



Principal Registrar &  
Chief Executive Officer



Form 7A (version 5)  
UCPR 14.3

## DEFENCE TO THE FOURTH FURTHER AMENDED STATEMENT OF CLAIM

### COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	Professional Negligence
Registry	Sydney
Case number	2017/00279308

### TITLE OF PROCEEDINGS

First plaintiff	<b>AMY RICKHUSS</b>
Number of plaintiffs	12
First defendant	<b>THE COSMETIC INSTITUTE PTY LTD (IN LIQUIDATION)</b> ACN 153 061 155
Number of defendants	19

### FILING DETAILS

Filed for	<b>Van Huu Anthony Nguyen</b> seventh defendant
Legal representative	Leonie Beyers HWL Ebsworth Lawyers
Legal representative reference	PCN: 45509 NSW Ref: LRB:MUC:993524 Court User No: 1290
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### HEARING DETAILS

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

### PLEADING AND PARTICULARS

Unless otherwise indicated, the seventh defendant adopts the defined terms used in the Fourth Further Amended Statement of Claim filed on 31 May 2022.

The seventh defendant pleads to the allegations in the Fourth Further Amended Statement of Claim as follows:

#### I. INTRODUCTION

1. The seventh defendant does not admit paragraph 1.

2. In response to paragraph 2, the seventh defendant:
  - (a) as to subparagraph (a), admits that BAS was performed on persons at TCI Parramatta, TCI Bondi, TCI Southport, Concord Private Hospital and Holroyd Private Hospital;
  - (b) as to subparagraph (b), admits that he performed BAS on the second plaintiff and the fifth plaintiff;
  - (c) as to subparagraph (c), admits that the second plaintiff and the fifth plaintiff attended a consultation with him prior to undergoing BAS;
  - (d) denies subparagraph (d);
  - (dd) as to subparagraph (dd), admits that the second plaintiff and the fifth plaintiff attended consultations with one or more of the fifth to sixteenth defendants following BAS;
  - (e) as to subparagraph (e), admits that the second plaintiff and the fifth plaintiff had BAS performed under anaesthesia administered by an anaesthetist; and
  - (f) otherwise does not admit the paragraph.
- 2A. The seventh defendant does not admit paragraph 2A.
3. In response to paragraph 3, the seventh defendant:
  - (a) admits that seven or more persons have brought claims against a defendant; and
  - (b) otherwise does not admit the paragraph.
4. The seventh defendant does not admit paragraph 4.
5. The seventh defendant:
  - (a) says that at around the time of her BAS, the second plaintiff identified her date of birth as 21 June 1977;
  - (b) says that at around the time of her BAS, the second plaintiff identified her place of residence as in New South Wales;
  - (c) says that at around the time of her BAS, the second plaintiff identified her marital status as 'married' and identified herself as having two children;
  - (d) says that at around the time of her BAS, the second plaintiff identified her occupation as at home mum; and
  - (e) otherwise does not admit the paragraph.
6. The seventh defendant does not admit paragraph 6.

7. The seventh defendant does not admit paragraph 7.
8. The seventh defendant:
  - (a) says that at around the time of her BAS, the fifth plaintiff identified her date of birth as 25 August 1994;
  - (b) says that at around the time of her BAS, the fifth plaintiff identified her place of residence as in New South Wales;
  - (c) says that at around the time of her BAS, the fifth plaintiff identified herself as having no children;
  - (d) says that at around the time of her BAS, the fifth plaintiff identified her occupation as retail and hospitality; and
  - (e) otherwise does not admit the paragraph.
- 8A. The seventh defendant does not admit paragraph 8A.
- 8B. The seventh defendant does not admit paragraph 8B.
- 8C. The seventh defendant does not admit paragraph 8C.
- 8D. The seventh defendant does not admit paragraph 8D.
- 8E. The seventh defendant does not admit paragraph 8E.
- 8F. The seventh defendant does not admit paragraph 8F.
- 8G. The seventh defendant does not admit paragraph 8G.
9. In relation to paragraph 9, the seventh defendant:
  - (a) admits subparagraph (a);
  - (b) as to subparagraph (b):
    - (i) admits that the first defendant was a corporation within the meaning of s 4 of the CCA; and
    - (ii) otherwise denies the subparagraph;
  - (c) does not admit subparagraph (c);
  - (d) as to subparagraph (d):
    - (i) admits that BAS was performed on persons at TCI Parramatta, TCI Bondi (including on the second plaintiff), TCI Southport (including on the fifth plaintiff), Holroyd Private Hospital and Concord Private Hospital; and
    - (ii) otherwise does not admit the subparagraph;
  - (e) does not admit subparagraph (e);

- (e1) does not admit subparagraph (e1); and
  - (f) does not admit subparagraph (f).
10. In response to paragraph 10, the seventh defendant:
- (a) admits subparagraph (a);
  - (b) as to subparagraph (b):
    - (i) admits that the first defendant was a corporation within the meaning of s 4 of the CCA; and
    - (ii) otherwise denies the subparagraph;
  - (c) does not admit subparagraph (c);
  - (d) as to subparagraph (d):
    - (i) admits that BAS was performed on persons at TCI Parramatta; and
    - (ii) otherwise does not admit the subparagraph;
  - (d1) as to subparagraph (d1):
    - (i) admits that BAS was performed on persons at TCI Parramatta, Concord Private Hospital and Holroyd Private Hospital; and
    - (ii) otherwise does not admit the subparagraph;
  - (e) does not admit subparagraph (e);
  - (f) does not admit subparagraph (f);
  - (g) does not admit subparagraph (g);
  - (g1) does not admit subparagraph (g1); and
  - (h) does not admit subparagraph (h).
11. The seventh defendant does not admit paragraph 11.
12. In response to paragraph 12, the seventh defendant:
- (a) admits subparagraph (a);
  - (b) as to subparagraph (b):
    - (i) admits that the first defendant was a corporation within the meaning of s 4 of the CCA; and
    - (ii) otherwise denies the subparagraph;
  - (c) does not admit subparagraph (c);

- (d) as to subparagraph (d):
  - (i) admits that BAS was performed on persons, including the second plaintiff, at TCI Bondi; and
  - (ii) otherwise does not admit the subparagraph;
- (e) does not admit subparagraph (e);
- (f) does not admit subparagraph (f);
- (g) does not admit subparagraph (g);
- (g1) does not admit subparagraph (g1); and
- (h) does not admit subparagraph (h).

13. In response to paragraph 13, the seventh defendant:

- (a) admits subparagraph (a);
- (b) as to subparagraph (b):
  - (i) admits that the first defendant was a corporation within the meaning of s 4 of the CCA; and
  - (ii) otherwise denies the subparagraph;
- (c) does not admit subparagraph (c);
- (d) as to subparagraph (d):
  - (i) admits that BAS was performed on persons, including the fifth plaintiff, at TCI Southport; and
  - (ii) otherwise does not admit the subparagraph;
- (e) does not admit subparagraph (e);
- (f) does not admit subparagraph (f);
- (g) does not admit subparagraph (g);
- (g1) does not admit subparagraph (g1); and
- (h) does not admit subparagraph (h).

14. In response to paragraph 14, the seventh defendant:

- (a) as to subparagraph (a):
  - (i) admits that the fifth defendant was a registered medical practitioner and practised as a plastic and reconstructive surgeon; and
  - (ii) otherwise does not admit the paragraph;

- (b) admits the fifth defendant was formerly a director of TCI Parramatta, TCI Bondi and TCI Southport;
- (c) does not admit subparagraph (c);
- (d) as to subparagraph (d):
  - (i) admits that the fifth defendant was the surgical director of TCI Facilities, including TCI Parramatta, TCI Bondi and TCI Southport ; and
  - (ii) otherwise does not admit the paragraph;
- (e) as to subparagraph (e):
  - (i) admits that the fifth defendant conducted training of the seventh defendant in relation to BAS;
  - (ii) otherwise does not admit the subparagraph;
- (f) does not admit subparagraph (f);
- (g) does not admit subparagraph (g);
- (h) does not admit subparagraph (h);
- (i) does not admit subparagraph (i);
- (j) does not admit subparagraph (j);
- (k) does not admit subparagraph (k);
- (l) as to subparagraph (l):
  - (i) denies that the seventh defendant performed BAS in accordance with a One Size Fits All Approach; and
  - (ii) otherwise does not admit the paragraph;
- (m) as to subparagraph (m):
  - (i) does not admit the subparagraph; and
  - (ii) denies that the seventh defendant performed BAS in accordance with a One Size Fits All Approach;
- (n) as to subparagraph (n):
  - (i) does not admit the subparagraph; and
  - (ii) denies that the seventh defendant performed BAS in accordance with a One Size Fits All Approach; and

- (o) as to subparagraph (o):
  - (i) does not admit the subparagraph; and
  - (ii) denies that the seventh defendant performed BAS in accordance with a One Size Fits All Approach.

14A. The seventh defendant does not admit paragraph 14A.

