

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: VID434/2015  
File Title: Cheryl Whittenbury v Vocation Ltd (in Liquidation) & Anor  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 22/01/2020 3:59:24 PM AEDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

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.

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**Defence to second further amended consolidated statement of claim  
(Mr Hutchinson's defence)**

**Federal Court of Australia  
District Registry: Victoria  
Division: General**

VID 434 of 2015

**Cheryl Whittenbury**

Applicant

**Vocation Limited (in liq.) and others named in the schedule**

First respondent

The third respondent (**Mr Hutchinson**) pleads as follows to the allegations contained in the Second Further Amended Consolidated Statement of Claim filed on 11 November 2019 (**2FACSOC**):

**I. INTRODUCTION**

1. Mr Hutchinson admits paragraph 1.
2. Mr Hutchinson does not know and therefore cannot admit paragraph 2.
3. Mr Hutchinson does not know and therefore cannot admit paragraph 3.

**II. CLAIM AGAINST VOCATION**

4. Mr Hutchinson does not admit paragraphs 4–260 of the 2FACSOC, which are stated to plead claims against the First Respondent only.

**III. CLAIM AGAINST PRICEWATERHOUSECOOPERS**

261. Mr Hutchinson does not admit paragraphs 261-403 of the 2FACSOC, which are stated to plead claims against the Second Respondent only.

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Filed on behalf of: **Mark Edward Hutchinson**, the third respondent

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#### **IV. CLAIMS AGAINST HUTCHINSON, GREWAL AND DAWKINS**

##### **A THE THIRD TO FIFTH RESPONDENTS**

404. Mr Hutchinson admits paragraph 404.

405. Mr Hutchinson admits paragraph 405.

406. Mr Hutchinson admits paragraph 406.

##### **B Vocation**

###### **B.1 Introduction**

407. Mr Hutchinson admits paragraph 407.

###### **B.2 The Initial Public Offering**

408. Mr Hutchinson admits paragraph 408.

409. Mr Hutchinson admits paragraph 409, save to say that the reference to s716(5) in paragraph 409(b) should be to s711(5).

410. In answer to paragraph 410, Mr Hutchinson:

- (a) admits that the Replacement Prospectus disclosed that, at listing, Vocation would be formed through the merger of the Founding Companies (AVANA, BAWM, Aspin and CSIA) and certain Ancillary Businesses;
- (b) says further that the Replacement Prospectus disclosed (at page 111) a corporate structure chart of the companies to be owned, directly and indirectly, by Vocation following Completion of the Offer (as those terms were defined in the Replacement Prospectus); and
- (c) otherwise denies the paragraph.

###### **B.3 BAWM and Aspin**

411. In answer to paragraph 411, Mr Hutchinson:

- (a) admits paragraph 411(a);
- (b) in answer to paragraph 411(b), admits that:
  - (i) BAWM reported profit before income tax expense for FY13 of \$6,766,493 derived from revenue of \$36,713,675;
  - (ii) as at the end of FY13, BAWM had reported net assets and total equity of \$4,736,455;

- (c) In answer to paragraph 411(c), admits that:
    - (i) Aspin reported profit before income tax expenses for FY13 of \$63,200 and revenue for FY13 of \$270,659; and
    - (ii) as at the end of FY13, Aspin had reported net assets and total equity of \$104,440; and
  - (d) otherwise denies the paragraph.
412. In answer to paragraph 412, Mr Hutchinson:
- (a) admits that, immediately prior to the Merger and the Initial Public Offering:
    - (i) BAWM's total assets represented a material proportion of the total contemplated assets of Vocation (on a pro forma consolidated basis as at the end of FY13);
    - (ii) BAWM's revenue represented a material proportion of revenue of the businesses proposed to be held by Vocation (on a pro forma consolidated basis as at the end of FY13, based on an assumption that the Merger and Initial Public Offering had taken place);
    - (iii) BAWM would have contributed a material proportion of the net profit before tax of Vocation (on a pro form consolidated basis as at the end of FY13); and
  - (b) otherwise denies the paragraph.
413. Mr Hutchinson denies paragraph 413.
414. Mr Hutchinson admits paragraph 414.
415. Mr Hutchinson admits paragraph 415.
416. In answer to paragraph 416, Mr Hutchinson:
- (a) admits paragraphs (a)–(i) and (k);
  - (b) admits that the 2014 BAWM Government Contract included a term to the effect set out in paragraph 416(j) of the 2FACSOC; and
  - (c) otherwise denies the paragraph.
417. In answer to paragraph 417, Mr Hutchinson:
- (a) admits that the Aspin Government Contracts contained terms materially to the same effect as the BAWM Government Contracts;

