

NOTICE OF FILING

Details of Filing

Document Lodged:	Defence - Form 33 - Rule 16.32
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	11/04/2023 4:03:21 PM AEST
Date Accepted for Filing:	11/04/2023 4:29:18 PM AEST
File Number:	VID176/2022
File Title:	STUART MCCULLAGH & ANOR v CUDECO LIMITED (RECEIVERS AND MANAGERS APPOINTED)(IN LIQUIDATION) ACN 000 317 251 & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Fourth Respondent's Defence

No. VID176 of 2022

Federal Court of Australia
District Registry: Victoria
Division: General

Stuart McCullagh and another

Applicants

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

and others

Respondents

NOTE

- A. In this Defence, 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.
- B. Nothing in this defence should be taken to amount to an express or implied waiver of any privilege against self-incrimination or privilege against exposure to penalty belonging to any of the partners, directors, officers or employees of the Fourth Respondent (**KPMG**).

Filed on behalf of (name & role of party) KPMG (A Firm) (ABN 51 194 660 183), the Fourth Respondent

Prepared by (name of person/lawyer) Peter Haig

Law firm (if applicable) Allens

Tel 03 9613 8289 Fax _____

Email Peter.Haig@allens.com.au

Address for service 37/101 Collins St, Melbourne VIC 3000

(include state and postcode) _____

- C. Headings from the **Statement of Claim** filed on 7 April 2022 are used for ease of reference and are not treated as part of the pleadings. For the avoidance of doubt, KPMG does not plead to the headings used by the Applicants and in particular does not plead to (and does not admit) headings which incorporate characterisations of conduct.

I. THE PARTIES

A. The Applicants and the Group Members

1. In response to paragraph 1 of the Statement of Claim, KPMG:
 - a. in response to sub-paragraph 1.2, denies that the Applicants or any persons suffered loss or damage by or resulting from the conduct of KPMG pleaded in the Statement of Claim;
 - b. otherwise, does not know and therefore cannot admit paragraph 1.
2. KPMG does not know and therefore cannot admit paragraph 2 of the Statement of Claim.
3. KPMG does not know and therefore cannot admit paragraph 3 of the Statement of Claim.
4. KPMG repeats paragraph 1(a) above and, on that basis, denies paragraph 4 of the Statement of Claim.

B. CuDeco

5. In response to paragraph 5 of the Statement of Claim, KPMG:
 - a. proceeds on the basis that the chapeau to sub-paragraph 5.3 is intended to refer to “until 3 February 2020”, not “until 3 February 2010”;
 - b. on the basis of that assumption:
 - i. says in relation to sub-paragraph 5.5(b), that CuDeco was a 'mining exploration entity', not a 'mining producing entity' within the meaning of ASX Listing Rule 9.12;
 - ii. otherwise, admits the paragraph.
6. In response to paragraph 6 of the Statement of Claim, KPMG:
 - a. admits sub-paragraph 6.1;
 - b. admits sub-paragraph 6.2;
 - c. admits that, on 30 April 2020, the Administrators were appointed as liquidators of CuDeco;
 - d. otherwise, does not know and therefore cannot admit the paragraph.

C. The CuDeco Officers

7. KPMG admits paragraph 7 of the Statement of Claim.
8. In response to paragraph 8 of the Statement of Claim, KPMG:
 - a. says that Peter Robert Hutchison (**Hutchison**) is the Second Respondent to the proceeding, not the Third Respondent;
 - b. admits sub-paragraph 8.1;
 - c. admits that Hutchison was the interim managing director of CuDeco from 24 July 2015, but otherwise does not know and therefore cannot admit sub-paragraph 8.2;
 - d. admits sub-paragraph 8.3.
9. In response to paragraph 9 of the Statement of Claim, KPMG:
 - a. says that Dianmin Chen (**Chen**) is the Third Respondent to the proceeding, not the Fourth Respondent;
 - b. admits sub-paragraph 9.1;
 - c. says that Chen was the managing director of CuDeco from 20 May 2016 until 21 February 2017;
 - d. otherwise denies paragraph 9 of the Statement of Claim.
10. KPMG admits paragraph 10 of the Statement of Claim.

D. KPMG

11. In response to paragraph 11 of the Statement of Claim, KPMG:
 - a. in response to sub-paragraph 11.1:
 - i. says that KPMG offered, at all material times, audit services and accounting services, including in Victoria and elsewhere in Australia;
 - ii. says that KPMG (ABN 51 194 660 183) is a partnership under the *Partnership Act 1982* (NSW) (**NSW Partnership Act**);
 - iii. otherwise denies the sub-paragraph;
 - b. in response to sub-paragraph 11.2:
 - i. says that, in respect of the conduct alleged in the Statement of Claim, the only proper persons against whom this proceeding may be brought, are those persons who were partners during the Relevant Period (as defined in the Statement of Claim);
 - ii. otherwise, admits the sub-paragraph;

- c. in response to sub-paragraph 11.3:
 - i. says that the KPMG partnership does not include employees;
 - ii. says that s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and s 18 of the Australian Consumer Law (**ACL**) only apply to conduct by persons in trade or commerce;
 - iii. otherwise, admits the sub-paragraph;
- d. in response to sub-paragraph 11.4:
 - i. refers to and relies on the provisions of s 761F of the Corporations Act for their full force and effect;
 - ii. otherwise, denies the sub-paragraph;
- e. in response to sub-paragraph 11.5:
 - i. refers to and repeats paragraph 11(a)(ii) above;
 - ii. refers to and relies on the provisions of the *Partnership Act 1958* (Vic) (**Victorian Partnership Act**) for their full force and effect;
 - iii. says that each partner of KPMG, during the Relevant Period and at all material times, was an agent of KPMG and the other partners of KPMG to the extent provided for in s 9 of the Victorian Partnership Act for the purpose of the business of the partnership;
 - iv. says that, in respect of the conduct alleged in the Statement of Claim:
 - 1. pursuant to s 13 of the Victorian Partnership Act, every partner of KPMG is liable jointly with the other partners for any debts and obligations of the firm incurred while the partner was a partner;
 - 2. pursuant to s 13(1) of the Victorian Partnership Act, in the event (which is denied) that any wrongful act or omission of Mr Adam Kenneth Twemlow (**Twemlow**), acting in the ordinary course of the business of the firm, or with the authority of his co-partners, caused loss or injury (which is denied) to any person not being a partner of the firm, KPMG would be liable therefore to the same extent as the partner so acting or omitting to act (which is denied);
 - v. otherwise, denies the sub-paragraph.

II. CUDECO'S BUSINESS AND REGULATORY CONTEXT

A. Rocklands Mine

12. In response to paragraph 12 of the Statement of Claim, KPMG:
- a. admits sub-paragraph 12.1;
 - b. in response to sub-paragraph 12.2:
 - i. does not know and therefore cannot admit when CuDeco commenced mining operations at Rocklands;
 - ii. admits that mining operations at Rocklands ceased on 31 August 2018;
 - c. admits sub-paragraph 12.3;
 - d. otherwise, denies the paragraph.

B. CuDeco reporting requirements

B.1 Corporations Act reporting requirements

13. In response to paragraph 13 of the Statement of Claim, KPMG:
- a. says that CuDeco was subject to, and bound by, ss 111AO(1), 292, 296, 297 and 301 of the Corporations Act;
 - b. otherwise, denies the paragraph.

B.2 Accounting Standards

14. In response to paragraph 14 of the Statement of Claim, KPMG:
- a. says that the Accounting Standards made by the Australian Accounting Standards Board (**AASB**) pursuant to s 334 of the Corporations Act, and in force during the whole of the Relevant Period, included:
 - i. AASB 101 "Presentation of Financial Statements";
 - ii. AASB 110 "Events After the Reporting Period";
 - iii. AASB 136 "Impairment of Assets";
 - b. says further that:
 - i. one version of AASB 136 was applicable to reporting periods beginning on or after 1 January 2016 but before 1 January 2017 (with early application permitted, except in relation to Part B); and

- ii. an amended version of AASB 136 was applicable to reporting periods beginning on or after 1 January 2017 but before 1 January 2018 (with early application permitted);
 - c. otherwise, admits the paragraph.
- 15. In response to paragraph 15 of the Statement of Claim, KPMG:
 - a. refers to and relies on the terms of AASB 101 as a whole;
 - b. otherwise, denies the paragraph.
- 16. In response to paragraph 16 of the Statement of Claim, KPMG:
 - a. refers to and relies on the terms of AASB 110 as a whole;
 - b. says that AASB 110 prescribed:
 - i. when an entity should adjust its financial statements for events after the reporting period;
 - ii. the disclosures that an entity should give about the date when the financial statements were authorised for issue and about events after the reporting period;
 - iii. that an entity should not prepare its financial statements on a going concern basis if events after the reporting period indicate that the going concern assumption is not appropriate;
 - c. says that AASB 110:
 - i. defined “*events after the reporting period*” in the manner set out in subparagraph 16.2(a) of the Statement of Claim;
 - ii. did not define “*adjusting events*”;
 - iii. defined “*adjusting events after the reporting period*” as those events after the reporting period that provide evidence of conditions that existed at the end of the reporting period;
 - iv. defined “*non-adjusting events after the reporting period*” as those events after the reporting period that are indicative of conditions that arose after the reporting period;
 - d. says that AASB 110 required that an entity adjust the amounts recognised in its financial statements to reflect adjusting events after the reporting period;

- e. otherwise, denies the paragraph.

Particulars

AASB 110, paragraphs 3 and 8.

