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THIRD FURTHER AMENDED STATEMENT OF CLAIM

(Filed pursuant to an order made by Garling J on 30 July 2014)

COURT DETAILS

Court Supreme Court of New South Wales
Division Common Law
List General
Registry Sydney Registry
Case number 2011/187125

FILED
30 JUL 2014

TITLE OF PROCEEDINGS

Plaintiff **EINPWY AMOM-MUSA-KONNEH**
Defendant **STATE OF NEW SOUTH WALES**

FILING DETAILS

Filed for The Plaintiff
Legal representatives Ben Slade - Maurice Blackburn Pty Ltd
Legal representative reference BJS:3022272
Contact name and telephone Ben Slade, Maurice Blackburn Pty Ltd
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TYPE OF CLAIM

Tort - Trespass - False imprisonment, Assault and Battery

RELIEF CLAIMED

1. Damages, including aggravated damages;
2. Damages, including aggravated damages where appropriate, for the Group Members (as defined in paragraph 1 of the pleadings and particulars);
3. Exemplary damages;
4. Exemplary damages for the Group Members;
5. Costs;
6. Interest.

PLEADINGS AND PARTICULARS

THE PROCEEDING, PARTIES AND BACKGROUND FACTS

The proceeding and group members

1. The plaintiff brings this proceeding on his own behalf and on behalf of ~~represented~~ persons pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW), ~~being persons~~ **(Group Members)** who ~~at the date of filing this third further amended statement of claim:~~ ^{prior to 20 May 2017}
 - (a) were detained by a member of the New South Wales Police Force **(NSW Police Force)** for only a breach of a bail condition or bail conditions; and
 - (b) the alleged breach of the bail condition or bail conditions related to an alleged offence or offences which were being or had been prosecuted in the Children's Court of New South Wales; and
 - (c) at the time of the detention, were not then subject to the bail condition or bail conditions which were alleged to have been breached.



The defendant

2. The defendant is liable to be sued pursuant to section 5 of the *Crown Proceedings Act 1988* (NSW).
3. The NSW Police Force is established by the *Police Act 1990* (NSW).
4. Each police officer of the NSW Police Force **(police officer)** referred to in this statement of claim was at all relevant times:
 - (a) pursuant to section 6 of the *Law Reform (Vicarious Liability) Act 1983* (NSW), a person in the service of the Crown;
 - (b) acting in the performance or purported performance of their functions as a police officer; and
 - (c) so acting where the performance or purported performance of their functions was in the course of their service of the Crown or was an incident of that service.

5. Each officer of the Department of Corrective Services (**DCS officer**) or the Department of Juvenile Justice (**DJJ officer**) who detained or facilitated the detention of the plaintiff or a Group Member was at all relevant times:
 - (a) a person in the service of the Crown;
 - (b) acting in the performance or purported performance of their functions including pursuant to the *Children (Detention Centres) Act 1987* (NSW) or the *Crimes (Administration of Sentences) Act 1999* (NSW); and
 - (c) so acting where the performance or purported performance of their functions was in the course of their service of the Crown or was an incident of the person's service of the Crown, or was directed to or incidental to the carrying on of an undertaking or activity of the Crown.
6. By reason of the matters pleaded in paragraph 4, the defendant is, pursuant to section 8(1) of the *Law Reform (Vicarious Liability) Act 1983* (NSW) vicariously liable to the plaintiff and Group Members in respect of each tort alleged in this proceeding to have been committed by a police officer.
7. By reason of the matters pleaded in paragraph 5, the defendant is, pursuant to section 8(1) of the *Law Reform (Vicarious Liability) Act 1983* (NSW) vicariously liable to the plaintiff and some Group Members in respect of each tort alleged in this proceeding to have been committed by a DCS officer and to some Group Members in respect of each tort alleged in this proceeding to have been committed by a DJJ officer.

Defendant's Inaccurate Computer System

8. At relevant times the police computer system known as the "Computerised Operational Policing System" or "COPS" (**COPS**) contained information which recorded, inaccurately, that the plaintiff and Group Members were subject to a bail condition when:
 - (a) they were at liberty and not subject to any bail conditions; or
 - (b) they were on conditional liberty, but the conditions of that liberty were otherwise than as recorded on COPS.

Particulars

With respect to the plaintiff, COPS recorded that the plaintiff was subject to the Amom Konneh Bail Conditions (as defined below) or a bail condition

notwithstanding the fact the Court's file and the computer system known as "JusticeLink" recorded that the Charges had been dismissed; in addition to the claims of Keith Moffitt and Reginald Simpson that are pleaded below (and whose claims are proposed to be dealt with at the initial trial), particulars of the balance of Group Member claims will be provided after a trial of the common issues.

9. At all material times when the plaintiff and Group Members were detained, senior police officers within the NSW Police Force were aware that the information on COPS as to bail conditions:
 - (a) was unreliable;
 - (b) was often inaccurate;
 - (c) was information the reliability of which did not provide a reasonable basis for assuming it recorded the accurate bail status of a person whose details were purported to be recorded in COPS.

10. At material times when the plaintiff and Group Members were detained, the knowledge of senior police officers within the NSW Police Force pleaded in paragraph 9, should be attributed to the NSW Police Force, and by reason of this fact, the members of the NSW Police Force referred to in paragraph 1(a).

Particulars

Any rule of attribution by which the knowledge or mental state of individual senior police officers should be attributed to the NSW Police Force requires an organic approach which goes beyond the law of agency and, following discovery and interrogatories as to the repositories and extent of the relevant knowledge (and prior to any initial trial), the plaintiff and Group Members will identify, in the context of the statutory scheme relevant to the arrest of a minor, the facts, matters and circumstances and relevant policy matters relied upon to support the special rule of attribution upon which the plaintiff and Group Members rely.

CLAIM OF THE PLAINTIFF

Bail status of the plaintiff

11. On 10 January 2010, the plaintiff appeared before the Children's Court of New South Wales (Children's Court) at Parramatta on certain charges and was granted bail by

the Children's Court pursuant to section 6 of the *Bail Act 1978* (NSW) (***Bail Act***)
subject to the following conditions:

- (a) to reside at 26 Elke Way, Toongabbie (Friday to Sunday);
- (b) to reside at Boys Town, Engadine (Monday to Thursday);
- (c) to abide by a curfew from Friday to Sunday to be at home between 6pm and 6am unless in the company of a parent;
- (d) to obey all reasonable directions of parents;
- (e) to attend school regularly;
- (f) not to enter Westpoint Shopping Centre, Blacktown; and
- (g) not to commit and further offences whilst on bail;

(Amom Bail Conditions).

- 12. On 25 March 2010, the plaintiff appeared before Children's Magistrate Murphy in the Children's Court at Parramatta at which time the Court:
 - (a) referred the charges against the plaintiff to a Youth Justice Conference pursuant to section 40 of the *Young Offenders Act 1997* (NSW) to take place on 14 May 2010; and
 - (b) dispensed with the plaintiff's bail.
- 13. At the conclusion of proceedings against the plaintiff on 25 March 2010, the plaintiff was thereafter at liberty and not subject to the Amom Bail Conditions, or to any grant of bail, including any conditional bail.
- 14. At all times from 26 March 2010 to 10 April 2010 inclusive, the plaintiff was not a person who was at liberty on bail within the meaning of section 50 of the *Bail Act*.

First unlawful imprisonment of the plaintiff: 26—27 March 2010

- 15. At about 11.00 pm on 26 March 2010, Sergeant Andrew Knight, Constable Ian Timms and/or Constable Dean Pickering:
 - (a) were near Blacktown Railway Station, Blacktown;
 - (b) arrested and detained the plaintiff for breach of the Amom Bail Conditions; and

Particulars

The breach of the Amom Bail Conditions alleged was detailed in a Police Facts document prepared by Constable Dean Pickering on or about 26 March 2010 for use in the Children's Court.

- (c) intentionally deprived the plaintiff of his liberty.
16. The plaintiff was intentionally deprived of his liberty by:
- (a) Sergeant Andrew Knight, Constable Ian Timms and/or Constable Dean Pickering at the following locations:
- (i) near Blacktown Railway Station, Blacktown;
- (ii) while walking from Blacktown Railway Station to Blacktown Police Station;
- (b) the Custody Manager at Blacktown Police Station, including in a locked cell;
- (c) a police officer or police officers in a police vehicle while being conveyed from Blacktown Police Station to Reiby Juvenile Justice Centre; and
- (d) DJJ officers in Reiby Juvenile Justice Centre.
17. The deprivation of the plaintiff's liberty:
- (a) commenced at about 11.00 pm on 26 March 2010;
- (b) continued overnight until about 12.20 pm on 27 March 2010;
- (c) came to an end when the plaintiff was released from his imprisonment approximately two hours after he appeared by audio-visual link on 27 March 2010 before Children's Magistrate Crawford at the Children's Court at Parramatta.