- (b) repeats his answers to paragraphs 415 and 416 above; and
- (c) otherwise denies the paragraph.

#### **B.4 Vocation’s Prospectus Recognition Policy**

418. Mr Hutchinson admits paragraph 418, save to say that the reference to “8.3” in the NPAT row of the FY13 column in the table should instead say “3.8”.
419. In answer to paragraph 419, Mr Hutchinson:
- (a) will rely on the description of the revenue recognition policy set out in Section 4.6.11 and Appendix A (Section e) of the Replacement Prospectus; and
  - (b) otherwise denies the paragraph.

### **C RELEVANT EVENTS OF MID 2014**

#### **C.1 The New Revenue Recognition Policy**

420. Mr Hutchinson denies paragraph 420.
421. Mr Hutchinson denies paragraph 421.

#### **C.2 The Victorian Funding Suspensions**

422. Mr Hutchinson admits paragraph 422.
423. Mr Hutchinson admits paragraph 423.
424. Mr Hutchinson admits paragraph 424 and says that he was told by a senior officer of BAWM who was dealing directly with the DEECD that the BAWM Enrolment Suspension related only to the CSP and Warehousing courses and that he honestly and reasonably held that belief until around 28 August 2014.
425. Mr Hutchinson admits paragraph 425.
426. Mr Hutchinson admits paragraph 426 (save for the reference to “the 2014 BAWM Government Contract”, in relation to which Mr Hutchinson denies the allegation).

### **D. LIABILITY OF HUTCHINSON AND GREWAL IN RESPECT OF 21 AUGUST CONDUCT (AND VOCATION’S DEFECTIVE FY14 RESULTS DOCUMENTS)**

427. In answer to paragraph 427, Mr Hutchinson repeats his answers to paragraphs 408 to 426 above.

#### **D.1 Publication of the 21 August results Documents**

428. Mr Hutchinson admits paragraph 428.

429. Mr Hutchinson admits paragraph 429.
430. Mr Hutchinson admits paragraph 430.
431. Mr Hutchinson admits paragraph 431.
432. In answer to paragraph 432, Mr Hutchinson:
- (a) admits paragraphs (a), (b), (c)(i), (c)(iii) and (d);
  - (b) in answer to paragraph (c)(ii) says that the relevant part of the Preliminary Financial Report said:  
  

*Revenue from services is recognised in the accounting period in which the services are rendered. For contracts, revenue is recognised under the percentage of completion method, based on the actual service provided as a proportion of the total services to be provided.*
  - (c) otherwise denies the paragraph.
433. Mr Hutchinson admits paragraph 433.
434. Mr Hutchinson admits paragraph 434, save to say that the reference to “\$24.7” in paragraph 434(a)(v) should be to “\$24.7m”.
435. In answer to paragraph 435, Mr Hutchinson:
- (a) repeats his answers to paragraphs 420 and 421 above; and
  - (b) otherwise admits the paragraph.

## **D.2 21 August Representations made by Hutchinson and Grewal**

436. In answer to paragraph 436, Mr Hutchinson:
- (a) admits that he and Mr Grewal participated in authorising the making and lodgement by Vocation with the ASX of the FY14 Results Documents in the form, or substantially in the form, in which those documents were made and lodged with the ASX; and
  - (b) otherwise denies the paragraph.
437. Mr Hutchinson denies paragraph 437.
438. Mr Hutchinson denies paragraph 438.
439. Mr Hutchinson denies paragraph 439.
440. Mr Hutchinson denies paragraph 440.

