NOTICE OF FILING

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File Title:	LEO TONER v CUDECO LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) (ACN 000 317 251) & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

SEAL OF THE FEDERAL COURT OF AUSTRALIA

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.

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Form 33
Rule 16.32

~~Amended~~ Defence

No. VID 176 of 2022

Federal Court of Australia

District Registry: Victoria

Division: General

~~**STUART McCULLAGH**~~

~~First Applicant~~

LEO TONER

~~Second~~ Applicant

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

Respondents

DEFENCE OF THE SECOND RESPONDENT

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[Form approved 01/08/2011]

TERMINOLOGY

The second respondent (**Hutchison**) adopts the conventions and definitions contained in the ~~applicants'~~ applicant's further amended statement of claim filed 8 August 2025 ~~7 April 2022~~ (**statement of claim**) unless otherwise stated herein.

I THE PARTIES

A. The Applicants and Group Members

1. As to the matters alleged in paragraph 1 of the statement of claim, Hutchison:

    1.1. denies that he has caused the group members loss and damage;

    1.2. otherwise does not know and therefore cannot admit the matters alleged in paragraph 1 of the statement of claim.

2. Hutchison does not know and therefore cannot admit the matters alleged in paragraph 2 of the statement of claim.

3. Hutchison does not know and therefore cannot admit the matters alleged in paragraph 3 of the statement of claim.

4. Hutchison does not know and therefore cannot admit the matters alleged in paragraph 4 of the statement of claim.

B. Cudeco

5. Hutchison admits the matters alleged in paragraph 5 of the statement of claim, save that the date pleaded in paragraph 5.3 ought to be 3 February 2020.

6. As to the matters alleged in paragraph 6 of the statement of claim, Hutchison:

    6.1. admits the matters alleged in paragraphs 6.1 and 6.2;

    6.2. does not know and therefore cannot admit the matters alleged in paragraph 6.3.

C. The Cudeco Officers

7. Hutchison admits the matters alleged in paragraph 7 of the statement of claim.

8. Hutchison admits the matters alleged in paragraph 8 of the statement of claim, save that he is the second respondent.

9. Hutchison admits the matters alleged in paragraph 9 of the statement of claim, save that Chen is the <u>third</u> ~~second~~ respondent.

10. Hutchison admits the matters alleged in paragraph 10 of the statement of claim.

D. KPMG

11. Hutchison does not know and therefore cannot admit the matters alleged in paragraph 11 of the statement of claim.

<u>**E. INSURERS**</u>

<u>11A. Hutchison does not know and therefore cannot admit the matters alleged in paragraphs 11A to 11C of the statement of claim.</u>

II CUDECO'S BUSINESS AND REGULATORY CONTEXT

A. Rocklands Mine

12. As to the matters alleged in paragraph 12 of the statement of claim, Hutchison:

    12.1. Denies that Cudeco's mining operations were continuous;

    12.2. otherwise admits the matters alleged in paragraph 12 of the statement of claim.

B. Cudeco Reporting Requirements

B.1 Corporations Act reporting requirements

13. Hutchison admits the matters alleged in paragraph 13 of the statement of claim, save that:

    13.1. there is no subsection (1) to s 111AO;

    13.2. The obligations in respect of s 297 of the Corporations Act are for production of financial statements and notes.

B.2 Accounting Standards

14. Hutchison does not know and therefore cannot admit the matters alleged in paragraph 14 of the statement of claim.

15. Hutchison does not know and therefore cannot admit the matters alleged in paragraph 15 of the statement of claim.

16. Hutchison does not know and therefore cannot admit the matters alleged in paragraph 16 of the statement of claim.

17. Hutchison does not know and therefore cannot admit the matters alleged in paragraph 17 of the statement of claim.

B.3 ASX Listing Requirements

18. As to the matters alleged in paragraph 18 of the statement of claim, Hutchison:

    18.1. In respect of paragraph 18.4(b) of the statement of claim says that the reporting obligation is limited to stating details of said activities for the relevant quarter;

    18.2. In respect of paragraph 18.4(c)(ii) of the statement of claim says that the entity's ore reserve holdings may alternatively be reported at another appropriate disclosed date;

    18.3. otherwise admits the matters alleged therein.

19. Hutchison admits the matters alleged in paragraph 19 of the statement of claim.

III CASE AGAINST CUDECO AND OFFICERS

A. Ore Reserve Representations

A.1 Maiden ore reserve estimate

20. Hutchison admits the matters alleged in paragraph<u>s 19A, 19B and</u> 20 of the statement of claim.

21. As to the matters alleged in paragraph 21 of the statement of claim, Hutchison:

    21.1. denies that Hutchison made the statements alleged therein;

Particulars

Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements.

Hutchison's involvement in the statements was solely as a director on behalf of Cudeco in releasing the third party Ore Reserve Statement to the public.

Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of the 2015 Maiden Ore Reserves Announcement.

21.2. otherwise denies the allegations therein because by the 2015 Maiden Ore Reserves Announcement Cudeco:

21.2.1. reported ore reserve estimates contained in the *Ore Reserves Statement* dated 9 December 2015 prepared by AMDAD and attached thereto;

21.2.2. did not make the statements alleged in paragraphs 21.1 to 21.2 of the statement of claim;

21.2.3. did not make the statement alleged in paragraph 21.4 but stated that the Feasibility Study indicated that Rocklands was technically and economically viable for the metal prices assumed;

21.3. <u>further says that, to the extent any of the Statements or Representations referred to in paragraph 21 were made by Hutchison, they were:</u>

21.3.1. <u>opinions, forecasts, forward looking statements or statements as to future matters;</u>

21.3.2. <u>actually held by Hutchison and further based on reasonable grounds.</u>

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

22. As to the matters alleged in paragraph 22 of the statement of claim, Hutchison:

22.1. In respect of paragraph 22.1(b) says that the availability of the rights issue was limited by the matters stated therein under the heading *Eligibility*;

22.2. otherwise admits the matters alleged therein.

23. Hutchison admits the matters alleged in paragraph 23 of the statement of claim.

24. Hutchison admits the matters alleged in paragraph 24 of the statement of claim.

25. As to the matters alleged in paragraph 25 of the statement of claim, Hutchison:

25.1. denies that Hutchison made the statements alleged therein;

Particulars

Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements.

Hutchison's involvement in the statements was solely as a director on behalf of Cudeco in releasing the third party Feasibility Study to the public.

Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of the Feasibility Study Announcement.

