IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV 2018-409-361

Between	**BRENDAN MILES ROSS and COLLEEN ANNE ROSS** Retired Manager and Retired Office Administrator of 88 Sawyers Arms Road, Christchurch as trustees of the Brendan Ross Family Trust and the Colleen Ross Family Trust Plaintiffs
And	**SOUTHERN RESPONSE EARTHQUAKE SERVICES LIMITED** a duly incorporated company having its registered office at 6 Show Place, Addington, Christchurch Defendant

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STATEMENT OF DEFENCE

Dated 16th July 2018

Judicial Officer: Whata J

Next event date: First case management conference on 30 July 2018 at 10am (Whata J)

BUDDLEFINDLAY
NEW ZEALAND LAWYERS
Barristers and Solicitors
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The defendant, by its solicitor says:

1. It has no knowledge of and apprehends it is not required to plead in response to the allegations at paragraph 1 of the statement of claim dated 25 May 2018.

2. It has no knowledge of and apprehends it is not required to plead in response to paragraph 2.

3. Save as to say that at all material times the registered proprietors of the Property (as defined at paragraph 3 of the statement of claim) were Brendan Miles Ross and Colleen Anne Ross, collectively as to a 1/2 share as tenants in common, it has no knowledge of and apprehends it is not required to plead in response to paragraph 3.

4. It admits that the plaintiffs sue in their capacity as trustees but otherwise denies paragraph 4. It says further that the outcome of the plaintiffs' application for leave to bring proceedings as a representative action and ancillary orders dated 25 May 2018 will determine whether, and to what extent, the plaintiffs are pursuing this claim as representatives of the class of persons identified at paragraph 59 of the statement of claim.

5. In relation to paragraph 5, it:

   (a) denies the allegations at paragraph 5(d); and

   (b) says further that its primary objectives are recorded in its Statement of Intent dated 19 June 2015 and its Constitution (as amended from time-to-time), the full contents of which are relied upon as if pleaded in full. The defendant's objectives as stated in the Statement of Intent include, relevantly, to address and resolve customer claims in accordance with policy obligations in a fair and consistent manner; and

   (c) otherwise admits paragraph 5.

6. In relation to paragraph 6, it admits that the Property had a residential dwelling on it (the **House**) but otherwise it has no knowledge of and therefore denies paragraph 6.

7. It admits paragraph 7 but says further that the Policy also comprised policy schedules issued to the plaintiffs in respect of the Property.

8. It admits paragraph 8.

The Policy

9. It denies paragraph 9 and says further that:

    (a) the House is covered to the extent that it comes within the definition of “house” (pages 1 and 2 of the Policy);

    (b) the House is covered for unforeseen and sudden physical loss or damage that is not excluded by the Policy (page 2 of the Policy);

    (c) the Policy schedules provide that the House was insured for full replacement costs limited to a total floor area of 177 m^2, on the terms and conditions of the Policy.

10. In response to paragraph 10:

    (a) It says that the terms and conditions of the Policy:

        (i) include those set out in clauses 1, 2 and 3 of the "what is covered by this policy" section of the Policy (pages 2 and 3) and those terms are relied on as if set out in full;

        (ii) include under clause 1 of the "cover for earthquake damage" section of the Policy (page 3) that if the plaintiffs' house is damaged by earthquake it will pay the difference between the maximum amount payable by the Earthquake Commission and the sum insured stated on the plaintiffs' Policy schedule;

        (iii) include under clauses 1 to 4 of the “cover for additional costs” section of the Policy (page 3), additional costs that are payable in certain circumstances in accordance paragraph 11 below;

    (b) It otherwise denies paragraph 10 and relies on the full text and context of the Policy in place at the time of the earthquakes on 4 September 2010 and 22 February 2011.

11. In response to paragraph 11:

    (a) It admits paragraph 11(a) and says further that the expenses must be approved by the defendant before they are incurred;

    (b) It admits paragraph 11(b) and says further that the expenses must be approved by the defendant before they are incurred;

    (c) It admits paragraph 11(c);

(d) It admits that under clause 4.a of the "cover for additional costs" section of the Policy (page 3), if additional work is required, Southern Response will pay the reasonable costs for compliance with building legislation and rules. This is subject to clause 4.b of the "cover for additional costs" section of the Policy;

(e) Save as expressly admitted it denies paragraph 11.