17. In response to paragraph 17 of the Statement of Claim, KPMG:
- a. refers to and relies on the terms of AASB 136 as a whole;
 - b. says that AASB 136 prescribed the procedures that an entity applies to ensure that its assets are carried at no more than their recoverable amount;
 - c. says that AASB 136 defined:
 - i. *“Carrying amount”* as the amount at which an asset is recognised after deducting any accumulated depreciation (amortisation) and accumulated impairment losses thereon;
 - ii. a *“cash generating unit (CGU)”* in the manner set out in sub-paragraph 17.2(b) of the Statement of Claim;
 - iii. the *“recoverable amount of an asset or a cash-generating unit”* in the manner set out in sub-paragraph 17.2(c) of the Statement of Claim; and
 - d. says that AASB 136 required:
 - i. that an entity “shall assess at the end of each reporting period whether there is any indication that an asset may be impaired. If any such indication exists, the entity shall estimate the recoverable amount of the asset”;
 - ii. that “the recoverable amount is determined for an individual asset, unless the asset does not generate cash inflows that are largely independent of those from other assets or groups of assets. If this is the case, recoverable amount is determined for the cash-generating unit to which the asset belongs, unless either:
 - 1. the asset’s fair value less costs of disposal is higher than its carrying amount; or
 - 2. the asset’s value in use can be estimated to be close to its fair value less costs of disposal and fair value less costs of disposal can be measured”;
 - iii. that “the recoverable amount of a cash-generating unit is the higher of the cash-generating unit’s fair value less costs of disposal and its value in use”;
 - iv. that “if there is any indication that an asset may be impaired, recoverable amount shall be estimated for the individual asset. If it is not possible to

estimate the recoverable amount of the individual asset, an entity shall determine the recoverable amount of the cash-generating unit to which the asset belongs (the asset's cash-generating unit)";

- v. that "an impairment loss shall be recognised for a cash-generating unit (the smallest group of cash-generating units to which goodwill or a corporate asset has been allocated) if, and only if, the recoverable amount of the unit (group of units) is less than the carrying amount of the unit (group of units). The impairment loss shall be allocated to reduce the carrying amount of the assets of the unit (group of units) in the following order: (a) first, to reduce the carrying amount of any goodwill allocated to the cash-generating unit (group of units); and (b) then, to the other assets of the unit (group of units) pro rata on the basis of the carrying amount of each asset in the unit (group of units). These reductions in carrying amounts shall be treated as impairment losses on individual assets and recognised in accordance with paragraph 60";
- vi. that "an impairment loss shall be recognised immediately in profit or loss, unless the asset is carried at revalued amount in accordance with another Standard (e.g. in accordance with the revaluation model in AASB 116). Any impairment loss of a revalued asset shall be treated as a revaluation decrease in accordance with that other Standard"; and
- e. otherwise denies the paragraph.

Particulars

AASB 136, paragraphs 6, 9, 22, 60, 66, 74, 104.

B.3 ASX Listing Requirements

- 18. In response to paragraph 18 of the Statement of Claim, KPMG:
 - a. refers to and relies upon the ASX Listing Rules as a whole;
 - b. otherwise admits the paragraph.

- 19. KPMG admits paragraph 19 of the Statement of Claim.

III. CASE AGAINST CUDECO AND ITS OFFICERS

A. Alleged Ore Reserve Representations

A.1 Maiden ore reserve estimate

- 20. KPMG admits paragraph 20 of the Statement of Claim.

21. In response to paragraph 21 of the Statement of Claim, KPMG:

- a. says that Chen was not a director of CuDeco at the time of the 2015 Maiden Ore Reserves Announcement;
- b. refers to and relies on the terms of the 2015 Maiden Ore Reserves Announcement as a whole;
- c. says that the 2015 Maiden Ore Reserves Announcement defined “Spec_CuEq” by way of a formula on page 6;
- d. says that the 2015 Maiden Ore Reserves Announcement stated that the total ore reserve at Rocklands was 28 million tonnes at 0.9% Spec_CuEq, comprising:
 - i. a proved ore reserve of 23 million tonnes, at 0.97% Spec_CuEq; and
 - ii. a probable ore reserve of 5 million tonnes, at 0.58% Spec_CuEq;
- e. says that the 2015 Maiden Ore Reserves Announcement stated that within the Ore Reserve, there was:
 - i. 10.4 million tonnes of high grade ore (being ore with >0.5% Copper) at 1.61% Spec_CuEq; and
 - ii. 17.4 million tonnes of low grade ore at 0.48% Spec_CuEq; and
- f. admits sub-paragraph 21.3(a);
- g. says that the 2015 Ore Reserves Statement stated that it was “based on the November 2013 Mineral Resource Estimate for Rocklands prepared [by Mining Associates Pty Ltd (**Mining Associates**)] and the mine plan prepared by AMDAD as part of the 2015 Rocklands Feasibility Study”;
- h. admits sub-paragraph 21.3(c);
- i. says that the 2015 Maiden Ore Reserves Announcement stated that “[t]he Feasibility Study indicates that the project is technically and economically viable for the metal prices assumed”; and
- j. otherwise, denies the paragraph.

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

22. Under cover of the pleading that paragraph 22 of the Statement of Claim makes no allegation against it, KPMG:

- a. in response to sub-paragraph 22.1:
 - i. says that on 5 February 2016, CuDeco published and lodged with the ASX an announcement;

- ii. refers to the full terms of the 5 February 2016 announcement;
 - iii. otherwise denies the sub-paragraph;
- b. in response to sub-paragraph 22.2:
 - i. says that, on 5 February 2016, CuDeco lodged the Rights Issue Prospectus with the Australian Securities and Investments Commission (**ASIC**);
 - ii. otherwise denies the sub-paragraph.
- 23. Under cover of the pleading that paragraph 23 of the Statement of Claim makes no allegation against it, KPMG admits the paragraph.
- 24. In response to paragraph 24 of the Statement of Claim, KPMG:
 - a. says that, on 3 March 2016, CuDeco published and lodged with the ASX an announcement titled “Rocklands Feasibility Study” (**Feasibility Study Announcement**);
 - b. otherwise, denies the paragraph.
- 25. In response to paragraph 25 of the Statement of Claim, KPMG:
 - a. refers to and repeats paragraph 24 above;
 - b. refers to and relies on the terms of the Feasibility Study Announcement as a whole;
 - c. admits sub-paragraphs 25.1 and 25.2;
 - d. otherwise denies the paragraph.
- 26. Under cover of the pleading that paragraph 26 of the Statement of Claim makes no allegation against it, KPMG denies the paragraph and says further that the Feasibility Study Announcement attached the “Executive Summary” of the Feasibility Study (**Executive Summary**), not the Feasibility Study itself.

Particulars

The Executive Summary did not contain the aspects of the alleged “2015 Ore Reserves Representations” set out in paragraph 21.2 of the Statement of Claim.

A.3 Replacement Prospectus

- 27. Under cover of the pleading that paragraph 27 of the Statement of Claim makes no allegation against it, KPMG:
 - a. refers to and relies on the terms of the Replacement Prospectus as a whole;
 - b. admits sub-paragraph 27.1;

- c. does not know and therefore cannot admit sub-paragraph 27.2;
 - d. admits sub-paragraph 27.3;
 - e. denies sub-paragraph 27.4, and says that the Replacement Prospectus attached an extract from the Executive Summary;
 - f. otherwise denies the paragraph.
28. Under cover of the pleading that paragraph 28 of the Statement of Claim makes no allegation against it, KPMG:
- a. refers to and repeats paragraphs 21, 25, and 27 above;
 - b. otherwise, denies the paragraph.
29. Under cover of the pleading that paragraph 29 of the Statement of Claim makes no allegation against it, KPMG:
- a. admits that, on 11 April 2016, CuDeco published and released to the ASX an announcement;
 - b. refers to and relies on the terms of the 11 April 2016 announcement as a whole;
 - c. otherwise denies the paragraph.
- A.4 Quarterly Reports*
30. Under cover of the pleading that paragraph 30 of the Statement of Claim makes no allegation against it, KPMG admits the paragraph.
31. Under cover of the pleading that paragraph 31 of the Statement of Claim makes no allegation against it, KPMG:
- a. refers to and repeats paragraphs 21 and 25 above;
 - b. refers to and relies on the terms of the 3Q16 Quarterly Report as a whole;
 - c. otherwise, denies the paragraph.
32. Under cover of the pleading that paragraph 32 of the Statement of Claim makes no allegation against it, KPMG admits the paragraph, save to say that the 4Q16 Quarterly Report was published and released on 1 August 2016, not 31 July 2016.
33. Under cover of the pleading that paragraph 33 of the Statement of Claim makes no allegation against it, KPMG:
- a. refers to and repeats paragraph 21 above;
 - b. refers to and relies on the terms of the 4Q16 Quarterly Report as a whole;
 - c. otherwise, denies the paragraph.

A.5 Alleged implied representations

34. Under cover of the pleading that paragraph 34 of the Statement of Claim makes no allegation against it, KPMG:
 - a. refers to and repeats paragraphs 21, 25, 26, 28, 31 and 33 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.
35. Under cover of the pleading that paragraph 35 of the Statement of Claim makes no allegation against it, KPMG:
 - a. refers to and repeats paragraph 27 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.
36. Under cover of the pleading that paragraph 36 of the Statement of Claim makes no allegation against it, KPMG:
 - a. refers to and repeats paragraphs 21, 25, 33, 34, and 35 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.
37. Under cover of the pleading that paragraph 37 of the Statement of Claim makes no allegation against it, KPMG:
 - a. refers to and repeats paragraph 36 above;
 - b. otherwise, denies the paragraph.

B. The alleged true position

38. In response to paragraph 38 of the Statement of Claim, KPMG:
 - a. denies sub-paragraph 38.1;
 - b. admits sub-paragraph 38.2 and says further that the Processing Plant was not commissioned prior to 11 April 2016.
39. KPMG does not know and therefore cannot admit paragraph 39 of the Statement of Claim.
40. Under cover of the pleading that paragraph 40 of the Statement of Claim makes no allegation against it, KPMG:
 - a. denies the paragraph;
 - b. says further that the Processing Plant and the fixed crusher plant were not commissioned prior to 11 April 2016.
41. In response to paragraph 41 of the Statement of Claim, KPMG:
 - a. refers to and repeats paragraphs 38 to 40 above;
 - b. otherwise denies the paragraph.

42. Under cover of the pleading that paragraph 42 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 38 to 41 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

C. Alleged contraventions from April 2016

C.1 Alleged April 2016 Continuous Disclosure Contraventions

43. Under cover of the pleading that paragraph 43 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 38, 39 and 40 above;
- b. otherwise, does not know and therefore cannot admit the paragraph.

44. Under cover of the pleading that paragraph 44 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraph 41 above;
- b. otherwise, does not know and therefore cannot admit the paragraph.

45. Under cover of the pleading that paragraph 45 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraph 42 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

46. Under cover of the pleading that paragraph 46 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 38, 39, 40, 41, and 42 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

C.2 Alleged Misleading or Deceptive Conduct

47. Under cover of the pleading that paragraph 47 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 21, 25 and 38 to 42 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

48. Under cover of the pleading that paragraph 48 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 25 and 38 to 42 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

49. Under cover of the pleading that paragraph 49 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 36 and 47 and 48 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

C.3 Alleged Rocklands Representations – false or misleading conduct contravention

50. Under cover of the pleading that paragraph 50 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 21, 25 and 38 to 42 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

51. Under cover of the pleading that paragraph 51 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 25 and 38 to 42 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

52. Under cover of the pleading that paragraph 52 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraph 36 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

53. Under cover of the pleading that paragraph 53 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 24 to 36 and 43 to 45 above;
- b. otherwise does not know and therefore cannot admit paragraph.

