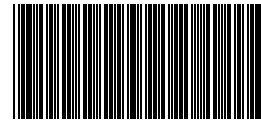




Filed: 18 October 2019 2:50 PM



D0001723JD

Commercial List Response

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	Paul Joseph Dagleish, Defendant 2
-----------	-----------------------------------

Legal representative	Steven Lewis
Legal representative reference	
Telephone	92169829
Your reference	MOBL396

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 Response (SKM_C55819101815120.pdf)

[attach.]

SECOND DEFENDANT'S COMMERCIAL LIST RESPONSE

COURT DETAILS

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

TITLE OF PROCEEDINGS

First Plaintiff	Ashita Tomi Ltd as trustee for Esskay Super Fund ABN 79582038569
Number of Plaintiffs	3
First Defendant	RCR Tomlinson Limited ACN 008898486
Second Defendant	Paul Joseph Dalglish
Number of Defendants	3

FILING DETAILS

Filed for	Paul Joseph Dalglish, Second Defendant
Legal representative	Mark O'Brien, Mark O'Brien Legal
Legal representative reference	MOBL322
Contact name and telephone	Steven Lewis 9216 9829
Contact email	Steven.lewis@markobrienlegal.com.au

PRELIMINARY MATTERS

1. Unless the context requires otherwise, the Second Defendant (**Dalglish**) adopts the defined terms used in the Commercial List Statement (**CLS**), but does not admit any factual assertions contained in, or in any way implied by, any defined term used in the CLS and repeated in this Commercial List Response (**Response**).
2. In this Response, Dalglish uses "**RCR**" to refer to the First defendant, RCR Tomlinson Limited ACN 008 898 486 (in liquidation).
3. References in this Response to subparagraphs include references to the chapeau to the subparagraph.

NATURE OF THE DISPUTE

4. Dalgleish agrees that the Plaintiffs' statement of the nature of the dispute reflects the Plaintiff's contentions in the CLS.

ISSUES LIKELY TO ARISE

5. Dalgleish agrees with the issues likely to arise as summarised in the CLS but says that, as between the Plaintiffs and him, if he is found liable for any alleged contravention, the Court will also be required to consider whether he should be relieved any liability imposed on him either wholly or partly (and excused from any breach of ss 1041H or 1041E of the Corporations Act found against him), by reason of him having acted honestly and reasonably and having regard to all of the circumstances of the case pursuant to s 1318 of the Corporations Act.
6. Dalgleish agrees that issues 2, 3 and 4 identified in Part B of the CLS are in issue in the proceeding but says that these issues cannot be resolved at the initial trial of common issues and would need to be determined on an individual basis for each Group Member.

SECOND DEFENDANT'S RESPONSE TO PLAINTIFFS' CONTENTIONS IN CLS

I. INTRODUCTION

(A) The Plaintiffs and Group Members

1. In answer to paragraph 1 of the CLS, Dalgleish:
 - (a) admits that the Plaintiffs bring these proceedings as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) on their own behalves and on behalf of the persons described in that paragraph as Group Members; and
 - (b) denies that any person so described has suffered loss or damage by, or which resulted from the conduct of Dalgleish pleaded in the CLS.
2. In answer to paragraph 2, Dalgleish:
 - (a) admits that seven or more Group Members are alleged to have claims against the Defendants; and
 - (b) denies that any Group Members are entitled to succeed on their claims against Dalgleish.

3. Dalgleish does not admit paragraph 3.
4. Dalgleish does not admit paragraph 4.
5. Dalgleish does not admit paragraph 5.
6. Dalgleish does not admit paragraph 6.
7. Dalgleish:
 - (a) does not plead to subparagraphs 7.1-7.3 as they contains no allegation against him; and
 - (b) does not admit subparagraph 7.4.

(B) The Defendants and other relevant persons

8. Dalgleish does not plead to paragraph 8 as it contains no allegation against him.
9. Dalgleish admits paragraph 9.
10. Dalgleish does not plead to paragraph 10 as it contains no allegation against him.
11. Dalgleish does not plead to paragraph 11 as it contains no allegation against him.
12. Dalgleish does not plead to paragraph 12 as it contains no allegation against him.