**D.3 Misleading nature of the Officers' 21 August Accounts Representation and Officers' 21 August Accounts Reasonable Grounds Representation made by Hutchinson and Grewal**

441. Mr Hutchinson denies paragraph 441 (and denies that Vocation adopted the New Revenue Recognition Policy which differed from the Prospectus Revenue Recognition Policy).
442. Mr Hutchinson denies paragraph 442.
443. Mr Hutchinson denies paragraph 443.

**D.4 Misleading nature of the Officers' Further 21 August Representation made by Hutchinson and Grewal**

444. In answer to paragraph 444:
- (a) Mr Hutchinson admits that, as at 21 August 2014, it was not the case that since 30 June 2014 there had been no change in BAWM's funding arrangements with the Victorian government other than a price list revision; and
- (b) otherwise denies the paragraph.

**D.5 Hutchinson's and Grewal's 21 August Contraventions**

445. Mr Hutchinson denies paragraph 445.
446. Mr Hutchinson denies paragraph 446.
447. Mr Hutchinson denies paragraph 447.
448. Mr Hutchinson denies paragraph 448.

**E. LIABILITY OF HUTCHINSON IN RESPECT OF 25 AUGUST CONDUCT**

449. In answer to paragraph 449, Mr Hutchinson repeats his answers to paragraphs 422 to 426 above.

**E.1 Publication of the 25 August Announcement**

450. In answer to paragraph 450, Mr Hutchinson:
- (a) admits that on 25 August 2014, the Australian Financial Review reported that:
- (i) on 21 August 2014, the DEECD "advised BAWM its funding was being suspended pending the outcome of a full audit"; and

- (ii) “We hear government auditors had been crawling over BAWM’s books for the previous six weeks”; and

(b) otherwise denies the paragraph.

451. Mr Hutchinson admits paragraph 451.

## **E.2 25 August Representations made by Hutchinson**

452. Mr Hutchinson admits paragraph 452.

453. In answer to paragraph 453, Mr Hutchinson:

(a) admits that he participated in authorising the making and lodgement by Vocation with the ASX of the 25 August Announcement in the form, or in substantially the form, in which that document was made and lodged with the ASX;

(b) admits that the 25 August Announcement conveyed each of the August No Suspension Representation, the August Continuing Enrolment and Delivery Representation and the August Materiality Representation; and

(c) otherwise denies the paragraph.

454. Mr Hutchinson denies paragraph 454.

455. Mr Hutchinson denies paragraph 455.

456. Mr Hutchinson denies paragraph 456.

## **E.3 Misleading nature of the Officers 25 August Representations and the Officers’ 25 August Reasonable Grounds Representation made by Hutchinson**

457. In answer to paragraph 457, Mr Hutchinson:

(a) admits that, as at 25 August 2014, it was not the case that none of Vocation’s entitlements under its RTOs’ funding contracts with DEECD had been suspended other than the withholding of recent payments due under the contracts;

(b) admits that, as at 25 August 2014, it was not the case that Vocation was able to continue to enrol students and deliver vocational education and training and ancillary services under all of its RTOs’ funding contracts with the DEECD; and

(c) otherwise denies the paragraph.



458. Mr Hutchinson denies paragraph 458.

#### **E.4 Hutchinson's 25 August Contraventions**

459. Mr Hutchinson denies paragraph 459.

460. Mr Hutchinson denies paragraph 460.

461. Mr Hutchinson denies paragraph 461.

### **F LIABILITY OF HUTCHINSON AND DAWKINS IN RESPECT OF 3 SEPTEMBER CONDUCT (AND VOCATION'S DEFECTIVE FY14 FINANCIAL REPORT)**

462. In answer to paragraph 462, Mr Hutchinson repeats his answers to paragraphs 408 to 426 above.

#### **F.1 Publication of the FY14 Annual Report and FY14 Audited Financial Statements**

463. Mr Hutchinson admits paragraph 463.

464. Mr Hutchinson admits paragraph 464.

465. Mr Hutchinson admits paragraph 465.

466. Mr Hutchinson admits paragraph 466.

467. In answer to paragraph 467, Mr Hutchinson:

- (a) denies that Vocation adopted the New Revenue Recognition Policy which differed from the Prospectus Revenue Recognition Policy; and
- (b) otherwise admits the paragraph.

