



**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST**

S E C I 2022 00739

Case: S E C I 2022 00739
Filed on: 20/01/2025 05:48 PM

BETWEEN

TINA LOMBARDO and others according to the schedule

Plaintiffs

and

**DERMATOLOGY AND COSMETIC SURGERY SERVICES PTY LTD
(ACN 055 927 618) and others according to the schedule**

Defendants

**FOURTH DEFENDANTS' DEFENCE TO THE FURTHER AMENDED STATEMENT OF
CLAIM**

Date of Document: 20 January 2025
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By way of defence to the putative Amended Statement of Claim, actually a Further Amended Statement of Claim ('**FASC**') dated 7 November 2024, and adopting the definitions used in the FASC, the Fourth Defendants, Jacqueline Darbyshire and Tony Darbyshire, in their capacity as the legal personal representatives of the estate of the late Dr Daniel Darbyshire ('**Dr Darbyshire**'), say as follows:

A. PARTIES

A.1 Group Proceeding

1. They do not plead to paragraph 1 as it makes no allegation against Dr Darbyshire.
- 1A. They admit the allegations in paragraphs 1A(a) and (b).
2. They do not admit paragraph 2 insofar as it relates to Dr Darbyshire.

A.2 The First Defendant – Dermatology and Cosmetic Surgery Services Pty Ltd

3. They do not plead to paragraph 3 as it makes no allegation against Dr Darbyshire.

A.3 The Second Defendant – Dr Lanzer

4. They do not plead to paragraph 4 as it makes no allegation against Dr Darbyshire.
5. They do not plead to paragraph 5 as it makes no allegation against Dr Darbyshire.
6. They do not plead to paragraph 6 as it makes no allegation against Dr Darbyshire.

A.4 The Other Cosmetic Doctor Defendants

7. As to paragraph 7 they:
 - a. admit that Dr Darbyshire was trained by the Second Defendant in the provision of cosmetic surgery services;
 - b. say further that Dr Darbyshire was a legally qualified and registered medical practitioner; and
 - c. do not admit the remaining allegations made in paragraph 7 which relate to Dr Darbyshire.

A.4.1 Liability of Other Cosmetic Doctor Defendants directly

8. As to paragraph 8 they:
 - a. admit that Dr Darbyshire was a registered general medical practitioner with training and experience in providing certain cosmetic surgery services;
 - b. admit that at all relevant times Dr Darbyshire:
 - i. was not a member of the Royal Australian College of Surgeons or the Royal Australian College of Physicians and was not required to be in order

to perform cosmetic surgery as a supervised trainee of the Second Defendant; and

ii. did not hold specialist registration in the field of surgery as defined by sections 57 and 58 of the *Health Practitioner Regulation National Law* or any guideline published by the Medical Board of Australia and was not required to hold such registration in order to perform cosmetic surgery as a supervised trainee of the Second Defendant;

c. says that he was undertaking training with Dr Lanzer who at all relevant times was a specialist Dermatologist and experienced cosmetic surgeon from January 2021.

d. otherwise do not admit the remaining allegations made in paragraph 8 which relate to Dr Darbyshire.

9. As to paragraph 9:

a. they admit that at all relevant times Dr Darbyshire practised as a trainee in the field of cosmetic surgery as an employee of the First Defendant and/or Second Defendant and was subject to the training, supervision and direction of the Second Defendant and otherwise deny the allegations in paragraph 9(a) which relate to Dr Darbyshire;

b. as to paragraph 9(b) they:

i. admit that on 6 September 2021 at a clinic operated by the First Defendant and/or Second Defendant he was a party to a discussion with the Third Plaintiff concerning a prospective treatment for lipoedema being 360 thigh liposuction and mini thigh lift including details of the limitations, risks and complications of both procedures;

- ii. do not know and therefore cannot admit whether Dr Darbyshire provided cosmetic surgery services to the Group Members from one of more of the Lanzer clinics;
- c. they deny the allegations in paragraph 9(c) and say further that at all relevant times Dr Darbyshire was employed as a supervised trainee pursuant to a contract of employment with the First Defendant and/or the Second Defendant;

PARTICULARS

- (A) He was an employee of the First Defendant and/or the Second Defendant pursuant to a contract of employment made on or about 21 January 2021 (**'the Employment Contract'**).
- (B) The Employment Contract is partly in writing, and partly to be implied.

Insofar as it is in writing it is contained in:

- (1) letters dated 21 January 2021 from the First Defendant and the Second Defendant to Dr Darbyshire. Copies of these letters may be inspected by appointment with the Fourth Defendants' solicitors.
- (2) a document entitled "Training Agreement" made on or about 21 January 2021 (**'the Training Agreement'**). A copy of the Training Agreement may be inspected by appointment with the Fourth Defendants' solicitors.

- (3) An unsigned document entitled “Employment Contract” provided to Dr Darbyshire by the First Defendant and/or the Second Defendant along and together with the documents referred to in subparagraphs (B)(1) and (2) of these particulars (**‘the Unsigned Employment Contract’**). A copy of the Unsigned Employment Contract may be inspected by appointment with the Fourth Defendants’ solicitors.

Insofar as it is implied, it is implied by law so as to give efficacy to the relationship between Dr Darbyshire on the one hand and the First Defendant and the Second Defendant on the other.

- (C) There were terms of the Employment Contract, among others, as follows:

- (1) it was a condition of appointment that the employee adhere to the Second Defendant’s policies and procedure and the policy and procedures manual;
- (2) the employee was to report to and was accountable to the Second Defendant;
- (3) although the employee was employed to provide clinical services, they were required to be involved in other areas of the clinic, including administration. This clause was applicable during a quiet season and the employee was to report to the Practice Manager for further instructions;

- (4) any annual leave taken outside of the Christmas Period must be discussed and approved by the Second Defendant;
- (5) religious holidays as defined in the draft contract of employment were to be taken by the employee at the time prescribed by the Second Defendant and were to be deducted from the employee's annual leave entitlement, and the Second Defendant's permission was required if the employee wished to work during these periods;
- (6) the employee was subject to an annual performance review which included planning for the future, setting objectives, identifying training needs and new opportunities for career development;
- (7) the employee was to comply with all duties specified within his Job Description and acknowledge that he may be asked to perform duties as requested that were outside his job description;
- (8) the employee was obliged to follow all lawful and reasonable directions of the First Defendant and the Second Defendant.
- (9) the Second Defendant was to provide hands on practical experience and training to be supervised and delivered by the Second Defendant in the Cosmetic Procedures so as to develop Dr

Darbyshire's skills and experience to undertake the Cosmetic Procedures;

- (10) further hands-on practical experience and training was to be supervised and delivered by DCSS nurses, cosmetic practitioners and practice management staff so as to develop Dr Darbyshire's skills and experience to undertake the Cosmetic Procedures and associated practice administration.