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

13. Dalgleish not plead to paragraph 13 as it contains no allegation against him.

II. RCR's BUSINESS

14. Dalgleish admits paragraph 14.
15. Dalgleish does not admit paragraph 15.
16. Dalgleish admits paragraph 16.
17. Dalgleish does not admit paragraph 17.
18. In answer to paragraph 18, Dalgleish:
 - (a) says that from about December 2016 RCR entered into contracts for the engineering, procurement and construction of solar farms; and

(b) does not otherwise admit the paragraph.

19. In answer to paragraph 19, Dalgleish:

(a) admits that from about 28 December 2016 until about April 2018, RCR entered into at least 15 EPC Solar Contracts; and

(b) does not otherwise admit the paragraph.

20. In answer to paragraph 20, Dalgleish:

(a) as to subparagraph 20.2, says that the phrase “high working capital requirements” is vague and embarrassing because it is untethered to any objective comparator or qualifying criteria;

(b) admits subparagraph 20.3; and

(c) does not otherwise admit the paragraph.

21. Dalgleish admits paragraph 21.

III. DAYDREAM AND HAYMAN SOLAR FARMS PROJECT

22. Dalgleish admits paragraph 22.

23. Dalgleish admits paragraph 23.

24. Dalgleish does not admit paragraph 24.

25. Dalgleish admits paragraph 25.

26. Dalgleish admits paragraph 26.

27. Dalgleish does not admit paragraph 27.

IV. RELEVANT ANNOUNCEMENTS, DISCLOSURES AND EVENTS

(A) 23 February 2017 Announcements

28. Dalgleish admits paragraph 28.

29. In answer to paragraph 29, Dalgleish:

(a) says the Board of RCR authorised the publication and release of the 23 February 2017 ASX Announcement;

- (b) admits authorising the publication and release of the 23 February 2017 Audio Recording;
- (c) admits providing statements for inclusion in the 23 February 2017 ASX Announcement;
- (d) admits he was identified as the contact person for investors in relation to the 23 February 2017 ASX Announcement; and
- (e) admits speaking the words in the 23 February 2017 Audio Recording.

30. In answer to paragraph 30, Dalgleish:

- (a) admits that, as part of the 23 February 2017 Announcements:
 - (i) he made a representation to the effect pleaded in subparagraph 30.1;
 - (ii) he made a representation to the effect pleaded in subparagraph 30.2;
 - (iii) he made a representation to the effect pleaded in subparagraph 30.3;
 - (iv) he made a representation to the effect pleaded in subparagraph 30.4;
 - (v) he made a representation to the effect pleaded in subparagraph 30.5;
 - (vi) he made a representation to the effect pleaded in subparagraph 30.6;
 - (vii) he made a representation to the effect pleaded in subparagraph 30.7;
 - (viii) he made a representation to the effect pleaded in subparagraph 30.8;
- (b) relies on the text of the 23 February 2017 Announcements as if set out here in full;
- (c) does not otherwise admit the paragraph.

31. In answer to paragraph 31, Dalgleish:

- (a) repeats paragraph 30, above;
- (b) does not otherwise plead to the paragraph as it contains no allegation against him.

(B) 3 May 2017 Presentation

32. Dalgleish admits paragraph 32.

33. In answer to paragraph 33, Dalgleish:
- (a) says the Board of RCR authorised the publication and release of the 3 May 2017 Presentation; and
 - (b) admits he was identified as the presenter in the 3 May 2017 Presentation.
34. In answer to paragraph 34, Dalgleish:
- (a) admits that, as part of the 3 May 2017 Presentation:
 - (i) he made a representation to the effect pleaded in subparagraph 34.1;
 - (ii) he made a representation to the effect pleaded in subparagraph 34.2;
 - (iii) he made a representation to the effect pleaded in subparagraph 34.3;
 - (iv) he made a representation to the effect pleaded in subparagraph 30.4;
 - (v) he made a representation to the effect pleaded in subparagraph 30.5;
 - (vi) he made a representation to the effect pleaded in subparagraph 30.6;
 - (b) relies on the text of the 3 May 2017 Presentation as if set out here in full; and
 - (c) does not otherwise admit the paragraph.