25.2. otherwise denies the allegations in paragraphs 25.3 and 25.4 because by the Feasibility Study Announcement Cudeco:

25.2.1. reported certain forecasts contained in the Feasibility Study and attached the Feasibility Study;

25.2.2. reported the net present value of Rocklands estimated in the Feasibility Study;

25.2.3. did not make the independent forecasts or statements alleged in paragraphs 25.3 to 25.4 of the statement of claim;

25.3. further says that, to the extent any of the Representations referred to in paragraph 25 were made by Hutchison, they were:

25.3.1. subject to the qualifications contained in the caveat lector section at page 3 of the *Executive Summary – Feasibility Study* to the effect that the conclusions expressed in the feasibility study were based on assumptions identified throughout the text, subject to the methodology, procedures and techniques used, the assumptions circumstances and constraints under which the report was written, together with use of professional judgement and reasonable care, but that no warranty was given as to the accuracy of estimates are other values;

25.3.2. opinions, forecasts, forward looking statements or statements as to future matters;

25.3.3. actually held by Hutchison and further based on reasonable grounds.

25.4. otherwise admits the allegations therein.

~~26.~~ [Not used] ~~As to the matters alleged in paragraph 26 of the statement of claim, Hutchison:~~

~~26.1. admits that the Feasibility Study contained statements to the effect of the matters alleged in paragraphs 21.1, 21.2, 25.3 and 25.4 of the statement of claim;~~

~~26.2. denies that the Feasibility Study constituted statements of CuDeco or Hutchison as pleaded in paragraphs 21 and 25 above and consequently denies the matters alleged in paragraph 26 of the statement of claim.~~

A.3 Replacement Prospectus

27. Hutchison admits the matters alleged in paragraph 27 of the statement of claim.

28. As to the matters alleged in paragraph 28 of the statement of claim, Hutchison:

28.1. denies that Hutchison made the statements alleged therein;

Particulars

Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements.

Hutchison's involvement in the statements was solely as a director on behalf of Cudeco in releasing the Replacement Prospectus.

Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of the Replacement Prospectus announcement.

28.2. Says that the 2015 Ore Reserve Announcement inclusive of the Ore Reserves Statement were attached to the Replacement Prospectus and contained statements to the effect of the matters alleged in paragraphs 21.1 to 21.2 of the statement of claim;

~~28.3. says that the Feasibility Study was attached to the Replacement Prospectus and contained statements to the effect of the matters alleged in paragraphs 21.1, 21.2, 25.3 and 25.4 of the statement of claim;~~

28.4. says further that the Replacement Prospectus:

28.4.1. stated that the shares offered by the Replacement Prospectus should be considered speculative;

28.4.2. identified significant risk factors affecting the Company and its future operating and financial performance including costs of construction and development, uncertainty of development and exploration risk, future financing, existing finance facilities, market conditions, product sale risk, and operating risks;

28.4.3. contained warnings that Cudeco's actual results, performance or achievements could significantly differ from results or objectives expressed in or implied by forward-looking statements in the Replacement Prospectus;

28.4.4. detailed important factors that could cause Cudeco's actual results to differ from those expressed in or implied by those forward-looking statements (together **Prospectus Qualification**);

Particulars

Replacement Prospectus pp 3, 14-16, 49-55.

28.5. further says that, to the extent any of the Representations referred to in paragraph 28 were made by Hutchison, they were:

28.5.1. Made subject to the Prospectus Qualification;

28.5.2. opinions, forecasts, forward looking statements or statements as to future matters;

28.5.3. further or alternatively actually held by Hutchison and further based on reasonable grounds.

28.6. otherwise denies the allegations therein because of the matters pleaded in paragraphs 21~~.2,~~ and 25~~.2 to 25.3~~ ~~and 26.2~~ above.

29. Hutchison admits the matters alleged in paragraph 29 of the statement of claim.

A.4 Quarterly Reports

30. Hutchison admits the matters alleged in paragraph 30 of the statement of claim.

31. As to the matters alleged in paragraph 31 of the statement of claim, Hutchison:

31.1. denies that Hutchison made the statements alleged therein;

Particulars

Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements.

Hutchison's involvement in the statements was solely as a director on behalf of Cudeco in releasing the said announcement.

Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of the announcement.

31.2. otherwise denies the allegations therein because by the 3Q16 Report Cudeco:

31.2.1. at page 4 reported the content of and referred the reader to the Feasibility Study;

31.2.2. at page 13 reported the content of ~~and referred the reader to~~ the Ore Reserve Statement;

31.2.3. did not otherwise make the statements alleged in paragraphs 31 of the statement of claim;

31.3. further says that, to the extent any of the Representations referred to in paragraph 31 were made by Hutchison, they were:

31.3.1. subject to the disclaimer contained at page 14 thereof, to the effect that the report contains forward-looking statements that are subject to risk factors associated with resources businesses which are believed to be reasonable but may be affected by a variety of variables and changes in underlying assumptions including price fluctuations, actual demand, currency fluctuations, drilling and production results, reserve estimates, loss of market, industry competition, economic and financial market conditions in various countries and regions, project delays or advancements and cost estimates (**Cudeco Qualification**);

31.3.2. opinions, forecasts, forward looking statements or statements as to future matters;

31.3.3. in the premises of the Cudeco Qualification and/or the Prospectus Qualification were representations only that Hutchison believed the opinions, forecasts, forward looking statements or statements as to future matters were reasonable;

31.3.4. actually held by Hutchison and further based on reasonable grounds.

31A Hutchison admits the matters alleged in paragraph 31A of the statement of claim

32. Hutchison admits the matters alleged in paragraph 32 of the statement of claim.

33. As to the matters alleged in paragraph 33 of the statement of claim, Hutchison:

33.1. denies that Hutchison made the statements alleged therein;

Particulars

Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements.

Hutchison's involvement in the statements was solely as a director on behalf of Cudeco in releasing the said announcement.

Following Hutchison's removal as interim managing director on 19 May 2016, Hutchison:

- had no input to management of Cudeco;

- was provided limited information as to that management;

- had no or a limited influence on the making of the said representations.

~~Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of the said announcement.~~

33.2. otherwise denies the allegations therein because by the 4Q16 ~~3Q16~~ Report Cudeco:

~~33.2.1. at page 4 reported the content of and referred the reader to the Feasibility Study;~~

33.2.2. at page 12 ~~13~~ reported the content of ~~and referred the reader to~~ the Ore Reserve Statement;

~~33.2.3. did not otherwise make the statements alleged in paragraphs 31 of the statement of claim.~~

33.3. further says that, to the extent any of the Representations referred to in paragraph 33 were made by Hutchison, they were:

33.3.1. Made subject to the Cudeco Qualification and/or the Prospectus Qualification;

33.3.2. opinions, forecasts, forward looking statements or statements as to future matters;

33.3.3. in the premises of the Cudeco Qualification and/or the Prospectus Qualification were representations only that Hutchison believed the opinions, forecasts, forward looking statements or statements as to future matters were reasonable;

33.3.4. further or alternatively actually held by Hutchison and further based on reasonable grounds.