14B. In response to paragraph 14B, the seventh defendant:

- (a) as to subparagraph (a);
  - (i) admits that he was at all material times a registered medical practitioner;
  - (ii) says that he had qualifications, training and experience relevant to the performance of BAS; and
  - (iii) otherwise does not admit the paragraph;
- (b) does not admit subparagraph (b);
- (c) as to subparagraph (c):
  - (i) admits that the fifth defendant conducted training of the seventh defendant in relation to BAS;
  - (ii) denies that he was trained, supervised and/or assisted by the fifth defendant in the performance of a One Size Fits All Approach to BAS; and
  - (iii) otherwise does not admit the subparagraph;
- (d) as to subparagraph (d):
  - (i) admits that he carried out the following duties or activities:
    - (A) pre-operative consultations with, and advice to, women about BAS;
    - (B) obtaining consent from women to undergo BAS;
    - (C) BAS under conscious sedation or general anaesthesia;
    - (D) the injection of local anaesthetic during conscious sedation of women undergoing BAS;
    - (E) post-BAS follow-up consultations; and
    - (F) the diagnosis and treatment of BAS complications; and
  - (ii) denies that he carried out a One Size Fits All Approach to BAS; and
  - (iii) otherwise denies the subparagraph;

(e) as to subparagraph (e):

- (i) admits that he performed BAS on the second plaintiff and the fifth plaintiff;  
and
- (ii) otherwise denies the subparagraph.

14C. The seventh defendant does not admit paragraph 14C.

14D. The seventh defendant does not admit paragraph 14D.

14E. The seventh defendant does not admit paragraph 14E.

14F. The seventh defendant does not admit paragraph 14F.

14G. The seventh defendant does not admit paragraph 14G.

14H. The seventh defendant does not admit paragraph 14H.

14I. The seventh defendant does not admit paragraph 14I.

14J. The seventh defendant does not admit paragraph 14J.

14K. The seventh defendant does not admit paragraph 14K.

14L. The seventh defendant does not admit paragraph 14L.

14M. The seventh defendant does not admit paragraph 14M.

14N. The seventh defendant does not admit paragraph 14N.

## **II. ALLEGED SYSTEM OF BAS**

15. In response to paragraph 15, the seventh defendant:

- (a) admits that BAS was offered to and performed on women at TCI Parramatta, TCI Bondi, TCI Southport, Holroyd Private Hospital and Concord Private Hospital;
- (b) admits that BAS was performed by surgeons, including the seventh defendant;
- (c) admits that patients were charged a fee for BAS; and
- (d) otherwise does not admit the paragraph.

16. In response to paragraph 16, the seventh defendant says, so far as the allegation concerns his own practice or what he observed:

- (a) denies subparagraph (a);
- (b) denies subparagraph (b);
- (c) otherwise does not admit the paragraph.

17. In response to paragraph 17, the seventh defendant:

- (a) repeats subparagraph 14(b), above;



- (b) says that the fifth defendant was the surgical director of the business conducted at the TCI Premises; and
- (c) otherwise does not admit the paragraph.

18. In response to paragraph 18, the seventh defendant:

- (a) admits that on or around 18 May 2014 he entered into an agreement with the second defendant which was headed 'Accreditation Deed' (**Accreditation Deed**);
- (b) admits that it was a term of the Accreditation Deed that he would perform medical services in accordance with the deed;

**Particulars**

Accreditation Deed, cl 5.8

- (c) admits that it was term of the Accreditation Deed that the medical services were to be performed at premises from which The Cosmetic Institute business operated; and
- (d) otherwise does not admit the paragraph.

19. In response to paragraph 19, the seventh defendant:

- (a) repeats subparagraphs 18(a) to (c), above;
- (b) admits that it was a term of the Accreditation Deed that he was granted the right during the term of the deed to be described as an "Accredited TCI Practitioner";

**Particulars**

Accreditation Deed, cl 5.9

- (c) admits that it was a term of the Accreditation Deed that the second defendant would provide space suitable for the conduct of a professional practice and such plant and equipment as were reasonably necessary for the provision of medical services by the seventh defendant;

**Particulars**

Accreditation Deed, cl 3.2(a), (b)

- (d) admits that on or around 18 May 2014 he entered into an agreement with the second defendant which was headed 'Deed for the provision of training' (**Training Deed**);

- (e) admits that it was a term of the Training Deed that the seventh defendant would undertake a training program as instructed by the second defendant; and

**Particulars**

Training Deed, cl 3(a)

- (f) otherwise does not admit the paragraph.

20. In response to paragraph 20, the seventh defendant:

- (a) admits that anaesthetists provided anaesthesia to enable the performance of BAS at TCI Parramatta, TCI Bondi, TCI Southport, Holroyd Private Hospital and Concord Private Hospital; and
- (b) otherwise does not admit the paragraph.

**The alleged 'One Size Fits All Approach'**

21. In response to paragraph 21, the seventh defendant:

- (a) as to subparagraph (a):
  - (i) denies that the pre-operative consultation conducted by him with the second plaintiff and the fifth plaintiff was conducted in the absence of an appropriately qualified and trained surgeon;
  - (ii) denies that the advice he provided to the second plaintiff and the fifth plaintiff was not provided by an appropriately qualified and trained surgeon; and
  - (iii) otherwise does not admit the subparagraph;
- (b) as to subparagraph (b):
  - (i) admits that he performed surgery on the second plaintiff and the fifth plaintiff under anaesthesia administered by an anaesthetist; and
  - (ii) otherwise does not admit the subparagraph;
- (b1) as to subparagraph (b1):
  - (i) admits that he administered local anaesthesia to the second plaintiff and the fifth plaintiff during the course of the surgery; and
  - (ii) otherwise does not admit the subparagraph.

- (c) as to subparagraph (c):
  - (i) admits that he performed surgery on the second plaintiff and the fifth plaintiff using a bilateral infra-mammary incision; and
  - (ii) otherwise does not admit the subparagraph;
- (d) as to subparagraph (d):
  - (i) admits that he implanted round, textured, silicone implants into the second plaintiff and the fifth plaintiff; and
  - (ii) otherwise does not admit the subparagraph;
- (e) as to subparagraph (e):
  - (i) admits that in conducting surgery on the second plaintiff and the fifth plaintiff he inserted the implants into subpectoral pockets; and
  - (ii) otherwise does not admit the subparagraph;
- (f) denies subparagraph (f); and
- (g) as to subparagraph (g):
  - (i) says that he performed surgery on the fifth plaintiff at Southport while the fifth plaintiff was under general anaesthesia;
  - (ii) admits that he performed surgery on other patients at TCI Parramatta and TCI Bondi in connection with which he injected patients with local anaesthesia; and
  - (iii) otherwise does not admit the subparagraph.
- (h) as to subparagraph (h):
  - (i) admits that the surgery was performed on the second plaintiff and the fifth plaintiff using the TCI Facilities; and
  - (ii) otherwise does not admit the balance of the paragraph.
- (i) as to subparagraph (i):
  - (i) admits that he performed surgery on the second plaintiff and the fifth plaintiff; and
  - (ii) otherwise does not admit the balance of the paragraph.

22. The seventh defendant denies paragraph 22.

23. Not used.

23A. Not used.

**Pre-surgery consultations**

24. In response to paragraph 24, the seventh defendant:
- (a) admits that the second plaintiff and the fifth plaintiff attended a pre-surgery consultation with him prior to undergoing BAS; and
  - (b) otherwise does not admit the paragraph.

**Post-surgery consultations**

- 24A. In response to paragraph 24A, the seventh defendant:
- (a) admits that following BAS, the second plaintiff and the fifth plaintiff participated in person or by videolink or by telephone, in follow up consultations with a TCI surgeon and/or cosmetic consultant and/or nurse; and
  - (b) otherwise does not admit the paragraph.
- 24B. In response to paragraph 24B, the seventh defendant:
- (a) says that the fifth defendant was at times available to consult with the seventh defendant about the performance of BAS; and
  - (b) otherwise does not admit the paragraph.
- 24C. In response to paragraph 24C, the seventh defendant:
- (a) admits that the fifth defendant was at times available to treat or assist in the treatment of patients following the performance of BAS; and
  - (b) otherwise does not admit the paragraph.

