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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 12/01/2024 4:21:15 PM AEDT
Date Accepted for Filing: 12/01/2024 4:24:22 PM AEDT
File Number: VID176/2022
File Title: LEO TONER v CUDECO LIMITED (RECEIVERS AND MANAGERS APPOINTED)(IN LIQUIDATION) ACN 000 317 251 & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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Form 17

Rule 8.05(1)(a)

Amended pursuant to Orders 3 and 9(b) of the Orders of Justice Murphy made on 21 December 2023

AMENDED STATEMENT OF CLAIM

No. VID 176 of 2022

Federal Court of Australia

District Registry: Victoria

Division: General

LEO TONER

Applicant

**CUDECO LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)
(ACN 000 317 251) & ors according to the schedule**

Respondents

Filed on behalf of Leo Toner
Lawyers for the Applicant
Banton Group
Telephone: (02) 8076 8090
Email: Elliott.smith@bantongroup.com.au
Joint Address for Service
Level 12, 60 Martin Place
Sydney NSW 2000

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NOTE AS TO TERMINOLOGY

In this Statement of Claim, the following conventions are used in referring to financial results:

- 1 FY2016, FY2017, etc. refer to the financial years ended 30 June 2016, 30 June 2017, etc.;
- 2 1H and 2H refer to the first half and second half of the relevant financial year respectively;
- 3 1Q, 2Q etc., refer to the first quarter, second quarter etc. of the relevant financial year;
- 4 References to dollar sums are approximations, and in the case of million-dollar amounts, are approximated to the first decimal point.

I THE PARTIES

A. The Applicants and the Group Members

- 1 This proceeding is commenced as a group proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* by the Applicants on their own behalf and on behalf of all persons who or which:

- 1.1 acquired an interest in fully paid ordinary shares (**CuDeco Shares**) in CuDeco Limited (**CuDeco**) during the period between 11 April 2016 and 13 March 2018 (**Relevant Period**);

- 1.2 have suffered loss or damage by reason of the conduct of the Respondents pleaded in this Statement of Claim;

- 1.3 were not during any part of the Relevant Period, and are not as at the date of this Statement of Claim, any of the following:

- (a) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of CuDeco;

- (b) a related body corporate (as defined by s 50 of the Corporations Act) of CuDeco;
- (c) an associated entity (as defined by s 50AAA of the Corporations Act) of CuDeco;
- (d) an officer or a close associate (as defined by s 9 of the Corporations Act) of CuDeco;
- (e) a Justice, Registrar, District Registrar or Deputy District Registrar of the Federal Court of Australia or the High Court of Australia;
- (f) Sinosteel Equipment & Engineering Ltd (**Sinosteel**);
- (g) China Oceanwide International Investment Co. Limited, Oceanwide International Resources Investment Co., Limited, China Oceanwide Holdings Group Co., Ltd, Oceanwide Group Co., Ltd, Oceanwide Holdings Co., Ltd, or Zhiqlang Lu;
- (h) Rich Lead Investments Pte Ltd.; or
- (i) New Apex Asia Investment Limited.

(Group Members).

- 2 The First Applicant is a resident of the State of Queensland.
- 3 The Second Applicant is a resident of the State of Victoria.
- 4 As at the date of the commencement of this proceeding, there are more than seven Group Members.

B. CuDeco

5 The First Respondent (**CuDeco**):

- 5.1 has been and is a company registered under the Corporations Act;
- 5.2 was until 3 February 2020, a corporation listed on a financial market operated by the Australian Securities Exchange (**ASX**);
- 5.3 had and has on issue CuDeco Shares which were until 3 February 2010:
 - (a) traded on the ASX under the designation 'CDU';
 - (b) ED securities within the meaning of s 111AE of the Corporations Act;
 - (c) quoted ED securities within the meaning of s 111AM of the Corporations Act; and
 - (d) financial products within the meaning of the Corporations Act,
- 5.4 was until 3 February 2020 a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
- 5.5 was at all times during the Relevant Period, and until 3 February 2020:
 - (a) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**); and
 - (b) a mining entity and a mining producing entity within the meaning of ASX Listing Rule 19.12;
- 5.6 was until 3 February 2020, and by reason of:
 - (a) the matters in sub-paragraphs 5.1 to 5.5 above, and

(b) sections 111AP(1) and/or 674(1) of the Corporations Act,

an entity to which s 674(2) of the Corporations Act applied;

5.7 was and is a trading corporation within the meaning of the Australian Securities and Investments Commission Act 2001 (Cth) (**ASIC Act**);

5.8 has been and is a person within the meaning of:

(a) section 1041H of the Corporations Act;

(b) section 12DA of the ASIC Act; and

(c) section 18 of the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:

(i) section 131 of the *Competition and Consumer Act 2010* (Cth);
and

(ii) section 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic),

(individually, or together, the **ACL**).

6 On:

6.1 1 July 2019, Kelly-Anne Trenfield, Ian Francis and Michael Ryan were appointed as receivers and managers of CuDeco;

6.2 5 July 2019, Matthew Joiner and Jeremy Nipps were appointed as voluntary administrators (**Administrators**) of CuDeco;

6.3 30 April 2020, the creditors of CuDeco resolved that CuDeco be wound up under sections 439C and 446A of the Corporations Act, and the Administrators were appointed as liquidators of CuDeco (**Liquidators**).

C. THE CUDECO OFFICERS

7 Noel Clarence White was from 28 January 2016 until 16 February 2017, a director and the non-executive chairman of CuDeco.

8 The Third Respondent, Peter Robert Hutchison (**Hutchison**) was:

8.1 from 1 December 2004 until 11 December 2018, a director of CuDeco;

8.2 from 24 July 2015 until 19 May 2016, the interim managing director of CuDeco;
and

8.3 from 16 February 2017, the chairman of CuDeco.

9 The Fourth Respondent, Dianmin Chen (**Chen**) was:

9.1 from 14 December 2015 until 21 February 2017, a director of CuDeco; and

9.2 from 19 May 2016 until 21 February 2017, the managing director of CuDeco;

10 At all times during their appointments as directors, each of White, Hutchison and Chen were officers of CuDeco within the meaning of section 9 of the Corporations Act and Listing Rule 19.2.

D. KPMG

11 The Fourth Respondent (**KPMG**) was at all material times:

11.1 a partnership conducting business within Victoria as accountants, auditors and advisors;

11.2 operating under the partnership name “KPMG” (ABN 51 194 660 183), and under r 9.41 of the Federal Court Rules 2011, may be sued in the partnership name; and

11.3 a partnership that:

(a) included among its partners and employees practicing in Victoria persons who were registered company auditors within the meaning of s 9 and Part 9.2 of the Corporations Act; and

(b) included Mr Adam Kenneth Twemlow (**Twemlow**), who was at all material times:

(i) a partner of KPMG;

(ii) a qualified accountant and registered as an auditor under Part 9.2 of the Corporations Act, being registered auditor number 346153;

(iii) the ‘lead auditor’ within the meaning of s 324AF of the Corporations Act in relation to the audits of CuDeco for FY2016 and FY2017;

(iv) a person for the purposes of s 1041E and s 1041H of the Corporations Act;

(v) a person for the purposes of s 12DA of the ASIC Act;

(vi) a person for the purposes of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act* 2010 (Cth), as applicable pursuant to the Australian Consumer Law;

11.4 was, by reason of s 761F of the Corporations Act, a person for the purposes of Chapter 7 of the Corporations Act, such that any contravention of a provision of Chapter 7 of the Corporations Act (including s 1041E and s 1041H of the Corporations Act) that would otherwise be a contravention by KPMG is taken to have been a contravention by each partner of KPMG who:

- (a) aided, abetted, counselled or procured the relevant act or omission; or
- (b) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner); and

11.5 was governed, inter alia, by the *Partnership Act 1958* (Vic), such that each partner of KPMG (including Twemlow):

- (a) is an agent of the firm and each partner of the firm for the purposes of the business of the partnership; and
- (b) is liable jointly with the other partners for all wrongful acts or omissions of any partner acting in the ordinary course of the business of KPMG.

E. Insurers

11A By no later than 31 August 2017, CuDeco had entered into a contract of insurance (Dual Policy) with the Fifth Respondent (Dual), as agent for certain underwriters at Lloyds.

Particulars

The Dual Policy was a written contract comprising documents entitled “Dual Evolution Insurance Policy” and “Dual Evolution Directors & Officers Liability Policy Wording”, and bore policy number EVO4711811711.

Further particulars may be provided following discovery.

- 11B By no later than 31 August 2017, CuDeco had entered into a contract of insurance (AAI Excess Policy) with the Sixth Respondent, AAI Limited (AAI).

Particulars

The AAI Excess Policy was a written contract comprising documents entitled “Excess of Loss Insurance” and “Excess Policy Schedule”, and bore policy number LPX104065834.

Further particulars may be provided following discovery.

- 11C By no later than 31 August 2017, CuDeco had entered into a contract of insurance (Berkshire Hathaway Excess Policy) with the Seventh Respondent, Berkshire Hathaway Speciality Insurance Company (Berkshire Hathaway).

Particulars

The Berkshire Hathaway Excess Policy was a written contract comprising documents entitled “Excess Policy Schedule” and “Excess Policy”, and bore policy number 47-ZEP-003790-02.

Further particulars may be provided following discovery.

II CUDECO’S BUSINESS AND REGULATORY CONTEXT

A. Rocklands Mine

12 CuDeco:

- 12.1 had at all material times the benefit of mining tenements associated with the Rocklands group copper project (**Rocklands**), an open-pit copper mine located in Cloncurry, in Northwest Queensland;

Particulars

Rocklands was an open-pit copper mine, characterised as an IOCG multi-lode high grade copper-cobalt-gold deposit with associated magnetite.

In 2011 and 2012, the Queensland Government issued mining leases ML 90177, ML 90188 and ML 90219 to CuDeco, which covered Rocklands.

- 12.2 from about 2012 until about 31 August 2018, conducted mining operations at Rocklands (**Mining Operations**); and
- 12.3 from about May 2016 to about 31 August 2018, operated a mineral processing plant (**Processing Plant**) at Rocklands (**Processing Operations**).

Particulars

On 25 February 2011 and 27 May 2013, CuDeco entered an agreement with Sinosteel to design, supply and construct infrastructure at Rocklands for the processing of copper ore extracted from the mine (**Plant**).

The Plant was designed to have the capacity to process three million tonnes per annum and incorporated both three stage Primary and Tertiary Crushing and High Pressure Grinding Rollers (HPGR) circuits specifically designed to handle coarse native copper ore, a large native copper gravity circuit including jigs, spirals and tables, and standard flotation circuits and magnetic separators.

On 5 February 2016, Sinosteel held approximately 17.3 million CuDeco Shares, which constituted approximately 5.5% of the CuDeco Shares on issue.

B. CuDeco reporting requirements

B.1 Corporations Act reporting requirements

- 13 At all relevant times, CuDeco was required:
- 13.1 pursuant to s 111AO(1) and s 292 of the Corporations Act, to prepare an annual financial report;
- 13.2 pursuant to s 296 of the Corporations Act, to prepare its annual financial reports in accordance with the accounting standards (**Accounting Standards**) made by the Australian Accounting Standards Board (**AASB**);
- 13.3 pursuant to s 297 of the Corporations Act, to prepare its annual financial reports so that they gave a true and fair view of its financial position and performance; and

13.4 pursuant to s 301 of the Corporations Act, to have its financial report for each financial year audited in accordance with Part 2M.3, Division 3 of the Corporations Act and obtain an auditor's report (**Auditor's Report**),

(Statutory Reporting Obligations).

B2 Accounting Standards

14 At all material times each of:

14.1 AASB 101 "Presentation of Financial Reports";

14.2 AASB 110 "Events After the Reporting Period"; and

14.3 AASB 136 "Impairment of Assets";

were Accounting Standards made by the AASB pursuant to s 334 of the Corporations Act and were in force during the whole of the Relevant period.

15 At all material times AASB 101:

15.1 was the accounting standard employed to determine the manner in which CuDeco prepared its financial statements;

15.2 required that, or to the effect that:

(a) financial statements shall present fairly the financial position, financial performance and cash flows of an entity;

(b) fair presentation required the faithful representation of the effects of transactions, other events and conditions in accordance with the definitions and recognition criteria for assets, liabilities, income and

expenses set out in the Framework for the Preparation and Presentation of Financial Statements (**Framework**); and

- (c) management prepare financial statements on a going concern basis, unless management either intends to liquidate the entity or to cease trading, or has no realistic alternative but to do so.

Particulars

AASB 101, paragraph 15 and 25.

Framework, paragraphs 83, 85, 92 and 93.

16 At all material times, AASB 110 ““Events After the Reporting Period”:

16.1 was the accounting standard employed to determine when an entity should adjust its financial statements for events after a reporting period;

16.2 defined:

(a) *events after the reporting period* as those events, favourable and unfavourable, that occur between the end of the reporting period and the date when the financial statements are authorised for issue, which include adjusting events after the reporting period;

(b) *adjusting events* as those events after the reporting period that provide evidence of conditions that existed at the end of the reporting period;

16.3 required that an entity adjust the amounts in its financial statements to reflect adjusting events after the reporting period.

Particulars

AASB 110, paragraphs 3 and 10.

17 At all material times, AASB 136 “Impairment of Assets”:

17.1 was the applicable accounting standard employed to determine the procedure that an entity applied to ensure that its assets were carried at no more than their recoverable amount;

17.2 defined:

- (a) carrying amount as the amount at which an asset is recognised after deducting any accumulated depreciation and accumulated impairment losses;
- (b) *a cash generating unit (CGU)* as the smallest identifiable group of assets that generates cash inflows that are largely independent of the cash inflows from other assets or a group of assets; and
- (c) *recoverable amount of an asset or CGU* as the higher of its fair value less costs of disposal, and its value in use.

Particulars

AASB 136, paragraph 6.

17.3 required that or to the effect that, inter alia:

- (a) an entity assesses at the end of each reporting period whether there was any indication that an asset may be impaired, and if any such impairment existed, the entity estimate the recoverable amount of the asset;
- (b) the recoverable amount be determined for an individual asset, unless the asset did not generate cash inflows that were largely independent of those from other assets or groups of assets, in which case

recoverable amount was determined for the CGU to which the asset belonged;

- (c) the recoverable amount of a CGU be determined as the higher of a CGU's fair value less costs of disposal, and its value in use;
- (d) if the carrying amount of the CGU exceeded the recoverable amount of the unit, the entity recognise an impairment loss equal to the difference between the carrying amount and the recoverable amount;
- (e) any such impairment loss be allocated to reduce the carrying amount of the assets of the CGU in the following order:
 - (i) first, to reduce the carrying amount of any goodwill allocated to the CGU; and
 - (ii) then, to the other assets of the CGU pro-rata on the basis of the carrying amount of each asset in the CGU;
- (f) the impairment loss in (d) was required to be recognised immediately in the profit or loss statements of the entity.

Particulars

AASB 136, paragraphs 9, 60, 66, and 104.

B.3 ASX Listing Requirements

18 At all material times:

18.1 the ASX was a market operator of a listing market, namely the ASX's financial market, in relation to CuDeco Shares for the purposes of s 674(1) of the Corporations Act (**Market**).

18.2 the Market operated by the ASX was a financial market for the purposes of s 767A of the Corporations Act.

18.3 Rule 4.5 of the ASX Listing Rules provided that an entity registered in Australia was required to give the ASX a copy of its annual financial report:

- (a) when it lodged its annual financial report with the Australian Securities and Investments Commission; and
- (b) in any event, no later than 3 months after the end of the accounting period.

18.4 as to continuous disclosure:

- (a) Rule 3.1 of the ASX Listing Rules provided that once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must, unless the exceptions in ASX Listing Rule 3.1A apply, immediately tell the ASX that information;
- (b) Rule 5.1 of the ASX Listing Rules provided that a "mining producing" entity was to give the ASX a report containing details of its mining production and development activities and exploration activities no later than 1 month after the end of each quarter;
- (c) Rule 5.21 of the ASX Listing Rules provided that a mining entity must include in its annual report a mineral resources and ore reserves statement (**Annual Reserves Statement**) which included:
 - (i) a summary of the results of the entity's annual review of its ore reserves;

- (ii) the entity's ore reserves holdings as at the end of the relevant financial year;
 - (iii) a comparison of the entity's ore reserves holdings as at the end of the relevant financial year against the previous year, including an explanation of any material change from the previous year;
- (d) Rule 5.24 of the ASX Listing Rules provided that an Annual Reserves Statement must:
- (i) include a statement that it is a statement that it is based on, and fairly represents, information and supporting documentation prepared by a Competent Person or persons;
 - (ii) include a statement that the Annual Reserves Statement as a whole has been approved by a named Competent Person or persons;
 - (iii) only be issued with the prior written consent of the Competent Person or persons that approved the Annual Reserves Statement as to the form and context in which the Annual Reserves Statement appears in the annual report,

(ASX Reporting Obligations).

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

III. CASE AGAINST CUDECO AND ITS OFFICERS

A. Ore Reserve Representations

A.1 Maiden ore reserve estimate

20 On 11 December 2015, CuDeco published and lodged with the ASX an announcement titled “Rocklands Maiden Ore Reserve Estimate” (**2015 Maiden Ore Reserves Announcement**), which was published on behalf of the Board of CuDeco.

21 Amongst other things, by the 2015 Maiden Ore Reserves Announcement, CuDeco and the Board of CuDeco, including Chen and Hutchison, stated to the market that:

21.1 the total ore reserve (**Ore Reserve**) at Rocklands was 28 million tonnes, at 0.9% species copper equivalent, comprising:

- (a) a proved ore reserve of 23 million tonnes, at 0.97% species copper equivalent; and
- (b) a probable ore reserve of 5 million tonnes, at 0.58% species copper equivalent;

Particulars

The Ore Reserve was said to be made up of 0.71% copper, 0.14 grams per tonne of gold, 357 parts per million cobalt, and 6.7% magnetite;

The proved ore reserve was said to be made up of 0.77% copper, 0.15 grams per tonne of gold, 382 parts per million cobalt, and 7.1% magnetite; and

The probable ore reserve was said to be made up of 0.45% copper, 0.11 grams per tonne of gold, 232 parts per million cobalt, and 5.0% magnetite.

So far as the Applicants are able to say prior to the filing of expert reports, ‘species copper equivalent’:

- A. was designated as ‘Spec_CuEq’;
- B. included reserves of copper, gold, cobalt and magnetite; and
- C. was derived in part from the November 2013 resource estimate prepared by Mining Associates Pty Ltd, but adjusted to take into account metals pricing and forex, species based recoveries and the resource cut to final working pit design.

21.2 within the Ore Reserve, there was:

- (a) high grade reserve of 10 million tonnes at 1.61% species copper equivalent; and
- (b) low grade reserve of 17 million tonnes at 0.48% species copper equivalent,

(the matters in 21.1 and 21.2 being the **2015 Ore Reserves Representations**),

Particulars

The 2015 Ore Reserves Representations were express and contained in the 2015 Maiden Ore Reserves Announcement.

21.3 the 2015 Ore Reserves Representations were based on the **2015 Ore Reserves Statement** which was:

- (a) prepared by Australian Mine Design & Development Pty Ltd ACN 010 977 330 (**AMDAD**) and dated 9 December 2015; and
- (b) itself was based on:
 - (i) a November 2013 mineral resource estimate of Rocklands prepared by Mining Associates Pty Ltd;
 - (ii) the 'Stage-1, 10-year mine plan' (**Rocklands Plan**), prepared by AMDAD as part of the '2015 Rocklands Feasibility Study' that was intended to be released shortly after the Maiden Ore Reserves Announcement;
- (c) attached to the 2015 Maiden Ore Reserves Announcement.

21.4 the Feasibility Study and the reserve estimate (containing the Ore Reserve) showed that Rocklands was technically and economically viable for the metals prices assumed (**2015 Viability Representation**).

Particulars

The 2015 Viability Representation was express, and contained in the 2015 Maiden Ore Reserve Announcement, pp.1-2.

A.2 Announcement of rights issue and publication of Feasibility Study

22 On 5 February 2016:

22.1 CuDeco published and lodged with the ASX an announcement that stated that:

- (a) CuDeco would issue a prospectus with respect to a non-renounceable rights issue to eligible shareholders, on the basis of one new fully paid share for every four shares held, at an issue price of \$0.80 per share, to raise approximately \$63.1 million (**Rights Issue**);
- (b) the Rights Issue would be available to all registered shareholders who held CuDeco Shares at 7:00 pm AWST on 11 February 2016;
- (c) the funds raised by the Rights Issue would be used, amongst other things, to complete the construction and commissioning of Rocklands;
and
- (d) the Rights Issue was intended to close on 26 February 2016,

22.2 lodged with the Australian Securities and Investments Commission (**ASIC**) a prospectus for the Rights Issue pursuant to s 718 of the Corporations Act (**Rights Issue Prospectus**).