(C) 11 August 2017 Announcement

35. Dalgleish admits paragraph 35.
36. In answer to paragraph 36, Dalgleish
- (a) says the Board of RCR authorised the publication and release of the 11 August 2017 Announcement;
 - (b) admits providing statements for inclusion in the 11 August 2017 Announcement; and
 - (c) admits he was identified as the contact person for investors in relation to the 11 August 2017 Announcement.
37. In answer to paragraph 37, Dalgleish:
- (a) admits that, as part of the 11 August Announcement:

- (i) he made a representation to the effect pleaded in subparagraph 37.1;
 - (ii) he made a representation to the effect pleaded in subparagraph 37.2;
 - (iii) he made a representation to the effect pleaded in subparagraph 37.3;
- (b) relies on the text of the 11 August 2017 Announcement as if set out here in full;
and
- (c) does not otherwise admit the paragraph.

38. Dalgleish does not plead to paragraph 38 as it contains no allegation against him.

(D) 24 August 2017 Announcements

39. Dalgleish admits paragraph 39.

40. Dalgleish admits paragraph 40.

41. In answer to paragraph 41, Dalgleish:

- (a) says the Board of RCR authorised the publication and release of the 24 August 2017 Announcements;
- (b) otherwise admits subparagraphs 41.2, 41.3, 41.4 and 41.5.

42. In answer to paragraph 42, Dalgleish:

- (a) admits that, in the 24 August Announcements:
 - (i) he made a representation to the effect pleaded in subparagraph 42.1;
 - (ii) he made a representation to the effect pleaded in subparagraph 42.2;
 - (iii) he made a representation to the effect pleaded in subparagraph 42.3;
 - (iv) he made a representation to the effect pleaded in subparagraph 42.4;
 - (v) he made a representation to the effect pleaded in subparagraph 42.5;
 - (vi) he made a representation to the effect pleaded in subparagraph 42.6;
 - (vii) he made a representation to the effect pleaded in subparagraph 42.7;
 - (viii) he made a representation to the effect pleaded in subparagraph 42.8;

- (ix) he made a representation to the effect pleaded in subparagraph 42.9;
- (x) he made a representation to the effect pleaded in subparagraph 42.10;
- (xi) he made a representation to the effect pleaded in subparagraph 42.11;
- (b) relies on the text of the 24 August 2017 Announcements as if set out here in full;
and
- (c) does not otherwise admit the paragraph.

43. Dalgleish does not plead to paragraph 43 as it contains no allegation against him.

(E) 30 August 2017 Cleansing Notice

44. Dalgleish does not plead to paragraph 44 as it contains no allegation against him.

45. Dalgleish does not plead to paragraph 45 as it contains no allegation against him.

46. Dalgleish does not plead to paragraph 46 as it contains no allegation against him.

47. Dalgleish does not plead to paragraph 47 as it contains no allegation against him.

(F) 22 February 2018 Announcements

48. Dalgleish admits paragraph 48.

49. Dalgleish admits paragraph 49.

50. In answer to paragraph 50, Dalgleish:

- (a) says the Board of RCR authorised the publication and release of the 22 February 2018 Announcements; and

- (b) otherwise admits subparagraphs 50.2, 50.3, 50.4 and 50.5.

51. In answer to paragraph 51, Dalgleish:

- (a) admits that he made a representation to the effect pleaded in subparagraph 51.1;

- (b) admits that he made a representation to the effect pleaded in subparagraph 51.2;

- (c) admits that he made a representation to the effect pleaded in subparagraph 51.3;

- (d) admits that he made the representation in subparagraph 51.4;

- (e) admits that he made a representation to the effect pleaded in subparagraph 51.5;
- (f) relies on the documents referred to and constituting the 22 February 2018 Announcements for their full terms and effect; and
- (g) does not otherwise admit the paragraph.

52. Dalgleish does not plead to paragraph 52 as it contains no allegation against him.

(G) 30 July 2018 Trading halt and suspension

53. Dalgleish admits paragraph 53.

54. In answer to paragraph 54, Dalgleish:

- (a) admits that on 1 August 2018, at the request of RCR, its securities were suspended from quotation pending the release of an announcement by RCR regarding its FY18 financial results; and
- (b) otherwise does not admit the paragraph.

55. In answer to paragraph 55, Dalgleish:

- (a) admits that on 7 August 2018, at the request of RCR, the suspension of RCR's securities from quotation on the ASX was continued;
- (b) says that on 7 August 2018 he resigned as Managing Director and Chief Executive Officer of RCR, effective immediately; and
- (c) says that from that date had no involvement in the management of RCR and was not authorised to communicate with the market on its behalf.

