the highest international standards of patient safety and surgical care”, accessed at www.thecosmeticinstitute.com.au/about/facilities;
- (k) “Our cosmetic surgeons have refined their surgical skills through further training with our resident Plastic Surgeon and Surgical Director, Dr Eddy Dona. Dr Dona trains each of our cosmetic surgeons in advanced surgical techniques such as “under the muscle” placement in breast augmentation”, accessed at www.thecosmeticinstitute.com.au/about/plastic-surgeons-cosmetic-surgeons/;
- (l) “This allows our cosmetic surgeons to provide exceptionally high standards of surgery at highly competitive rates”, accessed at www.thecosmeticinstitute.com.au/about/plastic-surgeons-cosmetic-surgeons/;
- (m) “This ensures you have the choice of surgeon, not only according to your budget but also who you trust to produce outstanding results for you”, accessed at www.thecosmeticinstitute.com.au/about/plastic-surgeons-cosmetic-surgeons/;
- (n) “They perform elective cosmetic surgery which is intended to enhance or improve a person’s natural appearance from the body’s normal structures”, accessed at www.thecosmeticinstitute.com.au/about/plastic-surgeons-cosmetic-surgeons/;
- (o) “Our streamlined processes greatly reduces out-of-pocket expenses for our patients. This allows us to offer the highest standards of surgical care at highly affordable prices”, accessed at www.thecosmeticinstitute.com.au/about/about-us/.

77FAB. The Cosmetic Institute’s Instagram page also conveyed the Representations to her in writing when she accessed that page where the Representations were displayed.

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 85);-
- (c) She conveyed that she expected to achieve the BAS results (refer to paragraph 87).

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

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

77FCA. The first and third defendants further made the Representations to Ms Rutherford in their conduct in arranging and carrying out the consultation on 15 June 2017, in that:

- (a) They booked and then charged Ms Rutherford for the pre-surgery consultation about undergoing BAS with a TCI Surgeon;
- (b) In the pre-surgery consultation, they promoted the System of BAS through Anh Tang, who was (or was presented as) a servant or agent of the first and third defendants;
- (c) They had available for provision to Ms Rutherford ASPS brochures about BAS;
- (d) They did not warn or advise Ms Rutherford that the System of BAS posed an increased risk of suffering the BAS Complications;
- (e) They did not resile from the Representations.

77FCB. Anh Tang conveyed the Representations to Ms Rutherford by his conduct in that:

- (a) He received her at the pre-surgery consultation on 15 June 2017 about undergoing BAS at TCI Premises;
- (b) He promoted the System of BAS in the pre-surgery consultation by his attendance as a TCI Surgeon;
- (c) He did not warn or advise Ms Rutherford that the System of BAS posed an increased risk of suffering the BAS Complications;
- (d) He did not resile from the Representations; and

(e) He agreed to and proceeded to carry out BAS for Ms Rutherford on 23 June 2017 in accordance with the System of BAS.

77FCC. In reliance upon the Representations, Ms Rutherford agreed to undergo BAS at Holroyd Private Hospital, to be performed by Anh Tang.

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

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

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

Particulars

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

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

Particulars

- [REDACTED]
- [REDACTED]

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

Particulars

- [REDACTED]
- [REDACTED]

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

Particulars

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

Particulars

[REDACTED]

[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]

[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 or on behalf of the defendants at www.thecosmeticinstitute.com.au, and www.facebook.com, and www.instagram.com.

77GAA. Website www.thecosmeticinstitute.com.au conveyed the Representations in writing to Ms Axen when she read the material on it.

Particulars of material conveying the Representations to Ms Axen during the period pleaded at [77GA]

(a) “Experienced Hands – Meet Our Team”, accessed at www.thecosmeticinstitute.com.au/;

(b) “Affordable Quality – The TCI Difference”, accessed at www.thecosmeticinstitute.com.au;

- (c) “Australia’s largest and most trusted cosmetic surgery clinic”, accessed at www.thecosmeticinstitute.com.au;
- (d) “We’re passionate about providing everyday Australians with superior cosmetic surgery”, accessed at www.thecosmeticinstitute.com.au;
- (e) “State of the Art – Our Facilities”, accessed at www.thecosmeticinstitute.com.au;
- (f) “There are a number of ways in which a breast augmentation can make you feel sexier, younger and more confident...”, accessed at www.thecosmeticinstitute.com.au/procedures/breast-implants/;
- (g) “Our highly skilled and friendly team”, accessed at www.thecosmeticinstitute.com.au/team/;
- (h) “We pride ourselves on exceeding our patients’ expectations in every procedure”, accessed at www.thecosmeticinstitute.com.au/team/;
- (i) “We’re committed to delivering the highest standards of clinical care”, accessed at www.thecosmeticinstitute.com.au/team/;
- (j) “Our team of highly trained and experienced cosmetic surgeons are supported and mentored by our Surgical Director and renowned Plastic and Reconstructive Surgeon, Dr Eddy Dona”, accessed at www.thecosmeticinstitute.com.au/team/dr-eddy-dona/;
- (k) “Dr Dona instils his knowledge and experience in each of our cosmetic surgeons through a rigorous training program on different surgical techniques and procedures and their aesthetic results. This allows our cosmetic surgeons to remain on the forefront of best practice cosmetic surgery and exceed the expectations of each of our patients”, accessed at www.thecosmeticinstitute.com.au/team/dr-eddy-dona/;
- (l) “We want all our patients to feel safe, secure and well looked after throughout their entire cosmetic journey. You should have peace of mind knowing that all our processes and procedures are quality assured and certified”, accessed at www.thecosmeticinstitute.com.au/about/facilities/;
- (m) “We’re reshaping the industry, bringing you superior cosmetic surgery at a price you can afford, all with the comfort of knowing your procedures are performed by experienced local surgeons in our state of the art facilities here in Australia”, accessed at www.thecosmeticinstitute.com.au/about/about-us/;
- (n) “The Cosmetic Institute offers a wide range of cosmetic procedures designed to make you feel and look better than you ever thought possible”, accessed at www.thecosmeticinstitute.com.au/about/about-us/;

- (o) “At the cornerstone of our business is our belief in providing exceptionally high standards of clinical care that exceeds our patient’s expectation at affordable prices. This is why we offer breast implants at a fixed fee of \$5,990 with no catches”, accessed at www.thecosmeticinstitute.com.au/about/about-us/.

77GAB. The Cosmetic Institute’s Facebook page also conveyed the Representations to her in writing when she accessed that page where the Representations were displayed.

77GAC. The Cosmetic Institute’s Instagram page also conveyed the Representations to her in writing when she accessed that page where the Representations were displayed.

77GAD. The Cosmetic Institute’s advertising, which appeared on Ms Axen’s screen while she was using Facebook, also conveyed the Representations to her in writing when she read them.

77GAE. The Cosmetic Institute’s advertising, which appeared on Ms Axen’s screen while she was using Instagram, also conveyed the Representations to her in writing when she read them.

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 85).
- (c) She conveyed that she expected to achieve the BAS results (refer to paragraph 87).

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77GCA. The first and second defendants further made the Representations to Ms Axen in their conduct in arranging and carrying out the consultation on 2 April 2016, in that:

- (a) They booked and then charged Ms Axen for the pre-surgery consultation about undergoing BAS with a TCI Surgeon;
- (b) In the pre-surgery consultation, they promoted the System of BAS through Napoleon Chiu, who was (or was presented as) a servant or agent of the first and second defendants;
- (c) They had available for provision to Ms Axen ASPS brochures about BAS;
- (d) They did not warn or advise Ms Axen that the System of BAS posed an increased risk of suffering the BAS Complications;
- (e) They did not resile from the Representations.

77GCB. Napoleon Chiu conveyed the Representations to Ms Axen by his conduct in that:

- (a) He received her at the pre-surgery consultation on 2 April 2016 about undergoing BAS at TCI Premises;
- (b) He promoted the System of BAS in the pre-surgery consultation by his attendance as a TCI Surgeon;
- (c) He did not warn or advise Ms Axen that the System of BAS posed an increased risk of suffering the BAS Complications;
- (d) He did not resile from the Representations; and
- (e) He agreed to and proceeded to carry out BAS for Ms Axen on 21 April 2016 in accordance with the System of BAS.

77GCC. In reliance upon the Representations, Ms Axen agreed to undergo BAS at Concord Private Hospital, to be performed by Napoleon Chiu.

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]
[REDACTED]
[REDACTED]

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

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

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

H. Sherine Zahr

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

77HAA. Website www.thecosmeticinstitute.com.au conveyed the Representations in writing to Ms Zahr when she read the material on it.

Particulars of material conveying the Representations to Ms Zahr during the period pleaded at [77HA]

- (a) "Experienced Hands", accessed at www.thecosmeticinstitute.com.au;
- (b) "Affordable quality", accessed at www.thecosmeticinstitute.com.au;
- (c) "Australia's largest and most trusted cosmetic surgery clinic", accessed at www.thecosmeticinstitute.com.au;
- (d) "We're passionate about providing everyday Australians with superior cosmetic surgery", accessed at www.thecosmeticinstitute.com.au;
- (e) "State of the Art – Our Facilities", accessed at www.thecosmeticinstitute.com.au;
- (f) "Our highly skilled and friendly team", accessed at www.thecosmeticinstitute.com.au/team;
- (g) "Our cosmetic surgeons have refined their surgical skills through further training with our resident Plastic Surgeon and Surgical Director, Dr Eddy Dona. Dr Dona trains each of our cosmetic surgeons in advanced surgical techniques such as 'under the muscle' placement in breast augmentation", accessed at www.thecosmeticinstitute.com.au/plastic-surgeons-cosmetic-surgeons/

- (h) “You should have peace of mind knowing that all our processes and procedures are quality assured and certified, allowing you to experience expert and affordable treatment here in Australia”, accessed at www.thecosmeticinstitute.com.au/facilities/;
- (i) “Our purpose-built flagship clinic is fitted with state of the art equipment, and is fully accredited to the highest international standards of patient safety and surgical care,” accessed at www.thecosmeticinstitute.com.au/about/facilities/;
- (j) “We’re different from other clinics because we’ve already invested in our own purpose-built ISO9001 accredited day facility. We have a dedicated surgical team, anaesthetic team and support staff to conduct all our consultations, procedures and follow up care. This means you won’t have to pay any hospital fees, facility fees, or agency nurse fees, greatly reducing the cost of your surgery. Other surgeons are usually required to hire agency nurses and surgical suites in private hospitals or clinics to conduct the same procedures and the use of the theatre alone can increase the cost by \$5000 or more”, accessed at www.thecosmeticinstitute.com.au/affordable/;
- (k) “This allows us to offer the highest standards of surgical care at highly competitive prices”, accessed at www.thecosmeticinstitute.com.au/affordable/;
- (l) “This allows our cosmetic surgeons to provide exceptionally high standards of surgery at highly competitive rates”, accessed at www.thecosmeticinstitute.com.au/plastic-surgeons-cosmetic-surgeons/;
- (m) “We’ve already helped thousands of patients feel sexier and more confident in their appearance, so you can rest assured that you’re in safe hands”, accessed at www.thecosmeticinstitute.com.au/about/about-us/.

77HAB. The Cosmetic Institute’s radio advertising also conveyed the Representations to her when she heard them.

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 85).

- (c) She conveyed that she expected to achieve the BAS results (refer to paragraph 87).

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 Sri Darshn.

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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77HGA. The first and third defendants further made the Representations to Ms Zahr in their conduct in arranging and carrying out the consultations on 11 April 2015, 9 May 2015 and 15 May 2015, in that:

- (a) They booked and then charged Ms Zahr for the first pre-surgery consultation about undergoing BAS with a TCI Surgeon;
- (b) In the pre-surgery consultation, they promoted the System of BAS through Sri Darshn and Daniel Kwok, who were (or were presented as) servants or agents of the first and third defendants;
- (c) They had available for provision to Ms Zahr ASPS brochures about BAS;

(d) They did not warn or advise Ms Zahr that the System of BAS posed an increased risk of suffering the BAS Complications;

(e) They did not resile from the Representations.

77HGB. Daniel Kwok conveyed the Representations to Ms Zahr by his conduct in that:

(a) He received her at the pre-surgery consultation on 15 May 2015 about undergoing BAS at TCI Premises;

(b) He promoted the System of BAS in the pre-surgery consultation by his attendance as a TCI Surgeon;

(c) He did not warn or advise Ms Zahr that the System of BAS posed an increased risk of suffering the BAS Complications;

(d) He did not resile from the Representations; and

(e) He agreed to and proceeded to carry out BAS for Ms Zahr on 4 August 2015 in accordance with the System of BAS.

77HGC. In reliance upon the Representations, Ms Zahr agreed to undergo BAS at TCI Bondi Premises, to be performed by Daniel Kwok.

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]

[REDACTED]

[REDACTED]

[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 Daniel 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 or on behalf of the defendants at www.thecosmeticinstitute.com.au and www.facebook.com.

77IAA. Website www.thecosmeticinstitute.com.au conveyed the Representations in writing to Ms Love when she read the material on it.

Particulars of material conveying the Representations to Ms Love during the period pleaded at [77IA]

- (a) “Meet our specialised & experienced medical team”, accessed at www.thecosmeticinstitute.com.au/;
- (b) “We’ve reshaped our industry to bring you honest treatments, natural results and fair pricing”, accessed at www.thecosmeticinstitute.com.au/;
- (c) “We’ll make you look and feel better than you ever thought possible”, accessed at www.thecosmeticinstitute.com.au/;
- (d) “However, they [TCI Surgeons] come from extensive surgical backgrounds and have been selected to have their existing skill sets further refined under the intensive training of our Surgical Director and prominent Sydney Plastic Surgeon”, accessed at www.thecosmeticinstitute.com.au/plastic-surgeons-and-cosmetic-surgeons/;
- (e) “Our state-of-the-art surgical facilities have been purpose built to the highest international standards and are subject to rigorous ISO9001 accreditation”, accessed at www.thecosmeticinstitute.com.au/our-facilities/;
- (f) “Our team of highly trained and experienced surgeons are supported and mentored by our surgical director”, accessed at www.thecosmeticinstitute.com.au/dr-eddy-dona/;
- (g) “His [Eddy Dona’s] knowledge, experience and mentorship ensure our surgeons remain at the forefront of cosmetic surgery’s best practice”, accessed at www.thecosmeticinstitute.com.au/dr-eddy-dona/;
- (h) “Dr Peter Val is a surgeon specialising in reconstructive surgery, breast augmentation and body contouring. His cosmetic and surgical experiences

are broad, ranging from urological, head & neck, breast and endocrine”, accessed at www.thecosmeticinstitute.com.au/meet-our-team/dr-peter-val/;

- (i) “We feel that it’s his [Pedro Valente’s] careful and thorough nature that holds him and his patients in good stead to ensure the best possible cosmetic outcome is reached in every procedure”, accessed at www.thecosmeticinstitute.com.au/meet-our-team/dr-peter-val/;

77IAB. The Cosmetic Institute’s Facebook page also conveyed the Representations to her in writing when she accessed that page, where the Representations were displayed.

