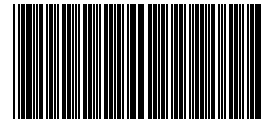




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D00015B1R0

Commercial List Response

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2019/00094443

TITLE OF PROCEEDINGS

First Plaintiff	Barry Jones
Second Plaintiff	Karen Jones
Number of Plaintiffs	4
First Defendant	RCR Tomlinson Limited 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

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 (Commercial List Response.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	2019/94443

TITLE OF PROCEEDINGS

First Plaintiff	Barry Jones
Second Plaintiff	Karen Jones
Number of Plaintiffs	4
First Defendant	RCR Tomlinson Limited ACN 008898486
Second Defendant	Paul Joseph Dalgleish
Number of Defendants	3

FILING DETAILS

Filed for	Paul Joseph Dalgleish, Second Defendant
Legal representative	Mark O'Brien Legal
Legal representative reference	MOBL322
Contact name and telephone	Steven Lewis +61 2 9216 9829
Contact email	Steven.lewis@markobrienlegal.com.au

PRELIMINARY MATTERS

1. Unless the context requires otherwise, the Second Defendant (**Dalgleish**) 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, Dalgleish 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 s 1041H 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. Although Dalgleish agrees that issue 4 identified in the CLS is in issue in the proceeding he does not admit that this issue can be resolved at the initial trial of common issues and says that it may be necessary for its determination to be dealt with on a sub-group or individual basis.

SECOND DEFENDANT'S RESPONSE TO PLAINTIFFS' CONTENTIONS IN CLS

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.

B. THE DEFENDANTS

B.1. RCR

5. Dalgleish does not plead to paragraph 5 as it contains no allegation against him.

B.2. Dalgleish

6. Dalgleish admits paragraph 6.

B.3. James

7. Dalgleish does not plead to paragraph 7 as it contains no allegation against him.

B.4. Prohibition on misleading and deceptive conduct

8. Dalgleish:

(a) admits subparagraph 8(a); and

(b) denies subparagraph 8(b) and says that s 18 of the Australian Consumer Law:

(i) does not prohibit a person from engaging in conduct in trade or commerce;

(ii) does prohibit a person from engaging in conduct in trade or commerce that is misleading or deceptive, or likely to mislead or deceive.

9. Dalgleish admits paragraph 9 but says that no claim is pleaded against him pursuant to s 1041E of the Corporations Act.

B.5. Other relevant RCR personnel

10. Dalgleish does not admit paragraph 10.

11. Dalgleish does not admit paragraph 11.

12. Dalgleish does not plead to paragraph 12 as it contains no allegations against him.

B.6. RCR's business

13. Dalgleish admits paragraph 13.

14. Dagleish does not admit paragraph 14.
15. In answer to paragraph 15, Dagleish:
 - (a) admits that from about December 2016 until about April 2018, RCR entered into contracts for the engineering, procurement and construction of solar farms;
 - (b) says that the phrase "*significant number of substantial contracts*" is vague and embarrassing because it is untethered to any objective comparator or qualifying criteria; and
 - (c) does not otherwise admit the paragraph.
16. In answer to paragraph 16, Dagleish:
 - (a) as to subparagraph 16(b), 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 16(c); and
 - (c) does not otherwise admit the paragraph.
17. In answer to paragraph 17, Dagleish:
 - (a) as to subparagraph 17(a), says that:
 - (i) in FY2017, RCR's Infrastructure division, which included revenue attributable to performance of EPC Solar Contracts as well as contracts for rail, transport, water and other infrastructure, contributed revenue of \$819m to RCR;
 - (ii) in FY2018, RCR's Infrastructure division contributed revenue of \$1,482.4m to RCR; and
 - (iii) otherwise does not admit the subparagraph;
 - (b) as to paragraph 17(b):
 - (i) says that the phrases "material increases" and "significant adverse impact" are vague and embarrassing;
 - (ii) otherwise does not admit the subparagraph.

18. Dalgleish admits paragraph 18.

C. RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES

C.1. 11 August 2017

19. Dalgleish admits paragraph 19.

20. In answer to paragraph 20, Dalgleish:

- (a) admits that RCR made a statement to the effect pleaded at paragraph 20(a) in the 11 August 2017 Announcement but does not admit that he also made that statement;
- (b) admits that RCR made a statement to the effect pleaded at paragraph 20(b) in the 11 August 2017 Announcement but does not admit that he also made that statement; and
- (c) says that the statement referred to in subparagraph 20(c) referred to support for further growth “into” FY19 and otherwise admits subparagraph 20(c).