**IIA. REPRESENTATIONS****A. The Alleged Representations made to the public**

- 24D. In response to paragraph 24D, the seventh defendant:
- (a) does not admit paragraph 24D;
  - (b) says in respect of paragraph 24D:
    - (i) on 29 July 2022 the seventh defendant requested further and better particulars of paragraph 24D and each of the paragraphs in the 4FASOC where the Representations (as defined in paragraph 24D of the 4FASOC) are alleged;
    - (ii) on 26 August 2022 the plaintiffs responded to the request and refused to provide further particulars of paragraph 24D and the Representations where they are alleged in the 4FASOC, and informed the seventh

defendant that “[i]t is not for the plaintiffs to assist your clients to pinpoint the precise words or text which contains or conveyed the relevant representation”;

- (iii) on 20 September 2022 the seventh defendant pressed the plaintiffs to specify the material facts, matters and circumstances upon which the plaintiffs rely to assert each Representation alleged to have been made;
- (iv) on 27 September 2022, the plaintiffs, via correspondence:

- (A) stated in respect of the Representations alleged to have been made:

*“Your clients are not left to “assume how it is alleged that each Representation was made to the public and each lead plaintiff”. There is considerable detail in the pleading, and a substantial body of evidence has been served.*

*Whereas you suggest that the “expectation that [your] clients are to just read hundreds of pages of documents and/or thousands of social media or website posts and infer which of the 14 alleged Representations were made on each page is inappropriate”, we disagree. It is not our concern that the evidence in these proceedings is substantial and runs to thousands of pages. It was the defendants who elected to make Representations time after time. The defendants must now wear that fact and consider that evidence.*

*Ultimately, you ask: “We press that you specify with particularity the material facts, matters and circumstances upon which the plaintiff rely to allege that the first to fourth defendants made each of the following Representations”. We provide the following further response. What appears below is only one instance (or, occasionally, two) of the making of the Representations by the first to fourth defendants. There are dozens more. We are not obliged to provide this level of detail (for reasons already canvassed, and which are discussed further below), but in an effort to avoid further dispute, we do anyway....”.*

- (B) provided eight examples of representations alleged to have been made in the terms set out below (without identifying to which lead plaintiff it is alleged each representation was conveyed), and otherwise refused to provide further and better particulars

concerning the Representations where they are pleaded in paragraph 24D and following in the 4FASOC:

- (1) *"In respect of 24D(a), it is pleaded that the TCI Surgeons were said to have a range of attributes. At 24D(a)(i), they are said to be 'plastic and reconstructive surgeons'. On 26 January 2014, available on the first to fourth defendants' website was a webpage titled "Plastic Surgeons and Cosmetic Surgeons" (formerly accessible at this link: [www.thecosmeticinstitute.com.au/plastic-surgeons-and-cosmetic-surgeons/](http://www.thecosmeticinstitute.com.au/plastic-surgeons-and-cosmetic-surgeons/)). That page asserted, "The Cosmetic institute is unique in that we have both Plastic Surgeons and Cosmetic Surgeons working side by side."";*
- (2) *"At 24D(a)(ii), it is pleaded that the TCI Surgeons were represented as being "highly skilled in performing BAS". On 6 August 2014, available on the first to fourth defendants' website was a webpage titled "Out Highly Skilled and Friendly Team" (formerly accessible at this link: [www.thecosmeticinstitute.com.au/team/](http://www.thecosmeticinstitute.com.au/team/)). That page asserted, that the TCI Team (including the TCI Surgeons) were "highly skilled".";*
- (3) *"At 24D(a)(iii), it is pleaded that the TCI Surgeons were represented as being "highly experienced in performing BAS". At 24D(a)(iv), it is pleaded that the TCI Surgeons were represented as having had extensive training in performing BAS. On 24 April 2013, available on the first to fourth defendants' website, was a webpage titled "Dr E Dona" (formerly accessible at this link: [www.thecosmeticinstitute.com.au/dr-eddv-dona/](http://www.thecosmeticinstitute.com.au/dr-eddv-dona/)). That page asserted, "Our team of highly trained and experienced surgeons are supported and mentored by our surgical director".";*
- (4) *"At 24D(v), it is pleaded that the TCI Surgeons were represented as being trained in-house by Dr Eddy Dona which "sets them apart from other surgeons". On 26 January 2014, available on the first to fourth defendants' website was a webpage titled "Plastic Surgeons and Cosmetic Surgeons" (formerly accessible at this link:*

- [www.thecosmeticinstitute.com.au/plastic-surgeons-and-cosmetic-surgeons/](http://www.thecosmeticinstitute.com.au/plastic-surgeons-and-cosmetic-surgeons/)). That page asserted, “The Cosmetic Institute’s Cosmetic Surgeons are not Plastic Surgeons. However, they come from extensive surgical backgrounds and have been hand selected to have their existing skills sets further refined under the intensive training of our Surgical Director and prominent Sydney Plastic Surgeon.””;
- (5) “At 24D(vi), it is pleaded that the TCI Surgeons “do not compromise on quality in performing BAS”. On 1 December 2014, available on the first to fourth defendants’ website was a webpage titled “Affordable Quality: The TCI Difference” (formerly accessible at this link: [www.thecosmeticinstitute.com.au/about/affordable/](http://www.thecosmeticinstitute.com.au/about/affordable/)). That page asserted, “We believe that everyday Australians should be able to have quality cosmetic surgery at affordable prices, without needing to take unnecessary medical risks overseas” and “This allows us to offer the highest standards of surgical care at highly competitive prices”.”;
- (6) “At 24D(b), it is pleaded that the TCI Surgeons were represented as offering and performing high quality BAS procedures at TCI Premises. On 1 December 2014, available on the first to fourth defendants’ website was a webpage titled “Affordable Quality: The TCI Difference” (formerly accessible at this link: [www.thecosmeticinstitute.com.au/about/affordable/](http://www.thecosmeticinstitute.com.au/about/affordable/)). That page asserted, “This allows us to offer the highest standards of surgical care at highly competitive prices.” Similarly, on 15 November 2016, available on the first to fourth defendants’ website, was a webpage titled “Our philosophy: about us” (formerly accessible at this link: [www.thecosmeticinstitute.com.au/about/about-us/](http://www.thecosmeticinstitute.com.au/about/about-us/)). That page asserted, “We believe that everyday Australians should be able to have quality cosmetic surgery at affordable prices.””;
- (7) “At 24D(f), it is pleaded that TCI Surgeons’ services at TCI Premises were represented as affordable. On 13 November 2016, available on the first to fourth defendants’ website was a webpage titled “Answers to your questions: FAQs”. Under

*a subheading “Why are our prices so affordable”, the website read: “This allows us to offer the highest standards of surgical care at highly competitive prices.”; and*

(8) *“At 24D(g), it is pleaded that TCI Facilities were represented to be “state-of-the- art”. On 26 January 2014, available on the first to fourth defendants’ website, was a webpage titled “Our facilities” (formerly accessible at this link: [www.thecosmeticinstitute.com.au/our-facilities](http://www.thecosmeticinstitute.com.au/our-facilities)). That page asserted, “Our state- of-the-art surgical facilities have been purpose built to the highest international standards and are subject to rigorous ISO9001 accreditation ... So you can stay here in Australia for expert and affordable treatment within easy reach of your friends, family and home.”; and*

(v) to the extent that the lead plaintiffs seek to tender material at trial to prove, or make submissions about, any of the Representations beyond the material and examples particularised above, the defendants object to the tendering of that material and the making of any such submissions on the basis that:

- (A) the Representations have not been adequately pleaded and particularised where those Representations are alleged in the 4FASOC;
- (B) the material facts upon which the lead plaintiffs rely to allege the making of each of the Representations have not been identified;
- (C) the pleading of the Representations where alleged in the 4FASOC are conclusionary;
- (D) the lead plaintiffs have not by reference to the voluminous material served identified, with specific reference to that material, the facts, matters and circumstances relied upon to prove each of the Representations alleged in the 4FASOC;
- (E) in the premises the defendants are, and have been, denied procedural fairness to be informed of the case put against them to afford them a proper opportunity to understand, and meet, that case;

(c) says that paragraph 24D:

- (i) pleads a conclusion;
- (ii) does not plead material facts;



- (iii) is embarrassing and should be struck out;
- (iv) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely.

24E. In response to paragraph 24E, the seventh defendant:

- (a) does not admit paragraph 24E;
- (b) repeats paragraph 24D(b) above; and
- (c) says that paragraph 24E:
  - (i) pleads a conclusion;
  - (ii) does not plead material facts;
  - (iii) is embarrassing and should be struck out;
  - (iv) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely.

24F. The seventh defendant does not admit paragraph 24F.

24G. The seventh defendant does not admit paragraph 24G.

24H. In response to paragraph 24H, the seventh defendant:

- (a) denies paragraph 24H;
- (b) repeats paragraph 24D(b) above; and
- (c) says that paragraph 24H:
  - (i) pleads a conclusion;
  - (ii) does not plead material facts;
  - (iii) is embarrassing and should be struck out;
  - (iv) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely.

24I. In response to paragraph 24I, the seventh defendant:

- (a) denies paragraph 24I;
- (b) repeats paragraph 24D(b) above; and
- (c) says that paragraph 24I:

- (i) pleads a conclusion;
- (ii) does not plead material facts;
- (iii) is embarrassing and should be struck out;
- (iv) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely.

**B. The Alleged Representations made to individual group members**

24J. In response to paragraph 24J, the seventh defendant:

- (a) does not admit paragraph 24J;
- (b) repeats paragraph 24D(b) above; and
- (c) says that paragraph 24J:
  - (i) pleads a conclusion;
  - (ii) does not plead material facts;
  - (iii) is embarrassing and should be struck out;
  - (iv) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely.