The terms identified in (1) – (8) above are express and are contained in the Unsigned Employment Contract. The terms identified in (9) and (10) above are express and are contained in the Training Agreement.

- (D) Alternatively, the Employment Contract is to be implied from the facts and circumstances including that:

- (1) from on or about 22 January 2021 Dr Darbyshire attended for work at the First Defendant's business premises in Malvern, Victoria during normal business hours; and
- (2) on a weekly or fortnightly basis from about 22 January 2021 Dr Darbyshire was paid a salary for services he provided to the First Defendant and/or the Second Defendant.
- (3) Dr Darbyshire's salary package (excluding commissions and bonuses) was a base salary of \$300,000 per annum;

- (4) Any annual leave taken outside of the Christmas Period was to be discussed and approved by the Second Defendant;
- (5) Dr Darbyshire was subject to an annual performance review which included planning for the future, setting objectives, identifying training needs and new opportunities for career development; and
- (6) Dr Darbyshire was obliged to follow all lawful and reasonable directions of the First Defendant and the Second Defendant.

The terms identified in (2) to (5) above are contained in the letter from the First Defendant and the Second Defendant to Dr Darbyshire dated 21 January 2020 and the draft contract of employment.

The term identified in (6) above are implied by law so as to give efficacy to the relationship of employer and employee as between the First and Second Defendants, on the one hand, and Dr Darbyshire on the other.

Further particulars may be provided following discovery in this proceeding.

- d. they deny the allegations in paragraph 9(d) and say further that paragraph 9(d) is vague and embarrassing and ought to be struck-out; and
- e. they otherwise do not admit the remaining allegations in paragraph 9 which relate to Dr Darbyshire.

A.4.2 Liability of DCSS and/or Lanzer as principals

10. They admit the allegations made in paragraph 10, which relate to Dr Darbyshire, and they refer to and repeat paragraph 9(c) above and say further that pursuant to the terms of the Employment Contract, Dr Darbyshire was trained, supervised and directed by the First Defendant and the Second Defendant.
11. Save that they admit that Dr Darbyshire was an employee of the First Defendant and/or the Second Defendant and refer to and repeat the matters in paragraph 9 above, they deny the allegations made in paragraph 11.

A.5 Wainstein

12. They do not plead to paragraph 12 as it makes no allegation against Dr Darbyshire.
13. They do not plead to paragraph 13 as it makes no allegation against Dr Darbyshire.

B. THE PLAINTIFFS

B.1 First Plaintiff – Tina Lombardo

14. They do not plead to paragraph 14 as it makes no allegation against Dr Darbyshire.
15. They do not plead to paragraph 15 as it makes no allegation against Dr Darbyshire.
16. They do not plead to paragraph 16 as it makes no allegation against Dr Darbyshire.
17. They do not plead to paragraph 17 as it makes no allegation against Dr Darbyshire.
18. They do not plead to paragraph 18 as it makes no allegation against Dr Darbyshire.
19. They do not plead to paragraph 19 as it makes no allegation against Dr Darbyshire.
20. They do not plead to paragraph 20 as it makes no allegation against Dr Darbyshire.
21. They do not plead to paragraph 21 as it makes no allegation against Dr Darbyshire.

22. They do not plead to paragraph 22 as it makes no allegation against Dr Darbyshire.

23. They do not plead to paragraph 23 as it makes no allegation against Dr Darbyshire.

B.2 Second Plaintiff – Tina Bonnici

24. They do not plead to paragraph 24 as it makes no allegation against Dr Darbyshire.

25. They do not plead to paragraph 25 as it makes no allegation against Dr Darbyshire.

26. They do not plead to paragraph 26 as it makes no allegation against Dr Darbyshire.

27. They do not plead to paragraph 27 as it makes no allegation against Dr Darbyshire.

28. They do not plead to paragraph 28 as it makes no allegation against Dr Darbyshire.

29. They do not plead to paragraph 29 as it makes no allegation against Dr Darbyshire.

30A. They do not plead to paragraph 30A as it makes no allegations against Dr Darbyshire.

30. They do not plead to paragraph 30 as it makes no allegation against Dr Darbyshire.

31. They do not plead to paragraph 31 as it makes no allegation against Dr Darbyshire.

32. They do not plead to paragraph 32 as it makes no allegation against Dr Darbyshire.

33. They do not plead to paragraph 33 as it makes no allegation against Dr Darbyshire.

34. They do not plead to paragraph 34 as it makes no allegation against Dr Darbyshire.

35. They do not plead to paragraph 35 as it makes no allegation against Dr Darbyshire.

36. They do not plead to paragraph 36 as it makes no allegation against Dr Darbyshire.

37A. They do not plead to paragraph 37A as it makes no allegations against Dr Darbyshire.

37. They do not plead to paragraph 37 as it makes no allegation against Dr Darbyshire.

38A. They do not plead to paragraph 38A as it makes no allegations against Dr Darbyshire.

B.3 Third Plaintiff – Simone Russell

38. They do not plead to paragraph 38 as it makes no allegation against Dr Darbyshire.

39. They do not plead to paragraph 39 as it makes no allegation against Dr Darbyshire.

39A. They do not plead to paragraph 39A as it makes no allegation against Dr Darbyshire.

39B. They do not plead to paragraph 39B as it makes no allegation against Dr Darbyshire.

40. They do not plead to paragraph 40 as it makes no allegation against Dr Darbyshire.

41. They do not plead to paragraph 41 as it makes no allegation against Dr Darbyshire.

42. They do not plead to paragraph 42 as it makes no allegation against Dr Darbyshire.

43. They do not plead to paragraph 43 as it makes no allegation against Dr Darbyshire.

44. They do not plead to paragraph 44 as it makes no allegation against Dr Darbyshire.

45. They do not plead to paragraph 45 as it makes no allegation against Dr Darbyshire.

46. They do not plead to paragraph 46 as it makes no allegation against Dr Darbyshire.

47. They do not plead to paragraph 47 as it makes no allegation against Dr Darbyshire.

48. They do not plead to paragraph 48 as it makes no allegation against Dr Darbyshire.

49. They do not plead to paragraph 49 as it makes no allegation against Dr Darbyshire.

50. They admit a document entitled 'Pre Operative Consultation Documentation' within the Second Defendant's medical notes for the Third Plaintiff records circles Dr Darbyshire's name in blue pen and otherwise do not admit the allegations made in paragraphs 50(a) and (b) which relate to Dr Darbyshire.