- 23 On 12 February 2016, CuDeco published and lodged with the ASX an announcement that stated that ASIC had, on that day, issued an interim stop order on the Rights Issue Prospectus, and had 'raised some concerns in relation to certain disclosures in the' Rights Issue Prospectus.
- 24 On 3 March 2016, CuDeco published and lodged with the ASX an announcement titled 'Rockland Feasibility Study' (**Feasibility Study Announcement**).
- 25 By the Feasibility Study Announcement, Cudeco, and the Board of CuDeco, including Chen and Hutchinson, stated, inter alia, that or to the effect that:
- 25.1 CuDeco was releasing a feasibility study for Rocklands (**Feasibility Study**);
- 25.2 the Feasibility Study:
- (a) had been prepared by Mining Associates Pty Ltd; and
- (b) covered Rocklands;
- 25.3 on the basis of the Feasibility Study, CuDeco forecast that it would earn:
- (a) project revenue of approximately \$1,930 million (**Rocklands Revenue Representation**);
- (b) net free cashflow from operations of approximately \$630 million (**Rocklands Earnings Representation**);
- 25.4 on the basis of the Feasibility Study, the net present value of Rocklands, after tax and remaining capital expenditure, was approximately \$405 million (**Rocklands NPV Representation**);

25.5 the Feasibility Study confirmed that CuDeco's modelling was appropriate, and Rocklands was both viable and would generate considerable cashflow from this point forward (**2016 Viability Representation**).

Particulars

The Rocklands Revenue Representation, Rocklands Earnings Representation, Rocklands NPV Representation and 2016 Viability Representation were express and contained in the Feasibility Study Announcement and the Feasibility Study.

26 The Feasibility Study Announcement attached a copy of the Feasibility Study, which repeated the:

26.1 2015 Ore Reserves Representations;

26.2 Rocklands Revenue Representation;

26.3 Rocklands Earnings Representation; and

26.4 Rocklands NPV Representation.

Particulars

The Feasibility Study:

- A. was dated 3 March 2016; and
- B. was based in part on the estimate of the ore reserve contained in the Ore Reserves Statement.

The 2015 Ore Reserves Representation appeared on pages 7 and 8 of the Feasibility Study.

The Rocklands Revenue Representation, Rocklands Earnings Representation and Rockland NPV Representation appeared on page 25, of the Feasibility Study.

A.3 Replacement Prospectus

27 On 11 April 2016, CuDeco published and lodged with the ASX a replacement prospectus for the Rights Issue (**Replacement Prospectus**) which:

27.1 stated that it was issued on 8 April 2016, and replaced the Prospectus;

27.2 contained an offer to Eligible Shareholders and had been prepared pursuant to s 710 of the Corporations Act;

Particulars

Replacement Prospectus, page 2.

27.3 attached a copy of the 2015 Maiden Ore Reserve Announcement, and the 2015 Ore Reserves Statement;

27.4 attached a copy of the Feasibility Study;

27.5 stated that:

(a) CuDeco was not aware of any new data or information that materially affected the information included in, inter alia, the 2015 Ore Reserves Statement; and

(b) that all material assumptions and technical parameters underpinning the estimates in the 2015 Ore Reserves Statement continued to apply, and had not materially changed,

(Replacement Prospectus Assumptions Statement).

Particulars

Replacement Prospectus, pages 3 and 4.

Replacement Prospectus, page 69 stated that each Director of CuDeco had consented to the lodgement of the Replacement Prospectus with ASIC.

28 By the matters in paragraph 27, Cudeco and each of Chen, and Hutchison repeated the:

28.1 2015 Ore Reserves Representations;

28.2 Rocklands Revenue Representation;

28.3 Rocklands Earnings Representation; and

28.4 Rocklands NPV Representation,

(each being a **Prospectus Representation**).

Particulars

The representations were express, and in the case of the:

- A. 2015 Ore Reserves Representations, appeared on page 1, 3, 5 and 6 of the copy of the 2015 Ore Reserve Announcement, pages 15 and 17 of the Ore Reserves Statement, and pages 7 and 8 of the Feasibility Study that were attached to the Replacement Prospectus; and
- B. Rocklands Revenue Representation, Rocklands Earnings Representation, and Rocklands NPV Representation appeared on page 25 of the copy of the Feasibility Study attached to the Replacement Prospectus.

29 On 11 April 2016, CuDeco published and released to the ASX an announcement that stated, amongst other things, that:

29.1 on 8 April 2016, ASIC had lifted the stop order on the Rights Issue; and

29.2 the Rights Issue would proceed so that it would close on 3 May 2016.

A.4 Quarterly Reports

30 On 29 April 2016, CuDeco published and released to the ASX its quarterly report for the period ending on 31 March 2016, and pursuant to the requirement in Listing Rule 5.1 (**3Q16 Quarterly Report**).

31 By the 3Q16 Quarterly Report, CuDeco, Chen, and Hutchison repeated the:

31.1 2015 Ore Reserves Representations;

31.2 Rocklands Revenue Representation;

31.3 Rocklands Earnings Representation; and

31.4 Rocklands NPV Representation.

Particulars

The representations were express, and in the case of the:

- A. 2015 Ore Reserves Representations, appeared on page 13; and
- B. Rocklands Revenue Representation, Rocklands Earnings Representation, and Rocklands NPV Representation appeared on page 4, of the 3Q2016 Quarterly Report.

32 On 31 July 2016, CuDeco published and released to the ASX its quarterly report for the period ending on 30 June 2016, and pursuant to the requirement in Listing Rule 5.1 (**4Q16 Quarterly Report**).

33 By the 4Q16 Quarterly Report, CuDeco, Chen, and Hutchison repeated the 2015 Ore Reserves Representations (**4Q16 Quarterly Report Representations**).

Particulars

The representations were express and appeared on page 11 of the 4Q16 Quarterly Report.

The 4Q16 Quarterly Report stated that it was made on behalf of the Board.

A.5 Implied representations

34 At each time that they made, and repeated, the 2015 Ore Reserves Representations, Rocklands Revenue Representation, Rocklands Earnings Representation, and Rocklands NPV Representation, CuDeco, Chen, and Hutchison represented to the Market that:

34.1 all necessary and reasonable investigations had been made before making any statement or representation as to the state of Cudeco's business and accounts and there were reasonable grounds for making, or maintaining those statements or representations; and

34.2 no information had come to their attention that meant that there was any material risk that those statements or representations no longer had reasonable grounds,

(Rocklands Implied Representations).

35 Further, by reason of the matters pleaded in paragraph 27.5, on 11 April 2016, CuDeco, Chen and Hutchison represented to the market of potential investors in CuDeco Shares that:

35.1 there were reasonable grounds for making the Prospectus Representations; and

35.2 it was possible, with the information available, for Cudeco to make a reasonably reliable assessment of the total ore reserves of Rocklands,

(together, the Prospectus Basis Representations).

Particulars

Each of Hutchison's and Chen's making of the Replacement Prospectus Basis Representations is to be inferred from:

- A. their position as directors of CuDeco; and
- B. the provision of the consent alleged in paragraph 27.5.

36 CuDeco, Chen, and/or Hutchison, did not wholly correct or qualify the:

36.1 2015 Ore Reserves Representations;

36.2 2015 Viability Representation;

36.3 Rocklands Revenue Representation;

36.4 Rocklands Earnings Representation;

36.5 Rocklands NPV Representation;

36.6 2016 Viability Representation;

36.7 4Q16 Quarterly Report Representations;

36.8 Rocklands Implied Representations;

(each of 36.1 to 36.8 being **Rocklands Representations**),

36.9 Prospectus Representations; or

36.10 Prospectus Basis Representations,

(each of 36.9 and 36.10 being **Rocklands Prospectus Representations**),

which were accordingly continuing representations which were disseminated continuously, to the extent that they remained unqualified and uncorrected, until 18 March 2018.

Particulars

The Applicants refer to the December Partial Disclosure pleaded and defined in paragraph 161 below, and the March Partial Disclosure pleaded and defined in paragraph 163 below.

37 The making of, and omissions to correct or qualify, the Rocklands Representations and Rocklands Prospectus Representations was:

37.1 conduct in trade or commerce;

37.2 in relation to:

(a) a financial product within the meaning of sub-sections 763A(1)(a) and 764A(1)(a) of the Corporations Act, namely CuDeco Shares; and

(b) a financial service within the meaning of:

(i) sections 766A(1)(a) and 766B(1) of the Corporations Act; and

(ii) section 12BAB(1)(a) of the ASIC Act;

37.3 as to the Rocklands Revenue Representation and Rocklands Earnings Representation (including their repetition as part of the Prospectus Representations), made in relation to future matters within the meaning of:

(a) section 769C of the Corporations Act;

(b) section 12BB of the ASIC Act; and

(c) section 4 of the ACL.

B. The True Position

38 By no later than the start of the Relevant Period:

38.1 CuDeco had not secured commercially acceptable 'offtake' arrangements in respect of Rocklands' cobalt and magnetite deposits, which was necessary to meet economic viability thresholds for the processing of ore mined from those deposits; and

38.2 CuDeco had not completed or commissioned the Processing Plant's magnetite and pyrite/cobalt circuits,

((38.1) and (38.2) being **Magnetite and Cobalt Information**).

Particulars

The Applicants refer to the statements in paragraph (i) of the announcement published and released to the ASX by CuDeco on 27 December 2017 (**December 2017 Announcement**).

Given that commercially acceptable offtake arrangements in respect of Rocklands' cobalt and magnetite deposits had not been secured as at May 2016, it is to be inferred they had not been secured at any earlier points in time.

Given that the Processing Plant's magnetite and pyrite/cobalt circuits had not been completed or commissioned as at May 2016, it is to be inferred they had not been secured at any earlier points in time.

39 Further, by no later than the start of the Relevant Period, if cobalt and magnetite deposits were excluded from the Ore Reserve because they were not economically viable to exploit, the remaining Ore Reserve which was economically viable to exploit was significantly less than the 28 million tonnes at 0.9% species copper equivalent estimated in the 2015 Maiden Ore Reserve Announcement and the Feasibility Study (**Reduced Ore Reserve Information**).

Particulars

The Applicants refer to the statements in paragraph (i) of the December 2017 Announcement.

Non-inclusion of cobalt and magnetite reserves reduced the Ore Reserve by ~11.7 million tonnes (a ~42% reduction).

40 On or before a date not presently known to the Applicants, but in any event before 11 April 2016, CuDeco had experienced:

40.1 operational 'teething issues' in respect of the Processing Plant and associated technical processes and procedures in respect of the native copper processing circuit, which affected the key economic assumptions which underpinned the economic modelling of the various ore types; and

40.2 performance and reliability issues associated with the fixed crusher plant which impacted upon the consistent availability of ore to the Processing Plant, and associated impediments to the efficient processing of the various ore types through the Processing Plant,

(Processing Plant Information).

41 On a date in May 2016 not presently known to the Applicants, but in any event on or before 31 May 2016:

41.1 CuDeco introduced an update to the Rocklands Plan (**Updated Mine Plan**), as a consequence of a number of factors which were inconsistent with, or which meant that CuDeco was unable to meet the requirements of, the key assumptions underpinning the 2015 Ore Reserves Statement;

41.2 the factors in 41.1 included:

(a) the Magnetite and Cobalt Information; and

(b) the Processing Plant Information,

(the matters in 41.1 and 41.2 being the **Mine Plan Information**).

Particulars

The Applicants refer to the statements in paragraph (i) of the December 2017 Announcement.

42 By reason of the matters in paragraphs 38 to 40, and/or 41, by no later than 11 April 2016, further or in the alternative 31 May 2016, it was likely, or there was at least a material risk, that:

42.1 the revenue from Rocklands would be materially less than the Rocklands Revenue Representation;

42.2 the earnings from Rocklands would be materially less than the Rocklands Earnings Representation; and

42.3 the net present value of Rocklands was materially less than the Rocklands NPV Representation,

(together, the **Financial Performance Information**).

Particulars

The Applicants refer to and repeat paragraphs 38 to 41 above, and the particulars to those paragraphs.

The financial forecast included as part of the Feasibility Study was based on the 2015 Ore Reserves Statement and, all other things being equal, a material reduction in the Ore Reserve would result in a material reduction in the revenue earned by CuDeco from, and a material reduction in the value of Rocklands.

Further particulars may be provided following discovery and the receipt of expert reports.

C. Contraventions from April 2016

C.1 April 2016 Continuous Disclosure Contraventions

43 The Magnetite and Cobalt Information, the Reduced Ore Reserve Information and the Processing Plant Information each constituted information that:

- 43.1 CuDeco had (within the meaning of s 674(2) of the Corporations Act) by no later than 11 April 2016;

Particulars

The Magnetite and Cobalt Information was actually known by Hutchison no later than 11 April 2016, which knowledge is to be inferred from the fact that he was responsible for securing commercially acceptable offtake arrangements in respect of the cobalt and magnetite deposits at Rocklands. The Magnetite and Cobalt Information was actually known by Chen no later than the time he became managing director on 19 May 2016, which knowledge is to be inferred from the fact that he was then responsible for securing commercially acceptable offtake arrangements in respect of the cobalt and magnetite deposits at Rocklands.

The Reduced Ore Reserve Information was actually known by Hutchison no later than 11 April 2016, which knowledge is to be inferred from his knowledge of the 2015 Ore Reserve Statement in which the cobalt and magnetite deposits comprised a material portion of the Ore Reserve, such that exclusion of those deposits would result in a material reduction to the Ore Reserve disclosed in the 2015 Ore Reserve Statement. The Reduced Ore Reserve Information was actually known by Chen no later than the time he became managing director on 19 May 2016, which knowledge is to be inferred from his knowledge of the 2015 Ore Reserve Statement in which the cobalt and magnetite deposits comprised a material portion of the Ore Reserve, such that exclusion of those deposits would result in a material reduction to the Ore Reserve disclosed in the 2015 Ore Reserve Statement.

The Processing Plant Information was actually known by Hutchison no later than 11 April 2016, which knowledge is to be inferred from the fact that as Interim Managing Director he was responsible for the operational performance of the Processing Plant. The Processing Plant Information was actually known by Chen no later than the time he became managing director on 19 May 2016, which knowledge is to be inferred from the fact that as Managing Director he was responsible for the operational performance of the Processing Plant.

Further, the directors of CuDeco ought reasonably to have had the Magnetite and Cobalt Information and the Reduced Ore Reserve Information and the Processing Plant Information, because:

- A. CuDeco had made announcements to the ASX concerning its ore reserves, and the financial feasibility of Rocklands, which were made on behalf of the board;
- B. the directors of CuDeco had provided their consent to the lodgement and publication of the Replacement Prospectus; and
- C. the Magnetite and Cobalt Information, Reduced Ore Reserve Information, and Processing Plant Information affected the continued reliability of those announcements.

Further particulars may be provided following discovery.

43.2 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act;

43.3 a reasonable person would expect, if it were generally available, to have a material effect on the price or value of CuDeco Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act; and

43.4 in the premises in sub-paragraphs 43.1 to 43.3, by the operation of Listing Rule 3.1, CuDeco was obliged to tell the ASX by no later than 11 April 2016.

44 The Mine Plan Information constituted information that:

44.1 CuDeco had (within the meaning of s 674(2) of the Corporations Act) by no later than the date pleaded in paragraph 41;

Particulars

The Mine Plan Information was actually known by Hutchison and Chen, which knowledge is to be inferred from the statement in the December 2017 Announcement that CuDeco's executive management team introduced a revised mine plan in May 2016, and each of Hutchison and Chen were managing directors of CuDeco during May 2016.

Further particulars may be provided following discovery.

44.2 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act;

44.3 a reasonable person would expect, if it were generally available, to have a material effect on the price or value of CuDeco Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act; and

44.4 in the premises in sub-paragraphs 44.1 to 44.3, by the operation of Listing Rule 3.1, CuDeco was obliged to tell the ASX by no later than the date pleaded in paragraph 44.

45 The Financial Performance Information constituted information that:

45.1 CuDeco had (within the meaning of s 674(2) of the Corporations Act) by no later than 11 April 2016, alternatively the date pleaded in paragraph 41;

Particulars

The Financial Performance Information was actually known by Hutchison and Chen, which knowledge is to be inferred from their knowledge of the Magnetite and Copper Information and the Reduced Ore Reserve Information and the Processing Plant Information (and the particulars to paragraph 43 are repeated) and the Mine Plan Information (and the particulars to paragraph 44 are repeated).

Further particulars may be provided following discovery.

45.2 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act;

45.3 a reasonable person would expect, if it were generally available, to have a material effect on the price or value of CuDeco Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act; and

45.4 in the premises in sub-paragraphs 45.1 to 45.3, by the operation of Listing Rule 3.1, CuDeco was obliged to tell the ASX by no later than 11 April 2016, alternatively the date pleaded in paragraph 44.

46 CuDeco:

46.1 did not tell the ASX the Magnetite and Cobalt Information, the Reduced Ore Reserve Information, the Processing Plant Information, the Mine Plan Information or the Financial Performance Information at any time prior to 27 December 2017, when it was partially disclosed, alternatively at any time prior to 22 March 2018, when it was partially disclosed;

46.2 in the premises in sub-paragraph 46.1, contravened ASX Listing Rule 3.1; and

46.3 in the premises in sub-paragraphs 46.1 and 46.2, contravened s 674(2) of the Corporations Act;

(Rocklands Continuous Disclosure Contraventions).

C.2 *Misleading or deceptive conduct*

47 By reason of the matters in:

47.1 paragraphs 38 to 40 and 42, by no later than 11 April 2016;

47.2 alternatively, paragraphs 38 to 42, by no later than 31 May 2016,

CuDeco and the Board of CuDeco including Chen and Hutchison did not have reasonable grounds for making or maintaining the 2015 Ore Reserves Representation and the 2015 Viability Representation and the 2016 Viability Representation, and those representations were misleading or deceptive or likely to mislead or deceive.

Particulars

The Applicants rely on s 769C of the Corporations Act, s 12BB of the ASIC Act and s 4 of the ACL.

48 Further or in the alternative, by reason of the matters in:

48.1 paragraphs 38 to 40 and 42, by no later than 11 April 2016;

48.2 alternatively, paragraphs 38 to 42, by no later than the date pleaded in paragraph 41,

CuDeco and the Board of CuDeco including Chen and Hutchison did not have reasonable grounds for making, or maintaining, the Rocklands Revenue Representation, Rocklands Earnings Representation and Rocklands NPV

Representation, and those representations were misleading or deceptive or likely to mislead or deceive.

Particulars

The Applicants rely on s 769C of the Corporations Act, s 12BB of the ASIC Act and s 4 of the ACL.

49 In the premises pleaded in paragraphs 47 and 48, by making, further or in the alternative maintaining and not correcting, the Rocklands Representations, CuDeco, Chen and/or Hutchinson engaged in conduct that was misleading or deceptive or that was likely to mislead or deceive in contravention of:

49.1 section 1041H(1) of the Corporations Act;

49.2 section 12DA(1) of the ASIC Act; further or alternatively

49.3 section 18 of the ACL,

(together and severally, the **Rocklands Misleading Conduct Contraventions**).

C.3 *Rocklands Representations - false or misleading conduct contraventions*

50 By reason of the matters in:

50.1 paragraphs 38 to 40 and 42, by no later than 11 April 2016;

50.2 alternatively, paragraphs 38 to 42, by no later than the date pleaded in paragraph 41,

the 2015 Ore Reserves Representation and the 2015 Viability Representation and the 2016 Viability Representation were false in a material particular or materially misleading.

51 Further or in the alternative, by reason of the matters in:

51.1 paragraphs 38 to 39 and 42, by no later than 11 April 2016;

51.2 alternatively, paragraphs 38 to 42, by no later than the date pleaded in paragraph 41,

each of the Rocklands Revenue Representation, Rocklands Earnings Representation and Rocklands NPV Representation were false in a material particular or materially misleading.

52 Each of the Rocklands Representations were statements or information that were or were likely to:

52.1 induce persons in this jurisdiction to dispose of or acquire CuDeco Shares; and/or

52.2 have the effect of increasing, reducing, maintaining or stabilising the price of trading in CuDeco Shares.

Particulars

These matters are to be inferred from the matters in paragraphs 57, 76, and 95 below.

Further particulars may be provided following discovery and the receipt of expert reports.

53 By reason of the matters in paragraphs 43.1, 44.1 and 45.1, at the time when the Rocklands Representations were disseminated as pleaded in paragraphs 24 to 36 above, CuDeco, Chen and/or Hutchison ought reasonably to have known that the Rocklands Representations were materially misleading or that they were false in a material particular.

Particulars

The particulars to paragraphs 43.1, 44.1 and 45.1 are repeated.

