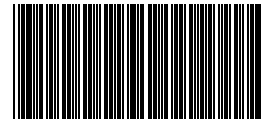




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### Commercial List Statement

#### COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2018/00353304

#### TITLE OF PROCEEDINGS

First Plaintiff	Ashita Tomi Pty Ltd as trustee for Esskay Super Fund ABN 79582038569
First Defendant	RCR TOMLINSON LTD trading as RCR Tomlinson Ltd ACN 008898486
Second Defendant	Paul Joseph Dagleish
Number of Defendants	3

#### FILING DETAILS

Filed for	Ashita Tomi Pty Ltd as trustee for Esskay Super Fund, Plaintiff 1
Legal representative	Damian Scattini
Legal representative reference	
Telephone	(02)91463888
Your reference	Ashita Tomi Proceeding

#### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Commercial List Statement (2019.08.30 Ashita Ors v RCR Ors - Ashita Tomi Proceeding(Consolidated).pdf)

[attach.]

**COMMERCIAL LIST STATEMENT****COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial List
Registry	Sydney
Case number	2018/00353304

**TITLE OF PROCEEDINGS**

First Plaintiff	<b>Ashita Tomi Pty Ltd as trustee for Esskay Super Fund ABN 79 582 038 569</b>
Number of Plaintiffs	<b>3</b>
First Defendant	<b>RCR Tomlinson Limited ACN 008 898 486</b>
Number of Defendants	<b>3</b>

**FILING DETAILS**

Filed for	<b>Ashita Tomi Pty Ltd, CJMcG Pty Ltd and Jorge Mayer, Plaintiffs</b>
Legal representative	Damian Scattini Quinn Emanuel Urquhart & Sullivan
Legal representative reference	07435-00002
Contact name and telephone	Meagan Bertolatti, +61 2 9146 3500
Contact email	<a href="mailto:meaganbertolatti@quinnemanuel.com">meaganbertolatti@quinnemanuel.com</a>

**TYPE OF CLAIM**

Commercially misleading conduct

## A. NATURE OF DISPUTE

1. This is a representative proceeding brought by the Plaintiffs on behalf of themselves and on behalf of other shareholders who acquired an interest in shares of the First Defendant, RCR Tomlinson Limited (**RCR**), or who acquired a long exposure to RCR shares by entering into equity swap confirmations, between 28 December 2016 and 12 November 2018.
2. RCR was an engineering and infrastructure company listed on the ASX.
3. From no later than 28 December 2016, RCR embarked upon a new strategy of pursuing substantial, fixed-price contracts for the engineering, procurement and construction (**EPC**) of solar farms. Those contracts, by their nature, exposed RCR to a heightened risk of loss, including in the event of delay or unanticipated increases in the cost of completing the relevant project. That risk of loss was not disclosed to the market until after it had materialised, with devastating consequences for RCR's shareholders.
4. On 28 August 2018, following a 30 day trading halt and suspension, RCR announced to the market that its strategy of pursuing EPC solar contracts had exposed RCR to a heightened risk of loss, including in the event of delay or unanticipated increases in the cost of completing the relevant project; and that it had in fact suffered substantial losses arising from operational issues in relation to one particular EPC solar contract, leading RCR to incur a net loss for FY18.
5. None of that information had previously been disclosed to the market. Immediately upon the resumption of trading in RCR Shares on 30 August 2018, RCR's share price declined sharply, wiping hundreds of millions from its market capitalisation.
6. In the 28 August 2018 disclosures, RCR also forecast substantial earnings for FY19, and announced that it was conducting a \$100 million capital raising pursuant to a prospectus. The prospectus indicated that the capital raising would solve RCR's financial problems caused by the financial impact of the cost-overruns announced on 28 August 2018.
7. On 12 November 2018, just six weeks after the \$100 million capital raising was completed, RCR shares were placed into a second and final trading halt. On 22 November 2018, RCR was placed into voluntary administration. RCR has since been

placed into liquidation. The liquidators do not expect that shareholders will receive any dividend in the liquidation.

8. In this proceeding, the Plaintiffs bring a number of claims. First, the Plaintiffs claim that RCR contravened its continuous disclosure obligations under the ASX Listing Rules. RCR ought to have disclosed to the market prior to 28 August 2018 the information that was disclosed to the market on that date. Furthermore, as at and from 28 August 2018, RCR ought to have disclosed to the market information about RCR's perilous financial position and outlook.
9. Secondly, the Plaintiffs claim that RCR, the Second Defendant (Dalgleish, RCR's CEO) and the Third Defendant (Bruce James, RCR's interim CEO after Dalgleish resigned) engaged in misleading or deceptive conduct. The Defendants made misleading representations and omissions to the market concerning the risks to which RCR was exposed, RCR's compliance with its continuous disclosure obligations, the effectiveness of RCR's risk management systems, and RCR's financial position and outlook.
10. Thirdly, the Plaintiffs claim that the prospectus pursuant to which the \$100 million capital raising was conducted was misleading.
11. The Plaintiffs seek damages on behalf of themselves and Group Members for loss suffered as a result of: RCR's breaches of continuous disclosure obligations; the misleading conduct of RCR, Dalgleish and James; and RCR's disclosure document contraventions.

## **B. ISSUES LIKELY TO ARISE**

1. Adopting the defined terms in Part C below, the questions of law or fact common to the claims of the Group Members are:

*In respect of the alleged breaches of RCR's continuous disclosure obligations:*

- 1.1 When did RCR become aware, within the meaning of Rule 19.12 of the Listing Rules, of the information pleaded below in Section V of Part C?
- 1.2 Whether the information pleaded below in Section V of Part C was material non-public information of the kind that RCR was required to disclose, pursuant to its continuous disclosure obligations, upon becoming aware of such information.

*In respect of the alleged misleading or deceptive conduct:*

- 1.3 Whether the conduct pleaded below in Section VII, VIII, IX of Part C was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act, section 12DA(1) of the ASIC Act and/or section 18 of the ACL?
- 1.4 Whether the conduct pleaded below in Section VII, VIII, IX of Part C was conduct of RCR, Dalgleish and/or James respectively.
- 1.5 Whether the First and Third Defendants contravened section 1041E of the Corporations Act by reason of the conduct pleaded below in Section X of Part C.

*In respect of causation:*

- 1.6 Whether, during the Relevant Period, the Market Contraventions pleaded below in Sections VII, VIII, IX and XI of Part C (or any one or combination of them) caused the market price of RCR Shares to be, or materially contributed to the market price of RCR Shares being, substantially greater than their true value and/or the market price that would otherwise have been paid at the time of acquisition but for those Market Contraventions (or any one or combination of them).
- 1.7 Whether the decline in the price of RCR Shares pleaded in paragraphs 66 of Part C was caused or materially contributed to by the information communicated to the Affected Market by RCR in respect of the Market Contraventions.
- 1.8 Whether the price of RCR Shares would have fallen substantially if RCR had:
  - (a) disclosed the EPC Solar Contract Risks Information, the Grounds Condition Information, the Project Issues Information, the Costs Overrun Information, the Write-downs Information and/or the FY18 Earnings Information prior to 28 August 2018;
  - (b) disclosed the FY19 Financial Information and the matters pleaded in paragraph 203 below prior to 12 November 2018; and/or
  - (c) not engaged in the conduct the subject of the Market Contraventions.

*In respect of the 2017 Capital Raising:*

- 1.9 Whether, during the Relevant Period, the 30 August 2017 Cleansing Notice Misleading Conduct Contravention pleaded below in Sections VII of Part C caused the offer price in the 2017 Capital Raising to be, or materially contributed to the offer price in the 2017 Capital Raising being, substantially

greater than the offer price otherwise would have been but for the 2017 Cleansing Notice RCR Misleading Conduct Contravention.

*In respect of the 2018 Capital Raising:*

- 1.10 Whether the Prospectus contained statements that were misleading or deceptive.
- 1.11 Whether the Prospectus Contravention pleaded below in Section XIII of Part C caused the offer price in the Prospectus to be, or materially contributed to the offer price in the Prospectus being, substantially greater than the offer price otherwise would have been but for the Prospectus Contravention.

*In respect of all claims:*

- 1.12 What is the proper methodology for assessing the quantum of the loss or damage suffered by the Plaintiffs and Group Members as a result of the impugned conduct of RCR?
- 2. The following additional questions will arise in respect of the Plaintiffs and some Group Members individually:
    - 2.1 Whether the Plaintiffs and Group Members acquired their respective interests in RCR Shares in reliance upon the conduct pleaded below in Section VII, VIII, IX of Part C (or any part of that conduct).
    - 2.2 Whether the Plaintiffs and Group Members would not have acquired their respective interests in RCR Shares had they known:
      - (a) of the information pleaded below in Section V of Part C; and/or
      - (b) that the representations pleaded below in Section VII, VIII, IX of Part C were false or misleading, or made without reasonable grounds; and/or
      - (c) of the information the subject of the omissions pleaded below in Section VII, VIII, IX of Part C.
  - 3. Whether the Third Plaintiff and Group Members who acquired an interest in RCR Shares in the 2017 Capital Raising would have acquired those shares at all, or in the volume in which they were acquired, but for the 30 August 2017 Cleansing Notice Misleading Conduct Contravention.
  - 4. Whether the Second Plaintiff and Group Members who acquired an interest in RCR Shares in the 2018 Capital Raising pursuant to the Prospectus would have acquired those shares at all, or in the volume in which they were acquired, but for the Prospectus Contravention.

## C. PLAINTIFF'S CONTENTIONS

### I. INTRODUCTION

#### (A) The Plaintiffs and Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) (**CPA**) on behalf of the Plaintiffs and all persons who or which:

1.1 during the period from 28–December 2016<sup>7</sup> to 12 November 2018 inclusive (**Relevant Period**), acquired:

- (a) an interest in ordinary shares in the Defendant, RCR (**RCR Shares**) on the financial market operated by the Australian Securities Exchange Limited (**ASX**); or
- (b) long exposure to RCR Shares by entering into equity swap confirmations in respect of the RCR Shares during the Relevant Period, for a period extending beyond 28 August 2018 (**RCR Equity Swaps**);

1.2 suffered loss or damage by or resulting from the contraventions by the Defendants pleaded in this Commercial List Statement (**CLS**); and

1.3 are not any of the following:

- (a) a related party (as defined by section 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of RCR;
- (b) a related body corporate (as defined by section 50 of the *Corporations Act*) of RCR;
- (c) an associated entity (as defined by section 50AAA of the *Corporations Act*) of RCR;
- (d) an officer or a close associate (as defined by section 9 of the *Corporations Act*) of RCR;
- (e) a Chief Justice, Justice or Registrar of the Supreme Court of New South Wales or the High Court of Australia; or
- (f) an officer or employee of, or other legal practitioner engaged by, the law firm Quinn Emanuel Urquhart & Sullivan,

(collectively, **Group Members**).

2. At the time of commencing this proceeding, seven or more persons being Group Members have claims against the Defendants within the meaning of section 157 of the CPA.

3. The Plaintiffs have standing to commence proceedings on their own behalf against the Defendants, within the meaning of section 158(1) of the CPA.
4. The First Plaintiff acquired an interest in RCR Shares on the ASX during the Relevant Period. As at 27 July 2018, the First Plaintiff held 3000 RCR Shares. As at the commencement of this proceeding, the First Plaintiff continues to hold those RCR Shares.

#### Particulars

*The First Plaintiff acquired RCR Shares as set out in the table below. The First Plaintiff did not dispose of RCR Shares during the Relevant Period.*

Date	Buy/Sell	Number of RCR Securities	Average Price per Security	Amount (\$)
27 July 2018	BUY	3,000	\$2.79	\$8,370.00

5. The Second Plaintiff acquired an interest in RCR Shares on the ASX during the Relevant Period. The Second Plaintiff purchased 4,225 RCR pursuant to the 2017 Capital Raising settling on 21 September 2017, 10,137 RCR Shares pursuant to the 2018 Capital Raising, settling on 26 September 2018, and 23,128 RCR Shares on the financial market operated by the ASX, settling on 13 November 2018. As at the filing of this CLS, the Second Plaintiff continues to hold those RCR Shares.

#### Particulars

*The Second Plaintiff acquired RCR Shares as set out in the table below. The Second Plaintiff did not dispose of RCR Shares during the Relevant Period.*

Date	Buy/Sell	Number of RCR Securities	Average Price per Security	Amount (\$)
21 September 2017	BUY	4,225	\$3.55	\$14,998.75
26 September 2018	BUY	10,137	\$1	\$10,137.00
13 November 2018	BUY	23,138	\$0.895	\$20,708.51



6. The Third Plaintiff acquired an interest in RCR Shares on the ASX during the Relevant Period. The Third Plaintiff jointly purchased 1,450 RCR Shares on the financial market operated by the ASX, settling on 29 May 2017, and 2,816 RCR Shares pursuant to the 2017 Capital Raising, settling on 21 September 2017. As at the filing of this CLS, the Third Plaintiff continues to hold those RCR Shares.

#### Particulars

*The Third Plaintiff acquired RCR Shares as set out in the table below. The Third Plaintiff did not dispose of RCR Shares during the Relevant Period.*

Date	Buy/Sell	Number of RCR Securities	Average Price per Security	Amount (\$)
29 May 2017	BUY	1,450	\$3.50	\$5,075
21 September 2017	BUY	2,816	\$3.55	\$9,996.80

7. As to the requirements in section 161 of the CPA:
- 7.1 the Group Members to whom the proceedings relate are identified in paragraph 1 above;
- 7.2 the claims made on behalf of Group Members are that the First Defendant breached its continuous disclosure obligations, that all Defendants engaged in misleading or deceptive conduct during the Relevant Period, and that the Prospectus (as defined below in paragraph 63.2) was misleading, causing the Group Members loss, as further described in this CLS;
- 7.3 the relief claimed is set out in the Summons;
- 7.4 the questions of law or facts common to the claims of the Group Members are as set out in Part B of this CLS, as further described in Part C of this CLS.