Particulars

The plaintiff appeared before Children's Magistrate Crawford by audio-visual link at approximately 10:15 am and the hearing completed at approximately 10.30 am. During the hearing Children's Magistrate Crawford made an order discharging the plaintiff from custody. However, the plaintiff was not released from custody until 12.20 pm.

18. By reason of the matters pleaded in paragraphs 13 and/or 14 above, the deprivation of the plaintiff's liberty on 26 March 2010, which continued until 27 March 2010, was unlawful.
19. In the alternative, Sergeant Andrew Knight, Constable Ian Timms and/or Constable Dean Pickering did not have reasonable grounds to arrest and detain the plaintiff under section 50 of the *Bail Act* as they did not undertake the searches and inquiries that were reasonable in the circumstances to obtain accurate information about the plaintiffs bail status given the existence of the following facts or matters or any combination of the following facts or matters:
- (a) the matter pleaded in paragraph 9 above; and/or
 - (b) the matter pleaded in paragraph 10 above; and/or
 - (c) that they ought to have known that the information on COPS as to bail conditions;
 - (i) was unreliable;
 - (ii) was often inaccurate;
 - (iii) was information the reliability of which did not provide a reasonable basis for assuming it recorded the accurate bail status of a person whose details were purported to be recorded in COPS; and/or
 - (d) they did not undertake any searches and inquiries other than accessing the information on COPS as to the bail conditions of the plaintiff; and/or
 - (e) they did not review the Court file or make inquiries of persons who were able to review or have access to information contained on the Court file; and/or
 - (f) that the plaintiff was 14 years old at the time of his arrest; and/or
 - (g) an arrest of a person interferes with his or her fundamental right of liberty; and/or
 - (h) the NSW Police Force's "Code of Practice for CRIME (Custody, Rights, Investigation, Management, Evidence)" acknowledges that the arrest of a person is an extreme action and requires police officers to always consider alternatives to arrest; and/or

- (i) that the plaintiff had put the arresting officers on notice of the inaccuracy of the information about his bail status; and/or
- (j) that accurate information about the plaintiff's bail status could easily have been obtained; and/or
- (k) that they made no attempt to negotiate with the plaintiff any less onerous method of ensuring he was not a flight risk while they made further inquiries to confirm his bail status; and/or
- (l) there was no urgent need to arrest the plaintiff.

20. In the alternative premises, the deprivation of the plaintiff's liberty on 26 March 2010, which continued until 27 March 2010, was unlawful.

Assault and battery of the plaintiff on 26 and 27 March 2010

21. At all material times during which the plaintiff's liberty was deprived as pleaded above, the plaintiff:
- (a) had a continuing apprehension that imminent physical contact would be made with his body by each police officer and each DJJ officer with whom he interacted at each time he was directed to do some action by such a person;
 - (b) did not consent to any physical contact being made with his body by any police officer or DJJ officer.
22. The plaintiff was touched on the following occasions:
- (a) while being subjected to a pat search at Blacktown Police Station on 26 March 2010, by one or other of Sergeant Andrew Knight, Constable Ian Timms and/or Constable Dean Pickering;
 - (b) while being fingerprinted at Blacktown Police Station on 26 March 2010, by a police officer whose name is not known to the plaintiff; and
 - (c) while being handcuffed on 27 March 2010, by a police officer whose name is not known to the plaintiff, immediately prior to being driven in a police vehicle from Blacktown Police Station to Reiby Juvenile Justice Centre.
23. The plaintiff was subjected to a strip search by unknown DJJ officers on 27 March 2010, after arriving at Reiby Juvenile Justice Centre.

24. The plaintiff did not consent to being searched, fingerprinted, strip searched, handcuffed or touched.
25. The searching and/or strip searching and/or handcuffing and/or fingerprinting and/or touching of the plaintiff constituted an assault and/or a battery of the plaintiff.
26. The physical contact being made with his body by any police officer or DJJ officer constituted a battery of the plaintiff.

Second unlawful imprisonment of the plaintiff: 1—2 April 2010

27. At about 6.30 pm on 1 April 2010 at Westpoint Shopping Centre, Blacktown, Constable Jamie Tebbenhoff and/or another police officer whose name is not known to the plaintiff:
- (a) arrested and detained the plaintiff for breach of the Amom Bail Conditions; and

Particulars

The breach of the Amom Bail Conditions alleged was detailed in a Police Facts document prepared on 1 April 2010 by Constable Jamie Tebbenhoff for use in the Children's Court.

- (b) intentionally deprived the plaintiff of his liberty.
28. The plaintiff was intentionally deprived of his liberty by:
- (a) Constable Jamie Tebbenhoff and/or another police officer whose name is not known to the plaintiff at the following locations:
- (i) at Westpoint Shopping Centre, Blacktown:
- (ii) while walking from at Westpoint Shopping Centre to Blacktown Police Station:
- (b) the Custody Manager at Blacktown Police Station, including in a locked cell:
- (c) a police officer or police officers in a police vehicle while being conveyed from Blacktown Police Station to Cobham Juvenile Justice Centre:
- (d) DJJ officers in Cobham Juvenile Justice Centre; and
- (e) DJJ and/or DCS officers at the Children's Court at Parramatta.

29. The deprivation of the plaintiff's liberty:
- (a) commenced at about 6.30 pm on 1 April 2010;
 - (b) continued overnight until about 2.35 pm on 2 April 2010; and
 - (c) came to an end when the plaintiff was released from his imprisonment approximately four hours after he appeared before Children's Registrar West at the Children's Court at Parramatta on 2 April 2010.

Particulars

The plaintiff appeared before Children's Registrar West at approximately 10:44 am and the hearing completed at approximately 10.55 am. During the hearing Children's Registrar West found that no breach of bail was established and directed that the plaintiff be discharged from custody. However, the plaintiff was not released from custody until 2.35 pm.

30. By reason of the matters pleaded in paragraphs 13 and/or 14 above, the deprivation of the plaintiff's liberty on 1 April 2010, which continued until 2 April 2010, was unlawful.
- 31 A. In the alternative, Constable Jamie Tebbenhoff and/or another police officer whose name is not known to the plaintiff did not have reasonable grounds to arrest and detain the plaintiff under section 50 of the *Bail Act* as they did not undertake the searches and inquiries that were reasonable in the circumstances to obtain accurate information about the plaintiff's bail status given the existence of the following facts or matters or any combination of the following facts or matters:
- (a) the matter pleaded in paragraph 9 above; and/or
 - (b) the matter pleaded in paragraph 10 above; and/or
 - (c) that they ought to have known that the information on COPS as to bail conditions:
 - (i) was unreliable;
 - (ii) was often inaccurate;
 - (iii) was information the reliability of which did not provide a reasonable basis for assuming it recorded the accurate bail status of a person whose details were purported to be recorded in COPS; and/or

- (d) they did not undertake any searches and inquiries other than accessing the information on COPS as to the bail conditions of the plaintiff; and/or
- (e) they did not review the Court file or make inquiries of persons who were able to review or have access to information contained on the Court file; and/or
- (f) that the plaintiff was 14 years old at the time of his arrest; and/or
- (g) an arrest of a person interferes with his or her fundamental right of liberty; and/or
- (h) the NSW Police Force's "Code of Practice for CRIME (Custody, Rights, Investigation, Management, Evidence)" acknowledges that the arrest of a person is an extreme action and requires police officers to always consider alternatives to arrest; and/or
- (i) that the plaintiff had put the arresting officers on notice of the inaccuracy of the information about his bail status; and/or
- (j) that accurate information about the plaintiff's bail status could easily have been obtained; and/or
- (k) that they made no attempt to negotiate with the plaintiff any less onerous method of ensuring he was not a flight risk while they made further inquiries to confirm his bail status; and/or
- (l) there was no urgent need to arrest the plaintiff.

31B. In the alternative premises, the deprivation of the plaintiff's liberty on 1 April 2010, which continued until 2 April 2010, was unlawful.