54. Under cover of the pleading that paragraph 54 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 36 and 50 to 53 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

C.4 Alleged Prospectus Contraventions

55. Under cover of the pleading that paragraph 55 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 28, 38, 39, 41 and 42 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

56. Under cover of the pleading that paragraph 56 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 38, 39, 40 and 42 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

D. Alleged market effects of Rocklands Contravening Conduct

57. Under cover of the pleading that paragraph 57 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 46, 49, 54, 55, and 56 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

E. Alleged October/November 2016 Representations

E.1 1Q17 Quarterly Report

58. Under cover of the pleading that paragraph 58 of the Statement of Claim makes no allegation against it, KPMG:

- a. says that on 1 November 2016, CuDeco published and released to the ASX its quarterly report for the period ending on 30 September 2016, pursuant to the requirement in Listing Rule 5.1 (**1Q17 Quarterly Report**);
- b. says that the 1Q17 Quarterly Report was dated 31 October 2016; and
- c. otherwise denies the paragraph.

59. Under cover that paragraph 59 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraph 21 above;
- b. refers to the terms of the 1Q17 Quarterly Report for their full force and effect; and
- c. otherwise, denies the paragraph.

E.2 FY2016 Annual Report

60. In response to paragraph 60 of the Statement of Claim, KPMG:

- a. admits that, on 17 November 2016, CuDeco published and released to the ASX the FY2016 Annual Report and FY2016 Financial Report for FY2016;
- b. in response to sub-paragraph 60.1:
 - i. says that the FY2016 Annual Report stated that the Maiden Ore Reserve estimate announced in December 2015 was one of a number of “firsts for Rocklands” in “fiscal 2016”;

Particulars

FY2016 Annual Report, pg 8.

- ii. says that the FY2016 Annual Report stated that the total ore reserve at Rocklands was 28 million tonnes at 0.9% Spec_CuEq, comprising:
 - 1. a proved ore reserve of 23 million tonnes, at 0.97% Spec_CuEq;
 - 2. a probable ore reserve of 5 million tonnes, at 0.58% Spec_CuEq;
 as part of the “Joint Ore Reserves Committee Statement”;

Particulars

FY2016 Annual Report, pg 83.

- iii. otherwise denies the sub-paragraph;
- c. in response to sub-paragraph 60.2:
 - i. says that the FY2016 Financial Report stated that CuDeco’s non-current assets included:
 - 1. property, plant and equipment of \$213,124,000; and
 - 2. development costs of \$139,247,000;

Particulars

FY2016 Financial Report, pg 23.

- ii. admits sub-paragraph 60.2(b);
- iii. otherwise denies the sub-paragraph;
- d. admits sub-paragraph 60.3.

E.3 Alleged implied representations

- 61. Under cover of the pleading that paragraph 61 of the Statement of Claim makes no allegation against it, KPMG:
 - a. refers to and repeats paragraphs 59 and 60 above;
 - b. otherwise, does not know and therefore cannot admit the paragraph.
- 62. Under cover of the pleading that paragraph 62 of the Statement of Claim makes no allegation against it, KPMG:
 - a. refers to and repeats paragraphs 59, 60 and 61 above;
 - b. says that further impairments of CuDeco’s mining assets were reported in CuDeco’s Annual Report and Financial Statements for FY17 on 31 October 2017;

- c. otherwise, does not know and therefore cannot admit the paragraph.

63. Under cover that paragraph 63 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraph 62 above;
- b. otherwise denies the paragraph.

F. Alleged true position as at October and November 2016

64. Under cover of the pleading that paragraph 64 of the Statement of Claim makes no allegation against it, KPMG:

- a. says that, on or around 7 September 2016, KPMG was informed that the CuDeco management team had prepared a newly revised plan which:
 - i. focused on copper and gold production rather than cobalt and magnetite production;
 - ii. reflected a decision by the new management team of CuDeco to change the operational direction of CuDeco;
 - iii. involved a “reoptimisation” of the Rocklands mine plan and pit design;

Particulars

KPMG held discussions with Bruno Bamonte of CuDeco on 7 December 2016 in relation to the Rocklands Project, at which Mr Bamonte advised KPMG that the management team had prepared a newly revised mine plan to implement going forward. The new plan was the result of a refreshed executive management team consisting of:

- Dianmin Chen;
- Mark Roberts – General Manager of the Rocklands Project appointed on 23 November 2015; and
- David Wrigley – New CFO appointed on 22 August 2016 (KPM.001.002.0951 at 0969).

- b. says further that, on 22 September 2016, CuDeco published and released to the ASX an announcement that stated, amongst other matters, that “[t]he Company has also reassessed operational budgets following a review of all costs and revenues associated with production from Rocklands. At this stage, the company proposes not to commission the Cobalt and Magnetite circuits and focus on copper and gold production”;

- c. otherwise does not know and therefore cannot admit the paragraph.

65. In response to paragraph 65 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 41 and 64 above;
- b. admits that there were indications of possible impairment (within the meaning of paragraph 9 of AASB 136) of Rocklands as at 30 June 2016;
- c. says that CuDeco identified possible indications of impairment of Rocklands as at 30 June 2016 and consequently conducted impairment testing to estimate the recoverable amount of the Rocklands cash generating unit (**CGU**);
- d. says that the recoverable amount of a CGU is defined by AASB 136 as the higher of its value in use and its fair value less costs of disposal;
- e. says that the recoverable amount of the Rocklands CGU as at 30 June 2016 (compared with its carrying value for the purposes of impairment testing) was assessed on the basis of fair value less costs of disposal;
- f. says that the assessment of the fair value less costs of disposal of the Rocklands CGU was undertaken using a discounted cash flow (**DCF**) methodology based on the Feasibility Study prepared by the external expert Mining Associates;
- g. says that a DCF based on the Feasibility Study prepared by Mining Associates for Rocklands continued to be an appropriate basis to determine the fair value less costs to sell of Rocklands as at 30 June 2016, subject to adjustments for:
 - i. the most up-to-date data available concerning foreign exchange rates;
 - ii. the most up-to-date data available concerning commodity forecast pricing;
 - iii. adjustments for capital expenditure to reflect actual spending;
 - iv. updated capital expenditure to complete based on the original project plan;
 - v. adjustments to the timing of the project to reflect the most up to date data;
- h. otherwise denies the paragraph.

G. Alleged contraventions from October and November 2016

G.1 Alleged FY2016 Continuous Disclosure Contraventions

66. Under cover of the pleading that paragraph 66 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 64 and 65 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

67. Under cover of the pleading that paragraph 67 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 64 and 65 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

G.2 Alleged FY2016 Representations – misleading or deceptive conduct

68. Under cover of the pleading that paragraph 68 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 38 to 42, 59, 60 and 64 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

69. Under cover of the pleading that paragraph 69 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 38 to 42, 60, 64 and 65 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

70. Under cover of the pleading that paragraph 70 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 62, 68 and 69 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

G.3 Alleged FY2016 Representations – false or misleading statement contraventions

71. Under cover of the pleading that paragraph 71 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 38 to 42, 59, 60 and 64 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

72. Under cover of the pleading that paragraph 72 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 38 to 42, 60 and 64 to 65 above; and
- b. otherwise does not know and therefore cannot admit the paragraph.

73. Under cover of the pleading that paragraph 73 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraph 62 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

74. Under cover of the pleading that paragraph 74 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 43, 44, 45, 58 to 62 and 66 above;
- b. otherwise, does not know and therefore cannot admit the paragraph.

75. Under cover of the pleading that paragraph 75 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 71 to 74 above;
- b. otherwise, does not know and therefore cannot admit the paragraph.

H. Alleged market effects of FY2016 Contravening Conduct

76. Under cover of the pleading that paragraph 76 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 67, 70 and 75 above;
- b. otherwise, does not know and therefore cannot admit the paragraph.

I. Alleged FY2017 Representations

I.1 Alleged Quarterly Report Representations

77. Under cover of the pleading that paragraph 77 of the Statement of Claim makes no allegation against it, KPMG admits paragraph 77 of the Statement of Claim.

78. Under cover of the pleading cover that paragraph 78 of the Statement of Claim makes no allegation against it, KPMG admits paragraph 78 of the Statement of Claim.

79. Under cover of the pleading that paragraph 79 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraph 21 above;
- b. says that the 2Q17 Quarterly Report and the 3Q17 Quarterly Report stated that “[t]he 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 estimates of Mineral Resources or 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 company confirms that the form and context in which the Competent Person’s findings are presented have not been materially modified from the original market announcement”;

Particulars

2Q17 Quarterly Report, pg 10.

3Q17 Quarterly Report, pg 10.

- c. otherwise, denies the paragraph.

1.2 FY2017 Annual Report

80. Under cover of the pleading that paragraph 80 of the Statement of Claim makes no allegation against it, KPMG:

- a. admits that on 31 October 2017, CuDeco published and released to the ASX the FY2017 Annual Report;
- b. says that, on 25 October 2017, CuDeco published and released to the ASX the FY2017 Financial Report;
- c. in response to sub-paragraph 80.1:
 - i. refers to and repeats paragraph 21 above;
 - ii. says that the FY2017 Annual Report stated that: "CuDeco is in the process of updating the June 2016 Ore Reserves to take account of operational results, including the effects of process plant performance, changes to foreign exchanges and increased metal prices. From 1st July 2016 to 30th June 2017 the mine stockpiled 877,441 tonnes of ore at 0.90% Cu grade and the mill processed 1,273,078 tonnes of ore at 1.52% Cu grade";

Particulars

FY2017 Annual Report, pg 96.

- iii. otherwise denies the sub-paragraph;
- d. admits sub-paragraph 80.2;
- e. admits sub-paragraph 80.3;
- f. otherwise denies the paragraph.

1.3 Alleged implied representations

81. Under cover of the pleading that paragraph 81 of the Statement of Claim makes no allegation against it, KPMG:

- a. refers to and repeats paragraphs 79 and 80 above;
- b. otherwise does not know and therefore cannot admit the paragraph.

82. Under cover of the pleading that paragraph 82 of the Statement of Claim makes no allegation against it, KPMG:
- a. refers to and repeats paragraphs 79, 80 and 81 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.
83. Under cover of the pleading that paragraph 83 of the Statement of Claim makes no allegation against it, KPMG:
- a. refers to and repeats paragraph 82 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.

