

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/01/2021 3:58:32 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: NSD1446/2019
File Title: LYNELLE BOUCHERE v CAR FESTIVALS PTY LTD ABN 70 603 505
728 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 27/01/2021 10:05:40 AM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Amended Defence of First and Third Respondents
to SFASOC filed 27 August 2020**

~~(Filed pursuant to Court order of 3 November 2020)~~

No. NSD1446/2019

Federal Court of Australia
District Registry: Sydney
Division: General

Lynelle Bouchere

Applicant

Car Festivals Pty Ltd and others

Respondents

Preliminaries

- A Headings are used for convenience only. They do not form part of the First and Third Respondent's response to the Second Further Amended Statement of Claim filed on 27 August 2020 (**SFASOC**).
- B In accordance with principle and usual practice, the First and Third Respondents have not pleaded to the particulars in the SFASOC. Nothing in this Defence should be taken to be an admission to any fact alleged in the particulars to any paragraph of the SFASOC.
- C Unless the context requires otherwise, the First and Third Respondents adopt the defined terms used in the SFASOC, but do not admit any factual assertions contained in or implied by the use of those terms.

In answer to the SFASOC, the First and Third Respondents say as follows:

The Applicant

- 1 In relation to paragraph 1 of the SFASOC, the First and Third Respondents:
- (a) say that all tickets to attend the Red CentreNats Event in Alice Springs, Northern Territory on 3 September 2017 (**Event**) as a spectator were supplied by the Second Respondent for a fee (**Spectator Tickets**);

Filed on behalf of	Car Festivals Pty Ltd, First Respondent and Summernats Pty Ltd, Third Respondent
Prepared by	Rachael Arnold, Partner
Law firm	Hall & Wilcox
Tel	(02) 8267 3808
Fax	(02) 8267 3888
Email	Rachael.arnold@hallandwilcox.com.au
Address for service	Level 18, 347 Kent Street, Sydney, NSW 2000

- (b) say further that the Applicant or any Group Member who purchased a Spectator Ticket (**Spectators**) from the Second Respondent did not, as a result, acquire any services within the meaning of sections 2 and 3(3) of the ACL from the First or Third Respondents;
- (c) say further that two putative Group Members, Mr Chaise Bouchere and Mr Cohen Walters (**Competitors**), purchased tickets from the First Respondent to compete in the burnout competition during the Event (**Competitor Tickets**);
- (d) say further that any Group Member who purchased a Spectator Ticket from the Second Respondent has not suffered any loss or damage because of the conduct of the First or Third Respondents, such loss or damage being otherwise denied;
- (e) say further that, for reasons set out in this Defence below, any Competitor who purchased a Competitor Ticket from the First Respondent has not suffered any loss or damage because of the conduct of the First or Third Respondents, such loss or damage being otherwise denied;
- (f) otherwise do not plead to the description of the class.

2 The First and Third Respondents admit paragraph 2 of the SFASOC.

The Respondents

3 The First and Third Respondents admit paragraph 3 of the SFASOC.

4 The First and Third Respondents admit paragraph 4 of the SFASOC.

5 The First and Third Respondents admit paragraph 5 of the SFASOC.

Red CentreNATS

6 In response to paragraph 6 of the SFASOC, the First and Third Respondents admit the paragraph, subject to saying that the Event has occurred annually since 2015.

7 The First and Third Respondents admit paragraph 7 of the SFASOC.

8 In response to paragraph 8 of the SFASOC, the First and Third Respondents:

- (a) admit that the First Respondent was responsible for some aspects of arranging, promoting, organising and operating the Event;
- (b) admit that the Second Respondent was responsible for some aspects of arranging, promoting, organising and operating the Event;
- (c) deny the paragraph in respect of the Third Respondent;
- (d) otherwise deny the paragraph.