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 Vealente.
- (b) She conveyed that she wished to have BAS for the BAS purpose (refer to paragraph 85).
- (c) She conveyed that she expected to achieve the BAS results (refer to paragraph 87).

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77ICA. The first and second defendants further made the Representations to Ms Love in their conduct in arranging and carrying out the consultation on 12 July 2013 in that:

- (a) They booked and then charged Ms Love for the pre-surgery consultation about undergoing BAS with a TCI Surgeon;
- (b) In the pre-surgery consultation, they promoted the System of BAS through Pedro Valente, who was (or was presented as) a servant or agent of the first and second defendants;
- (c) They had available for provision to Ms Love ASPS brochures about BAS;

(d) They did not warn or advise Ms Love that the System of BAS posed an increased risk of suffering the BAS Complications;

(e) They did not resile from the Representations.

77ICB. Pedro Valente conveyed the Representations to Ms Love by his conduct in that:

(a) He received her at the pre-surgery consultation on 12 July 2013 about undergoing BAS at TCI Premises;

(b) He promoted the System of BAS in the pre-surgery consultation by his attendance as a TCI Surgeon;

(c) He did not warn or advise Ms Love that the System of BAS posed an increased risk of suffering the BAS Complications;

(d) He did not resile from the Representations; and

(e) He agreed to and proceeded to carry out BAS for Ms Love on 28 April 2014 in accordance with the System of BAS.

77ICC. In reliance upon the Representations, Ms Love agreed to undergo BAS at TCI Parramatta Premises, to be performed by Pedro Valente.

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

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 Vukananovic (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~~ March 2013 and July 2013 Ms Gielisse accessed material published or otherwise disseminated by or on behalf of the defendants at www.thecosmeticinstitute.com.au and www.facebook.com.

77JAA. Website www.thecosmeticinstitute.com.au conveyed the Representations in writing to Ms Gielisse when she read the material on it.

Particulars of material conveying the Representations to Ms Gielisse during the period pleaded at [77JA]

- (a) “Meet our specialised & experienced medical team”, accessed at www.thecosmeticinstitute.com.au/;
- (b) “We’ve reshaped our industry to bring you honest treatments, natural results and fair pricing”, accessed at www.thecosmeticinstitute.com.au/;
- (c) “We’ll make you look and feel better than you ever thought possible”, accessed at www.thecosmeticinstitute.com.au/;
- (d) “However, they [TCI Surgeons] come from extensive surgical backgrounds and have been selected to have their existing skill sets further refined under the intensive training of our Surgical Director and prominent Sydney Plastic Surgeon”, accessed at www.thecosmeticinstitute.com.au/plastic-surgeons-and-cosmetic-surgeons/;
- (e) “Our state-of-the-art surgical facilities have been purpose built to the highest international standards and are subject to rigorous ISO9001 accreditation”, accessed at www.thecosmeticinstitute.com.au/our-facilities/;

- (f) “Our team of highly trained and experienced surgeons are supported and mentored by our surgical director”, accessed at www.thecosmeticinstitute.com.au/dr-eddy-dona/;
- (g) “His [Eddy Dona’s] knowledge, experience and mentorship ensure our surgeons remain at the forefront of cosmetic surgery’s best practice”, accessed at www.thecosmeticinstitute.com.au/dr-eddy-dona/;
- (h) “Dr Farheen Ali is an experienced surgical and cosmetic doctor”, accessed at www.thecosmeticinstitute.com.au/meet-out-team/dr-farheen-ali/;
- (i) “She [Farheen Ali] has a deep commitment to aesthetic surgery and has undertaken extensive training with our Surgical Director, Dr Eddy Dona”, accessed at www.thecosmeticinstitute.com.au/meet-out-team/dr-farheen-ali/;
- (j) “Exceptional cosmetic results are born of a focus on the complete patient journey, beginning to end”, accessed at www.thecosmeticinstitute.com.au/meet-out-team/dr-farheen-ali/.

77JAB. The Cosmetic Institute’s Facebook page also conveyed the Representations to her in writing when she accessed that page, where the Representations were displayed.

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 85).
- (c) She conveyed that she expected to achieve the BAS results (refer to paragraphs 87).

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

77JD. It was agreed that Ms Gielisse would receive [REDACTED]

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

77JDA. The first and second defendants further made the Representations to Ms Gielisse in their conduct in arranging and carrying out the consultation on 11 March 2013 in that:

- (a) They booked and then charged Ms Gielisse for the pre-surgery consultation about undergoing BAS with a TCI Surgeon;
- (b) In the pre-surgery consultation, they promoted the System of BAS through Farheen Ali, who was (or was presented as) a servant or agent of the first and second defendants;
- (c) They had available for provision to Ms Gielisse ASPS brochures about BAS;
- (d) They did not warn or advise Ms Gielisse that the System of BAS posed an increased risk of suffering the BAS Complications;
- (e) They did not resile from the Representations.

77JDB. Farheen Ali conveyed the Representations to Ms Gielisse by her conduct in that:

- (a) She received her at the pre-surgery consultation on 11 March 2013 about undergoing BAS at TCI Premises;
- (b) She promoted the System of BAS in the pre-surgery consultation by her attendance as a TCI Surgeon;
- (c) She did not warn or advise Ms Gielisse that the System of BAS posed an increased risk of suffering the BAS Complications;
- (d) She did not resile from the Representations; and
- (e) She agreed to and proceeded to carry out BAS for Ms Gielisse on 16 July 2013 in accordance with the System of BAS.

77JDC. In reliance upon the Representations, Ms Gielisse agreed to undergo BAS at TCI Parramatta Premises, to be performed by Farheen Ali.

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] (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]
[REDACTED] (the sixth procedure).

Particulars

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

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

77JL. Post-operatively, Ms Gielisse [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 or on behalf of the defendants at www.thecosmeticinstitute.com.au and www.facebook.com.

77KAA.Website www.thecosmeticinstitute.com.au conveyed the Representations in writing to Ms Turner when she read the material on it.

Particulars of material conveying the Representations to Ms Turner during the period pleaded at [77KA]

- (a) “Experienced Hands”, accessed at www.thecosmeticinstitute.com.au;
- (b) “Affordable quality”, accessed at www.thecosmeticinstitute.com.au;
- (c) “Australia’s largest and most trusted cosmetic surgery clinic”, accessed at www.thecosmeticinstitute.com.au;
- (d) “We’re passionate about providing everyday Australians with superior cosmetic surgery”, accessed at www.thecosmeticinstitute.com.au;
- (e) “State of the Art – Our Facilities”, accessed at www.thecosmeticinstitute.com.au;
- (f) “Our highly skilled and friendly team”, accessed at www.thecosmeticinstitute.com.au/team;
- (g) “Our cosmetic surgeons have refined their surgical skills through further training with our resident Plastic Surgeon and Surgical Director, Dr Eddy Dona. Dr Dona trains each of our cosmetic surgeons in advanced surgical techniques such as ‘under the muscle’ placement in breast augmentation”, accessed at www.thecosmeticinstitute.com.au/plastic-surgeons-cosmetic-surgeons/;
- (h) “You should have peace of mind knowing that all our processes and procedures are quality assured and certified, allowing you to experience expert and affordable treatment here in Australia”, accessed at www.thecosmeticinstitute.com.au/facilities/;
- (i) “Our purpose-built flagship clinic is fitted with state of the art equipment, and is fully accredited to the highest international standards of patient safety and surgical care,” accessed at www.thecosmeticinstitute.com.au/about/facilities/;
- (j) “We’re different from other clinics because we’ve already invested in our own purpose-built ISO9001 accredited day facility. We have a dedicated surgical team, anaesthetic team and support staff to conduct all our consultations, procedures and follow up care. This means you won’t have to pay any hospital fees, facility fees, or agency nurse fees, greatly reducing the cost of your surgery. Other surgeons are usually required to hire agency nurses and surgical suites in private hospitals or clinics to conduct the same

procedures and the use of the theatre alone can increase the cost by \$5000 or more”, accessed at www.thecosmeticinstitute.com.au/affordable;

- (k) “This allows us to offer the highest standards of surgical care at highly competitive _____ prices”, _____ accessed _____ at www.thecosmeticinstitute.com.au/affordable;
- (l) “This allows our cosmetic surgeons to provide exceptionally high standards of surgery at highly competitive rates”, accessed at www.thecosmeticinstitute.com.au/plastic-surgeons-cosmetic-surgeons/;
- (m) “We’ve already helped thousands of patients feel sexier and more confident in their appearance, so you can rest assured that you’re in safe hands”, accessed at www.thecosmeticinstitute.com.au/about/about-us/.

77KAB. The Cosmetic Institute’s Facebook page also conveyed the Representations to her in writing when she accessed that page, where the Representations were displayed.

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 85):-
- (c) She conveyed that she expected to achieve the BAS results (refer to paragraph 87).

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77KCA. The first and second defendants further made the Representations to Ms Turner in their conduct in arranging and carrying out the consultation on 18 June 2015 in that:

- (a) They booked and then charged Ms Turner for the pre-surgery consultation about undergoing BAS with a TCI Surgeon;

- (b) In the pre-surgery consultation, they promoted the System of BAS through James Kenny, who was (or was presented as) a servant or agent of the first and second defendants;
- (c) They had available for provision to Ms Turner ASPS brochures about BAS;
- (d) They did not warn or advise Ms Turner that the System of BAS posed an increased risk of suffering the BAS Complications;
- (e) They did not resile from the Representations.

77KCB. James Kenny conveyed the Representations to Ms Turner by his conduct in that:

- (a) He received her at the pre-surgery consultation on 18 June 2015 about undergoing BAS at TCI Premises;
- (b) He promoted the System of BAS in the pre-surgery consultation by his attendance as a TCI Surgeon;
- (c) He did not warn or advise Ms Turner that the System of BAS posed an increased risk of suffering the BAS Complications;
- (d) He did not resile from the Representations; and
- (e) He agreed to and proceeded to carry out BAS for Ms Turner on 19 June 2015 in accordance with the System of BAS.

77KCC. In reliance upon the Representations, Ms Turner agreed to undergo BAS at TCI Parramatta Premises, to be performed by James Kenny.

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]
[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 or on behalf of the defendants at www.thecosmeticinstitute.com.au and www.facebook.com and www.instagram.com.

77LAA. Website www.thecosmeticinstitute.com.au conveyed the Representations in writing to Ms Sanchez when she read the material on it.

Particulars of material conveying the Representations to Ms Sanchez during the period pleaded at [77LA]

- (a) “Experienced Hands – Meet Our Team”, accessed at www.thecosmeticinstitute.com.au/;
- (b) “State of the Art – Our Facilities”, accessed at www.thecosmeticinstitute.com.au/;
- (c) “Affordable Quality – About Us”, accessed at www.thecosmeticinstitute.com.au/;
- (d) “We’re passionate about providing everyday Australians with superior cosmetic surgery at affordable prices”, accessed at www.thecosmeticinstitute.com.au/;
- (e) “Choose the highly experienced and skilled surgeon you feel most comfortable with for your cosmetic journey”, accessed at www.thecosmeticinstitute.com.au/procedures/breast-implants/;
- (f) “There are a number of ways in which a breast augmentation can make you feel sexier, younger and more confident”, accessed at www.thecosmeticinstitute.com.au/procedures/breast-implants/;
- (g) “Our highly skilled & friendly team”, accessed at www.thecosmeticinstitute.com.au/team/;
- (h) “... we’re committed to delivering the highest standards of clinical care”, accessed at www.thecosmeticinstitute.com.au/team/;
- (i) “You should have peace of mind knowing that all our processes and procedures are quality assured and certified, allowing you to experience expert and affordable treatment here in Australia”, accessed at www.thecosmeticinstitute.com.au/about/facilities/;

- (j) “Our purpose-built flagship clinic is fitted with state of the art equipment, and is fully accredited to the highest international standards of patient safety and surgical care”, accessed at www.thecosmeticinstitute.com.au/about/facilities;
- (k) “Our cosmetic surgeons have refined their surgical skills through further training with our resident Plastic Surgeon and Surgical Director, Dr Eddy Dona. Dr Dona trains each of our cosmetic surgeons in advanced surgical techniques such as “under the muscle” placement in breast augmentation”, accessed at www.thecosmeticinstitute.com.au/about/plastic-surgeons-cosmetic-surgeons/;
- (l) “This allows our cosmetic surgeons to provide exceptionally high standards of surgery at highly competitive rates”, accessed at www.thecosmeticinstitute.com.au/about/plastic-surgeons-cosmetic-surgeons/;
- (m) “This ensures you have the choice of surgeon, not only according to your budget but also who you trust to produce outstanding results for you”, accessed at www.thecosmeticinstitute.com.au/about/plastic-surgeons-cosmetic-surgeons/;
- (n) “They perform elective cosmetic surgery which is intended to enhance or improve a person’s natural appearance from the body’s normal structures”, accessed at www.thecosmeticinstitute.com.au/about/plastic-surgeons-cosmetic-surgeons/;
- (o) “Our streamlined processes greatly reduces out-of-pocket expenses for our patients. This allows us to offer the highest standards of surgical care at highly affordable prices”, accessed at www.thecosmeticinstitute.com.au/about/about-us/.

77LAB. The Cosmetic Institute’s Facebook page also conveyed the Representations to her in writing when she accessed that page, where the Representations were displayed.

77LAC. The Cosmetic Institute’s Instagram page also conveyed the Representations to her in writing when she accessed that page, where the Representations were displayed.

77LAD. The Cosmetic Institute’s advertising, which appeared on Ms Sanchez’s screen while she was using Facebook, also conveyed the Representations to her in writing when she read them.

77LAE. The Cosmetic Institute’s advertising, which appeared on Ms Sanchez’s screen while she was using Instagram, also conveyed the Representations to her in writing when she read them.

77LFA. The first and fourth defendants further made the Representations to Ms Sanchez in their conduct in arranging and carrying out the consultations on 25 October 2016 and 11 January 2017 in that:

- (a) They booked and then charged Ms Sanchez for the pre-surgery consultation about undergoing BAS with a TCI Surgeon;
- (b) In the pre-surgery consultations, they promoted the System of BAS through James Kenny and Sri Darshn, who were (or were presented as) servants or agents of the first and fourth defendants;
- (c) They had available for provision to Ms Sanchez ASPS brochures about BAS;
- (d) They did not warn or advise Ms Sanchez that the System of BAS posed an increased risk of suffering the BAS Complications;
- (e) They did not resile from the Representations.

77LFB. Sri Darshn conveyed the Representations to Ms Sanchez by his conduct in that:

- (a) He received her at the pre-surgery consultation on 11 January 2017 about undergoing BAS at TCI Premises;
- (b) He promoted the System of BAS in the pre-surgery consultation by his attendance as a TCI Surgeon;
- (c) He did not warn or advise Ms Sanchez that the System of BAS posed an increased risk of suffering the BAS Complications;
- (d) He did not resile from the Representations; and
- (e) He agreed to and proceeded to carry out BAS for Ms Sanchez on 14 January 2017 in accordance with the System of BAS.