Assault and battery of the plaintiff on 1 and 2 April 2010

31C. At all material times during which the plaintiff's liberty was deprived as pleaded above, the plaintiff:

- (a) had a continuing apprehension that imminent physical contact would be made with his body by each police officer and each DJJ officer with whom he interacted at each time he was directed to do some action by such a person;
- (b) did not consent to any physical contact being made with his body by any police officer, DJJ officer or DCS officer.

- 31D. The plaintiff was touched on the following occasions:
- (a) at the time of arrest on 1 April 2010, by Constable Jamie Tebbenhoff and/or another police officer whose name is not known to the plaintiff;
 - (b) while being handcuffed by Constable Jamie Tebbenhoff on 1 April 2010, prior to being taken from Westpoint Shopping Centre, Blacktown, to Blacktown Police Station;
 - (c) while being subjected to a pat search at Blacktown Police Station on 1 April 2010, by a police officer whose name is not known to the plaintiff;
 - (d) while being fingerprinted at Blacktown Police Station on 1 April 2010, by a police officer whose name is not known to the plaintiff;
 - (e) while being handcuffed at Blacktown Police Station on 1 April 2010, by a police officer whose name is not known to the plaintiff, immediately prior to being driven in a police vehicle to Cobham Juvenile Justice Centre;
 - (f) while being subjected to a pat search at Cobham Juvenile Justice Centre on 2 April 2010, by a DJJ officer whose name is not known to the plaintiff, prior to being driven to the Children's Court at Parramatta;
 - (g) while being handcuffed at Cobham Juvenile Justice Centre on 2 April 2010, by a DJJ officer whose name is not known to the plaintiff, prior to being driven to the Children's Court at Parramatta; and
 - (h) while being led into the Children's Court at Parramatta on 2 April 2010, by a JJC officer whose name is not known by the plaintiff.
- 31E. The plaintiff was subjected to a strip search by unknown DJJ officers after arriving at Cobham Juvenile Justice Centre on 2 April 2010.
- 31F. The plaintiff did not consent to being searched, fingerprinted, strip searched, handcuffed or touched.
- 31G. The searching and/or strip searching and/or handcuffing and/or fingerprinting and/or touching of the plaintiff constituted an assault and/or a battery of the plaintiff.
- 31H. The physical contact being made with his body by any police officer or DJJ officer constituted a battery of the plaintiff.

Third unlawful imprisonment of the plaintiff: 9—10 April 2010

31I. At about 9.15 pm on 9 April 2010 at Westpoint Shopping Centre, Blacktown, Constable Jamie Tebbenhoff and/or Constable Vaughan Hau and/or Constable Andrew Brown:

- (a) arrested and detained the plaintiff for breach of the Amom Bail Conditions; and

Particulars

The breach of the Amom Bail Conditions alleged was detailed in a Police Facts document prepared on 10 April 2010 by Constable Jamie Tebbenhoff for use in the Children's Court.

- (b) intentionally deprived the plaintiff of his liberty.

31J. The plaintiff was intentionally deprived of his liberty by:

- (a) Constable Jamie Tebbenhoff and/or Constable Vaughan Hau and/or Constable Andrew Brown at the following locations:

- (i) at Westpoint Shopping Centre, Blacktown;
 (ii) while walking from at Westpoint Shopping Centre to Blacktown Police Station;

- (b) the Custody Manager at Blacktown Police Station, including in a locked cell;

- (c) a police officer or police officers in a police vehicle while being conveyed from Blacktown Police Station to Cobham Juvenile Justice Centre; and

- (d) DJJ officers in Cobham Juvenile Justice Centre.

31K. The deprivation of the plaintiff's liberty:

- (a) commenced at about 9.15 pm on 9 April 2010;

- (b) continued overnight until about 3.20 pm on 10 April 2010; and

- (c) came to an end when the plaintiff was released from his imprisonment several hours after he appeared by audio-visual link before Registrar George at the Children's Court at Parramatta on 10 April 2010.

Particulars

The plaintiff appeared before Registrar George by audio visual link at approximately 10.30 am and the hearing completed a short time later. During the hearing Registrar George found that bail had been dispensed with on 25 March 2010 and accordingly that the plaintiff should be released from his imprisonment. However, the plaintiff was not released from custody until 3.20 pm.

- 31L. By reason of the matters pleaded in paragraphs 13 and/or 14 above, the deprivation of the plaintiffs liberty on 9 April 2010, which continued until 10 April 2010, was unlawful.
- 31M. In the alternative, Constable Jamie Tebbenhoff and/or Constable Vaughan Hau and/or Constable Andrew Brown did not have reasonable grounds to arrest and detain the plaintiff under section 50 of the *Bail Act* as they did not undertake the searches and inquiries that were reasonable in the circumstances to obtain accurate information about the plaintiff's bail status given the existence of the following facts or matters or any combination of the following facts or matters:
- (a) Constable Jamie Tebbenhoff had on 1 April 2010 unlawfully arrested the plaintiff for breach of the Amom Bail conditions and knew or ought to have known that the plaintiff was not on bail; and/or
 - (b) the matter pleaded in paragraph 9 above; and/or
 - (c) the matter pleaded in paragraph 10 above; and/or
 - (d) that they ought to have known that the information on COPS as to bail conditions:
 - (i) was unreliable;
 - (ii) was often inaccurate;
 - (iii) was information the reliability of which did not provide a reasonable basis for assuming it recorded the accurate bail status of a person whose details were purported to be recorded in COPS; and/or
 - (e) they did not undertake any searches and inquiries other than accessing the information on COPS as to the bail conditions of the plaintiff; and/or

- (f) they did not review the Court file or make inquiries of persons who were able to review or have access to information contained on the Court file; and/or
- (g) that the plaintiff was 14 years old at the time of his arrest; and/or
- (h) an arrest of a person interferes with his or her fundamental right of liberty; and/or
- (i) the NSW Police Force's "Code of Practice for CRIME (Custody, Rights, Investigation, Management, Evidence)" acknowledges that the arrest of a person is an extreme action and requires police officers to always consider alternatives to arrest; and/or
- (j) that the plaintiff had put the arresting officers on notice of the inaccuracy of the information about his bail status; and/or
- (k) that accurate information about the plaintiff's bail status could easily have been obtained; and/or
- (l) that they made no attempt to negotiate with the plaintiff any less onerous method of ensuring he was not a flight risk while they made further inquiries to confirm his bail status; and/or
- (m) there was no urgent need to arrest the plaintiff.

31N. In the alternative premises, the deprivation of the plaintiffs liberty on 9 April 2010, which continued until 10 April 2010, was unlawful.

Assault and battery of the plaintiff on 9 and 10 April 2010

310. At all material times during which the plaintiffs liberty was deprived as pleaded above, the plaintiff;

- (a) had a continuing apprehension that imminent physical contact would be made with his body by each police officer and each DJJ officer with whom he interacted at each time he was directed to do some action by such a person;
- (b) did not consent to any physical contact being made with his body by any police officer or DJJ officer.

31 P. The plaintiff was touched on the following occasions:

- (a) while being handcuffed by Constable Jamie Tebbenhoff and/or Constable Vaughan Hau and/or Constable Andrew Brown on 9 April 2010, prior to being taken from Westpoint Shopping Centre, Blacktown, to Blacktown Police Station;
 - (b) while being subjected to a pat search at Blacktown Police Station on 9 April 2010, by a police officer whose name is not known to the plaintiff;
 - (c) while being fingerprinted at Blacktown Police Station on 9 April 2010, by a police officer whose name is not known to the plaintiff; and
 - (d) while being handcuffed at Blacktown Police Station on 9 April 2010, by a police officer whose name is not known to the plaintiff, immediately prior to being driven in a police vehicle to Cobham Juvenile Justice Centre.
- 31Q. The plaintiff was subjected to a strip search by unknown DJJ officers after arriving at Cobham Juvenile Justice Centre.
- 31R. The plaintiff did not consent to being searched, fingerprinted, strip searched, handcuffed or touched.
- 31S. The searching and/or strip searching and/or handcuffing and/or fingerprinting and/or touching of the plaintiff constituted an assault and/or a battery of the plaintiff.
- 31T. The physical contact being made with his body by any police officer or DJJ officer constituted a battery of the plaintiff.