#### **(B) The Defendants and other relevant persons**

8. The First Defendant, RCR is, and at all times during the Relevant Period was:
- 8.1 duly incorporated pursuant to the Corporations Act and capable of being sued;
- 8.2 a corporation included in the official list of the financial market operated by the ASX and whose ordinary shares are ED securities (that is, enhanced disclosure securities) for the purposes of sections 111AE and 111AC of the Corporations Act;

- 8.3 a listed disclosing entity within the meaning of section 111AL(1) and Chapter 6CA of the Corporations Act;
  - 8.4 in respect of the conduct described in this CLS in relation to financial services, a person that, in trade or commerce, engaged in conduct in relation to financial services within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
  - 8.5 a corporation within the meaning of the *Competition and Consumer Act 2010* (Cth) (**CCA**);
  - 8.6 in respect of the conduct described in this CLS other than in relation to financial services, a person that, in trade or commerce, engaged in conduct within the meaning of the Australian Consumer Law (**ACL**).
9. The Second Defendant, **Dalgleish**, was:
- 9.1 Chief Executive Officer of RCR from 25 May 2009 to 6 August 2018;
  - 9.2 the Managing Director of RCR from 20 October 2011 to 6 August 2018; and
  - 9.3 an officer of RCR within the meaning of section 9 of the Corporations Act and Listing Rule 19.12, at all times during the Relevant Period until 6 August 2018.
10. The Third Defendant, **James**, was:
- 10.1 a Director of RCR from 28 January 2014;
  - 10.2 the Interim Chief Executive Officer of RCR from 7 August 2018; and
  - 10.3 an officer of RCR within the meaning of section 9 of the Corporations Act and Listing Rule 19.12, at all times during the Relevant Period.
11. Andrew **Phipps** was:
- 11.1 the Chief Financial Officer of RCR at all material times during the Relevant Period until about 7 November 2018; and
  - 11.2 an officer of RCR within the meaning of section 9 of the Corporations Act and Listing Rule 19.12, at all times during the Relevant Period until about 7 November 2018.
12. Conal **McCullough** was:
- 12.1 the Chief Operating Officer-East of RCR from about February 2017 to about May 2018;
  - 12.2 the Chief Operating Officer of RCR from about May 2018 to about December 2018; and

- 12.3 an officer of RCR within the meaning of section 9 of the Corporations Act and Listing Rule 19.12, at all times during the Relevant Period from about February 2017.

**(C) Application of section 674(2) of the Corporations Act**

13. At all times during the Relevant Period:

13.1 RCR Shares were able to be acquired and disposed of by investors and potential investors on the financial market operated by the ASX (**Affected Market**);

13.2 RCR was bound by the Listing Rules of the ASX (**Listing Rules**);

13.3 Rule 3.1 of the Listing Rules provided that once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell the ASX that information, unless the exceptions in Listing Rule 3.1A apply; and

13.4 Rule 19.12 of the Listing Rules provided that an entity becomes aware of information if, and as soon as, an officer of the entity has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.

13.5 section 674(2) of the Corporations Act applied to RCR by reason of:

(a) the matters set out in paragraph 8.2 above and section 111AP(1) of the Corporations Act; and

(b) the matters set out in this paragraph 13 and section 674(1) of the Corporations Act,

(collectively, **Continuous Disclosure Obligations**).

**II. RCR'S BUSINESS**

14. RCR was a diversified engineering and infrastructure company that provided engineering and other services to the infrastructure, energy and resources sectors.

15. In the period up to about mid-2016, a substantial part of RCR's business involved providing engineering and other services to the coal sector.

16. In April 2016, RCR announced to the market that, following a strategic review, RCR would undertake a re-organisation pursuant to which it would reduce its exposure to the coal sector, and increase its exposure to the renewable energy sector.

### Particulars

*ASX Announcement and Media Release dated 4 April 2016 entitled "RCR exits coal services and significantly reduces fabrication capacity and regional presence in major cost-out and strategic re-organisation".*

17. As at mid to late 2016, the renewable energy sector was:
- 17.1 a new sector for RCR;
  - 17.2 a new and emerging market;
  - 17.3 a market in which RCR did not have substantial experience in delivering engineering, procurement or construction services.

### Particulars

*The Plaintiffs refer to RCR's 2017 Annual Report, p 11, and the Prospectus at p 16.*

18. By no later than 28 December 2016, RCR had embarked upon a business strategy pursuing contracts relating to the engineering, procurement and construction of solar farms (**EPC Solar Contracts**) (**EPC Solar Contracts Strategy**).
19. From about 28 December 2016 until about April 2018, pursuant to the EPC Solar Contracts Strategy, RCR entered into at least fifteen EPC Solar Contracts, having an aggregate award value of approximately \$1.5 billion.

### Particulars

(a) *The Plaintiffs refer to the Administrators' Report (as defined in paragraph 72 below) at p 8.*

(b) *Further particulars may be provided following discovery and evidence.*

20. The EPC Solar Contracts generally had the following characteristics:
- 20.1 they were fixed price contracts, which exposed RCR to risks including delays and unanticipated increases in the cost of delivering the project;
  - 20.2 they had high working capital requirements in the later stages of the project;
  - 20.3 cash receipts were dependent upon certain milestones being met, giving rise to timing differences from a cash collection point of view;
  - 20.4 they had a cash profile pursuant to which upfront payments were received to fund the working capital, but the majority (if not all) of the gross margin was received at completion of the project;

- 20.5 there was limited recourse for RCR to force timely approvals of extension of time requests, variations and milestone approvals, coupled with requirements on RCR to progress with construction to avoid adverse delay claims,

**(EPC Solar Contract Risks Information).**

**Particulars**

*The Plaintiffs refer to:*

- (a) *the 28 August 2018 Announcements (as defined at paragraph 57 below);*
- (b) *the Prospectus (as defined at sub-paragraph 63.2 below) at pp 42-43,53-54;*
- (c) *Administrators' Report at p 48.*

*Further particulars may be provided following discovery and evidence.*

21. At all material times prior to and during the Relevant Period:

- 21.1 RCR had in place processes and project-level systems relating to procurement commitments to monitor the time and cost to complete EPC Solar Contracts (**RCR Protocol**);
- 21.2 monthly reviews were prepared by management in order to monitor percentage completion and forecast costs to complete EPC Solar Contracts; and
- 21.3 monthly project meetings were held and updates were provided to RCR's board of directors,

**(RCR Reviews).**

**Particulars**

*The Plaintiffs refer to:*

- (a) *the Administrators' Report at p 47; and*
- (b) *the Prospectus at pp 9, 38.*

*Further particulars may be provided following discovery and evidence.*

**III. DAYDREAM AND HAYMAN SOLAR FARMS PROJECT**

22. At a time presently unknown to the Plaintiffs, but prior to 11 August 2017, RCR submitted a tender to enter into a contractual arrangement, for the engineering, procurement, construction, operation and maintenance of two 'solar farms' located in

Collinsville, Queensland, known as the 'Daydream Solar Farm' and the 'Hayman Solar Farm' (together, the **Project**).

23. The Project required, among other things:
- 10.1 approximately 110,000 piles to be installed on the Project site by driving the piles into the ground; and
  - 10.2 approximately 2.2 million solar panels to be mounted upon the driven piles.
24. In submitting a tender for the Project, RCR made an estimate of total costs in relation to the Project (**Tender Estimate**) which allowed for particular, or a range of particular, sub-surface ground conditions at the Project site.

#### **Particulars**

*The quantum of the Tender Estimate and the particular, or range of particular, sub-surface ground conditions at the Project site allowed for in the Tender Estimate are presently unknown to the Plaintiffs. Further particulars may be provided following discovery and evidence.*

25. On or around 11 August 2017, RCR was awarded the contracts for the Project.
26. In September 2017, construction of the Project commenced.
27. By August 2018, construction of the Project was substantially complete.

#### **IV. RELEVANT ANNOUNCEMENTS, DISCLOSURES AND EVENTS**

##### **(A) 23 February 2017 Announcements**

28. On 23 February 2017, RCR:
- 28.1 published and released an ASX Announcement and Media Release entitled "RCR Exceeds Consensus and Resumes Growth Cycle as Revenue, Earnings and Order Book Rebound From Previous Six Months" (**23 February 2017 ASX Announcement**);
  - 28.2 published and released to the ASX an audio recording entitled "Boardroom Radio Broadcast HY17 Results" (**23 February 2017 Audio Recording**),  
(the **23 February 2017 Announcements**).
29. Dagleish:
- 29.1 authorised the publication and release of the 23 February 2017 Announcements;
  - 29.2 provided statements for inclusion in the 23 February 2017 ASX Announcement, which statements were quoted therein;

- 29.3 was identified as the contact person for investors in relation to the 23 February 2017 ASX Announcement; and
- 29.4 spoke the words in the 23 February 2017 Audio Recording.
30. In the 23 February 2017 Announcements, Dalglish made the following representations to the Affected Market:
- 30.1 RCR's revenue for HY17 was \$484.4 million;
- 30.2 RCR's earnings before interest and tax (**EBIT**) for HY17 was \$13.7 million;
- 30.3 RCR's strategy to move away from the coal sector has paid dividends;
- 30.4 we are expecting revenues to continue to grow and margins to improve over the next six months;
- 30.5 RCR's growth is being driven by the development of renewable energy projects, and RCR is currently the preferred tenderer on over 350MW of renewable energy projects;
- 30.6 conversion of the pipeline of preferred tenders into contracted revenue will position RCR well for revenue growth in FY18;
- 30.7 RCR will continue to focus on opportunities in the renewable energy market; and
- 30.8 in recent times, I have not seen better conditions for the business or a better outlook.

**(23 February 2017 Dalglish Representations).**

#### **Particulars**

*The 23 February 2017 Dalglish Representations were express.*

31. In the 23 February 2017 Announcements, RCR made the following representations to the Affected Market:
- 31.1 the 23 February 2017 Dalglish Representations; and
- 31.2 on the back of over \$500 million in recent contract wins, a growing pipeline and a record order book and preferred status of \$1.8 billion, RCR expects to have stronger revenue and earnings growth in the second half of FY17 and into FY18,

**(23 February 2017 RCR Representations).**

### Particulars

*The 23 February 2017 RCR Representations were express.*

#### **(B) 3 May 2017 Presentation**

32. On 3 May 2017, RCR published and released to the ASX an investor presentation entitled “Macquarie Conference 2017 Investor Presentation” (**3 May 2017 Presentation**).
33. Dalglish:
- 33.1 authorised the publication and release of the 3 May 2017 Presentation; and
- 33.2 was identified as the presenter in the 3 May 2017 Presentation.
34. In the 3 May 2017 Presentation, Dalglish and RCR made the following representations to the Affected Market:
- 34.1 RCR’s revenue for HY17 was \$484.4 million;
- 34.2 RCR’s earnings before interest and tax (**EBIT**) for HY17 was \$13.7 million;
- 34.3 RCR is positioned for, and expects, stronger earnings growth in the second half of FY17 and into FY18;
- 34.4 RCR’s strategic objectives include expansion into new market sectors, including renewable energy, and
- 34.5 RCR has developed an advanced system delivery approach for large solar projects; and
- 34.6 newly won major projects and preferred contractor status are expected to increase RCR’s revenue and earnings,
- (3 May 2017 Representations).**

### Particulars

*The 3 May 2017 Representations were express.*

#### **(C) 11 August 2017 Announcement**

35. On 11 August 2017, RCR issued an ASX Announcement and Media Release entitled “RCR awarded \$315m for Daydream and Hayman solar farm projects” (**11 August 2017 Announcement**).
36. Dalglish:
- 36.1 authorised the publication and release of the 11 August 2017 Announcement;



- 36.2 provided statements for inclusion in the 11 August 2017 Announcement, which statements were quoted therein; and
- 36.3 was identified as the contact person for investors in relation to the 11 August 2017 Announcement.
37. In the 11 August 2017 Announcement, Dalgleish made the following representations to the Affected Market:
- 37.1 RCR now has over half a Gigawatt of large-scale solar projects in our order book and more than a Gigawatt currently being developed or progressed under early contractor involvement processes;
- 37.2 RCR has firmly positioned itself as one of Australia's leading developers and EPC providers of large-scale solar and other renewable energy infrastructure; and
- 37.3 RCR is currently preferred on a number of additional renewable energy projects that will support our further growth in FY18 and into FY19,

**(11 August 2017 Dalgleish Representations).**

**Particulars**

*The 11 August 2017 Dalgleish Representations were express.*

38. The 11 August 2017 Announcement, RCR made the following representations to the Affected Market:
- 38.1 the 11 August 2017 Dalgleish Representations; and
- 38.2 RCR has been awarded the contracts for the Project;
- 38.3 the value of the Project on award was \$315 million,

**(11 August 2017 RCR Representations).**

**Particulars**

*The 11 August 2017 RCR Representations were express.*

**(D) 24 August 2017 Announcements**

39. On 24 August 2017, RCR published and released to the ASX its FY17 audited annual financial report (FY17 Financial Report), which included a Managing Director's Report from Dalgleish (**FY17 Managing Director's Report**).
40. On 24 August 2017, RCR also:

- 40.1 issued an ASX Announcement and Media Release entitled “RCR Announces Strong Full Year Result and a Capital Raising to Support Future Growth” (**24 August 2017 ASX Announcement**);
  - 40.2 published and released to the ASX an investor presentation entitled “FY17 Results & Capital Raising to Support Future Growth” (**24 August 2017 Presentation**); and
  - 40.3 published and released to the ASX an audio recording entitled “RCR FY17 Results and Capital Raising to Support Future Growth” (**24 August 2017 Audio Recording**),  
**(24 August 2017 Announcements).**
41. Dalglish:
- 41.1 authorised the publication and release of the 24 August 2017 Announcements;
  - 41.2 provided statements for inclusion in the 24 August 2017 ASX Announcement, which statements were quoted therein;
  - 41.3 was identified as the contact person for investors in relation to the 24 August 2017 ASX Announcement;
  - 41.4 was identified as a presenter of the 24 August 2017 Presentation; and
  - 41.5 spoke the words in the 24 August 2017 Audio Recording.
42. In the 24 August 2017 Announcements and the FY17 Managing Director’s Report, Dalglish made the following representations to the Affected Market:
- 42.1 RCR’s revenue for FY17 was \$1.3 billion; and
  - 42.2 RCR’s EBIT for FY17 was \$35.2 million;
  - 42.3 RCR now has half a gigawatt of solar energy projects under construction and RCR’s momentum is being driven, in substantial part, by its renewable energy projects;
  - 42.4 there will likely be substantial growth in the large-scale solar project market, and RCR is in a strong position to capitalise on that growth;
  - 42.5 given RCR’s access to projects within the solar energy sector and our technical expertise and understanding of the generation market, RCR is favourably positioned to invest capital to deliver additional value for RCR shareholders;

- 42.6 low net debt and a strong balance sheet will provide growth for FY18 and FY19;
- 42.7 RCR expects to experience, and is positioned for, significant and continued strong growth through FY18;
- 42.8 we believe that our strategic position as market leader in the renewable energy sector will see our business enjoy significant growth opportunities over the next decade from new, large-scale, solar, wind and storage power projects;
- 42.9 we expect the infrastructure business to provide the strongest and most predictable path for growth over the next decade;
- 42.10 our strength in engineering and project delivery, which has stood us in good stead in servicing the traditional energy markets, has been readily translatable to the new and emerging renewable energy market, and this has enabled us to position RCR as a market leader in the design and construction of large scale utility photovoltaic solar, wind and battery storage projects and benefit from the rapid growth in renewable energy infrastructure;
- 42.11 RCR's success in the renewable energy sector has been enviable; and
- 42.12 there is a reasonable basis to expect that RCR's earnings for FY18 will exceed RCR's earnings for FY17,

**(24 August 2017 Dalgleish Representations).**

**Particulars**

- (a) *The 24 August 2017 Dalgleish Representations pleaded at subparagraphs 42.1 to 42.11 were express.*
  - (b) *The 24 August 2017 Dalgleish Representations pleaded at subparagraph 42.12 was implied.*
43. In the 24 August 2017 Announcements and the FY17 Annual Report, RCR made the following representations to the Affected Market:
- 43.1 the 24 August 2017 Dalgleish Representations;
  - 43.2 RCR is on track, and well positioned, to deliver further revenue and earnings growth in FY18;
  - 43.3 RCR is now the market leader in the design and construction of large scale solar farms in the rapidly evolving renewable energy sector;

- 43.4 RCR will undertake a capital raising of up to \$90 million, with \$75 million to be raised by way of an institutional placement and the balance to be raised by a non-underwritten share purchase plan offer to existing shareholders (**2017 Capital Raising**).

