FILED

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SS

Form 3A (version 7)
UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law Division
List	General
Registry	Sydney
Case number	2018/263134

TITLE OF PROCEEDINGS

First Plaintiff	**Garfield Mario Fernandez**
Second Plaintiff	**Apikali Fotu**
First Defendant	**State of New South Wales**
Number of Defendants	**16**

FILING DETAILS

Filed for	**Garfield Mario Fernandez and Apikali Fotu**
	First and Second Plaintiffs
Legal representative	Monique Hitter, Legal Aid NSW
Legal representative reference	2017159340
Contact name and telephone	Matthew Turner (02) 4253 6837
Contact email	matt.turner@legalaid.nsw.gov.au

TYPE OF CLAIM

Commercially misleading conduct

NOTATION pursuant to clause 4.2 of Practice Note SC Gen 17:

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 this statement of claim.

This matter has been listed before the Court
on 10 October 2018
at 9am
Clerk of the Court

RELIEF CLAIMED

1 A declaration that each of the Fees Directions and the Charging Directions made under the *Health Services Act 1997* (NSW) **(HSA)** to the extent that they have required the provision of a guarantee in relation to the provision of hospital services and other health services **(the Applicable Health Services)** at a public hospital controlled by one of Second to Sixteenth Defendants to persons who were not an eligible person for Medicare benefits within the meaning of the *Health Insurance Act 1973* (Cth) (**HIA**) has been invalid.

2 A declaration that the document headed "Overseas Visitor Guarantor's Statement" and dated 31 March 2017 in relation to the provision of the Applicable Health Services to Wayne Fernandez **(Mr Fernandez)** provided by the First Plaintiff to the Second Defendant **(the Fernandez Guarantee)** is void ab initio or alternatively is void on such date as is determined by the Court.

3 An order that the Second Defendant pay to the First Plaintiff $10.00 together with interest pursuant to s 100 of the *Civil Procedure Act 2005* (NSW) **(CPA).**

4 In the alternative to paragraphs 2 and 3 above, a declaration that the Second Defendant in procuring the Fernandez Guarantee in trade or commerce engaged in conduct that is unconscionable within the meaning of the unwritten law in contravention of s 20 of the *Australian Consumer Law* **(ACL).**

5 In the alternative to paragraphs 2 to 4 above, a declaration that the Second Defendant in procuring the Fernandez Guarantee in trade or commerce engaged in conduct that is misleading or deceptive or is likely to mislead or deceive in contravention of s 18 of the ACL.

6 In the alternative to paragraphs 2 to 5 above, a declaration that the Second Defendant in procuring the Fernandez Guarantee in trade or commerce in connection with the supply or possible supply of services to Mr Fernandez engaged in conduct that is, in all the circumstances, unconscionable in contravention of s 21 of the ACL.

7 An order pursuant to ss 237 and 243(a) of the ACL declaring the Fernandez Guarantee to have been void ab initio or alternatively void on such date as is determined by the Court.

8 An order pursuant to ss 237 and 243(d) of the ACL directing that the Second Defendant refund to the First Plaintiff $10.00 together with interest pursuant to s 100 of the CPA.

9 In the alternative to paragraphs 2 to 8 above, a declaration that the Fernandez Guarantee was unjust in the circumstances relating to it at the time it was made within s 7(1) of the *Contracts Review Act 1980* (NSW) **(CRA).**

10 An order pursuant to s 7(1)(b) of the CRA declaring the Fernandez Guarantee to have been void ab initio or alternatively void on such date as is determined by the Court.

11 An order pursuant to s 8 and Sch 1 of the CRA directing that the Second Defendant refund to the First Plaintiff $10.00 together with interest pursuant to s 100 of the CPA.

12 A declaration that each of the following documents:

(a) the document headed "Deed of Guarantee" and dated 17 August 2017 in relation to the provision of the Applicable Health Services to Seruwaiya Kalokalo Camaiyavala **(Mrs Camaiyavala)** provided by the Second Plaintiff to the Third Defendant **(the 17 August Fotu Guarantee);** and

(b) the document headed "Deed of Guarantee" and dated 3 October 2017 in relation to the provision of the Applicable Health Services to Mrs Camaiyavala provided by the Second Plaintiff to the Third Defendant **(the 3 October Fotu Guarantee);**

is void ab initio or alternatively is void on such date as is determined by the Court.

13 In the alternative to paragraph 12 above, a declaration that the Third Defendant in procuring each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee in trade or commerce engaged in conduct that is unconscionable within the meaning of the unwritten law in contravention of s 20 of the ACL.

14 In the alternative to paragraphs 12 and 13 above, a declaration that the Third Defendant in procuring each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee in trade or commerce engaged in conduct that is misleading or deceptive or is likely to mislead or deceive in contravention of s 18 of the ACL.

15 In the alternative to paragraphs 12 to 14 above, a declaration that the Third Defendant in procuring each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee in trade or commerce in connection with the supply or possible supply of services to Mrs Camaiyavala engaged in conduct that is, in all the circumstances, unconscionable in contravention of s 21 of the ACL.