- 51. Save to say that pain is a likely consequence of undergoing the procedures and that the third plaintiff was warned of the risk that she would experience pain, they do not know and therefore cannot admit the allegations made in paragraph 51 which relate to Dr Darbyshire.
- 52. They do not plead to paragraph 52 as it makes no allegation against Dr Darbyshire.
- 53. They do not plead to paragraph 53 as it makes no allegation against Dr Darbyshire.
- 54. They do not admit the allegations made in paragraph 54 which relate to Dr Darbyshire.
- 55. They do not admit the allegations made in paragraph 55 which relate to Dr Darbyshire.
- 56. They do not plead to paragraph 56 as it makes no allegation against Dr Darbyshire.
- 57. They do not plead to paragraph 57 as it makes no allegation against Dr Darbyshire.
- 57A. They do not plead to paragraph 57A as it makes no allegations against Dr Darbyshire.

B.4 Fourth Plaintiff – Julie Rose Morrison

- 58. They do not plead to paragraph 58 as it makes no allegation against Dr Darbyshire.
- 59. They do not plead to paragraph 59 as it makes no allegation against Dr Darbyshire.
- 60. They do not plead to paragraph 60 as it makes no allegation against Dr Darbyshire.
- 61. They do not plead to paragraph 61 as it makes no allegation against Dr Darbyshire.
- 62. They do not plead to paragraph 62 as it makes no allegation against Dr Darbyshire.
- 63. They do not plead to paragraph 63 as it makes no allegation against Dr Darbyshire.
- 64. They do not plead to paragraph 64 as it makes no allegation against Dr Darbyshire.
- 65. They do not plead to paragraph 65 as it makes no allegation against Dr Darbyshire.

- 66. They do not plead to paragraph 66 as it makes no allegation against Dr Darbyshire.
- 67. They do not plead to paragraph 67 as it makes no allegation against Dr Darbyshire.
- 68. They do not plead to paragraph 68 as it makes no allegation against Dr Darbyshire.
- 69. They do not plead to paragraph 69 as it makes no allegation against Dr Darbyshire.
- 70. They do not plead to paragraph 70 as it makes no allegation against Dr Darbyshire.
- 71. They do not plead to paragraph 71 as it makes no allegation against Dr Darbyshire.
- 71A. They do not plead to paragraph 71A as it makes no allegations against Dr Darbyshire.
- 72. They do not plead to paragraph 72 as it makes no allegation against Dr Darbyshire.
- 73. They do not plead to paragraph 73 as it makes no allegation against Dr Darbyshire.
- 74. They do not plead to paragraph 74 as it makes no allegation against Dr Darbyshire.
- 75. They do not plead to paragraph 75 as it makes no allegation against Dr Darbyshire.
- 76. They do not plead to paragraph 76 as it makes no allegation against Dr Darbyshire.
- 77. They do not plead to paragraph 77 as it makes no allegation against Dr Darbyshire.
- 78. They do not plead to paragraph 78 as it makes no allegation against Dr Darbyshire.
- 79. They do not plead to paragraph 79 as it makes no allegation against Dr Darbyshire.
- 80. They do not plead to paragraph 80 as it makes no allegation against Dr Darbyshire.
- 81. They do not plead to paragraph 81 as it makes no allegation against Dr Darbyshire.
- 82. They do not plead to paragraph 82 as it makes no allegation against Dr Darbyshire.
- 83. They do not plead to paragraph 83 as it makes no allegation against Dr Darbyshire.

84. They do not plead to paragraph 84 as it makes no allegation against Dr Darbyshire.

85. They do not plead to paragraph 85 as it makes no allegation against Dr Darbyshire.

C. MISLEADING OR DECEPTIVE CONDUCT

C.1 DCSS Sales System

86. Save to say that in the ordinary course of his employment with the First Defendant and/or the Second Defendant, from time-to-time, Dr Darbyshire:

- a. conducted Pre-Engagement Consultations as alleged in paragraph 86(d);
- b. conducted Pre-Surgery Consultations as alleged in paragraph 86(i); and
- c. provided cosmetic surgery services as alleged in paragraph 86(j) under the supervision of the Second Defendant;
- d. they otherwise do not plead to paragraph 86 as it makes no allegation against Dr Darbyshire.

87. As to paragraph 87 they:

- a. do not plead to paragraph 87(a) as it makes no allegation against Dr Darbyshire;
- b. refer to and repeat the matters in paragraphs 9 and 86 above;
- c. admit that Dr Darbyshire provided certain cosmetic surgery services in the ordinary course of his employment with the First Defendant and/or the Second Defendant pursuant to the Employment Contract; and
- d. otherwise deny the remaining allegations made in paragraph 87 which relate to Dr Darbyshire.

C.2 Representations

C.2.1 *The Representations*

88. As to paragraph 88:

- aa. they do not admit the allegations made in paragraph 88(aa) which relate to Dr Darbyshire and refer to and repeat the matters in paragraph 8(b)(ii) above;
- a. they do not admit the allegations made in paragraph 88(a) which relate to Dr Darbyshire;
- b. they do not admit the allegations made in paragraph 88(b) which relate to Dr Darbyshire;
- c. they do not plead to paragraph 88(c) as it makes no allegation against Dr Darbyshire;
- d. they do not plead to paragraph 88(d) as it makes no allegation against Dr Darbyshire; and
- e. as to paragraph 88(e)(i), they:
 - i. say that it was part of Dr Darbyshire's usual and ordinary practice to inform each patient he treated of the risks and complications that were inherent in a procedure; and
 - ii. otherwise deny the allegations made in paragraph 88(e) which relate to Dr Darbyshire.

88A As to paragraph 88A they:

- a. refer to and repeat the matters in paragraph 8 above; and

- b. do not admit the remaining allegations made in paragraph 88A which relate to Dr Darbyshire.

89. As to paragraph 89 they:

- a. do not plead to paragraph 89(a) as it makes no allegation against Dr Darbyshire;
- b. refer to and repeat the matters in paragraph 8 above; and
- c. deny the remaining allegations made in paragraph 89 which relate to Dr Darbyshire.

90. As to paragraph 90 they:

- a. admit that Dr Darbyshire was not a qualified plastic surgeon;
- b. refers to and repeat the matters in paragraph 8 above; and
- c. deny the remaining allegations made in paragraph 90 which relate to Dr Darbyshire.

91. They do not plead to paragraph 91 as it makes no allegation against Dr Darbyshire.

92. They do not plead to paragraph 92 as it makes no allegation against Dr Darbyshire.

93. They refer to and repeat paragraphs 88(e) above and otherwise deny the allegations made in paragraph 93 which relate to Dr Darbyshire.

C.2.2 How the Representations were made to potential patients

94. They do not plead to paragraph 94 as it makes no allegation against Dr Darbyshire.

95. They do not plead to paragraph 95 as it makes no allegation against Dr Darbyshire.

96. As to paragraph 96, save to say that:

- a. Dr Darbyshire received a salary from the First Defendant and/or the Second Defendant pursuant to the terms and conditions of the Employment Contract; and
- b. this paragraph as it relates to Dr Darbyshire is embarrassing and should be struck out;

they deny the allegations made in paragraph 96 which relate to Dr Darbyshire.