77LFC. In reliance upon the Representations, Ms Sanchez agreed to undergo BAS at TCI Southport Premises, to be performed by Sri Darshn.

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]

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

A. Duty of Care

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

78A. As the designer of the System of BAS, being a system of delivering a service, the fifth defendant also owed the plaintiffs and group members a duty to exercise reasonable care and skill in the design of that system.

78B. The sixth defendant owed the first plaintiff and the Sivathasan Sub-Group members a duty to exercise reasonable care and skill in the provision of advice about, in the performance of, and in the management after the performance of, BAS.

78C. The seventh defendant owed the second and fifth plaintiffs and the Nguyen Sub-Group members a duty to exercise reasonable care and skill in the provision of advice about, in the performance of, and in the management after the performance of, BAS.

78D. The eighth defendant owed the third plaintiff and the Lee Sub-Group members a duty to exercise reasonable care and skill in the provision of advice about, in the performance of, and in the management after the performance of, BAS.

78E. The ninth defendant owed the fourth plaintiff and the Duong Sub-Group members a duty to exercise reasonable care and skill in the provision of advice about, in the performance of, and in the management after the performance of, BAS.

78F. The tenth defendant owed the sixth plaintiff and the Tang Sub-Group members a duty to exercise reasonable care and skill in the provision of advice about, in the performance of, and in the management after the performance of, BAS.

78G. The eleventh defendant owed the seventh plaintiff and the Chiu Sub-Group members a duty to exercise reasonable care and skill in the provision of advice about, in the performance of, and in the management after the performance of, BAS.

78H. The twelfth defendant owed the eighth plaintiff and the Kwok Sub-Group members a duty to exercise reasonable care and skill in the provision of advice about, in the performance of, and in the management after the performance of, BAS.

78I. The thirteenth defendant owed the ninth plaintiff and the Valente Sub-Group members a duty to exercise reasonable care and skill in the provision of advice about, in the performance of, and in the management after the performance of, BAS.

78J. The fourteenth defendant owed the tenth plaintiff and the Ali Sub-Group members a duty to exercise reasonable care and skill in the provision of advice about, in the performance of, and in the management after the performance of, BAS.

78K. The fifteenth defendant owed the eleventh plaintiff and the Kenny Sub-Group members a duty to exercise reasonable care and skill in the provision of advice about, in the performance of, and in the management after the performance of, BAS.

78L. The sixteenth defendant owed the twelfth plaintiff and the Darshn Sub-Group members a duty to exercise reasonable care and skill in the provision of advice about, in the performance of, and in the management after the performance of, BAS.

B. Breach of Duty

~~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, in the performance of, and in the management after the performance of, BAS, was not provided. In undergoing BAS, there was a risk that the plaintiffs and group members might suffer harm from materialisation of the BAS Complications (the Risk of Harm).~~

79A. For the purposes of s 5B(1)(a) of the *Civil Liability Act 2002* (NSW) and s 9(1)(a) of the *Civil Liability Act 2003* (QLD), the risk of harm was known or ought to have been known to:

- (a) The first to fourth defendants, as businesses that offered and promoted the BAS to the plaintiffs and group members for profit;
- (b) The fifth defendant, as a plastic surgeon; the designer of the System of BAS; the surgeon who provided training to the TCI Surgeons to perform BAS under the System of BAS; and the 'surgical director' for the first to fourth defendants;
- (c) The sixth to sixteenth defendants, as qualified medical practitioners who offered the BAS to the plaintiffs and group members under the System of BAS, and who had received training by the fifth defendant.

79B. For the purposes of s 5B(1)(b) of the *Civil Liability Act 2002* (NSW) and s 9(1)(b) of the *Civil Liability Act 2003* (QLD), the Risk of Harm was not insignificant, in that:

- (a) The probability of BAS Complications materialising was not negligible;
- (b) The System of BAS utilised by the defendants increased the probability of BAS Complications materialising compared with BAS not performed under the System of BAS; and
- (c) Serious and even permanent injury could occur to patients as a result of BAS Complications materialising.

80. ~~The defendants breached their duty to the plaintiffs and group members by failing to exercise reasonable care and skill to avoid the BAS Complications. Not Used.~~

81. The first to fourth defendants breached their duties of care to the plaintiffs and group members by failing to take precautions in response to the Risk of Harm, which a reasonable person in their position would have taken in the circumstances in discharge of their duties.

Particulars of Negligence of First to Fourth Defendants

- (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 ~~first to fifth defendants'~~ System of BAS;
- (h) Devising and implementing the ~~first to fifth 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 ~~first to fifth 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 BAS₂ 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 ~~first to fifth 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 ~~first to fifth 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 failing to take the following precautions in response to the Risk of Harm, which a reasonable person in his position would have taken in the circumstances in discharge of his duty.

Particulars of Negligence of Fifth Defendant

- (a) Recommending to The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport that BAS be performed on women in accordance with the System of BAS and the One Size Fits All Approach;

- (b) Devising, designing, and implementing ~~or, performing, supervising or assisting in the performance of BAS in accordance with the~~ System of BAS and the One Size Fits All Approach;
- ~~(b1) Supervising the performance of BAS in accordance with the System of BAS and the One Size Fits All Approach;~~
- ~~(b2) In relation to some group members other than the plaintiffs, performing, or assisting in the performance of, BAS in accordance with the System of BAS and 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 ~~first to fifth 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) Properly supervising the TCI Anaesthetists;
- (h) Failing to regularly review and/or revise the ~~first to fifth defendants'~~ System of BAS;
- (i) Failing to devise, and advise the first to fourth defendants and the TCI Surgeons 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 training of the TCI Surgeons in relation to 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;
- (ll) In relation to some group members other than the plaintiffs, failing in the planning and performance of BAS, 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 himself in some group members other than the plaintiffs, or advise the TCI Surgeons not to perform BAS, in circumstances where BAS was considered technically difficult;
- (o) Failing to decline to perform BAS himself in some group members other than the plaintiffs, 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 not indicated;
- (p) Recommending to the first to fourth defendants and the TCI Surgeons to perform and/or performing BAS himself in some group members other than the plaintiffs 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 directly inform himself in some group members other than the plaintiffs 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 himself in some group members other than the plaintiffs 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 directly inform himself in some group members other than the plaintiffs 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) Not used. ~~The injection of local anaesthetic agents during conscious sedation of women undergoing BAS;~~
 - (v) ~~The One Size Fits All Approach to BAS;~~ Planning and performing BAS to consider differences in the individual anatomy of the patient;
 - (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 ~~first to fifth 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 and the TCI Surgeons 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 System of BAS and 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 ~~first to fifth 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~~ cause BAS Complications to materialise and cause harm to patients;
 - (ee) Failing to advise the first to fourth defendants and the TCI Surgeons to refrain from making the Representations;
 - (ff) Wrongly advising the first to fourth defendants and the TCI Surgeons 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 failing to take the following precautions in response to the Risk of Harm, which a reasonable person in his position would have taken in the circumstances in discharge of his duty.

Particulars of Negligence of the Sixth Defendant

Agreeing to participate in the System of BAS and thereby:

- (a) 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.
- (b) Failing to advise the first to fifth defendants to cease the 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 increase the risk of BAS Complications materialising and causing harm to patients, including the first plaintiff and the Sivathasan Sub-Group members;
- (c) Failing to cease performing BAS using the System of BAS when he knew or ought to have known that he had and would continue to increase the risk of BAS Complications materialising and causing harm to patients, including the first plaintiff and the Sivathasan Sub-Group members;

Participating in the System of BAS and thereby:

- (d) 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;
- (e) Failing adequately to inform the first plaintiff and the Sivathasan Sub-Group members of the BAS Complications;
- (f) 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;
- (g) Failing to carry out adequate infection control procedures for BAS on the first plaintiff and the Sivathasan Sub-Group members;
- (h) Failing in the planning and performance of BAS to consider differences in the anatomy of the first plaintiff and the Sivathasan Sub-Group members;

- (i) Failing to provide adequate review and follow up of the first plaintiff and the Sivathasan Sub-Group members following BAS;
- (j) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (k) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (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 thereby increasing the risk of BAS Complications;
- (m) 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;
- (n) 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;
- (o) Failing to inform the first plaintiff and the Sivathasan Sub-Group members that the System of BAS put them at an increased risk of the BAS Complications;
- (p) 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;
- (q) 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;
- (r) Making the Representations to the first plaintiff and the Sivathasan Sub-Group members;
- (s) Making the Representations to the first plaintiff and the Sivathasan Sub-Group members when he knew or ought to known that the first plaintiff and the

Sivathasan Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

Performance of BAS

- (t) In the alternative to (a) to (s), above, otherwise failing to exercise reasonable skill and care in performing, or in assisting in the performance of, BAS on the first plaintiff and the Sivathasan Sub-Group members.
- (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 first to fifth 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 first to fifth 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 increase the risk of BAS Complications materialising and causing harm to patients, including the first plaintiff and the Sivathasan Sub-Group members;~~
- (r) ~~Failing to cease performing BAS using the first to fifth defendants' System of BAS when he knew or ought to have known that he had and would continue to produce increase the risk of BAS Complications materialising and causing 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 and fifth plaintiffs and the Nguyen Sub-Group members by failing to take the following precautions in response to the Risk of Harm, which a reasonable person in his position would have taken in the circumstances in discharge of his duty.

Particulars of Negligence of Seventh Defendant

Agreeing to participate in the System of BAS and thereby:

- (a) 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.
- (b) Failing to advise the first to fifth defendants to cease the 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 increase the risk of BAS Complications materialising and causing harm to patients, including the second and fifth plaintiffs and the Nguyen Sub-Group members;
- (c) Failing to cease performing BAS using the System of BAS when he knew or ought to have known that he had and would continue to increase the risk of BAS Complications materialising and causing harm to patients, including the second and fifth plaintiffs and the Nguyen Sub-Group members;

Participating in the System of BAS and thereby:

- (d) Performing, or assisting in the performance of, BAS in accordance with the One Size Fits All Approach on the second and fifth plaintiffs and the Nguyen Sub-Group members;
- (e) Failing adequately to inform the second and fifth plaintiffs and the Nguyen Sub-Group members of the BAS Complications;
- (f) Failing to inform the second and fifth plaintiffs and the Nguyen Sub-Group members that they were at an increased risk of requiring revision surgery in the future;
- (g) Failing to carry out adequate infection control procedures for BAS on the second and fifth plaintiffs and the Nguyen Sub-Group members;
- (h) Failing in the planning and performance of BAS to consider differences in the anatomy of the second and fifth plaintiffs and the Nguyen Sub-Group members;
- (i) Failing to provide adequate review and follow up of the second and fifth plaintiffs and the Nguyen Sub-Group members following BAS;
- (j) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (k) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;

- (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 thereby increasing the risk of BAS Complications;
- (m) Failing to inform the second and fifth plaintiffs 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;
- (n) 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;
- (o) Failing to inform the second and fifth plaintiffs and the Nguyen Sub-Group members that the System of BAS put them at an increased risk of the BAS Complications;
- (p) Failing adequately to monitor the BAS Complications associated with the performance of the One Size Fits All Approach to BAS on the second and fifth plaintiffs and the Nguyen Sub-Group members;
- (q) 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 and fifth plaintiffs and the Nguyen Sub-Group members;
- (r) Making the Representations to the second and fifth plaintiffs and the Nguyen Sub-Group members;
- (s) Making the Representations to the second and fifth plaintiffs and the Nguyen Sub-Group members when he knew or ought to know that the second and fifth plaintiffs and the Nguyen Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

Performance of BAS

- (t) In the alternative to (a) to (s), above, otherwise failing to exercise reasonable skill and care in performing, or in assisting in the performance of, BAS on the second and fifth plaintiffs and the Nguyen Sub-Group members.
- (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 first to fifth 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 first to fifth 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 first to fifth 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 failing to take the following precautions in response to the Risk of Harm, which a reasonable person in his position would have taken in the circumstances in discharge of his duty.

Particulars of Negligence of Eighth Defendant

Agreeing to participate in the System of BAS and thereby:

- (a) 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.

- (b) Failing to advise the first to fifth defendants to cease the 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 increase the risk of BAS Complications materialising and causing harm to patients, including the third plaintiff and the Lee Sub-Group members;
- (c) Failing to cease performing BAS using the System of BAS when he knew or ought to have known that he had and would continue to increase the risk of BAS Complications materialising and causing harm to patients, including the third plaintiff and the Lee Sub-Group members;

Participating in the System of BAS and thereby:

- (d) 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;
- (e) Failing adequately to inform the third plaintiff and the Lee Sub-Group members of the BAS Complications;
- (f) 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;
- (g) Failing to carry out adequate infection control procedures for BAS on the third plaintiff and the Lee Sub-Group members;
- (h) Failing in the planning and performance of BAS to consider differences in the anatomy of the third plaintiff and the Lee Sub-Group members;
- (i) Failing to provide adequate review and follow up of the third plaintiff and the Lee Sub-Group members following BAS;
- (j) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (k) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (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 thereby increasing the risk of BAS Complications;

- (m) 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;
- (n) 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;
- (o) Failing to inform the third plaintiff and the Lee Sub-Group members that the System of BAS put them at an increased risk of the BAS Complications;
- (p) 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;
- (q) 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;
- (r) Making the Representations to the third plaintiff and the Lee Sub-Group members;
- (s) Making the Representations to the third plaintiff and the Lee Sub-Group members when he knew or ought to know that the third plaintiff and the Lee Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

Performance of BAS

- (t) In the alternative to (a) to (s), above, otherwise failing to exercise reasonable skill and care in performing, or in assisting in the performance of, BAS on the third plaintiff and the Lee Sub-Group members.
- (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 first to fifth 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 first to fifth 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 first to fifth 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 have 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 failing to take the following precautions in response to the Risk of Harm, which a reasonable person in his position would have taken in the circumstances in discharge of his duty.

Particulars of Negligence of Ninth Defendant

Agreeing to participate in the System of BAS and thereby:

- (a) 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.
- (b) Failing to advise the first to fifth defendants to cease the 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 increase the risk of BAS Complications materialising and causing harm to patients, including the fourth plaintiff and the Duong Sub-Group members;
- (c) Failing to cease performing BAS using the System of BAS when he knew or ought to have known that he had and would continue to increase the risk of BAS Complications materialising and causing harm to patients, including the fourth plaintiff and the Duong Sub-Group members;

Participating in the System of BAS and thereby:

- (d) 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;
- (e) Failing adequately to inform the fourth plaintiff and the Duong Sub-Group members of the BAS Complications;
- (f) 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;
- (g) Failing to carry out adequate infection control procedures for BAS on the fourth plaintiff and the Duong Sub-Group members;
- (h) Failing in the planning and performance of BAS to consider differences in the anatomy of the fourth plaintiff and the Duong Sub-Group members;
- (i) Failing to provide adequate review and follow up of the fourth plaintiff and the Duong Sub-Group members following BAS;
- (j) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (k) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (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 thereby increasing the risk of BAS Complications;
- (m) 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;
- (n) 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;

- (o) Failing to inform the fourth plaintiff and the Duong Sub-Group members that the System of BAS put them at an increased risk of the BAS Complications;
- (p) 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;
- (q) 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;
- (r) Making the Representations to the fourth plaintiff and the Duong Sub-Group members;
- (s) 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.