12. It denies paragraph 12 and says further that under the Policy, where the Earthquake Commission agrees to pay a claim for loss or damage to an insured's house, the defendant would provide Earthquake top-up cover for loss or damage not covered by the Earthquake Commission. Earthquake top up cover is the difference between the maximum amount payable by the Earthquake Commission (pursuant to the Earthquake Commission Act 1993) and the Sum Insured in the Policy Schedule.

13. It apprehends it is not required to plead to paragraph 13.

14. It denies paragraph 14.

15. It denies paragraph 15.

16. It admits paragraph 16.

17. It admits paragraph 17.

18. It denies paragraph 18 and refers to the stated terms of the Policy.

19. It admits paragraph 19.

20. It admits paragraph 20.

21. It admits paragraph 21.

22. It admits that following the earthquakes it engaged Arrow International (NZ) Limited (**Arrow**) as a project management office to assist it with claims assessment and management. Save as expressly admitted, it denies paragraph 22.

23. It admits paragraph 23.

24. In response to paragraph 24:

(a) It admits that:

(i) On or about 20 March 2012 Arrow prepared a draft Detailed Repair/Rebuild Analysis (the **DRA**) for the plaintiffs.

(ii) The purpose of the draft DRA was to scope the work required to repair or rebuild the House.

(iii) By letter dated 21 March 2012 the defendant sent a copy of the draft DRA to the plaintiffs prior to it being costed to allow for the plaintiffs' review of the detail included. The plaintiffs were asked to review the draft DRA to check if there were errors or omissions. The plaintiffs were advised that any comments and proposed changes to the draft DRA would be included and highlighted in the final costed DRA report that they would receive.

(iv) After provision of the draft DRA, Arrow updated the damage assessment and scope of works and estimated the cost of rebuilding the House in a new version of the DRA (the **Costed DRA**).

(v) The House was deemed uneconomic to repair.

(vi) On 27 June 2011 the plaintiffs were advised by the Canterbury Earthquake Recovery Authority that the House was zoned in the residential red zone and the land was not suitable for rebuilding. The plaintiffs were advised that an offer of purchase for either the Property (including the damaged House) or the land only would be made by the Crown.

(vii) Where a house is uneconomic to repair, the “cover for your house” section of the Policy gave the plaintiffs four options to choose from which included to rebuild on another site or to buy another house.

(viii) In addition to the "cover for your house" section the Policy also provides “cover for additional costs”, under a separate section of the Policy. Under this section, and in accordance with paragraph 11 above, Southern Response would pay for four categories of additional cost:

(1) Professional fees (specified as architects and surveyors);

(2) Demolition costs;

(3) Removal of household contents;

(4) The cost of compliance with the current building legislation and rules;

(the **Additional Costs**).

(ix) The Additional Costs are payable only where they are:

(1) approved and incurred in the case of architects' or surveyors' fees and demolition costs;

(2) reasonable and necessary in the case of the cost of removal of house contents;

(3) reasonable and required in the case of costs of additional work to achieve compliance with building legislation and rules.

(x) At the time the Costed DRA was prepared for the plaintiffs the defendant had a reasonable and honestly held belief that the Policy distinguished between what is included in the "full replacement cost of rebuilding" being the notional rebuilding cost and the separately identified Additional Costs.

(xi) The defendant had a reasonable and honestly held belief that that if a customer elected the buy another house option:

(1) Not all cover under Additional Costs was triggered. Further:

A. the defendant was only required to pay the additional cost of demolition if the insured house was in fact demolished;

B. the defendant was only required to pay the removal of house contents where that was reasonably necessary;

C. architects and surveyors fees and costs for work required for compliance with building legislation and rules would not be incurred and were not payable;

(2) Other professional fees (outside of the Additional Costs) and contingency costs ("**Other Costs**") would not be

incurred and therefore were not payable, consistent with how Additional Costs were treated in the Policy.

