

## NOTICE OF FILING

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### Details of Filing

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



Dated: 8/04/2020 1:52:52 PM AEST

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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Form 33  
Rule 16.32

## Cross-Respondent's Defence to Amended Third Cross-Claim

No. VID 434 of 2015

Federal Court of Australia  
District Registry: Victoria  
Division: General

### **Cheryl Whittenbury**

Applicant

### **Vocation Limited (ACN 166 631 330) (in liq)**

First Respondent/Cross-claimant by First Cross-Claim and Cross-Respondent by Third Cross-Claim

### **PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)**

Second Respondent/Cross-Claimant by Second and Third Cross-Claims

### **The Partners of Johnson Winter & Slattery**

Cross-Respondents by First and Second Cross-claims

### **Mark Edward Hutchinson** and others named in the schedule

Cross-Respondents by Third Cross-claim

In answer to the allegations in the Amended Statement of Cross-Claim (**Third Cross-Claim**) dated 12 March 2020~~20 July 2018~~ filed by the Second Respondent/Cross-Claimant (**PwC**), the Seventh Cross-Respondent by Third Cross-Claim (**Vocation**) says as follows, using the defined terms set out in the Second Further Amended Consolidated Statement of Claim (SFACSOC) (dated 11 November 2019~~2 May 2018~~) and the Replacement Prospectus save where stated:

## **A. BACKGROUND MATTERS**

### **A.1 Parties**

Filed on behalf of	Vocation Limited (ACN 166 631 330), First Respondent		
Prepared by	Colleen Platford		
Law firm	Gilbert + Tobin		
Tel	(02) 9263 4000	Fax	(02) 9263 4111
Email	cplatford@gtlaw.com.au; clynch@gtlaw.com.au		
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- 1 It admits paragraph 1.
- 2 In answer to paragraph 2, it:
  - (a) admits that Hutchinson was appointed a director of Vocation upon its incorporation on 6 November 2013 (the **Relevant Date**) and remained a director until at least 26 November 2014;
  - (b) otherwise denies paragraphs 2(a) and (b) and says further that:
    - (i) the Merger was contingent on the successful completion of the Offer and the listing of Vocation on the ASX; and
    - (ii) Hutchinson (along with other members of the senior management team listed in the Replacement Prospectus) became ~~were only~~ Vocation's senior management team upon Vocation being included in the official list of the financial market from 6 December 2013 (**Completion**).
  - (c) does not plead to paragraphs 2(c)-(e) as they make no allegations against Vocation.
- 3 In answer to paragraph 3, it:
  - (a) admits that Grewal was Vocation's Chief Financial Officer from Completion;
  - (b) admits that Grewal was appointed as company secretary of Vocation from the Relevant Date and remained company secretary until 16 December 2014;
  - (c) otherwise denies paragraphs 3(a) and (b); and
  - (d) does not plead to paragraphs 3(c)-(e) as they make no allegations against Vocation.
- 4 In answer to paragraph 4, it:
  - (a) admits that Dawkins was appointed a director of Vocation from the Relevant Date and remained a director until 26 November 2014;
  - (b) admits that Dawkins was appointed Chairman on the Relevant Date;
  - (c) otherwise denies paragraph 4(a); and

(d) does not plead to paragraphs 4(b)-(d) as they make no allegations against Vocation.

5 In answer to paragraph 5, it:

(a) admits that Tucker was appointed as a director of Vocation from the Relevant Date and remained a director until 16 December 2015;

(b) otherwise denies paragraph 5(a); and

(c) does not plead to paragraphs 5(b)-(d) as they make no allegations against Vocation.

6 In answer to paragraph 6, it:

(a) admits that Tredenick was appointed as a director of Vocation from the Relevant Date and remained a director until 16 December 2015;

(b) otherwise denies paragraph 6(a); and

(c) does not plead to paragraphs 6(b)-(d) as they make no allegations against Vocation.

