



## COMMERCIAL LIST STATEMENT

### COURT DETAILS

Court Supreme Court  
Division Equity  
List Commercial  
Registry Sydney  
Case number 2019 / 94443

### TITLE OF PROCEEDINGS

First plaintiff **Barry Jones**  
Number of plaintiffs (if more than two) Four  
First defendant **RCR Tomlinson Limited ACN 008 898 486 (Administrators Appointed)**  
Number of defendants (if more than two) Three

### FILING DETAILS

Filed for **Barry Jones, Karen Jones, Jorge Mayer and Elisabeth Mayer, Plaintiffs**  
Filed in relation to Plaintiffs' claim  
Legal representative Craig Allsopp, Shine Lawyers  
Contact name and telephone Craig Allsopp, (02) 8754 7270  
Contact email callsop@shine.com.au

### NATURE OF DISPUTE

1. This is a claim by the Plaintiffs on behalf of persons who acquired an interest in ordinary shares (**RCR Shares**) in the First Defendant (**RCR**) or a long exposure to RCR Shares by entering into equity swap confirmations in respect of RCR Shares during the period from 11 August 2017 to 12 November 2018 (**Relevant Period**).
2. RCR was at all material times an engineering and infrastructure company with operations in Australia, New Zealand and South East Asia. Prior to and during the Relevant Period, RCR entered into a significant number of substantial contracts for the engineering, procurement and construction of solar farms (**EPC Solar Contracts**).
3. It is alleged that during the Relevant Period, RCR contravened its continuous disclosure obligations by failing to inform the market about certain matters concerning its EPC Solar Contracts and the effect that the EPC Solar Contracts were having on RCR's financial performance and results.

4. It is also alleged that during the Relevant Period, RCR, the Second Defendant (**Dalgleish**), RCR's former Managing Director and Chief Executive Officer, and the Third Defendant (**James**), RCR's Interim Chief Executive Officer, made representations to the market that were misleading and deceptive or likely to mislead or deceive.
5. On 28 August 2018, RCR released and published to the ASX a prospectus as part of a capital raising (**Prospectus**). The Prospectus contained misleading and/or deceptive statements, and material omissions. James was a director of RCR at the time that RCR offered to sell RCR Shares via the Prospectus.

### **ISSUES LIKELY TO ARISE**

1. Did RCR contravene its continuous disclosure obligations in relation to the EPC Solar Contracts and the impact that the EPC Solar Contracts were having on its financial performance and results?
2. Did RCR, Dalgleish and James engage in conduct that was misleading or deceptive or likely to mislead or deceive in relation to the EPC Solar Contracts and RCR's financial performance and results?
3. Did the Prospectus contain statements that were misleading and/or deceptive, or material omissions?
4. Did the various contraventions cause the Plaintiffs and Group Members to suffer loss and damage?

### **PLAINTIFFS' CONTENTIONS**

#### **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) by the Plaintiffs on their own behalf and on behalf of persons who:
  - (a) acquired:
    - (i) an interest in ordinary shares (**RCR Shares**) in the First Defendant (**RCR**) during the period from 11 August 2017 to 12 November 2018 (**Relevant Period**); or

- (ii) long exposure to RCR Shares by entering into equity swap confirmations in respect of the RCR Shares during the Relevant Period (**RCR Equity Swaps**);
  - (b) are alleged to have suffered loss or damage by reason of the matters pleaded in this Commercial List Statement; and
  - (c) are not any of the following:
    - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of RCR;
    - (ii) a related body corporate (as defined by s 50 of the *Corporations Act*) of RCR;
    - (iii) an associated entity (as defined by s 50AAA of the *Corporations Act*) of RCR; or
    - (iv) the Chief Justice, or a Justice of Supreme Court of New South Wales, or the Chief Justice or a Justice of the High Court of Australia

(collectively, **Group Members**)
2. As at the commencement of this proceeding, seven or more Group Members have claims against the Defendants.
  3. The First and Second Plaintiffs jointly purchased 5,000 RCR Shares on 6 August 2018 at \$1.07 per RCR Share with brokerage of \$24.95 on the financial market operated by the Australian Securities Exchange Limited (**ASX**).
  4. The Third and Fourth Plaintiffs jointly purchased 2,816 RCR Shares through the share purchase plan announced by RCR on 24 August 2017 for \$3.55 per share with brokerage of \$19.95.

## B. THE DEFENDANTS

### B.1 RCR

5. RCR is and was at all material times:
  - (a) a company registered pursuant to the *Corporations Act* and capable of being sued;

- (b) a person within the meaning of ss 1041E and 1041H of the Corporations Act;
- (c) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
- (d) a person within the meaning of s 18 of the Australian Consumer Law in Sch 2 to the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer law**);
- (e) included in the official list of the financial market operated by the ASX;
- (f) an entity, the securities of which are ED Securities for the purposes of s 111AE of the Corporations Act;
- (g) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
- (h) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**); and
- (i) obliged by ss 111AP(1) and/or 674(1) of the Corporations Act and/or ASX Listing Rule 3.1 to, once it is, or becomes aware of any information concerning RCR that a reasonable person would expect to have a material effect on the price or value of RCR Shares, tell the ASX that information immediately (unless the exceptions in ASX Listing Rule 3.1A apply) (**Continuous Disclosure Obligations**).

## **B.2 Dagleish**

6. The Second Defendant (**Dagleish**) was:

- (a) from 25 May 2009 to 6 August 2018 the Chief Executive Officer of RCR;
- (b) from 20 October 2011 to 6 August 2018 the Managing Director of RCR;
- (c) a person within the meaning of ss 1041E and 1041H of the Corporations Act;
- (d) a person within the meaning of s 12DA of the ASIC Act;
- (e) a person within the meaning of s 18 of the Australian Consumer Law.

## **B.3 James**

7. The Third Defendant (**James**) is and was at all material times:

- (a) from 28 January 2014 a director of RCR;

- (b) from 6 August 2018 the Interim Chief Executive Officer of RCR;
- (c) a person within the meaning of ss 1041E and 1041H of the Corporations Act;
- (d) a person within the meaning of s 12DA of the ASIC Act;
- (e) a person within the meaning of s 18 of the Australian Consumer Law.

#### **B.4 Prohibition on misleading and deceptive conduct**

8. At all material times, RCR, Dalglish and James were prohibited pursuant to:
- (a) s 1041H of the Corporations Act and s 12DA of the ASIC Act, from engaging in conduct in relation to RCR Shares (being a financial product within the meaning of the Corporations Act and ASIC Act); and
  - (b) s 18 of the Australian Consumer Law, from engaging in conduct in trade or commerce

that was misleading or deceptive or likely to mislead or deceive.

9. At all material times, RCR, Dalglish and James were prohibited, pursuant to s 1041E of the Corporations Act, from making a statement or disseminating information if:
- (a) the statement or information was false in a material particular or was materially misleading; and
  - (b) the statement or information was likely:
    - (i) to induce persons in this jurisdiction to apply for financial products; or
    - (ii) to induce persons in this jurisdiction to dispose of or acquire financial products; or
    - (iii) to have the effect of increasing, reducing, maintaining or stabilising the price for trading in financial products on a financial market operated in this jurisdiction; and
  - (c) when the person making that statement or disseminating that information:
    - (i) did not care whether the statement or information was true or false; or
    - (ii) knew, or ought reasonably to have known, that the statement or information was false in a material particular or was materially misleading.

### B.5 Other relevant RCR personnel

10. Andrew Phipps (**Phipps**) was at all material times from about October 2013 to on or about 7 November 2018 the Chief Financial Officer of RCR.
11. Conal McCullough (**McCullough**) was at all material times:
  - (a) from in or about March 2017 to in or about May 2018 the Chief Operating Officer – East of RCR;
  - (b) from in or about May 2018 to in or about December 2018 the Chief Operating Officer of RCR.
12. By reason of the matters pleaded in paragraphs 6(a) and (b), 7(a) and (b), 10 and 11 above, information of which any of Dalgleish, James, Phipps and McCullough (each **RCR Officers**) became aware, or which ought reasonably to have come into their possession in the course of the performance of their respective duties as an officer of RCR was information of which RCR was aware (within the meaning of aware in ASX Listing Rule 19.12).

### B.6 RCR's business

13. At all material times prior to and during the Relevant Period, RCR was an engineering and infrastructure company with operations in Australia, New Zealand and South East Asia.
14. At all material times during the Relevant Period until about August 2018, RCR's business strategy was to increasingly pursue project development roles on large-scale solar projects where it had traditionally only been engaged as a contractor.

#### Particulars

- i) *24 August 2017 Presentation (defined in paragraph 21(b) below) at p 27.*
  - ii) *28 August 2018 Announcement (defined in paragraph 29(a) below) at p 2.*
15. From about December 2016 until about April 2018, RCR entered into a significant number of substantial contracts for the engineering, procurement and construction of solar farms (**EPC Solar Contracts**).

