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Details of Filing

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



Dated: 31/01/2020 4:47:14 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 - Fifth Respondent (Mr Dawkins)

No. VID 434 of 2015

Federal Court of Australia
District Registry: Victoria
Division: General

CHERYL WHITTENBURY

Applicant

VOCATION LIMITED (ACN 166 631 330) and others named in the schedule

First Respondent

Capitalised terms used but not defined in this defence have the same meaning as in the Second Further Amended Consolidated Statement of Claim dated 11 November 2019 (**SFACSOC**).

Nothing in this Defence should be taken to amount to an express or implied waiver of any privilege against self incrimination or privilege against exposure to penalty belonging to the Fifth Respondent, Mr John Sydney Dawkins (**Mr Dawkins**).

I INTRODUCTION

1-3 Mr Dawkins does not plead to paragraphs 1 to 3 of the SFACSOC as those paragraphs do not form part of any claim against him.

II CLAIM AGAINST VOCATION

A THE FIRST RESPONDENT

4-5 Mr Dawkins does not plead to paragraphs 4 to 5 of the SFACSOC as those paragraphs do not form part of any claim against him.

B VOCATION - COMPANY BACKGROUND

B.1 The Offer

6-11 Mr Dawkins does not plead to paragraphs 6 to 11 of the SFACSOC as those paragraphs do not form part of any claim against him.

Filed on behalf of (name & role of party)	John Sydney Dawkins, the Fifth Respondent		
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B.2 The Merger and the Founding Companies

12-15 Mr Dawkins does not plead to paragraphs 12 to 15 of the SFACSOC as those paragraphs do not form part of any claim against him.

B.3 Vocation Directors and Senior Managers

16-17 Mr Dawkins does not plead to paragraphs 16 to 17 of the SFACSOC as those paragraphs do not form part of any claim against him.

C. VOCATION'S BUSINESS**C.1 Vocation's business**

18-20 Mr Dawkins does not plead to paragraphs 18 to 20 of the SFACSOC as those paragraphs do not form part of any claim against him.

C.2 BAWM's and Aspin's Registrations

21-24 Mr Dawkins does not plead to paragraphs 21 to 24 of the SFACSOC as those paragraphs do not form part of any claim against him.

C.3 BAWM and Aspin Government Contracts

25-26 Mr Dawkins does not plead to paragraphs 25 to 26 of the SFACSOC as those paragraphs do not form part of any claim against him.

C.4 BAWM and Aspin Obligations

27-34 Mr Dawkins does not plead to paragraphs 27 to 34 of the SFACSOC as those paragraphs do not form part of any claim against him.

C.5 DEECD Regulatory focus

35-36 Mr Dawkins does not plead to paragraphs 35 to 36 of the SFACSOC as those paragraphs do not form part of any claim against him.

C.6 Significance of certain businesses to Vocation

37-43 Mr Dawkins does not plead to paragraphs 37 to 43 of the SFACSOC as those paragraphs do not form part of any claim against him.

D. PRE-LISTING CONDUCT**D.1 The BAWM Conduct**

43A-46 Mr Dawkins does not plead to paragraphs 43A to 46 of the SFACSOC as those paragraphs do not form part of any claim against him.

D.2 Features of BAWM's Conduct

47-49 Mr Dawkins does not plead to paragraphs 47 to 49 of the SFACSOC as those paragraphs do not form part of any claim against him.

D.3 Conduct of other Founding Companies

50-51L Mr Dawkins does not plead to paragraphs 50 to 51L of the SFACSOC as those paragraphs do not form part of any claim against him.

D.4 Systemic Features

52-54 Mr Dawkins does not plead to paragraphs 52 to 54 of the SFACSOC as those paragraphs do not form part of any claim against him.

E. RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES OF VOCATION**E.1 The 2013 Prospectus Conduct**

55-58 Mr Dawkins does not plead to paragraphs 55 to 58 of the SFACSOC as those paragraphs do not form part of any claim against him.

E.2 Vocation's announcements to the market in 2014**E2.1 The 25 August Announcement**

73-90 Mr Dawkins does not plead to paragraphs 73 to 90 of the SFACSOC as those paragraphs do not form part of any claim against him.

E2.2 The 10 September Announcement

91-94 Mr Dawkins does not plead to paragraphs 91 to 94 of the SFACSOC as those paragraphs do not form part of any claim against him.