#### **F.2 3 September Representations made by Hutchinson and Dawkins**

468. In answer to paragraph 468, Mr Hutchinson:

- (a) admits that he and Mr Dawkins participated in authorising the making and lodgement by Vocation with the ASX of the FY14 Annual Report (including the FY14 Financial Report and the FY14 Audited Financial Statements) in the form, or substantially in the form, in which those documents were made and lodged with the ASX; and
- (b) otherwise denies the paragraph.

469. In answer to paragraph 469, Mr Hutchinson:

- (a) denies that Mr Dawkins declared on behalf of himself and all directors the matters pleaded in paragraphs 469(a) to (c) of the 2FACSOC;

(b) says that the declarations made by Mr Dawkins on behalf of himself and all directors in the FY14 Annual Report were declarations of their opinion; and

(c) otherwise denies the paragraph.

470. Mr Hutchinson denies paragraph 470.

471. Mr Hutchinson denies paragraph 471.

472. Mr Hutchinson denies paragraph 472 (and denies that Vocation adopted the New Revenue Recognition Policy which differed from the Prospectus Revenue Recognition Policy).

473. Mr Hutchinson denies paragraph 473.

474. Mr Hutchinson denies paragraph 474.

#### **F.4 Hutchinson's and Dawkins' 3 September Contraventions**

475. Mr Hutchinson denies paragraph 475.

476. Mr Hutchinson denies paragraph 476.

477. Mr Hutchinson denies paragraph 477.

#### **G LIABILITY OF HUTCHINSON AND GRÉWAL IN RESPECT OF 10 SEPTEMBER CONDUCT (THE DDQ AND VOCATION'S DEFECTIVE ANNOUNCEMENT RE THE PLACEMENT)**

478. In answer to paragraph 478, Mr Hutchinson repeats his answers to paragraphs 408 to 426 above.

##### **G.1 The Proposed Placement, the DDQ and the 10 September Announcement**

479. Mr Hutchinson denies paragraph 479.

480. Mr Hutchinson admits paragraph 480.

481. Mr Hutchinson admits paragraph 481.

482. In answer to paragraph 482, Mr Hutchinson:

(a) admits that on or around 28 September 2014, Macquarie's involvement and participation in the proposed September placement ceased; and

(b) otherwise does not know and therefore cannot admit the paragraph.

483. Mr Hutchinson admits paragraph 483.

484. Mr Hutchinson admits paragraph 484.

485. Mr Hutchinson admits paragraph 485.

486. Mr Hutchinson admits paragraph 486.

487. Mr Hutchinson admits paragraph 487.

488. Mr Hutchinson admits paragraph 488.

489. Mr Hutchinson admits paragraph 489.

490. Mr Hutchinson admits paragraph 490.

491. In answer to paragraph 491, Mr Hutchinson:

(a) will rely on the terms of the 10 September Announcement for their full meaning and effect; and

(b) otherwise admits the paragraph.

492. In answer to paragraph 492, Mr Hutchinson:

(a) denies the Cash Requirement Information as pleaded at paragraph 479 of the 2FACSOC; and

(b) otherwise admits the paragraph.

493. Mr Hutchinson admits paragraph 493.

## **G.2 10 September DDQ Representations made by Hutchinson and Grewal**

494. Mr Hutchinson denies paragraph 494.

495. In answer to paragraph 495, Mr Hutchinson:

(a) denies the Officers' 10 September DDQ Representations; and

(b) otherwise does not know and therefore cannot admit the paragraph.

496. In answer to paragraph 496, Mr Hutchinson:

(a) admits that, if UBS had not entered into the underwriting agreement, Vocation would not have been able to undertake the Placement in the manner in which it occurred and would not have released the 10 September Announcement in the terms in which it was released;

(b) says that the SPP was withdrawn;

(c) does not know and therefore cannot admit that Vocation would not have undertaken a placement of shares that was underwritten by an entity other than UBS, or not underwritten; and

(d) otherwise denies the paragraph.