### Particulars

- ASX announcement on 28 December 2016 entitled "RCR awarded contract for over \$155M for large scale solar farm".
- ASX announcement on 13 March 2017 entitled "RCR awarded \$80m contract for Gannawarra solar farm".
- ASX announcement on 27 March 2017 entitled "RCR awarded approximately \$85m EPC contract for Manildra solar farm".
- ASX announcement on 1 May 2017 entitled "RCR awarded \$50m in contracts for Oakey & Longreach solar farm projects".
- ASX announcement on 2 May 2017 entitled "RCR secures \$175m contract for 110MW Darling Downs solar farm project".
- ASX announcement on 2 August 2017 entitled "Two new large-scale solar farm projects for RCR".
- ASX announcement on 11 August 2017 entitled "RCR awarded \$315m for Daydream and Hayman solar farm projects".
- ASX announcement on 23 October 2017 entitled "RCR awarded \$110m contract for 68MW Emerald solar farm project".
- ASX announcement on 10 November 2017 entitled "RCR awarded limited notice to proceed for the \$170m (approximately) Haughton solar farm".
- ASX announcement on 14 December 2017 entitled "RCR EPC and O&M contracts for Wemen and Claremont solar farms".
- ASX announcement on 10 April 2018 entitled "RCR awarded \$60m Greenough River Solar Farm 30MWac Expansion Project".
- ASX announcement on 30 April 2018 entitled "\$175m EPC and O&M contracts finalised for 100MWac Haughton solar farm".
- Administrators' report to creditors of dated 19 March 2019 (**Administrators' Report**) at p 8: "RCR entered into fifteen solar related EPC Contracts, with a total value of approximately \$1.5 billion within an eighteen month period."

16. At all material times prior to and during the Relevant Period, the EPC Solar Contracts primarily had the following characteristics:

- (a) they were fixed price contracts which exposed RCR to potential risks including project delays and unanticipated increases in the cost of delivery of the projects;
- (b) they had high working capital requirements in the later stages of the project;
- (c) cash receipts were dependent on certain milestones being met, which may cause timing differences from a cash collection point of view

(together, **EPC Solar Contract Terms**).

**Particulars**

- i) *28 August 2018 Announcement (as defined in paragraph 29(a) below) at p 4.*
- ii) *Prospectus (as defined in paragraph 29(d) below) at pp 42-43, 53-54.*
- iii) *Further particulars may be provided following discovery.*

17. At all material times during the Relevant Period:

- (a) the EPC Contracts contributed a significant proportion of RCR's annual revenue;
- (b) material increases in the cost or time to complete an EPC Solar Contract were capable of having a significant adverse impact on RCR's:
  - (i) cashflow and liquidity;
  - (ii) earnings and profitability.

**Particulars**

- i) *Administrators' Report at pp 30-31 "RCR's revenue grew rapidly in FY17 and FY18, primarily as a result of a number of contracts for solar farms entered into during that period. Sales revenue from the infrastructure business unit in FY18 was approximately \$1.5 billion (approximately \$1 billion being solar), up 81% from FY17 and 170% from FY16. Gross margin was impacted by (amongst other things) the solar farm cost overruns of approximately \$57 million".*

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



- (a) RCR utilised standard processes and project-level systems relating to procurement commitments to monitor the time and cost to complete the EPC Solar Contracts;
- (b) monthly reports were prepared by management in order to monitor percentage completion and forecast costs to complete the EPC Solar Contracts;
- (c) monthly project meetings were held and updates were provided to RCR's board of directors

(RCR's Reviews).

#### Particulars

*Prospectus (as defined at paragraph 29(d) below) at pp 9, 38.*

*Administrators' Report at p 47.*

### C. RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES

#### C.1 11 August 2017

- 19. On 11 August 2017, RCR made an announcement to the ASX entitled "RCR awarded \$315m for Daydream and Hayman solar farm projects" (**11 August 2017 Announcement**).
- 20. In the 11 August 2017 Announcement, RCR and Dalgleish made the following statements:
  - (a) RCR has been awarded two contracts totalling approximately \$315 million for the engineering, procurement and construction and operation and maintenance for the 150MWac Daydream solar farm and the 50MWac Hayman solar farm (**Daydream and Hayman Project**);
  - (b) the Daydream and Hayman Project will start immediately with construction scheduled to commence in Q3 2017;
  - (c) RCR is currently preferred on a number of additional renewable energy projects that will support our further growth in FY18 and FY19

(individually and together, **11 August 2017 Statements**).

### Particulars

*The 11 August 2017 Statement was express and made in writing in the 11 August 2017 Announcement.*

#### C.2 24 August 2017

21. On 24 August 2017, RCR:

- (a) made an announcement to the ASX entitled "RCR announces strong full year result and a capital raising to support future growth" (**24 August 2017 Announcement**); and
- (b) published and released to the ASX a presentation entitled "FY17 Results & Capital Raising to Support Future Growth" (**24 August 2017 Presentation**);
- (c) published and released to the ASX an audio recording entitled "RCR FY17 Results and Capital Raising to Support Future Growth" (**24 August 2017 Presentation Audio Recording**).

22. In the 24 August 2017 Announcement and 24 August 2017 Presentation, RCR and Dalgleish made the following statements:

- (a) RCR's revenue for FY17 was \$1.3 billion;
- (b) RCR's earnings before interest and tax for FY17 was \$35.2 million;
- (c) RCR's net profit after tax for FY17 was \$25.7 million;
- (d) RCR is on track to deliver further revenue and earnings growth in FY18;
- (e) to support RCR's growing pipeline of projects in renewable energy, rail and transport markets and to fund RCR's development aspirations in renewable energy, RCR has announced a raising that will raise up to \$90 million;
- (f) RCR is positioned for a sustainable future driven by significant market growth;
- (g) RCR's success in the renewable energy sector has been enviable;
- (h) the capital raising will provide RCR with sufficient balance sheet flexibility to ensure that RCR is best placed to continue winning projects across its growing end-markets, support future working capital and bonding requirements associated with RCR's strong pipeline of projects in the renewable energy, rail

and transport sectors, and selectively invest in solar projects, alongside RCR's project partners, when considered appropriate by RCR's management and board;

- (i) RCR believes in maintaining a conservative and flexible balance sheet is essential to ensuring that RCR is in a position to take full advantage of growth opportunities that exist across its end markets;
- (j) a stronger balance sheet will enable RCR to selectively invest in solar projects, alongside its project partners, when RCR's board considers it prudent to do so;
- (k) RCR is in a strong position to capitalise on substantial growth across its end-markets, particularly in the solar market and the capital raising is intended to ensure that RCR has sufficient balance sheet flexibility to do so;
- (l) given RCR's access to projects within the solar energy sector and RCR's technical expertise and understanding of the generation market, RCR is favourably positioned to invest in capital alongside RCR's development partners to deliver additional value for shareholders;
- (m) with a record order book and expanding pipeline of renewable energy and transport projects, RCR expects to experience continued strong growth through FY18

(individually and together, **24 August 2017 Statements**)

#### **Particulars**

*The 24 August 2017 Statements were express and were made in writing in the 24 August 2017 Announcement and the 24 August 2017 Presentation:*

- *Statement (a), refer to the 24 August 2017 Announcement at p 1 and 24 August 2017 Presentation at p 2.*
- *Statement (b), refer to the 24 August 2017 Announcement at p 1 and 24 August 2017 Presentation at p 2.*
- *Statement (c), refer to the 24 August 2017 Announcement at p 1 and 24 August 2017 Presentation at p 2.*
- *Statement (d), refer to the 24 August 2017 Announcement at p 1.*

- *Statement (e), refer to the 24 August 2017 Announcement at pp 2, 3.*
- *Statement (f), refer to the 24 August 2017 Announcement at p 2 and 24 August 2017 Presentation Audio Recording.*
- *Statement (g), refer to the 24 August 2017 Announcement at p 3.*
- *Statement (h), refer to the 24 August 2017 Announcement at p 4 and the 24 August 2017 Presentation at pp 2 and 18.*
- *Statement (i), refer to the 24 August 2017 Announcement at p 4.*
- *Statement (j), refer to the 24 August 2017 Announcement at p 4.*
- *Statement (k), refer to the 24 August 2017 Announcement at p 2.*
- *Statement (l), refer to the 24 August 2017 Announcement at p 2.*
- *Statement (m), refer to the 24 August 2017 Announcement at p 2 and 24 August 2017 Presentation Audio Recording.*

### **C.3 22 February 2018**

23. On 22 February 2018, RCR:

- (a) made an announcement to the ASX entitled "RCR delivers record half revenues, cash conversion and earnings growth" (**22 February 2018 Announcement**);
- (b) released and published to the ASX its Appendix 4D and HY18 Financial Report (**HY18 Financial Report**);
- (c) released and published to the ASX an investor presentation entitled "HY18 Results and Company Update" (**22 February 2018 Presentation**);
- (d) released and published to the ASX an audio recording entitled "RCR Half Year Results and Company Update" (**22 February 2018 Presentation Audio Recording**).