(xii) Given Southern Response's reasonably and honestly held belief that Additional Costs and Other Costs would not be incurred and were therefore not payable, the defendant asked Arrow to separately calculate the Additional Costs and the Other Costs. Arrow's estimate of the Additional Costs and the Other Costs was set out in a section of the DRA entitled "**AMI Office Use**".

(xiii) The DRA as provided to the plaintiffs did not include the AMI Office Use section.

(b) Save as expressly admitted it denies paragraph 24.

25. It denies paragraph 25 and repeats the further statements made in paragraph 24(a) above.

26. It admits that on 20 May 2012 Arrow provided the defendant with two iterations of the DRA: one included the AMI Office Use section; the other did not. Save as expressly admitted it denies paragraph 26.

27. It admits that on or about 7 August 2012 the defendant provided a DRA to the plaintiffs, which did not include the AMI Office Use section. Save as expressly admitted it denies paragraph 27.

28. It admits that the DRA provided to the plaintiffs did not include the AMI Office Use section. Save as expressly admitted it repeats the further statements at paragraph 24(a) above and denies paragraph 28.

29. It admits that the DRA sent to the plaintiffs contained the sums set out in paragraph 29. Save as expressly admitted it denies paragraph 29.

30. It admits that there was an iteration of the DRA which contained the same sums as those set out in paragraph 29 of the claim and also included the AMI Office Use section. Save as expressly admitted it denies paragraph 30.

31. In response to the allegations at paragraph 31:

(a) It admits that the AMI Office Use section contained the sums set out in paragraph 31 of the claim;

(b) It repeats the statements in paragraph 24(a) above;

(c) It says further that:

(i) The DRA provided to the plaintiffs on or about 7 August 2012 contained the pricing that the defendant reasonably and honestly believed was required to meet the defendant's obligations under the "cover for your house" section of the Policy.

(ii) The plaintiffs could elect one of three options: Southern Response would rebuild the plaintiffs' house managing the build process and pay the building costs directly; the plaintiffs could "buy another house"; or the plaintiffs could take a market value cash payment.

(iii) The defendants had a reasonably and honestly held belief that the Additional Costs and the Other Costs would not be payable to the plaintiffs under the options referred to in (ii) above.

(iv) Accordingly, the amounts in the AMI Office Use section were as follows:

(1) Internal Administration costs for which Southern Response's reasonably and honestly based opinion at the time was that they were not payable to the plaintiffs;

(2) Demolition, which was carried out by Southern Response's contractor;

(3) Professional fees referred to as "Possible Additional Costs" comprising building design, site design fees / pegging certificate and structural design fees for which Southern Response's reasonably and honestly based opinion at the time was that these costs were not payable to the plaintiffs; and

(4) Contingency costs for which Southern Response's reasonably and honestly based opinion at the time was that this allowance was not payable to the plaintiffs.

(d) Save as expressly admitted it denies paragraph 31.

32. In response to the allegations at paragraph 32:

(a) it admits that the DRA sent to plaintiffs did not include the AMI Office Use section;

(b) it repeats the further statements in paragraph 24(a) and 31(c) above;

(c) save as expressly admitted it denies paragraph 32.

33. It admits that prior to settlement of the plaintiffs' claims they were not provided with the AMI Office Use section. Save as expressly admitted it denies paragraph 33 and repeats the further statements in paragraphs 24(a) and 31(c) above.

34. It admits that on or about 7 August 2012 the Defendant sent the plaintiffs a "Decision Pack" which included the covering letter and a DRA which did not include the AMI Office Use section. Save as expressly admitted it denies paragraph 34.

35. It admits paragraph 35 and says further that:

(a) It relies on the wording of the covering letter in full and refers to the particulars below:

Particulars of wording of covering letter

(i) **Rebuild on another site**

"*this option is not costed out in your decision pack"*

(ii) **Buy another house**

"the most Southern Response will pay is the amount it would have cost us to rebuild your house on its present site. If the cost of buying another house is less than the amount that would have been required to rebuild your house on the present site then Southern Response will not provide any cash payment of the difference"

(iii) **Cash payment at market value**

if you select this option, Southern Response will pay the market value of your house. As defined in your Premier House policy, this is the value of your house immediately prior to it sustaining the earthquake damage, taking into account wear and tear and depreciation";

(b) The covering letter also stated the following: "While Southern Response is not able to offer you financial advice or discuss the appropriateness of your selected option, we encourage you to obtain your own independent advice regarding the settlement of your claim… this letter and the enclosed information do not replace your policy document and schedule. Please check your AMI policy documents for details of cover".