### **G.3 10 September Market Representations made by Hutchinson**

497. Mr Hutchinson denies paragraph 497.

498. In answer to paragraph 498, Mr Hutchinson:

(a) admits that he participated in authorising the making and lodgement by Vocation with the ASX of the 10 September Announcement in the form, or substantially in the form, in which that document was made and lodged with the ASX; and

(b) otherwise denies the paragraph.

499. Mr Hutchinson denies paragraph 499.

500. Mr Hutchinson denies paragraph 500.

501. Mr Hutchinson denies paragraph 501.

### **G.4 Misleading nature of the Officers 10 September DDQ Representations made by Hutchinson and Grewal**

502. In answer to paragraph 502, Mr Hutchinson:

(a) admits that, as at 10 September 2014, the DEECD's review related to a number of issues, including the issues identified in sub-paragraph (a);

(b) admits subparagraph (b) (but says that the extent to which school leavers were undertaking particular courses offered by BAWM and Aspin was an issue to which the DEECD's review related); and

(c) otherwise denies the paragraph.

503. In answer to paragraph 503, Mr Hutchinson:

(a) admits that, as at 10 September 2014, it was not the case that the focus of the DEECD's concerns was the extent to which school leavers were undertaking particular courses offered by BAWM and Aspin; and

(b) otherwise denies the paragraph.

504. Mr Hutchinson admits paragraph 504.

505. Mr Hutchinson admits paragraph 505.

506. In answer to paragraph 506, Mr Hutchinson:

- (a) says that, as at 10 September 2014, the DEECD had indicated a willingness to release a substantial portion of the then currently withheld funds, subject to a favourable outcome of a review of the CSP, Warehousing and CGEA courses; and
- (b) otherwise admits the paragraph.

507. In answer to paragraph 507, Mr Hutchinson:

- (a) admits that, as at 10 September 2014, it was not the case that all of the answers provided in the DDQ were true and correct and complete and not misleading or deceptive (whether by omission or otherwise); and
- (b) otherwise denies the paragraph.

**G.5 Misleading nature of the Officers' 10 September ASX Representations made by Hutchinson**

***September First Review Scope Representation, September Second Review Scope Representation, September No Suspension Representation and September Continuing Enrolment and Delivery Representation***

508. In answer to paragraph 508, Mr Hutchinson:

- (a) repeats his denial of the First Review Scope Representation, the Second Review Scope Representation, the Second No Suspension Representation and the Second Continuing Enrolment and Delivery Representation;
- (b) admits that, as at 10 September 2014 (and at all relevant times thereafter):
  - (i) it was not the case that the review being conducted by the DEECD was only in respect of three courses conducted by Vocation for which it received funding;
  - (ii) the amount being withheld by the DEECD was being withheld not only in respect of the claims to which the particular withheld payments related, but also in respect of a possible right of the DEECD to recover payments previously paid by DEECD to BAWM and Aspin under the Funding Contracts;
  - (iii) it was not the case that none of Vocation's entitlements under its RTOs' funding contracts with the DEECD had been suspended other than the withholding of recent payments due under the contracts;

(iv) it was not the case that Vocation was able to continue to enrol students and deliver vocational training and ancillary services under all of its RTOs' funding contracts with the DEECD; and

(c) otherwise denies the paragraph.

***September Materiality Representation***

509. Mr Hutchinson denies paragraph 509.

***September Placement Representation***

510. Mr Hutchinson does not know and therefore cannot admit paragraph 510.

511. Mr Hutchinson denies paragraph 511.

***Officers' 10 September Reasonable Grounds Representation***

512. Mr Hutchinson denies paragraph 512.

**G.6 Hutchinson's and Grewal's contraventions in respect of the DDQ**

513. Mr Hutchinson denies paragraph 513.

514. Mr Hutchinson denies paragraph 514.

515. Mr Hutchinson denies paragraph 515.

**G.7 Hutchinson's contraventions in respect of the 10 September Announcement**

516. Mr Hutchinson denies paragraph 516.

517. Mr Hutchinson denies paragraph 517.

518. Mr Hutchinson denies paragraph 518.

**H FACTS RELEVANT TO CAUSATION**

**H.1 The partial corrective disclosure on 25 August 2014 in relation to the fact of the Victorian Investigations, and part of the Funding Suspensions**