**(24 August 2017 RCR Representations).**

**Particulars**

- (a) *The Plaintiffs repeat the particulars to paragraph 42.*
- (b) *The 24 August 2017 RCR Representations pleaded at sub-paragraphs 43.2 to 43.4 were express.*

**(E) 30 August 2017 Cleansing Notice**

44. On 25 August 2017, RCR announced the successful completion of the institutional placement component of the 2017 Capital Raising.
45. On 30 August 2017, RCR gave notice purporting to comply with the requirements of s 708A(5)(e) of the Corporations Act (**Cleansing Notice**).
46. In the Cleansing Notice, RCR made the following representations to the Affected Market:
- 46.1 as at the date of the Cleansing Notice, RCR has complied with s 674 of the Corporations Act; and
- 46.2 as at the date of the Cleansing Notice, there is no excluded information of the type referred to in s 708A(7) and (8) of the Corporations Act,

**(Cleansing Notice Representations).**

47. On 20 September 2017, RCR announced the successful completion of the 2017 Capital Raising.

**(F) 22 February 2018 Announcements**

48. On 22 February 2018, RCR published and released to the ASX its HY18 financial report (**HY18 Financial Report**).
49. On 22 February 2018, RCR also:
- 49.1 published and released an ASX Announcement and Media Release entitled "RCR Delivers Record Half Revenues, Cash Conversion and Earnings Growth" (**22 February 2018 ASX Announcement**);
- 49.2 published and released to the ASX an investor presentation entitled "HY18 Results and Company Update" (**22 February 2018 Presentation**); and

49.3 published and released to the ASX an audio recording entitled “RCR Half Year Results and Company Update” (**22 February 2018 Audio Recording**),

**(22 February 2018 Announcements).**

50. Dalgleish:

50.1 authorised the publication and release of the 22 February 2018 Announcements;

50.2 provided statements for inclusion in the 22 February 2018 ASX Announcement, which statements were quoted therein;

50.3 was identified as the contact person for investors in relation to the 22 February 2018 ASX Announcement;

50.4 was identified as a presenter of the 22 February 2018 Presentation;

50.5 spoke the words in the 22 February 2018 Audio Recording.

51. In the 22 February 2018 Announcements, Dalgleish made the following representations to the Affected Market:

51.1 RCR’s revenue for HY18 was \$940 million; 14X.2 RCR’s EBIT for HY18 was \$22.8 million;

51.2 RCR’s cash flows have improved significantly over the past year, and RCR now has a record \$84.7 million in net cash;

51.3 RCR has delivered record revenues and earnings growth;

51.4 RCR’s success in the renewable energy sector over the past year is expected to contribute to RCR’s continuing growth momentum;

51.5 RCR is well placed for expected revenue and earnings growth, with a number of contracts to flow through to support FY19 revenue;

51.6 there is a reasonable basis to expect that RCR’s earnings for FY18 would exceed RCR’s earnings for FY17,

**(22 February 2018 Dalgleish Representations).**

#### **Particulars**

(a) *The 22 February 2018 Dalgleish Representations pleaded in subparagraphs 51.1 to 51.5 were express.*

(b) *The 22 February 2018 Dalgleish Representations pleaded in subparagraph 51.6 was implied.*

52. In the 22 February 2018 Announcements and the HY18 Financial Report, RCR made the following representations to the Affected Market:
- 52.1 the 22 February 2018 Dalgleish Representations;
  - 52.2 in RCR's infrastructure business, revenue was growing rapidly, predominantly as a result of the renewable energy projects;
  - 52.3 RCR's net cash of up to \$84.7 million will support a growing pipeline in renewable energy;
  - 52.4 RCR expects to deliver revenue and earnings growth in FY18 and FY19;
  - 52.5 RCR's financial position remains strong;
  - 52.6 solar energy contracts awarded to RCR in the past 12 months are expected to contribute strongly to RCR's continuing growth momentum; and
  - 52.7 key contracts contributing to the performance of RCR's infrastructure business include the Project,
- (22 February 2018 RCR Representations).**

#### **Particulars**

*The Plaintiffs repeat the particulars to paragraph 51.*

*The 22 February 2018 RCR Representations pleaded at sub-paragraphs 52.1 to 52.7 were express.*

#### **(G) 30 July 2018 Trading halt and suspension**

53. On 30 July 2018, at the request of RCR, trading in RCR Shares on the ASX was halted pending an announcement by RCR to the market regarding its FY18 earnings.
54. On 1 August 2018, at the request of RCR, RCR Shares were suspended from quotation on the ASX pending an announcement by RCR to the market concerning the likely financial impact of cost overruns in relation to the Project.
55. On 7 August 2018:
- 55.1 at the Request of RCR, the suspension of RCR's shares from quotation on the ASX was continued; and
  - 55.2 RCR announced to the market that its CEO, Dr Paul Dalgleish, would step down as Managing Director and CEO of RCR and its related companies.

**(H) 28 August 2018 disclosures**

56. On 28 August 2018, RCR released and published to the ASX its FY18 audited annual financial report (**FY18 Financial Report**).
57. On 28 August 2018, RCR also:
- 57.1 published and released to the ASX an ASX Announcement and Media Release, entitled “RCR Announces FY18 Results and a Capital Raising to Strengthen Balance Sheet” lodged with the ASX (**28 August 2018 ASX Announcement**); and
  - 57.2 published and released to the ASX an investor presentation entitled “Project Update and Capital Raising Investor Presentation” (**28 August 2018 Investor Presentation**),  
**(28 August 2018 Announcements)**.
58. James:
- 58.1 authorised the publication and release of the 28 August 2018 Announcements; and
  - 58.2 provided statements for inclusion in the 28 August 2018 ASX Announcement, which statements were quoted therein;
  - 58.3 was identified as the contact person for investors in relation to the 28 August 2018 ASX Announcement; and
  - 58.4 was identified as a presenter of the 28 August 2018 Presentation.
59. The 28 August 2018 Announcements-stated, and it was the fact, that:
- 59.1 the following issues had been encountered in relation to the Project:
    - (a) materially worse sub-surface ground conditions at the site than RCR had allowed for in its Tender Estimate, which resulted in an underestimation of site piling requirements;
    - (b) revisions to construction plans, due to the interdependence between construction and piling, which resulted in an increase in subcontractor costs and logistics costs;
    - (c) external delays, which resulted in ‘extension of time submissions’; and
    - (d) adverse weather conditions,  
(together, **Project Issues**);

- 59.2 the Project Issues had caused significant cost overruns in relation to the Project (**Cost Overruns**);
  - 59.3 the cost overruns resulted in cumulative write-downs of \$57 million from the tendered margin on the Project (**Write-downs**);
  - 59.4 RCR's underlying EBIT for FY18 was \$4.2 million;
  - 59.5 RCR had suffered a statutory net loss of \$16.1 million for FY18, which loss was largely driven by the Cost Overruns;
  - 59.6 in the 12 months prior to 28 August 2018, RCR's revenue had been largely derived from fixed price EPC Solar Contracts, which expose RCR to potential risks including delays, unanticipated increases in the cost of delivering the relevant project and high working capital requirements in the later stages of the project; and
  - 59.7 cash receipts on EPC Solar Contracts are dependent on certain milestones being met, which may cause timing differences from a cash collection point of view.
60. The 28 August 2018 Announcements also stated that:
- 60.1 a large proportion of the Write-downs were only recently identified;
  - 60.2 the reasons why a large proportion of the Write-downs were only recently identified was because RCR personnel circumvented RCR's standard processes and project-level systems relating to procurement commitments Protocol;
  - 60.3 20.2(i) the Breach of RCR Protocol made it extremely difficult to accurately determine cost-to-date and forecast cost-to-complete on a timely basis;
  - 60.4 several actions and additional measures were being implemented to mitigate the risk of project level systems being circumvented and cost overruns going undetected in the future; and
  - 60.5 the Board was taking immediate action to enhance the Company's systems and to reposition the Company towards a more acceptable risk profile, including by shifting RCR's project portfolio away from EPC Solar Contracts and towards 'alliance style' contracts, which offer a more favourable risk allocation to RCR and provide a higher degree of margin predictability.
61. In the 28 August 2018 Announcements, James made the following representations to the Affected Market:



61.1 with the 2018 Capital Raising (defined below at sub-paragraph 63.1), and the support from RCR's financiers announced today (ie 28 August 2018), RCR can move forward in a position of strength; and

61.2 the outlook for RCR remains positive,

**(28 August 2018 James Representations).**

#### **Particulars**

*The 28 August 2018 James Representations were express.*

62. In the 28 August 2018 Announcements, RCR made the following representations to the Affected Market:

62.1 the 28 August 2018 James Representations;

62.2 the Cost-overruns were caused by project-specific issues;

62.3 with the support of RCR's existing financiers and the 2018 Capital Raising, RCR is in a strong financial position, trading on a business as usual basis, and is well placed to deliver for its customers and shareholders;

62.4 RCR is targeting FY19 underlying EBIT in the range of \$40 million to \$48 million; and

62.5 there is a reasonable basis to expect that RCR's underlying EBIT for FY19 will be between \$40 to \$48 million,

**(28 August 2018 RCR Representations).**

#### **Particulars**

(a) *The Plaintiffs repeat the particulars to paragraph 61.*

(b) *The 28 August 2018 RCR Representations pleaded at sub-paragraphs 62.1 to 62.4 were express.*

(c) *The 28 August 2018 RCR Representation pleaded at sub-paragraph 62.5 was implied.*

#### **(I) Capital raising**

63. On 28 August 2018, RCR:

63.1 announced a \$100 million capital raising, by way of an underwritten 1 for 1.65 accelerated pro-rata non-renounceable entitlement offer at an offer price of \$1.00 per new share (**2018 Capital Raising**), to strengthen its balance sheet and address the financial impacts of the Cost Overruns; and

63.2 released and published to the ASX a prospectus, as part of the 2018 Capital Raising (**Prospectus**).

64. On 30 August 2018, RCR announced that it had successfully completed the institutional component of the 2018 Capital Raising, pursuant to which approximately \$70 million was raised.

**(J) Share price decline**

65. On 30 August 2018, the suspension of trading in RCR Shares was lifted and RCR Shares were reinstated to quotation on the ASX.

66. On 30 August 2018, following the reinstatement of RCR Shares to quotation on the ASX, the price of RCR Shares declined substantially.

**Particulars**

*According to information obtained from Computershare Investor Services Pty Ltd, which manages RCR's share register, RCR's share price in the period from 27 July 2018 to 5 September 2018 was as follows:*

<b>Date</b>	<b>Opening price</b>	<b>Closing price</b>
Friday 27 July 2018	\$2.80	\$2.80
Monday 30 July 2018 - Wednesday 29 August 2018	Trading halted and thereafter suspended	
30 August 2018	\$1.05	\$1.05
31 August 2018	\$1.12	\$1.12
3 September 2018	\$1.12	\$1.05
4 September 2018	\$1.07	\$1.04
5 September 2018	\$1.04	\$1.06

**(K) Voluntary administration and liquidation**

67. On 21 September 2018, RCR announced that it had successfully completed the 2018 Capital Raising, pursuant to which it raised \$100 million.

### Particulars

*RCR raised approximately \$70 million from institutional investors, approximately \$14.4 million from retail investors, and the balance from underwriters and/or sub-underwriters of the 2018 Capital Raising.*

68. On 12 November 2018, at the request of RCR, trading in RCR Shares on the ASX was halted pending an announcement by RCR to the market on 14 November 2018. The closing price of RCR Shares on 12 November 2018 was \$0.87.
69. On 14 November 2018, at the request of RCR, RCR Shares were suspended from quotation on the ASX pending an announcement by RCR to the market concerning its earnings for FY19 and the associated consequences for its funding.
70. On 20 November 2018:
  - 70.1 at the request of RCR, the suspension of RCR Shares from quotation on the ASX was continued; and
  - 70.2 RCR announced to the market the commencement of this proceeding.
71. On 22 November 2018, RCR announced to the market, and it was the fact, that Jason Preston, William Harris and Robert Brauer and Matthew Caddy of McGrathNicol had been appointed as administrators of RCR (**Administrators**).
72. On 19 March 2019, the Administrators published a report to creditors (**Administrators' Report**).
73. On 26 March 2019, the Administrators were appointed as Joint and Several Liquidators of RCR (**Liquidators**).
74. On 9 April 2019, the Liquidators declared that they had reasonable grounds to believe that there is no likelihood that shareholders of RCR will receive any distribution in respect of the shares they hold in RCR.