C.2. 24 August 2017

21. Dalgleish admits paragraph 21.

22. In answer to paragraph 22, Dalgleish admits that, in the 24 August 2017 Announcement and/or the 24 August 2017 Presentation (together, **24 August 2017 Publications**)

- (a) he and RCR made statements to the effect pleaded in subparagraphs 22(a);
- (b) he and RCR made statements to the effect pleaded in subparagraphs 22(b);
- (c) he and RCR made statements to the effect pleaded in subparagraphs 22(c);
- (d) RCR made statements to the effect pleaded in subparagraphs 22(d);
- (e) RCR made statements to the effect pleaded in subparagraphs 22(e);
- (f) RCR made statements to the effect pleaded in subparagraphs 22(f);
- (g) RCR made statements to the effect pleaded in subparagraphs 22(g);
- (h) he and RCR made statements to the effect pleaded in subparagraph 22(h);

- (i) RCR made statements to the effect pleaded in subparagraphs 22(i)
- (j) RCR made statements to the effect pleaded in subparagraphs 22(j);
- (k) he and RCR made statements to the effect pleaded in subparagraph 22(k);
- (l) he and RCR made statements to the effect pleaded in subparagraph 22(l);
- (m) he and RCR made statements to the effect pleaded in subparagraph 22(m);
- (n) relies on the text of the 24 August 2017 Publications as if set out here in full;
- (o) says that no allegation of contravention is pleaded against him in relation to the 24 August 2017 Publications (or the statements contained in those publications) and the paragraph does not otherwise support any pleaded allegation of contravention against him; and
- (p) does not otherwise admit the paragraph.

C.3. 22 February 2018

- 23. Dalgleish admits paragraph 23.
- 24. In answer to paragraph 24 (in so far as it contains allegations against him), Dalgleish assumes that the reference in paragraph 24 of the CLS to "FY18 Financial Report" should be to the "HY18 Financial Report" and:
 - (a) admits that he and RCR made a statement to the effect pleaded in subparagraph 24(a);
 - (b) admits that he and RCR made a statement to the effect pleaded in subparagraph 24(b);
 - (c) admits that he and RCR made a statement to the effect pleaded in subparagraph 24(c);
 - (d) as to subparagraph 24(d), says that he and RCR stated in the 22 February 2018 Presentation, "*With Order Book of \$1.2B and Preferred Contractor Status of \$2.0B, RCR expects revenue and earnings growth in FY18 and into FY19*" and does not otherwise admit the subparagraph;
 - (e) admits that RCR made a statement to the effect pleaded in subparagraph 24(e);

- (f) admits that RCR made a statement to the effect pleaded in subparagraph 24(f);
- (g) admits that he and RCR made a statement to the effect pleaded in subparagraph 24(g);
- (h) admits that he and RCR made a statement to the effect pleaded in subparagraph 24(h);
- (i) as to subparagraph 24(i), says that he and RCR stated in the HY18 Financial Report, "*Key contracts contributing to Infrastructure's performance include renewable energy projects for Sun Metals, Darling Downs, Manildra, Gannawarra, Oakey/Longreach, Daydream/Hayman Swan Hill and Yaloak, rail infrastructure projects for Transport for NSW, Metro Trains Melbourne and signalling works for the Northwest Rail Link Project and water projects for Water Corporation of WA, Water NSW and Sydney Water*" and does not otherwise admit the subparagraph;
- (j) admits that he and RCR made a statement to the effect pleaded in subparagraph 24(j);
- (k) as to subparagraph 24(k), says that he and Dalgleish stated in the 22 February 2018 Announcement, "*Our success in the renewable energy sector over the past year is expected to contribute to RCR's continuing growth momentum*" and does not otherwise admit the subparagraph;
- (l) as to subparagraph 24(l), says that RCR and Dalgleish stated in the 22 February 2018 Announcement, "*As we look forward, with a combined order book and preferred contractor status of \$3.2 billion, up an impressive 76% from a year ago, RCR is well placed for expected revenue and earnings growth, with a number of contracts to flow through to support FY19 revenue*" and does not otherwise admit the subparagraph;
- (m) relies on the documents referred to in that paragraph for their full terms and effect;
and
- (n) does not otherwise admit the paragraph.

C.4. 30 July 2018

25. In answer to paragraph 25, Dalgleish:

- (a) admits that on 30 July 2018, at the request of RCR, its securities were placed in trading halt pending the release of an announcement by RCR;
- (b) admits that in requesting the trading halt, RCR stated to the ASX that it expected to make an announcement to the market regarding its earnings for FY18; and
- (c) does not otherwise admit the paragraph.

C.5. 1 August 2018

26. In answer to paragraph 26, 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 the impact of its FY18 financial results; and
- (b) otherwise does not admit the paragraph .

C.6. 7 August 2018

27. In answer to paragraph 27, 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 the impact of its FY18 financial results; and
- (b) does not otherwise admit the paragraph.