16 An order pursuant to ss 237 and 243(a) of the ACL declaring each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee to have been void ab initio or alternatively void on such date as is determined by the Court.

17 In the alternative to paragraphs 12 to 16 above, a declaration that each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee was unjust in the circumstances relating to it at the time it was made within s 7(1) of the CRA.

18 An order pursuant to s 7(1)(b) of the CRA declaring each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee to have been void ab initio or alternatively void on such date as is determined by the Court.

19 Costs.

20 Such further or alternative orders as the Court thinks fit or the nature of the case requires.

PLEADINGS AND PARTICULARS

Representative proceedings

1. The First and Second Plaintiffs have commenced these proceedings pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) **(CPA)** on their own behalf and on behalf of the group members of which they are each a member described in paragraph 2 below.

The group members

2. The group of persons on whose behalf these representative proceedings have been commenced are persons who have guaranteed to one of the Second to Sixteenth Defendants the payment of all monies payable or owing by patients who:

   (a) received the provision of hospital services and other health services **(the Applicable Health Services)** from a public hospital controlled by that Defendant; and

   (b) were not an eligible person for Medicare benefits within the meaning of the *Health Insurance Act 1973* (Cth) (**HIA**);

   (Ineligible Persons).

The sub-group

3. The group of persons on whose behalf these representative proceedings have been commenced includes among its members persons who have guaranteed to one of the Second to Sixteenth Defendants the payment of all monies payable or owing by patients who:

(a) received the Applicable Health Services from a public hospital controlled by that Defendant;

(b) were without means to pay for the Applicable Health Services; and

(c) were not an eligible person for Medicare benefits within the meaning of the HIA;

(Impecunious Ineligible Persons).

The Defendants

4. The First Defendant is being sued pursuant to s 5 of the *Crown Proceedings Act 1988* (NSW).

5. Each of the Second to Sixteenth Defendants:

(a) is a local health district within the meaning of the *Health Services Act 1997* (NSW) **(HSA);**

(b) is constituted as a body corporate pursuant to s 17 and Sch 1 of the HSA;

(c) is capable of being sued pursuant to s 22(1)(c) of the HAS;

(d) at all material times has provided hospital services and other health services at public hospitals under its control in the applicable local government area or city or other area specified in Sch 1 of the HSA; and

(e) at all material times has provided hospital services and other health services at public hospitals under its control in trade or commerce within the meaning of s 2 of the *Australian Consumer Law* **(ACL).**

Directions by NSW Health to local health districts

6. At all material times public hospitals under the control of one of the Second to Sixteenth Defendants have been required by a series of directions made pursuant to s 32(1) of the HSA to ensure that in respect of the following categories of Ineligible Persons:

(a) all Ineligible Persons prior to 16 July 2016; and

(b) Ineligible Persons other than those holding a visa in visa subclasses 457, 570 to 576 and 485 issued under the *Migration Act 1958* (Cth) since 17 July 2016;

the following prepayment arrangements are made on admission:

(c) to obtain an assurance of payment from them before treatment is provided in a specified form including a personal guarantee from an Australian citizen whose bona fides are verified; and

(d) where such an assurance of payment is not forthcoming, to inform them that they will receive only the minimum and necessary medical care to stabilise their condition.

Particulars

The directions were in writing and contained in the following Policy Directives headed "Health Services Act 1997 - Scale of Fees for Hospital and Other Services" **(the** Fees **Directions):**

(1) PD2010_044 made by the Director-General of Health **(the Director-General)** and published on 28 June 2010. From 4 March 2011 this Policy Direction applied to the Second to Sixteenth Defendants pursuant to the *Health Services Amendment (Local Health Networks) Act 2010* (NSW) and the *Health Services Amendment (Local Health Districts and Boards) Act 2011* (NSW);

(2) PD2013_018 made by the Director-General and published on 15 July 2013;

(3) PD2014_009 made by the Director-General and published on 31 March 2014;

(4) PD2014_020 made by the Director-General and published on 30 June 2014;

(5) PD2015_022 made by the Secretary of the Ministry of Health **(the Health Secretary)** and published on 13 July 2015;

(6) PD2016_024 made by the Health Secretary and published on 17 June 2016;

(7) PD2017_018 made by the Health Secretary and published on 27 June 2017.

7. At all material times public hospitals under the control of one of the Second to Sixteenth Defendants have been required by a series of directions made pursuant to s 32(1) of the HSA to ensure that in respect of Ineligible Persons arrangements in a specified form including a personal guarantee are made prior to service provision, except in emergency situations when arrangements should be made at the appropriate time.

Particulars

The directions were in writing and contained in the following Policy Directives headed "Medicare Ineligible Reciprocal Health Care Agreement - Classification And Charging For NSW Public Health Services" **(the Charging Directions):**

(1) PD2016_031 made by the Health Secretary and published on 28 June 2016;

(2) PD2016_055 made by the Health Secretary and published on 1 December 2016.

