

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: QUD182/2020  
File Title: COLIN GRAHAM INGRAM AND JUDY GAIL TULLOCH AS TRUSTEES FOR THE INGRAM SUPERANNUATION FUND v ARDENT LEISURE LIMITED (ACN 104 529 106) & ORS  
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Dated: 8/12/2021 3:44:01 PM AEST

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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Form 33  
Rule 16.32

**FOURTH RESPONDENT'S AMENDED DEFENCE TO AMENDED  
STATEMENT OF CLAIM**

**(Filed pursuant to Order 2 of the orders of Justice Derrington dated 7 December 2021)**

No. QUD 182 of 2020

Federal Court of Australia  
District Registry: Queensland  
Division: General

**Colin Graham Ingram and Judy Gail Tulloch as trustees for the Ingram  
Superannuation Fund**

Applicants

**Ardent Leisure Limited (ACN 104 529 106)**

First Respondent

**Ardent Leisure Management Limited (ACN 079 630 676)**

Second Respondent

**Ardent Leisure Group Limited (ACN 628 881 603)**

Third Respondent

**Craig Malcolm Davidson**

Fourth Respondent

**PRELIMINARY**

- A. Headings used in this Defence are for convenience only. They do not form part of the Defence.
- B. Unless the context otherwise requires, the Fourth Respondent adopts the defined terms in the Applicants' Amended Statement of Claim filed on 21 December 2020 (**Amended Statement of Claim**), but does not admit any factual assertions contained in, or in any way implied by, any defined term used in the Amended Statement of Claim.

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Filed on behalf of (name & role of party)	Craig Malcolm Davidson, Fourth Respondent
Prepared by (name of person/lawyer)	Michael Mills; Michelle Fox;
Law firm (if applicable)	Quinn Emanuel Urquhart & Sullivan
Tel (02) 9146 3500	Fax (02) 9146 3600
Email	<a href="mailto:michaelmills@quinnemanuel.com">michaelmills@quinnemanuel.com</a> ; <a href="mailto:michellefox@quinnemanuel.com">michellefox@quinnemanuel.com</a>
<b>Address for service</b> (include state and postcode)	Level 15, 111 Elizabeth Street, Sydney NSW 2000

C. This Defence responds to the Amended Statement of Claim on behalf of the Fourth Defendant.

D. The First, Second and Third Respondents are collectively referred to in this Defence as **Ardent**.

**A. THE APPLICANTS AND THE GROUP**

1. In answer to paragraph 1 of the Amended Statement of Claim, the Fourth Respondent:

(a) admits that the Applicants commenced the proceeding as a representative proceeding pursuant to Part IVA of the Federal Court of Australia Act 1979 (Cth) on their own behalf and on behalf of Group Members;

(b) denies that he caused any loss or damage to Group Members by reason of the conduct pleaded in the Amended Statement of Claim; and

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

2. The Fourth Respondent does not know and therefore cannot admit paragraph 2 of the Amended Statement of Claim.

3. The Fourth Respondent does not know and therefore cannot admit paragraph 3 of the Amended Statement of Claim.

**B. THE RESPONDENTS**

4. The Fourth Respondent admits paragraph 4 of the Amended Statement of Claim.

5. The Fourth Respondent admits paragraph 5 of the Amended Statement of Claim.

6. The Fourth Respondent admits paragraph 6 of the Amended Statement of Claim.

7. In answer to paragraph 7 of the Amended Statement of Claim, the Fourth Respondent:

(a) admits the paragraph; and

(b) says further that, at all material times:

(i) he was not a member of the Board of ALL, ALML or ALG;

(ii) save for a small number of occasions where he was asked to present to the Boards of ALL and ALML (which were identical)

(together, the **Ardent Board**) on a particular matter, for example, a new attraction at Dreamworld, he did not attend meetings of the Ardent Board;

- (iii) he reported directly to the Ardent Group Chief Executive Officer, being Mr Greg Shaw until March 2015, and Ms Deborah Thomas from March 2015;
- (iv) he was not a member of any of the sub-committees of the Ardent Board and did not attend meetings of any Ardent Board sub-committees;
- (v) he had a delegated financial authority of \$250,000 in respect of general expenditure and \$500,000 (budgeted) and \$250,000 (unbudgeted) capital expenditure; and

### **Particulars**

Schedule of Maximum Delegated Authorities.

- (vi) he has never worked as a ride operator at Dreamworld, or held any other operational position at Dreamworld, and otherwise had limited knowledge of the particular operation and operating procedures of specific rides at Dreamworld including the TRRR.

#### **B.1 ALL and AMLM**

- 8. In answer to paragraph 8 of the Amended Statement of Claim, the Fourth Respondent:
  - (a) relies on the full terms and effect of ss 111AP(1) and 674(1) of the Corporations Act and ASX Listing Rule 3.1; and
  - (b) otherwise admits the paragraph.
- 9. The Fourth Respondent admits paragraph 9 of the Amended Statement of Claim.
- 10. The Fourth Respondent admits paragraph 10 of the Amended Statement of Claim.
- 11. The Fourth Respondent admits paragraph 11 of the Amended Statement of Claim.
- 12. The Fourth Respondent admits paragraph 12 of the Amended Statement of Claim.

13. In answer to paragraph 13 of the Amended Statement of Claim, the Fourth Respondent:
- (a) says that the theme parks division accounted for between 21.3% (in FY2013) and 15.6% (in FY2016) of AAD's total revenue during the Relevant Period; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.