24. In the 22 February 2018 Announcement, the FY18 Financial Report, and the 22 February 2018 Presentation, RCR and Dalgleish made the following statements:

- (a) RCR's revenue for HY18 was \$940 million;
- (b) RCR's earnings before interest and tax for HY18 were \$22.8 million;

- (c) RCR's net profits after tax for HY18 were \$16.3 million;
- (d) RCR expects to deliver earnings growth in FY18 and FY19;
- (e) RCR has been successful in the renewable energy sector during the past year and has secured over 850MWac of renewable energy projects. These wins are expected to contribute strongly to RCR's continuing growth momentum;
- (f) RCR's financial position remains strong, with net cash up to \$84.7 million at 31 December 2017;
- (g) the increase in RCR's revenue can predominantly be attributed to the procurement and construction phase on a number of large scale solar farms;
- (h) the increase in earnings before interest and tax compared with HY17 reflects the strong contribution from the infrastructure business which made progress on the delivery of a number of large scale utility solar projects;
- (i) key contracts contributing to the infrastructure business' performance included renewable energy projects for, amongst others, the Daydream and Hayman Project;
- (j) RCR has delivered record revenues and earnings growth, whilst investing in RCR's renewable energy and rail businesses. RCR's cash flows have improved significantly over the past year, and combined with our successful capital raising, RCR now has a record \$84.7 million in net cash;
- (k) RCR's success in the renewable energy sector over the past year is expected to contribute to RCR's growing momentum;
- (l) RCR is well placed for expected revenue and earnings growth, with a number of contracts to flow through to support FY19 revenue

(individually and together, **22 February 2018 Statements**).

#### **Particulars**

*The 22 February 2018 Statements were express and were made in writing:*

- *Statement (a), refer to the 22 February 2018 Announcement at p 1, 22 February 2018 Presentation at p 2.*

- *Statement (b), refer to the 22 February 2018 Announcement at p 1, 22 February 2018 Presentation at p 2.*
- *Statement (c), refer to the 22 February 2018 Announcement at p 1, 22 February 2018 Presentation at p 2.*
- *Statement (d), refer to the 22 February 2018 Announcement at p 1, 22 February 2018 Presentation at p 6.*
- *Statement (e), refer to the 22 February 2018 Announcement at p 1.*
- *Statement (f), refer to the 22 February 2018 Announcement at p 2, 22 February 2018 Presentation at p 2.*
- *Statement (g), refer to the HY18 Financial Report at p 2 and 22 February 2018 Presentation Audio Recording.*
- *Statement (h), refer to the HY18 Financial Report at p 2 and 22 February 2018 Presentation Audio Recording.*
- *Statement (i), refer to the FY18 Financial Report at p 3.*
- *Statement (j), refer to the 22 February 2018 Announcement at p 2 and 22 February 2018 Presentation Audio Recording.*
- *Statement (k), refer to the 22 February 2018 Announcement at p 2 and 22 February 2018 Presentation at p 3.*
- *Statement (l), refer to the 22 February 2018 Announcement at p 2 and 22 February 2018 Presentation at pp 3, 14 and 16.*

#### **C.4 30 July 2018**

25. On 30 July 2018, at the request of RCR, trading in RCR Shares on the ASX was halted from the commencement of trading pending the making of an announcement to the market on 1 August 2018 in relation to RCR's earnings for the financial year ended 30 June 2018.

#### **C.5 1 August 2018**

26. On 1 August 2018, at the request of RCR, trading in RCR Shares on the ASX was suspended from the commencement of trading pending the completion of a review of, and an announcement in relation to, a cost overrun on a project that was expected to have a material negative impact on FY18 earnings.

**C.6 7 August 2018**

27. On 7 August 2018, RCR made an announcement to the ASX entitled "Business update, leadership change and extension of voluntary suspension" (**7 August 2018 Announcement**) by which, at the request of RCR, the suspension in the trading of RCR Shares on the ASX was extended until 31 August 2018.
28. In the 7 August 2018 Announcement, RCR stated:
- (a) RCR confirmed that the cost overruns referred to in its 1 August 2018 announcement occurred at a single project;
  - (b) RCR continues to conduct business as usual on all its other projects;
  - (c) Dagleish will 'step down' as Managing Director and Chief Executive Officer of RCR
- (together, **7 August 2018 Statements**).

**Particulars**

*The 7 August 2018 Statements were express and were made in writing in the 7 August 2018 Announcement.*

**C.7 28 August 2018**

29. On 28 August 2018, RCR:
- (a) made an announcement to the ASX entitled "RCR announced FY18 results and a capital raising to strengthen balance sheet" (**28 August 2018 Announcement**);
  - (b) released and published to the ASX its FY18 financial report (**FY18 Financial Report**);
  - (c) released and published to the ASX a presentation entitled "Project Update and Capital Raising" (**28 August 2018 Presentation**);
  - (d) released and published to the ASX the Prospectus.
30. In the 28 August 2018 Announcement and the FY18 Financial Report, RCR and James made the following statements:
- (a) RCR had a statutory net loss after tax of \$16.1 million for FY18;

- (b) RCR had underlying earnings before interest and tax loss of \$4.2 million for FY18;
- (c) there were write-downs of \$57 million from tendered margin on the Daydream and Hayman Project;
- (d) RCR's loss was largely driven by cost overruns experienced on the Daydream and Hayman Project;
- (e) RCR had net cash of \$54.8 million as at 30 June 2018 before post balance date expected cash outflows of \$65 million;
- (f) the cost overruns on the Daydream and Hayman Project were due to several compounding project-specific issues. The Daydream and Hayman Project is now substantially complete and is currently undergoing commissioning;
- (g) aside from the cost overruns experienced on the Daydream and Hayman Project, RCR continues to operate across a large number of projects which, typical of a contracting business, experience some variance in tendered margins;
- (h) RCR's board and management are working to take immediate action to enhance RCR's systems and to re-position RCR towards a more acceptable risk profile. An important element of RCR's near term strategy is to focus on projects that use 'alliance style' contracting models, which are more working capital intensive, but offer a more favourable risk allocation to RCR as the contractor and should provide a higher degree of margin predictability relative to fixed price engineering, procurement and construction contracts;
- (i) 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;
- (j) RCR has announced an entitlement offer to raise approximately \$100 million to strengthen the balance sheet and address the financial impacts of cost overruns at the Daydream and Hayman Project;
- (k) the Daydream and Hayman Project experienced significant cost overruns due to several compounding project-specific issues, including external delays and materially worse sub-surface ground conditions than were allowed for in the tender estimate, as well as adverse weather conditions. These project-specific



issues required RCR to continuously review its execution methodologies to mitigate delays, leading to increases in sub-contractor costs (both people and plant) and logistics cost overruns;

- (l) the cost overruns arose over the life of the Daydream and Hayman Project;
- (m) RCR is targeting FY19 underlying earnings before interest and tax in the range of \$40 million to \$48 million under AASB 15;
- (n) to avoid any uncertainty around potential covenant breach with RCR's financiers at the date of the next covenant reporting, RCR has secured agreement from all financiers that in calculating the group's EBITDA for the 30 June 2018 calculation date and each quarterly calculation date up to and including 30 June 2019, RCR may add back to EBITDA the cost impact of the Hayman and Daydream Project of an amount up to \$50 million. The financier's support will lapse if RCR does not receive at least \$50 million in proceeds from the capital raising by the earlier of 5 November 2018 (or such later date as agreed to by the majority of financiers under the banking facility), the agent terminating the financier support letters for an event of default (other than as a result of any change to EBITDA relating to the cost impact of the Daydream and Hayman Project), RCR's failure to comply with its obligations in the financier letter of support, or an insolvency event;
- (o) the outlook for RCR remains positive

(individually and together, **28 August 2018 Statements**)

#### **Particulars**

*The 28 August 2018 Statements were express and were made in writing in the 28 August 2018 Announcement:*

- *Statement (a), refer to the 28 August 2018 Announcement at p 1, the FY18 Financial Report at p 5, 28 August 2018 Presentation at p 9.*
- *Statement (b), refer to the 28 August 2018 Announcement at p 1, the FY18 Financial Report at p 5, 28 August 2018 Presentation at p 11.*

- *Statement (c), refer to the 28 August 2018 Announcement at p 1, the FY18 Financial Report at p 5, 28 August 2018 Presentation at p 5.*
  - *Statement (d), refer to the 28 August 2018 Announcement at p 1, the FY18 Financial Report at p 5.*
  - *Statement (e), refer to the 28 August 2018 Announcement at p 1, 28 August 2018 Presentation at p 19.*
  - *Statement (f), refer to the 28 August 2018 Announcement at p 2, 28 August 2018 Presentation at pp 5, 8.*
  - *Statement (g), refer to the 28 August 2018 Announcement at p 2, the FY18 Financial Report at p 5.*
  - *Statement (h), refer to the 28 August 2018 Announcement at p 2, 28 August 2018 Presentation at pp 5, 15, 23.*
  - *Statement (i), refer to the 28 August 2018 Announcement at p 2.*
  - *Statement (j), refer to the 28 August 2018 Announcement at p 3.*
  - *Statement (k), refer to the 28 August 2018 Announcement at p 3, the FY18 Financial Report at p 5.*
  - *Statement (l), refer to the 28 August 2018 Announcement at p 3.*
  - *Statement (m), refer to the 28 August 2018 Announcement at p 3.*
  - *Statement (n), refer to FY18 Financial Report at p 16, 28 August 2018 Presentation at p 11.*
  - *Statement (o), refer to 28 August 2018 Announcement at p 2.*
31. Following the release of the 28 August 2018 Announcement and FY18 Financial Report, the price of RCR Shares fell materially.