Performance of BAS

- (t) In the alternative to (a) to (s), above, otherwise failing to exercise reasonable skill and care in performing, or in assisting in the performance of, BAS on the fourth plaintiff and the Duong Sub-Group members.
- (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 first to fifth 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 first to fifth 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 first to fifth 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 known 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 failing to take the following precautions in response to the Risk of Harm, which a reasonable person in his position would have taken in the circumstances in discharge of his duty.

Particulars of Negligence of Tenth Defendant

Agreeing to participate in the System of BAS and thereby:

- (a) 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.
- (b) Failing to advise the first to fifth defendants to cease the 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 increase the risk of BAS Complications materialising and causing harm to patients, including the sixth plaintiff and the Tang Sub-Group members;
- (c) Failing to cease performing BAS using the System of BAS when he knew or ought to have known that he had and would continue to increase the risk of BAS Complications materialising and causing harm to patients, including the sixth plaintiff and the Tang Sub-Group members;

Participating in the System of BAS and thereby:

- (d) 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;
- (e) Failing adequately to inform the sixth plaintiff and the Tang Sub-Group members of the BAS Complications;
- (f) 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;

- (g) Failing to carry out adequate infection control procedures for BAS on the sixth plaintiff and the Tang Sub-Group members;
- (h) Failing in the planning and performance of BAS to consider differences in the anatomy of the sixth plaintiff and the Tang Sub-Group members;
- (i) Failing to provide adequate review and follow up of the sixth plaintiff and the Tang Sub-Group members following BAS;
- (j) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (k) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (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 thereby increasing the risk of BAS Complications;
- (m) 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;
- (n) 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;
- (o) Failing to inform the sixth plaintiff and the Tang Sub-Group members that the System of BAS put them at an increased risk of the BAS Complications;
- (p) 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;
- (q) 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;

- (r) Making the Representations to the sixth plaintiff and the Tang Sub-Group members;
- (s) 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.

Performance of BAS

- (t) In the alternative to (a) to (s), above, otherwise failing to exercise reasonable skill and care in performing, or in assisting in the performance of, BAS on the sixth plaintiff and the Tang Sub-Group members.
- ~~(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 first to fifth 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 first to fifth 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 first to fifth 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 known 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 failing to take the following precautions in response to the Risk of Harm, which a reasonable person in his position would have taken in the circumstances in discharge of his duty.

Particulars of Negligence of Eleventh Defendant

Agreeing to participate in the System of BAS and thereby:

- (a) 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.
- (b) Failing to advise the first to fifth defendants to cease the 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 increase the risk of BAS Complications materialising and causing harm to patients, including the seventh plaintiff and the Chiu Sub-Group members;
- (c) Failing to cease performing BAS using the System of BAS when he knew or ought to have known that he had and would continue to increase the risk of BAS Complications materialising and causing harm to patients, including the seventh plaintiff and the Chiu Sub-Group members;

Participating in the System of BAS and thereby:

- (d) 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;
- (e) Failing adequately to inform the seventh plaintiff and the Chiu Sub-Group members of the BAS Complications;
- (f) 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;
- (g) Failing to carry out adequate infection control procedures for BAS on the seventh plaintiff and the Chiu Sub-Group members;
- (h) Failing in the planning and performance of BAS to consider differences in the anatomy of the seventh plaintiff and the Chiu Sub-Group members;
- (i) Failing to provide adequate review and follow up of the seventh plaintiff and the Chiu Sub-Group members following BAS;

- (j) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (k) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (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 thereby increasing the risk of BAS Complications;
- (m) 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;
- (n) 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;
- (o) Failing to inform the seventh plaintiff and the Chiu Sub-Group members that the System of BAS put them at an increased risk of the BAS Complications;
- (p) 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;
- (q) 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;
- (r) Making the Representations to the seventh plaintiff and the Chiu Sub-Group members;
- (s) 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.

Performance of BAS

- (t) In the alternative to (a) to (s), above, otherwise failing to exercise reasonable skill and care in performing, or in assisting in the performance of, BAS on the seventh plaintiff and the Chiu Sub-Group members.
- ~~(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 first to fifth 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 first to fifth 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 first to fifth 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 failing to take the following precautions in response to the Risk of Harm, which a reasonable person in his position would have taken in the circumstances in discharge of his duty.

Particulars of Negligence of Twelfth Defendant

Agreeing to participate in the System of BAS and thereby:

- (a) 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.

- (b) Failing to advise the first to fifth defendants to cease the 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 increase the risk of BAS Complications materialising and causing harm to patients, including the eighth plaintiff and the Kwok Sub-Group members;
- (c) Failing to cease performing BAS using the System of BAS when he knew or ought to have known that he had and would continue to increase the risk of BAS Complications materialising and causing harm to patients, including the eighth plaintiff and the Kwok Sub-Group members;

Participating in the System of BAS and thereby:

- (d) 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;
- (e) Failing adequately to inform the eighth plaintiff and the Kwok Sub-Group members of the BAS Complications;
- (f) 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;
- (g) Failing to carry out adequate infection control procedures for BAS on the eighth plaintiff and the Kwok Sub-Group members;
- (h) Failing in the planning and performance of BAS to consider differences in the anatomy of the eighth plaintiff and the Kwok Sub-Group members;
- (i) Failing to provide adequate review and follow up of the eighth plaintiff and the Kwok Sub-Group members following BAS;
- (j) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (k) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (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 thereby increasing the risk of BAS Complications;

- (m) Failing to inform the eighth 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;
- (n) 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;
- (o) Failing to inform the eighth plaintiff and the Kwok Sub-Group members that the System of BAS put them at an increased risk of the BAS Complications;
- (p) 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;
- (q) 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;
- (r) Making the Representations to the eighth plaintiff and the Kwok Sub-Group members;
- (s) Making the Representations to the eighth plaintiff and the Kwok Sub-Group members when he knew or ought to know that the eighth plaintiff and the Kwok Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

Performance of BAS

- (t) In the alternative to (a) to (s), above, otherwise failing to exercise reasonable skill and care in performing, or in assisting in the performance of, BAS on the eighth plaintiff and the Kwok Sub-Group members.
- (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 first to fifth 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 first to fifth 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 first to fifth 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.~~

81I. The thirteenth defendant breached his duty of care to the ninth plaintiff and the Valente Sub-Group members by failing to take the following precautions in response to the Risk of Harm, which a reasonable person in his position would have taken in the circumstances in discharge of his duty.

Particulars of Negligence of Thirteenth Defendant

Agreeing to participate in the System of BAS and thereby:

- (a) 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.
- (b) Failing to advise the first to fifth defendants to cease the 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 increase the risk of BAS Complications materialising and causing harm to patients, including the ninth plaintiff and the Valente Sub-Group members;

- (c) Failing to cease performing BAS using the System of BAS when he knew or ought to have known that he had and would continue to increase the risk of BAS Complications materialising and causing harm to patients, including the ninth plaintiff and the Valente Sub-Group members;

Participating in the System of BAS and thereby:

- (d) 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;
- (e) Failing adequately to inform the ninth plaintiff and the Valente Sub-Group members of the BAS Complications;
- (f) 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;
- (g) Failing to carry out adequate infection control procedures for BAS on the ninth plaintiff and the Valente Sub-Group members;
- (h) Failing in the planning and performance of BAS to consider differences in the anatomy of the ninth plaintiff and the Valente Sub-Group members;
- (i) Failing to provide adequate review and follow up of the ninth plaintiff and the Valente Sub-Group members following BAS;
- (j) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (k) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (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 thereby increasing the risk of BAS Complications;
- (m) 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;

- (n) 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;
- (o) Failing to inform the ninth plaintiff and the Valente Sub-Group members that the System of BAS put them at an increased risk of the BAS Complications;
- (p) 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;
- (q) 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;
- (r) Making the Representations to the ninth plaintiff and the Valente Sub-Group members;
- (s) Making the Representations to the ninth plaintiff and the Valente Sub-Group members when he knew or ought to known that the ninth plaintiff and the Valente Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

Performance of BAS

- (t) In the alternative to (a) to (s), above, otherwise failing to exercise reasonable skill and care in performing, or in assisting in the performance of, BAS on the ninth plaintiff and the Valente Sub-Group members.
- (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 first to fifth 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 first to fifth 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 first to fifth 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 failing to take the following precautions in response to the Risk of Harm, which a reasonable person in her position would have taken in the circumstances in discharge of her duty.

Particulars of Negligence of Fourteenth Defendant

Agreeing to participate in the System of BAS and thereby:

- (a) 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.
- (b) Failing to advise the first to fifth defendants to cease the 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 increase the risk of BAS Complications materialising and causing harm to patients, including the tenth plaintiff and the Ali Sub-Group members;
- (c) Failing to cease performing BAS using the System of BAS when she knew or ought to have known that she had and would continue to increase the risk of BAS Complications materialising and causing harm to patients, including the tenth plaintiff and the Ali Sub-Group members;

Participating in the System of BAS and thereby:

- (d) 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;

- (e) Failing adequately to inform the tenth plaintiff and the Ali Sub-Group members of the BAS Complications;
- (f) 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;
- (g) Failing to carry out adequate infection control procedures for BAS on the tenth plaintiff and the Ali Sub-Group members;
- (h) Failing in the planning and performance of BAS to consider differences in the anatomy of the tenth plaintiff and the Ali Sub-Group members;
- (i) Failing to provide adequate review and follow up of the tenth plaintiff and the Ali Sub-Group members following BAS;
- (j) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (k) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (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 thereby increasing the risk of BAS Complications;
- (m) 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;
- (n) 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;
- (o) Failing to inform the tenth plaintiff and the Ali Sub-Group members that the System of BAS put them at an increased risk of the BAS Complications;

- (p) Failing adequately to monitor the 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 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;
- (r) Making the Representations to the tenth plaintiff and the Ali Sub-Group members;
- (s) 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.

Performance of BAS

- (t) In the alternative to (a) to (s), above, otherwise failing to exercise reasonable skill and care in performing, or in assisting in the performance of, BAS on the tenth plaintiff and the Ali Sub-Group members.
- ~~(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 first to fifth 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 first to fifth 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 first to fifth 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 failing to take the following precautions in response to the Risk of Harm, which a reasonable person in his position would have taken in the circumstances in discharge of his duty.

Particulars of Negligence of Fifteenth Defendant

Agreeing to participate in the System of BAS and thereby:

- (a) 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.
- (b) Failing to advise the first to fifth defendants to cease the 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 increase the risk of BAS Complications materialising and causing harm to patients, including the eleventh plaintiff and the Kenny Sub-Group members;
- (c) Failing to cease performing BAS using the System of BAS when he knew or ought to have known that he had and would continue to increase the risk of BAS Complications materialising and causing harm to patients, including the eleventh plaintiff and the Kenny Sub-Group members;

Participating in the System of BAS and thereby:

- (d) Performing, or assisting in the performance of, BAS in accordance with the One Size Fits All Approach on the eleventh plaintiff and the Kenny Sub-Group members;
- (e) Failing adequately to inform the eleventh plaintiff and the Kenny Sub-Group members of the BAS Complications;
- (f) 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;

- (g) Failing to carry out adequate infection control procedures for BAS on the eleventh plaintiff and the Kenny Sub-Group members;
- (h) Failing in the planning and performance of BAS to consider differences in the anatomy of the eleventh plaintiff and the Kenny Sub-Group members;
- (i) Failing to provide adequate review and follow up of the eleventh plaintiff and the Kenny Sub-Group members following BAS;
- (j) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (k) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (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 thereby increasing the risk of BAS Complications;
- (m) 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;
- (n) 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;
- (o) Failing to inform the eleventh plaintiff and the Kenny Sub-Group members that the System of BAS put them at an increased risk of the BAS Complications;
- (p) 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;
- (q) 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;

- (r) Making the Representations to the eleventh plaintiff and the Kenny Sub-Group members;
- (s) 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.

Performance of BAS

- (t) In the alternative to (a) to (s), above, otherwise failing to exercise reasonable skill and care in performing, or in assisting in the performance of, BAS on the eleventh plaintiff and the Kenny Sub-Group members.
- ~~(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 first to fifth 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 first to fifth 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 first to fifth 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 known 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 failing to take the following precautions in response to the Risk of Harm, which a reasonable person in his position would have taken in the circumstances in discharge of his duty.

Particulars of Negligence of Sixteenth Defendant

Agreeing to participate in the System of BAS and thereby:

- (a) 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.
- (b) Failing to advise the first to fifth defendants to cease the 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 increase the risk of BAS Complications materialising and causing harm to patients, including the twelfth plaintiff and the Darshn Sub-Group members;
- (c) Failing to cease performing BAS using the System of BAS when he knew or ought to have known that he had and would continue to increase the risk of BAS Complications materialising and causing harm to patients, including the twelfth plaintiff and the Darshn Sub-Group members;

Participating in the System of BAS and thereby:

- (d) 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;
- (e) Failing adequately to inform the twelfth plaintiff and the Darshn Sub-Group members of the BAS Complications;
- (f) 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;
- (g) Failing to carry out adequate infection control procedures for BAS on the twelfth plaintiff and the Darshn Sub-Group members;
- (h) Failing in the planning and performance of BAS to consider differences in the anatomy of the twelfth plaintiff and the Darshn Sub-Group members;
- (i) Failing to provide adequate review and follow up of the twelfth plaintiff and the Darshn Sub-Group members following BAS;

- (j) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
- (k) Failing to decline to perform BAS in circumstances where BAS in the absence of mastopexy or other different or additional surgical techniques were indicated;
- (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 thereby increasing the risk of BAS Complications;
- (m) 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;
- (n) 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;
- (o) Failing to inform the twelfth plaintiff and the Darshn Sub-Group members that the System of BAS put them at an increased risk of the BAS Complications;
- (p) 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;
- (q) 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;
- (r) Making the Representations to the twelfth plaintiff and the Darshn Sub-Group members;
- (s) Making the Representations to the twelfth plaintiff and the Darshn Sub-Group members when he knew or ought to know that the twelfth plaintiff and the Darshn Sub-Group members would rely on them to undergo BAS and that they were untrue or inaccurate.

Performance of BAS

- (t) In the alternative to (a) to (s), above, otherwise failing to exercise reasonable skill and care in performing, or in assisting in the performance of, BAS on the twelfth plaintiff and the Darshn Sub-Group members.
- (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 first to fifth 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 first to fifth 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 first to fifth 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.~~

C. Causation

81M. But for the first to fifth defendants' breach of duty:

- (a) The System of BAS would not have been implemented and the plaintiffs and group members would not have undergone BAS at the TCI Premises or at all; or
- (b) In the alternative, if the System of BAS were implemented, the plaintiffs and group members would not have undergone BAS at the TCI Premises or at all; or
- (c) In the alternative, BAS using the One Size Fits All Approach would not have been performed on the plaintiffs and group members; or
- (d) In the alternative, the TCI Surgeons would not have performed BAS on any of the plaintiffs and group members;
- (e) The plaintiffs would not have suffered the injuries identified in Part VII; and
- (f) The group members would not have suffered any of the BAS Complications.