E2.3 The 18 September Announcement

99-100A Mr Dawkins does not plead to paragraphs 99 to 100A of the SFACSOC as those paragraphs do not form part of any claim against him.

E2.4 The 27 and 30 October Announcements

106-113 Mr Dawkins does not plead to paragraphs 106 to 113 of the SFACSOC as those paragraphs do not form part of any claim against him.

E2.5 The 4 December Announcement

116-119 Mr Dawkins does not plead to paragraphs 116 to 119 of the SFACSOC as those paragraphs do not form part of any claim against him.

F. PROSPECTUS CONTRAVENTIONS

F.1 Introduction

120-121 Mr Dawkins does not plead to paragraphs 120 to 121 of the SFACSOC as those paragraphs do not form part of any claim against him.

F.2 Misleading statements in the Replacement Prospectus

122-128 Mr Dawkins does not plead to paragraphs 122 to 128 of the SFACSOC as those paragraphs do not form part of any claim against him.

F.3 Omissions from the Replacement Prospectus

129-133 Mr Dawkins does not plead to paragraphs 129 to 133 of the SFACSOC as those paragraphs do not form part of any claim against him.

F.4 The Prospectus Contraventions

134-135C Mr Dawkins does not plead to paragraphs 134 to 135C of the SFACSOC as those paragraphs do not form part of any claim against him.

J. CONTRAVENING CONDUCT CAUSED LOSS

J.1 No transaction case in respect of the Prospectus Contraventions and Vocation Prospectus Misleading Conduct Contraventions

246-247B Mr Dawkins does not plead to paragraphs 246 to 247B of the SFACSOC as those paragraphs do not form part of any claim against him.

J.2 Market-based causation

J.2.1 Market-based causation for on-market purchasers

248 Mr Dawkins does not plead to paragraph 248 of the SFACSOC as those paragraphs do not form part of any claim against him.

J.2.2 Market-based causation for Initial Public Offering subscribers

249 Mr Dawkins does not plead to paragraph 249 of the SFACSOC as those paragraphs do not form part of any claim against him.

J.2.3 Market-based causation for Placement purchasers

250 Mr Dawkins does not plead to paragraph 250 of the SFACSOC as those paragraphs do not form part of any claim against him.

J.2.4 Effect of the Vocation Market Contraventions

251-253 Mr Dawkins does not plead to paragraphs 251 to 253 of the SFACSOC as those paragraphs do not form part of any claim against him.

J.3 Reliance

254 Mr Dawkins does not plead to paragraph 254 of the SFACSOC as those paragraphs do not form part of any claim against him.

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

255-257 Mr Dawkins does not plead to paragraphs 255 to 257 of the SFACSOC as those paragraphs do not form part of any claim against him.

III. CLAIM AGAINST PRICEWATERHOUSECOOPERS**A. PWC AND PWC'S ROLE****A.1 PWC**

261 Mr Dawkins does not plead to paragraph 261 of the SFACSOC as those paragraphs do not form part of any claim against him.

A.2 PWC'S Role

262-266 Mr Dawkins does not plead to paragraphs 262 to 266 of the SFACSOC as those paragraphs do not form part of any claim against him.

A.3 PWC Audit Team

267-269 Mr Dawkins does not plead to paragraphs 267 to 269 of the SFACSOC as those paragraphs do not form part of any claim against him.

B. FACTS RELEVANT TO THE CLAIM AGAINST PWC**B.1 Vocation**

270-272 Mr Dawkins does not plead to paragraphs 270 to 272 of the SFACSOC as those paragraphs do not form part of any claim against him.

B.2 BAWM and Aspin

273-279 Mr Dawkins does not plead to paragraphs 273 to 279 of the SFACSOC as those paragraphs do not form part of any claim against him.

B.3 Vocation's New Revenue Recognition Policy

280-283 Mr Dawkins does not plead to paragraphs 280 to 283 of the SFACSOC as those paragraphs do not form part of any claim against him.

B.4 The 2014 Victorian Funding Suspensions

284-288 Mr Dawkins does not plead to paragraphs 284 to 288 of the SFACSOC as those paragraphs do not form part of any claim against him.