J. Alleged true position in 2017

84. In response to paragraph 84 of the Statement of Claim, KPMG:
- a. refers to and repeats paragraphs 41, 64 and 65 above;
 - b. admits that there were indications of possible impairment (within in the meaning of paragraph 9 of AASB 136) of Rocklands as at 30 June 2017;
 - c. says that CuDeco identified possible indications of impairment of Rocklands as at 30 June 2017 and consequently conducted impairment testing to estimate the recoverable amount of the Rocklands CGU;
 - d. says that the recoverable amount of the Rocklands CGU as at 30 June 2017 (compared with its carrying value for the purposes of impairment testing) was assessed on the basis of fair value less costs of disposal;
 - e. says that the assessment of the fair value less costs of disposal of the Rocklands CGU was undertaken using a DCF methodology based on the Feasibility Study prepared by the external expert Mining Associates;
 - f. says that a DCF based on the Feasibility Study prepared by Mining Associates for Rocklands continued to be an appropriate basis to determine the fair value less costs to sell of Rocklands as at 30 June 2017, subject to adjustments for:
 - i. the most up-to-date data available concerning foreign exchange rates;
 - ii. the most up-to-date data available concerning commodity forecast pricing;
 - iii. adjustments for capital expenditure to reflect actual spending;
 - iv. updated capital expenditure to complete based on the original project plan;
 - v. adjustments to the timing of the project to reflect the most up to date data;
 - g. otherwise denies the paragraph.

K. Alleged 2017 Contraventions

K.1 Alleged FY2017 Continuous Disclosure Contraventions

85. Under cover of the pleading that paragraph 85 of the Statement of Claim makes no allegation against it, KPMG:
- a. refers to and repeats paragraph 84 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.
86. Under cover of the pleading that paragraph 86 of the Statement of Claim makes no allegation against it, KPMG:
- a. refers to and repeats paragraph 84 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.

K.2 Alleged FY2017 Representations – misleading or deceptive conduct

87. Under cover of the pleading that paragraph 87 of the Statement of Claim makes no allegation against it, KPMG:
- a. refers to and repeats paragraphs 38 to 42, 64, 79 and 80 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.
88. Under cover of the pleading that paragraph 88 of the Statement of Claim makes no allegation against it, KPMG:
- a. refers to and repeats paragraphs 38 to 42, 64 to 65, 80 and 84 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.
89. Under cover of the pleading that paragraph 89 of the Statement of Claim makes no allegation against it, KPMG:
- a. refers to and repeats paragraphs 82, 87 and 88 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.

K.3 Alleged FY2017 Representations – false statement contraventions

90. Under cover of the pleading that paragraph 90 of the Statement of Claim makes no allegation against it, KPMG:
- a. refers to and repeats paragraphs 38 to 39, 41, 64, 79 and 80 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.
91. Under cover of the pleading that paragraph 91 of the Statement of Claim makes no allegation against it, KPMG:
- a. refers to and repeats paragraphs 38 to 39, 41, 42, 64 to 65, 80 and 84 above;

- b. otherwise does not know and therefore cannot admit the paragraph.
- 92. Under cover of the pleading that paragraph 92 of the Statement of Claim makes no allegation against it, KPMG:
 - a. refers to and repeats paragraph 82 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.
- 93. Under cover of the pleading that paragraph 93 of the Statement of Claim makes no allegation against it, KPMG:
 - a. refers to and repeats paragraphs 43, 44, 45, 66, 79, 80 and 85 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.
- 94. Under cover of the pleading that paragraph 94 of the Statement of Claim makes no allegation against it, KPMG:
 - a. refers to and repeats paragraphs 82, 90 to 93 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.

L. Alleged market effects of FY2017 Contravening Conduct

- 95. Under cover of the pleading that paragraph 95 of the Statement of Claim makes no allegation against it, KPMG:
 - a. refers to and repeats paragraphs 86, 89 and 94 above;
 - b. otherwise does not know and therefore cannot admit the paragraph.

IV. CASE AGAINST KPMG

A. KPMG's role

- 96. KPMG admits paragraph 96 of the Statement of Claim and says further that:
 - a. on 2 February 2016, KPMG reconfirmed their engagement as auditors of CuDeco and its controlled entities under the Corporations Act by way of an engagement letter (**2 February 2016 Engagement Letter**);

Particulars

The 2 February 2016 Engagement Letter was in writing and signed by Mr Adam Twemlow on behalf of KPMG on 2 February 2016 and by Mr Bruno Bamonte, the Company Secretary of CuDeco, on behalf of Cudeco on 8 February 2016.

- b. the 2 February 2016 Engagement Letter was effective for services performed for the annual financial reporting period ending 30 June 2016 and the half-year

financial reporting period ended 31 December 2015 and each subsequent reporting period unless otherwise agreed in writing;

- c. on 2 February 2016, KPMG issued an “Annual arrangements letter for the half-year ended 31 December 2015 and the financial year ending 30 June 2016” (**2 February 2016 AAL**);

Particulars

The 2 February 2016 AAL was in writing and signed by Mr Adam Twemlow on behalf of KPMG on 2 February 2016 and by Mr Bruno Bamonte, the Company Secretary of CuDeco, on behalf of Cudeco on 8 February 2016.

- d. on 6 February 2017, KPMG issued an “Annual arrangements letter for the half-year ended 31 December 2016 and the financial year ending 30 June 2017” (**6 February 2017 AAL**).

Particulars

The 6 February 2017 AAL was in writing and signed by Mr Adam Twemlow on behalf of KPMG on 6 February 2017 and by Mr Bruno Bamonte, the Company Secretary of CuDeco, on behalf of Cudeco on 10 March 2017.

A.1 KPMG’s audit obligations

97. In response to paragraph 97 of the Statement of Claim, KPMG:

- a. denies that KPMG’s obligations were owed “through Twemlow”, and pleads to the balance of the paragraph under cover of that denial;
- b. in respect of sub-paragraph 97.1:
 - i. refers to and relies on the provisions of ss 296, 297 and 307 of the Corporations Act for their full force and effect;
 - ii. otherwise, denies the subparagraph;
- c. in respect of sub-paragraphs 97.2, 97.3 and 97.4;
 - i. relies on the applicable auditing standards issued by the Auditing and Assurance Standards Board for their full meaning and effect to the extent that they were in force and in the form in which they existed at the time, and say that those standards recognised the following matters (in

successive iterations and notwithstanding non-material changes in language):

1. the financial report subject to audit is that of the entity, prepared by the management of the entity, with oversight from those charged with governance;

Particulars

Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved 11 November 2013 and 1 December 2015) at paragraph 4.

2. the auditor's opinion on the financial report deals with whether the financial report is prepared, in all material respects, in accordance with the applicable financial reporting framework;

Particulars

Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (version approved 11 November 2013 at paragraph A1 and version approved 1 December 2015 at paragraph A3).

3. an audit in accordance with the auditing standards requires the auditor to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement;

Particulars

Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved 11 November 2013 and 1 December 2015) at paragraph 4.

4. reasonable assurance is not an absolute level of assurance, because there are inherent limitations of an audit which result in most of the audit evidence on which the auditor draws conclusions and bases the auditor's opinion being persuasive rather than conclusive;

Particulars

Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved 11 November 2013 and 1 December 2015) at paragraph 5.

5. the inherent limitations of an audit arise from: (a) the nature of financial reporting; (b) the nature of audit procedures; and (c) the need for the audit to be conducted within a reasonable period of time and at a reasonable cost;

Particulars

Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (version approved 11 November 2013) at paragraph A45 and (version approved 1 December 2015) at paragraph A47.

6. audit risk is a function of the “risks of material misstatement” (being the risks that the financial report is materially misstated prior to audit) and “detection risk” (being the risk that the procedures performed by the auditor to reduce audit risk to an acceptably low level will not detect a misstatement that exists and that could be material, either individually or when aggregated with other misstatements). The assessment of risks is a matter of professional judgement, rather than a matter capable of precise measurement;

Particulars

Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (version approved 11 November 2013) at paragraph A32 and (version approved 1 December 2015) at paragraph A34.

7. detection risk relates to the nature, timing and extent of the auditor’s procedures that are determined by the auditor to reduce risk to an acceptably low level. It is therefore a function of the effectiveness of an audit procedure and of its application by the auditor. Matters such as: (a) adequate planning; (b) proper assignment of personnel to the engagement term; (c) the application of professional

scepticism, and (d) supervision and review of the audit work performed, assist to enhance the effectiveness of an audit procedure and its application and reduce the possibility that an auditor might select an inappropriate audit procedure, misapply an appropriate audit procedure, or misinterpret the audit results;

Particulars

Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (version approved 11 November 2013) at paragraph A43 and (version approved 1 December 2015) at paragraph A45.

8. the audit process involves the exercise of professional judgement by the auditor in planning and performing an audit of a financial report;

Particulars

Auditing Standard AUS 200 (Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards) (versions approved 11 November 2013 and 1 December 2015) at paragraph 16.

- ii. say further that, by reason of the matters identified in (i):
 1. the provision of audit services (of a kind as provided by KPMG) in accordance with the Corporations Act necessarily involved the exercise by an auditor of his or her professional judgement and the forming by the auditor of professional opinions in respect of which reasonable minds could differ;
 2. in providing such audit services, an auditor was not providing an absolute assurance and was not verifying or warranting the accuracy of the contents of the financial report that had been prepared by the management of the entity the subject of the audit and for which that entity was responsible;
- iii. otherwise, admits the subparagraphs;

- d. in respect of sub-paragraphs 97.5(a), (b) and (c), relies on the provisions of ss 308(3B) and 297 of the Corporations Act for their full force and effect;
- e. otherwise denies the paragraph.

98. In response to paragraph 98 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraph 97 above;
- b. denies that KPMG's obligations were owed "through Twemlow", and pleads to the balance of the paragraph under cover of that denial;
- c. refers to and relies on the terms of the 2 February 2016 Engagement Letter, the 2 February 2016 AAL, and the 6 February 2017 AAL for their full force and effect;
- d. refers to and relies on the provisions of ss 314, 319 and 320 of the Corporations Act and the provisions of ASX Listing Rules 4.5.1 and 4.2A.1 for their full force and effect;
- e. otherwise, denies the paragraph.

A.2 KPMG's Audit Team

99. In response to paragraph 99 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 96, 97 and 98 above;
- b. says that "Statutory Review Obligations" is not a term defined in the Statement of Claim and, because the auditor's obligations for a full-year audit differ from the auditor's obligations for a half-year review, the allegation regarding Statutory Review Obligations is embarrassing and liable to be struck out;
- c. otherwise admits the paragraph.