24K. In response to paragraph 24K, the seventh defendant:

- (a) does not admit paragraph 24K;
- (b) repeats paragraph 24D(b) above; and
- (c) says that paragraph 24K:
  - (i) pleads a conclusion;
  - (ii) does not plead material facts;
  - (iii) is embarrassing and should be struck out;
  - (iv) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely.

24L. The seventh defendant does not admit paragraph 24L.

24M. The seventh defendant does not admit paragraph 24M.

24N. In response to paragraph 24N, the seventh defendant:

- (a) denies paragraph 24N;
- (b) repeats paragraph 24D(b) above; and
- (c) says that paragraph 24N:
  - (i) pleads a conclusion;
  - (ii) does not plead material facts;
  - (iii) is embarrassing and should be struck out;
  - (iv) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely.

24O. In response to paragraph 24O, the seventh defendant:

- (a) denies paragraph 24O;
- (b) repeats paragraph 24D(b) above; and
- (c) says that paragraph 24O:
  - (i) pleads a conclusion;
  - (ii) does not plead material facts;
  - (iii) is embarrassing and should be struck out;
  - (iv) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely.

24P. The seventh defendant does not admit paragraph 24P.

24Q. The seventh defendant does not admit paragraph 24Q.

24R. The seventh defendant does not admit paragraph 24R.

24S. The seventh defendant does not admit paragraph 24S.

24T. The seventh defendant does not admit paragraph 24T.

24U. The seventh defendant does not admit paragraph 24U.

24V. The seventh defendant does not admit paragraph 24V.

24W. The seventh defendant does not admit paragraph 24W.

24X. The seventh defendant does not admit paragraph 24X.

24Y. The seventh defendant does not admit paragraph 24Y.

24Z. The seventh defendant does not admit paragraph 24Z.

24AA. The seventh defendant does not admit paragraph 24AA.

24AB. The seventh defendant does not admit paragraph 24AB.

24AC. The seventh defendant does not admit paragraph 24AC.

24AD. The seventh defendant does not admit paragraph 24AD.

24AE. The seventh defendant does not admit paragraph 24AE.

24AF. The seventh defendant does not admit paragraph 24AF.

24AG. The seventh defendant does not admit paragraph 24AG.

**III. QUESTIONS WHICH IT IS CONTENDED ARE COMMON**

25. The seventh defendant does not admit paragraph 25.

**IV. THE PLAINTIFFS' BAS**

26. The seventh defendant does not admit paragraph 26.

26A. The seventh defendant does not admit paragraph 26A.

26B. The seventh defendant does not admit paragraph 26B.

26C. The seventh defendant does not admit paragraph 26C.

27. The seventh defendant does not admit paragraph 27.

28. The seventh defendant does not admit paragraph 28.

28A. The seventh defendant does not admit paragraph 28A.

28B. The seventh defendant does not admit paragraph 28B.

28C. The seventh defendant does not admit paragraph 28C.

29. The seventh defendant does not admit paragraph 29.

30. The seventh defendant does not admit paragraph 30.

31. The seventh defendant does not admit paragraph 31.

32. The seventh defendant does not admit paragraph 32.

33. The seventh defendant does not admit paragraph 33.

34. The seventh defendant does not admit paragraph 34.

35. The seventh defendant does not admit paragraph 35.

36. The seventh defendant does not admit paragraph 36.

37. The seventh defendant does not admit paragraph 37.

- 37A. In response to paragraph 37A, the seventh defendant:
- (a) does not admit paragraph 37A;
  - (b) repeats paragraph 24D(b) above; and
  - (c) says that paragraph 37A:
    - (i) pleads a conclusion;
    - (ii) does not plead material facts;
    - (iii) is embarrassing and should be struck out;
    - (iv) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely.
38. In response to paragraph 38, the seventh defendant:
- (a) admits that the second plaintiff attended at TCI Bondi premises on 7 May 2014 for a pre-surgery consultation; and
  - (b) otherwise does not admit the paragraph.
39. In response to paragraph 39, the seventh defendant:
- (a) admits that on 7 May 2014 Ms Pollock agreed that she would receive **implants which were to be:**
    - (i) **each of an approximate volume of 375 cc;**
    - (ii) **round;**
    - (iii) **each with a profile of 5.7cm;**
    - (iv) **textured;**
    - (v) **silicone;**
    - (vi) **inserted by way of an infra-mammary incision; and**
    - (vii) **placed sub-pectorally; and**
  - (b) otherwise does not admit the paragraph.
- 39A. The seventh defendant does not admit paragraph 39A.
- 39B. The seventh defendant denies paragraph 39B.
- 39C. The seventh defendant does not admit paragraph 39C.
40. The seventh defendant admits paragraph 40.

41. In response to paragraph 41, the seventh defendant:
- (a) admits that the second plaintiff was administered ropivacaine hydrochloride;
  - (b) admits that the second plaintiff was administered adrenaline; and
  - (c) otherwise does not admit the paragraph.
42. In response to paragraph 42, the seventh defendant:
- (a) admits that the second plaintiff's medical records indicate she was, following her BAS, administered diazepam in an initial dose of 2mg; and
  - (b) otherwise does not admit the paragraph.
43. In response to paragraph 43, the seventh defendant:
- (a) admits that the second plaintiff's medical records indicate she was subsequently administered further doses of diazepam totalling 8mg; and
  - (b) otherwise does not admit the paragraph.
44. The seventh defendant does not admit paragraph 44.
45. The seventh defendant does not admit paragraph 45.
46. The seventh defendant does not admit paragraph 46.
47. The seventh defendant does not admit paragraph 47.
48. The seventh defendant does not admit paragraph 48.
- 48A. The seventh defendant does not admit paragraph 48A.
- 48B. The seventh defendant does not admit paragraph 48B.
49. The seventh defendant does not admit paragraph 49
50. The seventh defendant does not admit paragraph 50.
- 50A. The seventh defendant does not admit paragraph 50A.
- 50B. The seventh defendant does not admit paragraph 50B.
- 50C. The seventh defendant does not admit paragraph 50C.
51. The seventh defendant does not admit paragraph 51.
52. The seventh defendant does not admit paragraph 52.
53. The seventh defendant does not admit paragraph 53.
54. The seventh defendant does not admit paragraph 54.
55. The seventh defendant does not admit paragraph 55.

- 56. The seventh defendant does not admit paragraph 56.
- 57. The seventh defendant does not admit paragraph 57.
- 57A. The seventh defendant does not admit paragraph 57A.
- 57B. The seventh defendant does not admit paragraph 57B.
- 57C. The seventh defendant does not admit paragraph 57C.
- 58. The seventh defendant does not admit paragraph 58.
- 59. The seventh defendant does not admit paragraph 59.
- 59A. The seventh defendant does not admit paragraph 59A.
- 59B. The seventh defendant does not admit paragraph 59B.
- 59C. The seventh defendant does not admit paragraph 59C.
- 60. The seventh defendant does not admit paragraph 60.
- 61. The seventh defendant does not admit paragraph 61.
- 62. The seventh defendant does not admit paragraph 62.
- 63. The seventh defendant does not admit paragraph 63.
- 64. The seventh defendant does not admit paragraph 64.
- 65. The seventh defendant does not admit paragraph 65.
- 65A. In response to paragraph 65A, the seventh defendant:
  - (a) does not admit paragraph 65A;
  - (b) repeats paragraph 24D(b) above; and
  - (c) says that paragraph 65A:
    - (i) pleads a conclusion;
    - (ii) does not plead material facts;
    - (iii) is embarrassing and should be struck out;
    - (iv) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely.
- 65B. In response to paragraph 65B, the seventh defendant:
  - (a) does not admit paragraph 65B;
  - (b) repeats paragraph 24D(b) above; and

- (c) says that paragraph 65B:
  - (i) pleads a conclusion;
  - (ii) does not plead material facts;
  - (iii) is embarrassing and should be struck out;
  - (iv) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely.

65C. In response to paragraph 65C, the seventh defendant:

- (a) does not admit paragraph 65C;
- (b) repeats paragraph 24D(b) above; and
- (c) says that paragraph 65C:
  - (i) pleads a conclusion;
  - (ii) does not plead material facts;
  - (iii) is embarrassing and should be struck out;
  - (iv) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely.

65D. In response to paragraph 65D, the seventh defendant:

- (a) does not admit paragraph 65D;
- (b) repeats paragraph 24D(b) above; and
- (c) says that paragraph 65D:
  - (i) pleads a conclusion;
  - (ii) does not plead material facts;
  - (iii) is embarrassing and should be struck out;
  - (iv) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely.

66. In response to paragraph 66, the seventh defendant:

- (a) admits that the fifth plaintiff attended at TCI Southport premises on 20 November 2015 for a pre-surgery consultation; and
- (b) otherwise does not admit the paragraph.