(H) 28 August 2018 disclosures

56. In answer to paragraph 56, Dalgleish:

- (a) repeats paragraph 55 above; and
- (b) otherwise does not plead to paragraph 56 as it contains no allegation against him.

57. In answer to paragraph 57 Dalgleish:

- (a) repeats paragraph 55 above; and

(b) otherwise does not plead to the paragraph as it contains no allegation against him.

58. In answer to paragraph 58 Dalgleish:

(a) repeats paragraph 55 above; and

(b) otherwise does not plead to the paragraph as it contains no allegation against him.

59. In answer to paragraph 59 Dalgleish:

(a) repeats paragraph 55 above; and

(b) otherwise does not plead to the paragraph as it contains no allegation against him.

60. In answer to paragraph 60 Dalgleish:

(a) repeats paragraph 55 above; and

(b) otherwise does not plead to the paragraph as it contains no allegation against him.

61. In answer to paragraph 61 Dalgleish:

(a) repeats paragraph 55 above; and

(b) otherwise does not plead to the paragraph as it contains no allegation against him.

62. In answer to paragraph 62 Dalgleish:

(a) repeats paragraph 55 above; and

(b) otherwise does not plead to the paragraph as it contains no allegation against him.

(I) Capital raising

63. In answer to paragraph 63 Dalgleish:

(a) repeats paragraph 55 above; and

(b) otherwise does not plead to the paragraph as it contains no allegation against him.

64. In answer to paragraph 64 Dalgleish:

(a) repeats paragraph 55 above; and

(b) otherwise does not plead to the paragraph as it contains no allegation against him.

(J) Share price decline

65. Dalgleish admits paragraph 65.

66. In answer to paragraph 66 Dalgleish:

(a) admits that on 30 August 2018, following the reinstatement of RCR Shares to quotation on the ASX, the price of RCR Shares declined; and

(b) otherwise does not admit the paragraph.

(K) Voluntary administration and liquidation

67. In answer to paragraph 67 Dalgleish:

(a) repeats paragraphs 55 and 56 above; and

(b) otherwise does not plead to the paragraph as it contains no allegation against him.

68. In answer to paragraph 68, Dalgleish:

(a) admits that on 12 November 2018, at the request of RCR, trading in RCR Shares on the ASX was suspended at the request of RCR [and that the closing price of RCR shares on that day was \$0.87c]; and

(b) otherwise does not admit the paragraph.

69. In answer to paragraph 69, Dalgleish:

(a) admits that on 14 November 2018, at the request of RCR, its securities were suspended from quotation pending the release of an announcement by RCR regarding its earnings for FY19 and the associated consequences for its funding; and

(b) otherwise does not admit the paragraph.

70. Dalgleish admits paragraph 70.

71. Dalgleish admits paragraph 71.

72. Dalgleish admits paragraph 72.

73. Dalgleish admits paragraph 73.

74. In answer to paragraph 74, Dalgleish:

- (a) admits that on 9 April 2019 the Liquidators issued and Update to Shareholders of RCR, and
- (b) otherwise does not admit the paragraph.

V. INFORMATION OF WHICH RCR WAS AWARE

(A) EPC Solar Contract Risk Information

75. In answer to paragraph 75, Dalgleish:

- (a) repeats paragraph 20, above; and
- (b) otherwise does not admit the paragraph.

(B) Ground Condition information

76. Dalgleish does not admit paragraph 76.

77. Dalgleish does not admit paragraph 77.

(C) Project issues information

78. In answer to paragraph 78, Dalgleish:

- (a) says that the paragraph, without proper identification of the date upon which the alleged information became available, is vague and embarrassing and liable to be struck out; and
- (b) otherwise does not admit the paragraph.

(D) Costs Overruns Information

79. In answer to paragraph 79, Dalgleish:

- (a) says that the paragraph, without proper identification of the date upon which the alleged information became available, is vague and embarrassing and liable to be struck out;
- (b) otherwise (in so far as it contains any allegation against him) does not admit the paragraph.

(E) Write-downs Information

80. In answer to paragraph 80, Dalgleish:

- (a) says that the paragraph, without proper identification of the date upon which the alleged information became available, is vague and embarrassing and liable to be struck out; and
- (b) otherwise (in so far as it contains any allegation against him) does not admit the paragraph.