100. KPMG admits paragraph 100 of the Statement of Claim.

101. In response to paragraph 101 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 99 and 100 above;
- b. otherwise denies the paragraph.

B. Facts relevant to the claim against KPMG

B.1 Matters prior to KPMG's audits

102. KPMG admits paragraph 102 of the Statement of Claim.

103. In response to paragraph 103 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 24 and 25 above;

- b. says that the Feasibility Study Announcement attached the Executive Summary rather than the Feasibility Study itself;
- c. otherwise, denies the paragraph.

104. In response to paragraph 104 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 38, 39 and 41 above;
- b. otherwise, denies the paragraph.

B.2 KPMG's audit of CuDeco's FY2016 Financial Reports

105. KPMG admits paragraph 105 of the Statement of Claim, and says further that KPMG commenced the FY2016 audit on or about 20 July 2016.

106. In response to paragraph 106 of the Statement of Claim, KPMG:

- a. in response to sub-paragraph 106.1, admits that the KPMG Audit Team could access working papers from all previous half-year reviews and audits conducted by KPMG for CuDeco in the period prior to 2016 and otherwise denies sub-paragraph 106.1;
- b. admits sub-paragraphs 106.2 to 106.5;
- c. in respect of sub-paragraphs 106.6 to 106.9, says that KPMG had access to information of this kind that was made available to the KPMG Audit Team by CuDeco's management team;
- d. in further response to paragraph 106 generally, says that, pursuant to the 2 February 2016 Engagement Letter and the 2 February 2016 AAL, KPMG expected the management of CuDeco to provide it with access to all information which they considered relevant to the preparation of the FY2016 Financial Report, including records, documentation and other matters, additional information that KPMG may request from management for the purpose of the audit of the FY2016 Financial Report and unrestricted access to persons within the entity from whom KPMG determined it was necessary to obtain audit evidence;
- e. otherwise denies the paragraph.

107. In response to paragraph 107 of the Statement of Claim, KPMG:

- a. refers to and relies on the FY2016 Audit Report as a whole;
- b. says that the FY2016 Audit Report was provided to the members of CuDeco;
- c. says that the audit of the FY2016 Financial Report was conducted by the KPMG Audit Team, and not merely by or through Mr Twemlow;

- d. otherwise admits sub-paragraphs 107.1 to 107.3;
- e. otherwise admits sub-paragraph 107.4, save that the FY2016 Audit Report referred to “the Group” rather than “CuDeco”;
- f. otherwise admits sub-paragraph 107.5, save that the FY2016 Audit Report referred to a “basis” rather than a “bases”;
- g. otherwise admits sub-paragraph 107.6, save that the FY2016 Audit Report referred to “the Group” rather than “CuDeco”;
- h. says further that the FY2016 Audit Report stated that:
 - i. “[t]he directors of the company are responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards and the Corporations Act 2001 and for such internal control as the directors determine is necessary to enable the preparation of the financial report that is free from material misstatement whether due to fraud or error. In note 2, the directors also state, in accordance with Australian Accounting Standard AASB 101 Presentation of Financial Statements, that the financial statements of the Group comply with International Financial Reporting Standards”;
 - ii. “[a]n audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor’s judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity’s preparation of the financial report that gives a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity’s internal control”; and
 - iii. “[w]ithout modifying our opinion, we draw attention to Note 5, Going Concern, in the financial report. The conditions disclosed in Note 5, indicate the existence of material uncertainties, the outcome of which are critically dependent upon future events, which may cast significant doubt about the Group’s ability to continue as a going concern. In the event the Group does not continue as a going concern, it may not realise its assets and extinguish its liabilities in the normal course of business and at the amounts stated in the financial report. In particular, in the event that the key assumptions outlined in Note 27 are not achieved further material impairment may arise”;

- i. says that Note 4 to FY2016 Financial Report included the following statements:
- i. “In preparing these consolidated financial statements, management has made judgements, estimates and assumptions that affect the application of the Group’s accounting policies and the reported amounts of assets, liabilities, income and expenses. Actual results may differ from these estimates”;
 - ii. “Information about assumptions and estimation uncertainties that have a significant risk of resulting in a material adjustment within the year ending 30 June 2016 are included in” notes 5, 15, 16, 17, 18, 22, 23, 24, and 27;
- j. says that Note 5 to FY2016 Financial Report included the following statement: “[t]he directors have prepared cash flow projections that support the ability of the Group to continue as a going concern, including repayment of debt and creditor obligations. These cash flow projections and the ongoing operation of the Group are critically dependent upon:
- The execution of the Amendment Deed with Minsheng Bank to extend the repayment terms of the US\$60M finance facility; and
 - An unsecured creditor owed \$33.09M continuing to accept deferred payment of balances due; and
 - The Group generating significant positive cash flows from production to meet its commitments. This is dependent on a significant ramp up of production of the Rocklands mine processing plant and an acceptable level of recovery being achieved in the short term; and/or
 - The Group raising significant additional funding from shareholders or other parties.

These conditions give rise to material uncertainties that may cast significant doubt upon the Group’s ability to continue as a going concern”;

- k. says that Note 27 to FY2016 Financial Report included the following statement: “The key assumptions to which the model is most sensitive include:
- Forecast commodity prices, including copper, gold, silver, cobalt and magnetite;
 - Ramp up of production timing and appropriate level of recoveries achieved;
 - Foreign exchange rates;
 - Mining, processing, administrative and capital costs; and
 - Discount rate of 8%.”; and
- l. otherwise denies the paragraph.

B.3 Release of FY2016 Financial Report

108. KPMG admits paragraph 108 of the Statement of Claim.

109. In response to paragraph 109 of the Statement of Claim, KPMG:

- a. in respect of sub-paragraph 109.1:
 - i. refers to and repeats paragraph 60 above;
 - ii. denies sub-paragraph 109.1(a);
 - iii. admits sub-paragraph 109.1(b);
- b. admits sub-paragraph 109.2;
- c. in respect of sub-paragraph 109.3:
 - i. refers to and repeats paragraphs 38, 39, 40 and 41 above;
 - ii. otherwise denies the sub-paragraph.

B.4 KPMG's alleged FY2016 opinion and representation

110. In response to paragraph 110 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 107 and 108 above;
- b. refers to and relies on the FY2016 Audit Report as a whole;
- c. says that the FY2016 Audit Report stated that in KPMG's opinion, "the financial report of the Group is in accordance with the Corporations Act 2001, including:
 - i. giving a true and fair view of the Group's financial position as at 30 June 2016 and of its performance for the year ended on that date;
 - ii. complying with Australian Accounting Standards and the Corporations Regulations 2001";
- d. says that the FY2016 Audit Report stated that: "[w]e performed the procedures to assess whether in all material respects the financial report presents fairly, in accordance with the Corporations Act 2001 and Australian Accounting Standards, a true and fair view which is consistent with our understanding of the Group's financial position and of its performance";
- e. says that the FY2016 Audit Report stated that: "[w]e conducted our audit in accordance with Australian Auditing Standards";
- f. otherwise denies the paragraph.

B.5 KPMG's audit of CuDeco's FY2017 Financial Reports

111. In response to paragraph 111 of the Statement of Claim, KPMG:

- a. says that the FY2017 Audit commenced on or about 3 July 2017;
- b. otherwise admits the paragraph.

112. In response to paragraph 112 of the Statement of Claim, KPMG:

- a. in response to sub-paragraph 112.1, admits that the KPMG Audit Team could access working papers from all previous half-year reviews and audits conducted by KPMG for CuDeco in the period prior to 2017 and otherwise denies sub-paragraph 112.1;
- b. admits sub-paragraphs 112.2 to 112.5;
- c. in respect of sub-paragraphs 112.6 to 112.9, says that KPMG had access to information of this kind that was made available to the KPMG Audit Team by CuDeco's management team;
- d. says further that, pursuant to the 2 February 2016 Engagement Letter and the 6 February 2017 AAL, KPMG expected the management of CuDeco to provide it with access to all information which they considered relevant to the preparation of the FY2017 Financial Report, including records, documentation and other matters, additional information that KPMG may request from management for the purpose of the audit of the FY2017 Financial Report and unrestricted access to persons within the entity from whom KPMG determined it was necessary to obtain audit evidence;
- e. otherwise denies the paragraph.

113. In response to paragraph 113 of the Statement of Claim, KPMG:

- a. refers to and relies on the FY2017 Audit Report as a whole;
- b. says that the FY2017 Audit Report was provided to the members of CuDeco;
- c. says that the audit of the FY2017 Financial Report was conducted by the KPMG Audit Team, and not merely by or through Mr Twemlow;
- d. admits sub-paragraphs 113.1 to 113.3;
- e. in response to sub-paragraph 113.4, admits that the FY2017 Audit Report stated that:
 - i. "[w]e draw attention to Note 5, 'Going Concern' in the financial report. The conditions disclosed in Note 5, indicate a material uncertainty exists that may cast doubt on the Group's ability to continue as a going concern and,

therefore, whether it will realise its assets and discharge its liabilities in the normal course of business, and at the amounts stated in the financial report. Our opinion is not modified in respect of this matter.

ii. In concluding there is a material uncertainty related to going concern we evaluated the extent of uncertainty regarding events or conditions casting significant doubt in the Group's assessment of going concern. This included:

- Analysing the cash flow projections by:
 - Evaluating the underlying data used to generate the projections for consistency with other information tested by us, our understanding of the Group's intentions, and past results and practices; and
 - Assessing the planned levels of operating and capital expenditures for consistency of relationships and trends to the Group's historical results, particularly in light of loss making operations, results since year end, and our understanding of the business, industry and economic conditions of the Group;
- Assessing significant non-routine forecast cash inflows and outflows for feasibility, quantum and timing. We used our knowledge of the client, its industry and current status of those initiatives to assess the level of associated uncertainty;
- Reading correspondence with existing and potential financiers to understand the financing options available to the Group, and assess the level of associated uncertainty resulting from renegotiation of existing debt facilities and negotiation of additional and/or revised funding arrangements;
- Reading Directors minutes and relevant correspondence with the Group's advisors to understand the Group's ability to raise additional shareholder funds, and assess the level of associated uncertainty;
- Evaluating the Group's going concern disclosures in the financial report by comparing them to our understanding of the matter, the events or conditions incorporated into the cash flow projection assessment, the Group's plans to address those events or conditions, and accounting standard requirements. We specifically

focused on the principle matters giving rise to the material uncertainty;