Damages

- 31U. As a result of the trespasses to the person of the plaintiff pleaded above, the plaintiff suffered deprivation of liberty, humiliation, indignity, outrage and distrust of police officers.
- 31V. The plaintiff suffered unusual loss and damage and claims aggravated damages.

Particulars of claim for aggravated damages

- (a) The plaintiff was only 14 years old at the time of his three arrests on 26 March 2010, 1 April 2010, and 9 April 2010.
- (b) The plaintiff's feelings of indignity, humiliation and outrage in respect of the arrests on 1 April 2010, and 9 April 2010 were exacerbated by being arrested during a busy part of the day in a public place and

being forced to walk handcuffed along a busy street to Blacktown Police Station.

- (c) The plaintiff's feelings of indignity, humiliation and outrage at being arrested and detained on each of 26 March 2010, 1 April 2010, and 9 April 2010 were exacerbated by his knowledge that he was not in breach of bail and should not have been arrested or detained at all.
- (d) The plaintiff's feelings of indignity, humiliation and outrage in respect of the arrests on 1 April 2010, and 9 April 2010 were exacerbated by being arrested by the same police officer twice.
- (e) The plaintiff's feelings of indignity, humiliation, and outrage were exacerbated by his being handcuffed while in transit from Cobham Juvenile Justice Centre to the Children's Court at Parramatta following each of the arrests on 1 April 2010, and 9 April 2010.
- (f) The plaintiff's feelings of indignity, humiliation, and outrage were exacerbated by his being pat searched, fingerprinted, touched and strip searched following each of the arrests on 26 March 2010, 1 April 2010, and 9 April 2010;
- (g) The plaintiff's feelings of indignity, humiliation, and outrage were exacerbated by his not being given any food or water by police following his arrest on 1 April 2010
- (h) The plaintiff's feelings of indignity, humiliation, and outrage following of the arrests on 1 April 2010 and 9 April 2010 were exacerbated by his concern that his mother would not know where he was.

31W. The plaintiff was treated with contemptuous disregard and claims exemplary damages.

Particulars of claim for exemplary damages

- (a) On each of 26 March 2010, 1 April 2010, and 9 April 2010, the plaintiff informed the arresting officers that he was no longer on bail. Despite being told by the plaintiff that he was not on bail, the arresting officers:
 - (i) did not attempt to confirm the inaccurate information on COPS about the plaintiff's bail status with the information available on the prosecutor's file, on the Court file or on JusticeLink prior to arresting the plaintiff;

- (ii) were not, in the circumstances, prevented from making enquiries to confirm the information on COPS;
 - (Hi) did not attempt to negotiate with the plaintiff any less onerous method of ensuring he was not a flight risk while they made enquiries to confirm his bail status;
 - (iv) did not contact the plaintiff's mother to obtain further information about his bail status in respect of the latter two of the arrests.
- (b) On 26 March 2010 one of the arresting officers telephoned the plaintiff's mother but did not accept her claim the plaintiff was not on bail, nor did the police tell his mother what would happen to the plaintiff overnight and he did not tell the plaintiff's mother when and where the plaintiff would next appear in court.
- (c) Despite Constable Jamie Tebbenhoff having previously unlawfully arrested the plaintiff for breach of the Amom Bail conditions on 1 April 2010, Constable Jamie Tebbenhoff again arrested the plaintiff for breach of the Amon Bail conditions on 9 April 2010 when he knew or ought to have known that the plaintiff was not on bail.
- (d) The plaintiff was arrested based upon inaccurate information on COPS in the circumstances pleaded in paragraph 9 and paragraph 10 above.
- (e) Despite the fact that on each of 26 March 2010, 1 April 2010, and 9 April 2010 the plaintiff was known by the arresting officers to be only fourteen years of age, the arresting officers:
 - (i) failed to consider any alternative to arrest; and
 - (ii) failed, on two of those' occasions, to contact the plaintiff's mother to inform her that the plaintiff was under arrest.
- (f) Following the plaintiff's appearance before the Children's Court at Parramatta on 25 March 2010, 27 March 2010 and 2 April 2010, no police officer, including any of the informants, arresting officers, or police prosecutors on those occasions, took any steps to correct the information held by NSW Police on COPS in relation to the plaintiff so as to avoid the risk of the plaintiff being arrested in respect of incorrect information.

- (g) Following the plaintiff's appearance before the Children's Court at Parramatta on 2 April 2010, Constable Jamie Tebbenhoff failed to take any steps to correct the information held by NSW Police on COPS or the information he held in relation to the plaintiff so as to avoid the plaintiff being arrested again in respect of incorrect information. In the alternative, Constable Jamie Tebbenhoff failed to take any steps to determine the veracity of the plaintiff's claims that he was not on bail and to ensure the police records were up to date.
- (h) The DJJ and/or DCS officers with custody of the plaintiff on 27 March 2010, 2 April 2010 and 10 April 2010 did not release the plaintiff from his imprisonment following the findings by the Children's Court on 27 March 2010, 2 April and 10 April 2010 that the plaintiff was not on bail and was therefore entitled to be released, resulting in:
- (i) a delay of approximately two hours from the end of the Court hearing on 27 March 2010 to the release of the plaintiff;
- (ii) a delay of approximately four hours from the end of the Court hearing on 2 April 2010 to the release of the plaintiff; and
- (Hi) a delay of approximately five hours from the end of the Court hearing on 10 April 2010 to the release of the plaintiff.
- (i) Prior to the plaintiff's appearance before the Children's Court at Parramatta on 10 April 2010, it was known to a DJJ officer whose name is believed by the plaintiff to be Sugi Heng that the plaintiff had been unlawfully arrested; however the DJJ officer did not take any steps to ensure that the plaintiff was immediately released from his imprisonment.

Bail status of the plaintiff

11. ~~On 28 July 2010 the plaintiff:~~

- (a) ~~was granted conditional bail by Senior Constable Terence Robinson, pursuant to section 17 of the *Bail Act 1078* (NSW) (**Bail Act**), in relation to certain charges; and~~

~~(b) gave a bail undertaking to appear in Court and to report to Campsie Police Station each Monday, Wednesday and Friday between 12:01am and 11:59pm commencing from 30 July 2010 to 18 August 2010 (Konneh Bail Conditions);~~

12. —The plaintiff:

~~(a) on 4 and 6 August 2010 failed to report to Campsie Police Station;~~

~~(b) was arrested on 9 August 2010;~~

~~(c) was arrested for breach of the Konneh Bail Conditions;~~

~~(d) was detained overnight; and~~

~~(e) appeared before Parramatta Children's Court on 10 August 2010 for the purpose of the Court re-determining his bail pursuant to section 50 of the *Bail Act*.~~

13. —At the hearing on 10 August 2010, rather than re-determining bail, Magistrate Hannam finalised all outstanding charges against the plaintiff by dismissing each of them under section 31 of the *Young Offenders Act 1007* (NSW);

Particulars

The charges dismissed were: (a) goods in custody (a driver's licence); (b) failing to state name and address when directed; and (c) not paying a train fare (police charge reference H41597421) . (Charges).

14. —At the conclusion of proceedings against the plaintiff on 10 August 2010, the plaintiff was thereafter at liberty and not subject to the Konneh Bail Conditions, or any grant of bail, including any conditional bail.

15. —At all times on 14 and 15 August 2010, the plaintiff was not at liberty on bail within the meaning of section 50 of the *Bail Act*.