The procurement of a guarantee from group members by local health districts

8. Pursuant to the applicable Fees Direction or alternatively the applicable Charging Direction one of the Second to Sixteenth Defendants has procured a group member to provide a guarantee to the applicable Defendant of all monies payable or owing by an Ineligible Person in relation to the provision of the Applicable Health Services to the Ineligible Person by the applicable Defendant.

The recovery of monies from group members by local health districts

9. One of the Second to Sixteenth Defendants in reliance on a guarantee provided by a group member in relation to the provision of the Applicable Health Services to an Ineligible Person has recovered from the group member monies payable or owing by the Ineligible Person to the applicable Defendant.

The lack of authority of local health districts to procure guarantee from group members

10. The Second to Sixteenth Defendants have not had authority to procure guarantees from group members in relation to the provision of the Applicable Health Services to an Ineligible Person because each of the Fees Directions and the Charging Directions to the extent that they have required the provision of a guarantee have been repugnant to the HSA.

Particulars

Section 70 of the HSA on its proper construction relevantly limits the category of persons who are liable for health service fees to such persons who receive any health service (other than a non-chargeable hospital service) from a local health district and have the means to pay for the health service fees as calculated in accordance with the scale of fees fixed under s 69 of the HSA.

11. By reason the matters in paragraphs 5 to 10 above, the guarantee provided by a group member to one of the Second to Sixteenth Defendants in relation to the provision of the Applicable Health Services to an Ineligible Person is invalid and the applicable Defendant is liable to refund to the group member any monies paid by the group member pursuant to the guarantee.

The lack of consideration provided by local health districts for guarantees procured from sub-group members

12. In the alternative to paragraphs 6 to 11 above, in the event it is held that each of the Fees Directions and the Charging Directions to the extent that they have required the provision of a guarantee in relation to the provision of the Applicable Health Services to an Ineligible Person have not been repugnant to the HSA and the Second to Sixteenth Defendants did have authority to procure guarantees from group members, then each of the Second to Sixteenth Defendants provided no consideration for the guarantee procured from a sub-group member.

Particulars

Each of the Second to Sixteenth Defendants was under the duty specified in s 71 of the HSA not to refuse care or treatment to Impecunious Ineligible Persons for sickness or injury at any public hospital by reason only of their inability to pay for the care or treatment and to provide whatever care and or treatment was necessary for the sickness or injury of the Impecunious Ineligible Person **(the Hospital Services Duty).**

13. By reason the matters in paragraphs 5 and 12 above, a guarantee provided by a sub-group member to one of the Second to Sixteenth Defendants in relation to the provision of the Applicable Health Services to an Impecunious Ineligible Person is invalid and the applicable Defendant is liable to refund to the sub-group member any monies paid by the sub-group member pursuant to the guarantee.

The failure by local health districts to make disclosure required under the general law to the sub-group members

14. Further or in the alternative to paragraphs 12 and 13 above, at all material times before and at the time each sub-group member provided a guarantee to one of the Second to Sixteenth Defendants in relation to the provision the Applicable Health Services to an Impecunious Ineligible Person by a public hospital controlled by that Defendant:

(a) the sub-group member was unaware of the Hospital Services Duty; and

(b) in its dealings with the sub-group member, the applicable Defendant was aware of the Hospital Services Duty and ought to have appreciated that:

(i) the sub-group member might be unaware of the Hospital Services Duty; and

(ii) the existence of the Hospital Services Duty might affect the decision of the sub-group member to provide the guarantee.

15. By reason of the matters in paragraph 14 above, the applicable Defendant was under a duty to disclose the existence of the Hospital Services Duty to the sub-group member before asking him or her to provide a guarantee **(the Disclosure Duty).**

16. In breach of the Disclosure Duty, the applicable Defendant did not disclose the existence of the Hospital Services Duty to the sub-group member before he or she provided a guarantee.

17. By reason of the matters in paragraphs 5 and 14 to 16 above, each sub-group member is entitled to rescind the guarantee provided by him or her to the applicable Defendant.

Unconscionable conduct by local health districts within the meaning of the unwritten law under the ACL

18. Further or in the alternative to paragraphs 12 to 17 above, the First and Second Plaintiffs repeat paragraphs 14 to 16 above.

19. By reason of the matters in paragraphs 5 and 18 above, the applicable Defendant in procuring the guarantee in trade or commerce engaged in conduct that is unconscionable within the meaning of the unwritten law in contravention of s 20 of the ACL, and each sub-group member thereby has suffered, or is likely to suffer, loss or damage within the meaning of s 237(1)(a) of the ACL.

Particulars

Each sub-group member has paid or is liable to pay monies to one of the Second to Sixteenth Defendants pursuant to the guarantee in relation to the provision of the Applicable Health Services to the Impecunious Ineligible Person.

Misleading or deceptive conduct by local health districts under the ACL

20. Further or in the alternative to paragraphs 12 to 19 above, one of the Second to Sixteenth Defendants, when an Impecunious Ineligible Person attended a public hospital controlled by that Defendant for care and or treatment for sickness or injury, in performance of the applicable Fees Direction represented to a sub-group member that unless a guarantee was provided in relation to the Applicable Health Services the Impecunious Ineligible Person would receive only the minimum and necessary medical care to stabilise their condition **(the Fees Direction Representation).**

Particulars

The Fees Direction Representation was oral and made by an officer of the applicable Defendant to the sub-group member.