67. In response to paragraph 67, the seventh defendant:
- (a) admits that on 20 November 2015 Ms Knowland agreed that she would receive implants which were to be:
- (i) each of an approximate volume of 330cc;
  - (ii) round;
  - (iii) textured;
  - (iv) silicone;
  - (v) inserted by way of an infra-mammary incision; and
  - (vi) placed sub-pectorally; and
- (b) otherwise does not admit the paragraph.
- 67A. The seventh defendant does not admit paragraph 67A.
- 67B. The seventh defendant denies paragraph 67B.
- 67C. The seventh defendant does not admit paragraph 67C.
68. The seventh defendant admits paragraph 68.
69. The seventh defendant does not admit paragraph 69.
70. The seventh defendant does not admit paragraph 70.
71. The seventh defendant does not admit paragraph 71.
72. In answer to paragraph 72, the seventh defendant:
- (a) admits that on 5 July 2016 the fifth plaintiff underwent washout procedure and replacement of her right breast implant at the TCI Southport, performed by him;
- (b) admits that the replacement implant was round, textured silicone, and was inserted by way of an infra-mammary incision and placed in a sub-pectoral pocket; and
- (c) otherwise does not admit the paragraph.
73. The seventh defendant does not admit paragraph 73.
74. The seventh defendant does not admit paragraph 74.
75. The seventh defendant does not admit paragraph 75.
76. The seventh defendant does not admit paragraph 76.
77. The seventh defendant does not admit paragraph 77.
- 77FA. The seventh defendant does not admit paragraph 77FA.
- 77FAA. The seventh defendant does not admit paragraph 77FAA.

77FAB. The seventh defendant does not admit paragraph 77FAB.

77FB. The seventh defendant does not admit paragraph 77FB.

77FC. The seventh defendant does not admit paragraph 77FC.

77FCA. The seventh defendant does not admit paragraph 77FCA.

77FCB. The seventh defendant does not admit paragraph 77FCB.

77FCC. The seventh defendant does not admit paragraph 77FCC.

77FD. The seventh defendant does not admit paragraph 77FD.

77FE. The seventh defendant does not admit paragraph 77FE.

77FF. The seventh defendant does not admit paragraph 77FF.

77FG. The seventh defendant does not admit paragraph 77FG.

77FH. The seventh defendant does not admit paragraph 77FH.

77FI. The seventh defendant does not admit paragraph 77FI.

77FJ. The seventh defendant does not admit paragraph 77FJ.

77FK. The seventh defendant does not admit paragraph 77FK.

77FL. The seventh defendant does not admit paragraph 77FL.

77FM. The seventh defendant does not admit paragraph 77FM.

77FN. The seventh defendant does not admit paragraph 77FN.

77FO. The seventh defendant does not admit paragraph 77FO.

77GA. The seventh defendant does not admit paragraph 77GA.

77GAA. The seventh defendant does not admit paragraph 77GAA.

77GAB. The seventh defendant does not admit paragraph 77GAB.

77GAC. The seventh defendant does not admit paragraph 77GAC.

77GAD. The seventh defendant does not admit paragraph 77GAD.

77GAE. The seventh defendant does not admit paragraph 77GAE.

77GB. The seventh defendant does not admit paragraph 77GB.

77GC. The seventh defendant does not admit paragraph 77GC.

77GCA. The seventh defendant does not admit paragraph 77GCA.

77GCB. The seventh defendant does not admit paragraph 77GCB.

77GCC. The seventh defendant does not admit paragraph 77GCC.

77GD. The seventh defendant does not admit paragraph 77GD.

77GE. The seventh defendant does not admit paragraph 77GE.

77GF. The seventh defendant does not admit paragraph 77GF.

77GG. The seventh defendant does not admit paragraph 77GG.

77GH. The seventh defendant does not admit paragraph 77GH.

77GI. The seventh defendant does not admit paragraph 77GI.

77GJ. The seventh defendant does not admit paragraph 77GJ.

77HA. The seventh defendant does not admit paragraph 77HA.

77HAA. The seventh defendant does not admit paragraph 77HAA.

77HAB. The seventh defendant does not admit paragraph 77HAB.

77HB. The seventh defendant does not admit paragraph 77HB.

77HC. The seventh defendant does not admit paragraph 77HC.

77HD. The seventh defendant does not admit paragraph 77HD.

77HE. The seventh defendant does not admit paragraph 77HE.

77HF. The seventh defendant does not admit paragraph 77HF.

77HG. The seventh defendant does not admit paragraph 77HG.

77HGA. The seventh defendant does not admit paragraph 77HGA.

77HGB. The seventh defendant does not admit paragraph 77HGB.

77HGC. The seventh defendant does not admit paragraph 77HGC.

77HH. The seventh defendant does not admit paragraph 77HH.

77HI. The seventh defendant does not admit paragraph 77HI.

77HJ. The seventh defendant does not admit paragraph 77HJ.

77HK. The seventh defendant does not admit paragraph 77HK.

77HL. The seventh defendant does not admit paragraph 77HL.

77HM. The seventh defendant does not admit paragraph 77HM.

77HN. The seventh defendant does not admit paragraph 77HN.

77HO. The seventh defendant does not admit paragraph 77HO.

77IA. The seventh defendant does not admit paragraph 77IA.

77IAA. The seventh defendant does not admit paragraph 77IAA.

77IAB. The seventh defendant does not admit paragraph 77IAB.

77IB. The seventh defendant does not admit paragraph 77IB.

77IC. The seventh defendant does not admit paragraph 77IC.

77ICA. The seventh defendant does not admit paragraph 77ICA.

77ICB. The seventh defendant does not admit paragraph 77ICB.

77ICC. The seventh defendant does not admit paragraph 77ICC.

77ID. The seventh defendant does not admit paragraph 77ID.

77IE. The seventh defendant does not admit paragraph 77IE.

77IF. The seventh defendant does not admit paragraph 77IF.

77IG. The seventh defendant does not admit paragraph 77IG.

77IH. The seventh defendant does not admit paragraph 77IH.

77II. The seventh defendant does not admit paragraph 77II.

77IJ. The seventh defendant does not admit paragraph 77IJ.

77JA. The seventh defendant does not admit paragraph 77JA.

77JAA. The seventh defendant does not admit paragraph 77JAA.

77JAB. The seventh defendant does not admit paragraph 77JAB.

77JB. The seventh defendant does not admit paragraph 77JB.

77JC. The seventh defendant does not admit paragraph 77JC.

77JD. The seventh defendant does not admit paragraph 77JD.

77JDA. The seventh defendant does not admit paragraph 77JDA.

77JDB. The seventh defendant does not admit paragraph 77JDB.

77JDC. The seventh defendant does not admit paragraph 77JDC.

77JE. The seventh defendant does not admit paragraph 77JE.

77JF. The seventh defendant does not admit paragraph 77JF.

77JG. The seventh defendant does not admit paragraph 77JG.

77JH. The seventh defendant does not admit paragraph 77JH.

77JI. The seventh defendant does not admit paragraph 77JI.

77JJ. The seventh defendant does not admit paragraph 77JJ.

77JK. The seventh defendant does not admit paragraph 77JK.

77JL. The seventh defendant does not admit paragraph 77JL.

77JM. The seventh defendant does not admit paragraph 77JM.

77JN. The seventh defendant does not admit paragraph 77JN.

77JO. The seventh defendant does not admit paragraph 77JO.

77KA. The seventh defendant does not admit paragraph 77KA.

77KAA. The seventh defendant does not admit paragraph 77KAA.

77KAB. The seventh defendant does not admit paragraph 77KAB.

77KB. The seventh defendant does not admit paragraph 77KB.

77KC. The seventh defendant does not admit paragraph 77KC.

77KCA. The seventh defendant does not admit paragraph 77KCA.

77KCB. The seventh defendant does not admit paragraph 77KCB.

77KCC. The seventh defendant does not admit paragraph 77KCC.

77KD. The seventh defendant does not admit paragraph 77KD.

77KE. The seventh defendant does not admit paragraph 77KE.

77KF. The seventh defendant does not admit paragraph 77KF.

77KG. The seventh defendant does not admit paragraph 77KG.

77KH. The seventh defendant does not admit paragraph 77KH.

77KI. The seventh defendant does not admit paragraph 77KI.

77LA. The seventh defendant does not admit paragraph 77LA.

77LAA. The seventh defendant does not admit paragraph 77LAA.

77LAB. The seventh defendant does not admit paragraph 77LAB.

77LAC. The seventh defendant does not admit paragraph 77LAC.

77LAD. The seventh defendant does not admit paragraph 77LAD.

77LAE. The seventh defendant does not admit paragraph 77LAE.

77LB. The seventh defendant does not admit paragraph 77LB.

77LC. The seventh defendant does not admit paragraph 77LC.

77LD. The seventh defendant does not admit paragraph 77LD.

77LE. The seventh defendant does not admit paragraph 77LE.

77LF. The seventh defendant does not admit paragraph 77LF.

77LFA. The seventh defendant does not admit paragraph 77LFA.