C.2.3 How the Representations were made to the Plaintiffs and Group Members

96A. They do not plead to paragraph 96A as it makes no allegation against Dr Darbyshire.

97. They do not plead to paragraph 97 as it makes no allegation against Dr Darbyshire.

98. They do not plead to paragraph 98 as it makes no allegation against Dr Darbyshire.

99. They do not plead to paragraph 99 as it makes no allegation against Dr Darbyshire.

100. They do not plead to paragraph 100 as it makes no allegation against Dr Darbyshire.

101. [Not used]

102. As to paragraph 102:

- a. save to say that Dr Darbyshire provided any cosmetic surgery services as a trainee of the Second Defendant and that he was subject to the supervision of the Second Defendant they deny the allegations in paragraph 102(a) which relate to Dr Darbyshire;
- b. as to paragraph 102(b), they:
 - i. do not plead to paragraph 102(b)(i) as it makes no allegation against Dr Darbyshire;

- ii. admit that it was a requirement of Dr Darbyshire's employment with the First Defendant and/or Second Defendant pursuant to the terms and conditions of the Employment Contract that he:
 - A. conduct Pre-Engagement Consultations;
 - B. conduct Pre-Surgery Consultations; and
 - C. provide cosmetic surgery services under the supervision of the Second Defendant;
 - iii. refer to and repeat the matters in paragraphs 9 and 96 above; and
 - iv. deny the remaining allegations made in paragraph 102(b) which relate to Dr Darbyshire;
- c. save to say that Dr Darbyshire received a salary from the First Defendant and/or the Second Defendant as an employee for performing services pursuant to the terms and conditions of the Employment Contract, they deny the allegations made in paragraph 102(c) which relate to Dr Darbyshire;
- d. deny the allegations made in paragraph 102(d) which relate to Dr Darbyshire;
- e. they admit that Dr Darbyshire was aware that there was information on the First Defendant's website relating to the other Defendants (excluding the Eighth Defendant) and otherwise deny the allegations in paragraph 102(e) which relate to Dr Darbyshire;
- f. they deny the allegations in paragraph 102(f) which relate to Dr Darbyshire; and
- g. they deny any remaining allegations made in paragraph 102 which relate to Dr Darbyshire and say that paragraph 102 fails to disclose a cause of action and/or is embarrassing and ought to be summarily dismissed or struck out.

103. They do not plead to paragraph 103 as it makes no allegation against Dr Darbyshire.

104. They do not plead to paragraph 104 as it makes no allegation against Dr Darbyshire.

105. They do not plead to paragraph 105 as it makes no allegation against Dr Darbyshire.

C.2.4 Contraventions

106. Insofar as the matters alleged at paragraph 106 are alleged to be the principal acts upon which it is alleged that Dr Darbyshire aided, abetted, counselled, procured or was otherwise knowingly concerned in or party to, they deny the allegations made in paragraph 106.

107. Insofar as the matters alleged at paragraph 107 are alleged to be the principal acts upon which it is alleged that Dr Darbyshire aided, abetted, counselled, procured or was otherwise knowingly concerned in or party to, they deny the allegations made in paragraph 107.

108. They do not plead to paragraph 108 as it makes no allegation against Dr Darbyshire.

109. They refer to and repeat the matters in paragraphs 96 and 102 above and otherwise deny the allegations in paragraph 109 which relate to Dr Darbyshire.

110. They do not plead to paragraph 110 as it makes no allegation against Dr Darbyshire.

D. STATUTORY GUARANTEES

D.1 Statutory guarantees

111. As to paragraph 111:

a. they do not plead to paragraph 111(a) as it makes no allegation against Dr Darbyshire.

b. as to paragraph 111(b) they:

- i. deny that Dr Darbyshire was a supplier, within the meaning of the *Australian Consumer Law* ('**ACL**'), of cosmetic surgery services;
- ii. refer to and repeat the matters in paragraphs 9(c), 86 and 87(c) above; and
- iii. do not admit the remaining allegations made in paragraph 111(b) which relate to Dr Darbyshire.

112. They refer to and repeat the matters in paragraphs 9 and 111 above and otherwise do not admit the allegations made in paragraph 112 which relate to Dr Darbyshire.

113. As to paragraph 113 they:

- a. refer to and repeat the matters in in paragraph 9 above;
- b. say further that they do not know the purpose for which any Plaintiff or Group Member acquired the services of any of the Defendants; and
- c. otherwise deny the allegations made in paragraph 113 which relate to Dr Darbyshire.

114. As to paragraph 114 they:

- a. refer to and repeat the matters in in paragraph 9 above;
- b. say further that they do not know the purpose for which any Plaintiff or Group Member acquired the services of any of the Defendants; and
- c. otherwise deny the allegations made in paragraph 114 which relate to Dr Darbyshire.

115. As to paragraph 115 they:

- a. refer to and repeat the matters in in paragraph 9 and 111 above;

- b. say that each of Dr Darbyshire's patients were advised of the inherent risks of cosmetic procedures and that the results could not be guaranteed; and
- c. otherwise deny the allegations made in paragraph 115 which relate to Dr Darbyshire.

116. As to paragraph 116 they:

- a. say that Dr Darbyshire rendered every procedure he conducted with the due care and skill of a medical practitioner undertaking supervised training in that procedure; and
- b. say that all procedures Dr Darbyshire performed were undertaken subject to the supervision of the Second Defendant; and
- c. otherwise deny the allegations made in paragraph 116 which relate to Dr Darbyshire.

D.2 Non-compliance with guarantees

117. They deny the allegations in paragraph 117 which relate to Dr Darbyshire.

118. They deny the allegations in paragraph 118 which relate to Dr Darbyshire.

119. They deny the allegations made in paragraph 119 which relate to Dr Darbyshire.

120. They refer to and repeat the matters in paragraphs 191, 196 and 217 below and otherwise deny the allegations in paragraph 120 which relate to Dr Darbyshire.

121. They refer to and repeat the matters in paragraphs 192, 196 and 217 below and otherwise deny the allegations in paragraph 121 which relate to Dr Darbyshire.

122. They refer to and repeat the matters in paragraphs 193, 196 and 217 below and otherwise deny the allegations in paragraph 122 which relate to Dr Darbyshire.

123. They refer to and repeat the matters in paragraphs 196 and 217 below and otherwise deny the allegations in paragraph 123 which relate to Dr Darbyshire.

124. They do not know and cannot plead to unspecified matters relating to Group Members.

124A. They do not know and cannot plead to unspecified matters relating to Group Members.