21. The Fees Direction Representation was false.

Particulars

There was no basis for the Fees Direction Representation because it was contrary to the Hospital Services Duty as it applied to the Impecunious Ineligible Person.

22. In the alternative to paragraphs 20 and 21 above, one of the Second to Sixteenth Defendants, when an Impecunious Ineligible Person attended a public hospital controlled by that Defendant for care and or treatment for sickness or injury, in performance of the applicable Charging Direction represented to a sub-group member that unless a guarantee was provided in relation to the Applicable Health Services the Impecunious Ineligible Person would not receive care or treatment except in emergency situations **(the Charging Direction Representation).**

Particulars

The Charging Direction Representation was oral and made by an officer of the applicable Defendant to the sub-group member.

23. The Charging Direction Representation was false.

Particulars

There was no basis for the Charging Direction Representation because it was contrary to the Hospital Services Duty as it applied to the Impecunious Ineligible Person.

24. In reliance upon the Fees Direction Representation or alternatively the Charging Direction Representation the sub-group member provided a guarantee to the applicable Defendant.

25. The sub-group member would not have provided the guarantee to the applicable Defendant if that Defendant had informed the sub-group member about the content and extent of the Hospital Services Duty before asking the sub-group member to provide the guarantee.

26. By reason of the matters in paragraphs 5, and 20 to 25 above, the applicable Defendant in procuring the guarantee in trade or commerce engaged in conduct that is misleading or deceptive or is likely to mislead or deceive in contravention of s 18 of the ACL, and the sub-group member thereby has suffered, or is likely to suffer, loss or damage within the meaning of s 237(1)(a) of the ACL.

Particulars

The sub-group member has paid or is liable to pay monies to one of the Second to Sixteenth Defendants pursuant to the guarantee in relation to the provision of the Applicable Health Services to Impecunious Ineligible Persons.

Unconscionable conduct of local health districts under the ACL

27. Further or in the alternative to paragraphs 12 to 26 above, the First and Second Plaintiffs repeat paragraphs 14 to 16 and 20 to 25 above.

28. The sub-group member was in a position of vulnerability in relation to the applicable Defendant at the time he or she provided the guarantee.

Particulars

The sub-group member was concerned for the welfare of the Impecunious Ineligible Person who was suffering from a sickness or injury requiring the provision of the Applicable Health Services for their care and or treatment by the applicable Defendant. In the absence of the provision of the guarantee the sub-group member

may have been responsible for any harm suffered by the Impecunious Ineligible Person through the failure of the applicable Defendant to provide the Applicable Health Services.

29. The applicable Defendant took advantage of its bargaining power in relation to the sub-group member to procure the sub-group member to provide a guarantee in relation to the provision of the Applicable Health Services to the Impecunious Ineligible Person.

30. By reason of the matters in paragraphs 5 and 27 to 29 above, the applicable Defendant in procuring the guarantee in trade or commerce in connection with the supply or possible supply of services to the Impecunious Ineligible Person engaged in conduct that is, in all the circumstances, unconscionable in contravention of s 21 of the ACL, and the sub-group member thereby has suffered, or is likely to suffer, loss or damage within the meaning of s 237(1)(a) of the ACL.

Particulars

The sub-group member has paid or is liable to pay monies to the applicable Defendant pursuant to the guarantee in relation to the provision of the Applicable Health Services to the Impecunious Ineligible Person.

The guarantees procured from sub-group members are unjust within the CRA

31. Further or in the alternative to paragraphs 14 to 30 above, the First and Second Plaintiffs repeat paragraphs 14 to 16, 20 to 25, and 28 and 29 above.

32. By reason of the matters in paragraphs 5 and 31 above, the guarantee procured from the sub-group member was unjust in the circumstances relating to it at the time it was made within s 7(1) of the *Contracts Review Act 1980* (NSW) **(CRA).**

The First Plaintiff's individual claim

33. The First Plaintiff is the brother of Wayne Fernandez **(Mr Fernandez).**

34. The Second Defendant has at all material times controlled Blacktown Hospital.

35. On 31 March 2017, Mr Fernandez, who was ordinarily resident in India, suffered from an acute illness connected with his chronic conditions of asthma and cerebral palsy, attended Blacktown Hospital to seek treatment for his acute illness accompanied by the First Plaintiff, was admitted to Blacktown Hospital, and in the period from 31

March 2017 to 4 April 2017 received the Applicable Health Services in respect of his acute illness.

36. At all material times Mr Fernandez was an Impecunious Ineligible Person.

Particulars

Mr Fernandez did not have the means to pay for the Applicable Health Services.

37. On 31 March 2017 a member of staff of Blacktown Hospital presented the First Plaintiff with the document headed "Overseas Visitor Guarantor's Statement" and dated 31 March 2017 in relation to the provision of the Applicable Health Services to Mr Fernandez provided by the Second Defendant **(the Fernandez Guarantee),** did not disclose the existence of the Hospital Services Duty to the First Plaintiff, made the Fees Direction Representation to the First Plaintiff, and procured the First Plaintiff to sign the Fernandez Guarantee in reliance upon the Fees Direction Representation.