C. PWC'S CONDUCT PRIOR TO 21 AUGUST 2014**C.1 PWC's Earlier Engagements**

289-290 Mr Dawkins does not plead to paragraphs 289-290 of the SFACSOC as those paragraphs do not form part of any claim against him.

C.2 PWC's Audit Work

291 Mr Dawkins does not plead to paragraph 291 of the SFACSOC as those paragraphs do not form part of any claim against him.

C.3 The knowledge of PWC and Bourke of the New Revenue Recognition Policy as at 15 August 2014

292 Mr Dawkins does not plead to paragraph 292 of the SFACSOC as those paragraphs do not form part of any claim against him.

C.4 The knowledge of PWC and Bourke of the Victorian Funding Suspensions as at 15 August 2014

293 Mr Dawkins does not plead to paragraph 293 of the SFACSOC as those paragraphs do not form part of any claim against him.

C.5 The knowledge of PWC and Bourke of the contents of Vocation's Appendix 4E as at 15-19 August 2014

294-297 Mr Dawkins does not plead to paragraphs 294 to 297 of the SFACSOC as those paragraphs do not form part of any claim against him.

C.6 PWC's August Representations to Vocation

298-300 Mr Dawkins does not plead to paragraphs 298 to 300 of the SFACSOC as those paragraphs do not form part of any claim against him.

D. VOCATION'S PUBLICATION OF THE FY14 RESULTS DOCUMENTS ON 21 AUGUST 2014**D.1 The ARC and Board approval of the FY14 Results Documents**

301-305 Mr Dawkins does not plead to paragraphs 301 to 305 of the SFACSOC as those paragraphs do not form part of any claim against him.

D.2 Contents of the FY14 Results Documents

306-309 Mr Dawkins does not plead to paragraphs 306 to 309 of the SFACSOC as those paragraphs do not form part of any claim against him.

D.3 Omissions from the FY14 Results Documents

310 Mr Dawkins does not plead to paragraph 310 of the SFACSOC as those paragraphs do not form part of any claim against him.

D.4 Vocation's reliance on PWC in issuing the FY14 Results Documents

311 Mr Dawkins does not plead to paragraph 311 of the SFACSOC as those paragraphs do not form part of any claim against him.

D.5 The partial corrective disclosure on 25 August 2014 in relation to the fact of the Victorian Investigations, and part of the Funding Suspensions

312-315 Mr Dawkins does not plead to paragraphs 312 to 315 of the SFACSOC as those paragraphs do not form part of any claim against him.

E. PWC'S CONDUCT BETWEEN 21 AUGUST 2014 AND 2 SEPTEMBER 2014**E.1 PWC's finalisation of PWC's audit**

316-322 Mr Dawkins does not plead to paragraphs 316 to 322 of the SFACSOC as those paragraphs do not form part of any claim against him.

E.2 The knowledge of PWC and Bourke of the New Revenue Recognition Policy as at 2 September 2014

323 Mr Dawkins does not plead to paragraph 323 of the SFACSOC as those paragraphs do not form part of any claim against him.

E.3 The knowledge of PWC and Bourke of the Victorian Funding Suspensions as at 2 September 2014

324 Mr Dawkins does not plead to paragraph 324 of the SFACSOC as those paragraphs do not form part of any claim against him.

E.4 The knowledge of PWC and Bourke of the contents of Vocation's FY14 Annual Report and FY14 Audited Financial Statements

325-326 Mr Dawkins does not plead to paragraphs 325 to 326 of the SFACSOC as those paragraphs do not form part of any claim against him.

E.5 PWC's September Representations to Vocation

327 Mr Dawkins does not plead to paragraph 327 of the SFACSOC as those paragraphs do not form part of any claim against him.

F. VOCATION'S APPROVAL AND PUBLICATION OF THE FY14 ANNUAL REPORT AND AUDITED FY14 FINANCIAL STATEMENTS ON 2-3 SEPTEMBER 2014

F.1 The Board Committee approval of the FY14 Annual Report

328-329 Mr Dawkins does not plead to paragraphs 328 to 329 of the SFACSOC as those paragraphs do not form part of any claim against him.

F.2 Contents of the FY14 Annual Report and Audited FY14 Financial Statements

330-331 Mr Dawkins does not plead to paragraphs 330 to 331 of the SFACSOC as those paragraphs do not form part of any claim against him.