519. In answer to paragraph 519, Mr Hutchinson repeats his answers to paragraphs 450 and 451 above.

520. Mr Hutchinson denies paragraph 520.

521. Mr Hutchinson admits paragraph 521, save to say that the last trading day before 25 August 2014 was 22 August 2014.

## **H.2 The partial corrective disclosure on 18 September 2014 in relation to the quantum of the Victorian Funding Suspensions**

522. In answer to paragraph 522, Mr Hutchinson:

- (a) admits paragraphs 522(a) and (c), save that the Australian Financial Review report was on 18 September 2014;
- (b) in answer to paragraph 522(b), says that the Australian Financial Review reported that in 2013, the then Education Minister had made comments about a practice described as channelling; and
- (c) otherwise denies the paragraph.

523. Mr Hutchinson admits paragraph 523.

524. Mr Hutchinson denies paragraph 524.

525. Mr Hutchinson admits paragraph 525.

## **H.3 The Corrective disclosure on 27 and 30 October 2014 in relation to the quantum of the Victorian Funding Suspensions**

526. Mr Hutchinson admits paragraph 526.

527. Mr Hutchinson admits paragraph 527.

528. In answer to paragraph 528, Mr Hutchinson:

- (a) in answer to paragraph 528(a), says that the 27 October Announcement stated that:
  - (i) Vocation “has reached a settlement with the Victorian Department of Education and Early Childhood Development (DEECD) in relation to its review into two of Vocation’s Registered Training Organisations (RTOs), BAWM and Aspin”;
  - (ii) “Vocation will receive \$9 million in withheld Government funding, and has agreed to surrender \$19.6 million in Government funding”; and
  - (iii) “Vocation will also undertake a series of measures to ensure continuous improvement in line with the VRQA Guidelines for VET and AQTF Continuing Standards for Registration”;
- (b) admits paragraph 528(b);

- (c) in answer to paragraph 528(c), says that the 27 October Announcement said that “BAWM and Aspin will relinquish their funding contracts (expected to be early 2015)” and that “all new enrolments in Victoria are being consolidated under Vocation’s two other RTOs”;
- (d) in answer to paragraph 528(d), says that the 27 October Announcement said that:

*The overall financial impact on Vocation’s statutory EBITDA for FY15 (which is now expected to be between \$53 m and \$57m) can be summarized as follows:*

- *The commercial settlement Vocation has reached with DEECD has resulted in the forfeiture of \$19.6m of funds. The earnings impact expected in FY15 of this is approximately \$5m.*
- *The remaining impact will flow from lower than budgeted enrolments in Victoria due to the DEECD review and Vocation’s decision to restructure part of its business model in Victoria to eliminate third party training and assessment providers.*
- *The financial impact in FY15 will be partially offset by the decision of the DEECD to approve a Domain C contract for its Building Brighter Futures program to be delivered through one of Vocation’s RTOs from 24 October 2014 and the ability of Vocation to offer a full suite of courses in Victoria through its remaining two RTOs.*

*The direct and indirect impacts of the review and the Victorian restructure will result in non-recurring items that will be taken up in H1 FY15.*

- (e) otherwise denies the paragraph.

529. Mr Hutchinson denies paragraph 529.

530. Mr Hutchinson admits paragraph 530, save to say that the last trading day before 27 October Announce was 22 October 2014.



## **I LOSS AND DAMAGE ARISING FROM HUTCHINSON'S, GRÉWAL'S AND DAWKINS' CONTRAVENTIONS**

### **I.1 Market-based causation**

#### *I.1.1 Market-based causation for on-market purchasers*

531. In answer to paragraph 531, Mr Hutchinson:

- (a) does not know and therefore cannot admit whether the Applicant and some Group Members acquired an interest in Vocation Securities on or after 21 August 2014;
- (b) admits that Vocation Securities were offered:
  - (i) on a market operated by the ASX;
  - (ii) regulated by, inter alia, section 674(2) of the Corporations Act and ASX Listing Rules 3.1 and 4.3(a);
- (c) denies paragraph 531(c); and
- (d) otherwise denies the paragraph.