**Particulars**

2013 Ardent Leisure Group Annual Report; 2014 Ardent Leisure Group Annual Report; 2015 Ardent Leisure Group Annual Report; and 2016 Ardent Leisure Group Annual Report.

**B.2 Safety Committees**

14. In answer to paragraph 14 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits there was a safety, sustainability and environment committee within AAD comprised of members from AAD's board of directors (**AAD Safety Committee**);
  - (b) refers to and repeats paragraph 7 above;
  - (c) says further he did not attend any meetings of the AAD Safety Committee during the Relevant Period; and
  - (d) otherwise does not know and therefore cannot admit the paragraph.
15. In answer to paragraph 15 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits there was an Executive Safety Committee within Dreamworld;
  - (b) admits that he was a member of the Executive Safety Committee during the Relevant Period;
  - (c) denies that the members of the Executive Safety Committee included the Dreamworld Executive Team as defined in paragraph 16 of the Amended Statement of Claim;

**Particulars**

During the Relevant Period, the members of the Executive Safety Committee included, from time to time, the Fourth Respondent, Michael Dodd, Troy Margetts, Andrew Fyfe, Chris Deaves, Angus Hutchings, John Paull, Neal Hedges, Alex Navarro, Bob Seow Tan, Shane Green, Paul Callander, Guy Conolan, Megan Reid, Al Mucci, Kelly Hogan, Stephen Bullard, Katrina Anderson and Mark Thompson.

- (d) says that, during the Relevant Period, the Executive Safety Committee generally met quarterly; and
  - (e) otherwise denies the paragraph.
16. In answer to paragraph 16 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits that during the Relevant Period, the following roles reported to him:
    - (i) General Manager Technical Services;
    - (ii) General Manager Park Operations;
    - (iii) General Manager Life Sciences;
    - (iv) General Manager Commercial Operations;
    - (v) Executive General Manager Marketing and Sales;
    - (vi) Chief Financial Officer for Dreamworld;
    - (vii) General Manager People;

**Particulars**

Organisation chart as at 25 October 2016.

- (b) says further that:
  - (i) there was no General Manager for Safety during the period of his employment at Dreamworld;
  - (ii) between approximately September 2013 and February 2015, a Safety Advisor reported to him;
  - (iii) in February 2015, the then Safety Advisor was promoted to the role of Safety Manager, but continued to report to him until the Safety Manager ceased his employment at Dreamworld in December 2015;

- (iv) the role of Safety Manager was filled in March 2016, and between March 2016 and September 2016, the new Safety Manager reported to the Ardent Group Safety Manager, who in turn reported to the then Company Secretary of ALL and ALML;

### **Particulars**

Organisation chart as at 25 October 2016.

- (v) in September 2016, the Safety Manager began directly reporting to him; and
- (c) otherwise denies the paragraph.

### **B3. Officers of AAD**

17. In answer to paragraph 17 of the Amended Statement of Claim, the Fourth Respondent:
  - (a) admits that Thomas was appointed as a director of ALL and ALML on or around 1 December 2013;
  - (b) admits that Thomas was appointed Managing Director and Chief Executive Officer of AAD on or about 10 March 2015;
  - (c) admits that Thomas was responsible for the day-to-day management of AAD's business; and
  - (d) otherwise does not know and therefore cannot admit the paragraph.
  
18. In answer to paragraph 18 of the Amended Statement of Claim, the Fourth Respondent:
  - (a) admits that Davis was a director of ALL and ALML at all times during the Fourth Respondent's employment with Dreamworld;
  - (b) admits that Davis was the chair of the AAD Safety Committee for the financial years ending 30 June 2016 and 30 June 2017; and
  - (c) otherwise does not know and therefore cannot admit the paragraph.
  
19. In answer to paragraph 19 of the Amended Statement of Claim, the Fourth Respondent:

- (a) admits that Haslingden became a director of ALL and ALML in or around mid-2015;
  - (b) admits that Haslingden was a member of the AAD Safety Committee; and
  - (c) otherwise does not know and therefore cannot admit the paragraph.
20. In answer to paragraph 20 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits that Morris was a director of ALL and ALML at all times during the Fourth Respondent's employment with Dreamworld;
  - (b) admits that Morris was a member of the AAD Safety Committee; and
  - (c) otherwise does not know and therefore cannot admit the paragraph.
21. In answer to paragraph 21 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits that Venardos was a director of ALL and ALML at all times during the Fourth Respondent's employment with Dreamworld;
  - (b) admits that Venardos was a member of the AAD Safety Committee; and
  - (c) otherwise does not know and therefore cannot admit the paragraph.
22. In answer to paragraph 22 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits sub-paragraphs (a) and (b);
  - (b) in answer to sub-paragraph (c):
    - (i) refers to and repeats paragraphs 7, 14 and 16 above;
    - (ii) says that he provided regular expenditure reports for Dreamworld to the Group Chief Executive Officer and Group Chief Financial Officer;
    - (iii) denies that he was the direct report for Mr Richard Johnson, and says that Mr Johnson reported to the Ardent Group Chief Executive Officer and Ardent Board;



**Particulars**

- A. Organisation chart as at 25 October 2016.
  - B. Executive Services Agreement between MLOL and Richard Johnson dated 22 July 2009.
- (iv) denies that he was the direct report for Mr Angus Hutchings, and says that between the time of his appointment to the role of Chief Executive Officer of the Theme Parks Division and 25 October 2016, Mr Hutchings reported to the Company Secretary of Ardent;

**Particulars**

- Organisation chart as at 25 October 2016.
- (v) admits that he was the direct report for Mr Mark Thompson between approximately September 2016 and 25 October 2016;

**Particulars**

- Organisation chart as at 25 October 2016.
- (vi) denies that he was the direct report for Mr Andrew Fyfe, and says that Mr Fyfe had the role of Attractions Manager and reported to the General Manager Park Operations;

**Particulars**

- Organisation chart as at 25 October 2016.
- (vii) admits that he was the direct report for each of Mr Bob Tan, Mr Chris Deaves and Mr Troy Margetts at all material times during the Relevant Period;

**Particulars**

- Organisation chart as at 25 October 2016.
- (viii) says that sub-paragraphs (c)(vii) and (viii) paraphrase certain of the responsibilities set out in a Responsibility Statement he

signed in March 2015 (the **Responsibility Statement**), and relies on the content of the Responsibility Statement in full;

### **Particulars**

Responsibility Statement dated March 2015.