#### **Particulars**

- i) *The price of RCR Shares fell from a closing price of \$2.1207 on 29 July 2018 to a closing price of \$1.195 on 30 August 2018 with a daily volume of 16,062,403 on 30 August 2018.*
- ii) *The price of RCR Shares fell from a closing price of \$1.195 on 30 August 2018 to a closing price of \$1.12 on 31 August 2018 with a daily volume of 7,606,871 on 31 August 2018.*

- iii) *The price of RCR Shares fell from a closing price of \$1.12 on 31 August 2018 to a closing price of \$1.05 on 3 September 2018 with a daily volume of 6,668,549 on 3 September 2018.*
- iv) *The price of RCR Shares fell from a closing price of \$1.05 on 3 September 2018 to a closing price of \$1.045 on 4 September 2018 with a daily volume of 3,752,541 on 4 September 2018.*
- v) *Further particulars may be provided.*

**C.8 12 November 2018**

32. On 12 November 2018, at the request of RCR, trading in RCR Shares on the ASX was halted from the commencement of trading pending the making of an announcement to the market on 14 November 2018 in relation to RCR's earnings for FY19 and the associated consequences for RCR's funding.

**C.9 14 November 2018**

33. On 14 November 2018, at the request of RCR, trading in RCR Shares on the ASX was suspended from the commencement of trading pending the completion of a review of, and an announcement in relation to, RCR's earnings for FY19 and the associated consequences for RCR's funding.

**C.10 22 November 2018**

34. On 22 November 2018, RCR made an announcement to the ASX entitled "Appointment of Administrators" (**22 November 2018 Announcement**).
35. In the 22 November 2018 Announcement, RCR made the following statements:
- (a) Jason Preston, William Harris, Robert Brauer and Matthew Caddy of McGrathNicol had been appointed as administrators of RCR;
  - (b) RCR had not been able to secure additional funding.
36. RCR Shares have not resumed, and are unlikely to resume, trading.

**D REPRESENTATIONS MADE BY RCR, DALGLEISH AND JAMES**

**D.1 Representations made on 11 August 2017**

37. By reason of the matters pleaded in paragraphs 19 and 20 above, on 11 August 2017 RCR and Dalgleish each represented to the market of investors and potential investors

in the RCR Shares and RCR Equity Swaps (**Affected Market**) that RCR's status as preferred contractor on a number of additional renewable energy projects would support RCR's further growth in FY18 and FY19 (**11 August 2017 Representations**).

**Particulars**

*The representations in paragraph 37 above were express and the Plaintiffs refer to the 11 August 2017 Statements.*

38. Further, by reason of the matters pleaded in paragraphs 19 and 20 above, on 11 August 2017 RCR and Dalgleish each represented to the Affected Market that RCR and Dalgleish had a reasonable basis for making the 11 August 2017 Representations (**11 August 2017 Basis Representations**).
39. From 11 August 2017 until 12 November 2018, alternatively from 11 August 2017 until 28 August 2018, RCR and Dalgleish each continued to make the 11 August 2017 Representations and the 11 August 2017 Basis Representations.

**Particulars**

*The continuing representation is implied by RCR and Dalgleish not saying anything during that period to modify, qualify or contradict the 11 August 2017 Representations and the 11 August 2017 Basis Representations.*

**D.2 Representations on 24 August 2017**

40. By reason of the matters pleaded in paragraphs 21 and 22 above, on 24 August 2017 RCR and Dalgleish each represented to the Affected Market that:
- (a) RCR was on track to deliver further earnings growth in FY18;
  - (b) RCR's earnings before interest and tax was on track to exceed \$35.2 million for FY18;
- (together, **24 August 2017 Earnings Representations**).

**Particulars**

- i) *The representations in subparagraph 40(a) above were express and the Plaintiffs refer to the 24 August 2017 Statements.*
- ii) *The representations in subparagraph 40(b) above were implied by the express representations in subparagraph 40(a) above.*

41. Further, by reason of the matters pleaded in paragraphs 21 and 22 above, on 24 August 2017 RCR and Dalgleish each represented to the Affected Market that:

- (a) RCR had a reasonable basis for making the 24 February 2017 Earnings Representations;
- (b) RCR was able to make reasonably reliable assessments of RCR's future earnings;

(together, **24 August 2017 Basis Earnings Representations**).

42. From 24 August 2017 until 28 August 2018, RCR and Dalgleish continued to make the 24 August 2017 Earnings Representations and 24 August 2017 Basis Earnings Representations.

#### Particulars

*The continuing representation is implied by RCR and Dalgleish not saying anything during that period to modify, qualify or contradict the 24 August 2017 Earnings Representations and the 24 August 2017 Basis Earnings Representations.*

43. By reason of the matters pleaded in paragraphs 21 and 22 above, on 24 August 2017 RCR and Dalgleish each represented to the Affected Market that:

- (a) RCR would selectively invest in solar projects when considered appropriate by RCR's management and board;
- (b) RCR would selectively invest in solar projects when RCR's board considers it prudent to do so;
- (c) RCR's investment in solar projects would be selective, appropriate and prudent;
- (d) RCR believes in maintaining a conservative and flexible balance sheet;
- (e) RCR's balance sheet was conservative and flexible

(together, **24 August 2017 Project and Balance Sheet Representations**).

#### Particulars

- i) *The representations in subparagraphs 42(a), (b) and (d) above were express and the Plaintiffs refer to the 24 August 2017 Statements.*

ii) *The representations in subparagraph 42(c) above were implied by the express representations in subparagraphs 42(a) and (b) above.*

iii) *The representations in subparagraph 42(e) above were implied by the express representations in subparagraphs 42(d) above.*

44. Further, by reason of the matters pleaded in paragraphs 21 and 22 above, on 24 August 2017 RCR and Dalgleish each represented to the Affected Market that:

- (a) RCR had a reasonable basis for making the 24 August 2017 Project and Balance Sheet Representations;
- (b) RCR was able to make reasonably reliable assessments of RCR's balance sheet position;
- (c) RCR was able to make reasonably reliable assessments whether it was appropriate and prudent for RCR to invest in a solar project

(together, **24 August 2017 Basis Project and Balance Sheet Representations**).

45. From 24 August 2017 until 12 November 2018, alternatively from 24 August 2017 until 28 August 2018, RCR and Dalgleish continued to make the 24 August 2017 Project and Balance Sheet Representations and the 24 August 2017 Basis Project and Balance Sheet Representations.

#### **Particulars**

*The continuing representation is implied by RCR and Dalgleish not saying anything during that period to modify, qualify or contradict the 24 August 2017 Project and Balance Sheet Representations and the 24 August 2017 Basis Project and Balance Sheet Representations.*

46. By reason of the matters pleaded in paragraphs 21 and 22 above, on 24 August 2017 RCR and Dalgleish each represented to the Affected Market that:

- (a) RCR was in a strong position to capitalise on substantial growth across RCR's end-markets, particularly in the solar market;
- (b) RCR expects to experience continued strong growth through FY18

(together, **24 August 2017 Growth Representations**).

**Particulars**

*The representations in subparagraphs 46(a) and (b) above were express and the Plaintiffs refer to the 24 August 2017 RCR and Dalgleish Statements.*

47. Further, by reason of the matters pleaded in paragraphs 21 and 22 above, on 24 August 2017 RCR and Dalgleish each represented to the Affected Market that:
- (a) RCR and Dalgleish had a reasonable basis for making the 24 August 2017 Growth Representations;
  - (b) RCR and Dalgleish were able to make reasonably reliable assessments about RCR's future financial performance
- (together, **24 August 2017 Basis Growth Representations**).

48. From 24 August 2017 until 28 August 2018, RCR and Dalgleish each continued to make the 24 August 2017 RCR and Dalgleish Growth Representations and the 24 August 2017 Basis Growth Representations.

**Particulars**

*The continuing representation is implied by RCR and Dalgleish not saying anything during that period to modify, qualify or contradict the 24 August 2017 Growth Representations and the 24 August 2017 RCR Basis Growth Representations.*

49. By reason of the matters pleaded in paragraphs 21 and 22 above, on 24 August 2017 RCR and Dalgleish each represented to the Affected Market that:
- (a) RCR had technical expertise and an understanding of the solar energy sector; and
  - (b) RCR was favourably positioned to invest in the solar energy sector
- (together, **24 August 2017 Solar Representations**).

**Particulars**

*The representations in subparagraphs 49(a) and (b) above were express and the Plaintiffs refer to the 24 August 2017 Statements.*

50. Further, by reason of the matters pleaded in paragraphs 21 and 22 above, on 24 August 2017 RCR and Dalgleish each represented to the Affected Market that:
- (a) RCR and Dalgleish had a reasonable basis for making the 24 August 2017 Solar Representations;
  - (b) RCR and Dalgleish could make a reasonably reliable assessment whether it was in RCR's interests to further invest in the solar energy sector or a particular solar energy project
- (together, **24 August 2017 Basis Solar Representations**).
51. From 24 August 2017 until 12 November 2018, alternatively from 24 August 2017 until 28 August 2018, RCR and Dalgleish each continued to make the 24 August 2017 Solar Representations and the 24 August 2017 Basis Solar Representations.