### Particulars

*Update to Shareholders of RCR issued by the Liquidators.*

## V. INFORMATION OF WHICH RCR WAS AWARE

### (A) EPC Solar Contract Risk Information

75. By no later than the start of the Relevant Period, RCR was aware of the EPC Solar Contract Risks Information.

### Particulars

- (a) *The EPC Solar Contract Risk Information was information of which:*

- (1) *Dalgleish, James, Phipps came, or alternatively ought reasonably to have come, into possession in the course of the performance of their duties as officers of RCR by no later than the start of the Relevant Period; and*
- (2) *McCullough came, or alternatively ought reasonably to have come, into possession in the course of the performance of his duties as officers of RCR by no later than February 2017.*
- (b) *The Plaintiffs repeat the matters pleaded in paragraphs 16 to 21 and 60 to 61 above.*
- (c) *Further particulars may be provided following discovery and evidence.*

**(B) Ground Conditions Information**

76. By no later than 11 August 2017:

76.1 sub-surface ground conditions at the Project site were materially worse than RCR had allowed for in its Tender Estimate (**Ground Conditions Issue**); and

76.2 there was a material risk that the profitability of the Project would be adversely affected by reason of the Ground Conditions Issue,

**(Ground Conditions Information).**

**Particulars**

- (a) *By reason of the Ground Conditions Issue, there was a material risk that:*
  - (1) *RCR would incur increased costs in relation to the installation of the piles at the Project site;*
  - (2) *RCR would encounter delay in the installation of the piles at the Project site;*
  - (3) *RCR would encounter delay in the completion of the construction of the Project, by reason of the interdependence of the installation of the piles and other aspects of the construction of the Project;*
  - (4) *RCR would be required to make revisions to its construction plans and/or execution methodologies, in order to mitigate the delays pleaded in particulars (2) and (3) to this paragraph 76, which in turn would increase subcontractor costs and logistics costs; and/or*

(5) *as a consequence of any one or combination of the matters set out above, RCR would encounter significant cost overruns in relation to the Project.*

(b) *Further particulars may be provided following discovery and evidence.*

77. RCR was aware of the Ground Conditions Information by no later than:

77.1 11 August 2017; or

77.2 alternatively, the point in time at which the installation of the piles commenced.

#### **Particulars**

(a) *The Ground Conditions Information was information of which Dalgleish, James, Phipps and McCullough came, or ought reasonably to have come, into possession in the course of the performance of their duties as officers of RCR by no later than 11 August 2017, including by reason of the RCR Reviews.*

(b) *Further particulars may be provided following discovery and evidence.*

#### **(C) Project Issues Information**

78. At a time presently unknown to the Plaintiffs, but materially prior to 28 August 2018, RCR was aware of the Project Issues (**Project Issues Information**).

#### **Particulars**

(a) *Each of the Project Issues had, or had substantially, arisen or occurred materially prior to 28 August 2018.*

(b) *In April 2018, as a consequence of the Project Issues, RCR readjusted its forecast time and cost to completion for the Project, reducing the forecast margin from approximately \$28.5 million to approximately \$11.5 million.*

(c) *The Project Issues Information was information of which Dalgleish, James, Phipps and McCullough came, or ought reasonably to have come, into possession in the course of the performance of their duties as officers of RCR by a date materially prior to 28 August 2018, including by reason of the RCR Reviews.*

(d) *Further particulars may be provided following discovery and evidence.*

**(D) Cost Overruns Information**

79. At a time presently unknown to the Plaintiffs, but materially prior to 28 August 2018, RCR was aware that RCR would incur, and/or had incurred, substantial cost overruns in relation to EPC Solar Contracts, including by reason of the Project Issues (**Cost Overruns Information**).

**Particulars**

- (a) *The Cost Overruns Information was information of which Dalgleish, James, Phipps and McCullough came, or ought reasonably to have come, into possession in the course of the performance of their duties as officers of RCR by a date materially prior to 28 August 2018, including by reason of the RCR Reviews.*
- (b) *In April 2018, as a consequence of the Project Issues, RCR readjusted its forecast time and cost to completion for the Project, reducing the forecast margin from approximately \$28.5 million to approximately \$11.5 million.*
- (c) *By July 2018, the cumulative cash flow had fallen to -\$50.8 million, a \$203.4 million net cash outflow in seven months, due to the combined impact of delayed milestone receipts, an increase in costs, and the upfront weighted nature of the payment profile of the contracts (Administrators' Report p 50).*
- (d) *The Administrators note that Management became aware of a number of cost overruns which it identified during 2018 and reported to the Board (Administrators' Report p 51).*
- (e) *Further particulars may be provided following discovery and evidence.*

**(E) Write-downs Information**

80. At a time presently unknown to the Plaintiffs, but materially prior to 28 August 2018, RCR was aware that the Cost Overruns would result, or had resulted, in substantial write-downs in relation to EPC Solar Contracts, including write-downs of the tendered margin on the Project (**Write-downs Information**).

**Particulars**

- (a) *The Write-downs Information was information of which Dalgleish, James, Phipps and McCullough came, or ought reasonably to have come, into possession in the course of the performance of their duties*

*as officers of RCR by a date materially prior to 28 August 2018, including by reason of the RCR Reviews.*

- (b) *In April 2018, as a consequence of the Project Issues, RCR readjusted its forecast time and cost to completion for the Project, reducing the forecast margin from approximately \$28.5 million to approximately \$11.5 million.*
- (c) *By July 2018, the cumulative cash flow had fallen to -\$50.8 million, a \$203.4 million net cash outflow in seven months, due to the combined impact of delayed milestone receipts, an increase in costs, and the upfront weighted nature of the payment profile of the contracts (Administrators' Report p 50).*
- (d) *The Administrators note that Management became aware of a number of cost overruns which it identified during 2018 and reported to the Board (Administrators' Report p 51).*
- (e) *Further particulars may be provided following discovery and evidence.*

**(F) FY18 Earnings Information**

81. At a time presently unknown to the Plaintiffs, but materially prior to 28 August 2018, RCR was aware that it was likely, or alternatively that there was a material risk, that RCR would not experience earnings growth in FY18, as forecast (**FY18 Earnings Information**).

**Particulars**

- (a) *The Plaintiffs repeat the allegations pleaded at paragraphs 60, 75 to 80 above.*
- (b) *The FY18 Earnings Information was information of which Dalgleish, James, Phipps, and McCullough came, or ought reasonably to have come, into possession in the course of the performance of their duties as officers of RCR by a date materially prior to 28 August 2018, including by reason of the RCR Reviews.*
- (c) *In April 2018, as a consequence of the Project Issues, RCR readjusted its forecast time and cost to completion for the Project, reducing the forecast margin from approximately \$28.5 million to approximately \$11.5 million.*
- (d) *By July 2018, the cumulative cash flow had fallen to -\$50.8 million, a \$203.4 million net cash outflow in seven months, due to the combined*

*impact of delayed milestone receipts, an increase in costs, and the upfront weighted nature of the payment profile of the contracts (Administrators' Report p 50).*

- (e) *Other EPC Solar Contracts were behind schedule and/or over budget (Administrators' Report p 48, 51).*
- (f) *Further particulars may be provided following discovery and evidence.*

**(G) FY19 Financial Information**

82. By no later than 28 August 2018, RCR was aware that it was likely, or alternatively that there was a material risk, that:

- 82.1 RCR would not achieve underlying EBIT in FY19 in the range of \$40 million to \$48 million, as forecast;
- 82.2 even with the funds raised by the 2018 Capital Raising, RCR was not in a strong financial position; and
- 82.3 RCR was not trading on a business as usual basis,

**(FY19 Financial Information).**

**Particulars**

- (a) *The Plaintiffs repeat the allegations pleaded at paragraphs 67 to 74 above.*
- (b) *The FY19 Financial Information was information of which James, Phipps, and McCullough came, or ought reasonably to have come, into possession in the course of the performance of their duties as officers of RCR by no later than 28 August 2018.*
- (c) *The Administrators' Report states that:*
  - (1) *by July 2018, the cumulative cash flow had fallen to -\$50.8 million, a \$203.4 million net cash outflow in seven months, due to the combined impact of delayed milestone receipts, an increase in costs, and the upfront weighted nature of the payment profile of the contracts (p 50);*
  - (2) *by 14 August 2018, RCR had engaged McGrath Nichol to undertake contingency planning for a potential appointment of voluntary administrators to the RCR group (p 27);*
  - (3) *the additional funds raised by the 2018 Capital Raising had been fully utilised by October 2018 (p 31);*



(4) *RCR stretched its trade creditors at various times over the months leading up to the appointment of Administrators as a means of managing its cash flow (p 32);*

(5) *cash flow forecasts prepared by RCR's management in August and October 2018 were unduly optimistic due to deficiencies in the assumptions underpinning the forecasts. Management does not appear to have applied sufficient scepticism in challenging the assumptions, particularly in relation to the timing of milestones payments and new project wins (p 57).*

(d) *Further particulars may be provided following discovery and evidence.*

## VI. BREACH OF CONTINUOUS DISCLOSURE OBLIGATIONS

### (A) EPC Solar Contract Risks Information Contravention

83. As at, and from, the start of the Relevant Period, the EPC Solar Contract Risks Information was information concerning RCR that:

83.1 was not generally available, within the meaning of sections 647(2)(c) and 676(2) of the Corporations Act;

83.2 a reasonable person would expect, if it were generally available, to have a material effect on the price or value of RCR Shares, within the meaning of section 674(c) of the Corporations Act;

83.3 would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of RCR Shares, within the meaning of section 677 of the Corporations Act; and

83.4 a reasonable person would expect to have a material effect on the price or value of RCR Shares, within the meaning of Listing Rule 3.1,

(such information is hereafter referred to as **Material Non-public Information**).

84. By reason of RCR's Continuous Disclosure Obligations and the matters pleaded in paragraphs 75 and 83 above, RCR became obliged immediately to tell the ASX of the EPC Solar Contract Risks Information by no later than the start of the Relevant Period.

85. RCR did not tell the ASX of the EPC Solar Contract Risks Information at any time prior to 28 August 2018, and the Affected Market did not become aware of the EPC Solar Contract Risk Information until no earlier than 28 August 2018.

86. By reason of the matters pleaded in paragraphs 83 to 85 above, RCR contravened Listing Rule 3.1 and section 674(2) of the Corporations Act, on and from the

commencement of the Relevant Period until 28 August 2018 (**EPC Solar Contract Risks Information Contravention**).

**(B) Ground Conditions Information Contravention**

87. As at, and from, no later than 11 August 2017, the Ground Conditions Information was information concerning RCR that was Material Non-public Information.

88. By reason of RCR's Continuous Disclosure Obligations and the matters pleaded in paragraphs 76 and 87 above, RCR became obliged immediately to inform the ASX of the Ground Conditions Information:

88.1 by no later than the start of the Relevant Period;

88.2 alternatively, by no later than 11 August 2017;

88.3 alternatively, by no later than the point in time at which the installation of the piles commenced.

89. RCR did not inform the ASX of the Ground Conditions Information at any time prior to 28 August 2018, and the Affected Market did not become aware of the Ground Conditions Information until no earlier than 28 August 2018.

90. By reason of the matters pleaded in paragraphs 87 to 89 above, RCR contravened Listing Rule 3.1 and section 674(2) of the Corporations Act from no later than 11 August 2017 until 28 August 2018 (**Ground Conditions Information Contravention**).

**(C) Project Issues Information Contravention**

91. As at, and from, a time presently unknown to the Plaintiffs, but materially prior to 28 August 2018, the Project Issues Information was information concerning RCR that was Material Non-public Information.

92. By reason of RCR's Continuous Disclosure Obligations and the matters pleaded in paragraphs 78 and 91 above, RCR became obliged immediately to inform the ASX of the Project Issues Information by no later than on or about a time presently unknown to the Plaintiffs, but materially prior to 28 August 2018.

93. RCR did not inform the ASX of the Project Issues Information at any time prior to 28 August 2018, and the Affected Market did not become aware of the Project Issues Information until no earlier than 28 August 2018.

94. By reason of the matters pleaded in paragraphs 91 to 93 above, RCR contravened Listing Rule 3.1 and section 674(2) of the Corporations Act (**Project Issues Information Contravention**).

**(D) Cost Overruns Information Contravention**

95. As at, and from, a time presently unknown to the Plaintiffs, but materially prior to 28 August 2018, the Cost Overruns Information was information concerning RCR that was Material Non-public Information.
96. By reason of RCR's Continuous Disclosure Obligations and the matters pleaded in paragraphs 79 and 95 above, RCR became obliged immediately to tell the ASX of the Cost Overruns Information by no later than a time presently unknown to the Plaintiffs, but materially prior to 28 August 2018.
97. RCR did not tell the ASX of the Cost Overruns Information at any time prior to 28 August 2018, and the Affected Market did not become aware of the Cost Overruns Information until no earlier than 28 August 2018.
98. By reason of the matters pleaded in paragraphs 95 to 97 above, RCR contravened Listing Rule 3.1 and section 674(2) of the Corporations Act (**Cost Overruns Information Contravention**).

**(E) Write-downs Information Contravention**

99. As at, and from, a time presently unknown to the Plaintiffs, but materially prior to 28 August 2018, the Cost Overruns Information was information concerning RCR that was Material Non-public Information.
100. By reason of RCR's Continuous Disclosure Obligations and the matters pleaded in paragraphs 82 and 99 above, RCR became obliged immediately to tell the ASX of the Write-downs Information by no later than a time presently unknown to the Plaintiffs, but materially prior to 28 August 2018.
101. RCR did not tell the ASX of the Write-downs Information at any time prior to 28 August 2018, and the Affected Market did not become aware of the Write-downs Information until no earlier than 28 August 2018.
102. By reason of the matters pleaded in paragraphs 99 to 101 above, RCR contravened Listing Rule 3.1 and section 674(2) of the Corporations Act (**Write-downs Information Contravention**).

**(F) FY18 Earnings Information Contravention**

103. As at, and from, a time presently unknown to the Plaintiffs, but materially prior to 28 August 2018, the FY18 Earnings Information was information concerning RCR that was Material Non-public Information.
104. By reason of RCR's Continuous Disclosure Obligations and the matters pleaded in paragraph 103 above, RCR became obliged immediately to tell the ASX of the FY18

Earnings Information by no later than a time presently unknown to the Plaintiffs, but materially prior to 28 August 2018.