54 By reason of the matters in paragraphs 50 to 53 above, by making the Rocklands Representations CuDeco, Chen and/or Hutchison made statements, or disseminated information, that were or was false in a material particular or materially misleading within the meaning of:

54.1 section 1041E(1) of the Corporations Act;

54.2 section 12DB(1)(a) of the ASIC Act; further or alternatively

54.3 section 29(1)(b) of the ACL.

(Rocklands False Statement Contraventions).

C.4 Prospectus Contraventions

55 By reason of the matters in paragraphs 38, 39, 41 and 42:

55.1 the Prospectus Representations were false;

55.2 in the alternative to paragraph 55.1, CuDeco did not have reasonable grounds for making the Prospectus Representations so far as those representations repeated the:

(a) Rocklands Revenue Representation;

(b) Rocklands Earnings Representation; and

(c) Rocklands NPV Representation,

and therefore, did not have reasonable grounds for making those statements within the meaning of s 728(2) of the Corporations Act;

55.3 by reason of the matters in paragraphs 55.1 and 55.2, the Replacement Prospectus contained misleading or deceptive statements in contravention of s 728 of the Corporations Act,

(Prospectus Misleading Statement Contraventions).

56 Further, or alternatively, by reason of the matters in paragraphs 38, 39, 40 and 42:

56.1 the Prospectus omitted to disclose each of the Magnetite and Cobalt Information, Processing Plant Information, the Reduced Ore Reserve Information and the Financial Performance Information, being information that:

- (a) investors and their professional advisers would reasonably require to make an informed assessment of the assets and liabilities, financial position and performance, profits and losses and prospects of CuDeco; and
- (b) information, which was actually known, or, in the circumstances ought reasonably to have been obtained by making enquiries by CuDeco, Chen and/or Hutchison,

Particulars

The particulars to paragraphs 43.1, 44.1 and 45.1 are repeated.

56.2 by reason of which the Replacement Prospectus omitted material required to be disclosed by s 710 of the Corporations Act in contravention of s 728 of the Corporations Act.

(Prospectus Omission Contraventions).

D. Market effects of Rocklands Contravening Conduct

57 In the period from 11 April 2016, further or in the alternative 31 May 2016, to the end of the Relevant Period, the:

57.1 Rocklands Continuous Disclosure Contraventions;

57.2 Rocklands Misleading Conduct Contraventions;

57.3 Rocklands False Statement Contraventions;

57.4 Prospectus Misleading Statement Contraventions;

57.5 Prospectus Omission Contraventions,

(together and severally, **Rocklands Contravening Conduct**) caused the traded price for CuDeco Shares to be materially higher during the Relevant Period than:

- (a) their true value; or
- (b) the price that would have existed if the Rocklands Contravening Conduct had not occurred,

(Rocklands Inflation).

Particulars

The Rocklands Inflation is to be inferred from:

- A. the characteristics of the Market set out in paragraph 165 below;
- B. the fact that the Magnetite and Cobalt Information, Reduced Ore Reserve Information, Processing Plant Information, Mine Plan Information and Financial Performance Information was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of CuDeco Shares;
- C. the fact that each of the Rocklands Representations and Rocklands Prospectus Representations was a representation that a reasonable person would expect to have a material effect on the price or value of CuDeco Shares; and
- D. the movements in the traded price of CuDeco Shares following the December 2017 Partial Disclosure set out in paragraph 161 below.

Further particulars will be provided following discovery and the receipt of expert reports.

E. October/November 2016 Representations

E.1 1Q17 Quarterly Report

58 On 31 October 2016, CuDeco published and released to the ASX its quarterly report for the period ending on 30 June 2016, and pursuant to the requirement in Listing Rule 5.1 (**1Q17 Quarterly Report**).

59 By the 1Q17 Quarterly Report, CuDeco and Chen and Hutchison repeated the 2015 Ore Reserves Representations (**1Q17 Ore Reserves Representation**).

Particulars

The representations were express and appeared in the 1Q17 Quarterly Report.

E.2 FY2016 Annual Report

60 On 17 November 2016, at the time of publishing and releasing to the ASX the CuDeco annual report (**FY2016 Annual Report**) and financial reports (**FY2016 Financial Report**) for FY2016:

60.1 CuDeco, and Chen repeated and thereby reaffirmed the 2015 Ore Reserves Representation (**FY2016 Annual Report Ore Reserves Representation**);

Particulars

The reaffirmation of the 2015 Ore Reserve Representations was express, and in the case of the representation by:

- A. Chen, was made in the managing director's report on page 8 of the FY2016 Annual Report; and
- B. CuDeco, was made in the reproduction in the Joint Ore Reserves Committee (**JORC**) statement that appeared from page 82-83 of the FY2016 Annual Report.

60.2 CuDeco, Chen and Hutchison stated in the FY2016 Financial Report that, or to the effect that:

- (a) CuDeco's non-current assets included mining assets of approximately \$352.4 million, which were made up of:
 - (i) property, plant and equipment worth approximately \$213.1 million; and
 - (ii) development costs of approximately \$139.2 million,
- (b) CuDeco had recognised an impairment loss of its mining assets in FY2016 (**FY2016 Impairment**) of approximately \$99.3 million (**FY2016 Annual Report Impairment Statement**),

Particulars

The FY2016 Impairment was constituted of an impairment of approximately:

- A. \$59.8 million for property, plant and equipment; and
- B. \$39.5 million for development costs (FY2016 Annual Report, page 76);

Note 27 to the FY2016 Annual Report stated, amongst other things, that:

- A. as at 30 June 2016, CuDeco had identified an unfavourable impact due to delay in start date of full production as an internal indicator of impairment;
- B. it had prepared a valuation of Rocklands, which it identified as a CGU for the purposes of AASB 136, using a fair value less costs of disposal discounted cash flow model (**Fair Value Assessment**);
- C. the key assumptions to which that Fair Value Assessment was most sensitive included:
 - a. forecast commodity prices, including copper, gold, silver, cobalt and magnetite;
 - b. a ramp up of production, timing, and 'appropriate level of recoveries achieved'; and
 - c. a discount rate of 8%;
- D. the recoverable amount of the Rocklands CGU was determined based on the life of the mine of 10 years, and calculated based on CuDeco's existing resource statement and its existing mine plan, (FY2016 Annual Report, page 75).

60.3 CuDeco, Chen and Hutchison stated that the financial statements that formed part of the FY2016 Annual Report had been prepared in accordance with the Corporations Act and Accounting Standards, and gave a true and fair view of CuDeco's financial position as at 30 June 2016 and of its performance for the financial year ended that date (**FY2016 Financial Report Representations**).

Particulars

The statements in 60.3 were express and were made:

- A. in note 2 to the FY2016 Financial Report (p 45), which stated that the financial statements had been 'prepared in accordance with Australian Accounting Standards...adopted by the Australian Accounting Standards Board and the Corporations Act 2001';
- B. by the Board of Directors of CuDeco by the resolution set out at p.84 of the FY2016 Annual Report (signed by Chen on their behalf in accordance with that resolution).

E.3 Implied Representations

61 By the 1Q17 Ore Reserves Representation, the FY2016 Annual Report Ore Reserves Representation and FY2016 Financial Report Representations, CuDeco, Chen and Hutchison represented to the Market from 17 November 2016 that:

61.1 all necessary and reasonable investigations had been made before making any statement or representation as to the state of CuDeco's business and accounts and there were reasonable grounds for making, or maintaining those statements or representations; and

61.2 no information had come to their attention that meant that there was any material risk that those statements or representations no longer had reasonable grounds, including information that:

- (a) might materially affect the 1Q17 Ore Reserves Representation or the FY2016 Annual Report Ore Reserves Representation; and

- (b) meant that the recoverable amount of the plant, property and equipment, and development costs, recognised as non-current assets in its statement of financial position, had reduced as at FY2016 in an amount greater than the FY2016 Impairment Statement; and
- (c) meant the financial reports were not prepared in accordance with the Corporations Act or the Accounting Standards or did not give a true and fair view of CuDeco's financial position and financial performance.

(FY2016 Implied Representations).

62 CuDeco, Chen and Hutchison did not wholly correct or qualify the:

62.1 1Q17 Ore Reserves Representation;

62.2 FY2016 Annual Report Ore Reserves Representation;

62.3 FY2016 Annual Report Impairment Statement;

62.4 FY2016 Financial Report Representations; or

62.5 FY2016 Implied Representations,

(FY2016 Representations) which were accordingly continuing representations which were continuously disseminated, to the extent that they remained unqualified and uncorrected, until 18 March 2018.

Particulars

The Applicants refer to the December Partial Disclosure pleaded and defined in paragraph 161 below, and the March Partial Disclosure pleaded and defined in paragraph 163 below.

63 The FY2016 Representations were:

63.1 conduct in trade or commerce;

63.2 in relation to:

- (a) a financial product within the meaning of sub-sections 763A(1)(a) and 764A(1)(a) of the Corporations Act, namely CuDeco Shares; and
- (b) a financial service within the meaning of:
 - (i) sections 766A(1)(a) and 766B(1) of the Corporations Act; and
 - (ii) section 12BAB(1)(a) of the ASIC Act; and
- (c) information that a reasonable person would expect to have a material effect on the price or value of CuDeco Shares.

Particulars

The matters in sub-paragraph (c) are to be inferred from the matters in paragraphs 76 and 95 below.

Further particulars may be provided following discovery and the receipt of expert reports.

F. True position as at October and November 2016

64 On a date in August or September 2016, of which the Applicants are not presently aware but of which CuDeco is aware, CuDeco changed the pit design of Rocklands based a new 'pit optimisation' to exclude the cobalt and magnetite reserves from its mining plan and included only copper and gold reserves (**October 2016 Information**).

Particulars

The Applicants refer to the:

- A. December 2017 Announcement; and
- B. an announcement that CuDeco published and released to the ASX on 22 March 2018 (**March 2018 Announcement**), which described a reduction in the Ore Reserve of approximately 11.7 million tonnes because of

changes and 'reoptimisations' to pit designs in September 2016 to exclude cobalt and magnetite.

- 65 By no later than 17 November 2016, and by reason of the matters in 64 above, which constituted an adjusting event after the reporting period for the purposes of AASB 110:
- 65.1 there were indications (within in the meaning of paragraph 9 of AASB136) that Rocklands was impaired;
- 65.2 the likely changes to the Ore Reserve effected by the Updated Mine Plan had reduced the fair value less costs of disposal of Rocklands in an amount greater than the FY2016 Impairment;
- 65.3 by reason of the matters in 65.2, the recoverable amount at Rocklands was less than the carrying amount of the mining assets recognised on the statement of financial position in the FY2016 Financial Report, after the FY2016 Impairment;
- 65.4 by reason of the matters in 65.2 and 65.3, the FY2016 Financial Report did not include an impairment of the Rocklands CGU equal to the difference between the carrying amount of that CGU, and its recoverable value as required by AASB136; and
- 65.5 because CuDeco did not comply with the requirement in 65.4 above, the financial statements for CuDeco:
- (a) did not give a true and fair view of its financial position; and
 - (b) did not comply with the Accounting Standards.

(FY2016 Annual Report Information).

Particulars to 65.1 to 65.5

So far as the Applicants are able to say prior to discovery and the filing of expert accounting reports, the indications in 65.1 included:

- A. those identified by CuDeco in note 27 to the financial statements included in its FY2016 Annual Report;
- B. the changes to the mining plan for Rocklands effected in May 2016, and the exclusion of magnetite and cobalt.

The recoverable amount of Rocklands was reduced by changes to the pit designs to exclude cobalt and magnetite, which reduced the ore reserve by approximately 11.7 million tonnes.

In its FY2016 Financial Report, CuDeco:

- A. recorded the carrying value of its mining assets as approximately \$352 million, made up of capitalised development costs of approximately \$139 million, and property, plant and equipment of approximately \$213 million;
- B. recorded an impairment charge on its mining assets of approximately \$99 million; and
- C. so far as the Applicants are able to say before discovery and the receipt of expert reports, did not reduce the carrying value of its mining assets in FY2016 to account for the changes in its mine plan to exclude cobalt and magnetite.

At 30 June 2016, the effect of the October 2016 Information was to reduce the recoverable amount of CuDeco's mining assets by, and CuDeco ought to have recognised an impairment charge on those assets, of at least \$218 million, which was the sum of an impairment charge of:

- A. \$33 million to reflect the reduction in value of the mining assets by reason of the change in the mine plan; and
- B. \$185 million to reflect the reduction in value of the mining assets by reason of the inability to economically mine cobalt and magnetite.

Further particulars will be provided following discovery and receipt of expert accounting reports.

G. **Contraventions from October and November 2016**

G.1 *FY2016 Continuous Disclosure Contraventions*****

66 The October 2016 Information and the FY2016 Annual Report Information constituted information that:

66.1 CuDeco had (within the meaning of s 674(2) of the Corporations Act) by, in the case of the:

- (a) October 2016 Information, no later than 31 October 2016; and

- (b) FY2016 Annual Report Information, no later than 17 November 2016.

Particulars

- (i) The October 2016 Information and FY2016 Annual Report Information related to the financial prospects of CuDeco.
- (ii) That October 2016 Information and FY2016 Annual Report Information was actually known by Chen and/or Hutchison, is to be inferred from:
 - A. the statement in the December 2017 Announcement that CuDeco's executive management team introduced a revised mine plan in May 2016, during which time Chen and Hutchison were managing directors of CuDeco; and
 - B. the statement in the March 2018 Announcement that in September 2016 the company had undertaken a 'pit optimisation', which had resulted in the exclusion of pyrite/cobalt and magnetite from the reserve, during which time Chen was managing director.
- (iii) Further, senior management of CuDeco ought reasonably to have had the October 2016 Information and FY2016 Annual Report Information because:
 - A. CuDeco had made announcements to the ASX concerning its ore reserves, and the financial feasibility of Rocklands;
 - B. the October 2016 Information and FY2016 Annual Report Information affected the continued reliability of those announcements; and
 - C. CuDeco was required by Listing Rule 5.21 to undertake an annual review of its ore reserves, and to include in its annual report, an ore reserve statement, which included a summary of its annual review and a comparison of its ore reserves from the previous year;
- (iv) Further particulars may be provided following discovery.

66.2 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act;

66.3 a reasonable person would expect, if it were generally available, to have a material effect on the price or value of CuDeco Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act; and

66.4 in the premises in sub-paragraphs 66.1 to 66.3, by the operation of Listing Rule 3.1, CuDeco was obliged to tell the ASX by no later than:

- (a) 31 October 2017 in the case of the October 2016 Information; and

- (b) 17 November 2016 in the case of the FY2016 Annual Report Information.

67 CuDeco:

67.1 did not tell the ASX the October 2016 Information or the FY2016 Annual Report Information at any time prior to 27 December 2017, when it was partially disclosed, alternatively at any time prior to 22 March 2018, when it was partially disclosed;

67.2 in the premises in sub-paragraph 67.1, contravened ASX Listing Rule 3.1; and

67.3 in the premises in sub-paragraphs 67.1 and 67.2, contravened s 674(2) of the Corporations Act,

(FY2016 Continuous Disclosure Contraventions).

G.2 FY2016 Representations – misleading or deceptive conduct

68 By reason of the matters in paragraphs 38 to 42, and 64, CuDeco and the Board of CuDeco including Chen and Hutchison did not have reasonable grounds for making or maintaining the 1Q17 Ore Reserves Representations and the FY2016 Annual Report Ore Reserves Representations, and those representations were misleading or deceptive or likely to mislead or deceive.

Particulars

The Applicants rely on s 769C of the Corporations Act, s 12BB of the ASIC Act and s 4 of the ACL.

69 Further or in the alternative, by reason of the matters in paragraphs 38 to 42, and 64 to 65, CuDeco and the Board of CuDeco including Chen, and Hutchison did not have reasonable grounds for making, or maintaining, the FY2016 Financial Report

Representations, and those representations were misleading or deceptive or likely to mislead or deceive.

Particulars

The Applicants rely on s 769C of the Corporations Act, s 12BB of the ASIC Act and s 4 of the ACL.

70 In the premises pleaded in paragraphs 68 and 69, by making the FY2016 Representations, CuDeco, and/or Chen, and/or Hutchison engaged in conduct that was misleading or deceptive or that was likely to mislead or deceive in contravention of:

70.1 section 1041H(1) of the Corporations Act;

70.2 section 12DA(1) of the ASIC Act; further or alternatively

70.3 section 18 of the ACL,

(together and severally, the **FY2016 Misleading Conduct Contraventions**).

G.3 FY2016 representations – false or misleading statement contraventions

71 By reason of the matters in paragraphs 38 to 42 and 64, the 1Q17 Ore Reserves Representations and the FY2016 Annual Report Ore Reserves Representations were false in a material particular or materially misleading.

72 Further or in the alternative, by reason of the matters in paragraphs 38 to 42 and 64 to 65, the FY2016 Financial Report Representations were false in a material particular or materially misleading.

73 Each of the FY2016 Representations were statements or information that were or was likely to:

73.1 induce persons in this jurisdiction to dispose of or acquire CuDeco Shares;
and/or

73.2 have the effect of increasing, reducing, maintaining or stabilising the price of
trading in CuDeco Shares;

Particulars

The matters in 73 are to be inferred from the matters in paragraphs 76, and 95 below.

Further particulars may be provided following discovery and the receipt of expert reports.

74 By reason of the matters in paragraphs 43.1, 44.1, 45.1 and 66.1, at the time when the FY2016 Representations were disseminated as pleaded in paragraphs 58 to 62 above, CuDeco Chen and/or Hutchison ought reasonably to have known that the FY2016 Representations were materially misleading or that they were false in a material particular.

Particulars

The particulars to paragraphs 43.1, 44.1, 45.1 and 66.1, are repeated.

75 By reason of the matters in paragraphs 71 to 74 above, CuDeco and/or Chen and/or Hutchison made statements, or disseminated information, that were or was false in a material particular or materially misleading within the meaning of:

75.1 section 1041E(1) of the Corporations Act;

75.2 section 12DB(1)(a) of the ASIC Act; further or alternatively

75.3 section 29(1)(b) of the ACL;

(FY2016 False Statement Contraventions).

H. Market effects of FY2016 Contravening Conduct

76 In the period from 31 October 2016, further or in the alternative 17 November 2016, to the end of the Relevant Period, the:

76.1 FY2016 Continuous Disclosure Contraventions;

76.2 FY2016 Misleading Conduct Contraventions; further or alternatively

76.3 FY2016 False Statement Contraventions,

(together and severally, **FY2016 Contravening Conduct**) caused the traded price for CuDeco Shares to be materially higher during the Relevant Period than:

(a) their true value; or

(b) the price that would have existed if the FY2016 Contravening Conduct had not occurred,

(FY2016 Inflation).

Particulars

The FY2016 Inflation is to be inferred from:

- A. the characteristics of the Market set out in paragraph 175 below;
- B. the fact that the October 2016 Information, the FY2016 Annual Report Information and the FY2016 Financial Report Information was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of CuDeco Shares;
- C. the fact that each of the FY2016 Representations was a representation that a reasonable person would expect to have a material effect on the price or value of CuDeco Shares; and
- D. the movements in the traded price of CuDeco Shares following the December 2017 Partial Disclosure set out in paragraph 161 below.

Further particulars will be provided following discovery and the receipt of expert reports.

I. FY2017 Representations

I.1 Quarterly report representations

77 On 31 January 2017, CuDeco published and released to the ASX its quarterly report for the period ending on 31 December 2016, and pursuant to the requirement in Listing Rule 5.1 (**2Q17 Quarterly Report**).

78 On 1 May 2017, CuDeco published and released to the ASX its quarterly report for the period ending on 31 March 2017, and pursuant to the requirement in Listing Rule 5.1 (**3Q17 Quarterly Report**).

79 By each of the:

79.1 2Q17 Quarterly Report, CuDeco, Chen and Hutchison; and

79.2 3Q17 Quarterly report, CuDeco, and Hutchison,

stated that, or to the effect that, Cudeco was not aware of any new information or data that materially affected the 2015 Maiden Ore Reserves Announcement or the 2015 Ore Reserves Representations, (separately the 2Q17 Report Representation and the 3Q17 Report Representation).

Particulars

The representations were express and appeared in the 2Q17 Quarterly Report and the 3Q17 Quarterly Report.

Each of the 2Q17 Quarterly Report and the 3Q17 Quarterly Report stated that:

the company confirms that it is not aware of any new information or data that materially affects the information included in the original market announcement and, in the case of the estimates of Mineral Resources and Ore Reserves, that all material assumptions and technical parameters underpinning the estimates in the relevant market announcement continue to apply and have not materially changed.

The 2Q17 Quarterly Report and the 3Q17 Quarterly Report was said to have been made on behalf of the board.

