IN THE COUNTY COURT OF VICTORIA

AT MELBOURNE

DAMAGES & COMPENSATION LIST/GENERAL DIVISION

No. CI-14-98988

B E T W E E N:

**BRAD HALES** Plaintiff

and

# BELLVOIR FOOTBALL CLUB & ORS

**(according to the attached schedule)** Defendants

# DEFENCE OF THE THIRD DEFENDANT

Date of document: 12 December 2014

Filed on behalf of: The Third Defendant Prepared by:

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To the endorsement standing as the Plaintiff’s Statement of Claim, the Third Defendant says as follows:

1. It does not plead to paragraph 1 as the same makes no allegation against it.
2. It does not plead to paragraph 2 as the same makes no allegation against it.
3. (a) It admits the allegations contained in paragraph 3(a).

(b) Save the Third Defendant admits the premises was a public reserve located within its municipality, it otherwise does not admit the remaining allegations contained in paragraph 3(b).

1. It does not admit the allegations contained in paragraph 4.
2. Insofar as the same relates to the Third Defendant, it denies the allegations contained in paragraph 5.
3. It does not plead to paragraph 6 as the same makes no allegation against it.
4. It denies each and every allegation contained in paragraph 7.
5. Insofar as the same relates to the Third Defendant, it denies the allegations contained in paragraph 8. Further, the Third Defendant denies s.14(3) of the *Wrongs Act* creates a statutory duty.
6. Insofar as the same relates to the Third Defendant, it denies each and every allegation contained in paragraph 9.
7. Save the Third Defendant admits the Plaintiff's date of birth and that he alleges he suffered injuries as a result of the incident, it otherwise does not admit the allegations contained in paragraph 10.
8. The Third Defendant says further that if the Plaintiff suffered loss or damage as alleged (which is denied by the Third Defendant), and if this occurred as a result of the negligence and/or breach of duty, whether statutory or otherwise, on the part of the Third Defendant its servants and/or agents (each of which allegations is denied), then there was contributory negligence on the part of the Plaintiff which caused or contributed to the loss or damage alleged.

# PARTICULARS OF CONTRIBUTORY NEGLIGENCE

* 1. Failing to keep any or any proper lookout;
  2. Failing to take sufficient care for his own safety;
  3. Failing to observe and avoid the fence;
  4. Failing to slow down and/or change direction so as to avoid a collision with the fence;
  5. Failing to use his hand/arms to brace for and minimise the impact of any collision with the fence;
  6. Moving at a speed and/or in a manner which resulted in his left foot coming into contact with the fence;
  7. Attempting a manoeuvre which was dangerous in the circumstances;
  8. If the fence was too close to the boundary line as alleged (which is denied), then failing to so advise the First, Second and/or Third Defendant.

1. Further, and in the alternative, at the time of the happening of the incident referred to in the Statement of Claim, the Plaintiff was playing football (hereinafter referred to as “the activity”) and knew or ought to have known that the same could result in injury but voluntarily engaged in the activity and did so with full appreciation of the nature and extent of the risks involved in the circumstances.

Accordingly, the Plaintiff voluntarily agreed to engage in the activity and agreed to accept the risk of injury involved.

1. By reason of the matters referred to in paragraph 12 above:
   1. the happening of the incident and the occurrence of injury to the Plaintiff did not constitute a breach of any duty owed by the Third Defendant to the Plaintiff;
   2. the Plaintiff voluntarily encountered the risk of sustaining the injury, loss or damage which is alleged to have been sustained;
   3. there was no duty of care owed by the Third Defendant to the Plaintiff.

***Latitude Partners***

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# LATITUDE PARTNERS

Solicitors for the Third Defendant

# SCHEDULE OF PARTIES

**BRAD HALE** Plaintiff

and

**BELLVOIR FOOTBALL CLUB** First Defendant and

**SOUTH REGIONAL JUNIOR FOOTBALL LEAGUE** Second Defendant

and

**BEACHFRONT CITY COUNCIL** Third Defendant