A.5 Implied representations

34. As to the matters alleged in paragraph 34 of the statement of claim, Hutchison:

34.1. Repeats paragraphs 21, 25, 26, 28, 31 and 33 above in respect of the allegations that Cudeco and Hutchison made the statements alleged and repeats the non admissions and denials therein;

34.2. Otherwise denies the allegations.

Particulars

No such express statements were made.

~~The statement of claim provides no particulars upon which the alleged representation ought be implied or inferred~~.

No such representations are to be implied or inferred in light of:

- Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements;
- the express statements made in the each of the documents pleaded above, including the Prospectus Qualification and the Cudeco Qualification;
- The source of the information or representation being stated provided or referenced in the document;
- Hutchison's participation in the Representations, if any, being as a director and upon the advice of other staff or contractors of Cudeco.

35. As to the matters alleged in paragraph 35 of the statement of claim, Hutchison:

35.1. denies that Hutchison made the statements alleged therein;

Particulars

No such representations are to be implied or inferred in light of:

- Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements;
- the express statements made in the each of the documents pleaded above, including the Prospectus Qualification and the Cudeco Qualification;
- The source of the information or representation being stated provided or referenced in the document;
- Hutchison's participation in the Representations, if any, being as a director and upon the advice of other staff or contractors of Cudeco.

~~Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements.~~

~~Hutchison's involvement in the statements was solely as a director on behalf of Cudeco in releasing the said announcement.~~

~~Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of the announcement.~~

35.2. Otherwise denies the allegations because:

35.2.1. The representation alleged in paragraph 35.1 of the statement of claim does not follow and cannot be inferred from the matters pleaded in paragraph 27.5 of the statement of claim or the particulars;

35.2.2. The representation in paragraph 35.2 of the statement of claim does not follow and cannot be inferred from the matters pleaded in paragraph 27.5 of the statement of claim or the particulars.

36. As to the matters alleged in paragraph 36 of the statement of claim, Hutchison:

36.1. Repeats paragraphs 21, 25, 26, 28, 31, 33, 34 and 35 above in respect of the allegations that Cudeco and Hutchison made the statements alleged and repeats the non admissions and denials therein;

36.2. denies that Hutchison made representations thereby;

Particulars

Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements.

Hutchison's involvement was solely as a director.

Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of Cudeco's disclosure or alleged non disclosure over the relevant period.

36.3. Further denies that Hutchison made continuing representations or was required to correct earlier representations because:

36.3.1. Hutchison was not able to control the issue or content of ASX announcements by Cudeco at all or alternatively from his termination as interim managing director on 19 May 2016;

36.3.2. The Company not Hutchison was under a positive obligation of continuous disclosure pursuant to section 674 of the Act where matters arose which a reasonable person would expect, if they were generally available, to have a material effect on the price or value on its shares;

And otherwise:-

36.4. denies the matters alleged in paragraph 36 because:

36.4.1. The statements made by Cudeco which are alleged to form the Rocklands Representations and the Prospectus Representation were:

36.4.1.1. statements as to the contents of the 2015 Ore Reserves Statement and the Feasibility Study, which documents are not of a continuing character;

36.4.1.2. statements conveying independent persons' opinions in respect of or based on the Rocklands ore reserve at December 2015, in respect of which Cudeco had obligations to update the market in their quarterly and annual reports, such that the representations were not of a continuing character;

36.4.2. The Prospectus Basis Representations are, if found to exist, dependent on and part of the Prospectus Representation, and must be inferred to bear the same non-continuous character;

36.5. Further or alternatively says that developments and changes in the planning and operation of the Rocklands Group Copper Project were disclosed by Cudeco pursuant to the following ASX announcements and consequently denies the matters alleged in paragraph 36 or alternatively says that the alleged representations were qualified or corrected:

36.5.1. On 11 May 2016 by "Rights Issue Closes" update p 1 stating that cobalt and magnetite circuits would be commissioned and production brought on line after copper circuits reached steady state;

36.5.2. On 16 May 2016 by "Commissioning Status Update" stating that cobalt and magnetite circuits would be commissioned and production brought on line after copper circuits reached steady state;

36.5.3. on or about 22 September 2016 by the ASX "Operational Update" announcement released on or about that date, p 2 as to Cudeco proposing not to commission cobalt and magnetite circuits at that stage;

36.5.4. on or about 31 October 2016 by the 1Q17 Quarterly Report p 3 “Mining” as to Cudeco proposing not to commission cobalt and magnetite circuits at that stage;

36.5.5. on or about 17 November 2016 by FY2016 Annual Report p 75-76 note 27 as to impairment arising from matters including delay in start date of full production;

36.5.6. on or about 18 May 2017 by the ASX announcement “Presentation at Brisbane Mining Club” p 19 as to options for non-production of cobalt and magnetite;

36.5.7. On 14 June 2017 by a “Rocklands Operations Update” identifying issues and remedial action to improve copper production;

36.5.8. On 11 July 2017 by a “Rocklands Operations Update” as to issues with the HPGR plant;

36.5.9. On or about 31 October 2017 by the FY2017 Annual Report p 96 New Information, and inclusion only revenue from production and sale of copper products;

36.5.10. On or about 29 November 2017 by the ASX announcement “Presentation to Annual General Meeting” p 15 immediate goals include “commission cobalt circuit”, p 32 looking forward regarding investigation of cobalt circuit and finding a buyer for pyrite/ cobalt product;

36.5.11. On or about 29 November 2017 by the ASX announcement “Chairman’s Address to AGM” p 3-4 as to working with potential customers to explore the prospect for additional revenue from production of cobalt;

36.5.12. On or about 27 December 2017 by the December 2017 Announcement p 1;

36.5.13. On or about 31 January 2018 by the 2Q2018 Report p 2-3 as to processing issues, and p 4 as to production and sale of copper products alone;

36.5.14. On about 23 February 2018 by the ASX Announcement “Update on Non Compliance …” which restated that Cudeco would not be able to make a 30 June 2017 ore reserve statements until about 15 March 2018;

36.5.15. By each ASX announcement subsequent to 16 May 2016 which referred to production and sale of copper products alone;

36.5.16. By each ASX announcement subsequent to 16 May 2016 which recorded financial statements for Cudeco, each of which incorporated the remedial costs of plant and equipment rehabilitation as they then stood;

36.6. further says that, to the extent any of the Representations were made by Hutchison, they were:

36.6.1. Made subject to the Cudeco Qualification and/or the Prospectus Qualification;

36.6.2. opinions, forecasts, forward looking statements or statements as to future matters;

36.6.3. in the premises of the Cudeco Qualification and/or the Prospectus Qualification were representations only that Hutchison believed the opinions, forecasts, forward looking statements or statements as to future matters were reasonable;

36.6.4. further or alternatively actually held by Hutchison and further based on reasonable grounds.