77LFB. The seventh defendant does not admit paragraph 77LFB.

77LFC. The seventh defendant does not admit paragraph 77LFC.

77LG. The seventh defendant does not admit paragraph 77LG.

77LH. The seventh defendant does not admit paragraph 77LH.

77LI. The seventh defendant does not admit paragraph 77LI.

77LJ. The seventh defendant does not admit paragraph 77LJ.

77LK. The seventh defendant does not admit paragraph 77LK.

77LL. The seventh defendant does not admit paragraph 77LL.

## **V. ALLEGED NEGLIGENCE**

78. The seventh defendant does not admit paragraph 78.

78A. The seventh defendant does not admit paragraph 78A.

78B. The seventh defendant does not admit paragraph 78B.

78C. In response to paragraph 78C:

(a) the seventh defendant admits that he owed the second plaintiff and the fifth plaintiff a duty to exercise reasonable care and skill in the provision of advice about, and in the performance of, BAS; and

(b) otherwise does not admit the paragraph.

78D. The seventh defendant does not admit paragraph 78D.

78E. The seventh defendant does not admit paragraph 78E.

78F. The seventh defendant does not admit paragraph 78F.

78G. The seventh defendant does not admit paragraph 78G.

78H. The seventh defendant does not admit paragraph 78H.

78I. The seventh defendant does not admit paragraph 78I.

78J. The seventh defendant does not admit paragraph 78J.

78K. The seventh defendant does not admit paragraph 78K.

78L. The seventh defendant does not admit paragraph 78L.

79. The seventh defendant does not admit paragraph 79.

79A. The seventh defendant does not admit paragraph 79A.

- 79B. The seventh defendant does not admit paragraph 79B.
- 80. Not used.
- 81. The seventh defendant does not admit paragraph 81.
- 81A. The seventh defendant does not admit paragraph 81A.
- 81B. The seventh defendant does not admit paragraph 81B.
- 81C. The seventh defendant denies paragraph 81C.
- 81D. The seventh defendant does not admit paragraph 81D.
- 81E. The seventh defendant does not admit paragraph 81E.
- 81F. The seventh defendant does not admit paragraph 81F.
- 81G. The seventh defendant does not admit paragraph 81G.
- 81H. The seventh defendant does not admit paragraph 81H.
- 81I. The seventh defendant does not admit paragraph 81I.
- 81J. The seventh defendant does not admit paragraph 81J.
- 81K. The seventh defendant does not admit paragraph 81K.
- 81L. The seventh defendant does not admit paragraph 81L.
- 81M. The seventh defendant does not admit paragraph 81M.
- 81N. The seventh defendant does not admit paragraph 81N.
- 81O. The seventh defendant denies paragraph 81O.
- 81P. The seventh defendant does not admit paragraph 81P.
- 81Q. The seventh defendant does not admit paragraph 81Q.
- 81R. The seventh defendant does not admit paragraph 81R.
- 81S. The seventh defendant does not admit paragraph 81S.
- 81T. The seventh defendant does not admit paragraph 81T.
- 81U. The seventh defendant does not admit paragraph 81U.
- 81V. The seventh defendant does not admit paragraph 81V.
- 81W. The seventh defendant does not admit paragraph 81W.
- 81X. The seventh defendant does not admit paragraph 81X.

**VI. COMPETITION AND CONSUMER ACT 2010 (CTH)**

**A. Alleged guarantees relating to supply of services**

82. In response to paragraph 82, the seventh defendant:
- (a) admits that the third plaintiff acquired BAS for personal use;
  - (b) says that the term 'service' is not given a particular meaning by s 3 of the ACL; and
  - (c) otherwise does not admit the paragraph.
83. In response to paragraph 83, the seventh defendant:
- (a) admits that the third plaintiff was supplied with BAS as a consumer within the meaning of s 3(12) of the ACL; and
  - (b) otherwise does not admit the paragraph.
- 83A. In response to paragraph 83A, the seventh defendant:
- (a) does not admit subparagraphs (a) to (c).
  - (b) admits subparagraph (d); and
  - (c) does not admit subparagraphs (e) to (m).
84. In response to paragraph 84, the seventh defendant:
- (a) admits that the second plaintiff and fifth plaintiff acquired BAS as a consumer within the meaning of s 3(3) of the ACL; and
  - (b) otherwise does not admit the paragraph.
85. In response to paragraph 85, the seventh defendant:
- (a) admits that women may obtain BAS for one or more of the purposes identified in subparagraph (a) to (d);
  - (b) otherwise does not admit the paragraph; and
  - (c) says further that the motivations for obtaining BAS will vary from patient to patient.
86. In response to paragraph 86 and insofar as it contains an allegation against him, the seventh defendant:
- (a) admits that, during her pre-surgery consultation with him, the second plaintiff and fifth plaintiff conveyed that they wanted their breasts enlarged;
  - (b) repeats paragraph 85, above; and
  - (c) otherwise does not admit the paragraph.



87. In response to paragraph 87, the seventh defendant:
- (a) admits that, in a given case, BAS may be performed with the reasonable expectation that the result would be likely to be one or more of the results identified in subparagraph (a) to (d);
  - (b) otherwise does not admit the paragraph; and
  - (c) says further that what is a reasonable expectation as to the outcome of BAS will vary from case to case.
88. In response to paragraph 88 and insofar as it contains an allegation against him, the seventh defendant:
- (a) insofar as paragraph 88 alleges that the seventh defendant knew that BAS was performed in the expectation that the result would be as identified in subparagraphs (a) to (d) of paragraph 87 – repeats paragraph 87, above; and
  - (b) otherwise does not admit the paragraph.
89. In response to paragraph 89 and insofar as it contains allegations against him, the seventh defendant:
- (a) says that he is a natural person;
  - (b) says that, by reason of the fact that he is a natural person, ss 60, 61(1) and 61(2) of the ACL do not apply to his conduct; and

### **Particulars**

*Competition and Consumer Act 2010 (Cth), s 131*

- (c) denies the paragraph.
- 89A. The seventh defendant does not admit paragraph 89A.
- 89B. The seventh defendant does not admit paragraph 89B.
- 89C. In response to paragraph 89C, the seventh defendant:
- (a) denies the breach alleged in subparagraph (a); and
  - (b) otherwise does not admit the balance of the paragraph.
- 89D. The seventh defendant does not admit paragraph 89D.
- 89E. The seventh defendant does not admit paragraph 89E.
- 89F. The seventh defendant does not admit paragraph 89F.
- 89G. The seventh defendant does not admit paragraph 89G.
- 89H. The seventh defendant does not admit paragraph 89H.

89I. The seventh defendant does not admit paragraph 89I.

89J. The seventh defendant does not admit paragraph 89J.

89K. The seventh defendant does not admit paragraph 89K.

89L. The seventh defendant does not admit paragraph 89L.

90. The seventh defendant does not admit paragraph 90.

91. The seventh defendant does not admit paragraph 91.

92. The seventh defendant does not admit paragraph 92.

**VII. ALLEGED INJURY, LOSS AND DAMAGE**

93. Not used.

94. In respect of paragraph 94 the seventh defendant:

(a) does not admit paragraph 94;

(b) to the extent paragraph 94 concerns any alleged representations:

(i) repeats paragraphs 24D, 24E, 24H, 24I, 24J, 24K, 24N, 24O, 37A and 65A-65D above;

(ii) says that paragraph 94:

(A) pleads a conclusion;

(B) does not plead material facts;

(C) is embarrassing and should be struck out;

(D) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely; and

(c) says, in any event, if any representations were as to future matters (which is not admitted) there were reasonable grounds for making the representations.

94A. In respect of paragraph 94A the seventh defendant:

(a) does not admit paragraph 94A; and

(b) says, in any event, if any representations were as to future matters (which is not admitted) there were reasonable grounds for making the representations.

94B. In respect of paragraph 94B the seventh defendant:

(a) does not admit paragraph 94B; and

- (b) says, in any event, if any representations were as to future matters (which is not admitted) there were reasonable grounds for making the representations.

94C. In respect of paragraph 94C the seventh defendant:

- (a) does not admit paragraph 94C;
- (b) to the extent paragraph 94C concerns any alleged representations:
  - (i) repeats paragraphs 24D, 24E, 24H, 24I, 24J, 24K, 24N, 24O, 37A and 65A-65D above;
  - (ii) says that paragraph 94C:
    - (A) pleads a conclusion;
    - (B) does not plead material facts;
    - (C) is embarrassing and should be struck out;
    - (D) denies procedural fairness to the defendant in failing to identify with particularity, and specificity, the material facts upon which the lead plaintiffs rely; and
- (c) says, in any event, if any representations were as to future matters (which is not admitted) there were reasonable grounds for making the representations.

94D. In respect of paragraph 94D the seventh defendant:

- (a) does not admit paragraph 94D; and
- (b) says, in any event, if any representations were as to future matters (which is not admitted) there were reasonable grounds for making the representations.