105. RCR did not tell the ASX of the FY18 Earnings Information at any time prior to 28 August 2018, and the Affected Market did not become aware of the FY18 Earnings Information until no earlier than 28 August 2018.
106. By reason of the matters pleaded in paragraphs 103 to 105 above, RCR contravened Listing Rule 3.1 and section 674(2) of the Corporations Act (**FY18 Earnings Information Contravention**).

**(G) FY19 Financial Information Contravention**

107. As at, and from, no later than 28 August 2018, the FY19 Financial Information was information concerning RCR that was Material Non-public Information.
108. By reason of RCR's Continuous Disclosure Obligations and the matters pleaded in paragraphs 82 and 107 above, RCR became obliged immediately to tell the ASX of the FY19 Financial Information by no later than 28 August 2018.
109. RCR did not tell the ASX of the FY19 Financial Information at any time prior to 28 August 2018, and the Affected Market did not become aware of the FY19 Earnings Information until no earlier than the end of the Relevant Period.
110. By reason of the matters pleaded in paragraphs 107 to 109 above, RCR contravened Listing Rule 3.1 and section 674(2) of the Corporations Act (**FY19 Financial Information Contravention**).

**(H) The Continuous Disclosure Contraventions were continuing**

111. Each of:
  - 111.1 the EPC Solar Contract Risks Information Contravention
  - 111.2 the Ground Conditions Information Contravention;
  - 111.3 the Project Issues Information Contravention;
  - 111.4 the Cost Overruns Information Contravention;
  - 111.5 the Write-downs Information Contravention;
  - 111.6 the FY18 Earnings Information Contravention; and
  - 111.7 the FY19 Financial Information Contravention,(collectively, the **Continuous Disclosure Contraventions**),

was a continuing contravention, which of its nature continued from and after the time of the first contravention (when first known to RCR) throughout the Relevant Period (or the remainder thereof) and until such time as the EPC Solar Contract Risks Information, the Ground Conditions Information, the Project Issues Information, the Cost Overruns Information, the Write-downs Information, the FY18 Earnings Information and/or the FY19 Financial Information, relevantly, was disclosed to the Affected Market on or after 28 August 2018.

## VII. MISLEADING AND DECEPTIVE CONDUCT OF RCR

### (A) Additional RCR public statements

112. Prior to and during the Relevant Period:

112.1 RCR made the statements set out in Schedule 1 to this CLS; and

112.2 the statements set out in Schedule 1 were made in a manner that was likely to result in their publication to the Affected Market.

### (B) Continuous Disclosure RCR Representation

113. Throughout the Relevant Period, RCR represented to the Affected Market that RCR was in compliance with its Continuous Disclosure Obligations (**Continuous Disclosure Representation**).

#### Particulars

*The Continuous Disclosure Representation is to be implied from:*

- (a) *the statements at Schedule 1 paragraphs 1 to 6;*
- (b) *the Cleansing Notice pleaded at paragraphs 44 and 45 above; and*
- (c) *taken together, RCR's Continuous Disclosure Obligations and the absence of any statement by RCR during the Relevant Period to the effect that RCR had not complied with those obligations.*

114. RCR failed to correct or qualify the Continuous Disclosure Representation at any time during the Relevant Period.

115. The Continuous Disclosure Representation was a continuing representation in the Relevant Period.

116. Throughout the Relevant Period, RCR was not in fact in compliance with its Continuous Disclosure Obligations.

#### Particulars

*The Plaintiffs repeat the matters pleaded in paragraphs 83 to 111 above.*

117. The conduct pleaded in paragraphs 112 to 116 was conduct engaged in by RCR:
- 117.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - 117.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
  - 117.3 in trade or commerce, within the meaning of section 18 of the ACL.
118. In making, maintaining and/or failing to correct or qualify the Continuous Disclosure Representation, RCR engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of:
- 118.1 section 1041H of the Corporations Act;
  - 118.2 section 12DA(1) of the ASIC Act; and/or
  - 118.3 section 18 of the ACL,
- (Continuous Disclosure RCR Misleading Conduct Contravention).**

**(C) Risk Management RCR Representation**

119. Throughout the Relevant Period, RCR represented to the Affected Market that RCR:
- 119.1 effectively managed risk in relation to major projects, including through project reporting; and
  - 119.2 had in place internal controls sufficient to enable RCR effectively to identify, assess and mitigate risk in relation to major projects, including the risk of cost overruns.

**(Risk Management Representation).**

**Particulars**

- (a) *The Risk Management Representation was express, or alternatively, implied.*
- (b) *To the extent it was express, the Plaintiffs repeat the statements at Schedule 1 paragraphs 7 to 8.*
- (c) *To the extent it was implied, it was to be implied from:*
  - (1) *the statements at Schedule 1 paragraphs 7 to 8; and*
  - (2) *the absence of any statement by RCR during the Relevant Period qualifying the statements referred to above.*

120. RCR failed to correct or qualify the Risk Management Representation at any time during the Relevant Period.
121. The Risk Management Representation was a continuing representation in the Relevant Period.
122. Throughout the Relevant Period, RCR in fact:
  - 122.1 did not effectively manage risk in relation to major projects, including through project reporting; and
  - 122.2 did not have in place internal controls sufficient to enable RCR effectively to identify, assess and mitigate risk in relation to major projects, including the risk of cost overruns.

### **Particulars**

*The Plaintiffs repeat the matters pleaded in paragraphs 59 and 60 above.*

123. The conduct pleaded in paragraphs 119 to 120 was conduct engaged in by RCR:
  - 123.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - 123.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
  - 123.3 in trade or commerce, within the meaning of section 18 of the ACL.
124. In making, maintaining and/or failing to correct or qualify the Risk Management Representation, RCR engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of:
  - 124.1 section 1041H of the Corporations Act;
  - 124.2 section 12DA(1) of the ASIC Act; and/or
  - 124.3 section 18 of the ACL,

**(Risk Management RCR Misleading Conduct Contravention).**

#### **(D) 23 February 2017 RCR Conduct**

125. RCR:
  - 125.1 made the 23 February 2017 RCR Representations;
  - 125.2 omitted to disclose the Affected Market the EPC Solar Contract Risks Information in the 23 February 2017 Announcements; and
  - 125.3 failed to correct or qualify the 23 February 2017 Representations,

**(23 February 2017 RCR Conduct).**

126. The 23 February 2017 RCR Conduct was conduct of RCR:
- 126.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - 126.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
  - 126.3 in trade or commerce, within the meaning of section 18 of the ACL.
127. The 23 February 2017 RCR Representations gave rise to a reasonable expectation that if the EPC Solar Contract Risks Information existed, it would be disclosed by RCR to the Affected Market.

**Particulars**

*The EPC Solar Contract Risks Information was Material Non-public Information, as pleaded at paragraph 83 above.*

128. In all the circumstances, the 23 February 2017 RCR Conduct was misleading or deceptive, or likely to mislead or deceive, in contravention of:
- 128.1 section 1041H of the Corporations Act;
  - 128.2 section 12DA(1) of the ASIC Act; and/or
  - 128.3 section 18 of the ACL,

**(23 February 2017 RCR Misleading Conduct Contravention).****Particulars**

*The Plaintiffs repeat the matters pleaded in paragraphs 18 to 20, 59 to 60, 75 and 83 above.*

**(E) 3 May 2017 RCR Conduct**

129. RCR:
- 129.1 made the 3 May 2017 Representations;
  - 129.2 omitted to disclose to the Affected Market the EPC Solar Contract Risks Information in the 3 May 2017 Presentation; and
  - 129.3 failed to correct or qualify the 3 May 2017 Representations,

**(3 May 2017 RCR Conduct).**

130. The 3 May 2017 RCR Conduct was conduct of RCR:



- 130.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - 130.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
  - 130.3 in trade or commerce, within the meaning of section 18 of the ACL.
131. The 3 May 2017 RCR Representations gave rise to a reasonable expectation that if the EPC Solar Contract Risks Information existed, it would be disclosed by RCR to the Affected Market.

**Particulars**

*The EPC Solar Contract Risks Information was Material Non-public Information, as pleaded at paragraph 83 above.*

132. In all the circumstances, 3 May 2017 RCR Conduct was misleading or deceptive, or likely to mislead or deceive, in contravention of:
- 132.1 section 1041H of the Corporations Act;
  - 132.2 section 12DA(1) of the ASIC Act; and/or
  - 132.3 section 18 of the ACL,
- (3 May 2017 RCR Misleading Conduct Contravention).**

**Particulars**

*The Plaintiffs repeat the matters pleaded in paragraphs 18 to 20, 59 to 60, 75 and 83 above.*

**(F) 11 August 2017 RCR Conduct**

133. RCR:
- 133.1 made the 11 August 2017 RCR Representations;
  - 133.2 omitted to disclose to the Affected Market the EPC Solar Contract Risks Information in the 11 August 2017 Announcements;
  - 133.3 omitted to disclose to the Ground Conditions Information in the 11 August 2017 Announcements; and
  - 133.4 failed to correct or qualify the 11 August 2017 RCR Representations,
- (11 August 2017 RCR Conduct).**

134. The 11 August 2017 RCR Conduct was conduct of RCR:

- 134.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - 134.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
  - 134.3 in trade or commerce, within the meaning of section 18 of the ACL.
135. The 11 August 2017 RCR Representations gave rise to a reasonable expectation that the following information, if it existed, would be disclosed by RCR to the Affected Market:
- 135.1 the EPC Solar Contract Risks Information; and
  - 135.2 the Ground Conditions Information.

#### **Particulars**

*The EPC Solar Contract Risks Information and the Ground Conditions Information was Material Non-public Information, as pleaded at paragraphs 83 and 87 above.*

136. In all the circumstances, 11 August 2017 RCR Conduct was misleading or deceptive, or likely to mislead or deceive, in contravention of:
- 136.1 section 1041H of the Corporations Act;
  - 136.2 section 12DA(1) of the ASIC Act; and/or
  - 136.3 section 18 of the ACL,
- (11 August 2017 RCR Misleading Conduct Contravention).**

#### **Particulars**

*The Plaintiffs repeat the matters pleaded in paragraphs 18 to 20, 59 to 60, 75, 83 and 87 above.*

#### **(G) 24 August 2017 RCR Conduct**

137. RCR:
- 137.1 made the 24 August 2017 RCR Representations;
  - 137.2 omitted to disclose to the Affected Market the EPC Solar Contract Risks and the Ground Conditions Information in the 24 August 2017 Announcements; and
  - 137.3 failed to correct or qualify the 24 August 2017 RCR Representations.
138. The 24 August 2017 RCR Conduct was conduct of RCR:

- 138.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - 138.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
  - 138.3 in trade or commerce, within the meaning of section 18 of the ACL.
139. The 24 August 2017 RCR Representations gave rise to a reasonable expectation that the following information, if it existed, would be disclosed by RCR to the Affected Market:
- 139.1 the EPC Solar Contract Risks Information; and
  - 139.2 the Ground Conditions Information.
140. Further, at the time the 24 August 2017 Representations were made:
- 140.1 RCR was not on track to deliver further revenue and earnings growth in FY18;
  - 140.2 RCR was not well positioned for revenue and earnings growth in FY18;
  - 140.3 there was not a reasonable basis to expect that RCR's earnings for FY18 would exceed RCR's earnings for FY17;
  - 140.4 there was not a reasonable basis to expect that RCR's infrastructure business would provide the strongest and most predictable path for growth over the next decade;
  - 140.5 insofar as the representations were representations with respect to future matters, RCR did not have reasonable grounds for making the representation.

#### **Particulars**

- (a) *The Plaintiffs repeat the matters pleaded in paragraphs 18 to 20, 59 to 60 and 75 to 81 above.*
  - (b) *By 14 August 2018, RCR had engaged McGrath Nichol to undertake contingency planning for a potential appointment of voluntary administrators to the RCR group (Administrators' Report p 27).*
  - (c) *Further particulars may be provided following discovery and evidence.*
  - (d) *Insofar as the 24 August 2017 RCR Representations were representations with respect to a future matter, the Plaintiffs will rely upon section 12BB(1) of the ASIC Act, s 796C of the Corporations Act, and/or section 4 of the Australian Consumer Law*
141. In all the circumstances, the 24 August 2017 RCR Conduct was misleading or deceptive, or likely to mislead or deceive, in contravention of:

- 141.1 section 1041H of the Corporations Act;
- 141.2 section 12DA(1) of the ASIC Act; and/or
- 141.3 section 18 of the ACL,

**(24 August 2017 RCR Misleading Conduct Contravention).**

**(H) 30 August 2017 RCR Conduct**

- 142. The making of the Cleansing Notice Representations was conduct of RCR:
  - 142.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - 142.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
  - 142.3 in trade or commerce, within the meaning of section 18 of the ACL.
- 143. At the time the Cleansing Notice Representations were made, RCR had not complied with section 674 of the Corporations Act.

**Particulars**

*The Plaintiffs repeat the matters pleaded in paragraphs 75 to 81, 87 to 106 above.*

- 144. Further, if and to the extent that the following information was excluded from a continuous disclosure notice purportedly in accordance with the ASX Listing Rules, then, as at the date of the Cleansing Notice, there was excluded information of the type referred to in sections 708A(7) and (8) of the Corporations Act:
  - 144.1 the EPC Solar Contract Risk Information;
  - 144.2 the Ground Conditions Information Contravention;
  - 144.3 the Project Issues Information Contravention;
  - 144.4 the Cost Overruns Information Contravention;
  - 144.5 the Write-downs Information Contravention; or
  - 144.6 the FY18 Earnings Information Contravention,

**(Cleansing Notice Omissions).**
- 145. By reason of the matters pleaded in paragraphs 142 and 144, the making of the Cleansing Notice Representations was misleading or deceptive, or likely to mislead or deceive, in contravention of:
  - 145.1 section 1041H of the Corporations Act;

145.2 section 12DA(1) of the ASIC Act; and/or

145.3 section 18 of the ACL,

**(30 August 2017 Cleansing Notice Misleading Conduct Contravention).**

**(I) 22 February 2018 RCR Conduct**

146. RCR:

146.1 made the 22 February 2018 RCR Representations;

146.2 omitted to disclose to the Affected Market the EPC Solar Contract Risks Information, the Ground Conditions Information, the Project Issues Information, the Cost Overruns Information or the Write-downs Information in the 22 February 2018 Announcements; and

146.3 failed to correct or qualify the 22 February 2018 RCR Representations,

**(22 February 2018 RCR Conduct).**

147. The 22 February 2018 RCR Conduct was conduct of RCR:

147.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

147.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

147.3 in trade or commerce, within the meaning of section 18 of the ACL.