- f. in response to sub-paragraph 113.5, admits that the FY2017 Audit Report identified the following “Key Audit Matters”:
 - i. the “matter described in the Material Uncertainty related to Going Concern section”;
 - ii. valuation of exploration and evaluation assets;
 - iii. valuation of property, plant and equipment and mine development costs;
 - iv. valuation of ore inventory;
- g. admits sub-paragraph 113.6 and says further that, at pages 64 to 66, each key audit matter was addressed in some detail including an explanation of the matter, and how it was addressed in the audit;
- h. in response to sub-paragraph 113.7:
 - i. proceeds on the basis that the reference to “the FY2016 Financial Report” is intended to be a reference to the “FY2017 Financial Report”;
 - ii. says that the FY2017 Financial Report stated that: “In our opinion the accompanying Financial Report of the Company is in accordance with the Corporations Act 2001, including:
 - giving a true and fair view of the Group’s financial position as at 30 June 2017 and of its performance for the year ended on that date; and
 - complying with Australian Accounting Standards and the Corporations Regulations 2001”;
- i. says further that the FY2017 Audit Report stated that:
 - i. “[w]e believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion”;
 - ii. “The Directors are responsible for:
 - preparing the Financial Report that gives a true and fair view in accordance with Australian Accounting Standards and the Corporations Act 2001;
 - implementing necessary internal control to enable the preparation of a Financial Report that gives a true and fair view and is free from material misstatement, whether due to fraud or error;

- assessing the Group's ability to continue as a going concern. This includes disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless they either intend to liquidate the Group or to cease operations, or have no realistic alternative but to do so”;
- j. says further that Note 4 to FY2017 Financial Report included the following:
- i. “In preparing these consolidated financial statements, management has made judgements, estimates and assumptions that affect the application of the Group's accounting policies and the reported amounts of assets, liabilities, income and expenses. Actual results may differ from these estimates”;
 - ii. “Information about assumptions and estimation uncertainties that have a significant risk of resulting in a material adjustment within the year ending 30 June 2017 are included in” notes 5, 15, 16, 17, 18, 19, 21, 22, and 27;
- k. says further that Note 5 to FY2017 Financial Report included the following statement: “[t]he directors have prepared cash flow projections that support the ability of the Group to continue as a going concern, including repayment of debt and creditor obligations. These cash flow projections and the ongoing operation of the Company are critically dependent upon:
- The Group generating significant positive cash flows from production to meet its commitments, including agreed repayment time frames under the Deed of Remediation with a major supplier. This is dependent on an increase of production to nameplate capacity of the Rocklands mine processing plant and an acceptable level of recovery being achieved in the short-term; and
 - Trade creditors not enforcing payment of overdue balances; and
 - The Group successfully renegotiating or refinancing its various finance facilities or alternatively, the Group raising significant additional funding from shareholders or other parties.

These conditions give rise to material uncertainties that may cast significant doubt upon the Group's ability to continue as a going concern”;

- l. says further that Note 27 to FY2017 Financial Report included the following statement: “The key assumptions to which the model is most sensitive include:
- Forecast commodity prices, including copper, gold, and cobalt;
 - Ramp up of production timing and appropriate level of recoveries achieved;

- Foreign exchange rates;
- Mining, processing, administrative and capital costs;
- Discount rate of 8%.”; and
- Total reserves to be extracted and processed at the Rocklands processing plant;

m. otherwise denies the paragraph.

B.6 Release of FY2017 Financial Report

114. KPMG admits paragraph 114 of the Statement of Claim.

115. In response to paragraph 115 of the Statement of Claim, KPMG:

- a. denies sub-paragraph 115.1;
- b. in respect of sub-paragraph 115.2:
 - i. refers to and repeats paragraphs 38, 39, 40 and 41 above;
 - ii. otherwise denies the sub-paragraph.

B.7 KPMG’s alleged FY2017 opinion and representation

116. In response to paragraph 116 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 113 and 114 above;
- b. refers to and relies on the FY2017 Audit Report as a whole;
- c. says that the FY2017 Audit Report was directed towards “the shareholders of CuDeco”;
- d. says that the FY2017 Audit Report stated that, in KPMG’s opinion, “the accompanying Financial Report of the Company is in accordance with the Corporations Act 2001, including:
 - i. giving a true and fair view of the Group’s financial position as at 30 June 2017 and of its performance for the year ended on that date;
 - ii. complying with Australian Accounting Standards and the Corporations Regulations 2001”;
- e. says that the FY2017 Audit Report stated that: “[w]e conducted our audit in accordance with Australian Auditing Standards”;
- f. says that the FY2017 Audit Report stated that: “Our objective is:
 - to obtain reasonable assurance about whether the Financial Report as a whole is free from material misstatement, whether due to fraud or error; and

- to issue an Auditor's Report that includes our opinion";
- g. says that the FY2017 Audit Report stated that: "[r]easonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error. They are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this Financial Report";
- h. otherwise, denies the paragraph.

B.8 Events after October 2017

117. In response to paragraph 117 of the Statement of Claim, KPMG:
- a. admits that, on 27 December 2017, CuDeco published and lodged with the ASX an announcement (**December 2017 Announcement**);
 - b. refers to and relies on the terms of the December 2017 Announcement as a whole;
 - c. otherwise denies the paragraph.
118. In response to paragraph 118 of the Statement of Claim, KPMG:
- a. admits that, on 22 March 2018, CuDeco published and lodged with the ASX an announcement titled "Rocklands Ore Reserves Update" (**March 2018 Announcement**);
 - b. refers to and relies on the terms of the March 2018 Announcement as a whole;
 - c. otherwise denies the paragraph.

C. KPMG's alleged FY2016 Contravening Conduct

C.1 Alleged FY2016 Misleading or Deceptive Conduct

119. In response to paragraph 119 of the Statement of Claim, KPMG:
- a. refers to and repeats paragraph 110 above;
 - b. says that if, which is denied, the KPMG FY2016 Opinion was expressed and/or the KPMG FY2016 Audit Representation was made, the expression of the opinion and/or the making of the representation was conduct in trade or commerce within the meaning of s 12DA(1) of the ASIC Act and s 4 of the Australian Consumer Law;
 - c. otherwise denies the paragraph.

120. In response to paragraph 120 of the Statement of Claim, KPMG:
- a. refers to and repeats paragraphs 65 and 110 above;
 - b. denies the paragraph.
121. In response to paragraph 121 of the Statement of Claim, KPMG:
- a. refers to and repeats paragraphs 60, 65 and 110 above;
 - b. denies the paragraph.
122. In response to paragraph 122 of the Statement of Claim, KPMG:
- a. refers to and repeats paragraphs 110, 120 and 121 above;
 - b. denies the paragraph.
123. In response to paragraph 123 of the Statement of Claim, KPMG:
- a. refers to and repeats paragraphs 110, and 120 to 122 above;
 - b. denies the paragraph.
124. In response to paragraph 124 of the Statement of Claim, KPMG:
- a. proceeds on the basis that the paragraph is intended to refer to “16 November 2016”, rather than “16 November 2017”;
 - b. refers to and repeats paragraphs 11, 100, 110, and 120 to 122 above;
 - c. denies the paragraph.
125. In response to paragraph 125 of the Statement of Claim, KPMG:
- a. refers to and repeats paragraphs 110, and 120 to 122 above;
 - b. denies the paragraph.
126. In response to paragraph 126 of the Statement of Claim, KPMG:
- a. refers to and repeats paragraphs 11, 100, 110, and 120 to 122 above;
 - b. denies the paragraph.
- C.2 Alleged FY2016 False or Misleading Conduct*
127. In response to paragraph 127 of the Statement of Claim, KPMG:
- a. refers to and repeats paragraphs 107 to 110 above;
 - b. denies the paragraph.
128. In response to paragraph 128 of the Statement of Claim, KPMG:
- a. refers to and repeats paragraphs 110 and 120 to 122 above;

b. denies the paragraph.

129. KPMG denies paragraph 129 of the Statement of Claim.

130. KPMG denies paragraph 130 of the Statement of Claim.

131. In response to paragraph 131 of the Statement of Claim, KPMG:

a. refers to and repeats paragraphs 97, 110 and 120 to 122 above;

b. denies the paragraph.

132. In response to paragraph 132 of the Statement of Claim, KPMG:

a. refers to and repeats paragraphs 110 and 127 to 131 above;

b. denies the paragraph.

133. In response to paragraph 133 of the Statement of Claim, KPMG:

a. refers to and repeats paragraphs 107 to 110 above;

b. denies the paragraph.

134. In response to paragraph 134 of the Statement of Claim, KPMG:

a. refers to and repeats paragraphs 110, 121 and 122 above;

b. denies the paragraph.

135. KPMG denies paragraph 135 of the Statement of Claim.

136. KPMG denies paragraph 136 of the Statement of Claim.

137. In response to paragraph 137 of the Statement of Claim, KPMG:

a. refers to and repeats paragraphs 97, 110 and 120 to 122 above;

b. denies the paragraph.

138. KPMG denies paragraph 138 of the Statement of Claim.

C.3 Alleged market effect of KPMG FY2016 Contraventions

139. KPMG denies paragraph 139 of the Statement of Claim.

D. KPMG's FY2016 Contravening Conduct

D.1 Alleged FY2017 Misleading or Deceptive Conduct

140. In response to paragraph 140 of the Statement of Claim, KPMG:

a. refers to and repeats paragraph 116 above;

b. says that if, which is denied, the KPMG FY2017 Opinion was expressed and/or the KPMG FY2017 Audit Representation was made, the expression of the opinion

and/or the making of the representation was conduct in trade or commerce within the meaning of s 12DA(1) of the ASIC Act and s 4 of the Australian Consumer Law;

c. otherwise denies the paragraph.

141. In response to paragraph 141 of the Statement of Claim, KPMG:

- a. proceeds on the basis that the paragraph is intended to refer to the “KPMG FY2017 Opinion”, rather than the “KPMG FY2016 Opinion”;
- b. refers to and repeats paragraphs 84 and 116 above;
- c. denies the paragraph.

142. In response to paragraph 142 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 80, 84 and 116 above;
- b. denies the paragraph.

143. In response to paragraph 143 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 116, 141 and 142 above;
- b. denies the paragraph.

144. In response to paragraph 144 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 116 and 141 to 143 above;
- b. denies the paragraph.

145. In response to paragraph 145 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 11, 100, 116 and 141 to 143 above;
- b. denies the paragraph.

146. In response to paragraph 146 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 116 and 141 to 143 above;
- b. denies the paragraph.

147. In response to paragraph 147 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 11, 100, 116 and 141 to 143 above;
- b. denies the paragraph.