(F) Earnings Information

81. In answer to paragraph 81, Dalgleish:

- (a) says that the paragraph, without proper identification of the date upon which the alleged information became available, is vague and embarrassing and liable to be struck out; and
- (b) otherwise (in so far as it contains any allegation against him) does not admit the paragraph.

(G) Financial Information

82. In answer to paragraph 82, Dalgleish:

- (a) repeats paragraph 55 above; and
- (b) otherwise does not plead to the paragraph as it contains no allegation against him and
- (c) otherwise (in so far as it contains any allegation against him) does not admit the paragraph.

VI. BREACH OF CONTINUOUS DISCLOSURE OBLIGATIONS

(A) EPC Solar Contract Risks Information Contravention

83. Dalgleish does not plead to paragraph 83 as it contains no allegation against him.

84. Dalgleish does not plead to paragraph 84 as it contains no allegation against him.

85. Dalgleish does not plead to paragraph 85 as it contains no allegation against him.

86. Dalgleish does not plead to paragraph 86 as it contains no allegation against him.

(B) Ground Conditions Information Contravention

87. Dalgleish does not plead to paragraph 87 as it contains no allegation against him.

88. Dalgleish does not plead to paragraph 88 as it contains no allegation against him.

89. Dalgleish does not plead to paragraph 89 as it contains no allegation against him.

90. Dalgleish does not plead to paragraph 90 as it contains no allegation against him.

(C) Project Issues Information Contravention

91. Dalgleish does not plead to paragraph 91 as it contains no allegation against him.

92. Dalgleish does not plead to paragraph 92 as it contains no allegation against him.

93. Dalgleish does not plead to paragraph 93 as it contains no allegation against him.

94. Dalgleish does not plead to paragraph 94 as it contains no allegation against him.

(D) Cost Overruns Information Contravention

95. Dalgleish does not plead to paragraph 95 as it contains no allegation against him.

96. Dalgleish does not plead to paragraph 96 as it contains no allegation against him.

97. Dalgleish does not plead to paragraph 97 as it contains no allegation against him.

98. Dalgleish does not plead to paragraph 98 as it contains no allegation against him.

(E) Write-downs Information Contravention

99. Dalgleish does not plead to paragraph 99 as it contains no allegation against him.

100. Dalgleish does not plead to paragraph 100 as it contains no allegation against him.

101. Dalgleish does not plead to paragraph 101 as it contains no allegation against him.

102. Dalgleish does not plead to paragraph 102 as it contains no allegation against him.

(F) FY18 Earnings Information Contravention

103. Dalgleish does not plead to paragraph 103 as it contains no allegation against him.

104. Dalgleish does not plead to paragraph 104 as it contains no allegation against him.

105. Dalgleish does not plead to paragraph 105 as it contains no allegation against him.

106. Dalgleish does not plead to paragraph 106 as it contains no allegation against him.

(G) FY19 Financial Information Contravention

107. Dalgleish does not plead to paragraph 107 as it contains no allegation against him.

108. Dalgleish does not plead to paragraph 108 as it contains no allegation against him.

109. Dalgleish does not plead to paragraph 109 as it contains no allegation against him.

110. Dalgleish does not plead to paragraph 110 as it contains no allegation against him.

(H) The Continuous Disclosure Contraventions were continuing

111. Dalgleish does not plead to paragraph 111 as it contains no allegation against him.

VII. MISLEADING AND DECEPTIVE CONDUCT OF RCR

(A) Additional RCR public statements

112. Dalgleish does not plead to paragraph 112 as it contains no allegation against him.

(B) Continuous Disclosure RCR Representation

113. Dalgleish does not plead to paragraph 113 as it contains no allegation against him.

114. Dalgleish does not plead to paragraph 114 as it contains no allegation against him.

115. Dalgleish does not plead to paragraph 115 as it contains no allegation against him.

116. Dalgleish does not plead to paragraph 116 as it contains no allegation against him.

117. Dalgleish does not plead to paragraph 117 as it contains no allegation against him.

118. Dalgleish does not plead to paragraph 118 as it contains no allegation against him.

(C) Risk Management Representation

119. Dalgleish does not plead to paragraph 119 as it contains no allegation against him.