81N. But for the sixth defendant's breach of duty:

- (a) The sixth defendant would not have performed BAS at TCI Premises or at all;

- (b) In the alternative, the sixth defendant would not have performed BAS on the first plaintiff or any of the Sivathasan Sub-Group members using the One Size Fits All Approach;
- (c) In the further alternative, the sixth defendant would not have performed, or assisted in the performance of, BAS on the first plaintiff or any of the Sivathasan Sub-Group members in an incompetent manner;
- (d) The first plaintiff would not have suffered the injuries identified in Part VII; and
- (e) The Sivathasan Sub-Group members would not have suffered any of the BAS Complications.

81O. But for the seventh defendant's breach of duty:

- (a) The seventh defendant would not have performed BAS at TCI Premises or at all;
- (b) In the alternative, the seventh defendant would not have performed BAS on the second and fifth plaintiffs or any of the Nguyen Sub-Group members using the One Size Fits All Approach;
- (c) In the further alternative, the seventh defendant would not have performed, or assisted in the performance of, BAS on the second and fifth plaintiffs or any of the Nguyen Sub-Group members in an incompetent manner;
- (d) The second and fifth plaintiffs would not have suffered the injuries identified in Part VII; and
- (e) The Nguyen Sub-Group members would not have suffered any of the BAS Complications.

81P. But for the eighth defendant's breach of duty:

- (a) The eighth defendant would not have performed BAS at TCI Premises or at all;
- (b) In the alternative, the eighth defendant would not have performed BAS on the third plaintiff or any of the Lee Sub-Group members using the One Size Fits All Approach;

- (c) In the further alternative, the eighth defendant would not have performed, or assisted in the performance of, BAS on the third plaintiff or any of the Lee Sub-Group members in an incompetent manner;
- (d) The third plaintiff would not have suffered the injuries identified in Part VII; and
- (e) The Lee Sub-Group members would not have suffered any of the BAS Complications.

81Q. But for the ninth defendant's breach of duty:

- (a) The ninth defendant would not have performed BAS at TCI Premises or at all;
- (b) In the alternative, the ninth defendant would not have performed BAS on the fourth plaintiff or any of the Duong Sub-Group members using the One Size Fits All Approach;
- (c) In the further alternative, the ninth defendant would not have performed, or assisted in the performance of, BAS on the fourth plaintiff or any of the Duong Sub-Group members in an incompetent manner;
- (d) The fourth plaintiff would not have suffered the injuries identified in Part VII; and
- (e) The Duong Sub-Group members would not have suffered any of the BAS Complications.

81R. But for the tenth defendant's breach of duty:

- (a) The tenth defendant would not have performed BAS at TCI Premises or at all;
- (b) In the alternative, the tenth defendant would not have performed BAS on the sixth plaintiff or any of the Tang Sub-Group members using the One Size Fits All Approach;
- (c) In the further alternative, the tenth defendant would not have performed, or assisted in the performance of, BAS on the sixth plaintiff or any of the Tang Sub-Group members in an incompetent manner;

(d) The sixth plaintiff would not have suffered the injuries identified in Part VII; and

(e) The Tang Sub-Group members would not have suffered any of the BAS Complications.

81S. But for the eleventh defendant's breach of duty:

(a) The eleventh defendant would not have performed BAS at TCI Premises or at all;

(b) In the alternative, the eleventh defendant would not have performed BAS on the seventh plaintiff or any of the Chiu Sub-Group members using the One Size Fits All Approach;

(c) In the further alternative, the eleventh defendant would not have performed, or assisted in the performance of, BAS on the seventh plaintiff or any of the Chiu Sub-Group members in an incompetent manner;

(d) The seventh plaintiff would not have suffered the injuries identified in Part VII; and

(e) The Chiu Sub-Group members would not have suffered any of the BAS Complications.

81T. But for the twelfth defendant's breach of duty:

(a) The twelfth defendant would not have performed BAS at TCI Premises or at all;

(b) In the alternative, the twelfth defendant would not have performed BAS on the eighth plaintiff or any of the Kwok Sub-Group members using the One Size Fits All Approach;

(c) In the further alternative, the twelfth defendant would not have performed, or assisted in the performance of, BAS on the eighth plaintiff or any of the Kwok Sub-Group members in an incompetent manner;

(d) The eighth plaintiff would not have suffered the injuries identified in Part VII; and

(e) The Kwok Sub-Group members would not have suffered any of the BAS Complications.

81U. But for the thirteenth defendant's breach of duty:

(a) The thirteenth defendant would not have performed BAS at TCI Premises or at all;

(b) In the alternative, the thirteenth defendant would not have performed BAS on the ninth plaintiff or any of the Valente Sub-Group members using the One Size Fits All Approach;

(c) In the further alternative, the thirteenth defendant would not have performed, or assisted in the performance of, BAS on the ninth plaintiff or any of the Valente Sub-Group members in an incompetent manner;

(d) The ninth plaintiff would not have suffered the injuries identified in Part VII; and

(e) The Valente Sub-Group members would not have suffered any of the BAS Complications.

81V. But for the fourteenth defendant's breach of duty:

(a) The fourteenth defendant would not have performed BAS at TCI Premises or at all;

(b) In the alternative, the fourteenth defendant would not have performed BAS on the tenth plaintiff or any of the Ali Sub-Group members using the One Size Fits All Approach;

(c) In the further alternative, the fourteenth defendant would not have performed, or assisted in the performance of, BAS on the tenth plaintiff or any of the Ali Sub-Group members in an incompetent manner;

(d) The tenth plaintiff would not have suffered the injuries identified in Part VII; and

(e) The Ali Sub-Group members would not have suffered any of the BAS Complications.

81W. But for the fifteenth defendant's breach of duty:

- (a) The fifteenth defendant would not have performed BAS at TCI Premises or at all;
- (b) In the alternative, the fifteenth defendant would not have performed BAS on the eleventh plaintiff or any of the Kenny Sub-Group members using the One Size Fits All Approach;
- (c) In the further alternative, the fifteenth defendant would not have performed, or assisted in the performance of, BAS on the eleventh plaintiff or any of the Kenny Sub-Group members in an incompetent manner;
- (d) The eleventh plaintiff would not have suffered the injuries identified in Part VII; and
- (e) The Kenny Sub-Group members would not have suffered any of the BAS Complications.

81X. But for the sixteenth defendant's breach of duty:

- (a) The sixteenth defendant would not have performed BAS at TCI Premises or at all;
- (b) In the alternative, the sixteenth defendant would not have performed BAS on the twelfth plaintiff or any of the Darshn Sub-Group members using the One Size Fits All Approach;
- (c) In the further alternative, the sixteenth defendant would not have performed, or assisted in the performance of, BAS on the twelfth plaintiff or any of the Darshn Sub-Group members in an incompetent manner;
- (d) The twelfth plaintiff would not have suffered the injuries identified in Part VII; and
- (e) The Darshn Sub-Group members would not have suffered any of the BAS Complications.

Part VI. - ~~COMPETITION AND CONSUMER ACT~~ AUSTRALIAN CONSUMER LAW

A. Guarantees relating to the supply of services

82. 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.

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

83A. BAS was supplied as a service:

(a) by the first to fourth defendants to the plaintiffs and group members;

(b) by the fifth defendant to the plaintiffs and group members, in that his involvement in the System of BAS as “surgical director” amounted to providing, granting or conferring the BAS to the plaintiffs and group members;

Further Particulars of the Fifth Defendant’s activity as “surgical director”

(i) Preparing, updating and maintaining the surgical training program;

(ii) Implementing the surgical training program;

(iii) Participating in quality improvement programs;

(iv) Assisting with recruitment, orientation, training and ongoing management of TCI Surgeons;

(v) Conducting medical committee meetings;

(vi) Providing reports to the first to fourth defendants in relation to TCI Surgeons’ performance levels;

(vii) Reviewing the outcomes of internal audits of a medical nature;

(viii) Occasionally supervising the performance of BAS by the TCI Surgeons;

(ix) Providing revision surgery for cases with BAS Complications.

(c) by the sixth defendant to the first plaintiff and the Sivathasan Sub-Group members;

- (d) by the seventh defendant to the second and fifth plaintiffs and the Nguyen Sub-Group members;
- (e) by the eighth defendant to the third plaintiff and the Lee Sub-Group members;
- (f) by the ninth defendant to the fourth plaintiff and the Duong Sub-Group members;
- (g) by the tenth defendant to the sixth plaintiff and the Tang Sub-Group members;
- (h) by the eleventh defendant to the seventh plaintiff and the Chiu Sub-Group members;
- (i) by the twelfth defendant to the eighth plaintiff and the Kwok Sub-Group members;
- (j) by the thirteenth defendant to the ninth plaintiff and the Valente Sub-Group members;
- (k) by the fourteenth defendant to the tenth plaintiff and the Ali Sub-Group members;
- (l) by the fifteenth defendant to the eleventh plaintiff and the Kenny Sub-Group members;
- (m) by the sixteenth defendant to the twelfth plaintiff and the Darshn Sub-Group members.

84. 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, s 4 of the Fair Trading Act 1987 (NSW), s 4 of the Fair Trading Act 1989 (QLD) and s 2 of the ACL.

85. 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).

86. 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.

87. 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).

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

89. By reason of the ~~first to fifth 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~~ supplied by the first to fourth defendants 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.

89A. By reason of the System of BAS referred to in Part II above and/or the matters referred to in paragraph 81A above, BAS acquired by the plaintiffs and group members:

- (a) was supplied by the fifth defendant 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.

89B. By reason of the System of BAS and/or the matters referred to in paragraph 81B above, BAS acquired by the first plaintiff and the Sivathasan Sub-Group members:

- (a) was supplied by the sixth defendant 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.

89C. By reason of the System of BAS and/or the matters referred to in paragraph 81C above, BAS acquired by the second and fifth plaintiffs and the Nguyen Sub-Group members:

- (a) was supplied by the seventh defendant 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.

89D. By reason of the System of BAS and/or the matters referred to in paragraph 81D above, BAS acquired by the third plaintiff and the Lee Sub-Group members:

(a) was supplied by the eighth defendant 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.

89E. By reason of the System of BAS and/or the matters referred to in paragraph 81E above, BAS acquired by the fourth plaintiff and the Duong Sub-Group members:

(a) was supplied by the ninth defendant 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.

89F. By reason of the System of BAS and/or the matters referred to in paragraph 81F above, BAS acquired by the sixth plaintiff and the Tang Sub-Group members:

(a) was supplied by the tenth defendant 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.

89G. By reason of the System of BAS and/or the matters referred to in paragraph 81G above, BAS acquired by the seventh plaintiff and the Chiu Sub-Group members:

(a) was supplied by the eleventh defendant 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;

(b) 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.

89H. By reason of the System of BAS and/or the matters referred to in paragraph 81H above, BAS acquired by the eighth plaintiff and the Kwok Sub-Group members:

- (a) was supplied by the twelfth defendant 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.

89I. By reason of the System of BAS and/or the matters referred to in paragraph 81I above, BAS acquired by the ninth plaintiff and the Valente Sub-Group members:

- (a) was supplied by the thirteenth defendant 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.

89J. By reason of the System of BAS and/or the matters referred to in paragraph 81J above, BAS acquired by the tenth plaintiff and the Ali Sub-Group members:

- (a) was supplied by the fourteenth defendant 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.

89K. By reason of the System of BAS and/or the matters referred to in paragraph 81K above, BAS acquired by the eleventh plaintiff and the Kenny Sub-Group members:

- (a) was supplied by the fifteenth defendant 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.

89L. By reason of the System of BAS and/or the matters referred to in paragraph 81L above, BAS acquired by the twelfth plaintiff and the Darshn Sub-Group members:

(a) was supplied by the sixteenth defendant 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.

90. The first to sixteenth 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.

91. The plaintiffs and group members would not have acquired BAS had they been fully aware of the nature and extent of the Failures.

92. 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.

B. Misleading or deceptive conduct and/or false or misleading representations

93. ~~Not used. In making the Representations the defendants engaged in conduct in trade or commerce.~~

94. By reason of the Failures System of BAS and/or the matters referred to in paragraph 81 above:

- (a) ~~Not used. The Representations were misleading Representations with respect to future matters for the purposes of s 4 of the ACL;~~
- (b) the making of the Representations made by the first to fourth defendants amounted to misleading or deceptive conduct by them, or conduct likely to mislead or deceive, in contravention of s 18 of the ACL;
- (b1) to the extent the Representations were with respect to future matters for the purposes of s 4 of the ACL, the first to fourth defendants did not have reasonable grounds for making the Representations;
- (c) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(b) of the ACL;
- (d) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(m) of the ACL;
- (e) further and in the alternative, the Representations amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose, of the BAS offered under the System of BAS in contravention of section 34 of the ACL. ~~were false or misleading representations in contravention of s 34 of the ACL.~~

94A. By reason of the System of BAS and/or the matters referred to in paragraph 81A above:

- (a) the making of the Representations by the fifth defendant amounted to misleading or deceptive conduct by him, or conduct likely to mislead or deceive, in contravention of s 18 of the ACL;
- (b) to the extent the Representations were with respect to future matters for the purposes of s 4 of the ACL, the fifth defendant did not have reasonable grounds for making the Representations;
- (c) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(b) of the ACL;
- (d) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(m) of the ACL;

(e) further and in the alternative, the Representations amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose, of the BAS offered under the System of BAS in contravention of section 34 of the ACL.

94B. By reason of the System of BAS and/or the matters referred to in paragraph 81B above:

(a) the making of the Representations by the sixth defendant amounted to misleading or deceptive conduct by him, or conduct likely to mislead or deceive, in contravention of s 18 of the ACL;

(b) to the extent the Representations were with respect to future matters for the purposes of s 4 of the ACL, the sixth defendant did not have reasonable grounds for making the Representations;

(c) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(b) of the ACL;

(d) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(m) of the ACL;

(e) further and in the alternative, the Representations amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose, of the BAS offered under the System of BAS in contravention of section 34 of the ACL.

94C. By reason of the System of BAS and/or the matters referred to in paragraph 81C above:

(a) the making of the Representations by the seventh defendant amounted to misleading or deceptive conduct by him, or conduct likely to mislead or deceive, in contravention of s 18 of the ACL;

(b) to the extent the Representations were with respect to future matters for the purposes of s 4 of the ACL, the seventh defendant did not have reasonable grounds for making the Representations;

(c) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(b) of the ACL;

(d) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(m) of the ACL;

(e) further and in the alternative, the Representations amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose, of the BAS offered under the System of BAS in contravention of section 34 of the ACL.