F.3 Omissions from the FY14 Annual Report and Audited FY14 Financial Statements

332 Mr Dawkins does not plead to paragraph 332 of the SFACSOC as those paragraphs do not form part of any claim against him.

F.4 Vocation's reliance on PWC in issuing the FY14 Annual Report and FY14 Audited Financial Statements

333 Mr Dawkins does not plead to paragraph 333 of the SFACSOC as those paragraphs do not form part of any claim against him.

G. PWC'S SEPTEMBER REPRESENTATIONS TO ASX

334 Mr Dawkins does not plead to paragraph 334 of the SFACSOC as those paragraphs do not form part of any claim against him.

H. EVENTS AFTER 3 SEPTEMBER 2014

H.1 The Placement

334A-339 Mr Dawkins does not plead to paragraphs 334A to 339 of the SFACSOC as those paragraphs do not form part of any claim against him.

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

340-343 Mr Dawkins does not plead to paragraphs 340 to 343 of the SFACSOC as those paragraphs do not form part of any claim against him.

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

344-348 Mr Dawkins does not plead to paragraphs 344 to 348 of the SFACSOC as those paragraphs do not form part of any claim against him.

I. PWC'S AUGUST CONTRAVENING CONDUCT**I.1 August misleading or deceptive conduct**

349-357 Mr Dawkins does not plead to paragraphs 349 to 357 of the SFACSOC as those paragraphs do not form part of any claim against him.

I.2 August Section 1041E Contraventions**I.2.1 Section 1041E liability in respect of the PWC August Opinion**

358-363 Mr Dawkins does not plead to paragraphs 358 to 363 of the SFACSOC as those paragraphs do not form part of any claim against him.

I.2.2 Section 1041E liability in respect of the PWC August Representation

364-369 Mr Dawkins does not plead to paragraphs 364 to 369 of the SFACSOC as those paragraphs do not form part of any claim against him.

J. PWC'S SEPTEMBER CONTRAVENING CONDUCT**J.1 September Misleading or deceptive conduct**

370-378 Mr Dawkins does not plead to paragraphs 370 to 378 of the SFACSOC as those paragraphs do not form part of any claim against him.

J.2 September Section 1041E Contraventions**J.2.1 Section 1041E liability in respect of the PWC September Opinions**

379-385 Mr Dawkins does not plead to paragraphs 379 to 385 of the SFACSOC as those paragraphs do not form part of any claim against him.

J.2.2 Section 1041E liability in respect of the PWC September Representations

386-392 Mr Dawkins does not plead to paragraphs 386 to 392 of the SFACSOC as those paragraphs do not form part of any claim against him.

K. LOSS AND DAMAGE ARISING FROM PWC'S CONTRAVENTIONS**K.1 Market-based causation****K.1.1 Market-based causation for on-market purchasers**

393-394 Mr Dawkins does not plead to paragraphs 393 to 394 of the SFACSOC as those paragraphs do not form part of any claim against him.

K.1.2 Market-based causation for Placement purchasers

395 Mr Dawkins does not plead to paragraph 395 of the SFACSOC as those paragraphs do not form part of any claim against him.

K.1.3 Effect of the PWC Market Contraventions

396-398 Mr Dawkins does not plead to paragraphs 396 to 398 of the SFACSOC as those paragraphs do not form part of any claim against him.

K.2 Reliance

399 Mr Dawkins does not plead to paragraph 399 of the SFACSOC as those paragraphs do not form part of any claim against him.

K.3 No transaction case in respect of the Placement

400 Mr Dawkins does not plead to paragraph 400 of the SFACSOC as those paragraphs do not form part of any claim against him.

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

401-403 Mr Dawkins does not plead to paragraphs 401 to 403 of the SFACSOC as those paragraphs do not form part of any claim against him.