Unlawful imprisonment of the plaintiff

16. —At about 9.20pm on 14 August 2010, Senior Constable Ngee Tran and Constable Matthew Lord:

~~(a) attended the plaintiff's home at 98 Dudley Street in Punchbowl;~~

~~(b) arrested and detained the plaintiff for breach of the Konneh Bail Conditions;~~

Particulars

~~The breach of the Konneh Bail Conditions alleged was specified in a Court Attendance Notice with police charge reference H173275194.~~

~~(e) intentionally deprived the plaintiff of his liberty.~~

~~17. The plaintiff was deprived of his liberty by:~~

~~(d) Senior Constable Ngoc Tran and Constable Matthew Lord at the following~~

~~locations:~~

~~(i) at 98 Dudley Street, Punchbowl;~~

~~(ii) in a police truck while being conveyed from 98 Dudley Street, Punchbowl to Campsie Police Station at 58 Campsie Street, Campsie;~~

~~(e) the Custody Manager at Campsie Police Station, including in a locked cell;~~

~~(f) a police officer or police officers in a police vehicle while being conveyed from Campsie Police Station to the Penrith court cell complex;~~

~~(g) by DCS officers in:~~

~~(i) the Penrith court cell complex pending the plaintiffs appearance by audio-visual link to the Parramatta Children's Court;~~

~~(ii) a room provided for the plaintiff's appearance by audio-visual link to the Parramatta Children's Court.~~

~~18. The deprivation of the plaintiff's liberty:~~

~~(a) commenced at about 9.20pm on 14 August 2010;~~

~~(b) continued overnight until about 3pm on 15 August 2010;~~

~~(c) came to an end when the plaintiff was released from his imprisonment after an appearance by audio-visual link on 15 August 2010 before Magistrate Shepherd at Parramatta Children's Court.~~

~~19. By reason of the matters pleaded in paragraphs 14 and 15 above, the deprivation of the plaintiff's liberty on 14 August 2010, which continued until 15 August 2010, was unlawful.~~

20. ~~In the alternative, Senior Constable Ngee Tran and Constable Matthew Lord did not have reasonable grounds to arrest and detain the plaintiff under section 50 of the *Bail Act* as they did not undertake the searches and inquiries that were reasonable in the circumstances to obtain accurate information about the plaintiff's bail status given the existence of the following facts or matters or any combination of the following facts or matters:~~

~~(a) the matter pleaded in paragraph 9 above; and/or~~

~~(b) the matter pleaded in paragraph 10 above; and/or~~

~~(c) that they ought to have known that the information on COPS as to bail conditions:~~

~~(i) was unreliable;~~

~~(ii) was often inaccurate;~~

~~(iii) was information the reliability of which did not provide a reasonable basis for assuming it recorded the accurate bail status of a person whose details were purported to be recorded in COPS; and/or~~

~~(d) they did not undertake any searches and inquiries other than accessing the information on COPS as to the bail conditions of the plaintiff;~~

~~(e) they did not review the Court file or make inquiries of persons who were able to review or have access to information contained on the Court file;~~

~~(f) that the plaintiff was 18 years old at the time of his arrest; and/or~~

~~(g) an arrest of a person interferes with his or her fundamental right of liberty; and/or~~

~~(h) the NSW Police Force's "Code of Practice for CRIME (Custody, Rights, Investigation, Management, Evidence)" acknowledges that the arrest of a person is an extreme action and requires police officers to always consider alternatives to arrest; and/or~~

~~(i) that the plaintiff had put the arresting officers on notice of the inaccuracy of the information about his bail status; and/or~~

(j) — that accurate information about the plaintiff's bail status could easily have been obtained; and/or

(k) — that at the time of his arrest the plaintiff was at home and presented no obvious flight risk; and/or

(l) — that they made no attempt to negotiate with the plaintiff any less onerous method of ensuring he was not a flight risk while they made further inquiries to confirm his bail status; and/or

(m) — there was no urgent need to arrest the plaintiff.

21. — In the alternative premises, the deprivation of the plaintiff's liberty on 14 August 2010, which continued until 15 August 2010, was unlawful.

Assault and Trespass battery of to the person of the plaintiff on 14 August 2010

22. — At all material times during which the plaintiff's liberty was deprived as pleaded above, the plaintiff:

(a) — had a continuing apprehension that imminent physical contact would be made with his body by each police officer and each DCS officer with whom he interacted at each time he was directed to do some action by such a person;

(b) — did not consent to any physical contact being made with his body by any police officer or DCS officer.

23. — At or about the time of the deprivation of the plaintiff's liberty, the plaintiff was searched and then handcuffed by Senior Constable Tran and/or Constable Lord and in the process of being searched and then handcuffed was touched by Senior Constable Tran and/or Constable Lord.

24. — The plaintiff was also touched by a police officer on the following occasions:

(a) — while being escorted from the rear of the police truck by Senior Constable Tran and/or Constable Lord after arriving at Campsie Police Station;

(b) — while being searched by an unknown police officer before being conveyed in a police vehicle from Campsie Police Station to the Penrith court cell complex;

(c) — while being handcuffed by an unknown police officer before being conveyed in a police vehicle from Campsie Police Station to the Penrith court cell complex;

~~(d) while being escorted from a police vehicle by an unknown police officer after arriving at the Penrith court cell complex.~~

~~25. The plaintiff was subjected to a strip search by unknown DCS officers after arriving at the Penrith court cell complex.~~

~~26. The plaintiff did not consent to being searched, strip searched, handcuffed or touched.~~

~~27. The searching and/or strip searching and/or handcuffing and/or touching of the plaintiff constituted an assault and/or a battery of the plaintiff.~~

~~28. The physical contact being made with his body by any police officer or DCS officer constituted a trespass to the person battery of the plaintiff.~~

Damages

~~29. As a result of the trespasses to the person of the plaintiff—assault and/or a battery and/or trespass to a person—committed upon the plaintiff as pleaded above, the plaintiff suffered deprivation of liberty, distress, humiliation, indignity, outrage, anxiety, fear, discomfort and distrust of officers.~~

~~30. The plaintiff suffered unusual loss and—and claims aggravated damages.~~

Particulars of claim for aggravated damages

~~The plaintiff was only 18 years old at the time of his arrest on 14 August 2010.~~

~~The plaintiff's feelings of indignity, humiliation, and outrage and distress were exacerbated by being handcuffed behind his back while conveyed in a police truck from the place of his arrest to Campsie Police Station, such that he found it difficult to avoid being tossed around in the rear of the police truck while in transit.~~

~~The plaintiff's feelings of indignity, humiliation, and outrage and distress at being arrested and detained were exacerbated by his knowledge that he was not in breach of bail and should not have been arrested or detained at all.~~

~~The plaintiff's feelings of indignity, humiliation, and outrage and distress were exacerbated by his being handcuffed while in transit from Campsie Police Station to the Penrith court cell complex.~~

~~The plaintiff's feelings of indignity, humiliation, and outrage and distress were exacerbated by his being strip-searched.~~

31. ~~The plaintiff was treated with contemptuous disregard and claims exemplary damages:~~

~~Particulars of claim for exemplary damages~~

~~While at his home at 98 Dudley Street in Punchbowl, the plaintiff questioned why he had been arrested. Either Senior Constable Tran or Constable Lord said to the plaintiff that the police computer system indicated that he was in breach of his bail conditions. The plaintiff told Senior Constable Tran and/or Constable Lord that he was not on bail because his charges had been dismissed a few days earlier.~~

~~Despite being told by the plaintiff that he was not on bail, Senior Constable Ngoo Tran and Constable Matthew Lord:~~

~~(e) did not attempt to confirm the inaccurate information on COPS about the plaintiff's bail status with the information available on the prosecutor's file, on the Court file or on JusticeLink prior to arresting the plaintiff;~~

~~(f) were not, in the circumstances, prevented from making enquiries to confirm the information on COPS;~~

~~(g) did not attempt to negotiate with the plaintiff any less onerous method of ensuring he was not a flight risk while they made enquires to confirm his bail status.~~

~~The plaintiff was arrested based upon inaccurate information on COPS in the circumstances pleaded in paragraph 9 above.~~

~~After being told by police that he was under arrest, the plaintiff asked Senior Constable Tran and/or Constable Lord if he could retrieve some clothing from his bedroom. At that time Senior Constable Tran or Constable Lord had been standing outside the plaintiff's front door. The plaintiff then walked to his bedroom to retrieve an item of clothing and when he turned around he saw Senior Constable Tran and Constable Lord standing at his bedroom door. The plaintiff had not consented to either Senior Constable Tran or Constable Lord entering his home.~~

~~While in police custody at Campsie Police Station, the plaintiff questioned why he had been arrested. A police officer replied to the effect that the police computer system said that he was on bail and in breach of bail. The~~

~~plaintiff said to the police officer that the police computer system should have been changed after his court appearance on 10 August 2010; however, the police officer refused to accept the plaintiff's explanation in circumstances where it was known or ought to have been known that the police computer system was unreliable.~~

~~The plaintiff was handcuffed behind his back while conveyed in a police truck from the place of his arrest to Campsie Police Station, such that he found it difficult to avoid being tossed around in the rear of the police truck while in transit. The plaintiff was also handcuffed while in transit from Campsie Police Station to the Penrith court cell complex.~~

CLAIMS OF IDENTIFIED GROUP MEMBERS

Bail status of Keith Moffitt

32. On 16 September 2010 a Group Member, Keith Moffitt (**Mr Moffitt**):

- (a) was granted conditional bail by Acting Sergeant Peter Northey, pursuant to section 17 of the *Bail Act* in relation a charge of robbery while armed with an offensive weapon; and
- (b) gave a bail undertaking to:
 - (i) appear at Kogarah Children's Court on 8 October 2010; and
 - (ii) not be absent from the premises at 13/2 Flide Street, Caringbah between the hours of 7pm and 6am unless in the company of Diana Gibbs (**Moffitt Curfew Condition**), among other conditions.