94E. In respect of paragraph 94E the seventh defendant:

- (a) does not admit paragraph 94E; and
- (b) says, in any event, if any representations were as to future matters (which is not admitted) there were reasonable grounds for making the representations.

94F. In respect of paragraph 94F the seventh defendant:

- (a) does not admit paragraph 94F; and
- (b) says, in any event, if any representations were as to future matters (which is not admitted) there were reasonable grounds for making the representations.

94G. In respect of paragraph 94G the seventh defendant:

- (a) does not admit paragraph 94G; and

- (b) says, in any event, if any representations were as to future matters (which is not admitted) there were reasonable grounds for making the representations.

94H. In respect of paragraph 94H the seventh defendant:

- (a) does not admit paragraph 94H; and
- (b) says, in any event, if any representations were as to future matters (which is not admitted) there were reasonable grounds for making the representations.

94I. In respect of paragraph 94I the seventh defendant:

- (a) does not admit paragraph 94I; and
- (b) says, in any event, if any representations were as to future matters (which is not admitted) there were reasonable grounds for making the representations.

94J. In respect of paragraph 94J the seventh defendant:

- (a) does not admit paragraph 94J; and
- (b) says, in any event, if any representations were as to future matters (which is not admitted) there were reasonable grounds for making the representations.

94K. In respect of paragraph 94K the seventh defendant:

- (a) does not admit paragraph 94K; and
- (b) says, in any event, if any representations were as to future matters (which is not admitted) there were reasonable grounds for making the representations.

94L. In respect of paragraph 94L the seventh defendant:

- (a) does not admit paragraph 94L; and
- (b) says, in any event, if any representations were as to future matters (which is not admitted) there were reasonable grounds for making the representations.

95. The seventh defendant does not admit paragraph 95.

95A. The seventh defendant does not admit paragraph 95A.

95B. The seventh defendant does not admit paragraph 95B.

95C. The seventh defendant does not admit paragraph 95C.

95D. The seventh defendant does not admit paragraph 95D.

95E. The seventh defendant does not admit paragraph 95E.

95F. The seventh defendant does not admit paragraph 95F.

95G. The seventh defendant does not admit paragraph 95G.

95H. The seventh defendant does not admit paragraph 95H.

95I. The seventh defendant does not admit paragraph 95I.

95J. The seventh defendant does not admit paragraph 95J.

95K. The seventh defendant does not admit paragraph 95K.

95L. The seventh defendant does not admit paragraph 95L.

## **VII. ALLEGED INJURY, LOSS AND DAMAGE**

### **A. All plaintiffs and group members**

96. The seventh defendant does not admit paragraph 96.

96A. The seventh defendant does not admit paragraph 96A.

96B. The seventh defendant does not admit paragraph 96B.

96C. The seventh defendant does not admit paragraph 96C.

96D. The seventh defendant does not admit paragraph 96D.

96E. The seventh defendant does not admit paragraph 96E.

96F. The seventh defendant does not admit paragraph 96F.

96G. In response to paragraph 96G the seventh defendant:

(a) does not admit paragraph 96G;

(b) as to subparagraph (a):

(i) denies the allegation insofar as it concerns the second plaintiff and the fifth plaintiff;

(ii) says that:

(A) in relation to the second plaintiff, any failure to take precautions against a risk of harm (which failure is not admitted) was not negligent;

### **Particulars**

*Civil Liability Act 2005 (NSW), ss 5B and 5C*

(B) in relation to the fifth plaintiff, any failure to take precautions against a risk of harm (which failure is not admitted) was not negligent;

### **Particulars**

*Civil Liability Act 2003 (QLD), ss 9 and 10*

- (C) in relation to the other Nguyen sub-group members, the question of whether the seventh defendant was negligent falls to be assessed by reference to ss 5B and 5C of the *Civil Liability Act 2005* (NSW) or, where applicable, ss 9 and 10 of the *Civil Liability Act 2003* (Qld);
- (iii) says that, in relation to all Nguyen sub-group members, causation will need to be assessed in accordance with s 5D of the *Civil Liability Act 2005* (NSW) or, where applicable, s 11 of the *Civil Liability Act 2003* (Qld);
- (iv) says that:
  - (A) in relation to the second plaintiff, the harm of the kind alleged in the ‘particulars of injuries’ was the materialisation of an inherent risk within the meaning of s 5I of the *Civil Liability Act 2005* (NSW);
  - (B) in relation to the fifth plaintiff, the harm of the kind alleged in the particulars of injuries was the materialisation of an inherent risk within the meaning of s 16 of the *Civil Liability Act 2003* (Qld);
  - (C) in relation to the other Nguyen sub-group members, liability for, or in respect of, any of those ‘particulars of injuries’ will need to be assessed by reference to s 5I of the *Civil Liability Act 2005* (NSW) or, where applicable, s 16 of the *Civil Liability Act 2003* (Qld);
- (v) says that, in relation to all Nguyen sub-group members, liability will need to be assessed in accordance with s 5O of the *Civil Liability Act 2005* (NSW) or, where applicable, s 22 of the *Civil Liability Act 2003* (Qld);
- (vi) says further that:
  - (A) the second plaintiff’s action in negligence is statute barred by reason of s 50C of the *Limitation Act 1969* (NSW);
  - (B) the fifth plaintiff’s action in negligence is statute barred by reason of s 11 of the *Limitation of Actions Act 1974* (Qld);
  - (C) the action in negligence of any group member on whom the seventh defendant performed BAS in New South Wales, and whose claim were discoverable three or more years before 19 June 2020, is statute barred by reason of s 50C of the *Limitation Act 1969* (NSW);
  - (D) the action in negligence of any group member on whom the seventh defendant performed BAS in Queensland, and whose cause of action arose more than three years before 19 June 2020, is statute barred by reason of s 11 of the *Limitation of Actions Act 1974* (Qld);

- (vii) says, further and in the alternative, that any entitlement to damages (which is denied) is governed by Part 2 of the *Civil Liability Act 2002* (NSW) or, where applicable, Chapter 3 of the *Civil Liability Act 2003* (Qld); and
- (viii) otherwise does not admit the subparagraph;
- (c) As to sub paragraphs (b) and (c)
  - (i) says that, by reason of ss 137C(1) and 137E(1) of the *Competition and Consumer Act 2010* (Cth), the group members are not entitled to recover the damages claimed.
  - (ii) says in the alternative that, in relation to all Nguyen sub-group members:
    - (A) liability falls to be assessed in accordance with Part 1A of the *Civil Liability Act 2005* (NSW) or, where applicable, Chapter 2 of the *Civil Liability Act 2003* (Qld);

**Particulars**

*Judiciary Act 1903* (Cth), ss 79 and 80

*Civil Liability Act 2005* (NSW), s 5A (1)

*Civil Liability Act 2003* (Qld), s 4(1)

- (B) any entitlement to damages (which is denied) is governed by Part 2 of the *Civil Liability Act 2002* (NSW) or, where applicable, Chapter 3 of the *Civil Liability Act 2003* (Qld);

**Particulars**

*Judiciary Act 1903* (Cth), ss 79 and 80

*Civil Liability Act 2005* (NSW), s 11A

*Civil Liability Act 2003* (Qld), 50

96GA. On 24 January 2017 Turner Freeman Lawyers, Ms Sally Gleeson, wrote to Bridges Lawyers, Mr Philip Parker, in terms:

- (a) Re:
  - (i) Amy Rickhuss;
  - (ii) Date of birth 1 December 1993;
  - (iii) The Cosmetic Institute Parramatta Pty Limited (in liquidation);
- (b) Referring to previous correspondence dated:
  - (i) 31 October 2016;

- (ii) 10 November 2016;
  - (iii) 13 December 2016;
  - (iv) 20 December 2016; and
  - (v) 12 January 2017;
- (c) Advising that Turner Freeman "... have also been instructed to act for the numerous other women, all of whom have suffered at the hands of your client and we intend on commencing on proceedings, representing the group as a whole";
- (d) Turner Freeman advised that "if within 14 days from the date of this letter, we do not receive the response sought in our letter of 13 December 2016, then we will have no choice but to apply to the Court, seeking leave to commence proceedings against your client pursuant to s 440D of the Corporations Act 2001 (Cth)".

96GB. On 24 January 2017 Bridges Lawyers, Mr Philip Parker, wrote to Turner Freeman Lawyers, Ms Sally Gleeson:

- (a) Referring to Turner Freeman's letter dated 24 January 2017;
- (b) Advising that Bridges Lawyers act on behalf of Benjamin Carson in his capacity as liquidator of The Cosmetic Institute Parramatta Pty Limited (in liquidation) (**the Company**);
- (c) The liquidator remains in the process of making enquiries in respect of the matters raised by Turner Freeman; and
- (d) The Company is in liquidation and, accordingly, proceedings against the company cannot be commenced without leave of the Court pursuant to s 500(2) of the *Corporations Act 2001*.