120. Dalgleish does not plead to paragraph 120 as it contains no allegation against him.

121. Dalgleish does not plead to paragraph 121 as it contains no allegation against him.

122. Dalgleish does not plead to paragraph 122 as it contains no allegation against him.

123. Dalgleish does not plead to paragraph 123 as it contains no allegation against him.

124. Dalgleish does not plead to paragraph 124 as it contains no allegation against him.

(D) 23 February 2017 RCR Conduct

125. Dalgleish does not plead to paragraph 125 as it contains no allegation against him.

126. Dalgleish does not plead to paragraph 126 as it contains no allegation against him.

127. Dalgleish does not plead to paragraph 127 as it contains no allegation against him.

128. Dalgleish does not plead to paragraph 128 as it contains no allegation against him.

(E) 3 May 2017 RCR Conduct

129. Dalgleish does not plead to paragraph 129 as it contains no allegation against him.

130. Dalgleish does not plead to paragraph 130 as it contains no allegation against him.

131. Dalgleish does not plead to paragraph 131 as it contains no allegation against him.

132. Dalgleish does not plead to paragraph 132 as it contains no allegation against him.

(F) 11 August 2017 RCR Conduct

133. Dalgleish does not plead to paragraph 133 as it contains no allegation against him.

134. Dalgleish does not plead to paragraph 134 as it contains no allegation against him.

135. Dalgleish does not plead to paragraph 135 as it contains no allegation against him.

136. Dalgleish does not plead to paragraph 136 as it contains no allegation against him.

(G) 24 August 2017 RCR Conduct

137. Dalgleish does not plead to paragraph 137 as it contains no allegation against him.

138. Dalgleish does not plead to paragraph 138 as it contains no allegation against him.

139. Dalgleish does not plead to paragraph 139 as it contains no allegation against him.

140. Dalgleish does not plead to paragraph 140 as it contains no allegation against him.

141. Dalgleish does not plead to paragraph 141 as it contains no allegation against him.

(H) 30 August 2017 RCR Conduct

142. Dalgleish does not plead to paragraph 142 as it contains no allegation against him.

143. Dalgleish does not plead to paragraph 143 as it contains no allegation against him.

144. Dalgleish does not plead to paragraph 144 as it contains no allegation against him.

145. Dalgleish does not plead to paragraph 145 as it contains no allegation against him.

(I) 22 February 2018 RCR Conduct

146. Dalgleish does not plead to paragraph 146 as it contains no allegation against him.

147. Dalgleish does not plead to paragraph 147 as it contains no allegation against him.

148. Dalgleish does not plead to paragraph 148 as it contains no allegation against him.

149. Dalgleish does not plead to paragraph 149 as it contains no allegation against him.

150. Dalgleish does not plead to paragraph 150 as it contains no allegation against him.

(J) 28 August 2018 RCR Conduct

151. Dalgleish does not plead to paragraph 151 as it contains no allegation against him.

152. Dalgleish does not plead to paragraph 152 as it contains no allegation against him.

153. Dalgleish does not plead to paragraph 153 as it contains no allegation against him.

154. Dalgleish does not plead to paragraph 154 as it contains no allegation against him.

VIII. MISLEADING CONDUCT OF DALGLEISH

(A) 23 February 2017 Dalgleish Conduct

155. Dalgleish does not plead to paragraph 155 as it contains no allegation against him.

156. In answer to paragraph 156, Dalgleish:

- (a) repeats paragraph 30 above;

- (b) admits that by conveying the representations admitted in that paragraph he engaged in conduct in relation to financial products within the meaning of ss 763A(1)(a) and 764A(1)(a) of the Corporations Act and s 12BAA of the ASIC Act; and
- (c) otherwise denies paragraph 156.

157. Dalglish denies paragraph 157.

158. Dalglish denies paragraph 158.

(B) 3 May 2017 Dalglish Conduct

159. In answer to paragraph 159, Dalglish:

- (a) repeats paragraph 34 above;
- (b) otherwise does not admit the paragraph.

160. In answer to paragraph 160, Dalglish:

- (a) repeats paragraph 34 above;
- (b) admits that in conveying the representations admitted in that paragraph he engaged in conduct in relation to financial products within the meaning of ss 763A(1)(a) and 764A(1)(a) of the Corporations Act and s 12BAA of the ASIC Act; and
- (c) otherwise denies paragraph 160.