#### **Particulars**

*The continuing representation is implied by RCR and Dalgleish not saying anything during that period to modify, qualify or contradict the 24 August 2017 Solar Representations and the 24 August 2017 Basis Solar Representations.*

#### **D.3 Representations on 22 February 2018**

52. By reason of the matters pleaded in paragraphs 23 and 24 above, on 22 February 2018 RCR and Dalgleish each represented to the Affected Market that:
- (a) RCR's earnings before interest and tax for HY18 were \$22.8 million;
  - (b) RCR's net profits after tax for HY18 were \$16.3 million;
  - (c) RCR expected to deliver earnings growth in FY18 and FY19;
  - (d) RCR expected RCR's earnings before interest and tax to exceed \$35.3 million for FY18;
  - (e) RCR had been successful in the renewable energy sector during the past year and these wins are expected to contribute strongly to RCR's continuing growth momentum;
  - (f) RCR's financial position remains strong;



- (g) the increase in earnings before interest and tax compared with HY17 reflects the strong contribution from the infrastructure business which made progress on the delivery of a number of large scale utility solar projects;
- (h) key contracts for the infrastructure business' performance included the Daydream and Hayman Project;
- (i) RCR has delivered record earnings growth;
- (j) RCR's cash flows have improved significantly;
- (k) RCR's success in the renewable energy sector over the past year is expected to contribute to RCR's growing momentum;
- (l) RCR is well placed for earnings growth with a number of contracts to flow through to support FY19 revenue

(together, **22 February 2018 Representations**).

#### Particulars

- i) The representations in subparagraphs 52(a) to (c) and (e) to (l) above were express and the Plaintiffs refer to the 22 February 2018 Statements.*
- ii) The representations in subparagraph 52(d) above was implied from the express representations in subparagraph 52(c) above.*

53. Further, by reason of the matters pleaded in paragraphs 23 and 24 above, on 22 February 2018 RCR and Dalgleish each represented to the Affected Market that:

- (a) RCR had a reasonable basis for making the 22 February 2018 Representations;
- (b) RCR was able to make reasonably reliable assessments of RCR's future earnings;
- (c) RCR was able to make a reasonably reliable assessment of RCR's financial position

(together, **22 February 2018 Basis Representations**).

54. From 22 February 2018 to 28 August 2018, RCR and Dalgleish each continued to make the 22 February 2018 and the 22 February 2018 Basis Representations.

### Particulars

*The continuing representation is implied by RCR not saying anything during that period to modify, qualify or contradict the 22 February 2018 Representations and the 22 February 2018 Basis Representations.*

#### D.4 Representations on 28 August 2018

55. By reason of the matters pleaded in paragraphs 29 and 30 above, on 28 August 2018 RCR and James each represented to the Affected Market that:

- (a) RCR's loss for FY18 was largely driven by cost overruns experienced on the Daydream and Hayman Project;
- (b) the cost overrun on the Daydream and Hayman Project were due to several compounding project-specific issues;
- (c) the Daydream and Hayman Project was substantially complete and undergoing commissioning;
- (d) aside from the cost overruns experienced on the Daydream and Hayman Project, RCR continued to operate across a large number of projects which, typical of a contracting business, experience some variation in tendered margins;
- (e) RCR is in a strong financial position, trading on a business as usual basis, and is well placed to deliver for its shareholders;
- (f) RCR is targeting FY19 underlying earnings before interest and tax in the range of \$40 million to \$48 million under AASB 15;
- (g) the outlook for RCR remains positive;
- (h) RCR's poor financial performance was limited to cost overruns on the Daydream and Hayman Project;
- (i) with the exception of the Daydream and Hayman Project, RCR was otherwise in a strong financial position

(together, **28 August 2018 Representations**).

### Particulars

- i) *The representations in subparagraphs 55(a) to (g) above were express and the Plaintiffs refer to the 28 August 2018 Statements.*
  - ii) *The representations in subparagraphs 55(h) to (i) above were implied by the express representations in subparagraphs 55(a) to (g) above.*
56. Further, by reason of the matters pleaded in paragraphs 29 and 30 above, on 28 August 2018 RCR and James each represented to the Affected Market that:
- (a) RCR had a reasonable basis for making the 28 August 2018 Representations;
  - (b) RCR was able to make a reasonably reliable assessment of RCR's future earnings;
  - (c) RCR was able to make a reasonably reliable assessment of RCR's financial position;
  - (d) RCR was able to make a reasonably reliable assessment as to the profitability of RCR's other EPC Solar Contracts
- (together, **28 August 2018 Basis Representations**).

### E WHAT RCR KNEW OR OUGHT TO HAVE KNOWN

57. During the Relevant Period, there were material delays in completing the EPC Solar Contracts (**EPC Solar Contract Delays**).

#### Particulars

- i) *During the Relevant Period, the time taken by the Australian Energy Market Operator to connect solar farms to the grid had increased from approximately a few weeks to up to about six months.*
- ii) *During the Relevant Period there were delays on at least the Daydream and Hayman Project by reason of extension of time submissions, adverse weather conditions, additional site piling requirements.*
- iii) *Administrators' Report at p 48: "Key issues which presented problems to RCR Management in relation to solar contracts*

*included: timing delays (both within and outside of RCR's control) experienced over various stages of the contracts, predominantly in the completion and commissioning stages (the final stages of the contracts)";*

- iv) RCR's original expected schedule for completion provided for ten EPC Solar Contracts completing before 22 November 2018 whereas only two EPC Solar Contracts had been completed: Administrators' Report at p 48.*
- v) During the Relevant Period, the time taken by the Australian Energy Market Operator to connect solar farms to the grid had increased from approximately a few weeks to up to about six months.*
- vi) Further particulars may be provided following discovery.*

58. During the Relevant Period, there were material increases in the cost of completing the EPC Solar Contracts (**EPC Solar Contract Costs**).

#### **Particulars**

- i) During the Relevant Period, labour costs for EPC Solar Contracts had increased by as much as 50 per cent.*
- ii) During the Relevant Period there were increased costs on at least the Daydream and Hayman Project by reason of the extension of time submissions and increases in the costs of subcontractors and logistics.*
- iii) Administrators' Report at p 48: "Key issues which presented problems to RCR Management in relation to the solar contracts included ... the fixed price nature of the contracts, resulting in the majority of the cost overruns (including costs incurred and delay liquidated damages) being borne by RCR (subject to limited variation)."*
- iv) Administrators' Report at p 51: "All risk of cost overruns was borne by RCR (unless agreed to as variations) with significant cost overruns occurring on a number of contracts during 2018. The Administrators note that Management became aware of a number of cost overruns which it identified during 2018 and reported to the Board."*

v) *Further particulars may be provided following discovery.*

59. During the Relevant Period, by reason of the EPC Solar Contract Terms, the EPC Solar Contract Delays and the EPC Solar Contract Costs:

- (a) RCR was unable to pass on increased costs to customers;
- (b) RCR had spent significant working capital completing the EPC Solar Contracts;
- (c) there were material delays in RCR receiving the milestone payment under the EPC Solar Contracts;
- (d) RCR was liable to pay liquidated damages under the EPC Solar Contracts.

#### **Particulars**

- i) *The particulars to paragraphs 57 and 58 above are repeated.*
- ii) *Administrators' Report at p 48: "Key issues which presented problems to RCR Management in relation to the solar contracts included ... the cash profile of the contracts, with upfront payments received to fund the working capital, however, the majority (if not all) of the gross margin being received at completion (which had not been achieved at Appointment for 13 of the 15 solar projects)".*
- iii) *Administrators' Report at p 48: "Key issues which presented problems to RCR Management in relation to the solar contracts included ... limited recourse in contracts for RCR to force timely approvals of extension of time requests, variations and milestone approvals, coupled with requirements to progress with construction to avoid adverse delay claims".*
- iv) *Administrators' Report at p 50: "By July 2018, the cumulative cash flow had fallen to (\$50.8 million), a \$203.4 million net cash outflow in seven months, due the combined impact of delayed milestone receipts, an increase in costs, and the upfront nature of the payment profile in the contracts."*
- v) *Administrators' Report at p 31: "Whilst the cash profile of the solar farm projects (large up-front payments) contributed to the positive build up of cash to begin with, by June 2018 the cumulative net cash flow from solar farms was near break-even".*

vi) *Further particulars may be provided following discovery.*

60. During the Relevant Period, the matters pleaded in paragraphs 57 to 59 above had a significant adverse impact on RCR's:

(a) liquidity and cashflow; and

(b) earnings and profitability.