125. They deny the allegations in paragraph 125 which relate to Dr Darbyshire.

E. NEGLIGENCE

126. They do not plead to paragraph 126 as it makes no allegation against Dr Darbyshire.

127. They do not plead to paragraph 127 as it makes no allegation against Dr Darbyshire.

128. They do not plead to paragraph 128 as it makes no allegation against Dr Darbyshire.

129. They do not plead to paragraph 129 as it makes no allegation against Dr Darbyshire.

130. As to paragraph 130 they:

- a. refer to and repeat the matters in paragraph 9 above;
- b. admit that Dr Darbyshire owed a duty to patients at DCSS to whom he personally provided cosmetic surgery services to exercise the degree of reasonable care and skill to be expected of a medical practitioner undertaking supervised training in providing cosmetic surgery services in the provision of those services; and
- c. otherwise deny the allegations made in paragraph 130 which relate to Dr Darbyshire.

131. They do not plead to paragraph 131 as it makes no allegation against Dr Darbyshire.

132. They do not plead to paragraph 132 as it makes no allegation against Dr Darbyshire.

133. They do not plead to paragraph 133 as it makes no allegation against Dr Darbyshire.

- 134. They do not plead to paragraph 134 as it makes no allegation against Dr Darbyshire.
- 135. They do not plead to paragraph 135 as it makes no allegation against Dr Darbyshire.
- 136. They do not plead to paragraph 136 as it makes no allegation against Dr Darbyshire.
- 137. They do not plead to paragraph 137 as it makes no allegation against Dr Darbyshire.
- 138. They do not plead to paragraph 138 as it makes no allegation against Dr Darbyshire.
- 139. They do not plead to paragraph 139 as it makes no allegation against Dr Darbyshire.
- 140. They do not plead to paragraph 140 as it makes no allegation against Dr Darbyshire.
- 141. They do not plead to paragraph 141 as it makes no allegation against Dr Darbyshire.
- 142. They do not plead to paragraph 142 as it makes no allegation against Dr Darbyshire.
- 143. They do not plead to paragraph 143 as it makes no allegation against Dr Darbyshire.
- 144. They do not plead to paragraph 144 as it makes no allegation against Dr Darbyshire.
- 145. They do not plead to paragraph 145 as it makes no allegation against Dr Darbyshire.
- 146. They do not plead to paragraph 146 as it makes no allegation against Dr Darbyshire.
- 147. They do not plead to paragraph 147 as it makes no allegation against Dr Darbyshire.
- 148. They do not plead to paragraph 148 as it makes no allegation against Dr Darbyshire.
- 149. They do not plead to paragraph 149 as it makes no allegation against Dr Darbyshire.
- 150. They do not plead to paragraph 150 as it makes no allegation against Dr Darbyshire.
- 151. They do not plead to paragraph 151 as it makes no allegation against Dr Darbyshire.
- 152. They do not plead to paragraph 152 as it makes no allegation against Dr Darbyshire.

- 153. They do not plead to paragraph 153 as it makes no allegation against Dr Darbyshire.
- 154. They do not plead to paragraph 154 as it makes no allegation against Dr Darbyshire.
- 155. They do not plead to paragraph 155 as it makes no allegation against Dr Darbyshire.
- 156. They do not plead to paragraph 156 as it makes no allegation against Dr Darbyshire.
- 157. They do not plead to paragraph 157 as it makes no allegation against Dr Darbyshire.
- 158. They do not plead to paragraph 158 as it makes no allegation against Dr Darbyshire.
- 159. They do not plead to paragraph 159 as it makes no allegation against Dr Darbyshire.
- 160. They do not plead to paragraph 160 as it makes no allegation against Dr Darbyshire.
- 161. They do not plead to paragraph 161 as it makes no allegation against Dr Darbyshire.
- 162. They do not plead to paragraph 162 as it makes no allegation against Dr Darbyshire.
- 163. They do not plead to paragraph 163 as it makes no allegation against Dr Darbyshire.
- 164. They do not plead to paragraph 164 as it makes no allegation against Dr Darbyshire.
- 165. They do not plead to paragraph 165 as it makes no allegation against Dr Darbyshire.
- 166. They do not plead to paragraph 166 as it makes no allegation against Dr Darbyshire.
- 167. They do not plead to paragraph 167 as it makes no allegation against Dr Darbyshire.
- 168. They do not plead to paragraph 168 as it makes no allegation against Dr Darbyshire.
- 169. They refer to and repeat the matters in paragraph 9above and otherwise deny the allegations made in paragraph 169.

170. As to paragraph 170 they:

- a. refer to and repeat the matters in paragraphs 9 above;
- b. deny the allegations made in paragraph 170(a) and say that if Dr Darbyshire is liable for any failure in giving or omitting to give any information or advice or warning to the Third Plaintiff (which is denied), s 60 of the *Wrongs Act 1958* (Vic) applies in determining the relevant standard of care; and
- c. do not know and therefore cannot admit the allegations made in paragraph 170(b).

171. As to paragraph 171:

- a. they refer to and repeat the matters in paragraphs 9 and 169 above;
- b. they say that any involvement Dr Darbyshire had in an operation on 17 September 2021 was subject to the supervision of the Second Defendant who performed the operation;
- c. as to paragraph 171(d) they:
 - i. admit competent medical practice required the Third Plaintiff to be examined prior to the day of surgery; and
 - ii. say further that Dr Darbyshire did so during the September Consultation referred to below;
- d. as to paragraph 171(e) they:
 - i. admit competent medical practice required the Third Plaintiff to attend a consultation prior to the surgery;

ii. say further that Dr Darbyshire consulted with the Third Plaintiff via telehealth on 6 September 2021, during which he warned the Third Plaintiff, *inter alia*, of the following:

A. that the procedure would result in, *inter alia*, the following:

- I. a worsening of her appearance;
- II. worsened appearance of skin;
- III. loose skin;
- IV. dents in fat;
- V. worsened appearance of her cellulite; and
- VI. her not wanting to expose her legs;

B. that the procedure carried risks, including, *inter alia*, the following:

- I. that her skin would not retract fully;
- II. wrinkling of skin or folds;
- III. tenderness;
- IV. bruising;
- V. numbness which may last several months;
- VI. the treated area feeling hard, and/or lumpy;
- VII. pain which may last several months;
- VIII. dimpling or unevenness in the fat;
- IX. scar tissue/deep bruising;

- X. scarring including that keyhole scars may be obvious thicken
darken or stretch, unevenness and lumpiness;
- XI. infection;
- XII. seroma requiring drainage;
- XIII. necrosis; and
- XIV. haematoma, possibly requiring a second procedure;

- C. that perfection was not promised and that she must have realistic expectations;

(‘the September Consultation’).