161. Dalglish denies paragraph 161.

162. Dalglish denies paragraph 162.

(C) 11 August 2017 Dalglish Conduct

163. In answer to paragraph 163, Dalglish:

- (a) repeats paragraph 37 above;
- (b) otherwise does not admit the paragraph.

164. In answer to paragraph 164, Dalglish:

- (a) repeats paragraph 37 above;
- (b) admits that by conveying the representations admitted in that paragraph he engaged in conduct in relation to financial products within the meaning of ss 763A(1)(a) and 764A(1)(a) of the Corporations Act and s 12BAA of the ASIC Act; and
- (c) otherwise denies paragraph 164.

165. Dalgleish denies paragraph 165.

166. Dalgleish denies paragraph 166.

(D) 24 August 2017 Dalgleish Conduct

167. In answer to paragraph 167, Dalgleish:

- (a) repeats paragraph 42 above;
- (b) otherwise does not admit the paragraph.

168. In answer to paragraph 168, Dalgleish:

- (a) repeats paragraph 42 above;
- (b) admits that by conveying the representations admitted in that paragraph, he engaged in conduct in relation to financial products within the meaning of ss 763A(1)(a) and 764A(1)(a) of the Corporations Act and s 12BAA of the ASIC Act; and
- (c) otherwise denies paragraph 168.

169. Dalgleish denies paragraph 169.

170. Dalgleish does not plead to paragraph 170 as it contains no allegation against him.

171. Dalgleish denies paragraph 171.

(E) 22 February 2018 Dalgleish Conduct

172. In answer to paragraph 172, Dalgleish:

- (a) repeats paragraph 51 above;

(b) otherwise does not admit the paragraph.

173. In answer to paragraph 173, Dalgleish:

(a) repeats paragraph 51 above;

(b) admits that by making the representations admitted in that paragraph, he engaged in conduct in relation to financial products within the meaning of ss 763A(1)(a) and 764A(1)(a) of the Corporations Act and s 12BAA of the ASIC Act; and

(c) otherwise denies paragraph 173.

174. Dalgleish denies paragraph 174.

175. In answer to paragraph 175: Dalgleish:

(a) does not admit subparagraphs 175.1 to 175.5; and

(b) otherwise denies the paragraph.

176. Dalgleish denies paragraph 176.

IX. MISLEADING CONDUCT OF JAMES

(A) 28 August 2018 James Conduct

177. Dalgleish does not plead to paragraph 177 as it contains no allegation against him.

178. Dalgleish does not plead to paragraph 178 as it contains no allegation against him.

179. Dalgleish does not plead to paragraph 179 as it contains no allegation against him.

180. Dalgleish does not plead to paragraph 180 as it contains no allegation against him.

181. Dalgleish does not plead to paragraph 181 as it contains no allegation against him.

X. SECTION 1041E CONTRAVENTION

182. In answer to paragraph 182 Dalgleish:

(a) repeats paragraph 55 above;

(b) does not plead to subparagraphs 182.1, 182.2, 182.3, 182.6, 182.8, 182.10, 182.11, 182.13 or 182.14 because they contain no allegations against him; and

(c) otherwise denies the paragraph.

183. In answer to paragraph 183, Dalgleish:

(a) repeats paragraph 182 above; and

(b) otherwise does not admit the paragraph.

184. Dalgleish does not plead to paragraph 184 as it contains no allegation against him.

185. Dalgleish denies paragraph 185.

186. Dalgleish does not plead to paragraph 186 as it contains no allegation against him.

187. In answer to paragraph 187, Dalgleish:

(a) does not plead to subparagraph 187.1 as it contains no allegation against him;

(b) denies subparagraph 187.2, and

(c) does not plead to subparagraph 187.3 as it contains no allegation against him.

XI. CAUSATION, INCLUDING INDIRECT MARKET-BASED CAUSATION

(A) Market Contraventions Generally

188. In answer to paragraph 188, Dalgleish:

(a) admits subparagraph 188.1;

(b) admits subparagraph 188.2;

(c) does not admit subparagraph 188.3;

(d) does not plead to subparagraph 188.4 as it contains no allegation against him; and

(e) denies subparagraph 188.5 to the extent the Misleading Conduct Contraventions and the 1041E Contraventions are alleged to have occurred prior to 7 August 2018 and otherwise does not plead to the subparagraph.