#### **Particulars**

- i) *The particulars to paragraphs 57 to 59 above are repeated.*
- ii) *Administrators' Report at p 7: "Further cost overruns occurred on other solar farm projects, together with milestone payment delays and pipeline of work not eventuating, leading to a significant decrease in RCR's cash position.*
- iii) *The Plaintiffs refer to the 28 August 2018 Announcement and the FY18 Financial Report.*
- iv) *The additional funds raised by the capital raising announced on 28 August 2018 had been fully utilised by October 2018. Those funds were used in part to pay further solar project cost overruns: Administrators' Report at p 31.*
- v) *"RCR stretched its trade creditors at various times over the months leading to the appointment of Administrators as a means to manage its cash flow": Administrators' Report at p 32.*
- vi) *By 14 August 2018, RCR had engaged McGrathNicol to assist in assessing RCR's short term cashflow and to undertake contingency planning for a potential appointment of voluntary administrators.*
- vii) *By 23 August 2018, McGrathNicol had prepared a draft forecast that RCR's revised cashflow forecasts indicated a substantial funding requirement in excess of RCR's existing facility limits which was finalised by 10 October 2018.*
- viii) *In October 2018, RCR terminated approximately 115 workers at a solar farm in Wemen, Queensland.*
- ix) *On 24 October 2018 McGrathNicol was approached by King & Wood Mallesons on behalf of RCR as RCR's management was*

*concerned that there was a risk of breaching financial covenants with its secured lenders at the end of December 2018.*

- x) *Further particulars may be provided following discovery and service of the Plaintiffs' expert evidence.*

## **F CONTINUOUS DISCLOSURE CONTRAVENTIONS**

### **F.1 FY18 Financial Information**

61. By the start of the Relevant Period, RCR had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) information that it was likely, or there was a material risk, that RCR's:

- (a) financial performance; and
- (b) financial results for FY18

would be adversely affected by the EPC Solar Contracts, such that its earnings and profitability would be less than that published in FY17 (**FY18 Financial Information**).

#### **Particulars**

- i) *Paragraphs 57 to 60 above are repeated.*
- ii) *Dagleish, Phipps and/or McCollough ought reasonably to have come into possession of the information pleaded in paragraphs 57 to 60 above by reason of their duties as an officer of that entity.*
- iii) *Dagleish, Phipps and/or McCollough ought reasonably to have come into possession of the FY18 Financial Information by reason of RCR's Reviews.*
- iv) *Administrators' Report at p 55: "The Administrators consider the books and records, particularly from June 2018, may not have accurately reflected RCR's true financial position, with retrospective write downs occurring in relation to solar projects and a lack of provision for potential future losses under these contracts."*
- v) *Administrators' Report at p 57: "The Administrators have reviewed the basis of preparation and underlying assumptions of Management's cash flow forecast. From this, the Administrators*

*consider that the process to prepare the forecast was robust in terms of who was involved, however the cash flow forecasts, in particular those prepared in August and October, proved 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 time of milestones payments and new project wins. These issues are evident from the material revisions made to the cash flow forecasts over the analysis period and the reasons for those revisions.”*

vi) *Further particulars may be provided following discovery.*

62. The FY18 Financial Information was information:
- (a) that, until 28 August 2018, was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act;
  - (b) that a reasonable person would expect, if it were generally available, to have a material impact on the price or value of the RCR Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.
63. Pursuant to ASX Listing Rule 3.1, RCR became obliged to tell the ASX the FY18 Financial Information by the start of the Relevant Period.
64. RCR did not communicate any of the FY18 Financial Information before 28 August 2018.
65. In the circumstances set out in paragraphs 61 to 64 above, RCR contravened s 674(2) of the Corporations Act (being a **Continuous Disclosure Contravention**).

## **F.2 EPC Solar Contract Information**

66. Further, or alternatively, by the start of the Relevant Period, RCR had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) information that it was likely that RCR could not reliably determine the time and/or cost to complete the EPC Solar Contracts (**EPC Solar Contract Information**).

### **Particulars**

- i) *Paragraphs 57 to 60 above are repeated.*



- ii) *Dalgleish, Phipps and/or McCollough ought reasonably to have come into possession of the information pleaded paragraphs 57 to 60 above by reason of their duties as an officer of that entity.*
- iii) *Dalgleish, Phipps and/or McCollough ought reasonably to have come into possession of the EPC Contract Information by reason of RCR's Reviews.*
- iv) *Further particulars may be provided following discovery.*

67. The EPC Solar Contract Information was information:
- (a) that, until 12 November 2018, alternatively 28 August 2018, was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act;
  - (b) that a reasonable person would expect, if it were generally available, to have a material impact on the price or value of the RCR Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.
68. Pursuant to ASX Listing Rule 3.1, RCR became obliged to tell the ASX the FY18 Financial Information by the start of the Relevant Period.
69. RCR did not communicate any of the FY18 Financial Information before 12 November 2018, alternatively 28 August 2018.
70. In the circumstances set out in paragraphs 66 to 69 above, RCR contravened s 674(2) of the Corporations Act (being a **Continuous Disclosure Contravention**).

### **F.3 FY19 Financial Information**

71. From on or about 24 August 2018, RCR had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) information that it was likely, or there was a material risk, that RCR's:
- (a) financial performance; and
  - (b) financial results for FY19

would be adversely affected by the EPC Solar Contracts, such that its underlying FY19 earnings before interest and tax would be significantly less than \$40 million to \$48 million under AASB 15 (**FY19 Financial Information**).

### Particulars

- i) *Paragraphs 57 to 60 above are repeated.*
- ii) *Dalgleish, Phipps, McCollough and/or James ought reasonably to have come into possession of the information pleaded paragraphs 57 to 60 above by reason of their duties as an officer of that entity.*
- iii) *Dalgleish, Phipps, McCollough and/or James ought reasonably to have come into possession of the FY19 Financial Information in the course of their duties as an officer of that entity.*
- iv) *Administrators' Report at p 8 "RCR entered into fifteen solar EPC Contracts, with a total value of approximately \$1.5 billion within an eighteen month time period. This introduced a significantly different risk profile into the Group, without any noticeable change in the Group's governance or risk management process."*
- v) *Administrators' Report at p 55: "The Administrators consider the books and records, particularly from June 2018, may not have accurately reflected RCR's true financial position, with retrospective write downs occurring in relation to solar projects and a lack of provision for potential future losses under these contracts."*
- vi) *Administrators' Report at p 57: "The Administrators have reviewed the basis of preparation and underlying assumptions of Management's cash flow forecast. From this, the Administrators consider that the process to prepare the forecast was robust in terms of who was involved, however the cash flow forecasts, in particular those prepared in August and October, proved 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 time of milestones payments and new project wins. These issues are evident from the material revisions made to the cash flow forecasts over the analysis period and the reasons for those revisions."*

- v) *In August 2018, Phipps, McCollough and/or James ought reasonably to have come into possession of the FY19 Financial Information following RCR's "comprehensive internal investigation into the circumstances surrounding the cost overruns on at the [Daydream and Hayman Island Project]"*.
- vi) *In August 2018, Phipps, McCollough and/or James ought reasonably to have come into possession of the FY19 Financial Information by reason of RCR's engagement of McGrathNicol.*
- vii) *Dalgleish, Phipps, McCollough and/or James ought reasonably to have come into possession of the FY19 Financial Information by RCR's Reviews.*
- viii) *Further particulars may be provided following discovery.*

72. The FY19 Financial Information was information:

- (a) that prior to 12 November 2018 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act;
- (b) that a reasonable person would expect, if it were generally available, to have a material impact on the price or value of the RCR Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.

73. Pursuant to ASX Listing Rule 3.1, RCR became obliged to tell the ASX the FY19 Financial Information by about August 2018.

74. RCR did not communicate any of the FY19 Financial Information before 12 November 2018.

75. In the circumstances set out in paragraphs 71 to 74 above, RCR contravened s 674(2) of the Corporations Act (being a **Continuous Disclosure Contravention**).

#### **F.4 Systemic EPC Solar Contract Information**

76. From about 24 August 2018, RCR had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rules 19.12) information that it was likely, or there was a material risk, that:

- (a) the losses on the Daydream and Hayman Project were not limited to project-specific issues;

- (b) RCR had made or would make significant losses on other EPC Solar Contracts **(Systemic EPC Solar Contract Information)**.

**Particulars**

- i) *Paragraphs 57 to 60 above are repeated.*
- ii) *Dalgleish, Phipps, McCollough and/or James ought reasonably to have come into possession of the information pleaded paragraphs 57 to 60 above by reason of their duties as an officer of that entity.*
- iii) *Dalgleish, Phipps, McCollough and/or James ought reasonably to have come into possession of the Systemic EPC Solar Contract Information in the course of their duties as an officer of that entity.*
- iv) *Administrators' Report at p 55: "The Administrators consider the books and records, particularly from June 2018, may not have accurately reflected RCR's true financial position, with retrospective write downs occurring in relation to solar projects and a lack of provision for potential future losses under these contracts."*
- v) *Administrators' Report at p 57: "The Administrators have reviewed the basis of preparation and underlying assumptions of Management's cash flow forecast. From this, the Administrators consider that the process to prepare the forecast was robust in terms of who was involved, however the cash flow forecasts, in particular those prepared in August and October, proved 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 time of milestones payments and new project wins. These issues are evident from the material revisions made to the cash flow forecasts over the analysis period and the reasons for those revisions.*
- vi) *In August 2018, Phipps, McCollough and/or James ought reasonably to have come into possession of the Systemic EPC Solar Contract Information following RCR's "comprehensive*

*internal investigation into the circumstances surrounding the cost overruns on at the [Daydream and Hayman Island Project]”.*

- vii) In August 2018 Phipps, McCollough and/or James ought reasonably to have come into possession of the Systemic EPC Solar Contract Information by reason of RCR’s engagement of McGrathNicol.*
- viii) Phipps, McCollough and/or James ought reasonably to have come into possession of the Systemic EPC Solar Contract Information by RCR’s Reviews.*
- ix) Further particulars may be provided following discovery.*

77. The Systemic EPC Solar Contract Information was information:
- (a) that prior to 12 November 2018 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act;
  - (b) that a reasonable person would expect, if it were generally available, to have a material impact on the price or value of the RCR Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.
78. Pursuant to ASX Listing Rule 3.1, RCR became obliged to tell the ASX the Systemic EPC Solar Contract Information by about August 2018.
79. RCR did not communicate any of the FY18 Financial Information before 12 November 2018.
80. In the circumstances set out in paragraphs 76 to 79 above, RCR contravened s 674(2) of the Corporations Act (being a **Continuous Disclosure Contravention**).

