

DEFENCE TO SECOND FURTHER AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	Common Law General
Registry	Sydney
Case number	2016/45027

TITLE OF PROCEEDINGS

Plaintiff	Clayton William Searle
Defendant	Commonwealth of Australia

FILING DETAILS

Filed for	Commonwealth of Australia, Defendant
Filed in relation to	Further Amended Statement of Claim
Legal representative	Tricia Hobson, Norton Rose Fulbright Australia
Legal representative reference	2836969
Contact name and telephone	Lindsay Houghton (02) 9330 8304
Contact email	lindsay.houghton@nortonrosefulbright.com

PLEADINGS AND PARTICULARS

- 1 The Defendant notes the allegation in paragraph 1 of the Second Further Amended Statement of Claim (**SFASOC**) but does not presently admit that these proceedings ought to proceed as representative proceedings.
- 2 In answer to paragraph 2 of the SFASOC the Defendant:
 - 2.1 in relation to the Plaintiff:
 - (a) admits the allegation in sub-paragraph (a);
 - (b) save that the Defendant admits that the Plaintiff signed a document styled "Training Contract" denies that the document created a contract between the Plaintiff and the Defendant;
 - (c) denies the allegation in sub-paragraph (c);

(d) admits the allegation in sub-paragraph (d);

(e) admits the allegation in sub-paragraph (e).

2.2 in relation to the Group Members who remain unidentified:

(a) does not know and cannot admit sub-paragraph (a);

(b) does not know and cannot admit that the Group Members signed a document styled "Training Contract" but if so denies that the document created a contract between any of the Group Members and the Defendant;

(c) denies the allegation in sub-paragraph (c)

(d) denies the allegation in sub-paragraph (d)

(e) does not know and cannot admit the allegation in sub-paragraph (e).

3 The Defendant admits the allegations contained in paragraph 3 of the SFASOC.

4 The Defendant admits the allegations contained in paragraph 4 of the SFASOC.

5 The Defendant admits the allegations contained in paragraph 5 of the SFASOC.

6 In answer to paragraph 6 of the SFASOC the Defendant:

(a) denies the allegations contained therein;

(b) says that the Training Contract was a nullity or invalid or otherwise unenforceable as the Plaintiff had no contractual relationship with the Defendant pursuant to such document or otherwise;

(c) says that the relationship between the Plaintiff and the Defendant is governed by section 61 of the *Commonwealth of Australia Constitution Act*, the *Defence Act 1903* (Cth) and the regulations promulgated thereunder including regulation 117, all being laws of the Commonwealth;

(d) says that the Training Contract cannot establish a relationship of employee and employer between the Plaintiff and the Defendant when there is not one at common law; and

(e) further says that the Training Contract is not supported by consideration and is void.

7 In answer to paragraph 7 of the SFASOC the Defendant:

(a) denies the validity of the Training Contract and repeats sub-paragraphs 6(b) to 6(e) above; and

(b) does not admit the balance of the allegations contained therein.

8 In answer to paragraph 8 of the SFASOC the Defendant:

(a) repeats sub-paragraphs 6(b) to 6(e) above save that the reference to the Plaintiff should be a reference to the Group Members and the reference to the Training Contract should be a reference to the Group Member Contracts; and

(b) does not know and cannot admit to the balance of the allegations contained therein as the Defendant is unaware of the identity of the Group Members.

9 The Defendant does not know and cannot admit the allegations in paragraph 9 of the SFASOC.

10 In answer to paragraph 10 of the SFASOC the Defendant:

(a) denies the validity of the Training Contracts and repeats sub-paragraphs 6(b) to 6(e)

(b) denies the validity of the Group Member Contracts and repeats sub-paragraph 8(a) above; and

(c) does not admit the balance of the allegations contained therein and will rely upon the terms of the alleged Training Contract and the Group Member Contracts in their entirety as to the interpretation of such terms.

11 In answer to paragraph 11 of the SFASOC the Defendant:

(a) denies the validity of the Training Contract and repeats sub-paragraphs 6(b) to 6(e);

(b) denies the validity of the Group Member Contracts and repeats sub-paragraph 8(a) above; and

(c) does not admit the balance of the allegations contained therein.