28. Dalgleish admits paragraph 28 and says further:

- (a) on 7 August 2018 he resigned as Managing Director and Chief Executive Officer of RCR, effective immediately; and
- (b) from that date had no involvement in the management of RCR and was not authorised to communicate with the market on its behalf.

C.7. 28 August 2018

29. In answer to paragraph 29, Dalgleish:

- (a) repeats paragraph 28 above; and
- (b) otherwise does not plead to paragraph 29 as it contains no allegations against him.

30. Dalgleish does not plead to paragraph 30 as it contains no allegation against him.

31. Dalgleish admits paragraph 31.

C.8. 12 November 2018

32. In answer to paragraph 32 Dalgleish:

(a) admits that on 12 November 2018, trading in RCR Shares on the ASX was suspended at the request of RCR; and

(b) does not otherwise admit the subparagraph.

C.9. 14 November 2018

33. In answer to paragraph 33 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.

C.10.22 November 2018

34. Dalgleish admits paragraph 34.

35. Dalgleish admits paragraph 35.

36. In answer to paragraph 36, Dalgleish:

(a) admits RCR Shares have not resumed trading; and

(b) otherwise does not admit the paragraph.

D. REPRESENTATIONS MADE BY RCR, DALGLEISH AND JAMES

D.1. Representations made on 11 August 2017

37. Dalgleish:

(a) says that the 11 August 2017 Announcement conveyed a representation that, in the opinion of RCR and Dalgleish, RCR's status as preferred contractor on a

number of additional renewable energy projects would support RCR's further growth in FY18 and into FY19;

- (b) will rely upon the 11 August 2017 Announcement as if set out here in full; and
 - (c) does not otherwise admit paragraph 37.
38. In answer to paragraph 38 (in so far as it contains an allegation against him), Dalgleish:
- (a) admits that the 11 August 2017 Announcement conveyed a representation that RCR had reasonable grounds for the representation referred to in paragraph 37(a) above and will rely upon the 11 August 2017 Announcement as if set out here in full; and
 - (b) otherwise does not admit paragraph 38.
39. In answer to paragraph 39 (in so far as it contains allegations against him), Dalgleish:
- (a) does not admit that the 11 August 2017 Representations and/or 11 August 2017 Basis Representations (in so far as he admits they were made) were continuing representations from the date they were made; and
 - (b) repeats paragraph 28 above and says that if (which is not admitted) any of the 11 August 2017 Representations or 11 August 2017 Basis Representations were conveyed by him and were continuing representations from the date they were made, they ceased to be continuing representations by him following his resignation on 7 August 2018; and

Particulars of 39(b)

From the date of his resignation, Dalgleish was no longer authorised to speak on RCR's behalf and could not reasonably be expected to correct or qualify any continuing representations which he had previously made on its behalf.

- (c) does not otherwise admit the paragraph.

D.2. Representations made on 24 August 2017

40. In answer to paragraph 40, Dalgleish:

- (a) admits that by the 24 August 2017 Announcement, RCR represented that it held the opinion that it was on track to deliver further earnings growth in FY18;
 - (b) relies on the text of the 24 August 2017 Announcement as if set out here and says further that, by the same announcement, RCR represented that the represented opinion and all other forward-looking statements, opinions or estimates contained in the 24 August 2017 Announcement were:
 - (i) based on assumptions and contingencies that were subject to change without notice;
 - (ii) not a guarantee of future performance;
 - (iii) subject to a variety of risks and uncertainties beyond RCR's ability to control or predict, which could cause actual events or results to differ materially from those anticipated;
 - (c) says that no allegation of contravention is pleaded against him in relation to the 24 August 2017 Earnings Representations and the paragraph does not otherwise support any pleaded allegation of contravention against him; and
 - (d) does not otherwise admit the paragraph.
41. In answer to paragraph 41, Dalgleish:
- (a) repeats paragraph 40 above;
 - (b) admits that by the 24 August 2017 Announcement, RCR impliedly represented that the opinion referred to in that subparagraph was based on reasonable grounds;
 - (c) says that no allegation of contravention is pleaded against him in relation to the 24 August 2017 Basis Earnings Representations and the paragraph does not otherwise support any pleaded allegation of contravention against him; and
 - (d) does not otherwise admit paragraph 41.
42. In answer to paragraph 42 in so far as it contains allegations against him), Dalgleish:
- (a) repeats paragraph 40 above;

- (b) if the 24 August 2017 Earnings Representations (or any part of them) were made by him, does not admit that they were continuing representations from the time they were made;
- (c) says that if (which is not admitted) the 24 August 2017 Earnings Representations (or any of them, or any part of them) were made by him and were continuing from the date on which they were made, they ceased to be continuing representations by him from 7 August 2018;
- (d) repeats his responses in subparagraphs 40(c) and 41(c) above and says that no allegation of contravention is pleaded against him in relation to the 24 August 2017 Basis Earnings Representations or the 24 August 2017 Earnings Representations; and
- (e) does not otherwise admit paragraph 42.