- iii. otherwise do not admit the allegations made in paragraph 171(e);
- e. as to paragraph 171(f) they:
 - i. admit that competent medical practice required the Third Plaintiff to be informed as to other treatment options including not having procedures; and
 - ii. say further that Dr Darbyshire did so during the September Consultation;
- f. as to paragraph 171(h), save that the Third Plaintiff:
 - i. attended consultations with the Third Defendant, Dr Darbyshire and the Second Defendant prior to the procedure; and
 - ii. consented to the surgery after being advised of the risks and limitations of the surgery in each of the consultations;

they otherwise do not admit the allegations made in paragraph 171(h).

- g. as to paragraph 171(i) they say:
 - i. it would have been obvious to the Third Plaintiff that any surgical procedure carried out under local anaesthetic carries the risk of intra-operative and post-operative pain;
 - ii. intra-operative and post-operative pain was an obvious risk within the meaning of s 53 of the *Wrongs Act 1958* (Vic);
 - iii. Dr Darbyshire did not owe a duty to warn the Third Plaintiff of any obvious risk, including intra-operative and/or post operative pain by reason of the operation of s 54(1) of the *Wrongs Act 1958* (Vic); and
 - iv. notwithstanding the above, Dr Darbyshire did warn the Third Plaintiff of the risk of intra-operative and post-operative pain during the September Consultation;
- h. as to paragraph 171(j) they:
 - i. admit competent medical practice required that Dr Darbyshire warn the Third Plaintiff of the risk of disfigurement, bleeding and scarring;
 - ii. say further that Dr Darbyshire did so during the September Consultation;
- i. as to paragraph 171(k) they:
 - i. admit competent medical practice required that Dr Darbyshire warn the Third Plaintiff of potential complications; and
 - ii. say further that Dr Darbyshire did so during the September Consultation;
- j. as to paragraph 171(m) they deny that Dr Darbyshire had an obligation to refer the Third Plaintiff to any other practitioner;

- k. deny the allegations made in paragraph 171(n) and say further that there was no indication during the September Consultation that the Third Plaintiff was a poor candidate for the treatment or such that the Third Plaintiff ought not to have undergone the procedure;
- l. as to paragraph 171(o) they:
 - i. admit competent medical practice required that Dr Darbyshire undertake an adequate assessment of whether the Third Plaintiff was a suitable candidate for the procedures subject to the supervision of the Second Defendant; and
 - ii. say further that Dr Darbyshire did so during the September Consultation;
- m. as to paragraph 171(p) they:
 - i. say that the Second Defendant's medical notes for the Third Plaintiff record that on 27 August 2021 a Counsellor with initials BD consulted with the Third Plaintiff and assessed her as having realistic expectations regarding the possible result of, and that she had a good understanding of the risks of and options for, the proposed surgery. Further on 13 September 2021 the Eighth Defendant noted in the Second Defendant's medical notes that the Third Plaintiff had not reported any mental health issues or medications to her. In the circumstances, including that Dr Darbyshire was undergoing training and was subject to the supervision of the Second Defendant, Dr Darbyshire had no obligation to provide any referral for independent assessment of the suitability of the Third Plaintiff for the proposed surgery; and
 - ii. otherwise do not admit the allegations made in paragraph 171(p).

n. they deny the allegations made in paragraph 171(r) and refer to paragraph 56 of the FASC which does not allege that Dr Darbyshire attended this appointment; and

o. they otherwise they do not admit the remaining allegations in paragraph 171.

172. As to paragraph 172 they:

a. refer to and repeat the matters in paragraph 9 above;

b. say that allegations made in paragraph 172 are to be determined in accordance with s 51 of the *Wrongs Act 1958* (Vic); and

c. otherwise deny the allegations in paragraph 172.

173. They do not plead to paragraph 173 as it makes no allegation against Dr Darbyshire.

174. They do not plead to paragraph 174 as it makes no allegation against Dr Darbyshire.

175. They do not plead to paragraph 175 as it makes no allegation against Dr Darbyshire.

176. They do not plead to paragraph 176 as it makes no allegation against Dr Darbyshire.

177. They do not plead to paragraph 177 as it makes no allegation against Dr Darbyshire.

178. They do not plead to paragraph 178 as it makes no allegation against Dr Darbyshire.

179. They do not plead to paragraph 179 as it makes no allegation against Dr Darbyshire.

180. They do not plead to paragraph 180 as it makes no allegation against Dr Darbyshire.

181. They do not plead to paragraph 181 as it makes no allegation against Dr Darbyshire.

182. They do not plead to paragraph 182 as it makes no allegation against Dr Darbyshire.

183. They do not plead to paragraph 183 as it makes no allegation against Dr Darbyshire.

184. They do not plead to paragraph 184 as it makes no allegation against Dr Darbyshire.
185. They do not plead to paragraph 185 as it makes no allegation against Dr Darbyshire.
- 186A. They do not plead to paragraph 186A as it makes no allegation against Dr Darbyshire.
186. They do not plead to paragraph 186 as it makes no allegation against Dr Darbyshire.
187. They do not plead to paragraph 187 as it makes no allegation against Dr Darbyshire.
188. They do not plead to paragraph 188 as it makes no allegation against Dr Darbyshire.
189. They do not plead to paragraph 189 as it makes no allegation against Dr Darbyshire.
190. They do not plead to paragraph 190 as it makes no allegation against Dr Darbyshire.
191. They do not plead to paragraph 191 as it makes no allegation against Dr Darbyshire.
192. They do not plead to paragraph 192 as it makes no allegation against Dr Darbyshire.
193. They deny the allegations made in paragraph 193 which relate to Dr Darbyshire and say further that the Third Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by the *Wrongs Act 1958* (Vic) which includes that the Third Plaintiff is not entitled to claim damages for non-pecuniary loss as she has not satisfied the provisions of Part VBA of that Act and further by the *Competition and Consumer Act 2010* (Cth) in so far as the Third Plaintiff is entitled to any remedies under those Acts.
194. They do not plead to paragraph 194 as it makes no allegation against Dr Darbyshire.
195. As to paragraph 195 they:
- a. refer to and repeat the matters in paragraph 9 above;

- b. do not know and cannot plead to unspecified matters relating to Group Members;
and
- c. deny the remaining allegations made in paragraph 195 which relate to Dr Darbyshire

F. CONTRACT

196. Save to say that Dr Darbyshire had no contractual relationship with any of the Plaintiffs or Group Members, they do not plead to paragraph 196 as it makes no allegation against Dr Darbyshire.

196A. They refer to and repeat the matters in paragraph 196 above and otherwise do not plead to paragraph 196A as it makes no allegation against Dr Darbyshire.

196B. They refer to and repeat the matters in paragraph 196 above and otherwise do not plead to paragraph 196B as it makes no allegation against Dr Darbyshire.

F.1 Lombardo

197. They do not plead to paragraph 197 as it makes no allegation against Dr Darbyshire.

F.2 Bonnici

198. They do not plead to paragraph 198 as it makes no allegation against Dr Darbyshire.

F.3 Russell

199. They deny that Dr Darbyshire was a party to any contract with the Third Plaintiff and otherwise do not plead to paragraph 199 as it makes no allegation against Dr Darbyshire.