- (ix) does not know and therefore cannot admit sub-paragraph (c)(ix); and
  - (c) otherwise denies the paragraph.
23. In answer to paragraph 23 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7, 14, 16 and 22 above;
  - (b) does not know and therefore cannot admit that he was an officer of ALL and ALML within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12; and
  - (c) otherwise does not plead to the paragraph as it does not contain any allegation against him.
24. In answer to paragraph 24 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraph 23 above;
  - (b) does not know and therefore cannot admit that any information of which he became aware or which ought reasonably to have come into his possession was information of which each of ALL and ALML was aware (as 'aware' is defined in ASX listing rule 19.12); and
  - (c) otherwise does not plead to the paragraph as it does not contain any allegation against him.

## **C. THE THUNDER RIVER RAPIDS RIDE AND ITS SAFETY**

### **C.1 The Thunder River Rapids Ride**

25. The Fourth Respondent admits paragraph 25 of the Amended Statement of Claim.

26. The Fourth Respondent admits paragraph 26 of the Amended Statement of Claim.
27. In answer to paragraph 27 of the Amended Statement of Claim, the Fourth Respondent:
  - (a) denies that the TRRR was approximately 450 metres long and says that the TRRR water channel was approximately 410 meters long; and
  - (b) otherwise admits the paragraph.
28. The Fourth Respondent admits paragraph 28 of the Amended Statement of Claim.

## **C.2 Operation of the TRRR**

29. In answer to paragraph 29 of the Amended Statement of Claim, the Fourth Respondent:
  - (a) admits the paragraph;
  - (b) says that before working on the TRRR, operators were trained in and had operated on all of the other rides at Dreamworld; and
  - (c) says further that it required a minimum of two operators, one being a Level 3 operator and one being a Level 2 operator.
30. In answer to paragraph 30 of the Amended Statement of Claim, the Fourth Respondent:
  - (a) refers to and repeats paragraph 7 above; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.
31. In answer to paragraph 31 of the Amended Statement of Claim, the Fourth Respondent:
  - (a) refers to and repeats paragraph 7 above; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.
32. In answer to paragraph 32 of the Amended Statement of Claim, the Fourth Respondent:
  - (a) refers to and repeats paragraph 7 above; and

- (b) otherwise does not know and therefore cannot admit the paragraph.
33. In answer to paragraph 33 of the Amended Statement of Claim, The Fourth Respondent:
- (a) refers to and repeats paragraph 7 above; and
- (b) otherwise does not know and therefore cannot admit the paragraph.
34. In answer to paragraph 34 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraph 7 above;
- (b) says that the Emergency Stop Button was coloured as a red and yellow e-stop button; and
- (c) otherwise does not know and therefore cannot admit the paragraph.
35. In answer to paragraph 35 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraph 7 above; and
- (b) otherwise does not know and therefore cannot admit the paragraph.
36. In answer to paragraph 36 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7 and 22 above; and
- (b) otherwise does not know and therefore cannot admit the paragraph.

### **C.3 Training and supervision**

37. In answer to paragraph 37 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraph 7 above;
- (b) says the training for a ride operator was conducted at the ride, by an instructing operator, who provided the trainee with instructions and assessed the trainee's competence in the role while the ride was in operation; and

- (c) otherwise does not know and therefore cannot admit the paragraph.
38. In answer to paragraph 38 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraph 7 above;
- (b) says the training for a ride operator was conducted at the ride, by an instructing operator, who provided the trainee with instructions and assessed the trainee's competence in the role while the ride was in operation;
- (c) says the training for ride operators, including in respect of the TRRR, included an assessment of competency regarding, amongst other things, start up and shutdown procedures; and
- (d) otherwise does not know and therefore cannot admit the paragraph.
39. In answer to paragraph 39 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7, 22, 32, 37 and 38 above;
- (b) says that training for operators included an assessment of competency regarding start up and shutdown procedures; and
- (c) otherwise does not know and therefore cannot admit the paragraph.

#### **C.4 TRRR modifications**

40. The Fourth Respondent admits paragraph 40 of the Amended Statement of Claim.
41. In answer to paragraph 41 of the Amended Statement of Claim, the Fourth Respondent:
- (a) does not know and therefore cannot admit the paragraph; and
- (b) says further that the pleaded event predates his employment with Dreamworld.
42. Save to say that the configuration of the Dry Dock Rails and the Gap on the TRRR did not alter during the time of his employment at Dreamworld, the

Fourth Respondent does not know and therefore cannot admit paragraph 42 of the Amended Statement of Claim.