7 In answer to paragraph 7, it:

(a) admits that Halley was appointed as a director of Vocation from the Relevant Date and remained a director until 16 December 2015;

(b) otherwise denies paragraph 7(a); and

(c) does not plead to paragraphs 7(b)-(d) as they make no allegations against Vocation.

8 In answer to paragraph 8, it:

(a) admits that Vocation was incorporated on the Relevant Date;

(b) admits that, subject to s 471B of the Corporations Act 2001 (Cth) (the **Corporations Act**), it has been capable of being sued since the Relevant Date;

(c) admits that it was a person within the provisions listed in paragraphs 8(b)-(d) since the Relevant Date; and

(d) otherwise denies paragraph 8.

9 In answer to paragraph 9, it:

- (a) admits that Hutchinson, Grewal, Dawkins, Tucker, Tredenick and Halley were officers of Vocation, within the meaning of s 9 of the Corporations Act, since the Relevant Date until the dates of their retirement from office; and
- (b) refers to and repeats paragraphs 2-8 above; and
- (c) otherwise denies paragraph 9.

## **A.2 The Applicant's claims against Vocation**

10 It-:

- (a) says the Applicant (on behalf of herself and Group Members) previously made claims against Vocation in this proceeding by a Further Amended Consolidated Originating Application dated 2 May 2018 (FACOA) and the Further Amended Consolidated Statement of Claim (FACSOC);
- (b) says Vocation filed a Further Amended Defence (FAD) to the FACSOC on 31 May 2018;
- (c) says further that the Applicant (on behalf of herself and Group Members) does not maintain certain claims against Vocation in this proceeding in her Second Further Amended Consolidated Originating Application dated 11 November 2019 (SFACSOA) and SFACSOC; and
- (d) otherwise admits paragraph 10.

### **A.2A The Applicant's claims against Hutchinson, Grewal and Dawkins**

10A It does not plead to paragraph 10A as it makes no allegations against Vocation.

## **A.3 The Applicant's claims against PwC**

~~40~~11 It admits paragraph 11.

**A.4 Basis of PwC's cross-claims against Hutchinson, Grewal, Dawkins, Tucker, Tredenick, Halley and Vocation**

11 It admits paragraph 12.

13 Insofar as the allegations relate to Vocation, it denies paragraph 13. It does not plead to paragraph 13 as it makes no allegations against Vocation.

**B. CONTRAVENTIONS ALLEGED AGAINST VOCATION**

14 In answer to paragraph 14, it:

(a) paragraph 14(a), it refers to and repeats paragraphs 1 - 135C4-210 of its Defence to the SFACSOC, including the paragraphs cross-referred to therein; and

(b) paragraph 14(b), save that it refers to and repeats paragraphs 65, 136 - 142, 168 - 170, 172 - 173, 175 and 209 - 210 of its FAD, including the paragraphs cross-referred to therein; and

(c) it otherwise does not know and therefore cannot admit paragraph 14.

14AA In answer to paragraphs 14AA – 14AF, it:

(a) refers to and repeats paragraphs 129 - 135C of its Defence to the SFACSOC; and

(b) otherwise does not know and therefore cannot admit paragraphs 14AA – 14AF.

14A In answer to paragraph 14A, it:

(a) refers to and repeats paragraphs 14 - 14AA above; and

(b) otherwise does not know and therefore cannot admit paragraph 14A.

14B It does not know and therefore cannot admit paragraph 14B.

14C It does not know and therefore cannot admit paragraph 14C.

14D It does not know and therefore cannot admit paragraph 14D.

14E It does not know and therefore cannot admit paragraph 14E.

14EA It does not know and therefore cannot admit paragraph 14EA.

14F It does not know and therefore cannot admit paragraph 14F.

14G It does not know and therefore cannot admit paragraph 14G.

14H It does not know and therefore cannot admit paragraph 14H.

14I It does not know and therefore cannot admit paragraph 14I.

14J It does not know and therefore cannot admit paragraph 14J.

14K It does not know and therefore cannot admit paragraph 14K.

14L It does not know and therefore cannot admit paragraph 14L.

14M It does not know and therefore cannot admit paragraph 14M.