43. In answer to paragraph 43 Dalglish:

- (a) as to subparagraph 43(a) (in so far as it contains allegations against him):
 - (i) says that the paragraph is vague and embarrassing in the absence of particulars as to which of the alleged 24 August 2017 Statements pleaded in paragraph 22 of the CLS (some of which Dalglish does not admit are attributable to him) are said to have given rise to the alleged representation;
 - (ii) refers to paragraph 22 above and denies that any statement pleaded in paragraph 22 of the CLS attributable to him conveyed the alleged representation;
 - (iii) says that in the 24 August 2017 Announcement he stated that [*"RCR's investments] in projects will be undertaken selectively where the RCR board and management consider it appropriate"*] and will rely on the text of the 24 August 2017 Publications as if set out here in full;
 - (iv) says that in the 24 August 2017 Presentation he stated that [*"The funds raised will be initially held as cash and will provide RCR with sufficient balance sheet flexibility to...selectively invest in solar projects, alongside RCR's project partners, when considered appropriate by RCR's Management and Board"*] and
 - (v) does not otherwise admit the subparagraph;

- (b) as to subparagraph 43(b) (in so far as it contains allegations against him):
- (i) says that the paragraph is vague and embarrassing in the absence of particulars as to which of the alleged 24 August 2017 Statements pleaded in paragraph 22 of the CLS (some of which Dalgleish does not admit are attributable to him) are said to have given rise to the alleged representation;
 - (ii) refers to paragraph 22 above and denies that any statement pleaded in paragraph 22 of the CLS attributable to him conveyed the alleged representation;
 - (iii) says that in the 24 August 2017 Announcement he stated that [*“RCR’s investments] in projects will be undertaken selectively where the RCR board and management consider it appropriate”*] and will rely on the text of the 24 August 2017 Publications as if set out here in full;
 - (iv) says that in the 24 August 2017 Presentation he stated that [*“The funds raised will be initially held as cash and will provide RCR with sufficient balance sheet flexibility to...selectively invest in solar projects, alongside RCR’s project partners, when considered appropriate by RCR’s Management and Board”*] and
 - (v) does not otherwise admit the subparagraph;
- (c) as to subparagraph 43(c) (in so far as it contains allegations against him):
- (i) says that the paragraph is vague and embarrassing in the absence of particulars as to which of the alleged 24 August 2017 Statements pleaded in paragraph 22 of the CLS (some of which Dalgleish does not admit are attributable to him) are said to have given rise to the alleged representation;
 - (ii) refers to paragraph 22 above and denies that any statement pleaded in paragraph 22 of the CLS attributable to him conveyed the alleged representation;
 - (iii) says that in the 24 August 2017 Announcement he stated that [*“RCR’s investments] in projects will be undertaken selectively where the RCR board and management consider it appropriate”*] and will rely on the text of the 24 August 2017 Publications as if set out here in full;

- (iv) says that in the 24 August 2017 Presentation he stated that "*The funds raised will be initially held as cash and will provide RCR with sufficient balance sheet flexibility to...selectively invest in solar projects, alongside RCR's project partners, when considered appropriate by RCR's Management and Board*" and
 - (v) does not otherwise admit the subparagraph;
- (d) in response to subparagraph 43(d) (in so far as it contains allegations against him):
- (i) says that the paragraph is vague and embarrassing in the absence of particulars as to which of the alleged 24 August 2017 Statements pleaded in paragraph 22 of the CLS (some of which Dalgleish does not admit are attributable to him) are said to have given rise to the alleged representation;
 - (ii) refers to paragraph 22 above and denies that any statement pleaded in paragraph 22 of the CLS attributable to him conveyed the alleged representation;
 - (iii) will rely on the text of the announcements as if set out here in full; and
 - (iv) otherwise denies the subparagraph;
- (e) in response to subparagraph 43(e) (in so far as it contains allegations against him):
- (i) says that the paragraph is vague and embarrassing in the absence of particulars as to which of the alleged 24 August 2017 Statements pleaded in paragraph 22 of the CLS (some of which Dalgleish does not admit are attributable to him) are said to have given rise to the alleged representation;
 - (ii) refers to paragraph 22 above and denies that any statement pleaded in paragraph 22 of the CLS attributable to him conveyed the alleged representation;
 - (iii) will rely on the text of the announcements as if set out here in full; and
 - (iv) otherwise denies the subparagraph;
- (f) says that no allegation of contravention is pleaded against him in relation to the 24 August 2017 Project and Balance Sheet Representations and the paragraph does not otherwise support any pleaded allegation of contravention against him; and