I.2 FY2017 Annual Report

80 On 31 October 2017, at the time of publishing and releasing to the ASX CuDeco's annual report (**FY2017 Annual Report**), and financial report (**FY2017 Financial Report**) for FY2017:

80.1 CuDeco, and Hutchison repeated and thereby reaffirmed the 2015 Ore Reserves Representations (**FY2017 Annual Report Ore Reserves Representation**);

Particulars

The reaffirmation of the 2015 Ore Reserve Representations was implied, and in the case of the representation by:

- A. CuDeco, was to be implied by the statement in the Competent Person Statement that CuDeco was in the process of updating the Ore Reserves Statement in the FY2016 Annual Report to take account of operational results, and changes to foreign exchange and increased metal prices, and the fact that it did not state that the effect of the Updated Mine Plan was to remove the cobalt and magnetite reserves from the Ore Reserves Statement, or to reduce the Ore Reserve estimate (FY2017 Annual Report, page 95); and
- B. Hutchison, to be implied from the matters in (A), and from the statement in the Chairman's Report that formed part of the FY2017 Annual Report that 'the extraction of the cobalt/pyrite concentrate was well established during CuDeco's metallurgical test work and pilot programme and by switching the cobalt/pyrite circuit on [CuDeco] could generate considerable additional revenue' (FY2017 Annual Report, page 8).

80.2 CuDeco, and Hutchison stated that, or to the effect that CuDeco:

(a) had non-current assets including:

- (i) property, plant and equipment worth approximately \$156 million;
- and

- (ii) development costs of approximately \$97.9 million,

- (b) had recognised an impairment loss of its mining assets in FY2017 (**FY2017 Impairment**) of approximately \$76 million (**FY2017 Annual Report Impairment Statement**),

Particulars

The FY2017 Impairment was constituted by an impairment of approximately:

- A. \$46.4 million for property, plant and equipment; and \$29.6 million for development costs (FY2016 Annual Report, page 78);

Note 27 to the financial statements that formed part of the FY2017 Annual Report stated, amongst other things, that:

- A. as at 30 June 2017, CuDeco had identified that impairment indicators existed at 30 June 2017 due to below budget performance and inconsistent processing plant operations;
- B. CuDeco had prepared a valuation of Rocklands, which it identified as a CGU for the purposes of AASB 126, using a Fair Value Assessment;
- C. the key assumptions to which that model was most sensitive included:
 - a. forecast commodity prices, including copper, gold, and cobalt;
 - b. a ramp up of production, timing, and 'appropriate level of recoveries achieved;
 - c. a discount rate of 8%; and
 - d. total reserves to be extracted and processed at the Rocklands processing plant.
- D. the recoverable amount of the Rocklands CGU was determined based on the life of the mine of 7 years, and calculated based on CuDeco's existing resource statement and its existing mine plan, (FY2016 Annual Report, page 77 and 78).

80.3 CuDeco, and Hutchison stated that the financial statements that formed part of the FY2017 Annual Report had been prepared in accordance with:

- (a) inter alia, 296 and 297 of the Corporations Act; and

- (b) Accounting Standards AASB 101 and AASB 136,

(FY2017 Financial Report Representations).

Particulars

The statements in 80.3 were express and:

- A. made in note 2 to FY2017 Financial Report (p 48 of the FY2017 Annual Report), which stated that the financial statements had been 'prepared in accordance with Australian Accounting Standards...adopted by the Australian Accounting Standards Board and the Corporations Act 2001';
- B. were made by the Board of Directors of CuDeco by the resolution set out at p.85 of the FY2017 Annual Report (signed by Hutchison on their behalf in accordance with that resolution).

1.3 Implied Representations

81 By the 2Q17 Ore Reserves Representation and the 3Q17 Ore Reserves Representation, the FY2017 Annual Report Ore Reserves Representations, FY2017 Financial Report Representations, CuDeco, Chen and Hutchison (as applicable) represented to the Market from the date that each of those representations were made that:

81.1 all necessary and reasonable investigations had been made before making any statement or representation as to the state of CuDeco's business and accounts and there were reasonable grounds for making, or maintaining those statements or representations; and

81.2 no information had come to their attention that meant that there was any material risk that those statements or representations no longer had reasonable grounds, including information that:

(a) might materially affect the 2Q17 Ore Reserves Representation and the 3Q17 Ore Reserves Representation, or the FY2017 Annual Report Ore Reserves Representations; and

(b) meant that the recoverable amount of the plant, property and equipment, and development costs, recognised as non-current assets in its statement of financial position had reduced as at 30 June 2017 in an amount greater than the FY2017 Impairment Statement; and

- (c) meant the financial reports were not prepared in accordance with the requirements of the Corporations Act or the Accounting Standards, or did not give a true and fair view of CuDeco's financial position and financial performance,

(FY2017 Implied Representations).

82 CuDeco, Chen and Hutchison respectively, did not wholly correct or qualify the:

82.1 2Q17 Ore Reserves Representation;

82.2 3Q17 Ore Reserves Representation;

82.3 FY2017 Annual Report Ore Reserves Representation;

82.4 FY2017 Financial Report Representations;

82.5 2017 Implied Representations;

(FY2017 Representations) which were accordingly continuing representations, to the extent that they remained unqualified and uncorrected, until 18 March 2018.

83 The FY2017 Representations were:

83.1 conduct in trade or commerce;

83.2 in relation to:

- (a) a financial product within the meaning of sub-sections 763A(1)(a) and 764A(1)(a) of the Corporations Act, namely CuDeco Shares; and

- (b) a financial service within the meaning of:

- (i) sections 766A(1)(a) and 766B(1) of the Corporations Act; and

(ii) section 12BAB(1)(a) of the ASIC Act; and

83.3 information that a reasonable person would expect to have a material effect on the price or value of CuDeco Shares.

Particulars

The matters in sub-paragraph 83.3 are to be inferred from the matters in paragraphs 95, 162 and 165 below.

Further particulars may be provided following discovery and the receipt of expert reports.

J. True position in 2017

84 By no later than 31 October 2017, and by reason of the matters in 38 to 42 and 64 above:

84.1 there were indications (within in the meaning of paragraph 9 of AASB136) that Rocklands was impaired;

84.2 the fair value less costs of disposal of Rocklands had reduced in a material amount;

84.3 by reason of the matters in 84.2, the recoverable amount for Rocklands was less than the carrying amount of the mining assets recognised on the statement of financial position in the FY2017 Annual Report, after the FY2017 Impairment;

84.4 in the premises, CuDeco was required by the accounting standards to reduce the carrying value of its mining assets in an amount greater than the FY2017 Impairment; and

84.5 because CuDeco did not comply with the requirement in 84.4 above, the statements:

- (a) did not give and true and fair view of the financial position and performance of CuDeco in FY2017; and
- (b) had not been prepared in accordance with the requirements of accounting standards AASB 101 and AASB 136.

(FY2017 Annual Report Information).

Particulars to 84.1 to 84.5

So far as the Applicants are able to say prior to discovery and the receipt of expert accounting reports, the indications in 84.1 included:

- A. those identified by CuDeco in note 27 to the FY2017 Financial Report; and
- B. the factors that led to the Updated Mining Plan for Rocklands effected in May 2016, as set out in paragraph 38 above.

The recoverable amount for Rocklands was reduced by changes to the pit design to exclude cobalt and magnetite, which reduced the ore reserve by approximately 11.7 million tonnes.

In its FY2017 Financial Report, CuDeco:

- A. recorded the carrying value of its mining assets as approximately \$253 million, made up of capitalised development costs of approximately \$97 million, and property plant and equipment of approximately \$156 million;
- B. recorded an impairment charge on its mining assets of approximately \$76 million; and
- C. so far as the Applicants are able to say before discovery and the receipt of expert reports, did not reduce the carrying value of its mining assets in FY2016 to account for the changes in its mine plan to exclude cobalt and magnetite.

At 30 June 2017, the effect of the October 2016 Information was to reduce the recoverable amount of CuDeco's mining assets by, and CuDeco ought to have recognised an impairment charge on those assets of, at least \$218 million, which was the sum of an impairment charge of:

- A. \$33 million to reflect the reduction in value of the mining assets by reason of the change in the mine plan; and
- B. \$185 million to reflect the reduction in value of the mining assets by reason of the inability to economically mine cobalt and magnetite.

Further particulars will be provided following discovery and receipt of expert accounting reports.

K. 2017 Contraventions

K.1 FY2017 Continuous Disclosure Contraventions

85 The FY2017 Annual Report Information constituted information that:

85.1 CuDeco had (within the meaning of s 674(2) of the Corporations Act) by later than 31 October 2017.

Particulars

The FY2017 Information related to the actual financial prospects of CuDeco.

That FY2017 Information was actually known by Gregory, who was the chief executive officer of CuDeco at the time of the publication of the FY2017 Annual Report, which knowledge is to be inferred from the statement in the December 2017 Announcement that CuDeco's executive management team introduced a revised mine plan in May 2016 and in March 2017 had identified areas of non-alignment of the Updated Mine Plan and operational plans with the Rocklands' Master Plan, and in the March 2018 Announcement that in September 2016 the company had undertaken a 'pit optimisation', which had resulted in the exclusion of pyrite/cobalt and magnetite from the reserve.

Further, the directors of CuDeco ought reasonably to have had the FY2017 Information because:

- A. CuDeco had made announcements to the ASX concerning its ore reserves, and the financial feasibility of Rocklands;
- B. the FY2017 Information affected the continued reliability of those announcements;
- C. CuDeco was required by Listing Rule 5.21 to undertake an annual review of its ore reserves, and to include in its annual report, an ore reserve statement, which included a summary of its annual review and a comparison of its ore reserves from the previous year; and
- D. CuDeco's management systems allowed its officers to receive sales revenue reports on a weekly basis.

Further particulars may be provided following discovery.

85.2 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act;

85.3 a reasonable person would expect, if it were generally available, to have a material effect on the price or value of CuDeco Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act; and

85.4 in the premises in sub-paragraphs 85.1 to 85.3, by the operation of Listing Rule 3.1, CuDeco was obliged to tell the ASX by no later than:

- (a) 31 January 2017 in the case of the FY2017 Information; and
- (b) 31 October 2017 in the case of the FY2017 Annual Report Information.

86 CuDeco:

86.1 did not tell the ASX the FY2017 Information or the FY2017 Annual Report Information at any time prior to 27 December 2017, when it was partially disclosed, alternatively at any time prior to 22 March 2018, when it was partially disclosed;

86.2 in the premises in sub-paragraph 86.1, contravened ASX Listing Rule 3.1; and

86.3 in the premises in sub-paragraphs 86.1 and 86.2, contravened s 674(2) of the Corporations Act,

(FY2017 Continuous Disclosure Contraventions).

K.2 FY2017 Representations – misleading or deceptive conduct

87 By reason of the matters in paragraphs 38 to 42 and 64:

87.1 CuDeco and the Board of CuDeco including Chen and Hutchison did not have reasonable grounds for making or maintaining the 2Q17 Ore Reserves Representations;

87.2 CuDeco and the Board of CuDeco including Hutchison did not have reasonable grounds for making or maintaining the 3Q17 Ore Reserves Representations and the FY2017 Annual Report Ore Reserves Representations,

and those representations were misleading or deceptive or likely to mislead or deceive.

Particulars

The Applicants rely on s 769C of the Corporations Act, s 12BB of the ASIC Act and s 4 of the ACL.

- 88 Further or in the alternative, by reason of the matters in paragraphs 38 to 42, and 64 to 65 and 84, CuDeco and the Board of CuDeco including Hutchison did not have reasonable grounds for making, or maintaining, the FY2017 Financial Report Representations, and those representations were misleading or deceptive or likely to mislead or deceive.

Particulars

The Applicants rely on s 769C of the Corporations Act, s 12BB of the ASIC Act and s 4 of the ACL.

- 89 In the premises pleaded in paragraphs 87 and 88, by making, and maintaining the FY2017 Representations, CuDeco, and/or Hutchison engaged in conduct that was misleading or deceptive or that was likely to mislead or deceive in contravention of:

89.1 section 1041H(1) of the Corporations Act;

89.2 section 12DA(1) of the ASIC Act; further or alternatively

89.3 section 18 of the ACL,

(together and severally, the **FY2017 Misleading Conduct Contraventions**).

K.3 FY2017 Representations – false statement contraventions

- 90 By reason of the matters in paragraphs 38 to 39 and/or 41 and 64, the 2Q17 Ore Reserves Representations, the 3Q17 Ore Reserves Representations and the FY2017

Annual Report Ore Reserves Representations were false in a material particular or materially misleading.

91 Further or in the alternative, by reason of the matters in paragraphs 38 to 39 and/or 41 and 42, and 64 to 65 and 84, the FY2017 Financial Report Representations were false in a material particular or materially misleading.

92 Each of the FY2017 Representations were statements or information that were or was likely to:

92.1 induce persons in this jurisdiction to dispose of or acquire CuDeco Shares;
and/or

92.2 have the effect of increasing, reducing, maintaining, or stabilising the price of trading in CuDeco Shares.

Particulars

The matters in 92 are to be inferred from the matters in paragraphs 95, 162, and 165 below.

Further particulars may be provided following discovery and the receipt of expert reports.

93 By reason of the matters in:

93.1 paragraphs 43.1, 44.1, 45.1 and 66.1, the 2Q17 Ore Reserves Representations were made when CuDeco and/or Chen and/or Hutchison ought reasonably to have known that the representations were materially misleading or that they were false in a material particular;

93.2 paragraphs 43.1, 44.1, 45.1 and 66.1, the 3Q17 Ore Reserves Representations were made when CuDeco and/or Hutchison ought reasonably to have known

that the representations were materially misleading or that they were false in a material particular; and

93.3 paragraphs 43.1, 44.1, 45.1 and 66.1 and 85.1, the FY2017 Annual Report Ore Reserves Representations and FY2017 Financial Report Representations were made when CuDeco and/or Hutchison ought reasonably to have known that the representations were materially misleading or that they were false in a material particular.

94 By reason of the matters in paragraphs 90 to 93 above, by making the FY2017 Representations or by disseminating the substance of the FY2017 Representations, CuDeco, Chen and/or Hutchison made statements, or disseminated information, that were or was false in a material particular or materially misleading within the meaning of:

94.1 section 1041E(1) of the Corporations Act;

94.2 section 12DB(1)(a) of the ASIC Act; further or alternatively

94.3 section 29(1)(b) of the ACL,

(FY2017 False Statement Contraventions).

L. Market effects of FY2017 Contravening Conduct

95 In the period from 1 January 2017, further or in the alternative 1 May 2017, further or in the alternative 31 October 2017, to the end of the Relevant Period, the:

95.1 FY2017 Continuous Disclosure Contraventions;

95.2 FY2017 Misleading Conduct Contraventions; further or alternatively

95.3 FY2017 False Statement Contraventions,

(together and severally, **FY2017 Contravening Conduct**) caused the traded price for CuDeco Shares to be materially higher during the Relevant Period than:

- (a) their true value; or
- (b) the price that would have existed if the FY2017 Contravening Conduct had not occurred,

(FY2017 Inflation).

Particulars

The FY2017 Inflation is to be inferred from:

- A. the characteristics of the Market set out in paragraph 175 below;
- B. the fact that the FY2017 Information, the FY2017 Annual Report Information and the FY2017 Financial Report Information was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of CuDeco Shares;
- C. the fact that each of the FY2017 Representations was a representation that a reasonable person would expect to have a material effect on the price or value of CuDeco Shares; and
- D. the movements in the traded price of CuDeco Shares following the December 2017 Partial Disclosure set out in paragraph 162 below.

Further particulars will be provided following discovery and the receipt of expert reports.

IV. Case against KPMG

A. KPMG's role

96 On dates not known to the Applicants, but known to KPMG, CuDeco engaged KPMG (**KPMG Retainer**) to conduct an audit of CuDeco's:

96.1 FY2016 Financial Report (**FY2016 Audit**); and

96.2 FY2017 Financial Report (**FY2017 Audit**),

as required by s 301 of the Corporations Act.

A.1 KPMG's audit obligations

97 As an auditor of CuDeco for the financial years ended 30 June 2016 and 30 June 2017, KPMG through Twemlow was obliged (**Statutory Auditing Obligations**):

97.1 pursuant to s 307 of the Corporations Act to form an opinion as to whether:

- (a) CuDeco's FY2016 Financial Report and FY2017 Financial Report was in accordance with the requirements of the Corporations Act, including whether it complied with the accounting standards, and whether it gave a true and fair view of the financial position and performance of CuDeco; and
- (b) whether KPMG had been given all information, explanation, and assistance necessary for the conduct of the audit,

97.2 pursuant to s 307A of the Corporations Act, to conduct the audit in accordance with the applicable auditing standards (**Auditing Standards**), including:

- (a) Australian Auditing Standard 200 ("Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards") (**ASA200**);
- (b) Australian Auditing Standard 500 ("Audit Evidence") (**ASA500**);
- (c) Australian Auditing Standard 505 ("External Confirmations") (**ASA505**);
- (d) Australian Auditing Standard 540 ("Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures") (**ASA540**);

97.3 Australian Auditing Standard 570 ("Going Concern") (**ASA570**); and

97.4 Australian Auditing Standard 706 (“Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor’s Report”) (**ASA706**);

97.5 pursuant to s 308 of the Corporations Act, to:

(a) report to the members of CuDeco on whether KPMG was of the opinion that CuDeco’s FY2016 Financial Report and FY2017 Financial Report was in accordance with the Corporations Act, including whether they complied with the Accounting Standards, and whether they gave a true and fair view of the financial position and performance of CuDeco, and if KPMG:

(i) was not of that opinion, say in the report why; and

(ii) was of the opinion that CuDeco’s FY2016 Financial Report or FY2017 Financial Report was not in compliance with an Accounting Standard, to the extent it is practicable to do so, quantify the effect that non-compliance had on the financial report, or if it was not practicable to quantify the effect, say why;

(b) describe in the Auditor’s Report:

(i) any defect or irregularity in the FY2016 Financial Report or FY2017 Financial Report; and

(ii) any deficiency, failure or shortcoming in respect of which KPMG has been given all information, explanation and assistance necessary for the conduct of the audit, whether CuDeco had kept financial records sufficient to enable a financial report to be prepared and audited, and whether CuDeco had kept other records and registers required by the Corporations Act;

- (c) if the FY2016 Financial Report or FY2017 Financial Report contained additional information to give a true and fair view of the financial position and performance of CuDeco, state in the Auditor's Report whether the inclusion of that additional information was necessary to give a true and fair view.

98 Pursuant to the KPMG Retainer and/or the Statutory Audit Obligations, KPMG through Twemlow was obliged to prepare the FY2016 Audit and FY2017 Audit by no later than the date which would enable CuDeco to comply with CuDeco's Statutory Reporting Obligations and CuDeco's ASX Reporting Obligations (**Audit Due Date**).

A.2 KPMG Audit team

99 So far as the Applicants are able to say prior to discovery, at all material times KPMG and Twemlow employed, engaged to act on their behalf, or directed, consented to or agreed to a number of persons (**KPMG Audit Team**) to carry out work in providing professional accounting and auditing services to CuDeco for and incidental to the KPMG Retainer and the performance of the Statutory Audit Obligations and Statutory Review Obligations.

Particulars

So far as they are able to say prior to discovery, in the preparation of the FY2017 Audit, KPMG engaged specialist valuers employed by KPMG, to determine the fair value less costs to dispose of the mining assets that constituted the Rocklands CGU.

Further particulars may be provided following discovery.

100 At all material times, pursuant to sections 769B(4), (6) and (10) of the Corporations Act:

100.1 conduct (including acts or omissions) engaged in or on behalf of the partners of KPMG (including Twemlow), by:

- (a) an employee or agent of the partners of KPMG (including Twemlow), acting within the scope of the actual or apparent authority of that employee or agent; or
- (b) any other person acting at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the partners of KPMG (including Twemlow), where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

is taken, for the purposes of Chapter 7 of the Corporations Act, to have been engaged in also by the partners of KPMG (including Twemlow);

100.2 the state of mind (including actual knowledge and constructive knowledge (that is, what ought to be known)) of:

- (a) an employee or agent of the partners of KPMG (including Twemlow), acting within the scope of the actual or apparent authority of that employee or agent; or
- (b) any other person acting at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the partners of KPMG (including Twemlow), where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

is sufficient to establish the state of mind of the partners of KPMG (including Twemlow) for the purposes of a proceeding under Chapter 7 of the Corporations Act in respect of conduct engaged in by the partners of KPMG (including Twemlow) or the firm KPMG.

101 At all material times, by reason of the matters pleaded in paragraphs 99 and 100:

101.1 the conduct (including acts or omissions) of persons in the KPMG Audit Team is taken, for the purposes of Chapter 7 of the Corporations Act, to have been engaged in by the partners of KPMG (including Twemlow); and

101.2 the state of mind (including actual knowledge and constructive knowledge (that is, what ought to be known)) of persons in the KPMG Audit Team is imputed to the partners of KPMG (including Twemlow) for the purposes of a proceeding under Chapter 7 of the Corporations Act in relation to the conduct of Twemlow (including conduct which the partners of KPMG (including Twemlow) are taken to have engaged in by reason of the matters pleaded in sub-paragraph 101.1 above).