36. It admits paragraph 36.

37. In response to paragraph 37:

(a) It admits that the Settlement Election Form included a table headed "Options". It refers to and relies on the text and context of the Settlement Election Form as if pleaded in full.

(b) It says further that the Settlement Election Form stated, "*the following represents a summary of your settlement options. Please refer to your AMI Premier House or Rental House policy document for a complete overview of our insurance contract and settlement options*".

(c) Save as expressly admitted it denies paragraph 37.

38. It admits paragraph 38 but refers to and relies upon the text and context of the Settlement Election Form as if pleaded in full.

39. It admits that by cover of letter dated 8 February 2013 the plaintiffs received from Bruce Glennie Building Consulting Limited an estimate for the replacement of the House. Save as expressly admitted it denies paragraph 39.

40. It admits that by cover of letter dated 8 February 2013 the plaintiffs received a document containing an estimated cost of $536,359.80 for the replacement of the House. It says further that in addition to the exclusions listed in paragraph 40 of the claim the estimate provided by Bruce Glennie Building Consulting Limited specifically excluded whiteware, furnishings, furniture, inflation and also did not contain professional fees or project management fees. Save as expressly admitted it denies paragraph 40.

41. It admits paragraph 41 of the claim.

42. It admits that on 4 April 2013 Arrow corresponded with the defendant about the costs supplied by Bruce Glennie Building Consulting Limited. It refers to

and relies on the content of the correspondence in full. Save as expressly admitted it denies paragraph 42.

43. It admits that on 4 April 2013 and 15 April 2013 the defendant corresponded with the plaintiffs by email and refers to and relies on that correspondence in full. Save as expressly admitted it denies paragraph 43.

44. It admits that on or after 4 April 2013 Arrow updated the DRA used by Southern Response which contained the AMI Office Section. Save as expressly admitted it denies paragraph 44.

45. It admits that the DRA provided to it on around 4 April 2013 contained the sums set out in paragraph 45 of the claim. Save as expressly admitted it denies paragraph 45.

46. It admits that the AMI Office Use section contained in the DRA provided to it on or after 4 April 2013 included the sums set out in paragraph 46. Save as expressly admitted it denies paragraph 46.

47. In response to paragraph 47:

    (a) it admits that prior to settlement of the plaintiffs' claims they were not provided with the AMI Office Use section of the DRA;

    (b) it repeats the further statements in paragraph 24(a) and 31(c) above; and

    (c) save as expressly admitted it denies paragraph 47.

48. It admits paragraph 48.

49. It admits paragraph 49 and says further that:

    (a) the plaintiffs instructed and obtained advice from a quantity surveyor, Bruce Glennie Building Consulting Limited, before entering into the Settlement Agreement (as defined at paragraph 49 of the claim) with the result that:

        (i) The plaintiffs relied upon the advice of their own expert, rather than statements made by Southern Response, in entering into the Settlement Agreement; and

(ii) The plaintiffs were not misled or deceived by any conduct of the defendant and no reasonable person would have been misled or deceived by any conduct of the defendant;

(b) the Settlement Agreement recorded that Southern Response would pay the plaintiffs $362,355 less EQC cover and payments (being $242,495).

50. It admits paragraph 50 and refers to and relies upon the text and context of the Settlement Agreement as if pleaded in full.