D.2 Alleged FY2017 False or Misleading Conduct

148. In response to paragraph 148 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraphs 113 to 116 above;

- b. denies the paragraph.
- 149. In response to paragraph 149 of the Statement of Claim, KPMG:
 - a. refers to and repeats paragraphs 116 and 141 to 143 above;
 - b. denies the paragraph.
- 150. KPMG denies paragraph 150 of the Statement of Claim.
- 151. KPMG denies paragraph 151 of the Statement of Claim.
- 152. In response to paragraph 152 of the Statement of Claim, KPMG:
 - a. refers to and repeats paragraphs 97, 116 and 141 to 143 above;
 - b. denies the paragraph.
- 153. In response to paragraph 153 of the Statement of Claim, KPMG:
 - a. refers to and repeats paragraphs 116 and 148 to 151 above;
 - b. denies the paragraph.
- 154. In response to paragraph 154 of the Statement of Claim, KPMG:
 - a. refers to and repeats paragraphs 107 and 116 above;
 - b. denies the paragraph.
- 155. In response to paragraph 155 of the Statement of Claim, KPMG:
 - a. refers to and repeats paragraphs 116, 121 and 122 above;
 - b. denies the paragraph.
- 156. KPMG denies paragraph 156 of the Statement of Claim.
- 157. KPMG denies paragraph 157 of the Statement of Claim.
- 158. In response to paragraph 158 of the Statement of Claim, KPMG:
 - a. refers to and repeats paragraphs 97, 116 and 141 to 143 above;
 - b. denies the paragraph.
- 159. KPMG denies paragraph 159 of the Statement of Claim.
- D.3 Alleged market effect of KPMG FY2017 Contraventions*
- 160. KPMG denies paragraph 160 of the Statement of Claim.

IV. LOSS AND DAMAGE

A. Corrective Disclosure

A.1 Alleged December 2017 partial disclosure

161. In response to paragraph 161 of the Statement of Claim, KPMG:
- a. refers to and repeats paragraph 117 above;
 - b. refers to and relies on the terms of the December 2017 Announcement as a whole;
 - c. otherwise denies the paragraph.

162. KPMG denies paragraph 162 of the Statement of Claim.

A.2 Alleged March 2018 partial disclosure

163. KPMG denies paragraph 163 of the Statement of Claim and says that CuDeco's shares entered a trading halt on 13 March 2018.

Particulars

ASX Market Release titled '*CuDeco Limited: Trading Halt*' dated 13 March 2018 attaching CuDeco's Market Release titled '*Voluntary Trading Halt*' of the same date

164. In response to paragraph 164 of the Statement of Claim, KPMG:
- a. refers to and repeats paragraph 118 above;
 - b. refers to and relies on the terms of the March 2018 Announcement as a whole;
 - c. otherwise denies the paragraph.
165. KPMG denies paragraph 165 of the Statement of Claim.
166. KPMG admits paragraph 166 of the Statement of Claim.
167. In response to paragraph 167 of the Statement of Claim, KPMG:
- a. admits that, on 31 August 2018, CuDeco published and released to the ASX an announcement titled "Rocklands Operations Update";
 - b. relies on the terms of that announcement as a whole;
 - c. otherwise denies the paragraph.
168. KPMG does not know and therefore cannot admit paragraph 168 of the Statement of Claim.

169. In response to paragraph 169 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraph 6 above;
- b. says that Kelly-Anne Trenfield, Ian Francis and Michael Ryan were appointed as receivers and managers of CuDeco on 1 July 2019, as pleaded in paragraph 6 of the Statement of Claim;
- c. otherwise denies the paragraph.

170. KPMG admits paragraph 170 of the Statement of Claim.

171. KPMG admits paragraph 171 of the Statement of Claim.

172. In response to paragraph 172 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraph 6 above;
- b. admits that, on 30 April 2020, the Administrators were appointed as Liquidators of CuDeco.

173. KPMG admits paragraph 173 of the Statement of Claim.

B. Alleged Contravening Conduct allegedly caused Group Members' Loss

174. KPMG does not know and therefore cannot admit paragraph 174 of the Statement of Claim.

B.1 Market Conditions

175. In response to paragraph 175 of the Statement of Claim, KPMG:

- a. refers to paragraphs 18 and 174 above and says that it does know and cannot admit whether the Applicants and Group Members acquired interests in CuDeco shares;
- b. says that the price or value of CuDeco Shares would reasonably be expected to have been informed or affected by material information disclosed to the ASX and by other publicly available information, amongst other factors, affecting the price at which those shares were traded;
- c. otherwise denies the paragraph.

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

176. In response to paragraph 176 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraph 175 above;
- b. denies the paragraph.

177. In response to paragraph 177 of the Statement of Claim, KPMG:

- a. refers to and repeats paragraph 175 above;
- b. denies the paragraph.

B.3 Alleged market-based causation – Rights Issue

178. KPMG does not know and therefore cannot admit paragraph 178 of the Statement of Claim.

179. KPMG does know and therefore cannot not admit paragraph 179 of the Statement of Claim.

B.4 Reliance

180. KPMG does not know and therefore cannot admit paragraph 180 of the Statement of Claim.

181. KPMG denies paragraph 181 of the Statement of Claim.

B.5 Loss and damage

182. KPMG denies paragraph 182 of the Statement of Claim.

V. ENTITLEMENT TO RELIEF

183. KPMG denies paragraph 183 of the Statement of Claim.

184. KPMG denies paragraph 184 of the Statement of Claim.

185. KPMG denies paragraph 185 of the Statement of Claim.

VI. RELIEF FROM LIABILITY

186. KPMG pleads the matters set out at paragraphs 187 to 212 below in further answer to the whole of the Statement of Claim.

187. If KPMG is liable to the Plaintiffs or any Group Members by reason of the facts and matters alleged in this Statement of Claim (which is denied), then KPMG acted honestly and having regard to all the circumstances of the case, ought fairly be excused for any such liability (in whole, or in the alternative, in part) pursuant to s 1317S (by reason of s 1041(4)) and/or s 1318 of the Corporations Act, and the Court should wholly, or alternatively partly, relieve KPMG from any liability.

VII. LIMITATION OF LIABILITY

188. It was an express term of the 2 February 2016 Engagement Letter that the services performed in relation to the FY2016 Audit Report and the FY2017 Audit Report would be limited by the application of the Institute of Chartered Accountants in Australia (NSW)

Scheme (the **2014 Scheme**) approved under the *Professional Standards Act 1994* (NSW) (the **PSA**), or such other applicable scheme approved under the PSA.

Particulars

2 February 2016 Engagement Letter, Appendix 1, clause 8.1.

- 189. At all material times, the 2014 Scheme was a scheme operating under the PSA.
- 190. At all material times, KPMG was a participating member of the 2014 Scheme.
- 191. It was a term of the Scheme that a participating member against whom a proceeding is brought relating to occupational liability (as defined in the PSA) in connection with auditing services or reviews performed (as defined in the 2014 Scheme) in respect of which the fee is \$100,000 or more, but less than \$300,000, is not liable in damages in relation to that claim above \$5,000,000.

Particulars

2014 Scheme, cl 3.2, 3.3 and 4.1

- 192. For performance of the services performed in relation to the FY2016 Audit, KPMG charged CuDeco the sum of \$204,990.50.

Particulars

- 1. KPMG invoice issued to Cudeco Limited dated 29 July 2016 for an interim fee for the statutory audit of CuDeco Limited for the year ended 30 June 2016 in the amount of \$28,869.50 incl GST. (KPM.001.007.0044).
- 2. KPMG invoice issued to Cudeco Limited dated 29 August 2016 for the second interim fee for the statutory audit of CuDeco Limited for the year ended 30 June 2016 in the amount of \$46,750.00 incl GST (KPM.001.007.0011).
- 3. KPMG invoice issued to Cudeco Limited dated 30 September 2016 for the third interim fee for the statutory audit of CuDeco Limited for the year ended 30 June 2016 in the amount of \$57,035.00 incl. GST. (KPM.001.001.1067).
- 4. KPMG invoice issued to Cudeco Limited dated 26 October 2016 for the fourth interim fee for the statutory audit of CuDeco Limited for the year ended 30 June 2016 in the amount of \$22,836.00 incl GST. (KPM.001.007.0042)
- 5. KPMG invoice issued to Cudeco Limited dated 21 December 2016 for the final interim fee for the statutory audit of CuDeco Limited for

the year ended 30 June 2016 in the amount of \$49,500.00 incl GST.
(KPM.001.007.0019).

193. For performance of the services performed in relation to the FY2017 Audit, KPMG charged CuDeco the sum of \$245,130.53.

Particulars

1. KPMG invoice issued to Cudeco Limited dated 11 August 2017 for an interim fee for the statutory audit of CuDeco Limited for the year ended 30 June 2017 in the amount of \$62,280.53 incl. GST (KPM.001.004.7000).
 2. KPMG Invoice issued to Cudeco Limited dated 26 September 2017 for the second interim fee for the statutory audit of CuDeco Limited for the year ended 30 June 2017 in the amount of \$78,925.00 incl. GST (KPM.001.004.7002).
 3. KPMG Invoice issued to Cudeco Limited dated 23 October 2017 for the third interim fee for the statutory audit of CuDeco Limited for the year ended 30 June 2017 in the amount of \$78,925.00 incl GST (KPM.001.004.7004)
 4. KPMG Invoice issued to Cudeco Limited dated 24 November 2017 for professional services rendered, including the final fee for the statutory audit of CuDeco Limited for the year ended 30 June 2017 in the amount of \$25,000 excl GST (KPM.001.004.7006)
194. By reason of ss 28 and 29(2) of the PSA, s 137 of *the Competition and Consumer Act 2010* (Cth) (**CCA**), and paragraphs 188 to 193 above, any liability of KPMG arising from the FY2016 Audit or the FY2017 Audit as claimed in the Statement of Claim is limited to \$5,000,000.

VIII. PROPORTIONATE LIABILITY

195. In respect of alleged contraventions by KPMG of s 1041H of the Corporations Act, s 12DA of the ASIC Act and s 18 of the ACL, as set out in Schedule 2 of the CCA (**the Claims**), if (which is denied) KPMG is liable to any Applicant or Group Member for any loss or damage that is the subject of the Claims (**Claimed Loss**), it says as follows at paragraphs 196 to 205 below.
196. The Claims are apportionable claims within the meaning of:
- a. in respect of any alleged contravention of s 1041H of the Corporations Act, s 1041L of the Corporations Act;

- b. in respect of any alleged contravention of s 12DA of the ASIC Act, s 12GP of the ASIC Act;
- c. in respect of any alleged contravention of s 18 of the ACL, s 87CB of the CCA.