148. The 22 February 2018 RCR Representations gave rise to a reasonable expectation that the following information, if it existed, would be disclosed by RCR to the Affected Market:

148.1 the EPC Solar Contract Risks Information;

148.2 the Ground Conditions Information;

148.3 the Project Issues Information;

148.4 the Cost Overruns Information; and

148.5 the Write-downs Information.

149. Further, at the time the 22 February 2018 RCR Representations were made:

149.1 RCR's EBIT for HY18 was materially less than \$22.8 million;

149.2 RCR's financial position was not strong;

149.3 the Project was not contributing to RCR's growth;

- 149.4 RCR was not on track to deliver earnings growth in FY18;
- 149.5 RCR was not well positioned for earnings growth in FY18;
- 149.6 there was not a reasonable basis to expect that RCR's earnings for FY18 would exceed RCR's earnings for FY17; and
- 149.7 insofar as the representations were representations with respect to future matters, RCR did not have reasonable grounds for making the representation.

#### **Particulars**

- (a) *The Plaintiffs repeat the matters pleaded in paragraphs 18 to 20, 59 to 60 and 75 to 81 above.*
  - (b) *Further particulars may be provided following discovery and evidence.*
  - (c) *Insofar as the 22 February 2018 RCR Representations were representations with respect to a future matter, the Plaintiffs will rely upon section 12BB(1) of the ASIC Act, s 796C of the Corporations Act, and/or section 4 of the Australian Consumer Law*
150. In all the circumstances, the 22 February 2018 RCR Conduct was misleading or deceptive, or likely to mislead or deceive, in contravention of:
- 150.1 section 1041H of the Corporations Act;
  - 150.2 section 12DA(1) of the ASIC Act; and/or
  - 150.3 section 18 of the ACL,
- (22 February 2018 RCR Misleading Conduct Contravention).**

#### **(J) 28 August 2018 RCR Conduct**

151. RCR:
- 151.1 made the 28 August 2018 RCR Representations;
  - 151.2 failed to correct or qualify the 24 August 2017 RCR Representations,
- (28 August 2018 RCR Conduct).**
152. The 28 August 2018 RCR Conduct was conduct of RCR:
- 152.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
  - 152.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
  - 152.3 in trade or commerce, within the meaning of section 18 of the ACL.

153. At the time the 28 August 2018 RCR Representations were made:
- 153.1 even with the 2018 Capital Raising and the support from RCR's financiers announced to the market, RCR could not move forward in a position of strength;
  - 153.2 the outlook for RCR was not positive;
  - 153.3 the issues that caused the Cost-overruns were not project-specific;
  - 153.4 RCR was not in a strong financial position, was not trading on a business as usual basis, and was not well placed to deliver for its customers and shareholders;
  - 153.5 there was not a reasonable basis to expect that RCR's FY19 underlying EBIT for would be between \$40 to \$48 million, or to target FY19 underlying EBIT in the range of \$40 million to \$48 million; and
  - 153.6 insofar as the representations were representations with respect to future matters, RCR did not have reasonable grounds for making the representation.

#### **Particulars**

- (a) *The Plaintiffs repeat the matters pleaded in paragraphs 67 to 74 and 82.*
  - (b) *Further particulars may be provided following discovery and evidence.*
  - (c) *By 14 August 2018, RCR had engaged McGrath Nichol to undertake contingency planning for a potential appointment of voluntary administrators to the RCR group (Administrators' Report p 27).*
  - (d) *Insofar as the 28 August 2018 RCR Representations were representations with respect to a future matter, the Plaintiffs will rely upon section 12BB(1) of the ASIC Act, s 796C of the Corporations Act, and/or section 4 of the Australian Consumer Law.*
154. In all the circumstances, the 28 August 2018 RCR Conduct was misleading or deceptive, or likely to mislead or deceive, in contravention of:
- 154.1 section 1041H of the Corporations Act;
  - 154.2 section 12DA(1) of the ASIC Act; and/or
  - 154.3 section 18 of the ACL,
- (28 August 2018 RCR Misleading Conduct Contravention).**

## VIII. MISLEADING CONDUCT OF DALGLEISH

### (A) 23 February 2017 Dalgleish Conduct

155. RCR:

155.1 made the 23 February 2017 Dalgleish Representations;

155.2 omitted to disclose the Affected Market the EPC Solar Contract Risks Information in the 23 February 2017 Announcements; and

155.3 failed to correct or qualify the 23 February 2017 Representations,

**(22 February 2017 Dalgleish Conduct).**

156. The 23 February 2017 Dalgleish Conduct was conduct of Dalgleish:

156.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

156.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

156.3 in trade or commerce, within the meaning of section 18 of the ACL.

157. The 23 February 2017 Dalgleish Representations gave rise to a reasonable expectation that if the EPC Solar Contract Risks Information existed, it would be disclosed by Dalgleish to the Affected Market.

### **Particulars**

*The EPC Solar Contract Risks Information was Material Non-public Information, as pleaded at paragraph 83 above.*

158. In all the circumstances, 23 February 2017 Dalgleish Conduct was misleading or deceptive, or likely to mislead or deceive, in contravention of:

158.1 section 1041H of the Corporations Act;

158.2 section 12DA(1) of the ASIC Act; and/or

158.3 section 18 of the ACL,

**(23 February 2017 RCR Misleading Conduct Contravention).**



### Particulars

*The Plaintiffs repeat the matters pleaded in paragraphs 18 to 20, 59 to 60, 75 and 83 above.*

#### **(B) 3 May 2017 Dalgleish Conduct**

159. Dalgleish:

159.1 made the 3 May 2017 Representations;

159.2 omitted to disclose to the Affected Market the EPC Solar Contract Risks Information in the 3 May 2017 Presentation; and

159.3 failed to correct or qualify the 3 May 2017 Representations,

**(3 May 2017 Dalgleish Conduct).**

160. The 3 May 2017 Dalgleish Conduct was conduct of Dalgleish:

160.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

160.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

160.3 in trade or commerce, within the meaning of section 18 of the ACL.

161. The 3 May 2017 Dalgleish Representations gave rise to a reasonable expectation that if the EPC Solar Contract Risks Information existed, it would be disclosed by Dalgleish to the Affected Market.

### Particulars

*The EPC Solar Contract Risks Information was Material Non-public Information, as pleaded at paragraph 83 above.*

162. In all the circumstances, 3 May 2017 Dalgleish Conduct was misleading or deceptive, or likely to mislead or deceive, in contravention of:

162.1 section 1041H of the Corporations Act;

162.2 section 12DA(1) of the ASIC Act; and/or

162.3 section 18 of the ACL,

**(3 May 2017 Dalgleish Misleading Conduct Contravention).**

### Particulars

*The Plaintiffs repeat the matters pleaded in paragraphs 18 to 20, 59 to 60, 83 and 87 above.*

**(C) 11 August 2017 Dalgleish Conduct**

163. Dalgleish:

163.1 made the 11 August 2017 Dalgleish Representations;

163.2 omitted to disclose to the Affected Market the EPC Solar Contract Risks Information in the 11 August 2017 Announcements;

163.3 omitted to disclose to the Ground Conditions Information in the 11 August 2017 Announcements; and

163.4 failed to correct or qualify the 11 August 2017 Dalgleish Representations,

**(11 August 2017 Dalgleish Conduct).**

164. The 11 August 2017 Dalgleish Conduct was conduct of Dalgleish:

164.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

164.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

164.3 in trade or commerce, within the meaning of section 18 of the ACL.

165. The 11 August 2017 Dalgleish Representations gave rise to a reasonable expectation that the following information, if it existed, would be disclosed by Dalgleish to the Affected Market:

165.1 the EPC Solar Contract Risks Information; and

165.2 the Ground Conditions Information.

**Particulars**

*The EPC Solar Contract Risks Information and the Ground Conditions Information was Material Non-public Information, as pleaded at paragraphs 83 and 87 above.*

166. In all the circumstances, 11 August 2017 by Dalgleish Conduct was misleading or deceptive, or likely to mislead or deceive, in contravention of:

166.1 section 1041H of the Corporations Act;

166.2 section 12DA(1) of the ASIC Act; and/or

166.3 section 18 of the ACL,

**(11 August 2017 Dalgleish Misleading Conduct Contravention).**

### Particulars

*The Plaintiffs repeat the matters pleaded in paragraphs 18 to 20, 59 to 60, 75, 83 and 87 above.*

#### **(D) 24 August 2017 Dalgleish Conduct**

167. Dalgleish:

167.1 made the 24 August 2017 Dalgleish Representations;

167.2 omitted to disclose to the Affected Market the EPC Solar Contract Risks Information in the 24 August 2017 Announcements; and

167.3 failed to correct or qualify the 24 August 2017 Dalgleish Representations.

#### **(25 August 2017 Dalgleish Conduct).**

168. The 24 August 2017 Dalgleish Conduct was conduct of Dalgleish:

168.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

168.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

168.3 in trade or commerce, within the meaning of section 18 of the ACL.

169. The 24 August 2017 Dalgleish Representations gave rise to a reasonable expectation that the following information, if it existed, would be disclosed by Dalgleish to the Affected Market:

169.1 the EPC Solar Contract Risks Information; and

169.2 the Ground Conditions Information.

### Particulars

*The EPC Solar Contract Risks Information and the Ground Conditions Information was Material Non-public Information, as pleaded at paragraphs 83 and 87 above.*

170. Further, at the time the 24 August 2017 Representations were made:

170.1 RCR was not on track to deliver further revenue and earnings growth in FY18;

170.2 RCR was not well positioned for revenue and earnings growth in FY18;

170.3 there was not a reasonable basis to expect that RCR's earnings for FY18 would exceed RCR's earnings for FY17;

- 170.4 there was not a reasonable basis to expect that RCR's infrastructure business would provide the strongest and most predictable path for growth over the next decade; and
- 170.5 insofar as the representations were representations with respect to future matters, Dalgleish did not have reasonable grounds for making the representation.

#### **Particulars**

- (a) *The Plaintiffs repeat the matters pleaded in paragraphs 18 to 20, 59 to 60, and 75 to 81 above.*
- (b) *Further particulars may be provided following discovery and evidence.*
- (c) *Insofar as the 24 August 2017 RCR Representations were representations with respect to a future matter, the Plaintiffs will rely upon section 12BB(1) of the ASIC Act, s 796C of the Corporations Act, and/or section 4 of the Australian Consumer Law.*

171. In all the circumstances, the 24 August 2017 Dalgleish Conduct was misleading or deceptive, or likely to mislead or deceive, in contravention of:

171.1 section 1041H of the Corporations Act;

171.2 section 12DA(1) of the ASIC Act; and/or

171.3 section 18 of the ACL,

**(24 August 2017 RCR Dalgleish Conduct Contravention).**

#### **(E) 22 February 2018 Dalgleish Conduct**

172. Dalgleish:

172.1 made the 22 February 2018 Dalgleish Representations;

172.2 omitted to disclose to the Affected Market the EPC Solar Contract Risks Information, the Ground Conditions Information, the Project Issues Information, the Cost Overruns Information or the Write-downs Information in the 22 February 2018 Announcements; and

172.3 failed to correct or qualify the 22 February 2018 Dalgleish Representations,

**(22 February 2018 Dalgleish Conduct).**

173. The 22 February 2018 Dalgleish Conduct was conduct of Dalgleish:

173.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

- 173.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
- 173.3 in trade or commerce, within the meaning of section 18 of the ACL.
174. The 22 February 2018 Dalglish Representations gave rise to a reasonable expectation that the following information, if it existed, would be disclosed by Dalglish to the Affected Market:
- 174.1 the EPC Solar Contract Risks Information;
- 174.2 the Ground Conditions Information;
- 174.3 the Project Issues Information;
- 174.4 the Cost Overruns Information; and
- 174.5 the Write-downs Information.
175. Further, at the time the 22 February 2018 Dalglish Representations were made:
- 175.1 RCR's EBIT for HY18 was materially less than \$22.8 million;
- 175.2 RCR's financial position was not strong;
- 175.3 the Project was not contributing to RCR's growth;
- 175.4 RCR was not on track to deliver earnings growth in FY18;
- 175.5 RCR was not well positioned for earnings growth in FY18;
- 175.6 there was not a reasonable basis to expect that RCR's earnings for FY18 would exceed RCR's earnings for FY17; and
- 175.7 insofar as the representations were representations with respect to future matters, Dalglish did not have reasonable grounds for making the representation.

### **Particulars**

- (a) *The Plaintiffs repeat the matters pleaded in paragraphs 18 to 20, 59 to 60, and 75 to 81 above.*
- (b) *Further particulars may be provided following discovery and evidence.*
- (c) *Insofar as the 22 February 2018 RCR Representations were representations with respect to a future matter, the Plaintiffs will rely upon section 12BB(1) of the ASIC Act, section 796C of the Corporations Act, and/or section 4 of the Australian Consumer Law*
176. In all the circumstances, the 22 February 2018 Dalglish Conduct was misleading or deceptive, or likely to mislead or deceive, in contravention of:

- 176.1 section 1041H of the Corporations Act;
- 176.2 section 12DA(1) of the ASIC Act; and/or
- 176.3 section 18 of the ACL,

**(22 February 2018 Dagleish Misleading Conduct Contravention).**

## **IX. MISLEADING CONDUCT OF JAMES**

### **(A) 28 August 2018 James Conduct**

177. James:

- 177.1 made the 28 August 2018 James Representations;
- 177.2 failed to correct or qualify the 24 August 2017 James Representations,

**(28 August 2018 James Conduct).**

178. The 28 August 2018 James Conduct was conduct of James:

- 178.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- 178.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
- 178.3 in trade or commerce, within the meaning of section 18 of the ACL.

179. At the time the 28 August 2018 James Representations were made:

- 179.1 even with the 2018 Capital Raising and the support from RCR's financiers announced to the market, RCR could not move forward in a position of strength;
- 179.2 the outlook for RCR was not positive;
- 179.3 the issues that caused the Cost-overruns were systemic;
- 179.4 RCR was not in a strong financial position, was not trading on a business as usual basis, and was not well placed to deliver for its customers shareholders;
- 179.5 there was not a reasonable basis to expect that RCR's underlying EBIT for FY19 would be between \$40 to \$48 million; and
- 179.6 insofar as the representations were representations with respect to future matters, James did not have reasonable grounds for making the representation.