- (g) does not otherwise admit the paragraph.
44. In answer to paragraph 44 (in so far as it contains allegations against him), Dalgleish:
- (a) says that the paragraph is vague and embarrassing in the absence of particulars as to the manner in which the alleged representation is said to have been conveyed by him;
 - (b) says further that no allegation of contravention is pleaded against him in relation to the 24 August 2017 Basis Project and Balance Sheet Representations and the paragraph does not otherwise support any pleaded allegation of contravention against him; and
 - (c) does not admit the paragraph.
45. In answer to paragraph 45 (in so far as it contains allegations against him), Dalgleish:
- (a) does not admit that any of the 24 August 2017 Project and Balance Sheet Representations or 24 August 2017 Basis Project and Balance Sheet Representations were conveyed by him;
 - (b) repeats paragraph 28 above and says that: (i) if (which is not admitted) he conveyed any of the 24 August 2017 Project and Balance Sheet Representations or 24 August 2017 Basis Project and Balance Sheet Representations; and (ii) such representations were continuing from the date they were made, those representations ceased to be continuing representations by him following his resignation on 7 August 2018;

Particulars of 45(b)

Dalgleish repeats the particulars to subparagraph 39(b) above.

- (c) repeats his responses in subparagraphs 43(f) and 44(b) above and says that no allegation of contravention is pleaded against him in relation to the 24 August 2017 Project and Balance Sheet Representations or the 24 August 2017 Basis Project and Balance Sheet Representations; and
 - (d) does not otherwise admit the paragraph.
46. In answer to paragraph 46 (in so far as it contains allegations against him), Dalgleish:
- (a) admits paragraph 46;

- (b) says that the representations were matters of opinion for which he had reasonable grounds;
 - (c) says further that no allegation of contravention is pleaded against him in relation to the 24 August 2017 Growth Representations and the paragraph does not otherwise support any pleaded allegation of contravention against him.
47. In answer to paragraph 47 (in so far as it contains allegations against him), Dalgleish:
- (a) says that the paragraph is vague and embarrassing in the absence of particulars as to the manner in which the alleged representation in subparagraph 47(b) is said to have been conveyed by him;
 - (b) subject to that objection:
 - (i) admits subparagraph 47(a);
 - (ii) denies subparagraph 47(b); and
 - (c) says further that no allegation of contravention is pleaded against him in relation to the 24 August 2017 Basis Growth Representations and the paragraph does not otherwise support any pleaded allegation of contravention against him.
48. In answer to paragraph 48 (in so far as it contains allegations against him), Dalgleish:
- (a) repeats his response to paragraphs 46 and 47 of the CLS;
 - (b) repeats paragraph 28 above and says that, to the extent that: (i) he conveyed the 24 August 2017 RCR and Dalgleish Growth Representations and the 24 August 2017 Basis Growth Representations (or any of them); and (ii) such representations were continuing from the date they were made, those representations ceased to be continuing representations by him following his resignation on 7 August 2018;

Particulars of 45(b)

Dalgleish repeats the particulars to subparagraph 39(b) above.

- (c) repeats his responses in subparagraphs 45(c) and 46(c) above and says that no allegation of contravention is pleaded against him in relation to the 24 August 2017 Growth Representations or the 24 August 2017 Basis Growth Representations; and

- (d) does not otherwise admit the paragraph.
49. Dalgleish admits paragraph 49 in so far as it contains allegations against him and:
- (a) says that those representations were matters of opinion for which he had reasonable grounds;
 - (b) will rely upon the content of the 24 August 2017 Publications as if set out here in full; and
 - (c) says further that no allegation of contravention is pleaded against him in relation to the 24 August 2017 Solar Representations and the paragraph does not otherwise support any pleaded allegation of contravention against him.
50. In answer to paragraph 50 (in so far as it contains allegations against him), Dalgleish:
- (a) says that the paragraph is vague and embarrassing in the absence of particulars as to the manner in which the alleged representation in subparagraph 50(b) is said to have been conveyed by him;
 - (b) subject to those objections:
 - (i) admits subparagraph 50(a);
 - (ii) denies subparagraph 50(b); and
 - (c) says further that no allegation of contravention is pleaded against him in relation to the 24 August 2017 Basis Solar Representations and the paragraph does not otherwise support any pleaded allegation of contravention against him.
51. In answer to paragraph 51 (in so far as it contains allegations against him), Dalgleish:
- (a) repeats his response to paragraphs 49 and 50 of the CLS above;
 - (b) repeats paragraph 28 above and says that, to the extent that: (i) he conveyed the 24 August 2017 Solar Representations and the 24 August 2017 Basis Solar Representations (or any of them); and (ii) such representations were continuing from the date they were made, those representations ceased to be continuing representations by him following his resignation on 7 August 2018;

Particulars of 51(b)

Dalgleish repeats the particulars to subparagraph 39(b) above.