IV. CLAIMS AGAINST HUTCHINSON, GREWAL AND DAWKINS**A THE THIRD TO FIFTH RESPONDENTS**

404. Mr Dawkins admits paragraph 404 of the SFACSOC.

405. Mr Dawkins admits paragraph 405 of the SFACSOC.

406. Mr Dawkins admits paragraph 406 of the SFACSOC.

B VOCATION**B.1 Introduction**

407. Mr Dawkins admits paragraph 407 of the SFACSOC.

B.2 The Initial Public Offering

408. Mr Dawkins admits paragraph 408 of the SFACSOC.

409. Mr Dawkins admits paragraph 409 of the SFACSOC.

410. In answer to paragraph 410 of the SFACSOC, Mr Dawkins:

- a. admits that the Replacement Prospectus disclosed that at listing, Vocation would be formed through the merger of the Founding Companies, being AVANA, BAWM and CSIA (as defined in the Replacement Prospectus) and certain Ancillary Businesses (as defined in the Replacement Prospectus);
- b. relies on the terms of the Replacement Prospectus; and
- c. otherwise does not admit paragraph the paragraph.

B.3 BAWM and Aspin

411. In answer to paragraph 411 of the SFACSOC, Mr Dawkins:
- a. admits paragraph 411(a); and
 - b. otherwise does not admit the paragraph.
412. In answer to paragraph 412 of the SFACSOC, Mr Dawkins:
- a. says that BAWM represented a material proportion of the total contemplated assets to be held by Vocation and that revenue and profit derived from those assets would have represented a material part of Vocation's revenues and profit; and
 - b. otherwise does not admit the paragraph.
413. Mr Dawkins does not admit paragraph 413 of the SFACSOC.
414. In answer to paragraph 414 of the SFACSOC, Mr Dawkins:
- a. says that BAWM derived revenue from the BAWM Government Contracts; and
 - b. otherwise does not admit that paragraph.
415. Mr Dawkins admits paragraph 415 of the SFACSOC.
416. In answer to paragraph 416 of the SFACSOC, Mr Dawkins:
- a. relies on the terms of the BAWM Government Contracts;
 - b. subject to paragraph (a) above, admits paragraphs 416(a) to 416(i) and 416(k) of the SFACSOC; and
 - c. otherwise denies the paragraph.
417. In answer to paragraph 417 of the SFACSOC, Mr Dawkins:
- a. relies on the terms of the Aspin Government Contracts;
 - b. says that the Aspin Government Contracts contained terms materially to the same effect as the BAWM Government Contracts;
 - c. repeats paragraphs 415 and 416 above; and
 - d. otherwise denies the paragraph.

B.4 Vocation's Prospectus Recognition Policy

418. In answer to paragraph 418 of the SFACSOC, Mr Dawkins:
- a. admits that the Replacement Prospectus contained the table in paragraph 418 SFACSOC (save that the NPAT figure in the table should be "3.8" not "8.3");

- b. relies on the relevant parts of the Replacement Prospectus; and
- c. otherwise does not admit the paragraph.

419. In answer to paragraph 419 of the SFACSOC, Mr Dawkins:

- a. relies on the terms of the Replacement Prospectus; and
- b. otherwise does not admit the paragraph.

C RELEVANT EVENTS OF MID 2014

C.1 The New Revenue Recognition Policy

420. Mr Dawkins does not admit paragraph 420 of the SFACSOC.

421. Mr Dawkins does not admit paragraph 421 of the SFACSOC.

C.2 The Victorian Funding Suspensions

422. Mr Dawkins admits paragraph 422 of the SFACSOC.

423. Mr Dawkins admits paragraph 423 of the SFACSOC.

424. In answer to paragraph 424 of the SFACSOC, Mr Dawkins;

- a. admits that was the effect of the letter;
- b. says his view at the time, based on information provided by Mr Hutchinson and others, was that the BAWM Enrolment Suspension related only to the CSP and Warehousing courses and that he honestly and reasonably held that view until late-August 2014; and
- c. otherwise denies the paragraph.

425. Mr Dawkins admits paragraph 425 of the SFACSOC.

426. Mr Dawkins admits paragraph 426 of the SFACSOC on the basis that the words "2014 BAWM Government Contract and" were mistakenly included in paragraph 426 of the SFACSOC.

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

427-448. Mr Dawkins does not plead to paragraphs 427 to 448 of the SFACSOC as those paragraphs do not form part of any claim against him.

E. LIABILITY OF HUTCHINSON IN RESPECT OF 25 AUGUST CONDUCT

449-461. Mr Dawkins does not plead to paragraphs 449 to 461 of the SFACSOC as those paragraphs do not form part of any claim against him, save that:

- a. in answer to paragraph 450, Mr Dawkins:

i. admits that the Australian Financial Review published the article pleaded on 25 August 2014; and

ii. relies on the terms of that article; and

b. Mr Dawkins admits paragraph 451.