8A In response to paragraph 8A of the SFASOC, the First and Third Respondents:

- (a) deny the paragraph in so far as it relates to the First Respondent;

- (b) do not know and do not admit the paragraph in so far as it relates to the Second Respondent;
 - (c) deny the paragraph in so far as it relates to the Third Respondent.
- 8B In response to paragraph 8B of the SFASOC, the First and Third Respondents:
 - (a) deny the paragraph in so far as it relates to the First Respondent;
 - (b) do not know and do not admit the paragraph in so far as it relates to the Second Respondent;
 - (c) deny the paragraph in so far as it relates to the Third Respondent.
- 8C In response to paragraph 8C of the SFASOC, the First and Third Respondents:
 - (a) deny the paragraph in so far as it relates to the First Respondent;
 - (b) do not know and do not admit the paragraph in so far as it relates to the Second Respondent;
 - (c) deny the paragraph in so far as it relates to the Third Respondent.
- 8D In response to paragraph 8D of the SFASOC, the First and Third Respondents:
 - (d) admit the paragraph in so far as it relates to the First Respondent;
 - (e) do not know and do not admit the paragraph in so far as it relates to the Second Respondent;
 - (f) admit the paragraph in so far as it relates to the Third Respondent.
- 8E In response to paragraph 8E of the SFASOC, The First and Third Respondents:
 - (a) say that the fact alleged does not go towards establishing any alleged cause of action, and is thus embarrassing and liable to be struck out;
 - (b) under cover of that objection, admit the paragraph in respect of the First Respondent;
 - (c) do not know and do not admit the paragraph in so far as it relates to the Second Respondent;
 - (d) under cover of that objection, deny the paragraph in respect of the Third Respondent.
- 8F The First and Third Respondents admit paragraph 8F of the SFASOC.
- 8G The First and Third Respondents admit paragraph 8G of the SFASOC.
- 8H In response to paragraph 8H of the SFASOC, the First and Third Respondents:
 - (a) say that the Alice Springs Inland Dragway (**ASID**), complete with infrastructure for competition and spectator areas, was already a working venue prior to the Event;
 - (b) admit that the officials' marquee, lighting tower locations and skip bins for tyres in the competition areas of the burnout competition were

stipulated by the First Respondent for the Event, but otherwise deny the paragraph in so far as it relates to the First Respondent;

(c) do not know and do not admit the paragraph in so far as it relates to the Second Respondent;

(d) deny the paragraph in so far as it relates to the Third Respondent.

8I In response to paragraph 8I of the SFASOC, the First and Third Respondents:

(a) deny the paragraph in so far as it relates to the First Respondent;

(b) do not know and do not admit the paragraph in so far as it relates to the Second Respondent;

(c) deny the paragraph in so far as it relates to the Third Respondent.

8J In response to paragraph 8J of the SFASOC, the First and Third Respondents:

(d) refer to and repeat paragraphs 8H and 8I of this Defence above;

(e) admit that the Second Respondent installed a temporary chain mesh security fence behind the Armco crash barrier around the burnout pad;

(f) otherwise deny the paragraph.

8K In response to paragraph 8K of the SFASOC, the First and Third Respondents:

(a) deny sub-paragraph (c) for the reason that the First Respondent contracted the on-site fire crew;

(b) otherwise admit the paragraph.

8L In response to paragraph 8L of the SFASOC, the First and Third Respondents:

(a) admit that systems to manage the health and safety of spectators and competitors at the Event were developed by the First and Second Respondents;

(b) deny the paragraph in so far as it relates to the Third Respondent.

9 In response to paragraph 9 of the SFASOC, the First and Third Respondents:

(a) say that the program was organised by the First Respondent and Second Respondent;

(b) say further that ultimate responsibility for organising the program for the Event lay with the Second Respondent;

(c) deny the paragraph in so far as it relates to the Third Respondent;

(d) otherwise deny the paragraph.

10 In response to paragraph 10 of the SFASOC, the First and Third Respondents:

(a) say that at all material times, the relevant version of the Event Guide was the "Red CentreNATS Entrants Guide V11 August 2017" (**Entrants Guide**);

- (b) rely on the Entrants Guide for its full terms and effect;
- (c) admit that the First Respondent drafted content for the Entrants Guide;
- (d) say that the Second Respondent signed-off on the Entrants Guide prior to it being issued;
- (e) say further that the First Respondent distributed the Entrants Guide to registered entrants, including the Competitors;
- (f) otherwise deny the paragraph.

11 In response to paragraph 11 of the SFASOC, the First and Third Respondents:

- (a) admit the paragraph in so far as it relates to the First Respondent;
- (b) deny the paragraph in so far as it relates to the Second and Third Respondents.