43. In answer to paragraph 43 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7, 22 and 41 above;
  - (b) does not know and therefore cannot admit the paragraph;
  - (c) says further that no one employed at Dreamworld, including Mr Tan, Mr Deaves, Mr Margetts, Mr Hutchings, or Mr Thompson, or any of the external consultants who maintained, operated, serviced or inspected the TRRR ever informed him that the Slat Removal was a risk to the health and safety of passengers on the ride; and
  - (d) says further that despite inspecting the TRRR on numerous occasions between the commencement of his employment at Dreamworld and 25 October 2016, WHSQ did not identify the Slat Removal as a risk to the health and safety of passengers.

#### **Particulars**

WHSQ conducted a number of site visits between September 2013 and 25 October 2016 and did not issue any corrective notices or take any enforcement action in respect of the Slat Removal (or any other issue) on the TRRR.

44. In answer to paragraph 44 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7, 22, 42 and 43 above;
  - (b) does not know and therefore cannot admit the paragraph;
  - (c) says further that no one employed at Dreamworld, including Mr Tan, Mr Deaves, Mr Margetts, Mr Hutchings, or Mr Thompson, or any of the external consultants who maintained, operated, serviced or inspected the TRRR ever informed him that the installation of the Dry Dock Rails, or the Gap, was a risk to the health and safety of passengers on the ride; and

- (d) says further that despite inspecting the TRRR on numerous occasions between the commencement of his employment at Dreamworld and 25 October 2016, WHSQ did not identify the Dry Dock Rails or the Gap as a risk to the health and safety of passengers.

### Particulars

WHSQ conducted a number of site visits between September 2013 and 25 October 2016 and did not issue any corrective notices or take any enforcement action in respect of the Dry Dock Rails (or any other issue) on the TRRR.

45. In answer to paragraph 45 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7, 22 and 41 to 44 above; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.
46. In answer to paragraph 46 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7, 22 and 41 to 44 above;
  - (b) says no one employed at Dreamworld, including Mr Tan, Mr Deaves, Mr Margetts, Mr Hutchings, or Mr Thompson, or any of the external consultants who maintained, operated, serviced or inspected the TRRR ever informed him that any engineering solution was needed to respond to a risk to the health and safety of passengers on the TRRR; and
  - (c) otherwise does not know and therefore cannot admit the paragraph.

### **C.5 TRRR incidents**

47. In answer to paragraph 47 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7 and 22 above;
  - (b) says that he was made aware of an incident having occurred in 2001 at the TRRR (the **2001 Incident**) when the incident was discussed at a Dreamworld leadership meeting on 13 November 2014 in the context of issues associated with ride operators breaching procedure, and further as

a result of having subsequently received an email from Bob Tan on 13 November 2014 (**Bob Tan Email**);

- (c) says that after receiving the Bob Tan Email, he made further enquiries of Mr Tan and Mr Deaves and satisfied himself that the 2001 Incident could not be repeated because, amongst other things, modifications had been made to the wooden platform at the TRRR and Dreamworld's operating procedures required a minimum of two operators to be present at all times during the operation of the TRRR;
- (d) says he was not aware at any time during the Relevant Period of other incidents having occurred at the TRRR between 2001 and 2011 and says further that such incidents pre-date his employment; and
- (e) otherwise does not know and therefore cannot admit the paragraph.

48. In answer to paragraph 48 of the Amended Statement of Claim, the Fourth Respondent:

- (a) refers to and repeats paragraph 47 above;
- (b) admits that an incident occurred in November 2014 at the TRRR;
- (c) says further that an internal investigation was conducted into the 2014 incident, which concluded that the operator had breached procedure. Following a disciplinary process, the operator was subsequently dismissed as a result of the 2014 Incident; and

### **Particulars**

Letter to Termination of Employment to Stephen Buss dated 14 November 2014 .

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

49. In answer to paragraph 49 of the Amended Statement of Claim, the Fourth Respondent:

- (a) refers to and repeats paragraphs 7, 22, 47 and 48 above;
- (b) says with the exception of the 2001 Incident and the Bob Tan Email, no one employed at Dreamworld, including Mr Tan, Mr Deaves, Mr Margetts, Mr Hutchings or Mr Thompson, or any of the external



consultants engaged to maintain or inspect the TRRR over the years, ever informed him of a risk to the health and safety of guests on the TRRR which had been identified following an incident on the TRRR; and

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

50. In answer to paragraph 50 of the Amended Statement of Claim, the Fourth Respondent:

(a) refers to and repeats paragraphs 47 to 49 above;

(b) says that AAD conducted an investigation and identified and implemented corrective actions following the 2014 Incident;

(c) says further that no other incidents occurred on the TRRR during his employment at Dreamworld prior to 25 October 2016; and

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

51. In answer to paragraph 51 of the Amended Statement of Claim, the Fourth Respondent:

(a) refers to and repeats paragraphs 7, 22 and 47 to 50 above;

(b) says Ardent did conduct an investigation and identified and implemented corrective actions following the 2014 Incident; and

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

### **C.6 JAK's safety audits**

52. In answer to paragraph 52 of the Amended Statement of Claim, the Fourth Respondent:

(a) admits that JAK conducted an audit in 2003;

(b) says that JAK's 2003 audit predates his employment with Dreamworld; and

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

53. In answer to paragraph 53 of the Amended Statement of Claim, the Fourth Respondent:

- (a) admits that JAK conducted an audit in 2004;
  - (b) says that JAK's 2004 audit predates his employment with Dreamworld;  
and
  - (c) otherwise does not know and therefore cannot admit the paragraph.
54. In answer to paragraph 54 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits that JAK conducted an audit in 2006;
  - (b) says that JAK's audit predates his employment with Dreamworld; and
  - (c) otherwise does not know and therefore cannot admit the paragraph.
55. In answer to paragraph 55 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits JAK conducted an audit in 2009;
  - (b) says that JAK's 2009 audit predates his employment with Dreamworld;  
and
  - (c) otherwise does not know and therefore cannot admit the paragraph.
56. In answer to paragraph 56 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits that JAK conducted an audit in 2013;
  - (b) says that JAK's 2013 audit predates his employment with Dreamworld;  
and
  - (c) otherwise does not know and therefore cannot admit the paragraph.
57. In answer to paragraph 57 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7, 22 and 52 to 56 above and says that each of the JAK audits pleaded in paragraphs 52 to 56 of the Amended Statement of Claim predate his employment with Dreamworld; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.