B. Facts relevant to the claim against KPMG

B.1 Matters prior to KPMG's audits

102 On 11 December 2015, CuDeco published and lodged with the ASX the 2015 Maiden Ore Reserves Announcement, which attached a copy of the 2015 Ore Reserves Statement.

Particulars

The Applicants refer to and repeat paragraphs 20 to and 21 above, and the particulars to those paragraphs.

103 On 3 March 2016, CuDeco published and lodged with the ASX the Feasibility Study.

Particulars

The Applicants refer to and repeat paragraph 24 and 25 above, and the particulars to those paragraphs.

104 On a date in May 2016 not known to the Applicants but known to CuDeco, CuDeco:

104.1 introduced the Updated Mine Plan; and

104.2 was aware of the Magnetite and Cobalt Information and the Reduced Ore Reserve Information.

Particulars

The Applicants refer to and repeat paragraphs 38 to 39 above, and the particulars to those paragraphs.

B.2 KPMG's audit of CuDeco's FY2016 financial reports

105 From a time presently not known to the Applicants, but prior to 16 November 2016, in performance of the KPMG Retainer, Twemlow and other members of the KPMG Audit Team commenced to the FY2016 Audit.

106 So far as the Applicants are able to say prior to discovery, for the purposes of conducting the FY2016 Audit, Twemlow and other members of the KPMG Audit Team:

106.1 had access to and made reference to working papers from all previous half-year reviews and audits conducted by KPMG for CuDeco in the period prior to 2016;

106.2 attended at the premises at which business records of CuDeco were held;

106.3 required officers and employees of CuDeco to provide KPMG with:

- (a) access to the books of CuDeco and its controlled entities; and
- (b) information, explanations and other assistance to enable KPMG to form opinions about the books of CuDeco and its controlled entities;

106.4 had access to board papers and board minutes of CuDeco;

- 106.5 had access to and reviewed documents which set out, inter alia, processes, procedures, guidance and other material relevant to the conduct of KPMG's review and audit (including the need to consider the reliability of management representations and to corroborate management representations by reviewing supporting evidence);
- 106.6 had access to appropriate source information, documents, budgets, models and guidance relevant to the impairment of assets;
- 106.7 had access to records to determine the appropriate accounting for revenue recognition, the measurement of trade receivables, the valuation and recoverability of inventory, the assessment of expenses incurred during the reporting period and existence of onerous contracts;
- 106.8 had access to information to allow KPMG to adequately understand the CuDeco business and the economy in which it operated including both internal and external information including commodity prices, economic forecasts, CuDeco's mineral resources, and CuDeco's mine plans; and
- 106.9 had access to details of CuDeco's banking covenants and compliance with those banking covenants.

Particulars

The best particulars that the Applicants can presently provide of KPMG's Audit Work are that:

- A. the Auditor's Report that formed part of the FY2016 Annual Report stated that, in preparing that report, KPMG had performed procedures to assess whether in all material respects the FY2016 Financial Report presented fairly in accordance with the Corporations Act and the Accounting Standards, a true and fair view which is consistent with KPMG's understanding of CuDeco's financial position and of its performance (FY2016 Annual Report, page 85); and
- B. the steps in paragraph 106 are steps that a reasonably competent auditor would take in conducting an audit of the financial statements of CuDeco in order to discharge the Statutory Audit Obligations.

Further particulars may be provided following discovery.

107 On 16 November 2016, Twemlow signed an 'Independent Auditor's Report to the members of CuDeco' (**FY2016 Audit Report**), in which Twemlow and KPMG (through Twemlow) stated to CuDeco (and/or the members of CuDeco) that:

107.1 Twemlow and KPMG (through Twemlow) had audited the FY2016 Financial Report;

107.2 Twemlow and KPMG (through Twemlow) had conducted the audit in accordance with the Auditing Standards;

107.3 an audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report, and includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial report;

107.4 Twemlow and KPMG (through Twemlow) had performed procedures to assess whether in all material respects the FY2016 Financial Report presented fairly, in accordance with the Corporations Act and the Accounting Standards, a true and fair view which is consistent with their understanding of CuDeco's financial position and of its performance;

107.5 Twemlow and KPMG (through Twemlow) believed that the audit evidence they had obtained was sufficient and appropriate to provide a bases for their audit opinion;

107.6 in the opinion of Twemlow and KPMG (through Twemlow), the FY2016 Financial Report was in accordance with the Corporations Act, including:

- (a) giving a true and fair view of CuDeco's financial position as at 30 June 2016 and of its performance for the year ended on that date; and
- (b) complying with the Accounting Standards and the Corporations Regulations 2001.

Particulars to 107.1 to 107.6

FY2016 Annual Report, pages 85 and 86.

B.3 Release of FY2016 financial report

108 On 17 November 2016, CuDeco released to the ASX the FY2016 Annual Report, containing the FY2016 Financial Report and the FY2016 Audit Report.

Particulars

The FY2016 Financial Report is contained in the FY2016 Annual Report, pages 19 to 86.

109 The FY2016 Financial Report:

109.1 contained the:

- (a) FY2016 Annual Report Ore Reserve Representation; and
- (b) FY2016 Annual Report Impairment Statement,

Particulars

The Applicants refer to paragraph 60 above and the particulars to that paragraph.

109.2 included the FY2016 Audit Report; and

109.3 did not contain any information or statement to the effect of the Magnetite and Cobalt Information, Reduced Ore Reserve Information, Processing Plant Information, or Mine Plan Information.

B.4 KPMG's FY2016 opinion and representation

110 On or about 17 November 2016, by reason of the matters pleaded in paragraphs 107 and 108, Twemlow and KPMG (through Twemlow):

110.1 stated to the members of CuDeco, and the market of investors or potential investors in CuDeco, that, in their opinion, the FY2016 Financial Report:

- (a) gave a true and fair view of CuDeco's financial position and financial performance; and
- (b) complied with the Accounting Standards,

(KPMG FY2016 Opinion).

110.2 represented to the members of CuDeco, and the market of investors or potential investors in CuDeco, that:

- (a) the KPMG FY2016 Opinion to the ASX was based on reasonable grounds and was the product of an exercise of reasonable skill and care; and
- (b) further or in the alternative, in conducting the FY2016 Audit, and arriving at the KPMG Opinion FY2016 Opinion, it had complied with the relevant requirements of the Audit Standards,

(KPMG FY2016 Representation).

B.5 KPMG's audit of CuDeco's FY2017 financial reports

111 From a time presently not known to the Applicants, but prior to 25 October 2017, in performance of the KPMG Audit Retainer, Twemlow and other members of the KPMG Audit Team commenced the FY2017 Audit.

112 So far as the Applicants are able to say prior to discovery, for the purposes of conducting the FY2017 Audit, Twemlow and other members of the KPMG Audit Team:

112.1 had access to and made reference to working papers from all previous half-year reviews and audits conducted by KPMG for CuDeco in the period prior to 25 October 2017;

112.2 attended at the premises at which business records of CuDeco were held;

112.3 required officers and employees of CuDeco to provide KPMG with:

- (a) access to the books of CuDeco and its controlled entities; and
- (b) information, explanations and other assistance to enable KPMG to form opinions about the books of CuDeco and its controlled entities;

112.4 had access to board papers and board minutes of CuDeco;

112.5 had access to and reviewed documents which set out, inter alia, processes, procedures, guidance and other material relevant to the conduct of KPMG's review and audit (including the need to consider the reliability of management representations and to corroborate management representations by reviewing supporting evidence);

112.6 had access to appropriate source information, documents, budgets, models and guidance relevant to the impairment of assets;

- 112.7 had access to records to determine the appropriate accounting for revenue recognition, the measurement of trade receivables, the valuation and recoverability of inventory, the assessment of expenses incurred during the reporting period and existence of onerous contracts;
- 112.8 had access to information to allow KPMG to adequately understand the CuDeco business and the economy in which it operated including both internal and external information including commodity prices, economic forecasts, CuDeco's mineral resources, and CuDeco's mine plans; and
- 112.9 had access to details of CuDeco's banking covenants and compliance with those banking covenants.

Particulars

The best particulars that the Applicants can presently provide of KPMG's Audit Work are that:

- A. the auditor's report that formed part of the FY2017 Annual Report stated that, in preparing that report, KPMG had conducted the audit in accordance with the Australian Auditing Standards, and that the audit evidence they had obtained was sufficient and appropriate to provide a basis for their opinion (FY2017 Annual Report, page 86); and
- B. the steps in paragraph 112 are steps that a reasonably competent auditor would take in conducting an audit of the financial statements of CuDeco in order to discharge the Statutory Audit Obligations.

Further particulars may be provided following discovery.

- 113 On 25 October 2017, Twemlow signed an 'Independent Auditor's Report to the members of CuDeco' (**FY2017 Audit Report**), in which Twemlow and KPMG (through Twemlow) stated to CuDeco (and/or the members of CuDeco) that:

- 113.1 Twemlow and KPMG (through Twemlow) had audited the FY2017 Financial Report;

113.2 Twemlow and KPMG (through Twemlow) had conducted the audit in accordance with the Australian Auditing Standards;

113.3 their objective in auditing the FY2017 Financial Report was:

(a) to obtain reasonable assurance about whether the FY2017 Financial Report as a whole is free from material misstatement, whether due to fraud or error; and

(b) to issue an Auditor's Report that included their opinion;

113.4 Twemlow and KPMG (through Twemlow) had considered the conditions identified in Note 5 to the FY2017 Financial Report, which indicated a material uncertainty that existed that may have cast doubt on CuDeco's ability to continue as a going concern, and therefore whether it would realise its assets and discharge its liabilities in the normal course of business and at the amounts stated in the FY2017 Financial Report;

113.5 determined the key audit matters to be communicated in their report were:

(a) valuation of exploration and evaluation assets;

(b) valuation of property, plant and equipment and mine development costs; and

(c) valuation of ore inventory;

Particulars

Key audit matters were those matters that, in Twemlow and KPMG's (through Twemlow) professional judgment, were of most significance in their audit of the FY2017 Financial Report.

113.6 Twemlow and KPMG (through Twemlow) had addressed the key audit matters in the context of their audit of the FY2017 Financial Report as a whole, and in forming their opinion thereon, and did not provide a separate opinion on those matters;

113.7 in the opinion of Twemlow and KPMG (through Twemlow), the FY2016 Financial Report was in accordance with the Corporations Act, including:

- (a) giving a true and fair view of CuDeco's financial position as at 30 June 2017 and of its performance for the year ended on that date; and
- (b) complying with the Accounting Standards and the Corporations Regulations 2001.

Particulars to 113.1 to 113.5

FY2017 Annual Report, pages 86.

B.6 Release of FY2017 financial report

114 On 31 October 2017, CuDeco released to the ASX the FY2017 Annual Report, containing the FY2017 Financial Report and the FY2017 Audit Report.

Particulars

The FY2017 Financial Report is contained in the FY2017 Annual Report, pages 21 to 92.

115 The FY2017 Financial Report:

115.1 stated that CuDeco was in the process of updating its Ore Reserves Statement to take account of operational results, including the effects of process plant performance, changes to foreign exchange and increased metal prices; and

Particulars

FY2017 Annual Report, page 96.

115.2 did not contain any information or statement to the effect of the Magnetite and Cobalt Information, Reduced Ore Reserve Information, Processing Plant Information, or Mine Plan Information.

B.7 KPMG's FY2017 opinion and representation

116 On or about 31 October 2017, by reason of the matters pleaded in paragraphs 113 and 114, Twemlow and KPMG (through Twemlow):

116.1 stated to the members of CuDeco, and the market of investors or potential investors in CuDeco, that, in their opinion, the FY2017 Financial Report:

- (a) gave a true and fair view of CuDeco's financial position and financial performance; and
- (b) complied with the Accounting Standards,

(KPMG FY2017 Opinion).

116.2 represented to the members of CuDeco, and the market of investors or potential investors in CuDeco, that:

- (a) the KPMG FY2017 Opinion to the ASX was based on reasonable grounds and was the product of an exercise of reasonable skill and care; and
- (b) further or in the alternative, that in conducting the FY2017 Audit, and arriving at the KPMG Opinion FY2017 Opinion, it had complied with the relevant requirements of the Audit Standards,

(KPMG FY2017 Representation).

B.8 Events after October 2017

117 On 27 December 2017, CuDeco published and lodged with the ASX an announcement **(December 2017 Announcement)** which stated that:

117.1 the FY2017 Annual Report 'did not comply with the requirements of ASX Listing Rule 5.21 and clause 15 of the JORC Code 2012 in respect of the annual review and reporting of [CuDeco's] Ore Reserves';

117.2 the Updated Mine Plan was introduced 'as a consequence of a number of factors which were inconsistent with or were unable to meet the requirements of key assumptions within the Company's formal Ore Reserve';

117.3 identified as the factors in 117.2 those set out in paragraph 41.2 above;

117.4 updated ore reserve information would be released to the market after the end of February 2018.

118 On 22 March 2018, CuDeco published and lodged with the ASX an announcement titled 'Rocklands Ore Reserves Update' **(March 2018 Announcement)**, which amongst other things, stated to the market that:

118.1 as 'flagged' in the December 2017 Announcement, CuDeco had prepared an updated ore reserve statement;

118.2 the Ore Reserve was 11.6 million tonnes, at 0.87% copper and 0.21 grams per tonne of gold, comprising:

(a) a proved reserve of 9.5 million tonnes, at 0.90% copper and 0.21 grammes per tonne of gold; and

- (b) a probable reserve of 2.1 million tonnes, at 0.72% copper, and 0.19 grams per tonne of gold,

(Adjusted Ore Reserve);

118.3 of the reduction of 16 million tonnes in the Ore Reserve from the 2015 Ore Reserves Representations, 11.7 million tonnes was due to the exclusion of cobalt and magnetite following changes and re-optimisation to pit designs in September 2016 to exclude cobalt and magnetite.

C. KPMG's FY2016 Contravening conduct

C.1 FY2016 Misleading or deceptive conduct

119 The conduct of Twemlow and KPMG (by Twemlow) in:

119.1 expressing the KPMG FY2016 Opinion, and in failing to correct or qualify that opinion; and

119.2 making the KPMG FY2016 Representation, and in failing to correct or qualify that representation,

was conduct which was:

- (a) in relation to financial products (being CuDeco Shares), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and
- (c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

120 At the time Twemlow and KPMG (by Twemlow) expressed the KPMG FY2016 Opinion and made the KPMG FY2016 Representation, CuDeco's FY2016 Financial Report was not prepared in compliance with the Accounting Standards and/or did not give a true and fair view of CuDeco's financial position and financial position in FY2016 by reason of the matters pleaded in paragraph 65 above.

121 Further or in the alternative, the KPMG FY2016 Opinion was not the product of an exercise of reasonable skill and care by reason of:

121.1 the recognition of the FY2016 Impairment Charge; and

121.2 the failure by Twemlow, or KPMG (by Twemlow and/or the members of the KPMG Review Team), to conclude the matters pleaded in paragraph 65 above.

122 The KPMG FY2016 Opinion was not, by reason of the matters pleaded in paragraphs 120 and/or 121, based upon reasonable grounds.

123 As at 16 November 2016, by reason of the matters in paragraphs 120 to 122, the conduct of Twemlow and KPMG (by Twemlow) in expressing the KPMG FY2016 Opinion (and in failing to correct or qualify that opinion) was misleading or deceptive or likely to misled or deceive, in contravention of:

123.1 s 1041H(1) of the Corporations Act; and/or

123.2 s 12DA(1) of the ASIC Act; and/or

123.3 s 18 of the Australian Consumer Law,

(contravention of such provisions being a **KPMG FY2016 Misleading Conduct Contravention**).

124 Further, or in the alternative, as at 16 November 2017, the conduct of Twemlow in expressing the KPMG FY2016 Opinion (and in failing to correct or qualify that opinion):

124.1 was conduct that was, by reason of the matters pleaded in paragraphs 120 to 122, misleading or deceptive, or likely to mislead or deceive;

124.2 was conduct engaged in on behalf of, and as agent of, every other partner of KPMG and the firm KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in by each other partner of KPMG and the firm KPMG as pleaded in paragraph 100 above;

124.3 by reason of sub-paragraphs 124.1 and 124.2, gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(b) of the Corporations Act to be a contravention by KPMG, being a partner of KPMG who was party to the act of expressing the KPMG FY2016 Opinion (and the omission of failing to correct or qualify those opinions), within the meaning of s 761F(1)(b) of the Corporations Act, as pleaded in paragraph 11.4 above; and

124.4 by reason of sub-paragraphs 124.1 and 124.2, gave to rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of KPMG.

125 As at 16 November 2016, by reason of the matters pleaded in paragraphs 120 to 122, the conduct of Twemlow and KPMG (by Twemlow) in making the KPMG FY2016 Representations (and in failing to correct or qualify those representations) was misleading or deceptive or likely to mislead or deceive, and comprised a KPMG FY2016 Misleading Conduct Contravention.

126 Further, or in the alternative, as at 16 November 2016, the conduct of Twemlow in making the KPMG FY2016 Representation (and in failing to correct or qualify those representations);

- 126.1 was conduct that was, by reason of the matters pleaded in paragraphs 120 to 122, misleading or deceptive, or likely to mislead or deceive;
- 126.2 was conduct engaged in on behalf of, and as agent of, every other partner of KPMG and the firm KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in by each other partner of KPMG and the firm KPMG as pleaded in paragraph 100 above;
- 126.3 by reason of sub-paragraphs 126.1 and 126.2, gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(b) of the Corporations Act to be a contravention by KPMG, being a partner of KPMG who was party to the act of making the KPMG FY2016 Representation (and the omission of failing to correct or qualify those representations), within the meaning of s 761F(1)(b) of the Corporations Act, as pleaded in paragraph 11.4 above; and
- 126.4 by reason of sub-paragraphs 126.1 and 126.2, gave to rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of KPMG.

H.2 *FY2016 False or misleading conduct*

- 127 By reason of the matters pleaded in paragraphs 107 to 110, Twemlow and KPMG (by Twemlow) made a statement or disseminated information, being the KPMG FY2016 Opinion.
- 128 By reason of the matters pleaded in in paragraphs 120 to 122, the KPMG FY2016 Opinion was a statement made or information disseminated by Twemlow (and KPMG (by Twemlow)), which was materially misleading.
- 129 Further or in the alternative, the KPMG FY2016 Opinion to ASX was likely to be relied upon by members of CuDeco, and the market for investors or potential investors in

CuDeco, in deciding whether to acquire or dispose of CuDeco Shares, and was likely to induce, either directly or indirectly, persons in this jurisdiction, including the Applicants and Group Members, to acquire CuDeco Shares and/or to have the effect of increasing, maintaining or stabilising the price for trading in CuDeco Shares on the ASX.

- 130 By reason of the matters in paragraph 129, the KPMG FY2016 Opinion was likely to have the effect of increasing, maintaining, or stabilising the price for trading in CuDeco Shares.

Particulars

The matters in paragraph 130 are to be inferred from the matters in paragraph 139 below.

Further particulars may be provided following the receipt of expert reports.

- 131 As at 17 November 2016, when expressing the KPMG FY2016 Opinion, Twemlow and KPMG, by reason of the matters pleaded in paragraph 97 above ought reasonably to have known that:

131.1 the KPMG FY2016 Opinion was not based upon reasonable grounds, as pleaded in paragraphs 120 to 122; and

131.2 by reason of sub-paragraph 131.1, the KPMG FY2016 Opinion was materially misleading.

- 132 By reason of the matters pleaded in paragraphs 127 to 131, by expressing the KPMG FY2016 Opinion, Twemlow and KPMG (by Twemlow) contravened s 1041E of the Corporations Act (**KPMG FY2016 s 1041E Contravention**)

- 133 By reason of the matters pleaded in paragraph 107, Twemlow and KPMG (by Twemlow) made a statement or disseminated information, being the KPMG FY2016 Representation.
- 134 By reason of the matters in paragraphs 121 and 122, the KPMG FY2016 Representation was a statement or information which was materially misleading.
- 135 The KPMG FY2016 Representation was likely to be relied upon by members of CuDeco, and the market for investors or potential investors in CuDeco, in deciding whether to acquire or dispose of CuDeco Shares, and was likely to induce, either directly or indirectly, persons in this jurisdiction, including the Applicants and Group Members, to acquire CuDeco Shares and/or to have the effect of increasing, maintaining or stabilising the price for trading in CuDeco Shares on the ASX.
- 136 By reason of the matters in paragraph 135, the KPMG FY2016 Representation was likely to have the effect of increasing, maintaining, or stabilising the price for trading in CuDeco Shares.

Particulars

The Applicants refer to and repeat the particulars appended to paragraph 130 above.

Further particulars may be provided following the receipt of expert reports.