14N It does not know and therefore cannot admit paragraph 14N.

14O It does not know and therefore cannot admit paragraph 14O.

14P It does not know and therefore cannot admit paragraph 14P.

**C. ALLEGED LIABILITY OF HUTCHINSON, DAWKINS, TUCKER, TREDENICK AND HALLEY FOR PROSECTUS CONTRAVENTIONS ALLEGED AGAINST VOCATION**

4315 Save that it refers to and repeats paragraph 14(a) above, it does not plead to paragraphs 15-~~19~~-29 as they make no allegations against Vocation.

**D. ALLEGED INVOLVEMENT BY HUTCHINSON, GREWAL AND DAWKINS IN CONTINUOUS DISCLOSURE CONTRAVENTIONS ALLEGED AGAINST VOCATION**

4416 Save that it refers to and repeats paragraph 14 above, it does not plead to paragraphs 30-99~~P~~ as they make no allegations against Vocation.

**E. ALLEGED INVOLVEMENT BY HUTCHINSON, GREWAL AND DAWKINS IN VOCATION'S ALLEGED MISLEADING AND DECEPTIVE CONUDCT CONTRAVENTIONS**

4517 Save that it refers to and repeats paragraph 14 above, it does not plead to paragraphs 100-180~~Z~~J as they make no allegations against Vocation.

**F. ALLEGED FY14 ANNUAL REPORT CONTRAVENTIONS OF HUTCHINSON, DAWKINS, TUKCER, TREDENICK, HALLEY AND VOCATION**

~~46~~18 In answer to paragraph 181, it:

- (a) denies paragraph 181 in so far as it relates to the period prior to and including Completion on 6 December 201~~38~~3; and
- (b) otherwise admits paragraph 181.

~~47~~19 Save that it refers to and repeats paragraphs 2-7 and 14 above, it does not plead to paragraphs 182, 186-187 and 191-193 as they make no allegations against Vocation.

~~48~~20 It does not know and therefore cannot admit paragraphs 183-185, 188-190 and 194-196.

**G. ALLEGED HUTCHINSON'S COMPLIANCE, IMMATERIAL RISK AND MATERIALITY CONTRAVENTIONS**

~~49~~21 Save that it refers to and repeats paragraph 14 above, it does not plead to paragraphs 197-204~~E~~E as they make no allegations against Vocation.

**H. ALLEGED HUTCHINSON'S FY14 RESULTS CONTRAVENTION**

~~20~~22 Save that it refers to and repeats paragraph 14 above, it does not plead to paragraphs 205-209 as they make no allegations against Vocation.

**I. ALLEGED HUTCHINSON'S FY15 EARNINGS GUIDANCE AND BASIS CONTRAVENTIONS**

23 Save that it refers to and repeats paragraph 14 above, it does not plead to paragraphs 210-214 as they make no allegations against Vocation.

24 In answer to paragraphs 214A - 214ZD:

- (a) insofar as those paragraphs make allegations against Vocation, it does not know and therefore cannot admit those paragraphs; and
- (b) otherwise does not plead to those paragraphs.



**J. ALLEGED HUTCHINSON'S SEPTEMBER PLACEMENT CONTRAVENTIONS**

~~24~~25 Save that it refers to and repeats paragraph 14 above, it does not plead to paragraphs 215-219 as they make no allegations against Vocation.

**K. ALLEGED HUTCHINSON'S CONTINUING FY15 EARNINGS GUIDANCE AND BASIS CONTRAVENTIONS**

~~22~~26 Save that it refers to and repeats paragraph 14 above, it does not plead to paragraphs 220-225 as they make no allegations against Vocation.

**L. ALLEGED HUTCHINSON'S CONTINUOUS DISCLOSURE REPRESENTATIONS CONTRAVENTIONS**

~~23~~27 Save that it refers to and repeats paragraph 14 above, it does not plead to paragraphs 226-230 as they make no allegations against Vocation.