### Particulars

- (a) *The Plaintiffs repeat the matters pleaded in paragraphs 67 to 74 and 82.*
- (b) *Further particulars may be provided following discovery and evidence.*
- (c) *Insofar as the 28 August 2018 RCR Representations were representations with respect to a future matter, the Plaintiffs will rely upon section 12BB(1) of the ASIC Act, s 796C of the Corporations Act, and/or section 4 of the Australian Consumer Law*

180. In all the circumstances, the 28 August 2018 James Conduct was misleading or deceptive, or likely to mislead or deceive, in contravention of:

180.1 section 1041H of the Corporations Act;

180.2 section 12DA(1) of the ASIC Act; and/or

180.3 section 18 of the ACL,

**(28 August 2018 James Misleading Conduct Contravention).**

181. The following conduct is hereafter referred to collectively as the **Misleading Conduct Contraventions**:

181.1 the Continuous Disclosure RCR Misleading Conduct Contravention;

181.2 the Risk Management RCR Misleading Conduct Contravention;

181.3 the 23 February 2017 RCR Misleading Conduct Contravention;

181.4 the 23 February 2017 Dalgleish Misleading Conduct Contravention;

181.5 the 3 May 2017 RCR Misleading Conduct Contravention;

181.6 the 3 May 2017 Dalgleish Misleading Conduct Contravention;

181.7 the 11 August 2017 RCR Misleading Conduct Contravention;

181.8 the 11 August 2017 Dalgleish Misleading Conduct Contravention;

181.9 the 24 August 2017 RCR Misleading Conduct Contravention;

181.10 the 24 August 2017 Dalgleish Misleading Conduct Contravention;

181.11 the 30 August 2017 RCR Misleading Conduct Contravention;

181.12 the 22 February 2018 RCR Misleading Conduct Contravention;

181.13 the 22 February 2018 Dalgleish Misleading Conduct Contravention;

181.14 the 28 August 2018 RCR Misleading Conduct Contravention; and

181.15 the 28 August 2018 James Misleading Conduct Contravention.

**X. SECTION 1041E CONTRAVENTION**

182. The following statements or information were false in a material particular or materially misleading:

- 182.1 the Continuous Disclosure Representation;
- 182.2 the Risk Management Representation;
- 182.3 the 23 February 2017 RCR Representations;
- 182.4 the 23 February 2017 Dalgleish Representations on;
- 182.5 the 3 May 2017 Representations;
- 182.6 the 11 August 2017 RCR Representations;
- 182.7 the 11 August 2017 Dalgleish Representations;
- 182.8 the 24 August 2017 RCR Representations;
- 182.9 the 24 August 2017 Dalgleish Representations;
- 182.10 the 30 August 2017 RCR Representations;
- 182.11 the 22 February 2018 RCR Representations;
- 182.12 the 22 February 2018 Dalgleish Representations;
- 182.13 the 28 August 2018 RCR Representations; and
- 182.14 the 28 August 2018 Representations,  
(**1041E Representations**).

**Particulars**

*The Plaintiffs repeat the matters pleaded in paragraphs 111 to 181.*

183. The 1041E Representations were likely:

- 183.1 to induce persons in Australia to apply for RCR Shares;
- 183.2 to induce persons in Australia to dispose of or acquire RCR Shares; and/or
- 183.3 to have the effect of increasing, reducing, maintaining or stabilising the price for trading in RCR Shares.

**Particulars**

*The Plaintiffs repeat the matters pleaded in paragraphs 83 to 110 above and 189 to 190 below.*



184. As regards those 1041E Representations made by RCR, when RCR made the each of those 1041E Representations, RCR ought reasonably to have known that the 1041E Representation was false in a material particular or was materially misleading.

**Particulars**

*The Plaintiffs repeat the allegations and particulars pleaded in paragraphs 75 to 82.*

185. As regards those 1041E Representations made by Dalgleish, when Dalgleish made the each of those 1041E Representations, Dalgleish ought reasonably to have known that the 1041E Representation was false in a material particular or was materially misleading.

**Particulars**

*The Plaintiffs repeat the particulars to paragraphs 75 to 81.*

186. As regards those 1041E Representations made by James, when James made the each of those 1041E Representations, James ought reasonably to have known that the 1041E Representation was false in a material particular or was materially misleading.

**Particulars**

*The Plaintiffs repeat the particulars to paragraph 82.*

187. Section 1041E has been contravened:
- 187.1 by RCR, by reason of the matters pleaded in paragraph 184;
  - 187.2 by Dalgleish, by reason of the matters pleaded in paragraph 185; and
  - 187.3 by James, by reason of the matters pleaded in paragraph 186,
- (1041E Contraventions).**

**XI. CAUSATION, INCLUDING INDIRECT (MARKET-BASED) CAUSATION**

**(A) Market Contraventions generally**

188. During the Relevant Period, the Plaintiffs and the Group Members acquired an interest in RCR Shares in a market of investors or potential investors in RCR Shares:
- 188.1 operated by the ASX;
  - 188.2 regulated by, inter alia, section 674(2) of the Corporations Act and Listing Rule 3.1;

- 188.3 where the price or value of RCR Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) of the Corporations Act and Listing Rule 3.1;
- 188.4 where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of RCR Shares (namely the information the subject of the Continuous Disclosure Contraventions, or any one of them); and
- 188.5 where misleading or deceptive conduct had occurred (namely the conduct the subject of the Misleading Conduct Contraventions and 1041E Contraventions) by the making of statements to the market that a reasonable person would expect to have a material effect on the price or value of RCR Shares.
189. During the Relevant Period, the Plaintiffs and the Group Members acquired an interest in RCR Shares in circumstances in which the Continuous Disclosure Contraventions, the Misleading Conduct Contraventions and the 1041E Contraventions (**Market Contraventions**) (or any one or combination of them) caused the market price of RCR Shares to be, or materially contributed to the market price of RCR Shares being, substantially greater than their true value and/or the market price that would otherwise have prevailed at the time of acquisition but for those Market Contraventions (or any one or combination of them).

**Particulars of indirect / market-based causation**

*Full particulars of the extent to which the Market Contraventions caused the market price for RCR Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed at the time of acquisition will be provided after the Plaintiffs have served expert evidence.*

190. Further or in the alternative to paragraph 189, the decline in the price of RCR Shares pleaded in paragraphs 66 above was caused or materially contributed to by the information communicated to the Affected Market by RCR in respect of the Market Contraventions.
191. Further or in the alternative to paragraph 189 and 190, if RCR had:
- 191.1 disclosed the EPC Solar Contract Risks Information, the Grounds Condition Information, the Project Issues Information, the Costs Overrun Information, the Write-downs Information, the FY18 Earnings Information prior to 28 August 2018;
- 191.2 disclosed the FY19 Financial Information and the matters pleaded in paragraph 203 below prior to 12 November 2018; and/or

191.3 not engaged in the conduct the subject of the Market Contraventions, the price of RCR Shares would have fallen substantially.

### Particulars

*The extent to which the price of RCR Shares would have fallen at earlier points in time during the Relevant Period, and when it would have so fallen, is a matter for evidence, particulars of which will be provided after the Plaintiffs have served expert evidence.*

192. Further or in the alternative to paragraphs 189 to 191, during the Relevant Period, the Plaintiffs and some Group Members acquired their respective interests in RCR Shares in reliance upon one or more of the Misleading Conduct Contraventions or 1041E Contraventions.
193. Further or in the alternative to paragraphs 189 to 192, during the Relevant Period, the Plaintiffs and some Group Members would not have acquired their respective interests in RCR Shares had they known:
- 193.1 of the EPC Solar Contract Risk Information, Ground Conditions Information, the Project Issues Information, the Cost Overruns Information, the Write-downs Information, the FY18 Earnings Guidance Information, the FY19 Financial Information; and/or
- 193.2 that the conduct giving rise to the Misleading Conduct Contraventions or 1041E Contraventions was misleading.
194. During the Relevant Period, the market for RCR Equity Swaps was a market that traded on the basis that the market for RCR Shares had the features pleaded in paragraph 189 above.
195. By reason of the matters set out in paragraphs 189 to 194 above, at all times during the Relevant Period, Group Members who entered into RCR Equity Swaps did so at a time when:
- 195.1 the price of RCR Shares had been artificially inflated by the Market Contraventions;
- 195.2 the RCR Equity Swaps had been defined by reference to a price of RCR Shares which was artificially inflated at the time the swap transaction was initiated;
- 195.3 by reason of the matters pleaded in this paragraph, the value of the future cash flows to be received by the equity amount receiver pursuant to the RCR Equity Swap, which future cash flows were determined by reference to the

performance of RCR Shares, was diminished and/or the value of the cash flows to be paid by the equity amount receiver in return was inflated.

**Particulars of indirect / market-based causation**

*Particulars of the Group Members' holdings of RCR Equity Swaps will be provided prior to the trial of their individual claims following the determination of the common questions.*

**(B) 30 August 2017 RCR Cleansing Notice Misleading Conduct Contravention - search**

**(i) No transaction**

196. But for the 30 August 2017 Cleansing Notice Misleading Conduct Contravention, RCR would not have been able to raise capital pursuant to the 2017 Capital Raising.

**(ii) Market-based causation**

197. The Third Plaintiff and some or all of the Group Members acquired an interest in RCR Shares pursuant to the 2017 Capital Raising in a market:

197.1 regulated by, inter alia, Chapter 6D of the Corporations Act;

197.2 where the offer price of RCR Shares in the 2017 Capital Raising would reasonably be expected by potential investors to have been determined by RCR to represent a fair market value for RCR Shares, based upon all information required to be disclosed by RCR;

197.3 in the alternative to sub-paragraph 197.2, where the offer price in the 2017 Capital Raising was in fact determined by RCR by reference to the then prevailing market price for RCR Shares;

**Particulars**

*As regards the 2017 Capital Raising, the 24 August 2017 Announcements provided that RCR will issue approximately 21 million RCR Shares to eligible, sophisticated, professional institutional investors at a fixed price of \$3.55 per share representing a 5.1% discount to the last close price of \$3.74 on 23 August 2017 and a 4.6% discount to the 5 day VWAP ending on 23 August 2017 or \$3.72. The 24 August 2017 Announcements further provided that eligible RCR shareholders will have the opportunity to subscribe for new shares up to maximum value of \$15,000 per shareholder at the same price as institutional investors.*

197.4 where material information had not been disclosed (namely the Cleansing Notice Omissions pleaded at paragraph 144), which a reasonable person

would expect, had it been disclosed, would have caused the capital raising not to proceed, or caused the offer price to be lower, and/or caused there to be a material adverse effect on the willingness of potential investors to participate in the capital raising at the relevant offer price or at all; and

- 197.5 where misleading or deceptive statements had been made (namely the Cleansing Notice Representations pleaded at paragraph 46) which a reasonable person would expect, had they not been made, would have caused the capital raising not to proceed, or caused the offer price to be lower, and/or caused there to be a material adverse effect on the willingness of potential investors to participate in the capital raising at the relevant offer price or at all.

### **Particulars**

*Full particulars of the extent to which the 30 August 2017 Cleansing Notice Misleading Conduct Contravention caused the offer price for RCR Shares in the 2017 Capital Raising to be greater than the price that would otherwise have prevailed will be provided after the Plaintiffs have served expert evidence.*

### **(iii) Reliance**

198. The Third Plaintiff and some or all of the Group Members acquired RCR Shares in volumes they were acquired in reliance upon:

198.1 the Cleansing Notice Representations; and/or

198.2 the Cleansing Notice Representations Omissions.

### **Particulars**

*The identity of all those Group Members which or who relied directly upon the statements and/or omissions identified above are not presently within the Plaintiffs' knowledge and cannot be ascertained unless and until those advising the Plaintiffs take detailed instructions from all Group Members on individual issues relevant to the determination of those Group Members' claims. Those instructions will be obtained (and particulars of the identities of those Group Members will be provided) following opt-out, the determination of the Plaintiffs' claim and identification of common issues at an initial trial, and if and when it is necessary to for a determination to be made of the individual claims of those Group Members.*

## **XII. LOSS AND DAMAGE**

199. By reason of the matters pleaded in paragraphs 189 to 198 above, the Plaintiffs and the Group Members have suffered loss and damage by and resulting from the Market Contraventions (or any one or combination of them).

### **Particulars**

- (a) *The loss suffered by the Plaintiffs will be calculated by reference to one or more of the following measures of loss and damage:*
- (1) *the difference between the price at which RCR Shares were acquired by the Plaintiffs during the Relevant Period and the true value of that interest at that time;*
  - (2) *the difference between the price at which RCR Shares were acquired by the Plaintiffs during the Relevant Period and the market price that would have prevailed at that time had the Market Contraventions not occurred;*
  - (3) *the nature and quantum of the decline in the price of RCR Shares on 28 August 2018 as a result of the disclosure of information which had not previously been disclosed in respect of the Market Contraventions; or*
  - (4) *the difference between the price at which the RCR Shares were acquired by the Plaintiffs during the Relevant Period and the amount "left in hand" or that might be realised on the sale of those shares.*
- (b) *Further particulars of the Plaintiffs' losses will be provided after the service of the Plaintiffs' expert evidence.*
- (c) *Particulars of the losses of the Group Members will be provided following opt-out, the determination of the Plaintiffs' claim and identified common issues at an initial trial, and if and when it becomes necessary for a determination to be made on the individual claims of the Group Members. The losses of the Group Members are presently expected to involve one or more of the following measures of loss and damage:*
- (1) *the difference between the price at which RCR Shares were acquired during the Relevant Period and the true value of the shares at that time; or*
  - (2) *the difference between the purchase price paid for the shares and the price that the shares would then have been trading at on*

*the day of purchase, had the Market Contraventions not occurred and the market been properly informed;*

- (3) *the nature and quantum of the decline in the price of RCR Shares on 28 August 2018 as a result of the disclosure of information which had not previously been disclosed in respect of the Market Contraventions;*
- (4) *in the alternative, the difference between the purchase price of the shares and (i) if the shares were sold: the price at the time they were sold; or (ii) if the shares are retained: the listed price of the shares at the date of the judgment;*
- (5) *for Group Members who entered into RCR Equity Swaps, the amount by which the future cash flows to be received by the Group Member pursuant to the RCR Equity Swap were diminished and/or the amount by which the cash flows to be paid by the Group Member pursuant to the RCR Equity Swap were inflated;*
- (5) *or for Group Members who purchased RCR Shares through the 2017 Capital Raising, the offer price for RCR Shares purchased through the 2017 Capital Raising, or alternatively, the difference between offer price for RCR Shares in the 2017 Capital Raising and the price that would otherwise have prevailed.*

### **XIII. PROSPECTUS CONTRAVENTION**

200. The Prospectus was:

200.1 issued for the purposes of Chapter 6D of the Corporations Act;

200.2 a disclosure document within the meaning of section 9 of the Corporations Act;

200.3 issued in relation to an offer of RCR Shares.