- 137 As at 16 November 2016, when making the KPMG FY2016 Representation, Twemlow and KPMG, by reason of the matters pleaded in paragraph 97, ought reasonably to have known that:

137.1 the KPMG FY2016 Representation was not based upon reasonable grounds, as pleaded in paragraphs 120 to 122; and

137.2 by reason of sub-paragraph 137.1, the KPMG FY2016 Representation was materially misleading.

138 By reason of the matters pleaded in paragraphs 133 to 136, by making the KPMG FY2016 Representations, Twemlow and KPMG (by Twemlow) contravened s 1041E of the Corporations Act (and therefore amounted to a KPMG FY2016 s 1041E Contravention).

C.3 Market effect of KPMG FY2016 Contraventions

139 In the period from 16 November 2016 to the end of the Relevant Period, the KPMG FY2016 Misleading Conduct Contraventions, further or in the alternative, the KPMG FY2016 s 1041E Contraventions (separately or together, the KPMG FY2016 Contravening Conduct), caused or materially contributed to the traded price for CuDeco's Shares to be substantially greater during the Relevant Period than:

139.1 their true value; or

139.2 the price that would have existed if the KPMG FY2016 Contravening Conduct had not occurred,

(FY2016 KPMG Inflation).

Particulars

The FY2016 KPMG Inflation is to be inferred from:

- A. the characteristics of the Market for CuDeco Shares set out in paragraph 175 below;
- B. the fact that the information in paragraphs 117 and 118 (KPMG Information) was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of CuDeco Shares as alleged in paragraphs 76 and 95 above; and
- C. the fact that each of the KPMG FY2016 Opinion and the KPMG FY2016 Representations were representations that a reasonable person would expect to have a material effect on the price or value of CuDeco Shares as alleged in paragraphs 130 and 136 above; and
- D. the movements in the traded price of CuDeco Shares following the Corrective Disclosure, as set out in paragraph 162 below.

D. KPMG's FY2017 Contravening conduct

D.1 FY2017 Misleading or deceptive conduct

140 The conduct of Twemlow and KPMG (by Twemlow) in:

140.1 expressing the KPMG FY2017 Opinion, and in failing to correct or qualify that opinion; and

140.2 making the KPMG FY2017 Representation, and in failing to correct or qualify that representation,

was conduct which was:

- (a) in relation to financial products (being CuDeco Shares), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act;
- (c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

141 At the time Twemlow and KPMG (by Twemlow) expressed the KPMG FY2016 Opinion and made the KPMG FY2017 Representation, CuDeco's FY2017 Financial Report was not prepared in compliance with the Accounting Standards and/or did not give a true and fair view of CuDeco's financial position and financial position in FY2017 by reason of the matters pleaded in paragraph 84 above.

142 Further or in the alternative, the KPMG FY2017 Opinion was not the product of an exercise of reasonable skill and care by reason of:

- 142.1 the recognition of the FY2017 Impairment Charge;
- 142.2 the failure by Twemlow, or KPMG (by Twemlow and/or the members of the KPMG Review Team), to conclude the matters pleaded in paragraph 84 above.
- 143 The KPMG FY2017 Opinion was not, by reason of the matters pleaded in paragraphs 141 and/or 142, based upon reasonable grounds.
- 144 As at 25 October 2017, by reason of the matters in paragraphs 141 to 143, the conduct of Twemlow and KPMG (by Twemlow) in expressing the KPMG FY2017 Opinion (and in failing to correct or qualify that opinion) was misleading or deceptive or likely to misled or deceive, in contravention of:
- 144.1 s 1041H(1) of the Corporations Act;
- 144.2 s 12DA(1) of the ASIC Act; and/or
- 144.3 s 18 of the Australian Consumer Law,
- (contraventions of such provisions being a **KPMG FY2017 Misleading Conduct Contravention**).
- 145 Further, or in the alternative, as at 25 October 2017, the conduct of Twemlow in expressing the KPMG FY2017 Opinion (and in failing to correct or qualify that opinion;
- 145.1 was conduct that was, by reason of the matters pleaded in paragraphs 141 to 143, misleading or deceptive, or likely to mislead or deceive;
- 145.2 was conduct engaged in on behalf of, and as agent of, every other partner of KPMG and the firm KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in by each other partner of KPMG and the firm KPMG as pleaded in paragraph 100 above;

145.3 by reason of sub-paragraphs 145.1 and 145.2, gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of KPMG, which is taken by reason of s 761F(b) of the Corporations Act to be a contravention by KPMG, being a partner of KPMG who was party to the act of expressing the KPMG FY2017 Opinion (and the omission of failing to correct or qualify those opinions), within the meaning of s 761F(1)(b) of the Corporations Act, as pleaded in paragraph 11.4 above; and

145.4 by reason of sub-paragraphs 145.1 and 145.2, gave to rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of KPMG.

146 As at 31 October 2017, by reason of the matters pleaded in paragraphs 141 to 143, the conduct of Twemlow and KPMG (by Twemlow) in making the KPMG FY2017 Representations (and in failing to correct or qualify those representations) was misleading or deceptive or likely to mislead or deceive, and comprised a KPMG 2017 Misleading Conduct Contravention.

147 Further, or in the alternative, as at 31 October 2017, the conduct of Twemlow and KPMG (by Twemlow) in making the KPMG FY2017 Representation (and in failing to correct or qualify those representations):

147.1 was conduct that was, by reason of the matters pleaded in paragraphs 141 to 143, misleading or deceptive, or likely to mislead or deceive;

147.2 was conduct engaged in on behalf of, and as agent of, every other partner of KPMG and the firm KPMG, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in by each other partner of KPMG and the firm KPMG as pleaded in paragraph 100 above;

147.3 by reason of sub-paragraphs 147.1 and 147.2, gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of KPMG, which is taken by

reason of s 761F(b) of the Corporations Act to be a contravention by KPMG, being a partner of KPMG who was party to the act of making the KPMG FY2017 Representation (and the omission of failing to correct or qualify those representations), within the meaning of s 761F(1)(b) of the Corporations Act, as pleaded in paragraph 11.4 above; and

147.4 by reason of sub-paragraphs 147.1 and 147.2, gave to rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of KPMG.

D.2 FY2017 false or misleading conduct

148 By reason of the matters pleaded in paragraphs 113 to 116, Twemlow and KPMG (by Twemlow) made a statement or disseminated information, being the KPMG FY2017 Opinion.

149 By reason of the matters pleaded in in paragraphs 141 to 143, the KPMG FY2017 Opinion was a statement made or information disseminated by Twemlow (and KPMG (by Twemlow)), which was materially misleading.

150 Further or in the alternative, the KPMG Opinion to ASX was likely to be relied upon by members of CuDeco, and the market for investors or potential investors in CuDeco, in deciding whether to acquire or dispose of CuDeco Shares, and was likely to induce, either directly or indirectly, persons in this jurisdiction, including the Applicants and Group Members, to acquire CuDeco Shares and/or to have the effect of increasing, maintaining or stabilising the price for trading in CuDeco Shares on the ASX.

151 By reason of the matters in paragraph 150, the KPMG FY2017 Opinion was likely to have the effect of increasing, maintaining, or stabilising the price for trading in CuDeco Shares.

Particulars

The matters in paragraph 151 are to be inferred from the matters in paragraph 160 below.

Further particulars may be provided following the receipt of expert reports.

152 As at 25 October 2017, when expressing the KPMG FY2017 Opinion, Twemlow and KPMG, by reason of the matters pleaded in paragraphs 97 ought reasonably to have known that:

152.1 the KPMG FY2017 Opinion was not based upon reasonable grounds, as pleaded in paragraphs 141 to 143;

152.2 by reason of sub-paragraph 152.1, the KPMG FY2017 Opinion was materially misleading.

153 By reason of the matters pleaded in paragraphs 148 to 151, by expressing the KPMG FY2017 Opinions, Twemlow and KPMG (by Twemlow) contravened s 1041E of the Corporations Act (KPMG FY2017 1041E Contravention).

154 By reason of the matters pleaded in paragraphs 107 Twemlow and KPMG (by Twemlow) made a statement or disseminated information, being the KPMG Representations.

155 By reason of the matters in paragraphs 121 and 122, the KPMG FY2017 Representations as a statement or information which was materially misleading.

156 The KPMG FY2017 Representation to ASX was likely to be relied upon by members of CuDeco, and the market for investors or potential investors in CuDeco, in deciding whether to acquire or dispose of CuDeco Shares, and was likely to induce, either directly or indirectly, persons in this jurisdiction, including the Applicants and Group Members, to acquire CuDeco Shares and/or to have the effect of increasing, maintaining or stabilising the price for trading in CuDeco Shares on the ASX.

Particulars

The Applicants refer to and repeats the particulars appended to paragraph 151 above.

Further particulars may be provided following the receipt of expert reports.

157 By reason of the matters in paragraph 156 above, the KPMG FY2017 Representations was likely to have the effect of increasing, maintaining, or stabilising the price for trading in CuDeco Shares.

158 As at 31 October 2017, when making the KPMG FY2017 Representations, Twemlow and KPMG, by reason of the matters pleaded in paragraphs 97 ought reasonably to have known that:

158.1 the KPMG FY2017 Representation was not based upon reasonable grounds, as pleaded in paragraphs 141 to 143;

158.2 by reason of sub-paragraph 158.1, the KPMG FY2017 Representation was materially misleading.

159 By reason of the matters pleaded in paragraphs 154 to 157, by making the KPMG 2017 Representation, Twemlow and KPMG (by Twemlow) contravened s 1041E of the Corporations Act (and amounted to a KPMG FY2017 s 1041E Contravention).

D.3 Market effect of KPMG FY2017 Contraventions

160 In the period from 31 October 2017 to the end of the Relevant Period, the KPMG FY2017 Misleading Conduct Contraventions, further or in the alternative, the KPMG FY2017 s 1041E Contraventions (separately or together, the **KPMG FY2017 Contravening Conduct**), caused or materially contributed to the traded price for CuDeco's Shares to be substantially greater during the Relevant Period than:

160.1 their true value; or

160.2 the price that would have existed if the KPMG FY2017 Contravening Conduct had not occurred,

(KPMG 2017 Inflation).

Particulars

The KPMG 2017 Inflation is to be inferred from:

- A. the characteristics of the Market for CuDeco Shares set out in paragraph 175 below;
- B. the fact that the KPMG Information was information that, if disclosed, a reasonable person would expect to have a material effect on the price or value of CuDeco Shares as alleged in paragraphs 151 and 157 above; and
- C. the fact that each of the KPMG FY2017 Opinion and the KPMG FY2017 Representations were representations that a reasonable person would expect to have a material effect on the price or value of CuDeco Shares as alleged in paragraphs 151 and 157 above; and
- D. the movements in the traded price of CuDeco Shares following the Corrective Disclosure, as set out in paragraph 162 below.

IV. LOSS AND DAMAGE

A. CORRECTIVE DISCLOSURE

A.1 *December 2017 partial disclosure*

161 On 27 December 2017, by the December 2017 Announcement, CuDeco stated to the Market that, or to the effect that:

161.1 the FY2017 Annual Report did not comply with the requirement of ASX Listing Rule 5.21 and clause 15 of the JORC Code 2012 in respect of the annual review and reporting of CuDeco's Ore Reserves, including the provision of material changes to the reported Ore Reserves;

161.2 CuDeco was in the process of updating the Ore Reserves which had appeared in the FY2016 Annual Report (that is the 2015 Ore Reserves Statement) to take account of operational changes;

161.3 in May 2016 the then executive management of CuDeco introduced the Updated Mine Plan, as a consequence of a number of factors which were inconsistent with or were unable to meet the requirements of key assumptions within the 2015 Ore Reserves Statement, including:

- (a) a failure to secure commercially acceptable 'offtake' arrangements in respect of Rocklands' cobalt and magnetite deposits, and consequent inability to meet economic viability thresholds for the processing of ore mined from those deposits;
- (b) the non-completion or commissioning of the Processing Plant's magnetite and pyrite/cobalt circuits;
- (c) operational 'teething issues' in respect of the Processing Plant and associated technical processes and procedures in respect of the native copper processing circuit, which affected the key economic assumptions which underpinned the economic modelling of the various ore types;
- (d) performance and reliability issues associated with the fixed crusher plant which impacted upon the consistent availability of ore to the Processing Plant, and associated impediments to the efficient processing of the various ore types through the Processing Plant,

161.4 in March 2017, the CuDeco executive management team identified areas of non-alignment of what CuDeco described as the 'Updated Mine Plan' and operational plans with the 'Rocklands Project's Master Plan'; and

161.5 the matters in 161.1 to 161.4 meant that it was not possible to provide an update to CuDeco's formal ore reserve in the FY2017 Annual Report,

(December Partial Disclosure).

Particulars

The December Partial Disclosure was express and contained in the December 2017 Announcement.

162 The information the subject of the December Partial Disclosure:

162.1 related to the subject matter of the:

- (a) Rocklands Contravening Conduct;
- (b) FY2016 Contravening Conduct;
- (c) FY2017 Contravening Conduct;
- (d) KPMG 2016 Contravening Conduct; and
- (e) KPMG FY2017 Contravening Conduct.

Particulars

The December Partial Disclosure concerned the:

- A. Ore Reserve at Rocklands;
- B. the ability of CuDeco to generate revenue from Rocklands, and the quantum of that revenue; and
- C. by reason of (A) and (B), the fair value less costs of disposal of the Rocklands CGU.

162.2 was information that a reasonable person would expect to have a material effect on the price or value of CuDeco Shares;

162.3 operated to qualify, supplement or partly correct the information available to the Market relating to the subject matter of the Rocklands Contravening Conduct, FY2016 Contravening Conduct, the FY2017 Contravening Conduct, the KPMG FY2016 Contravening Conduct and the KPMG FY2017 Contravening Conduct;

Particulars

The December Partial Disclosure qualified, supplemented or partially corrected the information available to the Market the subject of the FY2016 Contravening Conduct, the FY2017 Contravening Conduct, the KPMG FY2016 Contravening Conduct and the KPMG FY2017 Contravening Conduct by advising the Market that it had adopted the Updated Mine Plan.

The correction was partial because the December Partial Disclosure did not provide an updated Ore Reserve estimate.

Further particulars may be provided following discovery and the receipt of expert reports.

162.4 to the extent that it supplemented, qualified, or corrected the information available to the Market the subject of the Rocklands Contravening Conduct, FY2016 Contravening Conduct, FY2017 Contravening Conduct, KPMG FY2016 Contravening Conduct, and/or KPMG FY2017 Contravening Conduct, caused:

- (a) persons who held CuDeco Shares to lower the price at which they were willing to dispose of CuDeco Shares in the Market; and
- (b) persons who were considering acquiring CuDeco Shares to lower the price at which they were willing to purchase CuDeco Shares in the Market.

Particulars

The effect is to be inferred from the character of the Market as set out in paragraph 175 below and the change in the traded price of CuDeco Shares following the December Partial Disclosure.

Further particulars will be provided following the receipt of experts' reports.

162.5 by reason of the matters in sub-paragraph 162.4:

- (a) caused the price at which CuDeco Shares traded to decline from a closing price of \$0.335 on 22 December 2017, to a closing price of \$0.290 on 28 December 2017 (a decline of approximately 13%); and
- (b) by the movement in sub-paragraph (a), partially corrected the Rocklands Inflation, FY2016 Inflation, FY2017 Inflation, and KPMG Inflation.

Particulars

The corrective effect is to be inferred from the character of the Market as set out in paragraph 175 below and the change in the traded price of CuDeco Shares following the December Partial Disclosure.

Further particulars will be provided following the receipt of expert reports.

A.2 March 2018 partial disclosure

- 163 On 12 March 2018, CuDeco's shares entered a trading halt (**2018 Trading Halt**).

Particulars

CuDeco requested the 2018 Trading Halt.

- 164 On 22 March 2018, CuDeco:

164.1 published and released to the ASX an announcement titled Rocklands Ore Reserves Update (**March 2018 Announcement**):

164.2 by the March 2018 Announcement stated to the Market that:

- (a) CuDeco had updated its Ore Reserves estimate for Rocklands;
- (b) following that update, the Ore Reserve:

- (i) had declined from approximately 28 million tonnes to approximately 11.6 million tonnes;
- (ii) no longer included magnetite or cobalt, following changes and re-optimisations to pit designs in September 2016 to exclude cobalt and magnetite, along with the actual in-pit exclusions, which accounted for an 11.7 million tonne reduction in the Ore Reserve;
- (iii) had been depleted by approximately 2.3 million tonnes due to processing since 31 December 2017; and
- (iv) had been reduced by approximately 2.5 million tonnes by reason of an in-pit grade control model mismatch to the resource model;

164.3 withdrew the 2015 Ore Reserve Representation and the 2015 Ore Reserves Statement,

(together, the **March Partial Disclosure**).

Particulars

The March Partial Disclosure was express and contained in the March 2018 Announcement.

165 The information the subject of the March Partial Disclosure:

165.1 related to the subject matter of the:

- (a) Rocklands Contravening Conduct; and/or
- (b) FY2016 Contravening Conduct; and/or

- (c) FY2017 Contravening Conduct; and/or
- (d) KPMG 2016 Contravening Conduct; and/or
- (e) KPMG FY2017 Contravening Conduct.

Particulars

The March Partial Disclosure concerned the:

- A. Ore Reserve at Rocklands;
- B. the ability of CuDeco to generate revenue from Rocklands, and the quantum of that revenue; and
- C. by reason of (A), the fair value less costs of disposal of the Rocklands CGU.

165.2 was information that a reasonable person would expect to have a material effect on the price or value of CuDeco Shares;

165.3 operated to further qualify, supplement, or correct the information available to the Market concerning the subject matter of the Rocklands Contravening Conduct, FY2016 Contravening Conduct, FY2017 Contravening Conduct, KPMG FY2016 Contravening Conduct and/or the KPMG FY2017 Contravening Conduct.

Particulars

The March Partial Disclosure further qualified, supplemented or corrected the information available to the Market the subject of the Rocklands Contravening Conduct, FY2016 Contravening Conduct, FY2017 Contravening Conduct, KPMG FY2016 Contravening Conduct, and/or the KPMG FY2017 Contravening Conduct because it provided an updated ore reserves estimate for CuDeco.

Further particulars may be provided following the receipt of expert reports.

166 CuDeco Shares did not resume trading after the 2018 Trading Halt.

Particulars

On 22 March 2018, the 2018 Trading Halt was extended, CuDeco announcing it expected the suspension to continue until approximately 15 April 2018.

On 16 April 2018, the 2018 Trading Halt was extended, CuDeco announcing it expected the suspension to continue until approximately 15 May 2018.

On 17 May 2018, the 2018 Trading Halt was extended, CuDeco announcing it expected the suspension to continue until approximately 7 June 2018.

On 11 June 2018, the 2018 Trading Halt was extended, CuDeco announcing it expected the suspension to continue until approximately 15 July 2018.

On 30 July 2018, the 2018 Trading Halt was extended, CuDeco announcing it expected the suspension to continue until approximately 30 September 2018.

The 2018 Trading Halt was never lifted prior to the events pleaded in paragraphs 169 to 173.

167 On 31 August 2018, CuDeco published and released to the ASX an announcement titled Rocklands Operations Update, which stated that:

167.1 CuDeco was suspending mining and processing operations at Rocklands (save for preventative maintenance) (**2018 Operations Suspension**);

167.2 CuDeco's major shareholder representatives were progressing funding initiatives which it was confident would provide effective solutions to immediate and longer-term funding requirements; and

167.3 CuDeco was going to reset its operations and refine its business model so that once financing arrangements were successfully secured, it could achieve the full potential of Rocklands.

168 CuDeco did not resume operations at Rocklands following the 2018 Operations Suspension.

169 On 2 July 2019, Kelly-Anne Trenfield, Ian Francis and Michael Ryan of FTI Consulting were appointed as joint and several receivers and managers of CuDeco, as pleaded in paragraph 6.1 above.

- 170 On 5 July 2019 the Administrators were appointed to CuDeco as pleaded in paragraph 6.2 above.
- 171 On 3 February 2020, CuDeco Shares were removed from the Official List of the ASX.
- 172 On 30 April 2020, the Administrators were appointed as Liquidators of CuDeco, as pleaded in. paragraph 6.3 above.
- 173 On 19 May 2020, the Liquidators made a loss declaration in respect of CuDeco, declaring that they had reasonable grounds to believe there would be no distribution to shareholders of CuDeco.

B. CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS

- 174 The Applicants and Group Members acquired interests in CuDeco Shares during the Relevant Period.

Particulars

Particulars of acquisitions of CuDeco Shares by the Applicants during the Relevant Period are set out in Annexure A.

Particulars of acquisitions by Group Members during the Relevant Period will be provided after the trial of the common questions or otherwise as the Court may direct.