### **C.7 DRA's safety audits**

58. In answer to paragraph 58 of the Amended Statement of Claim, the Fourth Respondent:

- (a) admits that between 4 February 2013 and 8 February 2013, DRA conducted an audit of Dreamworld's safety management systems against the National Audit Tool and that Dreamworld had received a score of 41%;
- (b) says further that:
  - (i) the Managing Director of DRA, David Randall was and is a RPEQ, a fellow of the Safety Institute of Australia and an Exemplar Global certified OHS auditor;
  - (ii) the pass standard for the National Audit Tool is set by State government regulators in order to obtain approval to self-insure;

#### **Particulars**

Letter from DRA Safety Specialists to Angus Hutchings, dated 11 July 2012.

- (iii) the National Audit Tool was voluntarily adopted by Dreamworld as a convenient audit tool in circumstances where ALL had no intention of self-insuring and was not otherwise required or obliged to conduct an audit against this standard;
- (iv) the National Audit Tool is concerned with the formal documentation of safety management systems;
- (v) the absence of a passing score did not indicate that Dreamworld was unsafe;
- (vi) the 2013 DRA audit concluded that:
  - (1) the physical requirements of the legislation was being met in most areas but could not be supported with records or procedures;
  - (2) the rides and attractions at Dreamworld were well maintained with competent staff, however there was no documentary evidence to support the process; and

**Particulars**

DRA Audit Report dated 4-8 February 2013, executive summary.

- (c) otherwise admits the paragraph.
59. In answer to paragraph 59 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraph 58 above; and
  - (b) otherwise admits the paragraph.
60. In answer to paragraph 60 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraph 58 above; and
  - (b) otherwise admits the paragraph.
61. The Fourth Respondent admits paragraph 61 of the Amended Statement of Claim.
62. In answer to paragraph 62 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits that Dreamworld employed Mr Cruz, a first year engineer, on or around 29 September 2014 and that he was tasked with conducting an internal audit of the records maintained by Dreamworld in relation to its rides by reference to AS 3533;
  - (b) says further that Mr Cruz, in accordance with instructions from his supervisor, prioritised the highest risk rides first according to the ride's classification under the applicable Australian Standard, such that rides with a class 5 classification (being the highest risk) were audited first, followed by class 4 rides, and the lower risk rides last;
  - (c) says the TRRR was a class 2 ride;
  - (d) admits that by the end of the Relevant Period, Mr Cruz had not yet commenced an audit of the documentation relating to the TRRR against AS 3533; and

- (e) otherwise denies the paragraph.

### **C.8 Staff concerns**

63. In answer to paragraph 63 of the Amended Statement of Claim, the Fourth Respondent:

- (a) refers to and repeats paragraphs 47 and 48 above;
- (b) admits that he received the Bob Tan Email on 13 November 2014, which referred to the 2001 Incident on the TRRR;

- (c) says that the Bob Tan Email attached several photographs and stated:

*“Further to today’s Leadership meeting on the procedures breeches [sic] / deviations, below are just a peek of relevant incidents to bring home the point, if not already stressed by Craig [...] This occurred on the rapid ride several years ago, and fortunately there was no injury except for property damage. I shudder to think if there had been guests on the rafts...”*

- (d) otherwise relies on the Bob Tan Email in full;

### **Particulars**

Email from Bob Tan to Dreamworld Leadership Team on 13 November 2014, subject “Re: Ride incidents of relevance”.

- (e) says that prior to the Bob Tan Email, the 2001 Incident was discussed at a Dreamworld leadership meeting earlier on 13 November 2014, in the context of issues associated with ride operators breaching procedure;
- (f) says that after receiving the Bob Tan Email, he made further enquiries of Mr Tan and Mr Deaves and satisfied himself that the 2001 Incident could not be repeated because, amongst other things, modifications had been made to the wooden platform at the TRRR and Dreamworld’s operating procedures required a minimum of two operators to be present at all times during the operation of the TRRR; and
- (g) otherwise denies the paragraph.

64. The Fourth Respondent does not know and therefore cannot admit paragraph 64 of the Amended Statement of Claim.

65. The Fourth Respondent does not know and therefore cannot admit paragraph 65 of the Amended Statement of Claim.
66. In answer to paragraph 66 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 63 to 65 above;
  - (b) in answer to sub-paragraph (b), says that the allegations pleaded in paragraphs 63 to 65 do not relate to staffing levels for the TRRR;
  - (c) says that no one employed at Dreamworld, including Mr Tan, Mr Deaves, Mr Margetts, Mr Hutchings or Mr Thompson, ever informed him that modifications to the TRRR had been recommended but not implemented; and
  - (d) otherwise does not know and therefore cannot admit the paragraph.

### **C.9 Hazard identification and risk assessment**

67. In answer to paragraph 67 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7, 22, 45 and 50 above; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.