F.4 Morrison

200. They do not plead to paragraph 200 as it makes no allegation against Dr Darbyshire.

F.5 Group Members

201. They do not plead to paragraph 201 as it makes no allegation against Dr Darbyshire.

F.6 Breach of contract

202. They do not plead to paragraph 202 as it makes no allegation against Dr Darbyshire.

202A. They do not plead to paragraph 202A as it makes no allegation against Dr Darbyshire.

G. CAUSATION, LOSS AND DAMAGE

G.1 Misleading or deceptive conduct

G.1.1 Lombardo

203. They deny the allegations made in paragraph 203 which relate to Dr Darbyshire.

203A. They deny the allegations made in paragraph 203A which relate to Dr Darbyshire.

204. They deny the allegations made in paragraph 204 which relate to Dr Darbyshire and say further that:

- a. the First Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by the *Civil Liability Act 2002* (NSW) and further by the *Competition and Consumer Act 2010* (Cth) in so far as the First Plaintiff is entitled to any remedies under those Acts; and
- b. for the avoidance of doubt, if the First Plaintiff's claim is subject to the *Wrongs Act 1958* (Vic) (which is denied) the First Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by that Act which includes that the First Plaintiff is not entitled

to claim damages for non-pecuniary loss as she has not satisfied the provisions of Part VBA of that Act.

G.1.2 Bonnici

205. They deny the allegations made in paragraph 205 which relate to Dr Darbyshire.

205A. They deny the allegations made in paragraph 205A which relate to Dr Darbyshire.

206. They deny the allegations made in paragraph 206 which relate to Dr Darbyshire and say further that:

- a. the Second Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by the *Civil Liability Act 2003* (Qld) and further by the *Competition and Consumer Act 2010* (Cth) insofar as the Second Plaintiff is entitled to any remedies under those Acts; and
- b. for the avoidance of doubt, if the Second Plaintiff's claim is subject to the *Wrongs Act 1958* (Vic) (which is denied) the Second Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by that Act which includes that the Second Plaintiff is not entitled to claim damages for non-pecuniary loss as she has not satisfied the provisions of Part VBA of that Act.

G.1.3 Russell

207. They refer to and repeat the matters in paragraph 196 above and otherwise deny the allegations made in paragraph 207 which relate to Dr Darbyshire.

207A. They refer to and repeat the matters in paragraph 196 above and otherwise deny the allegations made in paragraph 207A which relate to Dr Darbyshire.

208. They deny the allegations made in paragraph 208 which relate to Dr Darbyshire and say further that:

- a. the Third Plaintiff's claim is to be determined by reference to the caps, bars and limitations on damages provided by the *Wrongs Act 1958* (Vic) and further by the *Competition and Consumer Act 2010* (Cth) insofar as the Third Plaintiff is entitled to any remedies under those Acts; and
- b. for the avoidance of doubt, the Third Plaintiff is not entitled to claim damages for non-pecuniary loss as she has not satisfied the provisions of Part VBA of the *Wrongs Act 1958* (Vic).

G.1.4 Morrison

209. They deny the allegations made in paragraph 209 which relate to Dr Darbyshire.

209A. They deny the allegations made in paragraph 209A which relate to Dr Darbyshire.

210. They deny the allegations made in paragraph 210 which relate to Dr Darbyshire and say further that:

- a. the Fourth Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by the *Civil Liability Act 2002* (WA) and further by the *Competition and Consumer Act 2010* (Cth) in so far as the Fourth Plaintiff is entitled to any remedies under those Acts; and
- b. for the avoidance of doubt, if the Fourth Plaintiff's claim is subject to the *Wrongs Act 1958* (Vic) (which is denied) the Fourth Plaintiff's claim for injury loss and damage is to be determined by reference to the caps, bars and limitations on damages provided by that Act which includes that the Fourth Plaintiff is not

entitled to claim damages for non-pecuniary loss as she has not satisfied the provisions of Part VBA of that Act.

G.1.5 Group Members

211. They deny the allegations made in paragraph 211 which relate to Dr Darbyshire.

211A. They deny the allegations made in paragraph 211A which relate to Dr Darbyshire.

212. They deny the allegations made in paragraph 210 which relate to Dr Darbyshire and say further that insofar as any Group Member has a claim for damages pursuant to s 236 of the ACL on the basis of the alleged Representations which arose prior to 9 March 2016, then such claims are barred by reason of s 236(2) of the ACL.

G.1.6 Liability of the Defendants for the Representation Contraventions

213. They deny the allegations made in paragraph 213 which relate to Dr Darbyshire and say further that in the circumstances the Plaintiffs and Group members are not entitled to recover loss or damages for personal injury for the alleged Representation Contraventions pursuant to s 137 of the *Competition and Consumer Act 2010* (Cth).

G.2 Statutory Guarantee Non-Compliances

214. They deny the allegations made in paragraph 214 which relate to Dr Darbyshire.

215. They deny the allegations made in paragraph 215 which relate to Dr Darbyshire and say further that in the event that a Group Member claims damages or compensation pursuant to s 267(4) of the ACL for an alleged contravention of s 60 and 61 of the ACL:

- a. such an action is based on alleged failure to comply with a guarantee that applies to a supply of services under Subdivision B of Division 1 of Part 2-3 of the ACL;

- b. the law of the place of the contract applies to the action by reason of section 275 of the ACL to limit or preclude liability for the alleged failure and recovery of that liability (if any);
- c. where the place of the contract that applies to this action is:
 - i. Victoria, then pursuant to s 5 and s 27D of the *Limitations of Action Act 1958* (Vic);
 - ii. Western Australia, then pursuant to s 13 of the *Limitations Act 2005* (WA);
 - iii. Queensland, then pursuant to s 10 of the *Limitations of Action Act 1974* (Qld);
 - iv. New South Wales, then pursuant to s 14 of the *Limitation Act 1969* (NSW);

then any claims brought by any Group Member that accrued prior to 9 March 2016 is barred.

G.3 Negligence

216. As to paragraph 216 they:

- a. do not plead to paragraph 216(a) as it makes no allegation against Dr Darbyshire;
- b. do not admit the Plaintiffs or Group Members have suffered loss or damage;
- c. say that if Dr Darbyshire was negligent (which is denied) they refer to and repeat the matters in paragraph 193 above; and
- d. deny the remaining allegations made in paragraph 216 which relate to Dr Darbyshire.

G.4 Contract

217. They refer to and repeat the matters in paragraph 196 above and otherwise deny the allegations made in paragraph 217 which relate to Dr Darbyshire.