201. In the Independent Auditor's Report on the FY18 Financial Report, the independent auditor stated that a material uncertainty exists that may cast significant doubt on the RCR group's ability to continue as a going concern (**Going Concern Modification**).

202. In the Prospectus, RCR made the following statements:

202.1 RCR remained ideally positioned in the renewable energy market;

202.2 the Cost Overruns were due to Project-specific issues;

- 202.3 the 2018 Capital Raising will enable RCR to avoid the risk of breaching financial covenants under its facility agreements; and
- 202.4 the 2018 Capital Raising and financier support announced in the Prospectus and the 28 August 2018 Announcements would resolve the Going Concern Modification,

**(Prospectus Misleading Statements).**

**Particulars**

*The Prospectus Misleading Statements were express and were made in the Prospectus at pages 8, 9, 21, 38 and 48.*

203. At the time the Prospectus Misleading Statements were made:
- 203.1 RCR was not ideally positioned in the renewable energy market;
- 203.2 the Cost Overruns were not due to project-specific issues;
- 203.3 RCR did not have reasonable grounds for making the Prospectus Misleading Statements.

**Particulars**

- (a) *The Plaintiffs repeat the matters pleaded in paragraphs 67 to 74 above.*
- (b) *The Administrators' Report states:*
- (1) *As at 12 October, RCR expected to breach an earnings covenant in December 2018 and was seeking a waiver (p 58).*
- (2) *In early November 2018, it became clear to the RCR Board that the Group was likely to breach its banking covenants in December 2018 (p 61).*
- (3) *Various discussions were held with the Secured Creditors in the month of November, culminating in RCR putting a formal request for funding to the Secured Creditors on 20 November 2018. This request was denied. The RCR Board immediately appointed the Administrators (p 61).*
- (4) *The Directors believe the RCR Group failed due to the Secured Creditors refusal to extend the Group's facilities, the non-waiver of a potential breach of financial covenants and the withdrawal of overdraft facilities by the CBA on 21 November 2018 (p 8).*



204. By reason of the matters pleaded in paragraphs 202 to 203 above, the Prospectus Misleading Statements were misleading or deceptive statements within the meaning of sections 728(1) and (2) of the Corporations Act.
205. The Prospectus did not contain the FY19 Financial Information (**Prospectus Omission**).
206. The Prospectus Omission was information that investors and their professional advisers would reasonably require to make an informed assessment of the effect of the offer on RCR and/or the rights and liabilities attaching to the securities offered, within the meaning of s 713(2) of the Corporations Act.
207. By reason of the matters pleaded in paragraphs 204 to 206 above, RCR contravened section 728 of the Corporations Act (**Prospectus Contravention**).

**(A) Causation**

**(i) No transaction**

208. But for the Prospectus Contravention, RCR would not have been able to raise capital pursuant to the 2018 Capital Raising.

**Particulars**

- (a) *Had the Prospectus not contained the Prospectus Misleading Statements, and had the Prospectus not omitted the information the subject of the Prospectus Omission, then:*
- (1) *Macquarie Capital as Lead Manager and Underwriter of the 2018 Capital Raising would have withdrawn its support for the 2018 Capital Raising;*
  - (2) *Deloitte Corporate Finance Pty Limited as Investigating Accountant to RCR in relation to the 2018 Capital Raising would not have consented to the inclusion of the Investigating Accountant's Report in the Prospectus;*
  - (3) *King & Wood Mallesons as legal adviser to RCR in relation to the 2018 Capital Raising would have withdrawn its consent to being named as such in the Prospectus;*
  - (4) *Deloitte Touch Tohmatsu as Independent Auditor in relation to the 2018 Capital Raising would have withdrawn its consent to being named as such in the Prospectus;*
  - (5) *the Prospectus would not have been lodged with ASIC; and/or*

(6) *investors who acquired an interest in RCR Shares pursuant to the Prospectus would not have done so.*

(b) *Further particulars may be provided following discovery and evidence.*

**(ii) Market-based causation**

209. The Second Plaintiff and Group Members acquired an interest in RCR Shares pursuant to the 2018 Capital Raising in a market:

209.1 regulated by, inter alia, Chapter 6D of the Corporations Act;

209.2 where the offer price of RCR Shares in the Prospectus would reasonably be expected by potential investors to have been determined by RCR to represent a fair market value for RCR Shares, based upon all information required to be disclosed by RCR;

209.3 in the alternative to sub-paragraph 209.2, where the offer price in the 2017 Capital Raising or in the Prospectus was in fact determined by RCR by reference to the then prevailing market price for RCR Shares;

**Particulars**

*The Prospectus provided (at p 23) that the offer price for RCR Shares pursuant to the entitlement offer was \$1.00 per RCR Share, which represented a 52.8% discount to the Theoretical Ex-Rights Price and a 64.3% discount to the last close price on the ASX of \$2.80 on 27 July 2018.*

209.4 where material information had not been disclosed (namely the Prospectus Omission), which a reasonable person would expect, had it been disclosed, would have caused the capital raising not to proceed, or caused the offer price to be lower, and/or caused there to be a material adverse effect on the willingness of potential investors to participate in the capital raising at the relevant offer price or at all; and

209.5 where misleading or deceptive statements had been made (namely the Prospectus Misleading Statements) which a reasonable person would expect, had they not been made, would have caused the capital raising not to proceed, or caused the offer price to be lower, and/or caused there to be a material adverse effect on the willingness of potential investors to participate in the capital raising at the relevant offer price or at all.

**Particulars**

*Full particulars of the extent to which the Prospectus Contravention caused the offer price for RCR Shares in the 2018 Capital Raising to be greater than*

*the price that would otherwise have prevailed will be provided after the Plaintiffs have served expert evidence.*

210. In the Relevant Period, the Prospectus Contravention caused the offer price in the 2018 Capital Raising to be, or materially contributed to the offer price in the 2018 Capital Raising being, substantially greater than the true value of RCR Shares and/or the offer price that would otherwise have prevailed at the time of the 2018 Capital Raisin but for the Prospectus Contravention.

**Particulars of indirect / market-based causation**

*Full particulars of the extent to which the Prospectus Contravention caused the offer price to be substantially greater than the true value of RCR Shares and/or the offer price that would otherwise have prevailed at the time of the 2018 Capital Raising will be provided after the Plaintiffs have served expert evidence.*

**(iii) Reliance**

211. The Second Plaintiff and some or all of the Group Members acquired RCR Shares in volumes they were acquired in reliance upon:
- 211.1 the Prospectus Misleading Statements; and/or
- 211.2 the Prospectus Omissions.

**Particulars**

*The identity of all those Group Members which or who relied directly upon the statements and/or omissions identified above are not presently within the Plaintiffs' knowledge and cannot be ascertained unless and until those advising the Plaintiffs take detailed instructions from all Group Members on individual issues relevant to the determination of those Group Members' claims. Those instructions will be obtained (and particulars of the identities of those Group Members will be provided) following opt-out, the determination of the Plaintiffs' claim and identification of common issues at an initial trial, and if and when it is necessary to for a determination to be made of the individual claims of those Group Members.*

**(B) Loss and Damage**

212. Some Group Members have suffered loss and damage resulting from the Prospectus Contravention.

**Particulars**

*Particulars of the losses of Group Members will be provided following opt-out, the determination of the Plaintiffs' claim and identification of common issues at an initial trial, and if and when it is necessary to for a determination to be made of the individual claims of those Group Members. Group Members' loss and damage resulting from the Prospectus Contravention will be the subject of expert evidence.*

**D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE**

1 None.

**E. MEDIATION**

1 The parties have not attempted mediation. The Plaintiffs are willing to proceed to mediation at an appropriate time.

**SIGNATURE OF LEGAL REPRESENTATIVE**

Signature

A handwritten signature in black ink, appearing to read 'Adam Hochroth', is written over a light grey rectangular background.

Capacity

Solicitor on the Record

Date of signature

30 August 2019

This pleading was prepared by Adam Hochroth, Patrick Meagher and Quinn Emanuel Urquhart & Sullivan, and settled by Elizabeth Collins SC.

**SCHEDULE 1****RCR's Misleading Public Statements****(A) CONTINUOUS DISCLOSURE STATEMENTS**

1. On 25 August 2016, RCR published its 2016 Annual Report.
2. In the 2016 Annual Report, RCR made the following statements:
  - 2.1 (p 68) "The company is committed to maintaining a level of disclosure that meets the standards and provides all investors with timely and equal access to information issued by the Company";
  - 2.2 (p 68) "The Company's Continuous Disclosure Policy reinforces its commitment to ASX continuous disclosure requirements and outlines management's accountabilities and the processes to be followed for ensuring compliance";
  - 2.3 (p 69) "The Company is committed to giving all shareholders comprehensive, timely and equal access to information about its activities so that they can make informed decisions. Similarly, prospective new investors are entitled to be able to make informed investment decisions when considering the purchase of shares in the Company";
  - 2.4 (p 69) "The Company's Shareholder Communication Policy provides that the Company will communicate effectively with its shareholders, give shareholders ready access to balanced and understandable information about RCR and encourages shareholder participation at General Meetings and AGMs. The way it does this includes:...ensuring the disclosure of full and timely information about the Company's activities in accordance with the general and continuous disclosure principles of the ASX Listing Rules and the *Corporations Act 2001*";
  - 2.5 (p 73) RCR has complied with its obligation to make timely and balanced disclosure to the ASX; and
  - 2.6 (p 73) RCR has written policies designed to ensure compliance with ASX Listing Rule disclosure requirements and to ensure accountability at a senior executive level for that compliance.
3. On 24 August 2017, RCR published its 2017 Annual Report.
4. In the 2017 Annual Report, RCR made the following statements:
  - 4.1 (p 63) "The Company is committed to giving all shareholders comprehensive, timely and equal access to information about its activities so that they can

make informed decisions. Similarly, prospective new investors are entitled to be able to make informed investment decisions when considering the purchase of shares in the Company;”

- 4.2 (p 64) “The Company’s Shareholder Communication Policy provides that the Company will communicate effectively with its shareholders, give shareholders ready access to balanced and understandable information about the Company and encourages shareholder participation at General Meetings and AGMs. The way it does this includes... ensuring the disclosure of full and timely information about the Company’s activities in accordance with the general and continuous disclosure principles of the ASX Listing Rules and the Corporations Act 2001”;
  - 4.3 (p 64) “The Company is committed to maintaining a level of disclosure that meets the standards and provides all investors with timely and equal access to information issued by the Company”.
  - 4.4 (p 64) “The Company’s Continuous Disclosure Policy reinforces its commitment to ASX continuous disclosure requirements and outlines management’s accountabilities and the processes to be followed for ensuring compliance”;
  - 4.5 (p 70) RCR has complied with its obligation to make timely and balanced disclosures to the ASX; and
  - 4.6 (p 70) RCR has written policies designed to ensure compliance with ASX Listing Rule disclosure requirements and to ensure accountability at a senior executive level for that compliance.
5. During the Relevant Period, RCR had in place a Continuous Disclosure Policy, which was referred to in the 2016 Annual Report (p 68) and in the 2017 Annual Report (p 68) and which was available throughout the Relevant Period in RCR’s website.
  6. In the Continuous Disclosure Policy, RCR made the following statements:
    - 6.1 (p 1) “As a company listed on the Australian Securities Exchange (ASX), RCR Tomlinson Ltd (RCR) is committed to: complying with its disclosure obligations under the ASX Listing Rules; and the promotion of investor confidence by ensuring that all investors have equal and timely access to material information concerning RCR, including material information about its financial position, performance, ownership and governance”; and
    - 6.2 (p 1) “Both the Corporations Act and the ASX Listing Rules require RCR to ensure that once it becomes aware of any certain information concerning it that a reasonable person would expect to have a material effect on the price

or value of RCR shares that is not generally available or previously been made available to ASX (Price Sensitive Information), it must immediately advise ASX of that information. RCR will become aware of information if a Director or executive officer of RCR has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as a Director or executive officer of RCR”.

## **(B) RISK MANAGEMENT STATEMENTS**

7. In the 2016 Annual Report, RCR made the following statements:

7.1 (p 23) “RCR’s management system is designed to support the high performance and sustainable development of our business, to increase transparency of key risk indicators, enhance corporate governance and strengthen primary management control information”;

7.2 (p 35) “The Company has a risk management policy and internal controls to enable the identification, assessment and mitigation of material business risks. Key processes include tender, contracting and project management, treasury and credit risks”; and

7.3 (p 69) “The Board and management recognise that risk management and internal compliance and control are key elements of good corporate governance”.

8. In the 2017 Annual Report, RCR made the following statements:

8.1 (p 35) “Effective risk management anticipates and evaluates uncertainties that could impact the Company’s business objectives. By recognising and managing risk, the Company is able to make the most out of opportunities to create shareholder value and deliver on commitments to our employees, customers, the environment and the community. The Company has defined five discrete risk environments, being: Strategic, Operational, Project, Financial and Compliance”;

8.2 (p 35) “The Company has a risk management policy and internal controls to enable the identification, assessment and mitigation of material business and project risks. Key processes include tender, contracting and project management, treasury and credit risks. Project risks are evaluated as a potential barrier to delivering contracted scopes against cost, time and technical performance targets, while maintaining health, safety and environmental performance at acceptable levels. RCR’s risk management framework sets the minimum required standard for project management in the delivery of major projects. Major project risk management activities include

contracting principles, project reviews, identification, analysis and control risks and opportunities, risk registers and monthly project reporting”;

- 8.3 (p 35) “The Company manages risk as an intrinsic part of its business and is committed to conducting business activities in a way that is aimed at achieving continued growth of shareholder value in a sustainable manner”; and
- 8.4 (p 65) “The Board and management recognise that risk management and internal compliance and control are key elements of good corporate governance”.