12 In response to paragraph 12 of the SFASOC, the First and Third Respondents:

- (a) admit the paragraph in so far as it relates to the First Respondent;
- (b) deny the paragraph in so far as it relates to the Second and Third Respondents.

13 In response to paragraph 13 of the SFASOC, the First and Third Respondents:

- (a) say that the fact alleged does not go towards establishing any alleged cause of action, and is thus embarrassing and liable to be struck out;
- (b) under cover of that objection, say that clause 12.1 of the Entrants Guide stated that:

Judges allocate points for the following:

INSTANT SMOKE

...

CONSTANT SMOKE

...

VOLUME OF SMOKE

...

DRIVER CONTROL

...

BURSTING TYRES

While not mandatory, it improves your chance to win. ...;

- (c) under cover of that objection, say further that clause 12.1 of the Entrants Guide stated that “*Judges will be looking for ... good driver control and pad use*”;
 - (d) under cover of that objection, rely on the Entrants Guide for its full terms and effect;
 - (e) otherwise deny the paragraph.
- 14 In response to paragraph 14 of the SFASOC, the First and Third Respondents:
- (a) say that the fact alleged does not go towards establishing any alleged cause of action, and is thus embarrassing and liable to be struck out;
 - (b) under cover of that objection, say that clause 12.1 of the Entrants Guide stated that:
 - Points will be subtracted from the total score for any of the following:*
 - ...
 - *Small fire*
 - ...
 - *Large fire (Judging Ends)*
 - (c) under cover of that objection, rely on clause 12.1 of the Entrants Guide for its full terms and effect;
 - (d) otherwise admit the paragraph.
- 15 In response to paragraph 15 of the SFASOC, the First and Third Respondents:
- (a) admit that the First Respondent arranged and supervised the burnout competition and that the Second Respondent supervised the First Respondent’s performance of those tasks;
 - (b) say that the spectator area had been designated prior to the Event;
 - (c) say that the Second Respondent arranged, briefed and paid for security guards;
 - (d) otherwise deny the paragraph.
- 16 In response to paragraph 16 of the SFASOC, the First and Third Respondents:
- (a) say that the Spectator Mound was separated from the burnout pad by a chain mesh security fence and an Armco crash barrier with two rail panels;
 - (b) otherwise deny the paragraph.
- 17 In answer to paragraph 17 of the SFASOC, the First and Third Respondents:
- (a) refer to and repeat paragraph 1 of this Defence above;
 - (b) admit the Spectator Tickets cost \$50.00;

(c) otherwise deny the paragraph.

18 In answer to paragraph 18 of the SFASOC, the First and Third Respondents:

(a) say that clause 9 of the document titled "Ticketing Terms & Conditions of Entry" stated that "You must comply with the directions or announcements from NTMEC or Venue staff and requirements relating to access and safety given by NTMEC or Venue staff or authorities";

(b) rely on that document for its full terms and effect;

(c) otherwise deny the paragraph.

The Alleged Consumer Guarantees

19 In response to paragraph 19 of the SFASOC, the First and Third Respondents:

(a) refer to and repeat paragraph 1 of this Defence above;

(b) admit that the First Respondent gave a guarantee that services it provided to consumers, in supplying the Competitor Tickets to the Competitors, would be rendered with due care and skill, pursuant to s 60 of the ACL;

(c) admit that the Second Respondent gave a guarantee that services it provided to consumers, in supplying the Spectator Tickets to Spectators, would be rendered with due care and skill, pursuant to s 60 of the ACL;

(d) deny the paragraph in so far as it relates to the Third Respondent;

(e) otherwise deny the paragraph.

20 In response to paragraph 20 of the SFASOC, the First and Third Respondents:

(a) say that neither the First Respondent nor the Third Respondent entered into any contract with any Group Member in relation to spectating at the Event;

(b) deny the paragraph.

21 In response to paragraph 21 of the SFASOC, the First and Third Respondents:

(a) say that neither the First Respondent nor the Third Respondent entered into any contract with any Group Member in relation to spectating at the Event;

(b) deny the paragraph.

22 In response to paragraph 22 of the SFASOC, the First and Third Respondents:

(a) refer to and repeat paragraph 1 of this Defence above;

(b) admit that the First Respondent gave a guarantee that services it provided to consumers, in supplying the Competitor Tickets to the Competitors, would be reasonably fit for that purpose, pursuant to s 61(1) of the ACL;

- (c) do not know and do not admit the paragraph in so far as it relates to the Second Respondent;
- (d) deny the paragraph in so far as it relates to the Third Respondent;
- (e) otherwise deny the paragraph.