## **G MISLEADING OR DECEPTIVE CONDUCT AND MATERIALLY MISLEADING STATEMENTS**

### **G.1 Misleading contraventions from 11 August 2017**

81. The making and failing to correct or qualify each of:
- (a) the 11 August 2017 Representations; and
  - (b) the 11 August 2017 Basis Representations;

was conduct engaged in by RCR and Dalgleish:

- (a) in trade or commerce; and
- (b) in relation to the RCR Shares.

82. As at and from 11 August 2017, RCR and Dalgleish did not have reasonable grounds for making each of the 11 August 2017 Representations and the 11 August 2017 Basis Representations in the circumstances pleaded in paragraphs 57 to 60 above.

#### **Particulars**

*The 11 August 2017 Representations were representations as to future matters, and the Applicant also relies on s 12BB(1) of the ASIC Act, s 796C of the Corporations Act and/or s 4 of the Australian Consumer Law.*

83. As at and from 11 August 2017, by making and/or failing to correct or qualify each of the 11 August 2017 Representations and 11 August 2017 Basis Representations in the circumstances pleaded in paragraphs 57 to 60 above, RCR and Dalgleish engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.
84. By reason of the matters pleaded in paragraphs 81 to 83 above, RCR and Dalgleish contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (being a **Misleading Statements Contravention**).

#### **G.2 Misleading contraventions from 24 August 2017**

85. The making and failing to correct or qualify each of:
- (a) the 24 August 2017 Earnings Representations;
  - (b) the 24 August 2017 Basis Earnings Representations;
  - (c) the 24 August 2017 Project and Balance Sheet Representations;
  - (d) the 24 August 2017 Basis Project and Balance Sheet Representations;
  - (e) the 24 August 2017 Growth Representations;
  - (f) the 24 August 2017 Basis Growth Representations;
  - (g) the 24 August 2017 Solar Representations;

(h) the 24 August 2017 Basis Solar Representations

(individually and together, **24 August 2017 Representations**)

was conduct engaged in by RCR:

(a) in trade or commerce; and

(b) in relation to the RCR Shares.

86. As at and from 24 August 2017, RCR did not have reasonable grounds for making each of the 24 August 2017 Representations in the circumstances pleaded in paragraphs 57 to 60 above.

#### **Particulars**

*To the extent that the 24 August 2017 Earnings Representations were representations as to future matters, and the Applicant also relies on s 12BB(1) of the ASIC Act, s 796C of the Corporations Act and/or s 4 of the Australian Consumer Law.*

87. As at and from 24 August 2017, by making and/or failing to correct or qualify each of the 24 August 2017 Representations in the circumstances pleaded in paragraphs 57 to 60 above, RCR engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.

88. By reason of the matters pleaded in paragraphs 85 to 87 above, RCR contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (being a **Misleading Statements Contravention**).

#### **G.3 Misleading statements from 22 February 2018**

89. The making and failing to correct or qualify each of:

(a) the 22 February 2018 Representations; and

(b) the 22 February 2018 Basis Representations;

was conduct engaged in by RCR and Dalgleish:

(a) in trade or commerce; and

(b) in relation to the RCR Shares.

90. As at and from 22 February 2018, RCR and Dalgleish did not have reasonable grounds for making each of the 22 February 2018 Representations and 22 February 2018 Basis Representations in the circumstances pleaded in paragraphs 57 to 60 above.

**Particulars**

*To the extent that 22 February Representations were representations as to future matters, and the Applicant also relies on s 12BB(1) of the ASIC Act, s 796C of the Corporations Act and/or s 4 of the Australian Consumer Law.*

91. As at and from 22 February 2018, by making and/or failing to correct or qualify each of the 22 February 2018 Representations and the 22 February 2018 Basis Representations in the circumstances pleaded in paragraphs 57 to 60 above, RCR and Dalgleish engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.
92. By reason of the matters pleaded in paragraphs 89 to 91 above, RCR and Dalgleish contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (being a **Misleading Statements Contravention**).

**G.4 Misleading statements from 28 August 2018**

93. The making and failing to correct or qualify each of:

- (a) the 28 August 2018 Representations; and
- (b) the 28 August 2018 Basis Representations;

was conduct engaged in by RCR and James:

- (a) in trade or commerce; and
- (b) in relation to the RCR Shares.

94. As at and from 28 August 2018, RCR and James did not have reasonable grounds for making each of the 28 August 2018 Representations and 28 August 2018 Basis Representations in the circumstances pleaded in paragraphs 57 to 60 above.

**Particulars**

*To the extent that 28 August Representations were representations as to future matters, and the Applicant also relies on s 12BB(1) of the*



*ASIC Act, s 796C of the Corporations Act and/or s 4 of the Australian Consumer Law.*

95. As at and from 28 August 2018, by making and/or failing to correct or qualify each of the 28 August 2018 Representations and the 28 August 2018 Basis Representations in the circumstances pleaded in paragraphs 57 to 60 above, RCR and James engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.
96. By reason of the matters pleaded in paragraphs 93 to 95 above, RCR and James contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (being a **Misleading Statements Contravention**).

## **H DISCLOSURE DOCUMENT CONTRAVENTIONS**

### **H.1 30 August 2017 Cleansing Notice**

97. On 30 August 2017, RCR gave notice purporting to comply with the requirements to s 708A(5)(e) of the Corporations Act (**Cleansing Notice**).
98. In the Cleansing Notice, RCR made the following statements:
  - (a) RCR had complied with s 674 of the Corporations Act; and
  - (b) as at the date of the Cleansing Notice, there was no excluded information of the type referred to in s 708A(7) and (8) of the Corporations Act  
(together and individually, **Cleansing Notice Statements**).

#### **Particulars**

*The Cleansing Notice Statements were express and were made in writing in the Cleansing Notice.*

99. The Cleansing Notice did not comply with the requirements of s 708A(6) as the Cleansing Notice Statements were misleading and/or deceptive in the circumstances pleaded in paragraphs 57 to 70 above.
100. By reason of the matters pleaded in paragraphs 97 to 99 above, RCR contravened s 727(5) of the Corporations Act (being a **Disclosure Document Contravention**).
101. Further, the Cleaning Notice did not contain:

- (a) the FY18 Financial Information; and/or
- (b) the EPC Solar Contract Information

(individually and together, **Cleansing Notice Omissions**).

102. The Cleansing Notice Omissions was excluded information within the meaning of s 708A(7).
103. By reason of the matters pleaded in paragraphs 101 to 102 above, RCR contravened s 727(5) of the Corporations Act (being a **Disclosure Document Contravention**).

## H.2 The Prospectus

104. The Prospectus was:

- (a) issued for the purposes of Chapter 6D of the Corporations Act;
- (b) a disclosure document within the meaning of s 9 of the Corporations Act;
- (c) issued in relation to an offer of RCR Shares in RCR.

105. The Prospectus contained the following statements:

- (a) the Daydream and Hayman Project has experienced significant cost overruns due to several compounding project-specific issues;
- (b) outside the cost overruns experienced on the Daydream and Hayman Project, RCR continues to operate across a large number of projects which, typical of a contracting business, experience some variance to tendered margins;
- (c) the procurement control issues identified at the Daydream and Hayman Project are not systemic within RCR

(individually and together, **Prospectus Statements**)

### Particulars

*The Prospectus Statements were express and was made in writing in the Prospectus:*

- *Statement (a), refer to Prospectus at pp 9, 35;*
- *Statement (b), refer to Prospectus at pp 9, 36;*
- *Statement (c), refer to Prospectus at p 37.*

106. The Prospectus Statements were misleading and/or deceptive in the circumstances pleaded in paragraphs 57 to 60 above.
107. By reason of the matters pleaded in paragraphs 104 to 106 above, RCR contravened s 728 of the Corporations Act (being a **Disclosure Document Contravention**).
108. The Prospectus did not contain:
- (a) the EPC Solar Contract Information;
  - (b) the FY19 Financial Information; and/or
  - (c) the Systemic EPC Solar Contract Information
- (individually and together, **Prospectus Omissions**).
109. The Prospectus Omissions was information that investors and professional advisers would reasonably require to make an informed assessment of the effect of the offer on RCR and/or the rights attaching to the securities offered within the meaning of s 713(2) of the Corporations Act.
110. By reason of the matters pleaded in paragraphs 108 and 109 above, RCR contravened s 728 of the Corporations Act (being a **Disclosure Document Contravention**).