### **C.10 Engineering response to risks**

68. In answer to paragraph 68 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7, 22, 46, 51 and 57 above;
  - (b) says no one employed at Dreamworld, including Mr Tan, Mr Deaves, Mr Margetts, Mr Hutchings or Mr Thompson, or any of the external consultants who maintained, operated, serviced or inspected the TRRR ever informed him that any engineering solution was needed to respond to a risk to the health and safety of passengers on the TRRR; and
  - (c) otherwise does not know and therefore cannot admit the paragraph.

**C.11 Record keeping**

69. In answer to paragraph 69 of the Amended Statement of Claim, the Fourth Respondent:
- (a) says Dreamworld kept records of tests, inspections, maintenance, commissioning and alterations carried out on the TRRR during the time of his employment with Dreamworld; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.

**C.12 Regulatory Contraventions**

70. The Fourth Respondent admits paragraph 70 of the Amended Statement of Claim.
71. The Fourth Respondent does not plead to paragraph 71 of the Amended Statement of Claim as it does not contain any allegation against him.
72. The Fourth Respondent does not plead to paragraph 72 of the Amended Statement of Claim as it does not contain any allegation against him.
73. The Fourth Respondent does not plead to paragraph 73 of the Amended Statement of Claim as it does not contain any allegation against him.
74. The Fourth Respondent admits paragraph 74 of the Amended Statement of Claim.
75. The Fourth Respondent admits paragraph 75 of the Amended Statement of Claim.
76. The Fourth Respondent admits paragraph 76 of the Amended Statement of Claim.
77. The Fourth Respondent does not plead to paragraph 77 of the Amended Statement of Claim as it does not contain any allegation against him.
78. The Fourth Respondent does not plead to paragraph 78 of the Amended Statement of Claim as it does not contain any allegation against him.
79. In answer to paragraph 79 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 70 and 78 above; and

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

### **C.13 Australian Standards**

80. The Fourth Respondent does not plead to paragraph 80 of the Amended Statement of Claim as it does not contain any allegation against him.
81. In answer to paragraph 81 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 41 to 44 and 47 to 48, above and says the Slat Removal and installation of the Dry Dock Rails predate his employment with Dreamworld; and
- (b) otherwise does not know and therefore cannot admit the paragraph.
82. The Fourth Respondent does not plead to paragraph 82 of the Amended Statement of Claim as this paragraph contains no allegation against him.
83. The Fourth Respondent does not know and therefore cannot admit paragraph 83 of the Amended Statement of Claim.
84. The Fourth Respondent does not plead to paragraph 84 of the Amended Statement of Claim as this paragraph contains no allegation against him.
85. In answer to paragraph 85 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7 and 22 above; and
- (b) otherwise does not know and therefore cannot admit the paragraph.
86. In answer to paragraph 86 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 80 to 85 above; and
- (b) otherwise does not know and therefore cannot admit the paragraph.

### **C.14 International Standards**

87. The Fourth Respondent does not plead to paragraph 87 of the Amended Statement of Claim as this paragraph contains no allegation against him.



88. The Fourth Respondent does not plead to paragraph 88 of the Amended Statement of Claim as this paragraph contains no allegation against him.
89. The Fourth Respondent does not know and therefore cannot admit paragraph 89 of the Amended Statement of Claim.
90. In answer to paragraph 90 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 87 to 89 above; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.

### **C.15 Registration**

91. The Fourth Respondent admits paragraph 91 of the Amended Statement of Claim.
92. The Fourth Respondent admits paragraph 92 of the Amended Statement of Claim.
93. In answer to paragraph 93 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits the paragraph; and
  - (b) says Ardent was granted a further extension by WHSQ until 1 December 2016.

### **Particulars**

Email from Yvan Contreras to Mark Thompson on 5 October 2016 at or around 1:37pm.

94. In answer to paragraph 94 of the Amended Statement of Claim, the Fourth Respondent:
- (a) says Mr Polley was engaged in August 2016 to carry out the annual inspection of the Class 2 rides (being 13 rides in total) at Dreamworld, since the inspection of the smaller rides had already been completed;

**Particulars**

- A. Email from Mark Thompson to Michael Chan on 29 September 2016 at or around 3:05pm.
  - B. Memorandum produced by Tom Polley, re “2016 Annual Mechanical and Structural Inspections of Class 2 Amusement Devices”.
- (b) says that Mr Polley was a Registered Professional Engineer in Queensland (**RPEQ**) and held himself out as having extensive experience in the amusement park industry; and
- (c) otherwise denies the paragraph.
95. In answer to paragraph 95 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits Mr Thompson, on behalf of ALL, emailed WHS on 29 September 2016;
  - (b) says that the email stated, as was the case, that the inspection of the TRRR had been completed; and

**Particulars**

Email from Mark Thompson to Michael Chan on 29 September 2016.

- (c) otherwise denies the paragraph.
96. In answer to paragraph 96 of the Amended Statement of Claim, the Fourth Respondent:
- (a) says that Mr Polley inspected the TRRR on 22 and 29 September 2016;
  - (b) says that Mr Polley issued a certificate in respect of the TRRR dated 17 October 2016;

**Particulars**

Rapid Ride 2016 Annual Mechanical and Structure Inspection Certificate/ Report.

- (c) relies upon the contents of the certificate referred to in sub-paragraph (b) above in full;

- (d) says that Mr Polley certified the TRRR on 17 October 2016; and
  - (e) otherwise denies the paragraph.
97. In answer to paragraph 97 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 94 to 96 above;
  - (b) admits sub-paragraph (c);
  - (c) says that Mr Polley held himself out as being a ‘competent person’; and
  - (d) otherwise does not know and therefore cannot admit the paragraph.
98. In answer to paragraph 98 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraph 97 above; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.