51. It apprehends that it is not required to plead to paragraph 51.

52. It admits paragraph 52.

53. It denies paragraph 53 and repeats the further statements in paragraphs 24(a) and 31(c) above.

54. It denies paragraph 54.

55. It denies paragraph 55.

56. It denies paragraph 56.

57. It denies paragraph 57.

58. In response to paragraph 58 it admits that it entered into settlement agreements but otherwise denies paragraph 58 and says further that:

(a) Settlements entered into with policyholders include policyholders with a Premier House policy and policyholders with a Premier Rental Property Cover policy;

(b) The terms and conditions of the Premier Rental Property Cover policy:

(i) include those set out in clauses 1, 2 and 3 of the "what is covered by this policy" section of the Policy (pages 2 and 3) and those terms are relied on as if set out in full;

(ii) differ from the Premier House Cover policy.

Particulars of differences in policies

(1) under the Premier Rental Property Cover policy:

A. if the rental house is damaged by earthquake, the defendant will pay the difference between the

maximum amount payable by EQC and either the cost of repairing or rebuilding the rental house or the sum insured stated on the policy schedule, whichever is the lesser, and the earthquake top-up cover is provided on the same basis as “cover for your house";

B. a customer whose rental house is uneconomic to repair does not have the option of electing to rebuild on another site; and

C. the “cover for additional costs” section included similar four categories of additional costs payable to the customer with some minor differences specified in relation to compliance with building regulations and legislation.

(c) The claim does not adequately particularise the materially similar circumstances alleged to exist between the unknown policyholders referred to and the plaintiffs.

59. It denies paragraph 59 and says further that:

(a) the claim does not adequately particularise the class of persons alleged to have the same interest in these proceedings;

(b) the class of persons described in paragraph 59 encompasses a potentially very wide range of claimant settlements involving potentially materially different factual and legal issues and circumstances;

(c) different wording was used in the Decision Packs and written letters and statements as sent to customers between 2010 and October 2014; and

(d) it repeats the further statements and particulars in paragraph 58(b)(ii) above in relation to the differences between Premier House Cover and Premier Rental Property Cover policies.

60. It denies paragraph 60, repeats the statements in paragraph 59 above and says further that paragraph 60 does not adequately particularise the express or implied representations that are alleged to have been the same or materially the same as those pleaded by the plaintiffs at paragraph 53.

61. It denies paragraph 61, repeats the statements in paragraph 59 above and says further that paragraph 61 does not adequately particularise the acts or omissions that are alleged to have been the same or materially the same as those pleaded by the plaintiffs at paragraph 54.

62. It denies paragraph 62.

63. It denies paragraph 63.

First Cause of Action – Fair Trading Act 1986

64. It apprehends that paragraph 64 relates to an issue of law and therefore it is not required to plead in response to it.

65. It denies paragraph 65 and says further that:

    (a) paragraph 65 does not adequately particularise the alleged way in which the defendant engaged with the unknown number of policyholders in a way that was misleading or deceptive;

    (b) it repeats the further statements in paragraphs 24(a), 31(c), 35(a)(iii), 35(b), 49(a) and 59 above.

66. It denies paragraph 66 and says further that:

    (a) paragraph 66 does not adequately particularise the loss alleged to have been suffered by each of the alleged Class Members (as defined in paragraph 59 of the claim);

    (b) it repeats the additional statements in paragraphs 24(a), 31(c), 35, 49(a) and 59 above.

    (c) the defendant's actions were not an effective cause of any alleged loss or damage suffered by the alleged Class Members. In particular:

        (i) there was no reliance on statements made by the defendant in entering into any settlement agreement;

        (ii) the plaintiffs (and other alleged Class Members) relied instead upon their own expert professional advice in reaching a decision on the terms of settlement of their claim.

    (d) clause 11 of the Settlement Agreement specifically provided for the risk of any known or unknown future claims arising directly or indirectly out

of the Canterbury earthquakes and records that the plaintiffs (and other alleged Class Members) would bear that risk.

(e) to the extent that the wording of clause 11 was incorporated into any settlement agreements with the alleged Class Members there has been accord and satisfaction of any claim.

67. It denies paragraph 67 and says further that:

(a) paragraph 67 does not adequately particularise:

(i) the alleged stress and inconvenience suffered by each alleged Class Member that is pleaded by the plaintiffs;

(ii) the terms of the alleged settlements;

(iii) the basis on which it is said that each alleged settlement was for a sum that was substantially less than that to which each alleged Class Member was entitled; and

(iv) the individual circumstances of each alleged Class Member such that would allow an assessment of whether it was objectively reasonable to be misled in each case.