## **I MARKET CONTRAVENTIONS CAUSED GROUP MEMBERS' LOSS**

### **1.1 Market based causation**

111. The First and Second Plaintiffs and Group Members acquired their interest in RCR Shares in a market of investors or potential investors in RCR Shares:
- (a) operated by the ASX;
  - (b) regulated by, inter alia, the ASX Listing Rules and s 674(2) of the Corporations Act;
  - (c) where RCR, Dalglish and James had the obligations pleaded in paragraphs 5, 8 and 9 above;
  - (d) where the price or value of RCR Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules and s 674(2) of the Corporations Act;

- (e) where:
- (i) material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of RCR Shares (namely the Continuous Disclosure Contraventions);
  - (ii) misleading or deceptive conduct had been engaged in (namely the Misleading Statements Contraventions) that a reasonable person would expect to have a material effect on the price or value of RCR Shares, in that if they had not been made no investors or potential investors in RCR Shares would have been in a position to read or rely upon them.

112. In the Relevant Period, the Continuous Disclosure Contraventions and/or the Misleading Statements Contraventions (and each of them) (**Market Contraventions**) caused the market price for RCR Shares to be, or materially contributed to the market price of RCR Shares being, substantially greater than:

- (a) their true value; and/or
- (b) the market price that would have prevailed but for the Market Contraventions; from the respective dates that those Market Contraventions commenced as pleaded above.

#### **Particulars**

*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 had prevailed (that is, inflated) during the Relevant Period will be served immediately following the Plaintiffs filing opinion evidence in the proceeding.*

113. The decline in the price of RCR Shares pleaded in paragraph 31 above was caused or contributed materially contributed to by:

- (a) the market's reaction to the 28 August 2018 Announcement and FY18 Financial Report; and
- (b) the Market Contraventions prior to 28 August 2018.

#### **Particulars**

*The extent to which the decline in price of RCR Shares was caused or materially contributed to by these matters is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence as referred to in the particulars to paragraph 112 above.*

114. Further, or alternatively, if RCR had:

- (a) disclosed FY18 Financial Information and/or the EPC Solar Contract Information prior to 28 August 2018;
  - (b) disclosed the EPC Solar Contract Information, the FY19 Financial Information and/or the Systemic EPC Solar Contract Information at any time during the Relevant Period; and/or
  - (c) 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 decline in 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 served immediately following the Plaintiffs filing opinion evidence as referred to in the particulars to paragraph 112 above.*

115. During the Relevant Period, the market for RCR Equity Swaps was a market that was traded on the basis that the market for RCR Shares had the feature pleaded in paragraph 111 above.
116. By reason of the matters set out in paragraphs 111 to 115 above, at all times during the Relevant Period when the Group Members who entered into RCR Equity Swaps entered into such RCR Equity Swaps, they did so at a time when:
- (a) the price of RCR Shares had been artificially inflated by the Market Contraventions;
  - (b) the RCR Shares had been defined by reference to a price of RCR Shares which was artificially inflated at the time the swap transaction was initiated; and
  - (c) by reason of the matters pleaded in 116(a) and 116(b), the value of the future cashflows to be received by the equity amount receiver pursuant to the RCR

Equity Swap by reference to the performance of RCR Shares was diminished and/or the value of the cashflows to be paid by the equity amount receiver in return was inflated.

**Particulars**

*Particulars of 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.*

**I.2 Reliance**

117. Further, or in the alternative, in the decision to acquire RCR Shares:

- (a) the Plaintiffs and some Group Members would not have acquired RCR Shares at the prices and the in volumes that they were acquired, if the FY18 Financial Information, the EPC Solar Contract Information, the FY19 Financial Information and/or the Systemic EPC Solar Contract had been disclosed to them and/or the ASX;
- (b) the Plaintiffs and some Group Members acquired RCR Shares at the prices and in the volumes they were acquired in reliance upon some or all of the following representations (and/or RCR, Dalgleish and/or James not having corrected or qualified such representations):
  - (i) 11 August 2017 Representations;
  - (ii) 11 August 2017 Basis Representations
  - (iii) 24 August 2017 Representations;
  - (iv) 22 February 2018 Representations;
  - (v) 22 February 2018 Basis Representations;
  - (vi) 28 August 2018 Representations; and/or
  - (vii) 28 August 2018 Basis Representations.

**Particulars**

*Particulars of the Plaintiffs' reliance will be provided following service of his evidence.*

*The identity of all those Group Members which or who relied directly on any or all of the representations referred to in subparagraph 117(b) above are not within the current state of 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 individual 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 Applicant's claim and identification of common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

### **I.3 Loss and damage**

118. The Plaintiffs and Group Members have suffered loss and damage resulting from the Market Contraventions.

#### **Particulars**

*Particulars of the Plaintiffs' loss and damage will be provided following service of the Plaintiffs' lay and expert evidence.*

*Particulars of the losses of Group Members are not within the current state of 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 individual Group Member's claims. Those instructions will be obtained (and particulars of the losses of those 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 is necessary for a determination to be made of the individual claims of those Group Members.*

## **J DISCLOSURE DOCUMENT CAUSED SOME GROUP MEMBERS' LOSS**

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

119. Were it not for the Disclosure Document Contraventions, RCR would not have been able to raise capital pursuant to the capital raisings announced by RCR on 24 August 2017 and 28 August 2018.

### **J.2 Market based causation**

120. 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 some Group Members acquired an interest in the capital raising announced by RCR on 28 August 2018 in a market:

- (a) regulated by, inter alia, Chapter 6D of the Corporations Act;
- (b) where the offer price of RCR Shares in the capital raising announced on 24 August 2017 and/or under the Prospectus would reasonably be expected by potential investors in RCR Shares to have been reasonably determined by RCR to represent a fair market value for RCR Shares, based on:
  - (i) the anticipated number of RCR Shares to be issued;
  - (ii) RCR's then current market capitalisation;
  - (iii) RCR's historical financial performance; and
  - (iv) RCR expected financial performance;
- (c) alternatively, where the offer price in the capital raising announced on 24 August 2017 and the Prospectus was in fact determined by RCR by reference to the then prevailing market price for RCR Shares;

### **Particulars**

*The 24 August 2017 Announcement provided that RCR will issue approximately 21 million RCR shares to eligible sophisticated, professional and institutional investors in order to raise approximately \$75 million. Those shares issued under the placement will be issued 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 (Placement Price).*

*The 24 August 2017 Announcement provided that eligible RCR shareholders will have the opportunity to subscribe for new shares up to a maximum of \$15,000 per shareholder at the Placement Price.*

*The Prospectus provided at p 23 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.*

(d) where:

- (i) material information had not been disclosed to the ASX (namely the information the EPC Solar Contract Information, the FY19 Financial Information and/or the Systemic EPC Solar Contract Information), which a reasonable person would expect, had it been disclosed, to have caused the placement not to proceed, the offer price to be lower and/or there to be a material effect on the willingness of potential investors to accept the offer made pursuant to the Prospectus, whether at the price in the Prospectus or generally;
- (ii) misleading or deceptive statements had been made (namely the Prospectus Misleading Statements) which had they not been made, a reasonable person would expect to have caused the offer price to be lower and/or there to be a material effect on the willingness of potential investors to accept the offer made pursuant to the Prospectus, whether at the price in the Prospectus or generally.

#### **Particulars**

*The identities of all those Group Members which or would not have acquired RCR Shares pursuant to the Prospectus are not known with the current state of 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 individual Group Member's claims; those instructions will be obtained (and particulars of the identity of those*

*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 is necessary for a determination to be made of the individual claims of those Group Members.*

### **J.3 Reliance**

121. Some of the Group Members acquired the RCR Shares in the volumes they were acquired in reliance upon the Prospectus Statements.

#### **Particulars**

*The identity of all those Group Members which or who relied directly on the Prospectus Statements are not within the current state of 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 individual 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 Applicant's claim and identification of common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

### **J.4 Loss and damage**

122. The Second Plaintiff and some of the Group Members have suffered loss and damage resulting from the Disclosure Document Contraventions.

#### **Particulars**

*Particulars of the losses of Group Members are not within the current state of 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 individual Group Member's claims. Those instructions will be obtained (and particulars of the losses of those 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 is necessary for a determination to be made of the individual claims of those Group Members.*

**QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE**

None.

**MEDIATION**

The parties have not attended a mediation. The Plaintiffs are willing to participate in a mediation at an appropriate time.

**SIGNATURE**

Signature of legal representative



Capacity

Solicitor for the Plaintiffs

Date of signature

26 March 2019

**PARTY DETAILS**

**Plaintiffs**

**Barry Jones**

First Plaintiff

**Karen Jones**

Second Plaintiff

**Jorge Mayer**

Third Plaintiff

**Elisabeth Mayer**

Fourth Plaintiff

**Defendants**

**RCR Tomlinson Limited ACN 008 898 486  
(Administrators Appointed)**

First Defendant

**Paul Joseph Dalglish**

Second Defendant

**Bruce Maxwell James**

Third Defendant