## **D. THE DREAMWORLD TRAGEDY**

### **D.1 The Incident**

99. In answer to paragraph 99 of the Amended Statement of Claim, the Fourth Respondent:
- (a) says that the passenger referred to as “Ebony Goodchild” is known as Ebony Turner;
  - (b) says further that passengers Ebony Turner and Kieran Low were aged 12 and 10 years old respectively at the time of the Incident; and
  - (c) otherwise admits the paragraph.

### **D.2 Events following the Incident**

100. Save to say Dreamworld issued press statements about the Incident at approximately 4.45pm and 8pm on 25 October 2016, the Fourth Respondent otherwise admits paragraph 100 of the Amended Statement of Claim.
101. The Fourth Respondent admits paragraph 101 of the Amended Statement of Claim.

102. In answer to paragraph 102 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits that the price of AAD stapled securities declined on 25 and 26 October 2016;
  - (b) admits that Dreamworld was closed for 45 days and reopened on 10 December 2016;
  - (c) admits that AAD recognised a statutory loss of \$49.4 million for the half year ending 31 December 2016;
  - (d) admits that the price of AAD stapled securities declined on 23 February 2017; and
  - (e) otherwise denies the paragraph.
103. In answer to paragraph 103 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits that the AAD 2017 Annual Report stated that it had completed a multi-tiered mechanical and operational safety review following the Incident;
  - (b) admits sub-paragraph (b);
  - (c) save to say that the new acting Chief Executive Officer of the Theme Parks Division was only appointed on 2 July 2018, otherwise admits sub-paragraph (c); and
  - (d) otherwise does not know and therefore cannot admit the paragraph.

### **Particulars**

The announcements particularised in sub-paragraphs (d), (e) and (f) of paragraph 103 of the Amended Statement of Claim post-date the Fourth Respondent's employment.

## **E. CONTRAVENTIONS**

### **E.1 Misleading or Deceptive Conduct**

104. In answer to paragraph 104 of the Amended Statement of Claim, the Fourth Respondent:

- (a) admits that a statement to the effect of the Website Safety Statement was published on Dreamworld’s website from the time when he commenced in the role of Chief Executive Officer of the Theme Parks Division until on or about 7 January 2015, at the following URL: <https://www.dreamworld.com.au/Rides/Maintenance/>;
  - (b) says that, once in Dreamworld’s website, in order to view the Website Safety Statement, consumers had to click on a page entitled “Rides” and a further page entitled “Maintenance”;
  - (c) says that he was not employed as at 12 April 2013 when the Website Safety Statement is alleged to have been first published;
  - (d) says that he was not involved in the preparation of the Website Safety Statement; and
  - (e) otherwise does not know and therefore cannot admit the paragraph.
105. In answer to paragraph 105 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits the paragraph;
  - (b) refers to and repeats paragraphs 7 and 14 above and says that the 2013 Annual Report was prepared prior to his employment at Dreamworld;
  - (c) says further that the Annual Report Safety Statement was part of Ardent’s Corporate Governance Statements in its Annual Reports, which included a total of 8 principles, and with the exception of the 2013 Annual Report, was published as a separate annexure to the Annual Report;

### **Particulars**

The statement appears on page 10 of 141 in the 2013 Annual Report; page 139 of 154, in a separate annexure of the 2014 Annual Report; page 141 of 154 in a separate annexure of the 2015 Annual Report; and page 152 of 155 in a separate annexure of the 2016 Annual Report.

- (d) says further that the aspect of principle 7 which is said in paragraph 105 of the Amended Statement of Claim to constitute the Annual Report Safety Statement, was published under the heading: “Safety,

Sustainability and Environment Committee”, being the committee which the Applicants otherwise refers to as the “AAD Safety Committee”;

- (e) says he was never involved in preparing or reviewing Ardent’s Corporate Governance Statement, including principle 7; and
  - (f) relies on the content of the Corporate Governance Statements in each of Ardent’s Annual Reports in full.
106. The Fourth Respondent does not plead to paragraph 106 of the Amended Statement of Claim as it does not contain any allegations against him.
107. The Fourth Respondent does not plead to paragraph 107 of the Amended Statement of Claim as it does not contain any allegations against him.
108. The Fourth Respondent does not plead to paragraph 108 of the Amended Statement of Claim as it does not contain any allegations against him.
109. In answer to paragraph 109 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 14 to 15 and 29 to 98 above; and
  - (b) otherwise does not plead to the paragraph as it does not contain any allegations against him.
110. In answer to paragraph 110 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 14 to 15 and 29 to 98 above; and
  - (b) otherwise does not plead to the paragraph as it does not contain any allegations against him.
111. In answer to paragraph 111 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 14 to 15 and 29 to 98 above; and
  - (b) otherwise does not plead to the paragraph as it does not contain allegations against him.

112. In answer to paragraph 112 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 14 to 15 and 29 to 98 above; and
  - (b) otherwise does not plead to the paragraph as it does not contain allegations against him.
113. In answer to paragraph 113 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 104 to 112 above; and
  - (b) does not know and therefore cannot admit the paragraph.