Burnout Event on 3 September 2017

23 In response to paragraph 23 of the SFASOC, the First and Third Respondents:

- (a) say that the Applicant purchased a Spectator Ticket from the Second Respondent to attend the Event;
- (b) deny the paragraph in so far as it relates to the First and Third Respondents.

24 The First and Third Respondents admit paragraph 24 of the SFASOC.

25 In response to paragraph 25 of the SFASOC, the First and Third Respondents:

- (a) refer to and repeat paragraph 9 of this Defence above;
- (b) otherwise admit the paragraph.

26 The First and Third Respondents admit paragraph 26 of the SFASOC.

27 The First and Third Respondents admit paragraph 27 of the SFASOC.

28 In response to paragraph 28 of the SFASOC, the First and Third Respondents:

- (a) say that the fact alleged does not go towards establishing any alleged cause of action, and is thus embarrassing and liable to be struck out;
- (b) under cover of that objection, do not know and cannot admit the paragraph.

29 The First and Third Respondents deny paragraph 29 of the SFASOC.

The Alleged Contravention of Consumer Guarantees

30 The First and Third Respondents deny paragraph 30 of the SFASOC in so far as it relates to the First and Third Respondents.

31 The First and Third Respondents deny paragraph 31 of the SFASOC in so far as it relates to the First and Third Respondents.

32 The First and Third Respondents deny paragraph 32 of the SFASOC in so far as it relates to the First and Third Respondents.

33 The First and Third Respondents deny paragraph 33 of the SFASOC in so far as it relates to the First and Third Respondents.

34 In response to paragraph 34 of the SFASOC, the First and Third Respondents:

- (a) deny that the Applicant suffered any loss or damage as alleged or at all;

- (b) deny that the Applicant is entitled to claim loss or damages and costs as alleged or at all;
- (c) say further that, even if the First or Third Respondent is found to have failed to comply with a guarantee that applies to a supply of services under Division 1 of Part 3-2 of the ACL (such failures being denied), such failures do not amount to contraventions of the ACL and, accordingly, do not give rise to any entitlement to damages under sections 236 or 237 of the ACL.

Alleged Negligence

35 In response to paragraph 35 of the SFASOC, the First and Third Respondents:

- (a) deny sub-paragraphs (a) – (h) in so far as each sub-paragraph relates to the First and Third Respondents;
- (b) say that the fact alleged in sub-paragraph (i) does not go towards establishing any alleged cause of action, is thus embarrassing and liable to be struck out and, under cover of that objection, deny the sub-paragraph in so far as it relates to the First and Third Respondents;
- (c) say that the fact alleged in sub-paragraph (j) does not go towards establishing any alleged cause of action, is thus embarrassing and liable to be struck out and, under cover of that objection, admit the sub-paragraph in so far as it relates to the First and Third Respondents;
- (d) deny sub-paragraph (k) in so far as it relates to the First and Third Respondents;
- (e) otherwise do not know and do not admit the paragraph in respect of the Second Respondent.

36 In response to paragraph 36 of the SFASOC, the First and Third Respondents:

- (a) refer to and repeat paragraphs 8 to 30 of this Defence above;
- (b) admit that the First Respondent was generally responsible for the safe operation and management of the Event for competitors;
- (c) admit that the Second~~Third~~ Respondent was generally responsible for the safe operation and management of the Event for spectators~~competitors~~;
- (d) otherwise deny the paragraph.

37 In response to paragraph 37, the First and Third Respondents:

- (a) admit that the Second Respondent occupied ASID for the duration of the Event;
- (b) admit that the First Respondent was on site from 30 August 2017 until 4 September 2017;
- (c) admit sub-paragraphs (a) and (b) in so far as they relate to the First Respondent;

- (d) admit sub-paragraph (c) in so far as it relates to the First Respondent controlling safety precautions for competitors at the burnout competition, and in so far as it relates to the Second Respondent controlling safety barriers and precautions for spectators at the burnout competition;
- (e) admit sub-paragraph (f) in so far as it relates to the First Respondent controlling the availability of on-site fire services, first aid and medical services for competitors, and in so far as it relates to the Second Respondent controlling the availability of on-site fire services, first aid and medical services for spectators;
- (f) admit sub-paragraph (g) in so far as it relates to the Second Respondent;
- (g) deny the balance of the paragraph in so far as it relates to the First and Third Respondents;
- (h) otherwise do not know and do not admit the balance of the paragraph in respect of the Second Respondent.