37. As to the matters alleged in paragraph 37 of the statement of claim, Hutchison:

37.1. Repeats paragraphs 21, 25, 26, 28, 31, 33, 34, 35 and 36 above in respect of the allegations that Cudeco and Hutchison made the representations alleged and repeats the non admissions and denials therein;

37.2. Otherwise admits that Cudeco's conduct which is alleged to constitute the Rockands Representations and the Rocklands Prospectus Representations was in trade or commerce as alleged in paragraph 37.1;

37.3. Admits the matters alleged in subparagraph 37.2(a);

37.4. Denies the matters alleged in subparagraph 37.2(b) because:

37.4.1. Cudeco's positive conduct was intended to comply with the ASX Listing Rules, and was not intended to influence people in relation to decisions regarding Cudeco shares;

37.4.2. Cudeco's omissions were not intended to influence people in relation to decisions regarding Cudeco shares

37.5. admits the matters alleged in subparagraph 37.2(c).

B. The True Position

38. As to the matters alleged in paragraph 38 of the statement of claim, Hutchison:

38.1. denies paragraph 38.1 because as a matter of fact or in the opinion of Hutchison based on reasonable grounds:

38.1.1. Cudeco had secured a commercially acceptable offtake arrangement with China Oceanwide for sale of copper and cobalt concentrates;

38.1.2. Cudeco subsequently signed a terms sheet for offtake of native copper;

38.1.3. Cudeco had previously signed a Heads of Agreement in respect of magnetite offtake and continued to have a commensurate level of interest in a magnetite offtake from the Heads of Agreement counterparty;

38.1.4. There was an available market for the sale of magnetite at the prices assumed in the 2015 Ore Reserves Statement;

38.1.5. Determination of whether the Rocklands mineral deposits were economically mineable required only demonstration that extraction of the Ore Reserves was viable under reasonable financial assumptions and did not require sales contracts to be in place;

Particulars to 38.1.1 to 38.1.4

JORC Code para 29.

Offtake Agreement for Copper/ Gold Concentrate and Cobalt/Pyrite Concentrate with China Oceanwide International Holdings Co Ltd dated 25 April 2011.

Offtake Agreement for native copper with China Oceanwide International Holdings Co Ltd Head agreed on about 21 June 2016 and announcement via ASX on even date.

Heads of Agreement for magnetite concentrate Martin & Robson Australia Pty Ltd dated 11 June 2014 and in or about late 2015.

Martin & Robson continued to engage with the Company as to acquisition of magnetite.

38.2. Admits the matters alleged in paragraph 38.2 and further says that there was no representation to the contrary in the Replacement Prospectus.

39. As to the matters alleged in paragraph 39 of the statement of claim, Hutchison:

39.1. Says that there was no reason to exclude cobalt and magnetite deposits from the 2015 Maiden Ore Announcement or the Feasibility Study prior to about December 2017 or January 2018 because:

39.1.1. The Feasibility Study provided for cobalt production to commence in the fifth quarter after production plant commissioning and magnetite production to commence in the seventh quarter after production plant commissioning;

39.1.2. In the course of operating the production plant for extraction of copper only, mineralised waste including cobalt and magnetite resources was stockpiled for future processing;

39.1.3. limited amounts of cobalt and magnetite were transferred to mineralised waste stockpiles by 30 June 2017 or alternatively during the Relevant Period;

39.1.4. Cudeco did not exclude cobalt or magnetite from immediate plans for exploitation of the ore reserve until in or about late 2017 or early 2018;

Particulars

22 September 2016 ASX "Operational Update" announcement released on or about that date, p 2 as to Cudeco proposing not to commission cobalt and magnetite circuits at that stage and 31 October 2016 by the 1Q17 Quarterly Report p 3 "Mining" as to Cudeco proposing not to commission cobalt and magnetite circuits were not limited to interim production or alternatively were unauthorised decisions of Cudeco to terminate production of cobalt and magnetite.

8 May 2017 ASX announcement "Presentation at Brisbane Mining Club" p 19 as to options for non-production of cobalt and magnetite.

29 November 2017 ASX announcement "Presentation to Annual General Meeting" p 15 immediate goals include "commission cobalt circuit", p 32 looking forward regarding investigation of cobalt circuit and finding a buyer for pyrite/ cobalt product.

29 November 2017 ASX announcement "Chairman's Address to AGM" p 3-4 as to working with potential customers to explore the prospect for additional revenue from production of cobalt.

Magnetite was a byproduct of cobalt production, requiring tailings from the cobalt circuit (which itself involved finer crushing of copper tailings) in order to be undertaken, and consequently delay to magnetite production followed decisions to delay cobalt production.

Management proposals regarding cobalt and magnetite production in late 2017 were:

- Not finalised;
- Not a permanent removal of cobalt or magnetite;
- not approved by the Board and did not represent Cudeco's position such that the mine plan remain unchanged;

~~Further particulars will be provided following discovery.~~

39.2. Otherwise admits the matters alleged therein.

~~40.~~ [Not used]~~As to the matters alleged in paragraph 40 of the statement of claim, Hutchison:~~

~~40.1. denies the matters alleged in paragraph 40.1 because ore feed commissioning to Cudeco's processing plant did not commence until 29 May 2016;~~

~~40.2. otherwise does not know the effect of the teething issues and the key economic assumptions which underpinned economic modelling and therefore cannot admit the matters alleged in paragraph 40.1;~~

~~40.3. denies the matters alleged in paragraph 40.2 because:~~

~~40.3.1. the crusher circuit was commissioned prior to the remainder of the process plant in or about late 2014 or early 2015;~~

~~40.3.2. post commissioning modification to the crushing circuit in or about early march 2016 to improve efficiency was disclosed to the market in the Feasibility Study Summary p 5 with supplementary crushing also employed as described in FY 2018 Annual Report p 16, 17;~~

~~40.3.3. the crusher plant was operating satisfactorily as at 29 May 2016 when ore feed commissioning commenced to Cudeco's processing plant;~~

~~Particulars~~

~~ASX announcement "*Ore Feed Commissioning Starts …*" dated 31 May 2016.~~

~~40.3.4. a stockpile of crushed ore was maintained to ensure that ore feed to the processing plant was maintained during crusher maintenance periods.~~

41. Hutchison denies the matters alleged in paragraph 41 of the statement of claim because no such plan had been introduced.