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 of the SFACSOC, Mr Dawkins repeats paragraphs 408 to 426 above.

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

463. Mr Dawkins admits paragraph 463 of the SFACSOC.

464. Mr Dawkins admits paragraph 464 of the SFACSOC.

465. In answer to paragraph 465 of the SFACSOC, Mr Dawkins:

a. relies on the content of the FY14 Annual Report;

b. subject to (a) above, admits that the FY14 Annual Report contains the statements in paragraph 465(a) and 465(b)(i) and (ii) of the SFACSOC (save that sub-paragraph (ii) should read "compared to the pro forma consolidated income statement"); and

c. otherwise does not admit the paragraph.

466. In answer to paragraph 466 of the SFACSOC, Mr Dawkins:

a. relies on the content of the FY14 Annual Report and FY14 Appendix 4E; and

b. otherwise does not admit the paragraph.

467. Mr Dawkins does not admit paragraph 467 of the SFACSOC.

F.2 3 September Representations made by Hutchinson and Dawkins

468. In answer to paragraph 468 of the SFACSOC, Mr Dawkins:

a. admits that Mr Dawkins participated in authorising the lodgement by Vocation with the ASX of the FY14 Annual Report (including the FY14 Financial Report and the FY14 Audited Financial Statements); and

b. otherwise denies the paragraph.

469. In answer to paragraph 469 of the SFACSOC, Mr Dawkins:

a. relies on the contents of the FY14 Annual Report;

- b. says that the declarations contained in paragraph 469(a)-(c) of the SFACSOC were stated to be "in the directors' opinion"; and
 - c. subject to paragraph 469(a) and (b) above, admits paragraph 469 of the SFACSOC.
470. Mr Dawkins denies paragraph 470 of the SFACSOC.
471. In answer to paragraph 471 of the SFACSOC, Mr Dawkins:
- a. relies on the contents of the FY14 Annual Report;
 - b. repeats paragraph 468 above; and
 - c. subject to 471(a) and (b), does not admit the paragraph.
472. Mr Dawkins denies paragraph 472 of the SFACSOC.
473. Mr Dawkins denies paragraph 473 of the SFACSOC.
474. Mr Dawkins denies paragraph 474 of the SFACSOC.
475. Mr Dawkins denies paragraph 475 of the SFACSOC.
476. Mr Dawkins denies paragraph 476 of the SFACSOC.
477. Mr Dawkins denies paragraph 477 of the SFACSOC.

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

- 478-518. Mr Dawkins does not plead to paragraphs 478 to 518 of the SFACSOC as those paragraphs do not form part of any claim against him.

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 of the SFACSOC, Mr Dawkins repeats paragraphs 449 to 461 above (to the extent they deal with paragraphs 450 and 451 of the SFACSOC).
520. Mr Dawkins does not admit to paragraph 520 of the SFACSOC.
521. Mr Dawkins admits paragraph 521 of the SFACSOC, 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 Finding Suspensions

522. In answer to paragraph 522 of the SFACSOC, Mr Dawkins:
- a. relies on the terms of the 18 September 2017 Australian Financial Review article titled "Victoria's withheld funding 'material' to Vocation";
 - b. subject to 522(a) above, admits paragraphs 522(a) and (c) of the SFACSOC;
 - c. says that the Australian Financial Review article refers to "channelling" as a practice whereby providers enrol students in courses other than what they intended for the purposes of receiving a greater subsidy level; and
 - d. otherwise denies the paragraph.

523. Mr Dawkins admits paragraph 523 of the SFACSOC.

524. In answer to paragraph 524 of the SFACSOC, Mr Dawkins:

- a. repeats paragraph 467 above; and
- b. otherwise denies the paragraph.

525. Mr Dawkins admits paragraph 525 of the SFACSOC.

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

526. Mr Dawkins admits paragraph 526 of the SFACSOC.

527. Mr Dawkins admits paragraph 527 of the SFACSOC.

528. In answer to paragraph 528 of the SFACSOC, Mr Dawkins:

- a. relies on the content of the 27 October Announcement;
- b. subject to (a) above admits paragraphs 528 (a) and (b) of the SFACSOC;
- c. subject to (a) above, says that the 27 October Announcement contained statements generally to the effect of paragraph 528(d) of the SFACSOC;
- d. says that the 27 October Announcement stated that "BAWM and Aspin will relinquish their funding contracts (expected to be early 2015)" and "all new enrolments in Victoria are being consolidated under Vocation's two other RTO's"; and
- e. otherwise denies the paragraph.