#### *I.1.2 Market-based causation for Placement purchasers*

532. In answer to paragraph 532, Mr Hutchinson:

- (a) does not know and therefore cannot admit whether some Group Members acquired an interest in Vocation Securities pursuant to the Placement;
- (b) admits that the Placement was subject to the provisions of Chapter 6D of the Corporations Act;
- (c) does not know and therefore cannot admit paragraphs 532(b) and (c); and
- (d) otherwise denies the paragraph.

#### *I.1.3 Effect of the Director/Officer Market Contraventions*

533. Mr Hutchinson denies paragraph 533.

534. Mr Hutchinson denies paragraph 534.

### **I.2 Reliance**

535. Mr Hutchinson denies paragraph 535.

536. Mr Hutchinson does not know and therefore cannot admit paragraph 536.

### I.3 No transaction case in respect of the Placement

537. Mr Hutchinson denies paragraph 537.

### I.4 Loss or damage suffered by the Applicant and Group Members

538. Mr Hutchinson denies paragraph 538.

539. Mr Hutchinson denies paragraph 539.

540. Mr Hutchinson denies paragraph 540.

### PROPORTIONATE LIABILITY

541. In further answer to the claims alleged against Mr Hutchinson in the 2FACSOC, if Mr Hutchinson is liable to the Applicant or Group Members in respect of the contraventions alleged against him (which is denied), and if the Applicant or Group Members have suffered loss and damage by reason of those alleged contraventions (**Applicant's and Group Members' Loss and Damage**) (which is denied), then, for the purpose of this Defence only, Mr Hutchinson says:

- (a) the claims against Mr Hutchinson are each an "apportionable claim" within the meaning of s 87CB(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**), s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 34 of the *Civil Liability Act 2002* (NSW) (**CLA**) and the corresponding provisions in the legislation of the other States and Territories;
- (b) with respect to Vocation:
  - (i) Mr Hutchinson repeats:
    - (A) the allegations in paragraphs 120-135C of the 2FACSOC;
    - (B) the allegations in paragraphs 136-210 of the Applicant's Further Amended Consolidated Statement of Claim filed 2 May 2018; and
    - (C) the allegations in paragraphs 183-196 of the Statement of Cross-claim (Third Cross-claim) filed by PwC on 20 July 2018;
  - (ii) by reason of paragraph 541(b)(i) above, Vocation is a "concurrent wrongdoer" within the meaning of s 87CB(3) of the CCA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 34 of the CLA and the corresponding provisions in the legislation of the other States and Territories, liable for the Applicant's and Group Members' Loss and Damage;

- (c) with respect to PWC:
  - (i) Mr Hutchinson repeats:
    - (A) the allegations in paragraphs 261 to 403 of the 2FACSOC;
    - (B) the allegations in paragraphs 183-193 of the Statement of Cross-claim (Third Cross-claim) filed by PwC on 20 July 2018;
  - (ii) by reason of paragraph 541(c)(i) above, PWC is a “concurrent wrongdoer” within the meaning of s 87CB(3) of the CCA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 34 of the CLA and the corresponding provisions in the legislation of the other States and Territories, liable for the Applicant’s and Group Members’ Loss and Damage;
- (d) with respect to Mr Dawkins:
  - (i) Mr Hutchinson repeats:
    - (A) the allegations made against Mr Dawkins in paragraphs 404–540 of the 2FACSOC;
    - (B) the allegations in paragraphs 183-193 of the Statement of Cross-claim (Third Cross-claim) filed by PwC on 20 July 2018;
  - (ii) by reason of paragraph 541(d)(i) above, Mr Dawkins is a “concurrent wrongdoer” within the meaning of s 87CB(3) of the CCA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 34 of the CLA and the corresponding provisions in the legislation of the other States and Territories, liable for the Applicant’s and Group Members’ Loss and Damage;
- (e) with respect to Mr Grewal:
  - (i) Mr Hutchinson repeats:
    - (A) the allegations made against Mr Grewal in paragraphs 404–540 of the 2FACSOC;
    - (B) the allegations in paragraphs 183-193 of the Statement of Cross-claim (Third Cross-claim) filed by PwC on 20 July 2018;
  - (ii) by reason of paragraph 541(e)(i) above, Mr Grewal is a “concurrent wrongdoer” within the meaning of s 87CB(3) of the CCA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 34 of the CLA and

the corresponding provisions in the legislation of the other States and Territories, liable for the Applicant's and Group Members' Loss and Damage;