38. The Second Defendant claimed $18,075.30 from Mr Fernandez in relation to the provision of the Applicable Health Services.

Particulars

The claim was in writing and comprised in the following three invoices of the Second Defendant addressed to Mr Fernandez:

(1) No N637420 dated 11 April 2017 for $94.30;

(2) No A659018 dated 3 May 2017 for $15,102.00;

(3) No N676310 dated 15 May 2017 for $2,879.00.

39. Mr Fernandez failed to pay $18,075.30 to the Second Defendant in relation to the provision of the Applicable Health Services.

40. The Second Defendant in reliance on the Fernandez Guarantee demanded payment from the First Plaintiff of $18,075.30 in relation to the provision of the Applicable Health Services to Mr Fernandez.

Particulars

The demand was in writing and contained in the following correspondence:

(1) email addressed to the First Plaintiff and Mr Fernandez sent on 10 October 2017;

(2) letter dated 17 December 2017 from MRM Lawyers on behalf of the Second Defendant to the First Plaintiff's solicitor.

41. On 26 April 2018, the First Plaintiff, without admission, paid $10.00 to the Second Defendant in response to the demands referred to in paragraph 40 above.

42. By reason of the matters in paragraphs 5, 10, and 33 to 41 above, the Fernandez Guarantee is void ab initio, and the Second Defendant is liable to pay to the First Plaintiff $10.00 together with interest pursuant to s 100 of the CPA.

43. In the alternative to paragraph 42 above, by reason of the matters in paragraphs 5, 12, and 33 to 41 above, the Fernandez Guarantee is void ab initio or alternatively is void on such date as is determined by the Court, and the Second Defendant is liable to pay to the First Plaintiff $10.00 together with interest pursuant to s 100 of the CPA.

44. Further or in the alternative to paragraph 43 above, by reason of the matters in paragraphs 5, 14 to 16, and 33 to 41 above, the Fernandez Guarantee is liable to be rescinded, by this statement of claim the First Plaintiff rescinds the Fernandez Guarantee, and the Second Defendant is liable to pay to the First Plaintiff $10.00 together with interest pursuant to s 100 of the CPA.

45. Further or in the alternative to paragraphs 43 and 44 above, by reason of the matters in paragraphs 5, 14 to 16, and 33 to 37 above, the Second Defendant in procuring the Fernandez Guarantee in trade or commerce engaged in conduct that is unconscionable within the meaning of the unwritten law in contravention of s 20 of the ACL.

46. Further or in the alternative to paragraphs 43 to 45 above, by reason of the matters in paragraphs 5, 20, 21, 24, 25, and 33 to 37 above, the Second Defendant in procuring the Fernandez Guarantee in trade or commerce engaged in conduct that is misleading or deceptive or is likely to mislead or deceive in contravention of s 18 of the ACL.

47. Further or in the alternative to paragraphs 43 to 46 above, by reason of the matters in paragraphs 5, 20, 21, 24, 25, 28, 29 and 33 to 37 above, the Second Defendant in procuring the Fernandez Guarantee in trade or commerce in connection with the

supply or possible supply of services to Mr Fernandez engaged in conduct that is, in all the circumstances, unconscionable in contravention of s 21 of the ACL.

48. By reason of the matters in paragraphs 45 to 47 above, the First Plaintiff has suffered or is likely to suffer loss or damage.

Particulars

The First Plaintiff repeat paragraphs 38 to 41 above.

49. Further or in the alternative to paragraphs 43 to 48 above, by reason of the matters in paragraphs 5, and 31 to 41 above, the Fernandez Guarantee was unjust in the circumstances relating to it at the time it was made within s 7(1) of the CRA.

The Second Plaintiff's individual claim

50. The Second Plaintiff is the daughter of Seruwaiya Kalokalo Camaiyavala **(Mrs Camaiyavala).**

51. The Third Defendant has at all material times controlled Campbelltown Hospital and Liverpool Hospital.

52. Mrs Camaiyavala, who was ordinarily resident in Fiji, suffered from an illness and during different periods was admitted to Campbelltown Hospital and Liverpool Hospital, and received the Applicable Health Services in respect of her illness.

Particulars

(1) Mrs Camaiyavala was a patient at Campbelltown Hospital on 23 October 2016, on 5 July 2017, from 4 August 2017 to 10 August 2017, and 30 September 2017 to 20 October 2017.

(2) Mrs Camaiyavala was a patient at Liverpool Hospital from 17 August 2017 to 21 August 2017, on 6, 12, 14, 15, 18,21 and September 2017.

53. At all material times Mrs Camaiyavala was an Impecunious Ineligible Person.

Particulars

Mrs Camaiyavala did not have the means to pay for the Applicable Health Services.