33. On 8 October 2010:

- (a) Mr Moffitt appeared before Magistrate Blewitt at Kogarah Children's Court in accordance with the bail undertaking that he gave on 16 September 2010;
- (b) Magistrate Blewitt:
 - (i) varied the Moffitt Curfew Condition such that Mr Moffitt was not to be absent from the premises at 13/2 Flide Street, Caringbah between the hours of 9 pm and 7 am unless in the company of Diana Gibbs (**Varied Moffitt Curfew Condition**); and

- (ii) on that basis continued Mr Moffitt's bail to 19 November 2010, pursuant to section 43 of the *Bail Act*.

34. In the premises, at the conclusion of Mr Moffitt's appearance at Kogarah Children's Court on 8 October 2010, Mr Moffitt was thereafter:

- (a) at liberty; and
- (b) no longer subject to the Moffitt Curfew Condition; and
- (c) subject to the Varied Moffitt Curfew Condition and, accordingly, entitled to be absent from 13/2 Flide Street, Caringbah between the hours of 7.01 am and 8.59 pm without being in the company of Diana Gibbs.

Unlawful imprisonment of Mr Moffitt

35. At about 11.30pm on 4 November 2010, one or more police officers (**Moffitt Arresting Officers**):

- (a) attended Mr Moffitt's home at 13/2 Flide Street in Caringbah;
- (b) arrested and detained Mr Moffitt for breach of his bail undertaking;

Particulars

The alleged breach was specified in a Court Attendance Notice and associated Police Facts Sheet with police charge reference H42471954.

It was alleged that Mr Moffitt had been absent from 13/2 Flide Street in Caringbah at 8pm on 4 November 2010 while not in the company of Diana Gibbs.

The Police Facts Sheet in respect of the alleged breach of bail states that "Police spoke with the accused who stated that his curfew began at 9pm... Police left the location and returned to Miranda Police Station to make further enquiries in relation to the curfew time. After police finished their enquiries, it was established that the accused's curfew in fact was 7:00pm - 6:00am".

The Moffitt Arresting Officers were one or more of the following police officers: Probationary Constable Marnie Cuy, Constable Damien Blok, Probationary Constable Victor Costabile and Constable Hayleigh Beringer.

- (c) intentionally deprived Mr Moffitt of his liberty.

36. Mr Moffitt was deprived of his liberty by:
- (a) one or more of the Moffitt Arresting Officers at the following locations:
 - (i) at 13/2 Flide Street in Caringbah;
 - (ii) in a police vehicle while being conveyed from 13/2 Flide Street in Caringbah to Miranda Police Station at 1-7 Willock Ave in Miranda;
 - (b) the Custody Manager at Miranda Police Station;
 - (c) a police officer or police officers in a police vehicle while being conveyed from Miranda Police Station to Cobham Juvenile Justice Centre;
 - (d) by DJJ officers:
 - (i) at Cobham Juvenile Justice Centre;
 - (ii) in a van while being conveyed from Cobham Juvenile Justice Centre to Parramatta Children's Court;
 - (iii) in a cell at Parramatta Children's Court;
 - (iv) in a court room at Parramatta Children's Court.
37. The deprivation of Mr Moffitt's liberty:
- (a) commenced at about 11.30pm on 4 November 2010;
 - (b) continued overnight until about 1pm on 5 November 2010;
 - (c) came to an end when Mr Moffitt was released from his imprisonment after his appearance on 5 November 2010 before Magistrate Sbrizzi at Parramatta Children's Court.

No reasonable grounds for the arrest of Mr Moffitt

38. On 4 November 2010 the Moffitt Arresting Officers:
- (a) did not undertake the searches and inquiries other than accessing the information the information on COPS as to the bail conditions of Mr Moffitt;
 - (b) did not review the Court file or make inquiries of persons who were able to review or have access to information contained on the Court file.

39. On 4 November 2010 the Moffitt Arresting Officers did not undertake the searches and inquiries that were reasonable in the circumstances to obtain accurate information about Mr Moffitt's bail status given the existence of the following facts or matters or any combination of the following facts or matters:
- (a) the matter pleaded in paragraph 9; and/or
 - (b) the matter pleaded in paragraph 10; and/or
 - (c) that the Moffitt Arresting Officers ought to have known that that the information on COPS as to bail conditions:
 - (i) was unreliable;
 - (ii) was often inaccurate;
 - (iii) was information the reliability of which did not provide a reasonable basis for assuming it recorded the accurate bail status of a person whose details were purported to be recorded in COPS; and/or
 - (d) the matter pleaded in paragraph 38(a); and/or
 - (e) the matter pleaded in paragraph 38(b); and/or
 - (f) that Mr Moffitt was 17 years old at the time of his arrest; and/or
 - (g) an arrest of a person interferes with his or her fundamental right of liberty; and/or
 - (h) the NSW Police Force's "Code of Practice for CRIME (Custody, Rights, Investigation, Management, Evidence)" acknowledges that the arrest of a person is an extreme action and requires police officers to always consider alternatives to arrest; and/or
 - (i) the principle that the exercise of a power of arrest, especially for children, should be reserved for circumstances where it is clearly necessary; and/or
 - (j) that Mr Moffitt had put the arresting officers on notice of the inaccuracy of the information about his bail conditions; and/or
 - (k) that accurate information about Mr Moffitt's bail status could easily have been obtained; and/or

- (l) that at the time of his arrest Mr Moffitt was at home in compliance with the Varied Moffitt Curfew Condition and presented no obvious flight risk; and/or
- (m) that the Moffitt Arresting Officers made no attempt to negotiate with Mr Moffitt any less onerous method of ensuring he was not a flight risk while they made further inquiries to confirm his bail status; and/or
- (n) there was no urgent need to arrest Mr Moffitt.

40. In the premises:

- (a) the Moffitt Arresting Officers did not have reasonable grounds to arrest Mr Moffitt on 4 November 2010 and to detain him; and
- (b) the deprivation of Mr Moffitt's liberty on 4 November 2010, which continued until 5 November 2010, was unlawful.

Assault and battery of Mr Moffitt on 4 November 2010

41. At all material times during which Mr Moffitt's liberty was deprived as pleaded in paragraph 36 above, Mr Moffitt:

- (a) had a continuing apprehension that imminent physical contact would be made with his body by each police officer and each DJJ officer with whom he interacted at each time he was directed to do some action by such a person;
- (b) did not consent to any physical contact being made with his body by any police officer or DJJ officer.

42. At or about the time of the deprivation of Mr Moffitt's liberty, Mr Moffitt was:

- (a) touched by one of the Moffitt Arresting Officers while being escorted from 13/2 Flide Street in Caringbah to a waiting police vehicle;
- (b) searched and then handcuffed by one of the Moffitt Arresting Officers and in the process of being searched and then handcuffed was touched by one of the Moffitt Arresting Officers.

43. Mr Moffitt was also touched by a police officer while being escorted by an unknown police officer at Miranda Police Station to a police vehicle before being conveyed to Cobham Juvenile Justice Centre.

44. Mr Moffitt was subjected to a strip search by unknown DJJ officers after arriving at the Cobham Juvenile Justice Centre.
45. Mr Moffitt was also touched by a DJJ officer on the following occasions:
- (a) while being escorted by an unknown DJJ officer from the rear of the van after arriving at Parramatta Children's Court;
 - (b) while being handcuffed by an unknown DJJ officer and then escorted from the cells at Parramatta Children's Court to a court room at Parramatta Children's Court.
46. Mr Moffitt did not consent to being searched, strip searched, handcuffed or touched.
47. The searching and/or strip searching and/or handcuffing and/or touching of Mr Moffitt constituted an assault and/or a battery of Mr Moffitt.
48. The physical contact being made with his body by any police officer or DCS officer constituted a battery of Mr Moffitt.