- (c) repeats his responses in subparagraphs 49(c) and 50(c) above and says that no allegation of contravention is pleaded against him in relation to the 24 August 2017 Solar Representations or the 24 August 2017 Basis Solar Representations; and
- (d) does not otherwise admit the paragraph.

D.3. Representations on 22 February 2018

52. In answer to paragraph 52 (in so far as it contains allegations against him), Dalglish:

- (a) admits paragraph 52(a);
- (b) admits paragraph 52(b);
- (c) admits paragraph 52(c);
- (d) admits paragraph 52(d);
- (e) denies paragraph 52(e);
- (f) denies paragraph 52(f);
- (g) admits paragraph 52(g) but will rely upon the HY18 Financial Report as if set out here in full;
- (h) admits paragraph 52(h) but will rely upon the HY18 Financial Report as if set out here in full;
- (i) admits paragraph 52(i) but will rely upon the 22 February 2018 Announcement as if set out here in full;
- (j) admits paragraph 52(j) but will rely upon the 22 February 2018 Announcement as if set out here in full;
- (k) admits paragraph 52(k) but will rely upon the 22 February 2018 Announcement as if set out here in full; and
- (l) admits paragraph 52(l) but will rely upon the 22 February 2018 Announcement as if set out here in full.

53. In answer to paragraph 53 (in so far as it contains allegations against him), Dalglish,

- (a) admits subparagraph 53(a) in so far as the alleged reasonable basis representation relates to the 22 February 2018 Representation pleaded in subparagraphs 53(h), 53(k) and 53(l) of the CLS;
 - (b) denies paragraph 53(b);
 - (c) denies paragraph 53(c); and
 - (d) repeats his response to paragraph 52 of the CLS.
54. In answer to paragraph 54 (in so far as it contains allegations against him), Dalgleish:
- (a) denies that the 22 February 2018 Representations were made by him, save to the extent admitted in paragraph 52 above;
 - (b) denies that the 22 February 2018 Basis Representations were made by him, save to the extent admitted in paragraph 53 above;
 - (c) repeats paragraph 28 above and says, to the extent that: (i) he conveyed the 22 February 2018 Representations and 22 February 2018 Basis Representations (or any of them); and (ii) such representations were continuing from the date they were made, those representations ceased to be continuing representations by him following his resignation on 7 August 2018; and

Particulars of 51(c)

Dalgleish repeats the particulars to subparagraph 39(b) above.

- (d) does not otherwise admit the paragraph.

D.4. Representations on 28 August 2018

- 55. Dalgleish does not plead to paragraph 55 as it contains no allegations against him.
- 56. Dalgleish does not plead to paragraph 56 as it contains no allegations against him.

E. WHAT RCR KNEW OR OUGHT TO HAVE KNOWN

- 57. In answer to paragraph 57, Dalgleish says that the allegation contained is embarrassing and liable to be struck out in the absence of further particulars as to when during the Relevant Period the alleged delays referred to in the particulars to that paragraph are said to have occurred and, under that objection, does not admit the paragraph.

58. In answer to paragraph 58, Dagleish says that the allegation contained is embarrassing and liable to be struck out in the absence of further particulars as to when during the Relevant Period the alleged costs overruns referred to in the particulars to that paragraph are said to have first occurred and, under that objection:
- (a) admits that in the Relevant Period there was a cost overrun on the Daydream and Hayman Project as disclosed in the 1 August 2018 publication referred to at paragraph 26 of the CLS and the 7 August 2018 Announcement;
 - (b) otherwise denies paragraph 58 to the extent it relates to that part of the Relevant Period prior to his resignation on 7 August 2018; and
 - (c) otherwise does not know and cannot admit paragraph 58.
59. In answer to paragraph 59, Dagleish repeats his responses to paragraphs 57 and 58 above and says that the allegations contained in those paragraphs and paragraph 59 are embarrassing and liable to be struck out in the absence of further particulars as to when in the Relevant Period each of the allegations of material fact are alleged to first occurred and, under that objection:
- (a) does not admit paragraph 59 to the extent it relates to that part of the Relevant Period prior to the time of his resignation on 7 August 2018; and
 - (b) otherwise does not know and cannot admit paragraph 59.
60. In answer to paragraph 60, Dagleish repeats his responses to paragraphs 57 to 59 above and says that the allegations contained in those paragraphs and in paragraph 60 are embarrassing and liable to be struck out in the absence of further particulars as to when in the Relevant Period each of the allegations of material fact are alleged to first arise and, under that objection:
- (a) denies paragraph 60 to the extent it relates to that part of the Relevant Period prior to the time of his resignation on 7 August 2018; and
 - (b) otherwise does not know and cannot admit paragraph 60.