42. Hutchison denies the matters alleged in paragraph 42 of the statement of claim because of the matters pleaded in paragraphs 38 to 41 above and because:

    42.1. the revenue, net earnings and net present value of Rocklands calculated in the Feasibility Study did not assume that Cudeco's cobalt and magnetite circuits had been completed at the date of its release;

    42.2. Cudeco's fundraising pursuant to the Replacement Prospectus was for purposes including completion of the construction and commissioning of the Rocklands Group Copper Project;

    42.3. <u>And further says that the Prospectus Qualification and thereafter the Cudeco Qualification identified that there was a risk that the results of Rocklands would not be consistent with the Feasibility Study or financial forecasts made in respect of Rocklands.</u>

C. Contraventions from April 2016

C.1 April 2016 Continuous Disclosure Contraventions

43. Hutchison denies the matters alleged in paragraph 43 of the statement of claim because the alleged information did not exist, as pleaded in paragraphs 38 to 40 above<u> and says that the said paragraph makes no allegations against him</u>.

44. Hutchison denies the matters alleged in paragraph 44 of the statement of claim because the alleged information did not exist, as pleaded in paragraph 41 above <u>and says that the said paragraph makes no allegations against him</u>.

45. Hutchison denies the matters alleged in paragraph 45 of the statement of claim because the alleged information did not exist, as pleaded in paragraph 42 above <u>and says that the said paragraph makes no allegations against him</u>.

46. Hutchison denies the matters alleged in paragraph 46 of the statement of claim because:

    46.1. of the matters pleaded in paragraphs 38 to 45 above; and

    46.2. of the matters pleaded in paragraph 36 above;

    <u>and says that the said paragraph makes no allegations against him</u>.

C.2 Misleading or deceptive conduct

47. As to the matters alleged in paragraph 47 of the statement of claim, Hutchison:

47.1. Repeats paragraphs 21, 25, 26, 28, 31, 33, 34, 35 and 36 above in respect of the allegations that Cudeco and Hutchison made the representations alleged and repeats the non admissions and denials therein;

47.2. denies that Hutchison maintained representations because Hutchison was not able to control the issue or content of ASX announcements by Cudeco at all, or alternatively from his termination as interim managing director on 19 May 2016;

47.3. further denies that after his termination as interim managing director on 19 May 2016, Hutchison had knowledge of matters relating to the Magnetite and Cobalt Information, the Reduced Ore Reserve Information, the Processing Plant Information, the Mine Plan Information and the Financial Performance Information which required him to withdraw or correct the alleged representations because:

47.3.1. the information provided to him in respect of those matters was limited;

47.3.2. he was not in a position to control board or management decisions as to ASX disclosure.

~~Particulars~~

~~Hutchison does not have access to the books and records of Cudeco to further particularise the limits of the relevant information provided to him.~~

47.4. otherwise denies the matters alleged in paragraph 47 because:

47.4.1. of the matters pleaded in paragraphs 21 to 46 ~~36, 38 to 40 and 42 or alternatively 36 and 38 to 42~~ above; and because:

47.4.1.1. the alleged representations were made on the basis of analysis by AMDAD (Ore Reserves Statement) and Mining Associates Limited (Feasibility Study), the declaration of other board members and other management advice and reports, board papers and other documents and the matters particularised below which were consistent with the representations;

Particulars

Cudeco's Mine Plan was to produce copper/gold, cobalt and magnetite concentrates for sale consistent with the Ore Reserves Statement, the Feasibility Study and other documents here particularised.

Wright Mining Contractors' October 2015 report *High Level Review of the Rockland Project Mining Cost Assumptions*, and Mining Associates' 15 October 2015 cover letter thereto.

Deloitte's 23 October 2015 *Review of the fair value of the Rockland Project.*

Due diligence process and verification statements signed by other board members in respect of the Prospectus.

Correspondence of Mr Vigar of Mining Associates including that of 21 March 2016 stating "*the FS report can be relied on by the directors and auditors of CuDeco Limited for the purpose of assessing the carrying value of the assets*".

KPMG audit of the December 2015 half yearly accounts.

~~Hutchison does not have access to the books and records of Cudeco, which he requires to identify other management report, board papers and other documents which record or constitute the subject matter of his inquiries~~.

47.4.1.2. the Company or alternatively Hutchison did not have any new data or information that materially affected the alleged representations by 11 April 2016 nor by 31 May 2016;

47.4.1.3. to the extent that the representations were made by Hutchison, they were:

47.4.1.3.1. Made subject to the Cudeco Qualification and/or the Prospectus Qualification;

47.4.1.3.2. opinions, forecasts, forward looking statements or statements as to future matters;

47.4.1.3.3. in the premises of the Cudeco Qualification and/or the Prospectus Qualification were representations only that Hutchison believed the opinions, forecasts, forward looking statements or statements as to future matters were reasonable;

47.4.1.3.4. further or alternatively actually held by Hutchison and further based on reasonable grounds for the reasons pleaded in this paragraph.

~~47.4.1.4. were representations as to future matters, Hutchison consequently had reasonable grounds for making them.~~

48. Hutchison denies the matters alleged in paragraph 48 of the statement of claim because of the matters pleaded in paragraphs 21 to 47 above.

49. Hutchison denies the matters alleged in paragraph 49 of the statement of claim because of the matters pleaded in paragraphs 21 to 47 above.

C.3 Rocklands Representations – false or misleading conduct contraventions

50. Hutchison denies the matters alleged in paragraph 50 of the statement of claim because of the matters pleaded in paragraphs 21 to 47 above.

51. Hutchison denies the matters alleged in paragraph 51 of the statement of claim because of the matters pleaded in paragraphs 21 to 47 above.

52. Hutchison denies the matters alleged in paragraph 52 of the statement of claim because of the matters pleaded in paragraphs 21 to ~~24 to 36, 39, 43 to 45 and~~ 47 above.

53. Hutchison denies the matters alleged in paragraph 53 of the statement of claim because of the matters pleaded in paragraphs 21 to ~~24 to 36, 39, 43 to 45 and~~ 47 above.