Damages claimed by Mr Moffitt

49. As a result of the trespasses to the person of Mr Moffitt pleaded above, Mr Moffitt suffered deprivation of liberty, distress, humiliation, indignity, outrage, anxiety, fear, discomfort and distrust of police officers.
50. Mr Moffitt suffered unusual loss and damage and claims aggravated damages.

Particulars of claim for aggravated damages

Mr Moffitt was only 17 years old at the time of his arrest on 4 November 2010.

Mr Moffitt's feelings of humiliation, outrage and distress at being arrested and detained were exacerbated by his knowledge that he was not in breach of bail and should not have been arrested or detained at all.

Mr Moffitt's feelings of humiliation, outrage and distress were exacerbated by his being handcuffed.

Mr Moffitt's feelings of humiliation, outrage and distress were exacerbated by his being strip searched.

51. Mr Moffitt was treated with contumelious disregard and claims exemplary damages.

Particulars of claim for exemplary damages

At the time that the Moffitt Arresting Officers first questioned Mr Moffitt in relation to the alleged breach of his bail conditions, Mr Moffitt informed the Moffitt Arresting Officers of the terms of the Varied Moffitt Curfew Condition. After apparently making inquiries into Mr Moffitt's bail status, the Moffitt Arresting Officers went to Mr Moffitt's home at about 11.30pm on 4 November 2010. At that time, Mr Moffitt again informed the Moffitt Arresting Officers of the Varied Moffitt Curfew Condition.

Despite being told by Mr Moffitt that he was not subject to the Moffitt Curfew Condition but, rather, the Varied Moffitt Curfew Condition and despite the matters pleaded in paragraph 9 above, the Moffitt Arresting Officers:

- (a) did not undertake the searches and inquiries that were reasonable in the circumstances to obtain accurate information about Mr Moffitt's bail status;*
- (b) were not, in the circumstances, prevented from making enquiries to confirm the information on COPS;*
- (c) did not attempt to negotiate with Mr Moffitt any less onerous method of ensuring he was not a flight risk while they made enquires to confirm his bail status.*

Mr Moffitt was arrested based upon inaccurate information on COPS in the circumstances pleaded in paragraph 9 and paragraph 10 above.

The Moffitt Arresting Officers refused to accept Mr Moffitt's explanation in circumstances where it was known or ought to have been known that COPS was unreliable.

Mr Moffitt was handcuffed by a police officer and later strip searched by a DJJ officer at Cobham Juvenile Justice Centre.

Bail status of Reginald Simpson

52. On 16 May 2006 a Group Member, Reginald Simpson (**Mr Simpson**):

- (a) was granted conditional bail by Sergeant Peter McLay, pursuant to section 17 of the *Bail Act* in relation certain charges arising from events on 2 May 2006 (**First Simpson Charges**); and
- (b) gave a bail undertaking to:

- (i) appear at Wagga Wagga Children's Court on 29 June 2006; and
- (ii) abide by a condition that he not associate with Matthew Price (**First Simpson Bail Condition**).

53. On 14 June 2006, Mr Simpson:

- (a) was granted conditional bail by the Wagga Wagga Children's Court, pursuant to section 23 of the *Bail Act* in relation certain charges arising from events on 11 January 2006 (**Second Simpson Charges**); and
- (b) gave a bail undertaking to:
 - (i) appear at Wagga Wagga Children's Court on 29 June 2006; and
 - (ii) abide by the following conditions (**Second Simpson Bail Conditions**):
 - (A) to live at 138 Raye Street, Tolland and not to be absent from that address between the hours of 6.00pm and 7.00am each day unless in the immediate company of Regina Simpson except when present at PCYC;
 - (B) to obey all reasonable directions of parents or carer;
 - (C) to not go within 200 metres of the Bruce Street Store in Tolland;
 - (D) to not be with Bradley Blair, Grace Simpson, Deleah Simpson or Aaron Blair;
 - (E) to attend school regularly.

54. On 29 June 2006:

- (a) Mr Simpson appeared before Magistrate Dare at Wagga Wagga Children's Court in accordance with the bail undertakings that he gave on 16 May 2006 and 14 June 2006;
- (b) the prosecutor withdrew the Second Simpson Charges and in lieu of the Second Simpson Charges filed a Court Attendance Notice in respect of a fresh charge (**Fresh Simpson Charge**);
- (c) Magistrate Dare:

- (i) dismissed the Second Simpson Charges;
- (ii) referred the Fresh Simpson Charge to a youth justice conference, pursuant to section 40 of the Young Offenders Act 1997 (NSW);
- (iii) dispensed with bail in relation to the Fresh Simpson Charge, pursuant to section 10 of the Bail Act;
- (iv) adjourned the First Simpson Charges to 8 August 2006;
- (v) continued bail in relation to the First Simpson Charge.

55. At the conclusion of Mr Simpson's appearance at Wagga Wagga Children's Court on 29 June 2006, Mr Simpson was thereafter:

- (o) at liberty;
- (p) not subject to the Second Simpson Bail Conditions;
- (q) subject to the First Simpson Bail Condition.

56. At all times on 2 and 3 July 2006, Mr Simpson was not at liberty on bail within the meaning of section 50 of the *Bail Act* in relation to the Second Simpson Bail Conditions.

Unlawful imprisonment of Mr Simpson

57. At about 5.20pm on 2 July 2006, one or more police officers (**Simpson Arresting Officers**):

- (a) attended premises at 3 Taragala Street in Cowra;
- (b) arrested and detained Mr Simpson for two alleged breaches of the Second Simpson Bail Conditions;

Particulars

The alleged breaches were specified in a Court Attendance Notice and associated Police Facts Sheet with police charge reference H28214365.

First, it was alleged that Mr Simpson had been in the company of Aaron Blair at about 4pm on 29 June 2006 and that he had been in the company of Grace Simpson later on 29 June 2006.

Secondly, it was alleged that Mr Simpson had been absent from 138 Raye Street in Tolland at about 11.55pm on 30 June 2006 in contravention of the condition that he not be absent from that address between the hours of 6.00pm and 7.00am each day unless in the immediate company of Regina Simpson except when present at PCYC.

The Simpson Arresting Officers were one or more of the following police officers: Constable Patrick Adams, Senior Constable Karen Galvin or Constable Brendan Clark.

(c) intentionally deprived Mr Simpson of his liberty.

58. Mr Simpson was deprived of his liberty by:

(a) one or more of the Simpson Arresting Officers at the following locations:

(i) at 3 Taragala Street in Cowra;

(ii) in a police vehicle while being conveyed from at 3 Taragala Street in Cowra to Cowra Police Station at 86-88 Brisbane Street in Cowra;

(b) the Custody Manager at Cowra Police Station;

(c) a police officer or police officers in a police vehicle while being conveyed from Cowra Police Station to Orange Police Station;

(d) the Custody Manager at Orange Police Station;

(e) by one or more police officers in a court room at Orange Children's Court.

59. The deprivation of Mr Simpson's liberty:

(a) commenced at about 5.20pm on 2 July 2006;

(b) continued overnight until about 1.19pm on 3 July 2006;

(c) came to an end when Mr Simpson was released from his imprisonment after his appearance on 3 July 2006 before Magistrate Stevenson at Orange Children's Court.

60. By reason of the matters pleaded in paragraphs 55 and 56 above, the deprivation of Mr Simpson's liberty on 2 July 2006, which continued until 3 July 2006, was unlawful.

61. In the alternative, the Simpson Arresting Officers did not have reasonable grounds to arrest and detain Mr Simpson under section 50 of the *Bail Act* as they did not undertake the searches and inquiries that were reasonable in the circumstances to obtain accurate information about the Mr Simpson's bail status given the existence of the following facts or matters or any combination of the following facts or matters:
- (a) the matter pleaded in paragraph 9 above; and/or
 - (b) the matter pleaded in paragraph 10 above; and/or
 - (c) that they ought to have known that the information on COPS as to bail conditions:
 - (i) was unreliable;
 - (ii) was often inaccurate;
 - (iii) was information the reliability of which did not provide a reasonable basis for assuming it recorded the accurate bail status of a person whose details were purported to be recorded in COPS; and/or
 - (d) they did not undertake any searches and inquiries other than accessing the information on COPS as to the bail conditions of Mr Simpson;
 - (e) they did not review the Court file or make inquiries of persons who were able to review or have access to information contained on the Court file;
 - (f) that Mr Simpson was 13 years old at the time of his arrest; and/or
 - (g) an arrest of a person interferes with his or her fundamental right of liberty; and/or
 - (h) the NSW Police Force's "Code of Practice for CRIME (Custody, Rights, Investigation, Management, Evidence)" acknowledges that the arrest of a person is an extreme action and requires police officers to always consider alternatives to arrest; and/or
 - (i) the principle that the exercise of a power of arrest, especially for children, should be reserved for circumstances where it is clearly necessary; and/or
 - (j) that Mr Simpson's family members had put the arresting officers on notice of the inaccuracy of the information about his bail status; and/or

- (k) that accurate information about Mr Simpson's bail status could easily have been obtained; and/or
- (l) that at the time of his arrest Mr Simpson presented no obvious flight risk; and/or
- (m) that they made no attempt to negotiate with Mr Simpson any less onerous method of ensuring he was not a flight risk while they made further inquires to confirm his bail status; and/or
- (n) there was no urgent need to arrest Mr Simpson.