(b) It repeats the additional statements in paragraphs 24(a), 31(c), 35, 49(a), 59 and 66 above.

Second Cause of Action – Misrepresentation

68. It repeats paragraphs 1 to 63 above.

69. It denies paragraph 69 and says further that paragraph 69 does not adequately particularise the way in which the alleged representations were material to each alleged Class Member and any decision to enter into a settlement agreement.

70. It denies paragraph 70 and says further that:

(a) paragraph 70 does not adequately particularise:

(i) the way in which the alleged representations were relied upon by each alleged Class Member; and

(ii) how the alleged representations induced each alleged Class Member to enter into a settlement agreement with the defendant.

(b) It repeats the additional statements in paragraphs 24(a), 31(c), 35, 49(a), 59 and 66 above.

71. It denies paragraph 71.

72. It denies paragraph 72 and says further that:

(a) Paragraph 72 does not adequately particularise the alleged loss said to have been suffered by the plaintiffs and each alleged Class Member;

(b) It repeats the additional statements in paragraphs 24(a), 31(c), 35, 49(a), 59 and 66 above; and

(c) Clause 11 of the Settlement Agreement specifically provided for the risk of any known or unknown future claims arising directly or indirectly out of the Canterbury earthquakes and records that the plaintiffs (and other alleged Class Members) would bear that risk.

73. It denies paragraph 73 and says further that

(a) paragraph 73 does not adequately particularise:

(i) the stress and inconvenience alleged to have been suffered by each alleged Class Member;

(ii) the terms of the alleged settlements; and

(iii) the basis on which it is said that each alleged settlement was for a sum that was substantially less than that to which each alleged Class Member was entitled.

(b) It repeats the additional statements in paragraphs 24(a), 31(c), 35, 49(a), 59 and 66 above.

Third Cause of Action: Mistake

74. It repeats paragraphs 1 to 63 above.

75. It denies paragraph 75 and repeats the additional statements in paragraphs 24(a), 31(c), 35, 49(a), 59 and 66 above.

76. It denies paragraph 76 and says further that:

(a) there was no qualifying mistake in respect of the Settlement Agreement that would give rise to a claim;

(b) it repeats the additional statements in paragraphs 24(a), 31(c), 35, 49(a), 59 and 66 above; and

(c) paragraph 76 does not adequately particularise the way in which the alleged mistakes influenced each alleged Class Member to enter into a settlement agreement with the defendant.

77. It denies paragraph 77 and says further that paragraph 77 lacks adequate particulars of the way in which the alleged mistakes were material to each alleged Class Member.

78. It denies paragraph 78.

79. In respect of the allegations in paragraph 79:

(a) it admits that the plaintiffs surrendered the right to recover for their Claim under their Policy;

(b) it otherwise denies paragraph 79; and

(c) it says further that paragraph 79 lacks adequate particulars of the way in which the alleged mistakes caused a substantially unequal exchange of values.

80. It denies paragraph 80 and says further that:

(a) paragraph 80 does not adequately particularise the way in which the alleged mistakes caused loss to each alleged Class Member;

(b) it repeats the additional statements in paragraphs 24(a), 31(c), 35, 49(a), 59 and 66 above;

(c) any mistake made by the plaintiffs is not the cause of any loss suffered by them;

(d) clause 11 of the Settlement Agreement specifically provided for the risk of any future known or unknown claims arising directly or indirectly out of the Canterbury earthquakes, and records that the plaintiffs (and other alleged Class Members) would bear that risk; and

(e) to the extent that the wording of clause 11 was incorporated into any settlement agreements with the alleged Class Members there has been accord and satisfaction of any claim.

81. It denies paragraph 81 and says further that:

(a) paragraph 81 does not adequately particularise:

(i) the alleged stress and inconvenience suffered by each alleged Class Member as pleaded by the plaintiffs;

(ii) the terms of the alleged settlements; and

(iii) the basis on which it is said that each settlement was for a sum that was substantially less than that to which each alleged Class Member was entitled.