54. Hutchison denies the matters alleged in paragraph 54 of the statement of claim because:

    54.1. of the matters pleaded in paragraphs 50 to 51, 52 and 53 above; and because

    54.2. the Rocklands Representations were not representations as to the standard, quality, value or grade of relevant services and consequently did not breach s 12DB(1)(a) of the ASIC Act or s 29(1)(b) of the ACL.

C.4 Prospectus Contraventions

55. Hutchison denies the matters alleged in paragraph 55 of the statement of claim because of the matters pleaded in paragraphs 21 to 47 ~~38, 39, 41 and 42~~ above.

56. Hutchison denies the matters alleged in paragraph 56 of the statement of claim because of the matters pleaded in paragraphs 21 to 47 ~~38, 39, 40 and 42~~ above.

D. Market effects of Rocklands Contravening Conduct

57. Hutchison denies the matters alleged in paragraph 57 of the statement of claim because of the matters pleaded in paragraphs 21 to ~~36, 39, 46, 49, 54, 55 and~~ 56 above.

E. October/November 2016 Representations

E.1 1Q17 Quarterly Report

58. Hutchison admits the matters alleged in paragraph 58 of the statement of claim.

59. As to the matters alleged in paragraph 59 of the statement of claim, Hutchison:

59.1. denies that Hutchison made the representations therein because Hutchison:

59.1.1. was not able to control the issue or content of ASX announcements by Cudeco at all or alternatively from his termination as interim managing director on 19 May 2016;

59.1.2. Did not authorise the 1Q17 Report, or alternatively Hutchison's involvement in the statement was solely as a director on behalf of Cudeco in releasing the said announcement.

Particulars

The 1Q17 Report was not approved by Mr Hutchison or the Board of Cudeco.

~~Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of the announcement.~~

59.2. Otherwise denies the matters alleged therein because of the matters alleged in paragraph 21.2;

59.3. further says that, to the extent any of the Representations referred to in paragraph 59 were made by Hutchison, they were:

59.3.1. Made subject to the Cudeco Qualification and/or the Prospectus Qualification;

59.3.2. opinions, forecasts, forward looking statements or statements as to future matters;

59.3.3. actually held by Hutchison and further based on reasonable grounds.

E.2 FY2016 Annual Report

60. As to the matters alleged in paragraph 60 of the statement of claim, Hutchison:

60.1. denies the matters alleged in paragraph 60.1 because of the matters alleged in paragraph 21.2 above;

60.2. as to paragraphs 60.2 and 60.3:

60.2.1. denies that Hutchison made the statements alleged therein;

Particulars

Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements.

Hutchison's involvement in the statements was solely as a director on behalf of Cudeco in releasing the said announcement.

Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of the announcement.

60.2.2. Otherwise admits in respect of the Company the matters alleged in paragraphs 60.2 and 60.3 of the statement of claim;

60.3. <u>further says that, to the extent any of the Representations referred to in paragraph 60 were made by Hutchison, they were:</u>

60.3.1. <u>Made subject to the Cudeco Qualification and/or the Prospectus Qualification;</u>

60.3.2. <u>opinions, forecasts, forward looking statements or statements as to future matters;</u>

60.3.3. <u>in the premises of the Cudeco Qualification and/or the Prospectus Qualification were representations only that Hutchison believed the opinions, forecasts, forward looking statements or statements as to future matters were reasonable;</u>

60.3.4. <u>further or alternatively actually held by Hutchison and further based on reasonable grounds.</u>

E.3 Implied Representations

61. As to the matters alleged in paragraph 61 of the statement of claim, Hutchison:

61.1. Repeats paragraphs 59 and 60 above in respect of the allegations that Cudeco and Hutchison made the statements alleged and repeats denials therein;

61.2. Otherwise denies the allegations.

Particulars

No such express statements were made.

It is not alleged in paragraph 60.1 of the statement of claim that Hutchison made the FY2016 Annual Report Ore Reserves Representation.

No such representations are to be implied or inferred in light of:

- Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements;
- the express statements made in the each of the documents pleaded above, including the Prospectus Qualification and the Cudeco Qualification;
- The source of the information or representation being stated or provided in the document;
- Hutchison's participation in the Representations, if any, being as a director and upon the advice of other staff or contractors of Cudeco.

~~The statement of claim provides no particulars upon which the alleged representation ought be implied or inferred.~~

62. As to the matters alleged in paragraph 62 of the statement of claim, Hutchison:

62.1. Repeats paragraphs 59, 60 and 61 above in respect of the allegations that Cudeco and Hutchison made the statements alleged and repeats the denials therein;

62.2. denies that Hutchison made representations thereby;

Particulars

Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements.

Hutchison's involvement was solely as a director.

Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of Cudeco's disclosure or alleged non disclosure over the relevant period.

62.3. Further denies that Hutchison made continuing representations because:

62.3.1. Hutchison was not able to control the issue or content of ASX announcements by Cudeco at all or alternatively from his termination as interim managing director on 19 May 2016;

62.3.2. <u>The Company not Hutchison was under a positive obligation of continuous disclosure pursuant to section 674 of the Act where matters arose which a reasonable person would expect, if they were generally available, to have a material effect on the price or value on its shares;</u>

62.4. Otherwise denies the matters alleged in paragraph 62 because:

62.4.1. The statements made by Cudeco which are alleged to form the FY2016 Representations were:

62.4.1.1. statements conveying independent persons' opinions in respect of or based on the Rocklands ore reserve at the dates they were made, in respect of which Cudeco had obligations to update the market in their quarterly and annual reports;

62.4.1.2. statements conveying the financial position of Cudeco in respect of the period for which they were made, which representations were as to a point in time and were not of a continuing character;

62.5. Further or alternatively says that developments and changes in the planning and operation of the Rocklands Group Copper Project were disclosed by Cudeco pursuant to the following ASX announcements and consequently denies the matters alleged in paragraph 62 or alternatively says that the alleged representations were qualified or corrected:

62.5.1. <u>on or about 22 September 2016 by the ASX "Operational Update" announcement released on or about that date, p 2 as to Cudeco proposing not to commission cobalt and magnetite circuits at that stage;</u>

62.5.2. on or about 31 October 2016 by the 1Q17 Quarterly Report p 3 "Mining" as to Cudeco proposing not to commission cobalt and magnetite circuits at that stage;

62.5.3. on or about 18 May 2017 by the ASX announcement "Presentation at Brisbane Mining Club" p 19 as to options for non-production of cobalt and magnetite;

62.5.4. On 14 June 2017 by a "Rocklands Operations Update" identifying issues and remedial action to improve copper production;