94D. By reason of the System of BAS and/or the matters referred to in paragraph 81D above:

(a) the making of the Representations by the eighth defendant amounted to misleading or deceptive conduct by him, or conduct likely to mislead or deceive, in contravention of s 18 of the ACL;

(b) to the extent the Representations were with respect to future matters for the purposes of s 4 of the ACL, the eighth defendant did not have reasonable grounds for making the Representations;

(c) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(b) of the ACL;

(d) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(m) of the ACL;

(e) further and in the alternative, the Representations amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose, of the BAS offered under the System of BAS in contravention of section 34 of the ACL.

94E. By reason of the System of BAS and/or the matters referred to in paragraph 81E above:

(a) the making of the Representations by the ninth defendant amounted to misleading or deceptive conduct by him, or conduct likely to mislead or deceive, in contravention of s 18 of the ACL;

(b) to the extent the Representations were with respect to future matters for the purposes of s 4 of the ACL, the ninth defendant did not have reasonable grounds for making the Representations;

(c) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(b) of the ACL;

(d) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(m) of the ACL;

(e) further and in the alternative, the Representations amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose, of the BAS offered under the System of BAS in contravention of section 34 of the ACL.

94F. By reason of the System of BAS and/or the matters referred to in paragraph 81F above:

(a) the making of the Representations by the tenth defendant amounted to misleading or deceptive conduct by him, or conduct likely to mislead or deceive, in contravention of s 18 of the ACL;

(b) to the extent the Representations were with respect to future matters for the purposes of s 4 of the ACL, the tenth defendant did not have reasonable grounds for making the Representations;

(c) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(b) of the ACL;

(d) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(m) of the ACL;

(e) further and in the alternative, the Representations amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose, of the BAS offered under the System of BAS in contravention of section 34 of the ACL.

94G. By reason of the System of BAS and/or the matters referred to in paragraph 81G above:

(a) the making of the Representations by the eleventh defendant amounted to misleading or deceptive conduct by him, or conduct likely to mislead or deceive, in contravention of s 18 of the ACL;

(b) to the extent the Representations were with respect to future matters for the purposes of s 4 of the ACL, the eleventh defendant did not have reasonable grounds for making the Representations;

(c) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(b) of the ACL;

(d) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(m) of the ACL;

(e) further and in the alternative, the Representations amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose, of the BAS offered under the System of BAS in contravention of section 34 of the ACL.

94H. By reason of the System of BAS and/or the matters referred to in paragraph 81H above:

(a) the making of the Representations by the twelfth defendant amounted to misleading or deceptive conduct by him, or conduct likely to mislead or deceive, in contravention of s 18 of the ACL;

(b) to the extent the Representations were with respect to future matters for the purposes of s 4 of the ACL, the twelfth defendant did not have reasonable grounds for making the Representations;

(c) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(b) of the ACL;

(d) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(m) of the ACL;

(e) further and in the alternative, the Representations amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose, of the BAS offered under the System of BAS in contravention of section 34 of the ACL.

94I. By reason of the System of BAS and/or the matters referred to in paragraph 81I above:

(a) the making of the Representations by the thirteenth defendant amounted to misleading or deceptive conduct by him, or conduct likely to mislead or deceive, in contravention of s 18 of the ACL;

(b) to the extent the Representations were with respect to future matters for the purposes of s 4 of the ACL, the thirteenth defendant did not have reasonable grounds for making the Representations;

(c) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(b) of the ACL;

(d) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(m) of the ACL;

(e) further and in the alternative, the Representations amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose, of the BAS offered under the System of BAS in contravention of section 34 of the ACL.

94J. By reason of the System of BAS and/or the matters referred to in paragraph 81J above:

(a) the making of the Representations by the fourteenth defendant amounted to misleading or deceptive conduct by her, or conduct likely to mislead or deceive, in contravention of s 18 of the ACL;

(b) to the extent the Representations were with respect to future matters for the purposes of s 4 of the ACL, the fourteenth defendant did not have reasonable grounds for making the Representations;

(c) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(b) of the ACL;

(d) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(m) of the ACL;

(e) further and in the alternative, the Representations amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose, of the BAS offered under the System of BAS in contravention of section 34 of the ACL.

94K. By reason of the System of BAS and/or the matters referred to in paragraph 81K above:

(a) the making of the Representations by the fifteenth defendant amounted to misleading or deceptive conduct by him, or conduct likely to mislead or deceive, in contravention of s 18 of the ACL;

(b) to the extent the Representations were with respect to future matters for the purposes of s 4 of the ACL, the fifteenth defendant did not have reasonable grounds for making the Representations;

(c) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(b) of the ACL;

(d) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(m) of the ACL;

(e) further and in the alternative, the Representations amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose, of the BAS offered under the System of BAS in contravention of section 34 of the ACL.

94L. By reason of the System of BAS and/or the matters referred to in paragraph 81L above:

(a) the making of the Representations by the sixteenth defendant amounted to misleading or deceptive conduct by him, or conduct likely to mislead or deceive, in contravention of s 18 of the ACL;

(b) to the extent the Representations were with respect to future matters for the purposes of s 4 of the ACL, the sixteenth defendant did not have reasonable grounds for making the Representations;

(c) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(b) of the ACL;

(d) further and in the alternative, the Representations were false or misleading representations about services in contravention of s 29(1)(m) of the ACL;

(e) further and in the alternative, the Representations amounted to conduct that was liable to mislead the public as to the nature, the characteristics, and the suitability for their purpose, of the BAS offered under the System of BAS in contravention of section 34 of the ACL.

C. Reliance

95. The plaintiffs and group members relied upon, and were induced by, the Representations made by the first to fourth defendants to acquire BAS.

95A. The plaintiffs and group members relied upon, and were induced by, the Representations made by the fifth defendant to acquire BAS.

95B. The first plaintiff and the Sivathasan Sub-Group members relied upon, and were induced by, the Representations made by the sixth defendant to acquire BAS.

95C. The second and fifth plaintiffs and the Nguyen Sub-Group members relied upon, and were induced by, the Representations made by the seventh defendant to acquire BAS.

95D. The third plaintiff and the Lee Sub-Group members relied upon, and were induced by, the Representations made by the eighth defendant to acquire BAS.

95E. The fourth plaintiff and the Duong Sub-Group members relied upon, and were induced by, the Representations made by the ninth defendant to acquire BAS.

95F. The sixth plaintiff and the Tang Sub-Group members relied upon, and were induced by, the Representations made by the tenth defendant to acquire BAS.

95G. The seventh plaintiff and the Chiu Sub-Group members relied upon, and were induced by, the Representations made by the eleventh defendant to acquire BAS.

95H. The eighth plaintiff and the Kwok Sub-Group members relied upon, and were induced by, the Representations made by the twelfth defendant to acquire BAS.

95I. The ninth plaintiff and the Valente Sub-Group members relied upon, and were induced by, the Representations made by the thirteenth defendant to acquire BAS.

95J. The tenth plaintiff and the Ali Sub-Group members relied upon, and were induced by, the Representations made by the fourteenth defendant to acquire BAS.

95K. The eleventh plaintiff and the Kenny Sub-Group members relied upon, and were induced by, the Representations made by the fifteenth defendant to acquire BAS.

95L. The twelfth plaintiff and the Darshn Sub-Group members relied upon, and were induced by, the Representations made by the sixteenth defendant to acquire BAS.

Part VII. - INJURY LOSS AND DAMAGE

A. All plaintiffs and group members

96. The plaintiffs and group members suffered injury, loss and/or damage by reason that:

- (a) the first to fifth defendants were negligent;
- (b) not used ~~The Representations were negligent;~~
- (c) not used ~~further or in the alternative, the Representations were false, misleading and deceptive pursuant to ss 4, 18, 29 and 34 of the ACL;~~
- (d) the ~~defendants'~~ services provided by the first to fifth defendants were not fit for the BAS Purpose; and

- (e) the defendants' services provided by the first to fifth defendants 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.

96A. The injuries, loss and damage suffered by the plaintiffs and group members are as follows:

In respect of the plaintiffs:

The injuries and disabilities set out in the statement of particulars filed and served for each plaintiff in the proceedings.

Particulars of Injuries In respect of the group members:

The injuries, loss and damage are not yet known and cannot be ascertained unless and until those instructing the plaintiffs take detailed instructions from all group members on individual issues relevant to the determination of those individual group members' claims. Such instructions will be obtained following opt out and the determination of the identified common issues. The injuries, loss and damage are expected to include the BAS Complications and any injuries, loss or damage in consequence such as pain and psychiatric injury.

96B. The first to fifth defendants are liable to compensate each of the plaintiffs and group members for their injury, loss and damage.

In respect of the plaintiffs

The damages claimed by the plaintiffs are set out in the statements of particulars filed and served for each plaintiff in the proceedings.

In respect of the group members

The particulars of the damages claimed are not yet known and cannot be ascertained unless and until those instructing the plaintiffs take detailed instructions from all group members on individual issues relevant to the determination of those individual group members' claims. Such instructions will be obtained following opt out and the determination of the identified common issues. Damages for personal injury are expected to include:

- (a) Costs associated with revision surgery;
(b) Costs associated with psychiatric or psychological services;

- (c) Health care expenses and medical monitoring;
- (d) Other out-of-pocket expenses;
- (e) Economic loss;
- (f) Need for gratuitous and/or commercial care; and
- (g) Non-economic loss.

96C. Alternatively, if any of the plaintiffs or group members have not suffered injury, they have suffered loss and damage by the first to fifth defendants' contraventions of ss 18, 29 and 34 of the ACL, in the form of:

- (a) distress and disappointment at the poor aesthetic outcome of the BAS;
- (b) economic loss, including for the costs of rectifying the poor aesthetic outcome of the BAS.

B. Individual plaintiffs and sub-group members

96D. The first plaintiff and the Sivathasan Sub-Group members suffered injury, loss and damage by reason that:

- (a) the sixth defendant was negligent;
- (b) the services provided by the sixth defendant were not fit for the BAS Purpose; and,
- (c) the services provided by the sixth defendant were not of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results expected by the first plaintiff and the Sivathasan Sub-Group members.

96E. The sixth defendant is liable to compensate the first plaintiff and the Sivathasan Sub-Group members for their injury, loss and damage as particularised in paragraphs 96A and 96B above.

96F. Alternatively, if the first plaintiff or any of the Sivathasan Sub-Group members have not suffered injury, they have suffered loss and damage by the sixth defendant's contraventions of ss 18, 29 and 34 of the ACL, in the form of:

- (a) distress and disappointment at the poor aesthetic outcome of the BAS;

(b) economic loss, including for the costs of rectifying the poor aesthetic outcome of the BAS.

96G. The second and fifth plaintiffs and the Nguyen Sub-Group members suffered injury, loss and damage by reason that:

- (a) the seventh defendant was negligent;
- (b) the services provided by the seventh defendant were not fit for the BAS Purpose; and,
- (c) the services provided by the seventh defendant were not of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results expected by the second and fifth plaintiffs and the Nguyen Sub-Group members.

96H. The seventh defendant is liable to compensate the second and fifth plaintiffs and the Nguyen Sub-Group members for their injury, loss and damage as particularised in paragraphs 96A and 96B above.

96I. Alternatively, if the second or fifth plaintiffs or any of the Nguyen Sub-Group members have not suffered injury, they have suffered loss and damage by the seventh defendant's contraventions of ss 18, 29 and 34 of the ACL, in the form of:

- (a) distress and disappointment at the poor aesthetic outcome of the BAS;
- (b) economic loss, including for the costs of rectifying the poor aesthetic outcome of the BAS.

96J. The third plaintiff and the Lee Sub-Group members suffered injury, loss and damage by reason that:

- (a) the eighth defendant was negligent;
- (b) the services provided by the eighth defendant were not fit for the BAS Purpose; and,
- (c) the services provided by the eighth defendant were not of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results expected by the third plaintiff and the Lee Sub-Group members.

96K. The eighth defendant is liable to compensate the third plaintiff and the Lee Sub-Group members for their injury, loss and damage as particularised in paragraphs 96A and 96B above.

96L. Alternatively, if the third plaintiff or any of the Lee Sub-Group members have not suffered injury, they have suffered loss and damage by the eighth defendant's contraventions of ss 18, 29 and 34 of the ACL, in the form of:

- (a) distress and disappointment at the poor aesthetic outcome of the BAS;
- (b) economic loss, including for the costs of rectifying the poor aesthetic outcome of the BAS.

96M. The fourth plaintiff and the Duong Sub-Group members suffered injury, loss and damage by reason that:

- (a) the ninth defendant was negligent;
- (b) the services provided by the ninth defendant were not fit for the BAS Purpose; and,
- (c) the services provided by the ninth defendant were not of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results expected by the fourth plaintiff and the Duong Sub-Group members.

96N. The ninth defendant is liable to compensate the fourth plaintiff and the Duong Sub-Group members for their injury, loss and damage as particularised in paragraphs 96A and 96B above.

96O. Alternatively, if the fourth plaintiff or any of the Duong Sub-Group members have not suffered injury, they have suffered loss and damage by the ninth defendant's contraventions of ss 18, 29 and 34 of the ACL, in the form of:

- (a) distress and disappointment at the poor aesthetic outcome of the BAS;
- (b) economic loss, including for the costs of rectifying the poor aesthetic outcome of the BAS.

96P. The sixth plaintiff and the Tang Sub-Group members suffered injury, loss and damage by reason that:

- (a) the tenth defendant was negligent;
- (b) the services provided by the tenth defendant were not fit for the BAS Purpose; and,
- (c) the services provided by the tenth defendant were not of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results expected by the sixth plaintiff and the Tang Sub-Group members.

96Q. The tenth defendant is liable to compensate the sixth plaintiff and the Tang Sub-Group members for their injury, loss and damage as particularised in paragraphs 96A and 96B above.

96R. Alternatively, if the sixth plaintiff or any of the Tang Sub-Group members have not suffered injury, they have suffered loss and damage by the tenth defendant's contraventions of ss 18, 29 and 34 of the ACL, in the form of:

- (a) distress and disappointment at the poor aesthetic outcome of the BAS;
- (b) economic loss, including for the costs of rectifying the poor aesthetic outcome of the BAS.

96S. The seventh plaintiff and the Chiu Sub-Group members suffered injury, loss and damage by reason that:

- (a) the eleventh defendant was negligent;
- (b) the services provided by the eleventh defendant were not fit for the BAS Purpose; and,
- (c) the services provided by the eleventh defendant were not of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results expected by the seventh plaintiff and the Chiu Sub-Group members.

96T. The eleventh defendant is liable to compensate the seventh plaintiff and the Chiu Sub-Group members for their injury, loss and damage as particularised in paragraphs 96A and 96B above.

96U. Alternatively, if the seventh plaintiff or any of the Chiu Sub-Group members have not suffered injury, they have suffered loss and damage by the eleventh defendant's contraventions of ss 18, 29 and 34 of the ACL, in the form of:

(a) distress and disappointment at the poor aesthetic outcome of the BAS;

(b) economic loss, including for the costs of rectifying the poor aesthetic outcome of the BAS.