(b) it repeats the additional statements in paragraphs 24(a), 31(c), 35, 49(a), 59 and 66 above

Fourth cause of action Breach of duty of good faith

82. It repeats paragraphs 1 to 63.

83. It denies both the allegation of the existence of a duty of good faith and the alleged breach of such a duty pleaded in paragraph 83 and repeats the additional statements in paragraphs 24(a), 31(c), 35, 49(a), 59 and 66 above.

84. It denies paragraph 84 and says further that:

(a) paragraph 84 does not adequately particularise:

(i) how each alleged Class Member was misled as to the value of their claim;

(ii) the terms of the alleged settlements;

(iii) the basis on which it is said that for each alleged Class Member settlement was for a sum that was less than the true value of their claim recoverable under their respective policies;

(b) clause 11 of the Settlement Agreement specifically provided for the risk of any future claims, which includes that based on a breach of good faith, and records that the plaintiffs (and other alleged Class Members) would bear that risk;

(c) to the extent that the wording of clause 11 was incorporated into any settlement agreements with the alleged Class Members there has been accord and satisfaction of any claim; and

(d) it repeats the additional statements in paragraphs 24(a), 31(c), 35, 49(a), 59 and 66 above.

85. It denies paragraph 85 and says further:

(a) If, contrary to the defendant's denials and further statements above, the Court determines that the duty pleaded in paragraph 83 of the claim exists (which is denied) and that such duty was breached (which is denied), then the loss asserted by the plaintiffs is not a remedy available to the plaintiffs for any such breach;

(b) It repeats further statements made in paragraphs 31(c), 35, 49(a), 59 and 66 above.

86. It denies paragraph 86 and says further that:

(a) Paragraph 86 lacks sufficient particulars of:

(i) the stress and inconvenience suffered by each alleged Class Member pleaded by the plaintiff;

(ii) the terms of the alleged settlements; and

(iii) the basis on which it is said that each settlement was for a sum that was substantially less than that to which each alleged Class Member was entitled.

(b) it repeats the additional statements in paragraphs 24(a), 31(c), 35, 49(a), 59, 66 and 85(a) above.

First affirmative defence – section 43A Fair Trading Act 1986 applies to first cause of action

87. It repeats the admissions, denials and further statements pleaded in paragraphs 1 to 86 above.

88. In relation to the first cause of action for alleged breach of the Fair Trading Act 1986, to the extent that any claimant or alleged Class Member discovered or ought to have discovered the loss or damage, or likelihood of loss or damage, prior to 25 May 2015 then the claimant or alleged Class Member is precluded from applying for or obtaining relief under the first cause of action pursuant to section 43A of the Fair Trading Act 1986.

Second affirmative defence – Limitation in relation to second to fourth causes of action

89. In relation to the second to fourth pleaded causes of action, where any claimant or alleged Class Member is deemed to have commenced a claim after 4 September 2018, then to the extent that:

Either

(a) in the case of claims to which the Limitation Act 1950 (now repealed) applies, the cause of action on which the claim is based accrued prior to 4 September 2012;

Or, alternatively

(b) in the case of claims to which the Limitation Act 2010 applies:

(i) the act or omission on which the claim is based arose prior to 4 September 2012; and

(ii) to the extent that there was a late knowledge date, any alleged Class Member had knowledge of the factors referred to in s14(1)(a)-(e) of the Limitation Act 2010 prior to 4 September 2015,

any such claims are time barred pursuant the Limitation Act 2010 and/or the Limitation Act 1950 (as the case may be).

This document is filed by **WILLIAM JOHN PALMER**, solicitor for the defendant whose address for service is at the offices of Buddle Findlay, Level 4, 83 Victoria Street, Christchurch.

Documents for service on the abovenamed may be left at that address or may be:

1. Posted to the solicitor at PO Box 322, Christchurch; or

2. Left for the solicitor at a document exchange for direction DX WX11135, Christchurch; or

3. Transmitted to the solicitor by facsimile to 0-3- 379 5659; or

4. Emailed to the solicitor at willie.palmer@buddlefindlay.com / susan.rowe@buddlefindlay.com.