B.1 Market Conditions

- 175 The Applicants and Group Members acquired their interests in CuDeco Shares in the Market, being a market of investors or potential investors in CuDeco Shares:

175.1 operated by the ASX;

175.2 regulated by, inter alia, the ASX Listing Rules and sections 674(2), 728, 1041E and 1041H of the Corporations Act;

175.3 where CuDeco had the obligations set out in paragraph 18 above;

175.4 in which the price at which CuDeco Shares were trading rapidly adjusted to reflect all material information concerning those securities that was disclosed by CuDeco in accordance with the ASX Listing Rules and s 674(2) of the Corporations Act; and

175.5 in which the following conduct had occurred:

- (a) the Rocklands Contravening Conduct;
- (b) the FY2016 Contravening Conduct;
- (c) the KPMG FY2016 Contravening Conduct;
- (d) the FY2017 Contravening Conduct; and
- (e) the FY2017 KPMG Contravening Conduct;

(together, the **Contravening Conduct**)

175.6 in which:

- (a) by reason of the:
 - (i) Rocklands Continuous Disclosure Contraventions;
 - (ii) Prospectus Omission Contraventions;
 - (iii) FY2016 Continuous Disclosure Contraventions; and
 - (iv) FY2017 Continuous Disclosure Contraventions,

(together, the **Disclosure Contraventions**)

information that a reasonable person would expect to have a material effect on the price or value of CuDeco Shares had not been disclosed; and

175.7 by reason of the:

- (a) Rocklands Misleading Conduct Contraventions;
- (b) Rocklands False Statement Contraventions;
- (c) Prospectus Misleading Conduct Contraventions;
- (d) FY2016 Misleading Conduct Contraventions;
- (e) FY2016 False Statement Contraventions;
- (f) FY2017 Misleading Conduct Contraventions;
- (g) FY2017 False Statement Contraventions;
- (h) KPMG FY2016 Misleading Conduct Contraventions;
- (i) KPMG FY2016 False Statement Contravention;
- (j) KPMG FY2017 Misleading Conduct Contraventions; and
- (k) KPMG FY2017 False Statement Contraventions,

(together, the **Misleading Conduct Contraventions**) misleading or deceptive information or statements that were either false in a material particular or materially misleading had been released to the Market such that a reasonable person would expect to have an effect on the price or value of CuDeco Shares.

B.2 Market-based causation – market-based acquisitions

176 In the Relevant Period, the Disclosure Contraventions and/or the Misleading Conduct Contraventions (and each of them) (Market Contraventions) caused the market price of CuDeco Shares to be, or materially contributed to the market price of CuDeco Shares being substantially greater than:

176.1 their true value; and/or

176.2 the market price that would have prevailed but for the Market Contraventions;

from the respective dates that those Market Contraventions commenced, as pleaded in this Statement of Claim.

Particulars

Paragraphs 57, 76, 95, 139 and 160 are repeated.

The extent to which the Market Contraventions caused the price for CuDeco Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed during the Relevant Period will be provided following expert evidence.

177 Further, or alternatively, if:

177.1 the information the subject of the Disclosure Contraventions had been disclosed to the ASX in the Relevant Period; and/or

177.2 the conduct the subject of the Misleading Conduct Contraventions had not been engaged in during the Relevant Period,

the price of CuDeco Shares would have fallen substantially.

Particulars

Paragraphs 57, 76, 95, 139 and 160 are repeated.

The extent to which the price for CuDeco Shares would have fallen will be provided following expert evidence.

B.3 Market based causation – Rights Issue

178 Between 11 April 2016 and about 13 May 2016, CuDeco conducted the Rights Issue and between 11 April 2016 and 11 May 2016 invited eligible shareholders to acquire CuDeco Shares, with such CuDeco Shares being issued on about 13 May 2016.

179 The Rights Issue was undertaken:

179.1 at an offer price of \$0.80, being a price fixed by reference to the market price of CuDeco Shares, which traded in a market with the features pleaded in paragraph 176 above;

179.2 at a price which, by reason of the matters in paragraph 179.1, would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) of the Corporations Act and ASX Listing Rule 3.1 (and by s 710 of the Corporations Act in respect of rights issues such as the Rights Issue);

179.3 was set in circumstances where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of CuDeco Shares (namely the information the subject of the Rocklands Continuous Disclosure Contraventions and Prospectus Omission Contraventions);

179.4 was set in circumstances where the other conduct had occurred, being conduct involving making, and failing to correct or qualify representations that a reasonable person would expect to have a material effect on the price or value of CuDeco Shares (namely the Rocklands Representations and the Rocklands Prospectus Representations), in that if they had not been made no investors or

potential investors in CuDeco Shares would have been in a position to read or rely upon them.

Particulars

The extent to which this conduct caused the offer price for CuDeco Shares under the Rights Offer to be substantially greater than their true value and/or the price that they would have been offered had they been set by reference to the market price that would otherwise have prevailed (that is, inflated) is a matter for evidence, particulars of which will be served immediately following the Applicants filing opinion evidence in the proceeding.

B.4 Reliance

180 Further or alternatively, the Applicants and some or all of the Group Members acquired an interest in CuDeco Shares as a result of holding and acting upon the assumption (being also an assumption generally made by all participants in the Market for CuDeco Shares) that:

180.1 the price at which they acquired the CuDeco Shares represented the market price in a market that had been informed of all material information relating to CuDeco; and

180.2 all such material information had been incorporated into and was reflected in the price of the CuDeco Shares as at the time of acquisition,

(Price Integrity Assumption).

Particulars

Investors and potential investors in shares on the ASX, including CuDeco Shares, are generally aware that there is a comprehensive regulatory regime including, inter alia, the ASX Listing Rules and sections 674(2), 1041E, and 1041H of the Corporations Act, which has as one of its purposes to ensure that the market is promptly informed of all information which is relevant to the price at which shares are traded.

Particulars of the Applicants' holding and relying upon the Price Integrity Assumption will be provided before trial. Particulars for each of the Group

Members who also held and relied upon the Price Integrity Assumption will be provided following resolution of the common questions.

181 Further or alternatively, in the decision to acquire CuDeco Shares:

181.1 the Applicants and some Group Members would not have acquired CuDeco Shares at the prices and in the volumes that they did, if the information the subject of the Disclosure Contraventions had been disclosed to them and/or the ASX;

181.2 the Applicants and some Group Members acquired CuDeco Shares at the prices and in the volumes that they did in relation upon some or all of the representations the subject of the Misleading Conduct Contraventions (and/or those representations not having been corrected or qualified).

Particulars

Particulars of the Applicants' reliance will be provided prior to trial.

The identity of all those Group Members which or who relied directly as pleaded above are not within the current state of the Applicants' knowledge and cannot be ascertained unless and until those advising the Applicants 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 Applicants' claims and determination 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.

B.5 Loss and damage

182 The Applicants and the Group Members suffered loss and damage resulting from the Disclosure Contraventions and/or the Misleading Statement Contraventions.

Particulars

The loss suffered by the Applicants will be calculated by reference to:

- A. the difference between the price at which they acquired interests in the CuDeco Shares and the true value of that interest;

- B. alternatively, the difference between the price at which they acquired interests in the CuDeco Shares and whatever is 'left in hand', or has been realised upon a sale, including by reason of the matters pleaded in paragraphs 163 to 173;
- C. alternatively, the difference between the price at which they acquired interests in the CuDeco Shares and whatever is 'left in hand', or has been realised upon a sale modified to take into account any part of the movement in the market price of the shares which did not 'result from' the contravening conduct;
- D. alternatively, the difference between the price at which they acquired interests in the CuDeco Shares and the price that would have prevailed but for the Disclosure Contraventions and/or the Misleading Statement Contraventions;
- E. in addition to the loss in A to D, the loss of the opportunity to achieve a reasonable rate of return on the monies used to purchase the interest in the CuDeco Shares.

Further particulars in relation to the Applicants' losses will be provided after the service of evidence in chief.

Particulars of the losses of Group Members are not known within the current state of the Applicants' knowledge and cannot be ascertained unless and until those advising the Applicants 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 losses of those Group Members will be provided) following opt out, the determination of the Applicants' 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.

IVA. INSURANCE

A. Dual Policy

182A It was a term of the Dual Policy that, or to the effect that, Dual agreed, subject to the other terms of the Dual Policy, to insure the current and former directors of CuDeco, including Hutchison and Chen, against all Loss (as defined in the Dual Policy) arising from a Claim (as defined in the Dual Policy) first made against Hutchison or Chen during the Insurance Period (as defined in the Dual Policy), for which CuDeco had not indemnified Hutchison or Chen.

Particulars

The Dual Policy provided that, or to the effect that, Dual "agree[d] to pay on behalf of each insured person their loss arising from a claim first made against an insured person during the insurance period, for which the policy holder has not indemnified the insured person: Insuring Clause 2.1.

"Insured Person" was defined in the Dual Policy to mean, inter alia, any past, present or future director...of the policy holder": Clause 6.21

“Policy Holder” was defined in the Dual Policy to mean CuDeco: Clause 6.34 and Schedule Item 2.

“Loss” was defined in the Dual Policy to mean the “total amount which any insured (which included Chen and Hutchison by reason of each of them being an Insured Person) becomes legally obliged to pay on account of a claim or investigation,” and included damages, judgments, settlement and adverse costs orders: Clause 6.25.

“Claim” was defined in the Dual Policy to mean, inter alia, a written demand for monetary damages or non-pecuniary relief, and a civil proceeding or counter-claim commenced by the service of a writ, complaint, summons, statement of claim, or similar originating process: Clause 6.5(a) and (b).

“Insurance Period” was defined in the Dual Policy to mean 4:00 pm on 31 August 2017 to 4:00 pm on 31 August 2018 Australian local time in the state or territory where the Dual Policy was purchased: Clause 6.19 and Schedule Item 4.

182B The Dual Policy provided that the limit of liability for any one Claim (as defined) was \$20 million.

Particulars

Dual Policy, Schedule, Item 5.

182C The Dual Policy provided the applicable deductible amounts for Insuring Clause 2.1 was “Nil”.

Particulars

Dual Policy, Schedule, Item 6.

182D During the Insurance Period:

182D.1 CuDeco gave notice in writing to Dual of facts that might give rise to a claim against Hutchison and/or Chen as soon as was practicable after CuDeco became aware of those facts and, in any event, before the insurance coverage provided by the Dual Policy expired;

182D.2 by operation of s 40(3) of the Insurance Contracts Act 1984 (Cth), Dual is not relieved of liability under the Dual Policy in respect of the Claims constituted by this proceeding so far as it seeks relief from Hutchison and Chen, by reason only that those Claims were made after the expiration of the Insurance Period.

Particulars

On or about 17 July 2018, the board of CuDeco received a letter from Henderson Legal with the subject line “Misleading and deceptive conduct by CuDeco Limited...and its board of directors” (July 2018 Letter).

The July 2018 Letter set out the following facts that might give rise to the claims against Hutchison and/or Chen set out in Part IV above:

- (A) the ‘CuDeco board’ failed to ensure that the processing plant would meet the operations expectations and requirements for Rocklands, which expectations and requirements were said to have been communicated to the market in, *inter alia*, the Replacement Prospectus ([7]);
- (B) the ‘CuDeco board’ had allowed material changes to mining operations at Rocklands to occur without appropriate due diligence being undertaken and without informing the market of those changes in a timely manner ([8]);
- (C) the Replacement Prospectus was “false, misleading and deceptive as it did not disclose” that, *inter alia*: (A[19])
 - (1) CuDeco’s cobalt agreement with China Oceanwide had been, or was going to be cancelled, without compensation to CuDeco;
 - (2) CuDeco was no longer planning to secure cobalt and magnetite offtake agreements;
 - (3) decisions had been taken, or would be taken, not to complete the cobalt/pyrite circuit and the magnetite circuit; and
 - (4) new management “would adopt a new approach to the mining and processing of orebody that would be a radical departure from the carefully developed master plan that had been developed for Rocklands and which was encapsulated in the [Feasibility Study]”;
- (D) on 22 March 2018, CuDeco released the March 2018 Announcement, which “corrected and countered many of the misleading statements made by CuDeco and referred to” in the earlier paragraphs of the July 2018 Letter (A[20]); and
- (E) “many of the problems with the commissioning of the Plant occurred as a result of changes that Dr Chen had implemented to the Rocklands master plan for mining and processing Rocklands ore”, including “changes to the mine plan and to

operations such as not producing cobalt and magnetite” (B[45]).

On about 7 August 2018, McCullough Robertson, the solicitors for CuDeco, addressed a letter (McCullough Letter) to Adam Battista (Battista) of Allegiant IRS (Allegiant), which at the relevant time was CuDeco’s insurance broker, which attached a copy of the July 2018 Letter, and requested that Battista “pass this correspondence and its attachments on to Dual and have them acknowledge notification of a ‘Claim’ under the [Dual Policy] on behalf of CuDeco and the ‘Insured Persons’.

On about 8 August 2018, Battista sent the McCullough Letter to Dual by an email addressed to Sharon Fowler of Dual.

On about 15 August 2018, James Skiba of Dual responded to the email dated 8 August 2018 from Battista, acknowledging that Dual “has been notified of circumstances that may give rise to a claim being made against the Insured.”

Further particulars may be provided following discovery.

B. AAI Excess Policy

183E It was a term of the AAI Excess Policy that, or to the effect that, AAI agreed, subject to the other terms of the AAI Excess Policy, to insure the current and former directors of CuDeco, including Hutchison and Chen, against all Loss (as defined in the Dual Policy) arising from a Claim (as defined in the Dual Policy) first made against Hutchison or Chen during the Insurance Period (as defined in the Dual Policy), for which CuDeco had not indemnified Hutchison or Chen, which was in excess of the Loss insured by the Dual Policy.

Particulars

The AAI Excess Policy provided that, or to the effect that:

- (A) AAI would “provide the Insured with insurance in excess of the Underlying Insurance and in accordance with the terms, conditions and exclusions (except as otherwise provided herein) of the Primary Policy”: Insuring Clause 1;
- (B) except as provided by the AAI Excess Policy, the AAI Excess Policy was “subject to all the provisions in the Primary Policy.”

“Insured” was defined in the AAI Excess Policy to mean “those persons or entities designated as insureds in the Primary Policy and shall include the Policyholder”: Clause 4, Definitions.

“Underlying Insurance” was defined in the AAI Excess Policy to mean, inter alia, the Primary Policy specified in Item 5 of the Schedule: Clause 4, Definitions.

“Primary Policy” was defined in the AAI Excess Policy to mean the Policy referred to in Item 5 of the Schedule, which included the Dual Policy: Clause 4, Definitions; Schedule Item 5.

“Policy Period” was defined in the AAI Excess Policy to mean 4:00 pm on 31 August 2017 to 4:00 pm on 31 August 2018: Clause 4, Definitions; Schedule, Item 2.

182F The AAI Excess Policy provided that the limit of liability for any one Claim (as defined in the Dual Policy) was \$20 million, in excess of the \$20 million limit of liability in the Dual Policy.

Particulars

AAI Excess Policy, Schedule, Item 3.

182G During the Insurance Period (as defined in the Dual Policy) and the Policy Period (as defined in the AAI Excess Policy):

182G.1 CuDeco gave notice in writing to AAI of facts that might give rise to a claim against Hutchison and/or Chen as soon as was practicable after CuDeco became aware of those facts and, in any event, before the insurance coverage provided by the Dual Policy and AAI Excess Policy expired;

182G.2 by operation of s 40(3) of the *Insurance Contracts Act 1984* (Cth), AAI is not relieved of liability under the AAI Excess Policy in respect of the Claims constituted by this proceeding so far as it seeks relief from Hutchison and Chen, by reason only that those Claims were made after the expiration of the Policy Period in the AAI Excess Policy.

Particulars

The Applicants refer to and repeat paragraph 0 above, and the particulars subjoined to that paragraph.

On about 27 August 2018, Sam Vickerson of Allegiant sent an email to Adam Carter of AAI attaching a copy of the McCullough Letter and the July 2018 Letter.

Further particulars may be provided following discovery.

C. Berkshire Hathaway Excess Policy

182H It was a term of the Berkshire Hathaway Excess Policy that, or to the effect that, Berkshire Hathaway agreed to insure the current and former directors of CuDeco, including Hutchison and Chen, against all Loss (as defined in the Dual Policy) arising from a Claim (as defined in the Dual Policy) first made against Hutchison or Chen during the Insurance Period (as defined in the Dual Policy), for which CuDeco had not indemnified Hutchison or Chen, which was in excess of the Loss insured by the Dual Policy and the AAI Excess Policy.

Particulars

The Berkshire Hathaway Excess Policy provided that, or to the effect that:

- (A) it would “provide coverage in accordance with the same terms, conditions and limitations of the Followed Policy, as amended by any more restrictive provisions of the Underlying Excess Policies, except as otherwise set out in this Excess Policy”;
- (B) the “coverage obligations under this Excess Policy shall attach to the Insurer only after all Underlying Insurance has been exhausted by amounts which the insurers of the Underlying Insurance shall have paid, or shall have agreed to pay, or shall have had their liability to pay established by judgment, arbitration award or other final binding adjudication”,
(Excess Policy, Section 1).
- (C) “[a]ny notice or information to the insurer(s) under the Underlying Insurance which is required to be given in accordance with the terms and conditions of the Underlying Insurance, including but not limited to any notification of claim or circumstance, shall also be provided to the Insurer under this Excess Policy”: Excess Policy, section 6.

“Followed Policy” was defined by the Berkshire Hathaway Excess Policy to mean the Dual Policy: Excess Policy, section 2(a); Schedule, Item 5(A).

“Underlying Excess Policy” was defined by the Berkshire Hathaway Excess Policy to mean the AAI Excess Policy: Excess Policy, section 2(i); Schedule, Item 5(B).

“Insurer” was defined by the Berkshire Hathaway Excess Policy to mean Berkshire Hathaway.

“Underlying Insurance” was defined by the Berkshire Hathaway Excess Policy to mean the Dual Policy and the AAI Excess Policy: Excess Policy, section 2(i); Schedule, Items 5(A) and 5(B).

“Policy Period” was defined in the Berkshire Hathaway Excess Policy to mean 4:00 pm on 31 August 2017 to 4:00 pm on 31 August 2018: Excess Policy, section 2(g); Schedule, Item 2.

182I The Berkshire Hathaway Excess Policy provided that the limit of liability for any one Claim (as defined in the Dual Policy) was \$10 million, in excess of the aggregate of the \$20 million limit of liability in the Dual Policy, and the \$20 million limit of liability in the AAI Excess Policy.

Particulars

Berkshire Hathaway Excess Policy, Schedule, Item 4.

182J During the Insurance Period (as defined in the Dual Policy) and the Policy Period (as defined in the Berkshire Hathaway Excess Policy):

182J.1 CuDeco gave notice in writing to Berkshire Hathaway of facts that might give rise to a claim against Hutchison and/or Chen as soon as was practicable after CuDeco became aware of those facts and, in any event, before the insurance coverage provided by the Dual Policy and Berkshire Hathaway Excess Policy expired;

182J.2 by operation of s 40(3) of the *Insurance Contracts Act 1984* (Cth), Berkshire Hathaway is not relieved of liability under the Berkshire Hathaway Excess Policy in respect of the Claims constituted by this proceeding so far as it seeks relief from Hutchison and Chen, by reason only that those Claims were made after the expiration of the Policy Period in the Berkshire Hathaway Excess Policy.

Particulars

The Applicants refer to and repeat paragraph 0 above, and the particulars subjoined to that paragraph.

On about 28 August, Sam Vickerson of Allegiant sent an email to Sami Jaghbir of Berkshire Hathaway, which so far as the Applicants are able to say prior to discovery, attached a copy of the McCullough Letter.

Further particulars may be provided following discovery.

D. Entitlement to indemnity

182K In the event that Hutchison and/or Chen were to incur a judgment debt in favour of the Applicants and Group Members in respect of the loss and damage pleaded under heading 'IV. Loss and Damage' above:

182K.1 such payments will constitute a Loss (as defined in the Dual Policy) to an Insured Person resulting from the claim constituted by this proceeding, and the facts set out in the July 2018 Letter, and notified to Dual, AAI and Berkshire Hathaway, referred to in paragraphs 0, 0 and 0 above;

182K.2 Dual will be obliged by the Dual Policy to pay each of Hutchison and/or Chen an amount equal to the amount that each of them is ordered to pay to the Applicants and Group Members, save to the extent that doing so would require Dual to pay a total of more than \$20 million under the Dual Policy;

182K.3 AAI will be obliged under the AAI Excess Policy to pay to each of Hutchison and/or Chen an amount equal to the amount that each of them is ordered to pay to the Applicants and Group Members, to the extent that the latter amount exceeds \$20 million, and save to the extent that doing so would require AAI to pay a total of more than \$20 million under the AAI Excess Policy;

182K.4 Berkshire Hathaway will be obliged under the Berkshire Hathaway Excess Policy to pay each of Hutchison and/or Chen an amount equal to the amount that each of them is ordered to pay to the Applicants and Group Members, to the extent that the latter amount exceeds \$40 million, and save to the extent that doing so would require Berkshire Hathaway to pay a total of more than \$10 million under the Berkshire Hathaway Excess Policy.