38 In circumstances where the bare allegation of a duty of care in paragraph 38 of the SFASOC is re-pleaded with particulars in paragraph 39 of the SFASOC, the First and Third Respondents:

- (a) say that paragraph 38 of the SFASOC is embarrassing and ought to be struck out;
- (b) under cover of that objection, deny the paragraph.

39 The First and Third Respondents deny paragraph 39 of the SFASOC.

40 The First and Third Respondents deny paragraph 40 of the SFASOC.

41 The First and Third Respondents deny paragraph 41 of the SFASOC.

42 In response to paragraph 42 of the SFASOC, the First and Third Respondents deny that the Applicant and Group Members are entitled to claim loss, damages, interest and costs as alleged or at all.

Further matters in answer to the SFASOC

Section 275 of the ACL and section 5 of the MACA (ACL claims)

Only in the event that the First or Third Respondent is found to have failed to comply with a guarantee that applies to a supply of services under Subdivision B of Division 1 of Part 3-2 of the ACL (such failures being denied), such that section 275(a) of the ACL is satisfied, the First and Third Respondents plead as follows:

43 For the purposes of section 275(b) of the ACL, the law of the Northern Territory:

- (a) was the proper law of the contracts referred to in this Defence above as the Competitor Tickets;
- (b) would be the law of any hypothetical contract between the First Respondent and any Spectators.

- 44 At all material times, the law of the Northern Territory included the *Motor Accidents (Compensation) Act 1979* (Northern Territory) (**MACA**).
- 45 For the purposes of sections 4A(1)(a) and (b) and (2) of the MACA, the accident the subject of the claims was an occurrence caused by, or arising out of, the use of a motor vehicle, resulting in injury to a person.
- 46 In the premises, the Group Members' rights to pursue actions for damages in respect of the accident the subject of their claims are subject to the operation of the MACA.
- 47 Section 5 of the MACA operates to limit or preclude the First Respondent's liability for a breach of:
- (a) any term of the contracts described as Competitor Tickets arising out of the accident the subject of the claims;
 - (b) any term of any hypothetical contact between the First Respondent and any of Spectators arising out of the accident the subject of the claims.
- 48 Section 5 of the MACA operates to limit or preclude the Third Respondent's liability for a breach of any hypothetical contact between the Third Respondent and any Group Members arising out of the accident the subject of their claims.
- 49 In the premises, by operation of section 275 of the ACL, section 5 of the MACA applies to limit or preclude:
- (a) the First Respondent and Third Respondent's liability for any failure to comply with a guarantee that applies to a supply of services to consumers under Subdivision B of Division 1 of Part 3-2 of the ACL;
 - (b) the recovery of that liability (if any).

Section 5 of the MACA (Negligence claims)

Only in the event that the First or Third Respondent is found to have acted negligently (such negligence being denied), the First and Third Respondents plead as follows:

- 50 At all material times, the law of the Northern Territory included the MACA.
- 51 For the purposes of sections 4A(1)(a) and (b) and (2) of the MACA, the accident the subject of the claims was an occurrence caused by, or arising out of, the use of a motor vehicle, resulting in injury to a person.
- 52 The Applicant and Group Members' rights to pursue actions for common law damages in respect of the accident the subject of their claims are subject to the operation of the MACA.
- 53 In the premises, section 5 of the MACA operates to abolish the Applicant and Group Members' rights to pursue common law damages claims against the First and Third Respondent arising out of the accident the subject of their claims.

Volenti non fit injuria (Negligence claims)

Only in the event that the First or Third Respondent is found to have acted negligently (such negligence being denied), and it is also found that section 5 of the MACA does not operate to abolish the Applicant and Group Members' rights to pursue common law damages claims

against the First or Third Respondent arising out of the Event the subject of the claim (contrary to the First and Third Respondents' contentions about the operation of that provision), the First and Third Respondent plead as follows:

Spectators

54 Prior to entering the Event, Spectators were made aware of the contents of a document titled "Ticketing Terms & Conditions of Entry".