529. Mr Dawkins denies paragraph 529 of the SFACSOC.

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

I. LOSS AND DAMAGE ARISING FROM HUTCHINSON'S, GREWAL'S AND DAWKINS' CONTRAVENTIONS

I.1 Market-based causation

531. In answer to paragraph 531 of the SFACSOC, Mr Dawkins:

- a. admits Vocation Securities were offered on a market operated by the ASX and regulated by, inter alia, s 674(2) Corporations Act and ASX Listing Rules 3.1 and 4.3A;
- b. does not admit the Applicant and some Group Members acquired an interest in Vocation Securities on or after 21 August; and
- c. otherwise denies the paragraph.

532. In answer to paragraph 532 of the SFACSOC, Mr Dawkins:

- a. admits that the Placement was regulated by, inter alia, Chapter 6D of the Corporations Act; and
- b. otherwise does not admit the paragraph.

533. Mr Dawkins denies paragraph 533 of the SFACSOC.

534. Mr Dawkins denies paragraph 534 of the SFACSOC.

535. Mr Dawkins denies paragraph 535 of the SFACSOC.

536. Mr Dawkins does not admit paragraph 536 of the SFACSOC.

537. Mr Dawkins denies paragraph 537 of the SFACSOC.

538. Mr Dawkins denies paragraph 538 of the SFACSOC.

539. Mr Dawkins denies paragraph 539 of the SFACSOC.

540. Mr Dawkins denies paragraph 540 of the SFACSOC.

PROPORTIONATE LIABILITY

541. In further answer to the contraventions alleged against Mr Dawkins in Part IV of the SFACSOC, if Mr Dawkins is liable to the Applicant or Group Members in respect of those alleged contraventions (which is denied), and if the Applicant or Group Members have suffered loss or damage by reason of those alleged contraventions (which is also denied) (**Applicant's and Group Members' Loss and Damage**), then, for the purpose of this Defence only, Mr Dawkins says as follows:

- a. the claims against Mr Dawkins in the SFACSOC are each an "apportionable claim" within the meaning of s87CB(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**), s1041L of the *Corporations Act 2001* (**Corporations Act**), s12GP of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**) and s34 of the *Civil Liability Act 2002* (NSW) (**CLA**) and the equivalent provisions of the other States and Territories legislation;
- b. in relation to PWC:
 - i. Mr Dawkins repeats the allegations in paragraphs 261 to 403 of the SFACSOC; and
 - ii. by reason of sub-paragraph (b)(i) above, PWC is a concurrent wrongdoer within the meaning of s87CB(3) of the CCA, s1041L of the Corporations Act, s12GP of the ASIC Act and s34 of the CLA and the equivalent provisions of the other States and Territories legislation liable for the Applicant's and Group Members' Loss and Damage;
- c. further, or in the alternative, in relation to Vocation:
 - i. Mr Dawkins repeats:
 1. the allegations in paragraphs 4 to 135C and 246 to 257 of the SFACSOC;
 2. the allegations in paragraphs 136 to 210 of the Applicant's Further Amended Consolidated Statement of Claim filed 2 May 2018 (**FACSOC**); and
 3. the allegations in paragraphs 181, 183 to 184, 188 to 190 and 194 to 196 of the Statement of Third Cross-claim (Third Cross-claim) filed by PWC on 20 July 2018 (**Third Cross-Claim**); and
 - ii. by reason of sub-paragraph (c)(i) above, Vocation is a concurrent wrongdoer within the meaning of s87CB(3) of the CCA, s1041L of the Corporations Act, s12GP of the ASIC Act and s34 of the CLA and the equivalent provisions of the other States and Territories legislation liable for the Applicant's and Group Members' Loss and Damage;
- d. further, or in the alternative, in relation to The Partners of Johnson Winter Slattery (**JWS**):
 - i. Mr Dawkins repeats paragraphs 18 to 154 of the Statement of cross-claim dated 4 December 2018; and
 - ii. by reason of sub-paragraph (d)(i) above, JWS is a concurrent wrongdoer within the meaning of s87CB(3) of the CCA, s1041L of the Corporations Act,

s12GP of the ASIC Act and s34 of the CLA and the equivalent provisions of the other States and Territories legislation liable for the Applicant's and Group Members' Loss and Damage;

e. further, or in the alternative, in relation to the Third Respondent

(Mr Hutchinson):

i. Mr Dawkins repeats:

1. the allegations in paragraphs 2, 15 to 17, 30 to 35, 46 to 51, 62 to 67, 78 to 82, 91 to 95, 100 to 103, 110 to 114, 123 to 128, 139 to 144, 155 to 159, 168 to 172 and 197 to 230 of the Third Cross-Claim; and
2. the allegations made against Mr Hutchinson in paragraphs 404 to 540 of the SFACSOC; and

ii. by reason of sub-paragraph (e)(i) above, Mr Hutchinson is a concurrent wrongdoer within the meaning of s87CB(3) of the CCA, s1041L of the Corporations Act, s12GP of the ASIC Act and s34 of the CLA and the equivalent provisions of the other States and Territories legislation liable for the Applicant's and Group Members' Loss and Damage;

f. further, or in the alternative, in relation to the Fourth Respondent **(Mr Grewal):**

i. Mr Dawkins repeats:

1. the allegations in paragraphs 3, 30, 36 to 40, 46, 52 to 56, 62, 68 to 72, 78, 83 to 86, 100, 104 to 106, 110, 115 to 118, 123, 129 to 133, 139, 145 to 149, 155, 160 to 163, 168, 173 to 176 and 231 to 258 of the Third Cross-Claim; and
2. the allegations made against Mr Grewal in paragraphs 404 to 540 of the SFACSOC; and

ii. by reason of sub-paragraph (f)(i) above, Mr Grewal is a concurrent wrongdoer within the meaning of s87CB(3) of the CCA, s1041L of the Corporations Act, s12GP of the ASIC Act and s34 of the CLA and the equivalent provisions of the other States and Territories legislation liable for the Applicant's and Group Members' Loss and Damage;

g. further, or in the alternative, in relation to each of the Fourth, Fifth and Sixth Cross-Respondents to the Third Cross-Claim **(Mr Tucker, Ms Tredenick and Mr Halley):**

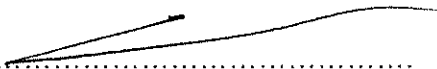
i. Mr Dawkins repeats:

1. the allegations against each of Mr Tucker, Ms Tredenick and Mr Halley in paragraphs 5 to 7, 21 to 29, 181 to 196 of the Third Cross-Claim; and
 2. by reason of sub-paragraph (g)(i) above, each of Mr Tucker, Ms Tredenick and Mr Halley is a concurrent wrongdoer within the meaning of s87CB(3) of the CCA, s1041L of the Corporations Act, s12GP of the ASIC Act and s34 of the CLA and the equivalent provisions of the other States and Territories legislation liable for the Applicant's and Group Members' Loss and Damage; and
- h. Mr Dawkins' 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 equivalent provisions of the other States and Territories legislation, 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 Dawkins' responsibility for that damage or loss.

SECTION 1318 DEFENCE

542. Further and in the alternative, if Mr Dawkins is otherwise liable in respect of the matters alleged against him in the SFACSOC, Mr Dawkins acted honestly and having regard to all the circumstances of these proceedings, he ought fairly be excused and wholly relieved from liability pursuant to section 1318 of the *Corporations Act*.

Date: 31 January 2020


.....
Signed by Andrew Salgo by his partner David Walter
Lawyer for the Fifth Respondent

This pleading was prepared by Baker McKenzie and settled by Marcus Pesman SC.

Certificate of lawyer

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

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

Date: 31 January 2020



Signed by David Walter

Schedule

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 Gréwal
 Fifth Respondent: John Sydney Dawkins

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
 First 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 (in liquidation) (ACN 166 631 330)

SIXTH CROSS-CLAIM

Cross-claimant: Mark Edward Hutchinson
First Cross-respondent: The Partners of Johnson Winter & Slattery

SEVENTH CROSS-CLAIM

Cross-claimant: Manvinder Grèwal
First Cross-respondent: The Partners of Johnson Winter & Slattery