F. CONTINUOUS DISCLOSURE CONTRAVENTIONS

F.1. FY18 Financial Information

61. Dagleish does not plead to paragraph 61 as it contains no allegations against him.

62. Dalgleish does not plead to paragraph 62 as it contains no allegations against him.

63. Dalgleish does not plead to paragraph 63 as it contains no allegations against him.

64. Dalgleish does not plead to paragraph 64 as it contains no allegations against him.

65. Dalgleish does not plead to paragraph 65 as it contains no allegations against him.

F.2. EPC Solar Contract Information

66. Dalgleish does not plead to paragraph 66 as it contains no allegations against him.

67. Dalgleish does not plead to paragraph 67 as it contains no allegations against him.

68. Dalgleish does not plead to paragraph 68 as it contains no allegations against him.

69. Dalgleish does not plead to paragraph 69 as it contains no allegations against him.

70. Dalgleish does not plead to paragraph 70 as it contains no allegations against him.

F.3. FY19 Financial Information

71. Dalgleish does not plead to paragraph 71 as it contains no allegations against him.

72. Dalgleish does not plead to paragraph 72 as it contains no allegations against him.

73. Dalgleish does not plead to paragraph 73 as it contains no allegations against him.

74. Dalgleish does not plead to paragraph 74 as it contains no allegations against him.

75. Dalgleish does not plead to paragraph 75 as it contains no allegations against him.

F.4. Systemic EPC Contract Information

76. Dalgleish does not plead to paragraph 76 as it contains no allegations against him.

77. Dalgleish does not plead to paragraph 77 as it contains no allegations against him.

78. Dalgleish does not plead to paragraph 78 as it contains no allegations against him.

79. Dalgleish does not plead to paragraph 79 as it contains no allegations against him.

80. Dalgleish does not plead to paragraph 80 as it contains no allegations against him.

G. MISLEADING OR DECEPTIVE CONDUCT AND MATERIALLY MISLEADING STATEMENTS

G.1. Misleading contraventions from 11 August 2017

81. In answer to paragraph 81 (in so far as it contains allegations against him), Dalgleish:
- (a) repeats paragraphs 19, 20 and 37 to 39 inclusive above;
 - (b) admits that if (which is not admitted) he conveyed the 11 August 2017 Representations or 11 August 2017 Basis Representations, in so doing 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 2001* and s 12BAA of the *ASIC Act 2001*; and
 - (c) otherwise denies paragraph 81.
82. In answer to paragraph 82 (in so far as it contains allegations against him), Dalgleish:
- (a) repeats paragraphs 57 to 60 of this Response and says that the matters pleaded and particularised in paragraphs 57 to 60 of the CLS do not support the allegation that Dalgleish did not have reasonable grounds for making each of the 11 August 2017 Representations and/or the 11 August 2017 Basis Representations;
 - (b) in the premises, says that paragraph 82 of the CLS is embarrassing and liable to be struck out; and
 - (c) otherwise denies paragraph 82.
83. In answer to paragraph 83 (in so far as it contains allegations against him), Dalgleish:
- (a) repeats paragraph 82 of this Response; and
 - (b) under the objection noted in 82(a) of this Response, denies paragraph 83.

84. Dalgleish denies paragraph 84 in so far as it contains allegations against him.

G.2. Misleading contraventions from 24 August 2017

85. Dalgleish does not plead to paragraph 85 as it contains no allegations against him.
86. Dalgleish does not plead to paragraph 86 as it contains no allegations against him
87. Dalgleish does not plead to paragraph 87 as it contains no allegations against him.

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

G.3. Misleading statements from 22 February 2018

89. In answer to paragraph 89 (in so far as it contains allegations against him), Dalgleish:

- (a) denies that he made the 22 February 2018 Representations, save to the extent admitted in paragraph 52 above;
- (b) denies that he made the 22 February 2018 Basis Representations, save to the extent admitted in paragraph 53 above;
- (c) admits that if (which is not admitted) he conveyed the 22 February 2018 Representations and/or the 22 February 2018 Basis Representations (or any of them or any part of them), in so doing 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 2001* and s 12BAA of the *ASIC Act 2001*; and
- (d) otherwise denies paragraph 89.