Particulars

A Spectators, including the Applicant, who entered ASID on 3 September 2017, passed by a prominent, physical sign setting out the "Ticketing Terms & Conditions of Entry" at the entrance to the venue.

B Spectators who purchased a Spectator Ticket online, acknowledged at the point of sale that they agreed to the contents of the "Ticketing Terms & Conditions of Entry".

55 Clause 14 of the "Ticketing Terms & Conditions of Entry" stated relevantly that *"There are risks and inherent dangers associated with attending Events and associated activities that may result in patrons being injured."*

56 Clause 15 of the "Ticketing Terms & Conditions of Entry" stated relevantly that *"Patrons attending an Event do so at their own risk, and assume all risk and liability for personal injury or death, including that of any minors under their care."*

57 In the premises, prior to the burnout competition taking place at the Event, the Applicant and Spectators were fully aware of the risk of injury (which injury is not admitted).

58 In the premises, prior to the burnout competition taking place at the Event, the Applicant and Spectators fully appreciated the nature and extent of the risk of injury (which injury is not admitted).

59 In the premises, prior to the burnout competition taking place at the Event, the Applicant and Spectators freely and voluntarily accepted the risk of injury (which injury is not admitted).

60 In the premises, the First and Third Respondents rely on the defence of *volenti non fit injuria* to say that the Applicant and those Group Members who were Spectators at the Event are not entitled to claim loss or damages and costs as alleged or at all.

Competitors

61 The terms of the Competitor Ticket included, relevantly, the contents of a "Participant Release of Liability Form".

62 Clause 1 of the "Participant Release of Liability Form" stated relevantly that:

"You acknowledge that the Activity is a dangerous recreational activity, and as a result there is a risk of injury, serious injury or death, along with the loss of, damage to or destruction of property (the risk).

You acknowledge that the Activity may involve additional risks apart from the Risk.

You acknowledge that, by desiring to participate in the Activity and signing this Form, you have acted voluntarily with full appreciation of the Risk.

You acknowledge that, by your voluntary assumption of the Risk, the Organisers will not be liable for:

Any injury, serious injury, or death; and/or

Any loss of, damage to or destruction of property,

Arising out of or in connection with your participation in the Activity.

You acknowledge that this clause 1 constitutes a risk warning of the Risk, and therefore the Organisers do not owe a duty of care to take care in respect of the Risk.”

- 63 In the premises, prior to the burnout competition taking place at the Event, Competitors were fully aware of the risk of injury (which injury is not admitted).
- 64 In the premises, prior to the burnout competition taking place at the Event, Competitors fully appreciated the nature and extent of the risk of injury (which injury is not admitted).
- 65 In the premises, prior to the burnout competition taking place at the Event, Competitors freely and voluntarily accepted the risk of injury (which injury is not admitted).
- 66 In the premises, the First and Third Respondents rely on the defence of *volenti non fit injuria* to say that Competitors are not entitled to claim loss or damages and costs as alleged or at all.

Limitation to Damages

- 67 Further and in the alternative, in answer to the whole of the SFASOC, if the First and/or Third Respondent is liable as alleged:
- (a) any order for loss or damage or damages would be an award of personal injury damages for the purposes of Part VIB of the Competition and Consumer Act 2010 (Cth);
 - (b) the First and Third Respondents rely on the limitation to any award of personal injury damages as set out in Divisions 3, 4, 5 and 6 of Part VIB of the Competition and Consumer Act 2010 (Cth) to the extent applicable to the claims brought by the Applicant and each Group Member.

Date: 25 January 2021

Signed by Rachael Arnold
Lawyer for First Respondent and Third
Respondent, by her employed solicitor
Catherine Blair

This pleading was prepared by Rachael Arnold, Lawyer for the First Respondent and Third Respondent and Naomi Oreb of counsel, and settled by Ruth C A Higgins SC.

Certificate of lawyer

I, Rachael Arnold, certify to the Court that, in relation to the defence filed on behalf of the First Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 25 January 2021

Signed by Rachael Arnold
Lawyer for the First Respondent and Third
Respondent, by her employed solicitor
Catherine Blair