## **E.2 Continuous Disclosure Contravention**

114. In answer to paragraph 114 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 29 to 98 above; and
  - (b) denies the paragraph.
115. In answer to paragraph 115 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraph 114 above;
  - (b) says that if the “Incident Information” referred to in paragraph 114(a), existed (which is denied), it would be in the nature of an opinion or opinions; and
  - (c) otherwise denies the paragraph.
116. In answer to paragraph 116 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraph 114 above;
  - (b) says that if the “Incident Impact Information” referred to in paragraph 114(b) existed (which is denied), it would be in the nature of an opinion or opinions; and
  - (c) otherwise denies the paragraph.

117. In answer to paragraph 117 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 114 to 116 above; and
  - (b) admits that the Incident Information and the Incident Impact Information were not generally available within the meaning of section 676 of the Corporations Act as at and from the commencement of the Relevant Period and says further that the Incident Information and the Incident Impact Information did not exist at and from the commencement of the Relevant Period, as pleaded at paragraph 114 above, and so was not information for the purposes of section 676 of the Corporations Act.
118. In answer to paragraph 118 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 114 to 117 above; and
  - (b) denies the paragraph.
119. In answer to paragraph 119 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 114 to 118 above;
  - (b) says that if the Incident Information and the Incident Impact Information existed (which is denied):
    - (i) the information comprised matters of supposition or was insufficiently definite to warrant disclosure; and
    - (ii) a reasonable person would not expect the information to be disclosed; and
  - (c) otherwise denies the paragraph.
120. In answer to paragraph 120 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 114 to 119 above; and
  - (b) denies the paragraph.



121. The Fourth Respondent does not plead to paragraph 121 of the Amended Statement of Claim as it does not contain any allegations against him.
122. In answer to paragraph 122 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 114 to 121 above; and
  - (b) denies the paragraph.

### **E.3 Continuing Nature of the Contraventions**

123. In answer to paragraph 123 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 104 to 122 above; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.

## **F. CONTRAVENING CONDUCT OF DAVIDSON**

124. In answer to paragraph 124 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7, 22, 104, 105 and 114 to 121 above;
  - (b) as to sub-paragraph (f), denies that the Incident Information and the Incident Impact Information existed, and otherwise does not know and therefore cannot admit the sub-paragraph; and
  - (c) otherwise admits the paragraph.
125. In answer to paragraph 125 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7, 22, 46 to 51, 57 and 68 above; and
  - (b) denies the paragraph.
126. In answer to paragraph 126 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 114 to 121 above; and
  - (b) denies the paragraph.

127. In answer to paragraph 127 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 7, 22 and 104 to 121 above;
  - (b) admits sub-paragraphs (a) and (b) and says further that, in light of the matters pleaded in paragraphs 104 to 113 above, no qualification or correction was necessary;
  - (c) as to sub-paragraph (c), denies that the Incident Information and the Incident Impact Information existed; and
  - (d) otherwise denies the paragraph.
128. In answer to paragraph 128 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 124 to 127 above; and
  - (b) denies the paragraph.
129. In answer to paragraph 129 of the Amended Statement of Claim, the Fourth Respondent:
- (a) refers to and repeats paragraphs 124 to 127 above; and
  - (b) denies the paragraph.

## **G. CONTRAVENING CONDUCT CAUSED LOSS**

### **G.1 Market based causation**

130. In answer to paragraph 130 of the Amended Statement of Claim, the Fourth Respondent:
- (a) admits sub-paragraphs (a) and (b);
  - (b) does not know and therefore cannot admit sub-paragraph (c);
  - (c) refers to and repeats paragraphs 104 to 121 above; and
  - (d) otherwise denies the paragraph.
131. The Fourth Respondent denies paragraph 131 of the Amended Statement of Claim.

**G.2 Reliance**

132. In answer to paragraph 132 of the Amended Statement of Claim, the Fourth Respondent:

- (a) refers to and repeats paragraphs 104 to 121 above; and
- (b) otherwise denies the paragraph.

**G.3 Loss or Damage suffered by the Applicants and Group Members**

133. The Fourth Respondent denies paragraph 133 of the Amended Statement of Claim.

**H. LIABILITY OF ALG**

134. In answer to paragraph 134 of the Amended Statement of Claim, the Fourth Respondent:

- (a) refers to and repeats paragraph 22(a) above;
- (b) says the events referred to occurred after the end of his employment at Dreamworld; and
- (c) otherwise does not know and therefore cannot admit the paragraph.

135. In answer to paragraph 135 of the Amended Statement of Claim, the Fourth Respondent:

- (a) refers to and repeats paragraph 22(a) above;
- (b) says the events referred to occurred after the end of his employment at Dreamworld; and
- (c) otherwise does not know and therefore cannot admit the paragraph.

136. In answer to paragraph 136 of the Amended Statement of Claim, the Fourth Respondent:

- (a) refers to and repeats paragraph 22(a) above;
- (b) says the events referred to occurred after the end of his employment at Dreamworld; and
- (c) otherwise does not know and therefore cannot admit the paragraph.

137. In answer to paragraph 137 of the Amended Statement of Claim, the Fourth Respondent:

- (a) refers to and repeats paragraph 22(a) above;
- (b) says the events referred to occurred after the end of his employment at Dreamworld; and
- (c) otherwise does not know and therefore cannot admit the paragraph.

Date: ~~5 March~~ 7 December 2021



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Signed by Michael Gibson Mills  
Lawyer Fourth Respondent

This pleading was prepared by Quinn Emanuel Urquhart & Sullivan, LLP and settled by Nicholas Owens SC and Kate Lindeman of Counsel.

**Certificate of lawyer**

I Michael Gibson Mills 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: ~~5 March~~ 7 December 2021



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Signed by Michael Gibson Mills  
Lawyer for the Fourth Respondent