96GC. On 28 February 2017 Bridges Lawyers, Mr Philip Parker, wrote to Turner Freeman Lawyers, Ms Sally Gleeson, requesting that Turner Freeman provided the following information:

- (a) In addition to Ms Rickhuss, the name of each other person for whom Turner Freeman acted in relation to any potential claim against The Cosmetic Institute Parramatta Pty Limited (in liquidation) (**the Company**);
- (b) In relation to each of the persons identified, set out:
  - (i) The relevant facts or circumstances that each of Turner Freeman's clients rely upon to support an allegation that may give rise to a claim as against the Company; and



- (ii) The amount of damages that each of Turner Freeman's clients seek to claim.

96GD. On 2 March 2017 Turner Freeman Lawyers, Ms Sally Gleeson, wrote to Bridges Lawyers, Mr Philip Parker:

- (a) Referring to Bridges Lawyers letter dated 28 February 2017 in which particulars of Turner Freeman's letter 24 January 2017 were sought;
- (b) Advising that Turner Freeman "intend on filing a Summons seeking leave to commence proceedings against this entity, annexed to which will be a copy of a draft Statement of Claim. That draft Statement of Claim will provide answers to your request for particulars";
- (c) Requesting that Bridges Lawyers know the insurance position of The Cosmetic Institute Parramatta Pty Limited (in liquidation).

96GE. On 13 April 2017 an originating process was filed in Equity Division, Corporations List proceedings 2017/112603, in the matter of The Cosmetic Institute Parramatta Pty Limited (in liquidation):

- (a) By the following plaintiffs:
  - (i) Ms Amy Rickhuss, the first plaintiff;
  - (ii) Ms Kylie Pollock, the second plaintiff,
  - (iii) Ms Sherine Zahr, the third plaintiff;
  - (iv) Ms Kirsty-Anne Rowlands, the fourth plaintiff; and
  - (v) Ms Lily Knowland, the fifth plaintiff;
- (b) Against The Cosmetic Institute Parramatta Pty Limited (in liquidation), the defendant;
- (c) Seeking:
  - (i) An order pursuant to s 500(2) of the *Corporations Act 2001* (Cth) granting the plaintiffs leave to commence representative in this Court against The Cosmetic Institute Parramatta Pty Limited (in liquidation);
  - (ii) An order that the costs of the application be costs in the proceedings.

96GF. On 13 April 2017 Ms Sally Gleeson, Turner Freeman, swore an affidavit in support of the originating process filed in the Corporations List proceedings:

- (a) Recording that she was a solicitor and partner of the firm Turner Freeman Lawyers;
- (b) Stating, at paragraph 2:

*My firm has been retained by numerous women who have sustained injury during, or secondary, breast augmentation surgery performed in premises owned or operated by the defendant and other entities. I have been instructed by these women to seek damages in respect of their injuries.*

(c) Stating, at paragraph 3:

*Annexed hereto and marked with the letter "A" is a copy of the Statement of Claim which I have instructions to file in the Supreme Court of New South Wales to commence representative proceedings against the defendant and other entities*

(d) Stating, at paragraph 4:

*On the basis of provable facts and a reasonably arguable view of the law, I believe that the claim against the defendant and other entities has reasonable prospects of success.*

96GG. In the Statement of Claim annexed and marked "A" to the Gleeson affidavit:

(a) The plaintiffs are described as:

- (i) Ms Amy Rickhuss, the first plaintiff;
- (ii) Ms Kylie Pollock, the second plaintiff,
- (iii) Ms Sherine Zahr, the third plaintiff;
- (iv) Ms Kirsty-Anne Rowlands, the fourth plaintiff; and
- (v) Ms Lily Knowland, the fifth plaintiff;

(b) The defendants are named as:

- (i) The Cosmetic Institute Pty Ltd, the first defendant;
- (ii) The Cosmetic Institute Parramatta Pty Limited, the second defendant;
- (iii) TCI Bondi Junction Pty Limited, the third defendant;
- (iv) TCI Southport Pty Ltd, the fourth defendant; and
- (v) Dr Eddy Dona, the fifth defendant;

(c) The pleading stated that the plaintiffs bring representative proceedings pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW):

- (i) In their own right; and
- (ii) On behalf of the group members;

(d) The group members were described as persons who:

- (i) Had breast augmentation surgery (**BAS**):

- (ii) TCI Parramatta premises;
  - (iii) TCI Bondi premises;
  - (iv) TCI Southport premises;
  - (v) Concord Private Hospital; and
  - (vi) Holyrood Private Hospital;
- (e) Had BAS performed by surgeons who were the servants and/or agents of the second, third or fourth defendants (**TCI surgeons**);
- (f) Had BAS performed by a TCI surgeon trained by, or under the supervision, of the fifth defendant in accordance with accreditation and training contracts between the TCI surgeons and the first, second, third and/or fourth defendants;
- (g) Had BAS using the “*One Size Fits All*” Approach;
- (h) Had BAS performed under anaesthesia administered by an anaesthetists who were the servants and/or agents of the first, second, third and/or fourth defendants (**TCI anaesthetists**); and
- (i) Suffered injury, loss and damage as a result of undergoing BAS.

96GH. In the premises pleaded above Turner Freeman, by its principal, servant or agent, Ms Sally Gleeson, made an admission on behalf of the “numerous clients” for whom she had instructions, that each of the clients knew or ought to have known:

- (a) The fact that the injury concerned had occurred to the client;
- (b) The fact that the injury was caused by the fault of the TCI Surgeons;
- (c) In the case of injury, the fact that the injury was sufficiently serious to justify the bringing of an action on the cause of action.

96H. The seventh defendant does not admit paragraph 96H.

96I. The seventh defendant does not admit paragraph 96I.

96J. The seventh defendant does not admit paragraph 96J.

96K. The seventh defendant does not admit paragraph 96K.

96L. The seventh defendant does not admit paragraph 96L.

96M. The seventh defendant does not admit paragraph 96M.

96N. The seventh defendant does not admit paragraph 96N.

96O. The seventh defendant does not admit paragraph 96O.

96P. The seventh defendant does not admit paragraph 96P.

- 96Q. The seventh defendant does not admit paragraph 96Q.
- 96R. The seventh defendant does not admit paragraph 96R.
- 96S. The seventh defendant does not admit paragraph 96S.
- 96T. The seventh defendant does not admit paragraph 96T.
- 96U. The seventh defendant does not admit paragraph 96U.
- 96V. The seventh defendant does not admit paragraph 96V.
- 96W. The seventh defendant does not admit paragraph 96W.
- 96X. The seventh defendant does not admit paragraph 96X.
- 96Y. The seventh defendant does not admit paragraph 96Y.
- 96Z. The seventh defendant does not admit paragraph 96Z.
- 96AA. The seventh defendant does not admit paragraph 96AA.
- 96AB. The seventh defendant does not admit paragraph 96AB.
- 96AC. The seventh defendant does not admit paragraph 96AC.
- 96AD. The seventh defendant does not admit paragraph 96AD.
- 96AE. The seventh defendant does not admit paragraph 96AE.
- 96AF. The seventh defendant does not admit paragraph 96AF.
- 96AG. The seventh defendant does not admit paragraph 96AG.
- 96AH. The seventh defendant does not admit paragraph 96AH.
- 96AI. The seventh defendant does not admit paragraph 96AI.
- 96AJ. The seventh defendant does not admit paragraph 96AJ.

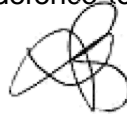
#### **VIII. CLAIMS AGAINST INSURERS**

- 97. The seventh defendant does not admit paragraph 97.
- 98. The seventh defendant does not admit paragraph 98.
- 99. The seventh defendant does not admit paragraph 99.
- 100. The seventh defendant does not admit paragraph 100.
- 101. The seventh defendant does not admit paragraph 101.
- 102. The seventh defendant does not admit paragraph 102.
- 103. The seventh defendant does not admit paragraph 103.
- 104. The seventh defendant does not admit paragraph 104.

- 105. The seventh defendant does not admit paragraph 105.
- 106. The seventh defendant does not admit paragraph 106.
- 107. The seventh defendant does not admit paragraph 107.
- 108. The seventh defendant does not admit paragraph 108.
- 109. The seventh defendant does not admit paragraph 109.
- 110. The seventh defendant does not admit paragraph 110.
- 111. The seventh defendant does not admit paragraph 111.
- 112. The seventh defendant does not admit paragraph 112.
- 113. The seventh defendant does not admit paragraph 113.

**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 defence to the claim for damages in these proceedings has reasonable prospects of success.



Signature

Capacity

Date of signature

---

Leonie Beyers  
Solicitor on record

20 October 2022

**FURTHER DETAILS ABOUT FILING PARTY****Seventh defendant:**

Name: **VAN HUU ANTHONY NGUYEN**  
Address: c/- HWL Ebsworth Lawyers Level 14 Australia Square, 264-278  
George Street, Sydney NSW 2000

**Legal representative for filing party:**

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Practising certificate number: 45509 NSW  
Firm: HWL Ebsworth Lawyers  
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