90. Dalgleish denies paragraph 90 in so far as it contains allegations against him.

91. Dalgleish denies paragraph 90 in so far as it contains allegations against him.

92. Dalgleish denies paragraph 92 in so far as it contains allegations against him.

G.4. Misleading statements from 28 August 2018

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

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

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

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

H. DISCLOSURE DOCUMENT CONTRAVENTIONS

H.1. 30 August 2017 Cleansing Notice

97. Dalgleish admits paragraph 97.

98. Dalgleish admits paragraph 98.

99. Dalgleish denies paragraph 99.
100. Dalgleish does not plead to paragraph 100 as it contains no allegations against him.
101. Dalgleish admits paragraph 101.
102. Dalgleish denies paragraph 102.
103. Dalgleish does not plead to paragraph 103 as it contains no allegations against him.

H.2. The Prospectus

104. In answer to paragraph 104, Dalgleish:
- (a) repeats paragraph 28 above; and
 - (b) otherwise does not plead to paragraph 104 as it contains no allegations against him.
105. In answer to paragraph 105, Dalgleish:
- (a) repeats paragraph 28 above;
 - (b) otherwise does not plead to paragraph 105 as it contains no allegations against him.
106. Dalgleish does not plead to paragraph 106 as it contains no allegations against him.
107. Dalgleish does not plead to paragraph 107 as it contains no allegations against him.
108. Dalgleish does not plead to paragraph 108 as it contains no allegations against him.
109. Dalgleish does not plead to paragraph 109 as it contains no allegations against him.
110. Dalgleish does not plead to paragraph 110 as it contains no allegations against him.

I. MARKET CONTRAVENTIONS CAUSED GROUP MEMBERS' LOSS

I.1. Market based causation

111. In answer to paragraph 111, Dalgleish:
- (a) admits paragraph 111(a);
 - (b) admits paragraph 111(b);

- (c) admits paragraph 111(c);
- (d) does not admit paragraph 111(d);
- (e) in answer to paragraph 111(e);
 - (i) does not plead to paragraph 111(e)(i) as it contains no allegations against him; and
 - (ii) denies paragraph 111(e)(ii) to the extent the Misleading Statements Contraventions are alleged to have occurred prior to 7 August 2018 and otherwise does not plead to the paragraph.

112. Dalgleish denies paragraph 112.

113. In answer to paragraph 113, Dalgleish:

- (a) does not know and cannot admit paragraph 113(a);
- (b) denies paragraph 113(b) to the extent the Market Contraventions are alleged to have occurred prior to 7 August 2018 and otherwise does not plead to the paragraph.

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

115. In answer to paragraph 115, Dalgleish:

- (a) admits that during the Relevant period the market for RCR Equity Swaps was a market that was traded on the ASX and subject to the obligations referred to in subparagraph 111(b); and
- (b) otherwise does not admit the allegations in paragraph 115.

116. Dalgleish denies paragraph 116.

I.2 Reliance

117. In answer to paragraph 117, Dalgleish:

- (a) does not plead to subparagraph 117(a) as it contains no allegations against him; and
- (b) does not admit subparagraph 117(b).

I.3 Loss and damage

118. Dalgleish does not admit paragraph 118.

J. DISCLOSURE DOCUMENT CAUSED SOME MEMBERS' LOSS

J.1. No transaction case in respect of the Prospectus Contraventions

119. In answer to paragraph 119, Dalgleish:

- (a) does not admit that that RCR would not have been able to raise capital pursuant to the capital raising announced by RCR on 24 August 2017 in the absence of the alleged Disclosure Document Contravention pleaded in paragraphs 97 to 103 inclusive of the CLS; and
- (b) otherwise does not plead to paragraph 119, which does not contain any allegations against him.

J.1 Market based causation

120. In answer to paragraph 120, Dalgleish:

- (a) as to subparagraph 120(a), admits that the market in which RCR Shares were traded were regulated by Chapter 6D of the Corporations Act;
- (b) does not know and cannot admit subparagraph 120(b);
- (c) does not know and cannot admit subparagraph 120(c);
- (d) in answer to subparagraph 120(d), Dalgleish:
 - (i) does not plead to paragraph 120(d)(i), insofar as the paragraph concerns the alleged FY18 Financial Information, EPC Solar Contract Information, the FY19 Financial Information and/or the Systemic EPC Solar Contract Information, as there is no claim against Dalgleish in respect of that alleged information;
 - (ii) denies subparagraph 120(d)(ii);
- (e) does not know and cannot admit that the Third and Fourth Plaintiffs and some group Members acquired an interest in RCR Shares pursuant to the capital raising announced by RCR on 24 August 2017; and

- (f) does not know and cannot admit that some Group Members acquired an “interest” in the capital raising announced by RCR on 24 August 2017.

J.2. Reliance

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

J.4 Loss and damage

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

K. DEFENCE UNDER SECTION 1318 OF THE CORPORATIONS ACT

123. 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

19 June 2019