**M. ALLEGED GREWAL'S COMPLIANCE, IMMATERIAL RISK AND MATERIALITY CONTRAVENTIONS**

~~24~~28 Save that it refers to and repeats paragraph 14 above, it does not plead to paragraphs 231-237 as they make no allegations against Vocation.

**N. ALLEGED GREWAL'S FY14 RESULTS CONTRAVENTIONS**

~~25~~29 Save that it refers to and repeats paragraph 14 above, it does not plead to paragraphs 238-242 as they make no allegations against Vocation.

**O. ALLEGED GREWAL'S FY15 EARNINGS GUIDANCE AND BASIS CONTRAVENTIONS**

30 Save that it refers to and repeats paragraph 14 above, it does not plead to paragraphs 243-247 as they make no allegations against Vocation.

31 In answer to paragraphs 247A – 247L:

(a) insofar as those paragraphs make allegations against Vocation, it does not know and therefore cannot admit those paragraphs; and

(a)(b) otherwise does not plead to those paragraphs.

**P. ALLEGED GREWAL'S SEPTEMBER PLACEMENT CONTRAVENTION**

~~26~~32 Save that it refers to and repeats paragraph 14 above, it does not plead to paragraphs 248-252 as they make no allegations against Vocation.

**Q. ALLEGED GREWAL'S CONTINUOUS DISCLOSURE REPRESENTATIONS CONTRAVENTIONS**

~~33~~ Save that it refers to and repeats paragraph 14 above, it does not plead to paragraphs 253-258 as they make no allegations against Vocation.

**Q1. FURTHER OR ALTERNATIVE LIABILITY OF HUTCHINSON, GREWAL AND DAWKINS AS ALLEGED IN THE 2FACSOC**

~~27~~34 Save that it refers to and repeats paragraphs 404 - 405 of its Defence to the SFACSOC, it does not plead to paragraph 258A as it makes no allegations against Vocation.

**R. RELIEF**

~~28~~35 It does not plead to paragraph 259 as it makes no allegations against Vocation.

~~29~~36 In answer to paragraph 260, it:

- (a) denies paragraph 260 in so far as allegations are made against Vocation; and
- (b) otherwise refers to and repeats paragraphs 14, 14AA, 14A, 14F, 14K, 14P and 24 above.

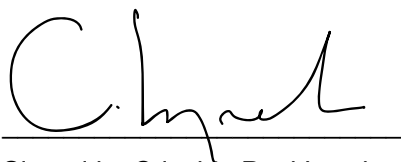
~~30~~37 Save that it refers to and repeats paragraph 14 above, it does not plead to paragraph 261 as it makes no allegations against Vocation.

~~34~~38 It denies paragraph 262 in so far as allegations are made against Vocation.

**S. RESERVATION OF RIGHTS**

~~32~~39 It does not plead to paragraph 263 as it makes no allegations against Vocation.

Date: ~~8 April 2020~~ 21 December 2018



Signed by Crispian Paul Lynch, partner with  
Colleen Anne Platford of Gilbert + Tobin  
Lawyer for the First Respondent and Cross-  
Respondent by Third Cross-Claim

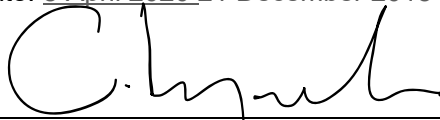
This pleading was prepared by C Platford, C Lynch, ~~E Martin, V Giang~~ C Harb, A Pailthorpe,  
S Bekric solicitors, and settled by C M Caleo and ~~C G Button~~ S Gory of counsel.

### Certificate of lawyer

I, Crispian Paul Lynch, certify to the Court that, in relation to the defence filed on behalf of the First Respondent and Cross-Respondent by Third Cross-Claim, 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: ~~8 April 2020~~ 21 December 2018

A handwritten signature in black ink, appearing to read 'C. Lynch', written over a horizontal line.

Signed by Crispian Paul Lynch, partner

with Colleen Anne Platford of Gilbert +

Tobin

Lawyer for the First Respondent and

Cross-Respondent by Third Cross-Claim