189. Dalgleish denies paragraph 189.

190. In answer to paragraph 190, Dalgleish:

(a) denies paragraph 190 to the extent the Market Contraventions are alleged to have occurred prior to 7 August 2018, and

(b) otherwise does not plead to the paragraph.

191. Dalgleish does not plead to paragraph 191 as it contains no allegation against him.

192. In answer to paragraph 192 Dalgleish:

(a) repeats paragraphs 155 to 176 and 183 to 187 above and denies that he engaged in any of the Misleading Conduct Contraventions or 1041E Contraventions alleged against him;

(b) otherwise does not know and cannot admit the paragraph.

193. In answer to paragraph 193, Dalgleish:

(a) does not plead to paragraph 193.1 as it contains no allegation against him;

(b) repeats paragraphs 155 to 176 and 183 to 187 above and denies that he engaged in any of the Misleading Conduct Contraventions or 1041E Contraventions referred to in 193.2 alleged against him;

(c) otherwise does not know and cannot admit the paragraph.

194. In answer to paragraph 194, Dalgleish:

(a) admits that during the Relevant Period the market for RCR Equity Swaps was a market that traded on the ASX;

(b) otherwise does not admit the paragraph.

195. Dalgleish denies paragraph 195.

(B) 30 August 2017 RCR Cleaning Notice Misleading Conduct Contraventions

(i) No transaction

196. Dalgleish does not plead to paragraph 196 as it contains no allegation against him.

(ii) Market-based causation

197. Dalgleish does not plead to paragraph 197 as it contains no allegation against him.

(iii) Reliance

198. Dalgleish does not plead to paragraph 198 as it contains no allegation against him.

XII. LOSS AND DAMAGE

199. In answer to paragraph 199 Dalgleish:

- (a) repeats paragraphs 189 to 195 above and denies that he engaged in any of the Market Contraventions alleged against him;
- (b) denies that any such contraventions (if established) caused group members loss or damage in the absence of group members establishing that they relied directly on his alleged Market Contraventions;
- (c) does not know and cannot admit that the Plaintiffs or any of the group members suffered loss or damage as a result of them relying directly on his alleged Market Contraventions (if established);
- (d) otherwise does not know and cannot admit the paragraph.

XIII. PROSPECTUS CONTRAVENTION

200. Dalgleish does not plead to paragraph 200 as it contains no allegation against him.
allegation against

201. Dalgleish does not plead to paragraph 201 as it contains no allegation against him.

202. Dalgleish does not plead to paragraph 202 as it contains no allegation against him.

203. Dalgleish does not plead to paragraph 203 as it contains no allegation against him.

204. Dalgleish does not plead to paragraph 204 as it contains no allegation against him.

205. Dalgleish does not plead to paragraph 205 as it contains no allegation against him.

206. Dalgleish does not plead to paragraph 206 as it contains no allegation against him.

207. Dalgleish does not plead to paragraph 207 as it contains no allegation against him.

(A) Causation

(i) No transaction

208. Dalgleish does not plead to paragraph 208 as it contains no allegation against him.

(ii) Market-based causation

209. Dalgleish does not plead to paragraph 209 as it contains no allegation against him.

210. Dalgleish does not plead to paragraph 210 as it contains no allegation against him.

(iii) Reliance

211. Dalgleish does not plead to paragraph 211 as it contains no allegation against him.

(B) Loss and Damage

212. Dalgleish does not plead to paragraph 212 as it contains no allegation against him.

XIV. DEFENCE UNDER SECTION 1318 OF THE CORPORATIONS ACT

213. In the alternative to the matters set out above, in further answer to the whole of the CLS, Dalgleish says that:

- (a) he is a person to whom s 1318 of the Corporations Act applies;
- (b) in taking all actions the subject of the allegations made against him in this proceeding, he acted honestly;
- (c) having regard to all the circumstances of the case, he ought to be excused for any default or breach that the Court might find to have occurred; and
- (d) the Court ought to relieve him entirely from liability for any such default or breach.

SIGNATURE

Signature of legal representative



Capacity

Solicitor

Date of signature

18 October 2019