62.5.5. On 11 July 2017 by a "Rocklands Operations Update" as to issues with the HPGR plant;

62.5.6. On or about 31 October 2017 by the FY2017 Annual Report p 96 New Information, and inclusion only revenue from production and sale of copper products;

62.5.7. On or about 29 November 2017 by the ASX announcement "Presentation to Annual General Meeting" p 15 immediate goals include "commission cobalt circuit", p 32 looking forward regarding investigation of cobalt circuit and finding a buyer for pyrite/ cobalt product;

62.5.8. On or about 29 November 2017 by the ASX announcement "Chairman's Address to AGM" p 3-4 as to working with potential customers to explore the prospect for additional revenue from production of cobalt;

62.5.9. On or about 27 December 2017 by the December 2017 Announcement p 1;

62.5.10. On or about 31 January 2018 by the 2Q2018 Report p 2-3 as to processing issues, and p 4 as to production and sale of copper products alone;

62.5.11. On about 23 February 2018 by the ASX Announcement "Update on Non Compliance …" which restated that Cudeco would not be able to make a 30 June 2017 ore reserve statements until about 15 March 2018;

62.5.12. By each ASX announcement subsequent to 16 May 2016 which referred to production and sale of copper products alone;

62.5.13. By each ASX announcement subsequent to 16 May 2016 which recorded financial statements for Cudeco, each of which incorporated the remedial costs of plant and equipment rehabilitation as they then stood;

62.6. <u>further says that, to the extent any of the Representations referred to in paragraph 62 were made by Hutchison, they were:</u>

62.6.1. <u>Made subject to the Cudeco Qualification and/or the Prospectus Qualification;</u>

62.6.2. <u>opinions, forecasts, forward looking statements or statements as to future matters;</u>

62.6.3. <u>in the premises of the Cudeco Qualification and/or the Prospectus Qualification were representations only that Hutchison believed the opinions, forecasts, forward looking statements or statements as to future matters were reasonable;</u>

62.6.4. further or alternatively actually held by Hutchison and further based on reasonable grounds.

63. As to the matters alleged in paragraph 63 of the statement of claim, Hutchison:

63.1. Repeats paragraphs 58 to 62~~.1 to 62.2~~ above in respect of the allegations that Cudeco and Hutchison made the representations alleged and repeats the non admissions and denials therein;

And otherwise:-

63.2. admits that Cudeco's conduct which is alleged to constitute the FY2016 Representations was in trade or commerce;

63.3. Admits the matters alleged in subparagraph 63.2(a)

63.4. Denies the matters alleged in subparagraph 63.2(b) because:

63.4.1. Cudeco's positive conduct was intended to comply with the ASX Listing Rules, and was not intended to influence people in relation to decisions regarding Cudeco shares;

63.4.2. Cudeco's omissions were not intended to influence people in relation to decisions regarding Cudeco shares;

63.5. Admits the matters alleged in subparagraph 63.2(c).

F. True position as at October and November 2016

64. As to the matters alleged in paragraph 64 of the statement of claim, Hutchison denies the allegations because:

64.1. ~~Says that~~ Cudeco did not exclude cobalt or magnetite from its production plans until in or about late 2017 or early 2018 and repeats paragraph 39.1 above;

64.2. The Mine Plan adopted by Cudeco had not been changed;

64.3. if an amended pit design was created in late 2016:

64.3.1. Mining did not commence until March 2017 and pit design was of no effect until that time;

64.3.2. Pit design was able to be expanded to extract cobalt and magnetite in accordance with the mine plan which remained unchanged;

~~64.4. otherwise does not know and therefore cannot admit the matters alleged in paragraph 64 of the statement of claim.~~

~~Particulars~~

~~Hutchison does not recall and does not have access to the books and records of Cudeco to determine the matters alleged.~~

65. Hutchison ~~does not know and therefore cannot admit the matters alleged in paragraph 65 of the statement of claim.~~ denies the matters pleaded in paragraph 65 of the statement of claim because of the matters pleaded in paragraphs 38 to 41 and 58 to 64 above.

Particulars

~~Hutchison repeats and relies on paragraph 64 above.~~

The FY2016 Impairment as reported was the product of engagement between management and KPMG in preparation and audit of the 2016 Financial Report and the KPMG Report to Audit Committee in respect thereof.

Hutchison requires expert accounting evidence to address the application and effect of the pleaded AASB standards.

G. Contraventions from October and November 2016

G.1 FY2016 Continuous Disclosure Contraventions

66. As to the matters alleged in paragraph 66 of the statement of claim, Hutchison says that the said paragraph makes no allegations against him and:

66.1. repeats and relies on paragraph 64 to 65~~.1~~ above;

66.2. otherwise denies ~~does not know and therefore cannot admit~~ the matters alleged in paragraph 66 of the statement of claim because the alleged information did not exist and because of the matters pleaded in paragraphs 58 ~~64~~ to 65 above.

67. As to the matters alleged in paragraph 67 of the statement of claim, Hutchison says that the said paragraph makes no allegations against him and otherwise:

67.1. Repeats paragraphs 64 to 66 above~~, repeats the non admissions therein and consequently does not know and therefore cannot admit the matters alleged~~;

67.2. Further or alternatively says that management-proposed developments and changes in the planning and operation of the Rocklands Group Copper Project were disclosed by Cudeco as pleaded in paragraph 62.5 above and consequently denies that the alleged information was not disclosed until the dates alleged.

G.2 FY2016 Representations – misleading or deceptive conduct

68. As to the matters alleged in paragraph 68 of the statement of claim, Hutchison:

68.1. Repeats paragraphs 38 to 42, 58 to 67 ~~59, 60, 62 and 64.1~~ above, repeats the non admissions and denials therein and consequently denies the matters alleged;

68.2. says that if the representations were those of Hutchison they:

68.2.1. remained correct, or alternatively were;

68.2.2. made subject to the Cudeco Qualification and/or the Prospectus Qualification;

68.2.3. opinions, forecasts, forward looking statements or statements as to future matters;

68.2.4. in the premises of the Cudeco Qualification and/or the Prospectus Qualification were representations only that Hutchison believed the opinions, forecasts, forward looking statements or statements as to future matters were reasonable;

68.2.5. further or alternatively actually held by Hutchison and he had reasonable grounds for making them.

Particulars

Hutchison relied on board papers and other documents provided to him which were consistent with the subject matter of the representations.

Hutchison relied on management advice, the Ore Reserve Statement, the Feasibility Study, the KPMG audit of half yearly financial statements to December 2016, and KPMG's report to the Audit Committee in relation to the subject matter of the FY2016 Annual Report.