12 The Defendant denies the allegations contained in paragraph 12 of the SFASOC.

13 The Defendant denies the allegations pleaded in paragraph 12A of the SFASOC.

14 The Defendant denies the allegations pleaded in paragraph 12B of the SFASOC.

15 The Defendant does not know and cannot admit the allegations contained in paragraph 13 of the SFASOC.

16 The Defendant denies the allegation in paragraph 13A of the SFASOC.

17 The Defendant denies the allegation in paragraph 13B of the SFASOC.

18 The Defendant denies the allegation in paragraph 13C of the SFASOC.

19 The Defendant denies the allegations contained in paragraph 14 of the SFASOC.

20 In answer to paragraph 15A of the SFASOC, the Defendant:

(a) denies the allegation pleaded in sub-paragraph (a);

(b) denies the allegation pleaded in sub-paragraph (b);

(c) denies the allegation pleaded in sub-paragraph (c);

(d) denies the allegation pleaded in sub-paragraph (d).

21 The Defendant denies the allegations contained in paragraph 15 of the SFASOC.

22 In answer to paragraph 16 of the SFASOC the Defendant:

(a) denies the validity of the Training Contract and repeats sub-paragraphs 6(b) to 6(e) above;

(b) denies the validity of the Group Member Contracts and repeats sub-paragraph 8(a) above; and

(c) denies the allegations pleaded in sub-paragraphs 16(a) to 16(q).

- 23 The Defendant denies the allegations contained in paragraph 17 of the SFASOC.
- 24 The Defendant denies the allegations contained in paragraph 18 of the SFASOC.
- 25 The Defendant denies the allegations contained in paragraph 19 of the SFASOC.
- 26 The Defendant denies the allegations contained in paragraph 20 of the SFASOC.
- 27 The Defendant denies the allegations contained in paragraph 21 of the SFASOC.
- 28 The Defendant denies the allegations contained in paragraph 22 of the SFASOC.
- 29 The Defendant denies the allegations contained in paragraph 23 of the SFASOC.
- 30 The Defendant denies the allegations contained in paragraph 23A of the SFASOC.
- 31 The Defendant denies the allegations contained in paragraph 23B of the SFASOC.
- 32 The Defendant denies the allegations contained in paragraph 23C of the SFASOC.

Common questions of law or fact

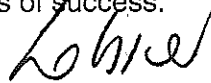
33. The Defendant agrees that the questions set forth at paragraphs 24(a), 24(b), 24(c), 24(f), 24(w), 24(x), 24(y) and 24(z) are questions of law or fact common to the claims of the Plaintiff and the Group Members in these proceedings. The Defendant is unable to determine, at present, whether there exists any other common questions in relation to Group Members until those Group Members file and serve their evidence.
34. The Defendant contends that no common questions of law or fact common to the claims of the Plaintiff and the Group Members arise in relation to the following claims:
- (a) issues of assumption, inducement and reliance in paragraphs 12A – 13;
 - (b) the issue of detriment in paragraph 13B;
 - (c) the matters pleaded in paragraph 15A regarding estoppel;
 - (d) the quantification of damages for breach of contract in paragraph 17;

- (e) issues of reliance in paragraphs 22, 23A, 23B and 23C;
- (f) issues of inducement in paragraphs 23A and 23B
- (g) the quantification of damages in paragraphs 23, 23A, 23B and 23C

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature



Capacity

Solicitor on record

Date of signature

22 August 2016

AFFIDAVIT VERIFYING

Name Commodore Michael James Rothwell AM RAN
 Address Fleet Command Headquarters, Level 3, 14-18 Wylde Street, Potts Point in the State of New South Wales
 Occupation Naval Officer
 Date 22 August 2016

I say on oath/affirm:

- 1 I am a Commodore in the Royal Australian Navy and am authorised to make this affidavit.
- 2 I believe that the allegations of fact contained in the defence are true.
- 3 I believe that the allegations of fact that are denied in the defence are untrue.
- 4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

SWORN/AFFIRMED at Sydney
 Signature of deponent Michael Rothwell
 Name of witness Edward Lindsay Roux Houghton
 Address of witness Level 18, 225 George Street, Sydney, NSW, 2000
 Capacity of witness Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document:

NSW DRIVER LICENCE 3488AL

Identification document relied on (may be original or certified copy)

Signature of witness

[Signature]

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.