54. On 17 August 2017 Ms Sheldon Woodward **(Ms Woodward),** a member of staff of Liverpool Hospital, presented the Second Plaintiff with the document headed "Deed of Guarantee" **(the 17 August 2017 Fotu Guarantee),** represented to the Second Plaintiff that she had to sign the 17 August 2017 Fotu Guarantee so that the Third Defendant could proceed to provide Mrs Camaiyavala with the Applicable Health Services **(the 17 August 2017 Fotu Representation),** did not disclose the existence of the Hospital Services Duty to the Second Plaintiff, and procured the Second Plaintiff to sign the 17 August 2017 Fotu Guarantee in reliance upon the 17 August 2017 Fotu Representation.

Particulars

The 17 August 2017 Fotu Representation was oral.

55. The 17 August 2017 Fotu Representation was false.

Particulars

Ms Woodward had no basis for the 17 August 2017 Fotu Representation because it was contrary to the Hospital Services Duty as it applied to Mrs Camaiyavala.

56. On 3 October 2017 Ms Joanne Brennan **(Ms Brennan),** a member of staff of Campbelltown Hospital presented the Second Plaintiff with the document headed "Deed of Guarantee" **(the 3 October 2017 Fotu Guarantee),** did not disclose the existence of the Hospital Services Duty to the Second Plaintiff, and procured the Second Plaintiff to sign the 3 October 2017 Fotu Guarantee.

57. The Third Defendant claimed $86,948.00 from Mrs Camaiyavala in relation to the provision of the Applicable Health Services.

Particulars

The claim was in writing and comprised in the following 24 invoices of the Third Defendant addressed to Mrs Camaiyavala:

(1) No N1025759 for $133.00;

(2) No N1015631 for $399.00;

(3) No N1266189 for $138.00;

(4) No A1266239 for $13,284.00;

(5) No N1264578 for $2,995.00;

(6) No N1279368 for $1,213.00;

(7) No N1293643 for $325.00;

(8) No N1330573 for $1,605.00;

(9) No A1275846 for $8,856.00;

(10) No N1274325 for $605.00;

(11) No N1277907 for $1,088.00;

(12) No N1330707 for $3,210.00;

(13) No N1305168 for $605.00;

(14) No N1305169 for $885.00;

(15) No N1305170 for $646.00;

(16) No N1305171 for $406.00;

(17) No N1305172 for $205.00;

(18) No N1305173 for $406.00;

(19) No N1305174 for $406.00;

(20) No A1329385 for $44,280.00;

(21) No N1322425 for $160.00;

(22) No N1329447 for $3,208.00;

(23) No N1274324 for $1,650.00;

(24) No N1274323 for $170.00.

58. The Second Plaintiff paid $190.00, and failed to pay $86,758.00, to the Third Defendant in relation to the provision of the Applicable Health Services to Mrs Camaiyavala.

59. The Third Defendant in reliance on the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee demanded payment from the Second Plaintiff of $86,758.00 in relation to the provision of the Applicable Health Services to Mrs Camaiyavala.

Particulars

The demand was in writing and contained in the following correspondence:

(1) letter dated 10 March 2018 from Dun and Bradstreet on behalf of the Third Defendant to the Second Plaintiff demanding the payment of $69,540.00;

(2) letter dated 12 April 2018 from Dun and Bradstreet on behalf of the Third Defendant to the Second Plaintiff demanding the payment of $69,540.00;

(3) email dated 3 May 2018 from the Health Service Manager Debt Collection of the Third Defendant to the Second Plaintiff's solicitor demanding the payment of $86,758.00.

60. By reason of the matters in paragraphs 5, 10, and 50 to 59 above, each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee is void ab initio.

61. In the alternative to paragraph 60 above, by reason of the matters in paragraphs 5, 12, and 50 to 59 above, each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee is void ab initio or alternatively are void on such date as is determined by the Court.

62. Further or in the alternative to paragraph 61 above, by reason of the matters in paragraphs 14 to 16, and 50 to 59 above, each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee is liable to be rescinded, and by this statement of claim the Second Plaintiff rescinds each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee.

63. Further or in the alternative to paragraphs 61 and 62 above, by reason of the matters in paragraphs 5, 14 to 16, and 50 to 56 above, the Third Defendant in procuring each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee in trade or commerce engaged in conduct that is unconscionable within the meaning of the unwritten law in contravention of s 20 of the ACL.

64. Further or in the alternative to paragraphs 61 to 63 above, by reason of the matters in paragraphs 5, 20, 21, 24, 25, and 50 to 56 above, the Third Defendant in procuring each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee in trade or commerce engaged in conduct that is misleading or deceptive or is likely to mislead or deceive in contravention of s 18 of the ACL.

65. Further or in the alternative to paragraphs 61 to 64 above, by reason of the matters in paragraphs 5, 20, 21, 24, 25, 28, 29 and 50 to 56 above, the Third Defendant in procuring each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee in trade or commerce in connection with the supply or possible supply of services to Mrs Camaiyavala engaged in conduct that is, in all the circumstances, unconscionable in contravention of s 21 of the ACL.