First, Second and Third Respondents

197. In respect of the FY2016 Financial Report and/or the FY2017 Financial Report, each of CuDeco, Chen and Hutchison is to be considered a "concurrent wrongdoer" within the meaning of s 1041L(3) of the Corporations Act, s 12GP(3) of the ASIC Act and s 87CB(3) of the CCA by reason of:
- a. the matters pleaded in paragraphs 20 to 95 of the Statement of Claim;
 - b. Chen and Hutchison each being a person whose acts or omissions caused the Claimed Loss.

Mining Associates

198. On or around 3 March 2016, Mining Associates provided CuDeco with a copy of the Feasibility Study.
199. KPMG:
- a. refers to and repeats paragraphs 65 and 84 above;
 - b. says that the DCF model used by CuDeco to assess the recoverable amount of the Rocklands CGU as at 30 June 2016 and 30 June 2017 was based on the Feasibility Study.
200. On or around 21 March 2016, Mining Associates represented to the directors of CuDeco and KPMG that:
- a. the Feasibility Study could be relied on for the purpose of assessing the carrying value of the Rocklands CGU as at 31 December 2015;
 - b. the Feasibility Study was a detailed independent examination of all technical assumptions made by CuDeco in respect of production rates, reserves, resources, operating costs and capital expenditure;
 - c. Mining Associates considered the assumptions in the DCF model prepared by CuDeco relating to production rates, reserves and resources, operating costs and capital expenditure to be reasonable for the type, scale and location of the project;
 - d. an offtake agreement for between 60% and 100% of the copper and cobalt production had been signed and negotiations were well advanced for the sale of the magnetite;

- e. each of the copper, cobalt and magnetite products capable of being processed at Rocklands was of marketable quality.

(Mining Associates Feasibility Study Representations)

Particulars

Letter from Andrew J Vigar, Director, Mining Associates, to Bruno Bamonte, Company Secretary, CuDeco Limited, dated 21 March 2016 (KPM.001.003.1956).

- 201. For the purposes of assessing the recoverable amount of the Rocklands CGU as at 30 June 2016 and 30 June 2017, CuDeco and KPMG relied on the Feasibility Study and the Mining Associates Feasibility Study Representations, subject to making the adjustments to the DCF model based on the Feasibility Study referred to at paragraphs 65(g) and 84(f) above.
- 202. If (which is denied):
 - a. CuDeco's FY2016 Financial Report:
 - i. was not prepared in compliance with the Accounting Standards; and/or
 - ii. did not give a true and fair view of CuDeco's financial position in FY2016 by reason of the matters pleaded in paragraph 65 of the Statement of Claim; and/or
 - b. CuDeco's FY2017 Financial Report:
 - i. was not prepared in compliance with the Accounting Standards; and/or
 - ii. did not give a true and fair view of CuDeco's financial position in FY2017 by reason of the matters pleaded in paragraph 84 of the Statement of Claim,

then Mining Associates is a "concurrent wrongdoer" within the meaning of s 1041L(3) of the Corporations Act, s 12GP(3) of the ASIC Act and s 87CB(3) of the CCA by reason of:

 - c. the matters pleaded in paragraphs 65 and 84 of the Statement of Claim;
 - d. paragraphs 65, 84 and 198 to 201 above.

Apportionment

- 203. In the premises, KPMG's liability (if any) to the Applicant's and each Group Member in respect of the FY2016 Financial Report and/or the FY2017 Financial Report is limited by s 1041N of the Corporations Act, s 12GR of the ASIC Act, and s 87CD of the CCA, to an amount reflecting that proportion of Claimed Loss that the Court considers is just having regard to the extent of KPMG's responsibility for that Claimed Loss.

204. If (which is not presently known to KPMG):

- a. any Applicant or Group Member was advised by an adviser in relation to purchases of CuDeco Shares in respect of which that Applicant or Group Member now makes Claims;
- b. that advice was negligent;
- c. that advice caused or contributed to the making of those purchases,

that adviser is a person whose acts or omissions caused the Claimed Loss in respect of that Applicant or Group Member.

Particulars

Particulars may be provided following discovery in respect of the Claims by the Applicants and, prior to the trial of each Group Member's Claims, by that Group Member.

205. In the premises, any adviser referred to in the preceding paragraph is, in relation to the Claims by any Applicant or Group Member referred to in that paragraph, a concurrent wrongdoer within the meaning of s 1041L(3) of the Corporations Act, s 12GP(3) of the ASIC Act and s 87CB(3) of the CCA.

IX. CONTRIBUTORY NEGLIGENCE

206. If (which is not presently known to KPMG) the decision of any Applicant or Group Member to purchase CuDeco Shares, in respect of which that Applicant or Group Member now makes claims based on alleged contraventions of ss 1041H of the Corporations Act, s 12DA of the ASIC Act or s 18 of the ACL, involved a failure by that Applicant or Group Member to take reasonable care, then, by reason of:

- a. in respect of the alleged contravention by KPMG of s 1041H of the Corporations Act, s 1041I of the Corporations Act;
- b. in respect of the alleged contravention by KPMG of s 12DA of the ASIC Act, s 12GF of the ASIC Act; and
- c. in respect of the alleged contravention by KPMG of s 18 of the ACL, s 137B of the ACL,

any liability of KPMG in relation to those claims is limited to an amount which the Court thinks just and equitable having regard to the responsibility of that Applicant or Group Member.

Particulars

Particulars may be provided following discovery in respect of the Claims by the Applicants and, prior to the trial of each Group Member's Claims, by that Group Member.

X. CIVIL LIABILITY ACT 2003 (QLD)

207. The claims in respect of the contravention of s 18 of the ACL alleged against KPMG in the Statement of Claim are for harm resulting from a breach of duty, within the meaning of Schedule 2 of the *Civil Liability Act 2003 (Qld)* (**CLA**).

208. In respect of those claims:

- a. having regard to the subject matter, scope and purpose of ss 18 and 236 of the ACL, it is not appropriate for the scope of KPMG's liability to extend to any loss or damage claimed, within the meaning of s 11 of the CLA;
- b. accordingly, KPMG is not liable under s 236 of the ACL for any such loss or damage.

209. Further or alternatively:

- a. the risk that:
 - i. the FY2016 Financial Report or FY2017 Financial Report might contain a material misstatement prior to audit or review, as applicable;
 - ii. further, or alternatively, a material misstatement might not be detected by the auditor,
 was an obvious risk, within the meaning of s 13 of the CLA;
- b. the risk that, at any given time, the price of CuDeco Shares on ASX might be:
 - i. affected by an error in the FY2016 Financial Report or FY2017 Financial Report;
 - ii. further or alternatively, different from the true value of CuDeco Shares,
 was an obvious risk, within the meaning of s 13 of the CLA;
- c. the risk that the offer price for CuDeco shares in the Rights Issue might be different from the true value of CuDeco Shares was an obvious risk, within the meaning of s 13 of the CLA;
- d. the risk that the price of CuDeco Shares on the ASX might fluctuate to a significant degree was an obvious risk, within the meaning of s 13 of the CLA;

- e. accordingly, pursuant to s 14 of the CLA, for the purposes of any claim in respect of the contravention of s 18 of the ACL alleged against KPMG in the Statement of Claim, it is to be presumed that the Applicants and Group Members were aware of the risks referred to in sub-paragraphs (a) to (d) above;
- f. for that reason, no loss or damage can be recovered pursuant to s 236 of the ACL.

210. Further or alternatively:

- a. the risk that:
 - i. the FY2016 Financial Report or FY2017 Financial Report might contain a material misstatement prior to audit or review, as applicable;
 - ii. further, or alternatively, a material misstatement might not be detected by the auditor,
 was an inherent risk, within the meaning of s 16 of the CLA;
- b. the risk that, at any given time, the price of CuDeco Shares on ASX might be:
 - i. affected by an error in the FY2016 Financial Report or FY2017 Financial Report;
 - ii. further or alternatively, different from the true value of CuDeco Shares,
 was an inherent risk, within the meaning of s 16 of the CLA;
- c. the risk that the offer price for CuDeco shares in the Rights Issue might be different from the true value of CuDeco Shares was an inherent risk, within the meaning of s 16 of the CLA;
- d. the risk that the price of CuDeco Shares on ASX might fluctuate to a significant degree was an inherent risk, within the meaning of s 16 of the CLA;
- e. accordingly, pursuant to s 16 of the CLA, KPMG is not liable under s 236 of the ACL for any loss alleged in the Statement of Claim to have been suffered as a result of the materialisation of a risk referred to in sub-paragraphs (a) to (d) above.

211. Further or alternatively:

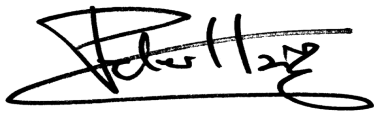
- a. in performing the 2 February 2016 Engagement Letter in relation to the FY2016 Financial Report and FY2017 Financial Report, KPMG acted in a manner that (at the time) was widely accepted in Australia by peer professional opinion as competent professional practice, within the meaning of s 22 of the CLA;
- b. accordingly, pursuant to s 22 of the CLA, KPMG is not liable under s 236 of the ACL for any loss alleged in the Statement of Claim.

XI. NORMATIVE CAUSATION

212. Further and in answer to each of the claims made:

- a. having regard to the subject matter, scope and purpose of ss 1041H and 1041I of the Corporations Act, it is not appropriate for the scope of KPMG's liability to extend to any loss or damage claimed;
- b. having regard to the subject matter, scope and purpose of ss 1041E and 1041I of the Corporations Act, it is not appropriate for the scope of KPMG's liability to extend to any loss or damage claimed;
- c. having regard to the subject matter, scope and purpose of ss 12DA(1) and 12GF of the ASIC Act, it is not appropriate for the scope of KPMG's liability to extend to any loss or damage claimed;
- d. having regard to the subject matter, scope and purpose of ss 18 and 236 of the ACL, it is not appropriate for the scope of KPMG's liability to extend to any loss or damage claimed.

Date: 11 April 2023



Signed by Peter Haig

Lawyer for KPMG

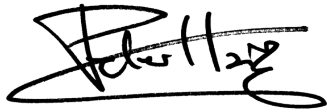
This pleading was prepared by Kane Loxley and Alison Hammond of counsel and settled by Ruth Higgins SC.

Certificate of lawyer

I, Peter Haig, certify to the Court that, in relation to the defence filed on behalf of the Fourth Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 11 April 2023

A handwritten signature in black ink, appearing to read 'Peter Haig', written over a horizontal dotted line.

Signed by Peter Haig

Lawyer for KPMG