H. COMMON QUESTIONS

218. They deny that the proposed common questions raise any substantial common questions of law or fact.
219. Further, they say that if Dr Darbyshire breached any duty or was negligent with regard to the Third Plaintiff (which is denied) and if the Third Plaintiff suffered injury (which is not admitted), then any injury, loss or damage was caused or contributed to by the Third Plaintiff's contributory negligence.

Particulars of Contributory Negligence of the Third Plaintiff

- (A) Representing to a counsellor employed by the First Defendant whose initials are BD that she had researched and understood the risks of the procedures, and had realistic expectations, when she knew or ought to have known that the Third Defendant would rely on her representations;
- (B) If she wished to have plastic surgery treatment, failing to seek same from a plastic surgeon;
- (C) Signing a consent form acknowledging that she had been warned of risks particularised on the form and accepted them, if that was not so;
- (D) Misrepresenting to the Third Defendant that her purpose for undergoing the procedures was for the treatment of lipoedema rather than cosmetic;

- (E) Misrepresenting to the Third Defendant that she was not concerned with the long-term cosmetic appearance of her legs.

220. They say further that the law that applies in respect of an action by a Plaintiff or a Group Member is:

- a. the law of the place of the tort for an action in negligence;
- b. the law of the place of the contract for an action for breach of contract;
- c. the law of the place of the contravention for an action based on an alleged representation contravention;
- d. the law of the place of the contract for an alleged statutory guarantee non-compliance.

221. Further to paragraph 220:

- a. the law that applies to substantive issues in the First Plaintiff's actions is the law of New South Wales;
- b. the law that applies to substantive issues in the Second Plaintiff's actions is the law of Queensland;
- c. the law that applies to substantive issues in the Third Plaintiff's actions is the law of Victoria; and
- d. the law that applies to substantive issues in the Fourth Plaintiff's actions is the law of Western Australia.

222. Where the law that applies to an action by a Plaintiff or Group Member is Victorian, Victorian law governs all substantive issues including:

- a. the limitation period that applies to the action;

PARTICULARS

Limitation of Actions Act 1958 (Vic), Part IIA.

- b. the action and substantive rights in respect of the action;

PARTICULARS

Wrongs Act 1958 (Vic), Parts X and XI.

- c. any limit on the kind of injury, loss or damage for which damages may be recovered and the assessment of those damages.

PARTICULARS

Wrongs Act 1958 (Vic), Parts VA, VB, VBA and XI.

- 223. Where the law that applies to an action by a Plaintiff or Group Member is New South Wales, the law of New South Wales governs all substantive issues including:

- a. the limitation period that applies to the action;

PARTICULARS

Limitation of Actions Act 1969 (NSW).

- b. the action and substantive rights in respect of the action;
- c. any limit on the kind of injury, loss or damage for which damages may be recovered and the assessment of those damages.

PARTICULARS

Civil Liability Act 2002 (NSW).

224. Where the law that applies to an action by a Plaintiff or Group Member is Western Australian, the law of Western Australia governs all substantive issues including:

- a. the limitation period that applies to the action;

PARTICULARS

Limitation Act 2005 (WA).

- b. the action and substantive rights in respect of the action;
- c. any limit on the kind of injury, loss or damage for which damages may be recovered and the assessment of those damages.

PARTICULARS

Civil Liability Act 2002 (WA).

225. Where the law that applies to an action by a Plaintiff or Group Member is Queensland, the law of Queensland governs all substantive issues including:

- a. the limitation period that applied to the action;

PARTICULARS

Limitations of Action Act 1974 (Qld).

- b. the action and substantive rights in respect of the action;
- c. any limit on the kind of injury, loss or damage for which damages may be recovered and the assessment of those damages.

PARTICULARS

Civil Liability Act 2003 (Qld) and Personal Injuries Proceedings Act 2002 (Qld).

226. The claims made by the Plaintiffs and Group Members under s 236 of the ACL (**‘the misleading and deceptive conduct claims’**) are apportionable claims within the meaning of:

- a. Part VIA of the *Competition and Consumer Act 2010* (Cth);
- b. Part 4 of the *Civil Liability Act 2002* (NSW);
- c. Part IVAA of the *Wrongs Act 1958* (Vic);
- d. Part 1F of the *Civil Liability Act 2002* (WA); and
- e. Chapter 2 Part 2 of the *Civil Liability Act 2003* (Qld)

(**‘the proportionate liability legislation’**).

227. If a Plaintiff or a Group Member has suffered loss and damage as alleged in the misleading and deceptive conduct claims (which are not admitted but expressly denied), the Seventh Defendant’s acts or omissions caused the claimed loss and damage within the meaning of the proportionate liability legislation.

PARTICULARS

The Fourth Defendants refer to and repeat the matters alleged at paragraphs 9, 58–85, 87, 95 (and its particulars), 96, 100, 102–104, 117– 119, and 123–125, 184–186, 194 and 210 of the FASC

228. If the Fourth Defendants are liable to a Plaintiff or Group Member as alleged by the misleading and deceptive conduct (which is not admitted but expressly denied), then the Seventh Defendant is:

- a. a person who is one of two or more persons whose acts or omissions caused the alleged loss or damage that is the subject of the misleading and deceptive conduct claims; and

- b. a concurrent wrongdoer within the meaning of the proportionate liability legislation.

229. In the premises, if the Fourth Defendants are liable to any Plaintiff or Group Member in relation to the misleading and deceptive conduct (which is not admitted but is expressly denied) then its liability is limited by the proportionate liability legislation to an amount reflecting that proportion of the claimed loss that the Court considers just having regard to the extent of Dr Darbyshire's responsibility for the claimed loss and judgment must not be given against Dr Darbyshire for more than that amount.

Dated: 20 January 2025

MARY ANNE HARTLEY KC

D G GUIDOLIN KC

MORGAN MCLAY

.....
Gilchrist Connell
GILCHRIST CONNELL
Solicitors for the Fourth Defendants

SCHEDULE OF PARTIES

TINA LOMBARDO	First Plaintiff
and	
TINA BONNICI	Second Plaintiff
and	
SIMONE RUSSELL	Third Plaintiff
and	
JULIE ROSE MORRISON	Fourth Plaintiff
and	
DERMATOLOGY AND COSMETIC SURGERY SERVICES PTY LTD (ACN 055 927 618)	First Defendant
and	
DANIEL LANZER	Second Defendant
and	
DANIEL ARONOV	Third Defendant
and	
JACQUELINE DARBYSHIRE and TONY DARBYSHIRE (in their Capacity as the legal personal representatives of the estate of Daniel Darbyshire)	Fourth Defendant
and	
RYAN WELLS	Fifth Defendant
and	
ALIREZA FALLAHI	Sixth Defendant
and	
GEORGE SHU-KHIM WONG	Seventh Defendant
and	
CANDICE WAINSTEIN	Eighth Defendant