66. By reason of the matters in paragraphs 63 to 65 above, the Second Plaintiff has suffered or is likely to suffer loss or damage.

Particulars

The Second Plaintiff repeats paragraphs 57 to 59 above.

67. Further, or in the alternative to paragraphs 61 to 66 above, by reason of the matters in paragraphs 5, 31 and 32, and 50 to 59 above, each of the 17 August 2017 Fotu Guarantee and the 3 October 2017 Fotu Guarantee was unjust in the circumstances relating to it at the time it was made within s 7(1) of the CRA.

Group Member claims

68. The claims of the group members give rise to the common questions of fact or law in Annexure A.

69. Each group member is entitled to the following relief arising out of the guarantee in relation to the provision of the Applicable Health Services to an Ineligible Person provided to one of the Second to Sixteenth Defendants:

(a) a declaration that each of the Fees Directions and the Charging Directions to the extent that it has required the provision of a guarantee in relation to the provision of the Applicable Health Services to an Ineligible Person has been repugnant to the HSA and invalid.

(b) a declaration that the guarantee is void ab initio; and

(c) an order that the applicable Defendant pay to the group member the amount of any money paid by the group member to the applicable Defendant together with interest on that amount pursuant to s 100 of the CPA.

Sub-group member claims

70. The claims of the sub-group members give rise to the common questions of fact or law in Annexure B.

71. Each sub-group member is entitled to the following relief arising out of the guarantee in relation to the provision of the Applicable Health Services to an Impecunious Ineligible Person provided to one of the Second to Sixteenth Defendants:

(a) in respect of the matters referred to in paragraphs 13 to 17 above:

(i) a declaration that the guarantee is void ab initio or alternatively is void on such date as is determined by the Court; and

(ii) an order that the applicable Defendant pay to the sub-group member the amount of any money paid by the sub-group member to the applicable Defendant together with interest on that amount pursuant to s 100 of the CPA;

(b) in respect of the matters referred to in paragraphs 18 to 30 above:

(i) one or more of the following declarations:

(A) a declaration that the applicable Defendant in procuring the guarantee in trade or commerce engaged in conduct that is unconscionable within the meaning of the unwritten law in contravention of s 20 of the ACL;

(B) a declaration that the applicable Defendant in procuring the guarantee in trade or commerce engaged in conduct that is misleading or deceptive or is likely to mislead or deceive in contravention of s 18 of the ACL;

(C) a declaration that the applicable Defendant in procuring the guarantee in trade or commerce engaged in conduct in connection with the supply or possible supply of services to Impecunious Ineligible Persons that was, in all the

circumstances, unconscionable in contravention of s 21 of the ACL; and

(ii) orders pursuant to ss 237 and 243 of the ACL:

(A) declaring the guarantee to have been void ab initio or alternatively void on such date as is determined by the Court; and

(B) directing the applicable Defendant to refund to the sub-group member the amount of any money paid by the sub-group member to the applicable Defendant together with interest on that amount; and

(c) in respect of the matters referred to in paragraphs 31 and 32 above:

(i) a declaration that the guarantee was unjust in the circumstances relating to the guarantee at the time it was made within s 7(1) of the CRA;

(ii) an order pursuant to s 7(1)(b) of the CRA declaring the guarantee to have been void ab initio or alternatively void on such date as is determined by the Court; and

(iii) an order pursuant to s 8 and Sch 1 of the CRA directing the applicable Defendant to refund to the sub-group member the amount of any money paid by the sub-group member to the applicable Defendant together with interest on that amount.

Annexure A

Common questions of fact or law in the claims of the group members

1. Whether each of the Fees Directions and the Charging Directions to the extent that it has required the provision of a guarantee in relation to the provision of the Applicable Health Services to an Ineligible Person has been repugnant to the HSA and invalid.

Annexure B

Common questions of fact or law in the claims of the sub-group members

1. Whether each of the Second to Sixteenth Defendants at all material times has provided hospital services and other health services at public hospitals under its control in trade or commerce within the meaning of s 2 of the ACL.

2. Whether each of the Second to Sixteenth Defendants provided no consideration for the guarantee in relation to the provision of the Applicable Health Services to an Impecunious Ineligible Person procured from the sub-group member.

3. Whether each of the Second to Sixteenth Defendants when procuring the guarantee in relation to the provision of the Applicable Health Services to an Impecunious Ineligible Person from the sub-group member was under a duty to disclose the existence of the Hospital Services Duty to the sub-group member before asking him or her to provide the guarantee.

4. Whether each sub-group member was in a position of vulnerability in relation to the one of the Second to Sixteenth Defendants when providing the guarantee in relation to the provision of the Applicable Health Services to an Impecunious Ineligible Person to the applicable Defendant because of the need of the applicable Impecunious Ineligible Person for care or treatment for sickness or injury.

SIGNATURE OF LEGAL REPRESENTATIVE

This statement of claim does not require a certificate under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014*.