- (f) with respect to Ms Tredenick and Messrs Tucker and Halley:
  - (i) Mr Hutchinson repeats the allegations in paragraphs 183-193 of the Statement of Cross-claim (Third Cross-claim) filed by PwC on 20 July 2018;
  - (ii) by reason of paragraph 541(f)(i) above, each of Ms Tredenick and Messrs Tucker and Halley is a "concurrent wrongdoer" within the meaning of s 87CB(3) of the CCA, s 1041L of the Corporations Act, s 12GP of the ASIC Act and s 34 of the CLA and the corresponding provisions in the legislation of the other States and Territories, liable for the Applicant's and Group Members' Loss and Damage; and
- (g) Mr Hutchinson's liability (if any) to the Applicant or Group Members is, by that reason, limited by s 87CD(1) of the CCA, s 1041N of the Corporations Act, s 12GR of the ASIC Act, s 35 of the CLA and the corresponding provisions in the legislation of the other States and Territories, to an amount reflecting that proportion of the damage or loss claimed that the Court considers is just having regard to the extent of Mr Hutchinson's responsibility for that damage or loss.

Date 22 January 2020



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Signed by Richard Glenn Harris  
Solicitor for Mr Hutchinson

This pleading was prepared by Gilbert + Tobin and settled by Stuart Lawrance of counsel.

**Certificate of lawyer**

I Richard Harris certify to the Court that, in relation to the defence filed on behalf of Mr Hutchinson, 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: 22 January 2020



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Signed by Richard Glenn Harris

Lawyer for Mr Hutchinson

**Schedule**

VID 434 of 2015

**Federal Court of Australia**  
**District Registry: Victoria**  
**Division: General**

**Applicant**

Applicant: Cheryl Whittenbury

**Respondents**

First Respondent: Vocation Limited (in liquidation) (ACN 166 631 330)  
Second Respondent: PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)  
Third Respondent: Mark Edward Hutchinson  
Fourth Respondent: Manvinder Grewal  
Fifth Respondent: John Sydney Dawkins

**Details of all cross-claims in the proceeding****First Cross-claim**

Cross-claimant: Vocation Limited (in liquidation) (ACN 166 631 330)  
Cross-respondent: The Partners of Johnson Winter & Slattery

**Second Cross-claim**

Cross-claimant: PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)  
Cross-respondent: The Partners of Johnson Winter & Slattery

**Third Cross-claim**

Cross-claimant: PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)

First Cross-respondent: Mark Edward Hutchinson

Second Cross-respondent: Manvinder Gréwal

Third Cross-respondent: John Sydney Dawkins

Fourth Cross-respondent: Stephen John Tucker

Fifth Cross-respondent: Michelle Kim Tredenick

Sixth Cross-respondent: Douglas James Halley

Seventh Cross-respondent: Vocation Limited (in liquidation) (ACN 166 631 330)

**Fourth Cross-Claim**

Cross-Claimant John Sydney Dawkins

Cross-Respondent The Partners of Johnson Winter & Slattery

**Fifth Cross-Claim**

Cross-Claimant The Partners of Johnson Winter & Slattery

First Cross-Respondent Mark Edward Hutchinson

Second Cross-Respondent Manvinder Gréwal

Third Cross-Respondent John Sydney Dawkins

Fourth Cross-Respondent Stephen John Tucker

Fifth Cross-Respondent Michelle Kim Tredenick

Sixth Cross-Respondent Douglas James Halley

Seventh Cross-Respondent      Vocation Limited (ACN 166 631 330)

**Sixth Cross-Claim**

Cross-Claimant                      Mark Edward Hutchinson

Cross-Respondent                      The Partners of Johnson Winter & Slattery

**Seventh Cross-Claim**

Cross-Claimant                      Manvinder Gréwal

Cross-Respondent                      The Partners of Johnson Winter & Slattery