182L In the premises of the preceding paragraph, the Court should declare that:

182L.1 Dual is obliged under the Dual Policy to pay Hutchison and/or Chen an amount equal to such amount as each of them is ordered to pay to the Applicants and Group Members, save to the extent that doing so would require Dual to pay a total of more than \$20 million under the Dual Policy;

182L.2 AAI is obliged to under the AAI Excess Policy to pay to each of Hutchison and/or Chen an amount equal to the amount that each of them is ordered to pay to the Applicants and Group Members, to the extent that the latter amount exceeds \$20 million, and save to the extent that doing so would require AAI to pay a total of more than \$20 million under the AAI Excess Policy;

182L.3 Berkshire Hathaway is obliged under the Berkshire Hathaway Excess Policy to pay each of Hutchison and/or Chen an amount equal to the amount that each of them is ordered to pay to the Applicants and Group Members, to the extent that the latter amount exceeds \$40 million, and save to the extent that doing so would require Berkshire Hathaway to pay a total of more than \$10 million under the Berkshire Hathaway Excess Policy.

V ENTITLEMENT TO RELIEF

183 In the premises, CuDeco is obliged, pursuant to s 1317HA of the Corporations Act, to compensate the Applicants and Group Members for the damage that resulted from CuDeco's contraventions of s 674(2) of the Corporations Act pleaded against it.

184 Further or in the alternative, in the premises, the Applicants and each of the Group Members may recover from CuDeco, Chen, and/or Hutchison, and/or KPMG the amount of the loss and damage suffered by them by reason of the contraventions of ss 1041H and 1041E of the Corporations Act, s 12DA of the ASIC Act and s 18 of the ACL pleaded respectively against each of them, pursuant to:

184.1 section 1041I of the Corporations Act;

184.2 section 12GF of the ASIC Act; and/or

184.3 section 236 of the ACL.

185 Further or in the alternative, in the premises, the Applicants and each of the Group Members may recover from CuDeco and/or Chen and/or Hutchison the amount of the loss and damage suffered by them by reason of the contraventions of s 728 of the Corporations Act pleaded respectively against them, pursuant to s 729 of the Corporations Act.

185A Further, by reason of the matters pleaded in paragraphs 0 to 0 above, the Applicants are entitled to declarations that:

185A.1 Dual is obliged under the Dual Policy to pay Hutchison and/or Chen an amount equal to such amount as each of them is ordered to pay to the Applicants and Group Members, save to the extent that doing so would require Dual to have paid a total of more than \$20 million under the Dual Policy;

185A.2 AAI is obliged to under the AAI Excess Policy to pay to each of Hutchison and/or Chen an amount equal to the amount that each of them is ordered to pay to the Applicants and Group Members, to the extent that the latter amount exceeds \$20 million, and save to the extent that doing so would require AAI to have paid a total of more than \$20 million under the AAI Excess Policy;

185A.3 Berkshire Hathaway is obliged under the Berkshire Hathaway Excess Policy to pay each of Hutchison and/or Chen an amount equal to the amount that each of them is ordered to pay to the Applicants and Group Members, to the extent that the latter amount exceeds \$40 million, and save to the extent that doing so would require Berkshire Hathaway to pay a total of more than \$10 million under the Berkshire Hathaway Excess Policy.

AND THE APPLICANTS CLAIM, for themselves and on behalf of group members the relief set out in the originating application.

Dated: ~~7 April 2022~~ 12 January 2024



.....
Signed by Elliott Smith

Solicitors for the Applicant

This pleading was prepared by:


WAD EDWARDS

TJD CHALKE

CERTIFICATE OF LAWYERS

I Elliott Smith, certify to the Court that, in relation to the amended statement of claim filed on behalf of the Applicant, the factual and legal material available to us at present provides a proper basis for each allegation in the pleading.

Date: 12 January 2024



Signed by Elliott Smith

Lawyer for the Applicant

Schedule of Parties

CuDeco Limited (receivers and managers appointed) (in liquidation) ACN 000 317 251

First Respondent

Peter Robert Hutchison

Second Respondent

Dianmin Chen

Third Respondent

KPMG (A FIRM) ABN 51 194 660 183

Fourth Respondent

**Dual Australia Pty Ltd ACN 107 553 257 as agent for
certain underwriters at Lloyd's**

Fifth Respondent

AAI Limited ACN 005 297 807

Sixth Respondent

Berkshire Hathaway Speciality Insurance Company

Seventh Respondent

**ANNEXURE A – PARTICULARS OF APPLICANTS' SHAREHOLDINGS
IN CUDECO SHARES DURING THE RELEVANT PERIOD**

First Applicant

Mr McCullagh acquired an interest in CuDeco Shares as outlined in the following table:

Date	Number of shares purchased / (sold)	Average price per share (\$)¹	Amount paid / (received) (\$) [not incl. brokerage]	Brokerage (\$)	Amount paid / (received) (\$) [incl. brokerage]
11/05/2016	50,000	0.68	\$34,000.00	\$40.80	\$34,040.80
18/05/2016	48,512	0.52	\$25,226.24	\$30.27	\$25,256.51
19/05/2016	(47,289)	0.54	(\$25,299.62)	\$30.36	(\$25,269.26)
20/05/2016	(49,980)	0.54	(\$27,139.14)	\$32.58	(\$27,106.56)
23/05/2016	110,000	0.58	\$63,250.00	\$75.90	\$63,325.90
25/05/2016	102,546	0.59	\$60,502.14	\$72.60	\$60,574.74
24/06/2016	55,000	0.45	\$24,475.00	\$29.95	\$24,504.95
17/08/2016	21,200	0.47	\$9,858.00	\$19.95	\$9,877.95
22/12/2016	16,153	0.46	\$7,349.62	\$19.95	\$7,369.57
23/12/2016	3,000	0.45	\$1,350.00	N/A	\$1,350.00
28/12/2016	30,847	0.45	\$13,881.15	\$10.00	\$13,891.15
30/12/2016	(20,000)	0.48	(\$9,500.00)	\$19.95	(\$9,480.05)
05/01/2017	(30,000)	0.50	(\$15,000.00)	\$29.95	(\$14,970.05)
05/01/2017	49,000	0.49	\$24,010.00	\$29.95	\$24,039.95

¹ Totals may not add due to rounding.

Date	Number of shares purchased / (sold)	Average price per share (\$)¹	Amount paid / (received) (\$) [not incl. brokerage]	Brokerage (\$)	Amount paid / (received) (\$) [incl. brokerage]
10/01/2017	(44,444)	0.50	(\$22,222.00)	\$29.95	(\$22,192.05)
11/01/2017	50,000	0.49	\$24,500.00	\$29.95	\$24,529.95
13/01/2017	(54,373)	0.50	(\$26,914.64)	\$32.31	(\$26,882.33)
18/05/2017	100,000	0.30	\$29,455.30	\$35.34	\$29,490.64
19/05/2017	(100,000)	0.33	(\$33,000.00)	\$39.60	(\$32,960.40)
29/05/2017	100,000	0.33	\$32,500.00	\$39.00	\$32,539.00
27/07/2017	36,285	0.28	\$10,159.80	\$29.95	10,189.75
28/07/2017	(33,507)	0.31	(\$10,219.64)	\$29.95	(\$10,189.69)
31/07/2017	10,090	0.35	\$3,481.05	\$19.95	\$3,501.00
31/07/2017	(10,090)	0.36	(\$3,581.95)	\$19.95	(\$3,562.00)
01/08/2017	100,000	0.38	\$37,500.00	\$45.00	\$37,545.00
25/09/2017	70,000	0.32	\$22,681.47	\$29.95	\$22,711.39

Mr McCullagh, as trustee of the Stuart McCullagh Superannuation Fund, acquired an interest in CuDeco Shares as outlined in the following table:

Date	Number of shares purchased / (sold)	Average price per share (\$)	Amount paid / (received) (\$) [not incl. brokerage]	Brokerage (\$)	Amount paid / (received) (\$) [incl. brokerage]
24/07/2017	12,115	0.26	\$3,149.90	\$19.95	\$3,169.95

Second Applicant

Mr Toner acquired an interest in CuDeco Shares as outlined in the following table:

Date	Number of shares purchased / (sold)	Average price per share (\$)	Amount paid / (received) (\$) [not incl. brokerage]	Brokerage (\$)	Amount paid / (received) (\$) [incl. brokerage]
16/05/2016	20,000	0.57	\$11,400.00	\$29.95	\$11,429.95
19/05/2016	10,000	0.54	\$5,350.00	\$29.95	\$5,379.95
29/06/2016	10,000	0.46	\$4,600.00	\$29.95	\$4,629.95
07/08/2016	(10,000)	0.52	(\$5,150.00)	\$29.95	\$(5,120.05)
25/08/2016	10,000	0.53	\$5,250.00	\$29.95	\$5,279.95
07/04/2017	10,000	0.26	\$2,650.00	\$29.95	\$2,679.95
18/05/2017	10,000	2.75	\$27,500.00	\$29.95	\$27,529.95
22/06/2017	10,000	0.25	\$2,500.00	\$29.95	\$2,529.95
21/07/2017	5,000	0.27	\$1,325.00	\$29.95	\$1,354.95
19/02/2018	2,500	0.21	\$525.00	\$29.95	\$554.95
2/07/2018	6,000	0.23	\$1,350.00	\$29.95	\$1,379.95

Mr Toner, on behalf of the Leo Toner Superannuation Fund, acquired an interest in CuDeco Shares as outlined in the following table:

Date	Number of shares purchased / (sold)	Average price per share (\$)	Amount paid / (received) (\$) [not incl. brokerage]	Brokerage (\$)	Amount paid / (received) (\$) [incl. brokerage]
13/05/2016	10,000	0.56	\$5,638.13	\$29.95	\$5,668.08
13/05/2016	(1,000)	0.57	(\$570.00)	\$29.95	\$(540.05)
05/11/2016	7,200	0.66	\$4,751.22	\$29.95	\$4,781.17

Date	Number of shares purchased / (sold)	Average price per share (\$)	Amount paid / (received) (\$) [not incl. brokerage]	Brokerage (\$)	Amount paid / (received) (\$) [incl. brokerage]
17/11/2016	7,800	0.51	\$3,975.25	\$29.95	\$4,005.20
25/11/2016	4,372	0.44	\$1,901.82	\$29.95	\$1,931.77
28/11/2016	2,422	0.45	\$1,077.79	\$29.95	\$1,107.74
30/12/2016	1,675	0.45	\$753.75	\$29.95	\$783.70
23/01/2017	3,327	0.47	\$1,563.69	\$29.95	\$1,593.64
05/03/2017	4,703	0.31	\$1,457.93	\$29.95	\$1,487.88
16/05/2017	2,789	0.26	\$725.14	\$29.95	\$755.09
23/05/2017	3,368	0.32	\$1,077.76	\$29.95	\$1,107.71
03/06/2017	3,160	0.41	\$1,279.80	\$29.95	\$1,309.75
27/06/2017	4,227	0.25	\$1,056.75	\$29.95	\$1,086.70
06/07/2017	1,079	0.29	\$312.91	\$29.95	\$342.86
24/07/2017	3,835	0.26	\$997.10	\$29.95	\$1,027.05
24/07/2017	(4,146)	0.26	(\$1,057.23)	\$29.95	\$(1,027.28)
08/08/2017	463	0.33	\$152.79	\$29.95	\$182.74
21/08/2017	2,629	0.41	\$1,077.89	\$29.95	\$1,107.84
26/09/2017	3,036	0.35	\$1,069.05	\$29.95	\$1,099.00
26/10/2017	5,269	0.36	\$1,896.84	\$29.95	\$1,926.79
07/11/2017	1,317	0.26	\$335.84	\$29.95	\$365.79
09/11/2017	319	0.39	\$122.82	\$29.95	\$152.77
14/11/2017	9,417	0.34	\$3,154.70	\$29.95	\$3,184.65
27/11/2017	2,094	0.33	\$688.70	\$29.95	\$718.65
26/02/2018	4,900	0.22	\$1,078.00	\$29.95	\$1,107.95

Date	Number of shares purchased / (sold)	Average price per share (\$)	Amount paid / (received) (\$) [not incl. brokerage]	Brokerage (\$)	Amount paid / (received) (\$) [incl. brokerage]
02/06/2018	876	0.21	\$183.96	\$29.95	\$213.91
02/12/2018	3,340	0.22	\$718.10	\$29.95	\$748.05

GLOSSARY OF TERMS

Term	Location
1Q17 Ore Reserves Representation	is defined in paragraph 59.
1Q17 Quarterly Report	is defined in paragraph 58.
2015 Maiden Ore Reserves Announcement	is defined in paragraph 20.
2015 Ore Reserves Representations	is defined in paragraphs 21.1 – 21.2.
2015 Ore Reserves Statement	is defined in paragraph 21.3.
2015 Viability Representation	is defined in paragraph 21.4.
2016 Viability Representation	is defined in paragraph 25.5.
2018 Operations Suspension	is defined in paragraph 167.1.
2018 Trading Halt	is defined in paragraph 163.
2Q17 Quarterly Report	is defined in paragraph 77.
2Q17 Report Representation	is defined in paragraph 79.
3Q16 Quarterly Report	is defined in paragraph 30.
3Q17 Quarterly Report	is defined in paragraph 78.
3Q17 Report Representation	is defined in paragraph 79.
4Q16 Quarterly Report	is defined in paragraph 32.
4Q16 Quarterly Report Representations	is defined in paragraph 33.
AASB	is defined in paragraph 13.2.
Accounting Standards	is defined in paragraph 13.2.
ACL	is defined in paragraph 5.8(c).
Adjusted Ore Reserve	is defined in paragraph 118.2.
Administrators	is defined in paragraph 6.2.
AMDAD	is defined in paragraph 21.3(a).

Annual Reserves Statement	is defined in paragraph 18.4(c).
ASIC	is defined in paragraph 22.2.
ASIC Act	is defined in paragraph 5.7.
ASX	is defined in paragraph 5.2.
ASX Listing Rules	is defined in paragraph 5.5(a).
ASX Reporting Obligations	is defined in paragraph 18.
Auditing Standards	is defined in paragraph 97.2.
Auditor's Report	is defined in paragraph 13.4.
CGU	is defined in paragraph 17.2(b).
Chen	is defined in paragraph 9.
Contravening Conduct	is defined in paragraph 175.5.
Corporations Act	is defined in paragraph 1.3(a).
CuDeco Shares	is defined in paragraph 1.1.
December 2017 Announcement	is defined in paragraph 38.
December Partial Disclosure	is defined in paragraph 161.
Disclosure Contraventions	is defined in paragraph 175.6.
Fair Value Assessment	is defined in paragraph 60.
Feasibility Study	is defined in paragraph 25.1.
Feasibility Study Announcement	is defined in paragraph 24.
Financial Performance Information	is defined in paragraph 42.
Framework	is defined in paragraph 15.2(b).
FY2016 Annual Report	is defined in paragraph 60.
FY2016 Annual Report Impairment Statement	is defined in paragraph 60.2(b).
FY2016 Annual Report Information	is defined in paragraph 65.

FY2016 Annual Report Ore Reserves Representation	is defined in paragraph 60.1.
FY2016 Audit	is defined in paragraph 96.1.
FY2016 Audit Report	is defined in paragraph 107.
FY2016 Continuous Disclosure Contraventions	is defined in paragraph 67.
FY2016 Contravening Conduct	is defined in paragraphs 76.1 – 76.3.
FY2016 False Statement Contraventions	is defined in paragraph 75.
FY2016 Financial Report	is defined in paragraph 60.
FY2016 Financial Report Representations	is defined in paragraph 60.3.
FY2016 Impairment	is defined in paragraph 60.2(b).
FY2016 Implied Representations	is defined in paragraph 61.2.
FY2016 Inflation	is defined in paragraph 76.
FY2016 KPMG Inflation	is defined in paragraph 139.
FY2016 Misleading Conduct Contraventions	is defined in paragraph 70.
FY2016 Representations	is defined in paragraph 62.
FY2017 Annual Report	is defined in paragraph 80.
FY2017 Annual Report Impairment Statement	is defined in paragraph 80.2.
FY2017 Annual Report Information	is defined in paragraph 84.
FY2017 Annual Report Ore Reserves Representation	is defined in paragraph 80.1.
FY2017 Audit	is defined in paragraph 96.2.
FY2017 Audit Report	is defined in paragraph 113.
FY2017 Continuous Disclosure Contraventions	is defined in paragraph 86.
FY2017 Contravening Conduct	is defined in paragraphs 95.1 – 95.3.

FY2017 False Statement Contraventions	is defined in paragraph 94.
FY2017 Financial Report	Is defined in paragraph 80.
FY2017 Financial Report Representations	is defined in paragraph 80.3.
FY2017 Impairment	is defined in paragraph 80.2.
FY2017 Implied Representations	is defined in paragraph 81.2.
FY2017 Inflation	is defined in paragraph 95.
FY2017 Misleading Conduct Contraventions	is defined in paragraph 89.
FY2017 Representations	is defined in paragraph 82.
Group Members	is defined in paragraph 1.
Hutchison	is defined in paragraph 8.
JORC	is defined in paragraph 60.
KPMG	is defined in paragraph 11.
KPMG 2017 Inflation	is defined in paragraph 160.
KPMG Audit Team	is defined in paragraph 99.
KPMG FY2016 Contravening Conduct	is defined in paragraph 139.
KPMG FY2016 Misleading Conduct Contravention	is defined in paragraph 123.
KPMG FY2016 Opinion	is defined in paragraph 110.1.
KPMG FY2016 Representation	is defined in paragraph 110.2.
KPMG FY2017 Contravening Conduct	is defined in paragraph 160.
KPMG FY2017 Misleading Conduct Contravention	is defined in paragraph 144.
KPMG FY2017 Opinion	is defined in paragraph 116.1.
KPMG FY2017 Representation	is defined in paragraph 116.2.
KPMG Information	is defined in paragraph 139.

KPMG Retainer	is defined in paragraph 96.
Liquidators	is defined in paragraph 6.3.
Magnetite and Cobalt Information	is defined in paragraphs 38.1 – 38.2.
March 2018 Announcement	is defined in paragraph 64.
March Partial Disclosure	is defined in paragraph 164.
Market	is defined in paragraph 18.1.
Market Contraventions	is defined in paragraph 176.
Mine Plan Information	is defined in paragraphs 41.1 – 41.2.
Mining Operations	is defined in paragraph 12.2.
Misleading Conduct Contraventions	is defined in paragraph 175.7.
October 2016 Information	is defined in paragraph 64.
Ore Reserve	is defined in paragraph 21.1.
Price Integrity Assumption	is defined in paragraph 180.
Processing Operations	is defined in paragraph 12.3.
Processing Plant	is defined in paragraph 12.3.
Processing Plant Information	is defined in paragraph 40.
Prospectus Basis Representations	is defined in paragraph 35.
Prospectus Misleading Statement Contraventions	is defined in paragraph 55.
Prospectus Omission Contraventions	is defined in paragraph 56.
Prospectus Representation	is defined in paragraph 28.
Reduced Ore Reserve Information	is defined in paragraph 39.
Relevant Period	is defined in paragraph 1.1.
Replacement Prospectus	is defined in paragraph 27.

Replacement Prospectus Assumptions Statement	is defined in paragraph 27.5.
Rights Issue	is defined in paragraph 22.1(a).
Rights Issue Prospectus	is defined in paragraph 22.2.
Rocklands	is defined in paragraph 12.1.
Rocklands Continuous Disclosure Contraventions	is defined in paragraph 46.
Rocklands Contravening Conduct	is defined in paragraphs 57.1 – 57.5.
Rocklands Earnings Representation	is defined in paragraph 25.3(b).
Rocklands False Statement Contraventions	is defined in paragraph 54.
Rocklands Implied Representations	is defined in paragraph 34.
Rocklands Inflation	is defined in paragraph 57.
Rocklands Misleading Conduct Contraventions	is defined in paragraphs 49.1 – 49.3.
Rocklands NPV Representation	is defined in paragraph 25.4.
Rocklands Plan	is defined in paragraph 21.3(b)(ii).
Rocklands Prospectus Representations	is defined in paragraphs 36.9 – 36.10.
Rocklands Representations	is defined in paragraphs 36.1 – 36.8.
Rocklands Revenue Representation	is defined in paragraph 25.3(a).
Sinosteel	is defined in paragraph 12.
Statutory Auditing Obligations	is defined in paragraph 97.
Statutory Reporting Obligations	Is defined in paragraph 13.
Twemlow	is defined in paragraph 11.3(b).
Updated Mine Plan	is defined in paragraph 41.1.
White	is defined in paragraph 7.