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

Signature

Capacity Matt Turner, Solicitor

Date of signature 16 / 08 / 2018

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.lawaccess.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 or part of 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.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Law Courts Building, 184 Phillip Street, Sydney NSW 2000
Postal address	GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

[on separate page]

AFFIDAVIT VERIFYING

Name	Garfield Fernandez, First Plaintiff
Address	11A Golding Drive, Glendenning NSW 2761
Occupation	Engineer
Date	f© / 08 / 2018

I say on oath/affirm:

1 I am the first plaintiff.

2 I believe that the allegations of fact in the statement of claim are true.

SWORN ~~AFFIRMED~~ at	Penrith
Signature of deponent	
Name of witness	Andrew Langley
Address of witness	Level 4, 2-6 Station Street, Penrith NSW 2750
Capacity of witness	Solicitor

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

1 I saw the face of the deponent.

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

Original NSW Driver Licence

Identification document relied on (may be original or certified copy)[1]

Signature of witness

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

AFFIDAVIT VERIFYING

Name	Apikali Fotu, Second Plaintiff
Address	3 Mary Brown Place, Blair Athol NSW 2560
Occupation	Nurse
Date	16/08/2018

I say on oath/~~affirm~~:

3 I am the second plaintiff.

4 I believe that the allegations of fact in the statement of claim are true.

SWORN AFFIRMED at Sydney

Signature of deponent _____

Name of witness Mah Turner

Address of witness 73 Church St, Wollongong 2500

Capacity of witness Solicitor

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

1 I saw the face of the deponent.

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

Driver Licence (Original)

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

Signature of witness _____

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

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

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

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

First Plaintiff

Garfield Mario Fernandez

Second Plaintiff

Apikali Fotu

Defendant

State of New South Wales

Second Defendant

Western Sydney Local Health District

Third Defendant

South Western Sydney Local Health District

Fourth Defendant

Sydney Local Health District

Fifth Defendant

Northern Sydney Local Health District

Sixth Defendant

Nepean Blue Mountains Local Health District

Seventh Defendant

Illawarra Shoalhaven Local Health District

Eighth Defendant

Central Coast Local Health District

Ninth Defendant

Far West Local Health District

Tenth Defendant

Hunter New England Local Health District

Eleventh Defendant

Mid North Coast Local Health District

Twelfth Defendant

Murrumbidgee Local Health District

Thirteenth Defendant

Northern NSW Local Health District

Fourteenth Defendant

Southern NSW Local Health District

Fifteenth Defendant

Western NSW Local Health District

FURTHER DETAILS ABOUT PLAINTIFF[S]

First plaintiff

Name	Garfield Mario Fernandez
Address	11A Golding Drive Glendenning NSW 2761

Second plaintiff

Name	Apikali Fotu
Address	3 Mary Place Blair Athol NSW 2560

Legal representative for plaintiffs

Name	Monique Hitter
Practising certificate number	28510
Firm	Legal Aid NSW
Contact solicitor	Matt Turner
Address	73 Church Street Wollongong NSW 2500
DX address	DX 27819 WOLLONGONG COURT
Telephone	4253 6837
Fax	4229 9078
Email	matt.turner@legalaid.nsw.gov.au
Electronic service address	

DETAILS ABOUT DEFENDANTS

First defendant

Name	State of New South Wales
Address	Crown Solicitor's Office 60-70 Elizabeth Street Sydney NSW 2000

Second defendant

Name	Western Sydney Local Health District
Address	Institute Road Westmead NSW 2145

Third defendant

Name	South Western Sydney Local Health District
Address	Liverpool Hospital Eastern Campus Corner of Lachlan and Hart Streets LIVERPOOL NSW 2170

Fourth defendant

Name	Sydney Local Health District
Address	Level 11, KGV Building Missenden Road Camperdown NSW 2050

Fifth defendant

Name	Northern Sydney Local Health District
Address	Royal North Shore Hospital Reserve Road St Leonards NSW 2065

Sixth defendant

Name	Nepean Blue Mountains Local Health District
Address	Derby Street Kingswood NSW 2747

Seventh defendant

Name	Illawarra Shoalhaven Local Health District
Address	Lawson House Wollongong Hospital Level 4, Loftus Street Wollongong NSW 2500

Eighth defendant

Name	Central Coast Local Health District
Address	West Wing, Old Medical Building Gosford Hospital Level 6, Holden Street Gosford NSW 2250

Ninth defendant

Name	Far West Local Health District
Address	Kincumber House Morgan Street Broken Hill NSW 2880

Tenth defendant

Name	Hunter New England Local Health District
Address	Lookout Road New Lambton Heights NSW 2305

Eleventh defendant

Name	Mid North Coast Local Health District
Address	Morton Street Port Macquarie NSW 2444

Twelfth defendant

Name	Murrumbidgee Local Health District
Address	63-65 Johnston Street Wagga Wagga NSW 2650

Thirteenth defendant

Name	Northern NSW Local Health District
Address	Crawford House Hunter Street Lismore NSW 2480

Fourteenth defendant

Name	Southern NSW Local Health District
Address	Cnr Collette and Erin Streets Queanbeyan NSW 2620

Fifteenth defendant

Name	Western NSW Local Health District
Address	23 Hawthorn Street Dubbo NSW 2830