96V. The eighth plaintiff and the Kwok Sub-Group members suffered injury, loss and damage by reason that:

(a) the twelfth defendant was negligent;

(b) the services provided by the twelfth defendant were not fit for the BAS Purpose; and,

(c) the services provided by the twelfth defendant were not of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results expected by the eighth plaintiff and the Kwok Sub-Group members.

96W. The twelfth defendant is liable to compensate the eighth plaintiff and the Kwok Sub-Group members for their injury, loss and damage as particularised in paragraphs 96A and 96B above.

96X. Alternatively, if the eighth plaintiff or any of the Kwok Sub-Group members have not suffered injury, they have suffered loss and damage by the twelfth defendant's contraventions of ss 18, 29 and 34 of the ACL, in the form of:

(a) distress and disappointment at the poor aesthetic outcome of the BAS;

(b) economic loss, including for the costs of rectifying the poor aesthetic outcome of the BAS.

96Y. The ninth plaintiff and the Valente Sub-Group members suffered injury, loss and damage by reason that:

(a) the thirteenth defendant was negligent;

(b) the services provided by the thirteenth defendant were not fit for the BAS Purpose; and,

(c) the services provided by the thirteenth defendant were not of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results expected by the ninth plaintiff and the Valente Sub-Group members.

96Z. The thirteenth defendant is liable to compensate the ninth plaintiff and the Valente Sub-Group members for their injury, loss and damage as particularised in paragraphs 96A and 96B above.

96AA. Alternatively, if the ninth plaintiff or any of the Valente Sub-Group members have not suffered injury, they have suffered loss and damage by the thirteenth defendant's contraventions of ss 18, 29 and 34 of the ACL, in the form of:

- (a) distress and disappointment at the poor aesthetic outcome of the BAS;
- (b) economic loss, including for the costs of rectifying the poor aesthetic outcome of the BAS.

96AB. The tenth plaintiff and the Ali Sub-Group members suffered injury, loss and damage by reason that:

- (a) the fourteenth defendant was negligent;
- (b) the services provided by the fourteenth defendant were not fit for the BAS Purpose; and,
- (c) the services provided by the fourteenth defendant were not of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results expected by the tenth plaintiff and the Ali Sub-Group members.

96AC. The fourteenth defendant is liable to compensate the tenth plaintiff and the Ali Sub-Group members for their injury, loss and damage as particularised in paragraphs 96A and 96B above.

96AD. Alternatively, if the tenth plaintiff or any of the Ali Sub-Group members have not suffered injury, they have suffered loss and damage by the fourteenth defendant's contraventions of ss 18, 29 and 34 of the ACL, in the form of:

- (a) distress and disappointment at the poor aesthetic outcome of the BAS;
- (b) economic loss, including for the costs of rectifying the poor aesthetic outcome of the BAS.

96AE. The eleventh plaintiff and the Kenny Sub-Group members suffered injury, loss and damage by reason that:

- (a) the fifteenth defendant was negligent;

- (b) the services provided by the fifteenth defendant were not fit for the BAS Purpose; and,
- (c) the services provided by the fifteenth defendant were not of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results expected by the eleventh plaintiff and the Kenny Sub-Group members.

96AF. The fifteenth defendant is liable to compensate the eleventh plaintiff and the Kenny Sub-Group members for their injury, loss and damage as particularised in paragraphs 96A and 96B above.

96AG. Alternatively, if the eleventh plaintiff or any of the Kenny Sub-Group members have not suffered personal injury, they have suffered loss and damage by the fifteenth defendant's contraventions of ss 18, 29 and 34 of the ACL, in the form of:

- (a) distress and disappointment at the poor aesthetic outcome of the BAS;
- (b) economic loss, including for the costs of rectifying the poor aesthetic outcome of the BAS.

96AH. The twelfth plaintiff and the Darshn Sub-Group members suffered injury, loss and damage by reason that:

- (a) the sixteenth defendant was negligent;
- (b) the services provided by the sixteenth defendant were not fit for the BAS Purpose; and,
- (c) the services provided by the sixteenth defendant were not of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results expected by the twelfth plaintiff and the Darshn Sub-Group members.

96AI. The sixteenth defendant is liable to compensate the twelfth plaintiff and the Darshn Sub-Group members for their injury, loss and damage as particularised in paragraphs 96A and 96B above.

96AJ. Alternatively, if the twelfth plaintiff or any of the Darshn Sub-Group members have not suffered injury, they have suffered loss and damage by the sixteenth defendant's contraventions of ss 18, 29 and 34 of the ACL, in the form of:

- (a) distress and disappointment at the poor aesthetic outcome of the BAS;

(b) economic loss, including for the costs of rectifying the poor aesthetic outcome of the BAS.

Part VIII – CLAIMS AGAINST INSURERS

A. Claims against Newline

97. Newline entered into a policy of insurance which named the fifth defendant, TCI Parramatta, TCI and TCI Bondi as the insured for the period 28 July 2014 to 30 June 2015, the terms of which are found in a document entitled Newline Group Medical Malpractice, version 02-13 Medical Malpractice - costs inclusive (the **2014/15 Policy**).

Particulars

Policy number 04012

The fifth defendant is an Insured because he was a principal or director of the named insured, and was therefore an “insured person” and an “Insured” as those expressions are defined under clause 7 of the 2014/15 Policy.

98. Newline entered into a policy of insurance which named the fifth defendant, TCI Parramatta, TCI Bondi and TCI as the Insured for the period 30 June 2015 to 30 June 2016, the terms of which are found in a document entitled Newline Group Medical Malpractice, version 02-13 Medical Malpractice - costs inclusive (the **2015/16 Policy**).

Particulars

Policy number 04012

The fifth defendant is an Insured because he was a principal or director of the named insured, and was therefore an “insured person” and an “Insured” as those expressions are defined under clause 7 of the 2015/16 Policy.

99. The 2015/16 Policy also named TCI Southport as an Insured from on or about 1 August 2015.

100. It was a term of the 2014/15 Policy and the 2015/16 Policy that Newline would indemnify the Insured against civil liability for Loss arising from Malpractice in the provision of Healthcare Services, where:

(a) Loss was defined to include Defence costs, as that term is defined in each Policy and compensatory damages payable by the Insured pursuant to an award or judgment entered against it;

- (b) Malpractice was defined as a breach of a professional duty of care; and
 - (c) Healthcare Services was defined as any care, treatment, advice, service or goods provided in respect of the physical or mental health of a person admitted to the care of the Insured and arising directly from the Insured's conduct of its business.
101. It was a term of the 2014/15 Policy and the 2015/16 Policy that Newline would indemnify the Insured against civil liability for loss arising from any actual or alleged misleading or deceptive conduct under, inter alia, the *Competition and Consumer Act 2010* (Cth), provided such conduct by the Insured was unintentional and was committed in the provision of Healthcare Services as defined in each Policy.
102. It was a term of the 2014/15 Policy and the 2015/16 Policy that Newline would indemnify the Insured as set out in paragraphs 100 and 101 for any Claims made and notified to Newline during the periods of insurance, where Claim was defined as a written demand for or an assertion of a right to civil compensation or civil damages in respect of any liability insured under the Policies or a written intimation of an intention to seek such compensation or damages.
103. Claims by the first to fourth, ninth and eleventh plaintiffs were notified to Newline as follows:
- (a) For Ms Rickhuss (TCI Parramatta), on 6 February 2015 under the 2014/15 Policy;
 - (b) For Ms Pollock (TCI Bondi), on 12 August 2014 under the 2014/15 Policy;
 - (c) For Ms Bruen (TCI Bondi), on 24 September 2015 under the 2015/16 Policy;
 - (d) For Ms Rowlands (TCI Parramatta), on 8 October 2015 under the 2015/16 Policy;
 - (e) For Ms Love (TCI Parramatta), on 30 October 2015 under the 2015/16 Policy;
 - (f) For Ms Turner (TCI Parramatta), on 4 March 2016 under the 2015/16 Policy.
104. In the circumstances, Newline is obliged to indemnify the fifth defendant, TCI, TCI Parramatta and TCI Bondi for their respective liabilities to Ms Rickhuss, Ms Pollock,

Ms Bruen, Ms Rowlands, Ms Love and Ms Turner for damages and costs in these proceedings.

105. Group members other than Ms Rickhuss, Ms Pollock, Ms Bruen, Ms Rowlands, Ms Love and Ms Turner had surgery performed at the premises conducted by TCI, TCI Parramatta, TCI Southport or TCI Bondi in the period during which the 2014/15 Policy and 2015/2016 Policy were in force.
106. A number of group members other than Ms Rickhuss, Ms Pollock, Ms Bruen, Ms Rowlands, Ms Love and Ms Turner had claims and/or factual circumstances that might give rise to claims, which were notified to Newline in the periods during which the 2014/15 Policy and 2015/16 Policy were in force and which would fall within the provisions of those policies referred to at paragraphs 100 to 102 above.

Particulars

The names of all relevant group members are not yet known. The group members whose claims and/or circumstances that might give rise to claims, in the periods during which the 2014/15 Policy and 2015/16 Policy were in force, are known to Newline.

107. In the circumstances, Newline is obliged to indemnify the fifth defendant, TCI, TCI Parramatta, TCI Bondi and TCI Southport for their respective liabilities to group members other than Ms Rickhuss, Ms Pollock, Ms Bruen, Ms Rowlands, Ms Love and Ms Turner for damages and costs in these proceedings.

B. Claims against Allied World

108. Allied World entered into a policy of insurance which included the fifth defendant, TCI, TCI Parramatta, TCI Bondi and TCI Southport as the Insured for the period 30 June 2016 to 30 June 2017, the terms of which are found in the document entitled Allied World Healthcare Liability Package Policy, with wording version HCAUS 00002 100 (08/15) (the **Allied World Policy**).

Particulars

The fifth defendant is an Insured because he was a principal, director or manager of the named insured, and was therefore an “insured individual” and an “Insured” as those expressions are defined under clause 7 of the Allied World Policy.

109. The retroactive date for the Allied World Policy is 6 September 2011.
110. It was a term of the Allied World Policy that Allied World would indemnify the Insured for damages the Insured was legally liable to pay on account of patient injury caused by an incident after the retroactive date and before the end of the policy period where:
- (a) Damages was defined as including compensatory damages and claimant's costs;
 - (b) Patient injury was defined as including injury sustained by a natural person arising in connection with the rendering or failure to render healthcare treatment by the Insured or by a person acting for or on behalf of the Insured or from the Insured's premises;
 - (c) Incident was defined as including an act, error or omission of the Insured, or a person acting for or on behalf of the Insured or from the Insured's premises in breach of professional duty in rendering or failing to render professional healthcare services as that term is defined in the Allied World Policy;
 - (d) Claim was defined as a demand or assertion of a right or entitlement made against the Insured for damages or the intimation by a person of the intention to seek such damages, provided such demand, assertion or intimation was communicated to the Insured;
111. It was a term of the Allied World Policy that Allied World would indemnify the Insured as set out in paragraphs 108 to 110 for any Claims made during the policy period and notified to Allied World as soon as reasonably practicable and no later than 30 days after the end of the policy period, where:
- (a) Claim was defined as a written demand for or an assertion of a right to civil compensation or civil damages in respect of any liability insured under the Policies or a written intimation of an intention to seek such compensation or damages; and
 - (b) Circumstance was defined as any fact or circumstance which might give rise to a claim.
112. Claims by the fifth to eighth, tenth and twelfth plaintiffs were notified to Allied World as follows:

- (a) For Ms Knowland (TCI Southport), on 6 July 2017 or alternatively 12 May 2017 as part of the notification of a Statement of Claim in the Supreme Court brought by Ms Rickhuss, Ms Pollock, Ms Zahr, Ms Rowlands and Ms Knowland in their own right and on behalf of group members;
 - (b) For Ms Zahr (TCI Bondi), on 25 January 2017 or alternatively on 12 May 2017 as part of the notification of a Statement of Claim in the Supreme Court brought by Ms Rickhuss, Ms Pollock, Ms Zahr, Ms Rowlands and Ms Knowland in their own right and on behalf of group members;
 - (c) For Ms Rutherford (TCI Bondi), on 12 May 2017 as part of the notification of a Statement of Claim in the Supreme Court brought by Ms Rickhuss, Ms Pollock, Ms Zahr, Ms Rowlands and Ms Knowland in their own right and on behalf of group members, including Ms Rutherford;
 - (d) For Ms Axen (TCI Parramatta), on 12 May 2017 as part of the notification of a Statement of Claim in the Supreme Court brought by Ms Rickhuss, Ms Pollock, Ms Zahr, Ms Rowlands and Ms Knowland in their own right and on behalf of group members, including Ms Axen;
 - (e) For Ms Gielisse (TCI Parramatta), on 12 May 2017 as part of the notification of a Statement of Claim in the Supreme Court brought by Ms Rickhuss, Ms Pollock, Ms Zahr, Ms Rowlands and Ms Knowland in their own right and on behalf of group members, including Ms Gielisse;
 - (f) For Ms Sanchez (TCI Southport), on 12 May 2017 as part of the notification of a Statement of Claim in the Supreme Court brought by Ms Rickhuss, Ms Pollock, Ms Zahr, Ms Rowlands and Ms Knowland in their own right and on behalf of group members, including Ms Sanchez.
113. In the circumstances, Allied World is obliged to indemnify the fifth defendant, TCI, TCI Parramatta, TCI Bondi and TCI Southport for their respective liabilities to Ms Knowland, Ms Zahr, Ms Rutherford, Ms Axen, Ms Gielisse and Ms Sanchez, for damages and costs in these proceedings.
114. Group members other than Ms Knowland, Ms Zahr, Ms Rutherford, Ms Axen, Ms Gielisse and Ms Sanchez had surgery performed at the premises conducted by TCI, TCI

Parramatta, TCI Bondi and TCI Southport in the period during which the Allied World Policy was in force.

115. A number of group members other than Ms Knowland, Ms Zahr, Ms Rutherford, Ms Axen, Ms Gielisse and Ms Sanchez, had claims and/or factual circumstances that might give rise to claims, which were notified to Allied World in the period during which the Allied World Policy was in force and which would fall within the provisions of that policy referred to at paragraphs 108 to 111 above.

Particulars

The names of all relevant group members are not yet known. Some of the names of group members whose claims and/or circumstances that might give rise to claims, in the period during which the Allied World Policy was in force, are known to Allied World. On 12 May 2017 and/or during the policy period for the Allied World Policy, Allied World was notified of claims for damages and costs to be pursued against TCI, TCI Parramatta, TCI Bondi and TCI Southport by way of Statement of Claim in the Supreme Court of New South Wales by Ms Rickhuss, Ms Pollock, Ms Zahr, Ms Rowlands and Ms Knowland in their own right and on behalf of group members. Notification of the Statement of Claim constituted notification of the claims of Group members other than Ms Knowland, Ms Zahr, Ms Rutherford, Ms Axen, Ms Gielisse and Ms Sanchez and/or factual circumstances that might give rise to claims.