62. In the alternative premises, the deprivation of Mr Simpson's liberty on 2 July 2006, which continued until 3 July 2006, was unlawful.

Assault and battery of Mr Simpson on 2 July 2006

63. At all material times during which Mr Simpson's liberty was deprived as pleaded in paragraph 58 above, Mr Simpson:
- (a) had a continuing apprehension that imminent physical contact would be made with his body by each police officer with whom he interacted at each time he was directed to do some action by such a person;
 - (b) did not consent to any physical contact being made with his body by any police officer.
64. At or about the time of the deprivation of Mr Simpson's liberty, two of the Simpson Arresting Officers touched Mr Simpson while he was escorted from 3 Taragala Street in Cowra to a waiting police vehicle.
65. Mr Simpson was searched and then handcuffed by one of the Simpson Arresting Officers and in the process of being searched and then handcuffed was touched by one of the Simpson Arresting Officers.
66. Mr Simpson was also touched by a police officer on the following occasions:
- (a) while being searched by an unknown police officer after arriving at Cowra Police Station;
 - (b) while being handcuffed by an unknown police officer before being conveyed from Cowra Police Station to Orange Police Station;

- (c) while being escorted to a police vehicle before being conveyed from Cowra Police Station to Orange Police Station;
- (d) while being handcuffed by an unknown police officer and then escorted from the cells at Orange Police Station to a court room at Orange Children's Court.

- 67. Mr Simpson did not consent to being searched, handcuffed or touched.
- 68. The searching and/or handcuffing and/or touching of Mr Simpson constituted an assault and/or a battery of Mr Simpson.
- 69. The physical contact being made with his body by any police officer or DCS officer constituted a battery of Mr Simpson.

Damages claimed by Mr Simpson

- 70. As a result of the trespasses to the person of Mr Simpson as pleaded above, Mr Simpson suffered deprivation of liberty, humiliation, indignity, outrage, anxiety, fear, discomfort and distrust of police officers.
- 71. Mr Simpson suffered unusual loss and damage and claims aggravated damages.

Particulars of claim for aggravated damages

Mr Simpson was only 13 years old at the time of his arrest on 2 July 2006.

Mr Simpson's feelings of humiliation, outrage and distress were exacerbated by the fact that he suffered from asthma and was not permitted to take his Ventolin puffer with him at the time that he was arrested.

Mr Simpson's feelings of humiliation, outrage and distress were exacerbated by the fact that, at the time of his arrest, he was only wearing shorts and socks and he was not permitted by one or more of the Simpson Arresting Officers to fully dress himself before being taken to the police station. Mr Simpson was therefore conveyed to the police station while not wearing a shirt or shoes.

While Mr Simpson was being conveyed to Cowra Police Station he asked one of the Simpson Arresting Officers to turn on the heating in the rear of the police truck. Mr Simpson's feelings of humiliation, outrage and distress were exacerbated by the fact that one of the Simpson Arresting Officers instead turned on the air conditioning.

Mr Simpson's feelings of humiliation, outrage and distress were exacerbated by his being searched and handcuffed.

72. Mr Simpson was treated with contumelious disregard and claims exemplary damages.

Particulars of claim for exemplary damages

Despite the matters pleaded in paragraph 9 above, the Simpson Arresting Officers:

- (a) did not undertake the searches and inquiries that were reasonable in the circumstances to obtain accurate information about Mr Simpson's bail status;*
- (b) were not, in the circumstances, prevented from making enquiries to confirm the information on COPS;*
- (c) did not attempt to negotiate with Mr Simpson any less onerous method of ensuring he was not a flight risk while they made enquiries to confirm his bail status.*

Mr Simpson was arrested based upon inaccurate information on COPS in the circumstances pleaded in paragraph 9 and paragraph 10 above.

The Simpson Arresting Officers refused to accept the information provided by Mr Simpson's family members in circumstances where it was known or ought to have been known that COPS was unreliable.

Mr Simpson was handcuffed and searched by a police officer.

Claims of other Group Members

73. Group Members were deprived intentionally of their liberty by a police officer and/or a DCS officer or a DJJ officer.

Particulars

The material facts and particulars of Group Member claims will be provided after a trial of the common issues.

74. The cognate claims of Group Members, which arise from the deprivation of the liberty of Group Members, will be pleaded or particularised after a trial of common issues.

COMMON QUESTIONS OF LAW OR FACT WHICH ARE SAID TO ARISE

In accordance with paragraph 4.1(c) of *Practice Note No SC Gen 17 - Supreme Court Representative Proceedings*, the plaintiff specifies the following common questions of fact or law which are said to arise in the proceeding:

1. The proper construction of section 50 of the *Bail Act*.
2. Whether one or other of the matters pleaded in paragraph 9 was true during all of the relevant period.
3. Whether, if true, that matter or matters had the consequences as pleaded in paragraph 10.
4. The content of the duties of arresting officers to the plaintiff and Group Members in the event one or other of the matters alleged in paragraph 9 and/or 10 was true.
5. Whether in the premises a police officer could ever have reasonable grounds for believing that a person has breached their bail conditions without first confirming the bail information from a source or sources other than COPS.
6. What was the scope and content of the obligation of police officers to make further inquiries to confirm the bail information on COPS?
7. What is the appropriate measure of damages for unlawful imprisonment of persons 18 years old or younger (**Young Persons**) for relatively short periods of time?
8. Whether the young age of the person unlawfully arrested is a circumstance of aggravation.
9. Whether the arrest and detention of Young Persons solely on the basis on inaccurate information on COPS when there is a well-known risk that the information is inaccurate and no procedures have been implement by the NSW Police Force to minimise that risk, is a circumstance warranting an award of exemplary damages.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under section 347 of the *Legal Profession Act 2004* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

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

Signature



Name

Ben Slade, Maurice Blackburn

Capacity

Solicitor on the record

Date of signature

26 July 2014

NOTICE TO DEFENDANT

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

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

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

HOW TO RESPOND

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

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

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

You can respond in one of the following ways:

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

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

REGISTRY ADDRESS

Street address Supreme Court of NSW
Law Courts Building, Queens Square
184 Phillip Street
SYDNEY NSW 2000

Postal address GPO Box 3
SYDNEY NSW 2001

Telephone (02) 92308111

AFFIDAVIT VERIFYING

Name Einpwy Amom

Address [Redacted]

Occupation Unemployed

Date 23 July 2014

I say on oath:

1 I am the plaintiff.

2 I believe that the allegations of fact in the statement of claim are true. ^{that's further to-^-<^}

~~Suspect or Intention~~
AFFIRMED at Sydney V

Signature of deponent: [Signature]

Signature of witness: [Signature]

Name of witness: BEN SHADE

Address of witness: LEVEL 20, 201 ELIZABETH ST.
SYDNEY NSW 2000

Capacity of witness: Solicitor

DETAILS ABOUT PLAINTIFF**Plaintiff**

Name MUSA-KONNEH-Einpwy Amom

Address

[REDACTED]

[REDACTED]

Legal representative for plaintiff

Name	Ben Slade
Practising certificate number	9365
Firm	Maurice Blackburn
Contact solicitor	Ben Slade
Address	Level 20 201 Elizabeth Street SYDNEY NSW 2000
DX address	DX 13002 SYDNEY MARKET STREET
Telephone	(02)9261 1488
Fax	(02)9261 3318
Email	<u>bslade@mauriceblackburn.com.au</u>
Electronic service address	Not applicable

DETAILS ABOUT DEFENDANT**Defendant**

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