116. In the circumstances, Allied World is obliged to indemnify the fifth defendant, TCI, TCI Parramatta, TCI Bondi and TCI Southport for their respective liabilities to group members other than Ms Knowland, Ms Zahr, Ms Rutherford, Ms Axen, Ms Gielisse and Ms Sanchez for damages and costs in these proceedings.

C. Claim against MDANI

117. MDANI entered into a policy of insurance with the fifth defendant for the period 1 July 2016 to 30 June 2017 to insure him for his professional liability as a plastic and cosmetic surgeon (the **MDANI Policy**).

Particulars

Policy number 442306/01072015

118. The terms of the MDANI Policy are found in the document titled MDA National Professional Indemnity Insurance Policy Combined Financial Services Guide, Product Disclosure Statement and Policy Wording V.11.
119. It is a term of the MDANI Policy that MDANI will indemnify the fifth defendant for civil liability for a claim arising directly out of his provision of healthcare services when:
- (a) The claim was first made against him during the period of insurance; and
 - (b) He told MDANI about the claim in writing during the period of insurance and;
 - (c) The claim arises from an act or omission occurring after the retroactive date and not within any non-practising period.
120. The retroactive date of the MDANI Policy is 1 January 2001.
121. Healthcare services is defined in the MDANI Policy insofar as it relates to the fifth defendant as a medical practitioner to mean:
- (a) Healthcare treatment, services or advice or a report of those things provided to a patient or in relation to a patient in a professional capacity; or
 - (b) Supervision, training or direction of a healthcare student or registered healthcare professional who is undertaking a recognised healthcare program; or
 - (c) Supervision or direction of a person who is not a medical practitioner to assist you in providing healthcare treatment, services or advice to a patient; or
 - (d) Supervision, training or direction of a medical practitioner whose registration or license is conditional upon such supervision; or
 - (e) A healthcare report or opinion not for the purpose of treatment; or
 - (f) Healthcare advice to a person or organisation in relation to a person's fitness to carry out certain duties or activities; or
 - (g) Writing an academic paper or an article in a peer reviewed, refereed healthcare journal.
122. Claim is defined in the MDANI Policy to mean;

- (a) A demand for, or an assertion of a right to, compensation, damages or injunctive relief made against you; or
- (b) An intimation of an intention to seek compensation, damages or injunctive relief from you.

123. These proceedings were filed on 14 September 2017 and served on the fifth defendant on 19 September 2017.

124. On 29 June 2017 the fifth defendant notified MDANI of the claims made against him in these proceedings.

125. On 29 June 2017 the fifth defendant notified MDANI of facts and circumstances that might give rise to other claims against him.

Particulars

As set out in letter dated 29 June 2017 from the fifth defendant to MDANI.

126. These proceedings satisfy the definition of a claim as defined in the MDANI Policy which was first made against the fifth defendant during the MDANI Policy period of insurance and after the retroactive date of the MDANI Policy.

127. The fifth defendant notified MDANI of the claim constituted by these proceedings during the MDANI Policy period of insurance.

128. The claims by each of the plaintiffs against the fifth defendant include claims in negligence which fall within the definition of healthcare services in the MDANI Policy.

Particulars

- (a) The claims arise from healthcare treatment, services or advice provided to a patient or in relation to a patient in a professional capacity; and/or
- (b) The claims arise from supervision, training or direction of a registered healthcare professional who was undertaking a recognised healthcare training program; and/or
- (c) The claims arise from healthcare advice to a person or organisation in relation to a person's fitness to carry out certain duties or activities.

129. In the circumstances MDANI is liable to indemnify the fifth defendant for the claims in negligence of each of the plaintiffs.

130. All or a number of group members other than the plaintiffs had surgery performed on them in circumstances the same or materially the same as the plaintiffs for which it is pleaded above that the fifth defendant is liable.
131. In the circumstances identified in paragraphs 117 to 130 above, the fifth defendant will have a liability to all of those group members for which MDANI is liable to indemnify him under the MDANI Policy.

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

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.ucprforms.justice.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

1. **If you intend to dispute the claim**, by filing a defence and/or making a cross claim.
2. **If money is claimed, and you believe you owe the money claimed**, by:
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
3. **If money is claimed, and you believe you owe part of the money claimed**, by:
 - Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

REGISTRY ADDRESS

Street address	Law Courts Building Queens Square, 184 Phillip Street SYDNEY NSW 2000
Postal address	As above
Telephone	1300 679 272

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

Plaintiffs

Amy Rickhuss, first plaintiff

Kylie Pollock, second plaintiff

Jessica Bruen, third plaintiff

Kirsty-Anne Rowlands, fourth plaintiff

Lily Knowland, fifth plaintiff

Tiffany Rutherford, sixth plaintiff

Alysha Axen, seventh plaintiff

Sherine Zahr, eighth plaintiff

Emma Love, ninth plaintiff

Defendants

The Cosmetic Institute Pty Ltd (ACN 135 061 155), first defendant

The Cosmetic Institute Parramatta Pty Limited (ACN 144 469 036), second defendant

TCI Bondi Junction Pty Limited (ACN 165 531 895), third defendant.

TCI Southport Pty Ltd (ACN 605 603 423), fourth defendant

Eddy Dona, fifth defendant

Niroshan Sivathasan, sixth defendant

Van Huu Anthony Nguyen, seventh defendant

Victor Lee, eighth defendant

Chi-Vien Duong (aka Charles Wong), ninth defendant

Candiece Gielisse, tenth plaintiff

Anh Huy Tang, tenth defendant

Ali Turner, eleventh plaintiff

Napoleon Po Han Chiu, eleventh defendant

Daniel Kwok, twelfth defendant

Pedro Miguel da Silva Valente, thirteenth defendant

Farheen Ali, fourteenth defendant

James Francis Christopher Kenny, fifteenth defendant

Stefanie Sanchez, twelfth plaintiff

Sri Balakrishnan Darshn, sixteenth defendant

Certain underwriters at Lloyd's subscribing to policy no. 04012, seventeenth defendant

Allied World Assurance Company, Ltd, eighteenth defendant

MDA National Insurance Pty Ltd, nineteenth defendant

FURTHER DETAILS ABOUT PLAINTIFFS

First plaintiff

Name Amy Rickhuss

Address 14 Kiewa Avenue
MILDURA VIC 3500

Second plaintiff

Name Kylie Pollock
Address 53 Alfred Street
MASCOT NSW 2020

Third plaintiff

Name Jessica Bruen
Address 39 Winbin Crescent
GWANDALAN NSW 2259

Fourth plaintiff

Name Kirsty-Anne Rowlands
Address 8 Jess Street
RESERVOIR VIC 3072

Fifth plaintiff

Name Lily Knowland
Address 44 Rishworths Lane
BROOKLET NSW 2479

Sixth plaintiff

Name Tiffany Rutherford
Address Holsworthy Barracks
Artillery Road
HOLSWORTHY NSW 2173

Seventh plaintiff

Name Alysha Axen

Address 13 Downing Avenue
CAMBRIDGE GARDENS NSW 2747

Eighth plaintiff

Name Sherine Zahr
Address 13 Downing Avenue
CAMBRIDGE GARDENS NSW 2747

Ninth plaintiff

Name Emma Love
Address Unit 2, 54 Reibelt Drive
CABOOLTURE QLD 4510

Tenth plaintiff

Name Candiece Gielisse (nee Bailey)
Address 49 The Esplanade
OAK FLATS NSW 2529

Eleventh plaintiff

Name Ali Turner
Address 11 Roughsey Place
CONDER ACT 2906

Twelfth plaintiff

Name Stefanie Sanchez
Address 154 Parkview Parade
RIPLEY QLD 4306

Legal representative for plaintiffs

Name	Armando Gardiman
Practising certificate number	2328
Firm	Turner Freeman
Contact solicitor	Sally Gleeson
Address	Level 12 160 Sussex Street SYDNEY NSW 2000
DX address	DX 152 SYDNEY
Telephone	(02) 8222 3333
Fax	(02) 8222 3349
Email	par.fax@turnerfreeman.com.au
Electronic service address	Not applicable

DETAILS ABOUT DEFENDANTS

First defendant

Name	The Cosmetic Institute Pty Ltd (in liquidation) (ACN 153 061 155)
Address	c/- Jason Bing-Fai Tang/ John Thompson (liquidators) Cor Cordis One Wharf Lane, Level 20, 171 Sussex Street SYDNEY NSW 2000

Second defendant

Name The Cosmetic Institute Parramatta Pty Limited
(in liquidation) (ACN 144 469 036)

Address c/- Benjamin Carson (liquidator)
Farnsworth Carson
Suite 1.4
Level 1, 135 Victoria Road
DRUMMOYNE NSW 2047

Third defendant

Name TCI Bondi Junction Pty Limited (in liquidation)
(ACN 165 531 895)

Address c/- Jason Bing-Fai Tang/ John Thompson (liquidators)
Cor Cordis
One Wharf Lane,
Level 20, 171 Sussex Street
SYDNEY NSW 2000

Fourth defendant

Name TCI Southport Pty Ltd (in liquidation)
(ACN: 605 603 423)

Address c/- Jason Bing-Fai Tang/ John Thompson (liquidators)
Cor Cordis
One Wharf Lane,
Level 20, 171 Sussex Street
SYDNEY NSW 2000

Fifth defendant

Name Eddy Dona
Address Suite 413, 29 – 31 Lexington Drive
BELLA VISTA NSW 2153

Legal representative for fifth defendant

Name Andrew Thorpe
Legal representative reference: ABT:EXS:200305
Firm McLachlan Thorpe Partners
Contact solicitor Andrew Thorpe/Samantha Peterson
Address Level 19, 1 Castlereagh Street
SYDNEY NSW 2000
Postal address: GPO Box 3549
SYDNEY NSW 2001
Telephone (02) 9229 2222
Fax (02) 9229 2200
Email athorpe@mtpartners.com.au

Sixth defendant

Name Niroshan Sivathanan
Address Ignite Medispa
Wollongong Private Hospital
Level 7, 360 Crown Street
WOLLONGONG NSW 2500

Legal representative for the sixth defendant

Name: Jaswinder Sekhon
Legal representative reference: AS329
Firm: Jaswinder SEKHON Goldman Lawyers Pty Limited

Contact solicitor: Jaswinder Sekhon
Address: Goldman & Co Lawyers Pty Limited
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111 Elizabeth Street
SYDNEY NSW 2000
Postal address: as above
Telephone: (02) 8880 0750
Email: jas@goldmanlawyers.com.au
Electronic service address: jas@goldmanlawyers.com.au

Seventh defendant

Name Van Huu Anthony Nguyen
Address SunDoctors
9 Westland Street
ROCKVILLE QLD 4350

Eighth defendant

Name Victor Lee
Address c/- HWL Ebsworth Lawyers
Level 14, Australia Square, 264-278 George Street
Sydney NSW 2000

Ninth defendant

Name Chi-Vien Duong (aka Charles Wong)
Address Astley Medical Centre
Great Western Highway
ST MARYS NSW 2760

Tenth defendant

Name Anh Huy Tang
Address Zen Medispa
Level 1/116 Burwood Rd
BURWOOD NSW 2134

Eleventh defendant

Name Napoleon Po-Han Chiu
Address Mind Your Health Medical Centre
1/124 Military Road
NEUTRAL BAY NSW 2089

Twelfth defendant

Name Daniel Kwok
Address Zen Medispa
1/116 Burwood Road
BURWOOD NSW 2134

Thirteenth defendant

Name Pedro Miguel da Silva Valente
Address Esteem Cosmetic Studio
Park House
Level 8, 187 Macquarie Street
SYDNEY NSW 2000

Fourteenth defendant

Name Farheen Ali
Address Westmead Hospital
Cnr Hawkesbury Road and Darcy Road
WESTMEAD NSW 2145

Fifteenth defendant

Name James Francis Christopher Kenny
Address Cosmetic Evolution
Suite 1 98 Marine Parade
SOUTHPORT QLD 4215

Legal representative for the seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth defendants

Name: Leonie Beyers
Legal representative reference: LRB:DJA:993524

Firm: HWL Ebsworth Lawyers
Contact solicitor: Danielle Ashton
Address: Level 14, Australia Square,
264-278 George Street
SYDNEY NSW 2000
Postal Address: DX 129 SYDNEY
Telephone: (02) 9334 8555
Facsimile: 1300 369 656
Email: lbeyers@hwle.com.au
Electronic service address lbeyers@hwle.com.au

Sixteenth defendant

Name Sri Balakrishnan Darshn
Address Cosmetic Surgery Australia
Level 14, 187 Macquarie Street
SYDNEY NSW 2000

Legal representative for the sixteenth defendant

Name: Robert Ishak
Legal representative reference: 37579
Firm: William Roberts Lawyers
Contact solicitor: Effie Dimos
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66 Goulburn Street
SYDNEY NSW 2000
Postal address: PO Box 20424
WORLD SQUARE NSW 2002
Telephone: (02) 9552 2111
Facsimile: (02) 9552 1911

Email: effie.dimos@williamroberts.com.au
Electronic service address: robert.ishak@williamroberts.com.au

Seventeenth defendant

Name Certain underwriters at Lloyd's subscribing to policy no.
04012
Address Level 11, 535 Bourke Street
MELBOURNE VIC 3000

Legal representative for the seventeenth defendant

Name: Gavin Hollamby
Legal representative reference: P0025190
Firm: Lander & Rogers
Contact solicitor: Gavin Hollamby
Address: Level 12,
600 Bourke Street
MELBOURNE VIC 3000
Postal address: DX 370 MELBOURNE
Telephone: (03) 9269 9141
Facsimile: (03) 9629 9001
Email: ghollamby@landers.com.au
Electronic service address: ghollamby@landers.com.au

Eighteenth defendant

Name Allied World Assurance Company, Ltd

Address Littlewoods Services Pty Ltd
Level 21, 264 – 278 George Street
SYDNEY NSW 2000

Legal representative for the eighteenth defendant

Name: Mark Williams
Legal representative reference: 1703028
Firm: Minter Ellison
Contact solicitor: Daniel Bunoza
Address: Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000
Postal address: DX 117 SYDNEY
Telephone: (02) 9921 8775
Facsimile: (02) 9921 8408
Email: daniel.bunoza@minterellison.com
mark.williams@minterellison.com
Electronic service address: daniel.bunoza@minterellison.com
mark.williams@minterellison.com

Nineteenth defendant

Name MDA National Insurance Pty Ltd
Address Level 3, 88 Colin Street
WEST PERTH WA 6005

Legal representative for the nineteenth defendant

Name: Mark Doepel
Legal representative reference: 15899
Firm: Sparke Helmore Lawyers

Contact solicitor: Deborah Morris
Address: Level 29, MLC Centre,
19 Martin Place
SYDNEY NSW 2000
Postal address: DX 282 SYDNEY
Telephone: (02) 9373 3555
Facsimile: (02) 9373 3599
Email: Mark.Doepel@sparke.com.au
Deborah.Morris@sparke.com.au
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Deborah.Morris@sparke.com.au