The Mine Plan adopted by Cudeco had not been changed.

Performance and reliability issues as at November 2016 were or were in the opinion of management, and the Board, of insufficient duration and nature as to affect the Mine Plan or the Ore Reserve Estimate.

The assessed post-impairment value contained in the FY2016 Audit Committee Report and adopted in the FY2016 Annual Report demonstrated that, or provided reasonable grounds for Hutchison's opinion that, the ore reserve as stated was economically mineable.

In the premises of paragraph 64 of this amended defence and of these particulars, none of the matters alleged had any or any material impact on the Ore Reserve Estimate.

~~Hutchison does not have access to the books and records of Cudeco, which he requires to identify those documents~~.

69. As to the matters alleged in paragraph 69 of the statement of claim, Hutchison:

69.1. Repeats paragraph 60.2.1 above, and consequently denies the matters alleged in respect of the FY2016 Financial Report Representations as regards Hutchison;

69.2. otherwise repeats paragraphs 38 to 42 and 58 to 68 ~~64 to 65~~ above, repeats the non admissions and denials therein and consequently denies the allegations;

69.3. says that if the representations were those of Hutchison and were made:

69.3.1. they remained correct, or alternatively were;

69.3.2. made subject to the Cudeco Qualification and/or the Prospectus Qualification;

69.3.3. opinions, forecasts, forward looking statements or statements as to future matters;

69.3.4. in the premises of the Cudeco Qualification and/or the Prospectus Qualification were representations only that Hutchison believed the opinions, forecasts, forward looking statements or statements as to future matters were reasonable;

69.3.5. actually held by Hutchison and further he had reasonable grounds for making them.

Particulars

Hutchison repeats the particulars to paragraph 68 above. ~~Relied on board papers and other documents provided to him which were consistent with the subject matter of the representations.~~

~~Hutchison does not have access to the books and records of Cudeco, which he requires to identify those documents.~~

70. As to the matters alleged in paragraph 70 of the statement of claim, Hutchison:

70.1. Repeats paragraphs 58 to ~~62, 64.1, 68 and~~ 69 above, repeats the non admissions and denials therein and consequently denies the matters alleged as regards Hutchison;

70.2. otherwise denies~~does not know and does not admit~~ the allegations.

G.3 FY2016 Representations – false or misleading statement contraventions

71. As to the matters alleged in paragraph 71 of the statement of claim, Hutchison repeats paragraphs 38 to 42 and 58 to 70 ~~64~~ above, repeats the non admissions and denials therein and consequently denies the allegations.

72. As to the matters alleged in paragraph 72 of the statement of claim, Hutchison repeats paragraphs 38 to 42 and 58 to 71 ~~64 to 65~~ above, repeats the non admissions and denials therein and consequently denies the allegations.

73. As to the matters alleged in paragraph 73 of the statement of claim, Hutchison:

73.1. Repeats paragraphs 62 and 64.1 above and repeats the non admissions and denials therein;

73.2. consequently denies the allegations ~~otherwise does not know and therefore cannot admit the matters alleged in therein~~.

74. As to the matters alleged in paragraph 74 of the statement of claim, Hutchison:

74.1. Repeats paragraphs 38 to 42, 43 to 45, 58 to 73 ~~62, 64.1 and 66~~ above and repeats the non admissions and denials therein;

74.2. ~~further~~ consequently denies that Hutchison ought reasonably have known the FY2016 Representations were false because of the above matters and because:

74.2.1. the FY2016 Annual Report Impairment Statement and FY2016 Financial Report Representations were matters the assessment of which required detailed accounting knowledge not possessed by Hutchison;

74.2.2. after his termination as interim managing director on 19 May 2016 the information provided to him in respect of those matters was limited;

~~Particulars~~

~~Hutchison does not have access to the books and records of Cudeco to further particularise the limits of the relevant information provided to him.~~

74.3. otherwise:

74.3.1. denies that Hutchison disseminated the representations;

74.3.2. denies the allegations.

75. As to the matters alleged in paragraph 75 of the statement of claim, Hutchison:

75.1. Repeats paragraphs 71 to 74 above and repeats the non admissions and denials therein;

75.2. Consequently denies that Hutchison made or disseminated the relevant statements or information;

75.3. further denies that Hutchison's relevant conduct:

75.3.1. breached s 1041E of the Corporations Act because of the matters pleaded in paragraphs 74.2 above;

75.4. breached s 12DB(1)(a) of the ASIC Act or s 29(1)(b) of the ACL because the FY2016 Representations were not representations as to the standard, quality, value or grade of relevant services;

75.5. otherwise denies the allegations therein.

H. Market effects of FY2016 Contravening Conduct

76. As to the matters alleged in paragraph 76 of the statement of claim, Hutchison:

76.1. Repeats paragraphs 64.1, 67, 70 and 75 above and repeats the non admissions and denials therein;

76.2. ~~Otherwise~~ Consequently denies the matters alleged therein.

Particulars

Hutchison repeats and relies on paragraphs 58 to 75 ~~64.1~~.

Hutchison otherwise requires expert accounting evidence to address the application and effect of the pleaded AASB standards.

I. FY2017 Representations

I.1 Quarterly report representations

77. Hutchison admits the matters alleged in paragraph 77 of the statement of claim.

78. Hutchison admits the matters alleged in paragraph 78 of the statement of claim.

79. As to the matters alleged in paragraph 79 of the statement of claim, Hutchison:

79.1. denies that Hutchison made the statements alleged therein;

Particulars

Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements.

Hutchison's involvement in the statements was solely as a director on behalf of Cudeco in releasing the said announcement.

Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of the announcement.

79.2. Otherwise admits in respect of Cudeco the matters alleged in paragraphs 79.1 and 79.2 of the statement of claim;

79.3. <u>further says that, to the extent the statements were made by Hutchison:</u>

79.3.1. <u>they remained correct, or alternatively;</u>

79.3.2. <u>were opinions, forecasts, forward looking statements or statements as to future matters;</u>

79.3.3. <u>made subject to the Cudeco Qualification and/or the Prospectus Qualification;</u>

79.3.4. <u>in the premises of the Cudeco Qualification and/or the Prospectus Qualification were representations only that Hutchison believed the opinions, forecasts, forward looking statements or statements as to future matters were reasonable;</u>

79.3.5. <u>they were actually held by Hutchison and further based on reasonable grounds</u>.

I.2 FY2017 Annual Report

80. As to the matters alleged in paragraph 80 of the statement of claim, Hutchison:

80.1. Denies the matters alleged in paragraph 80.1 in respect of Hutchison;

Particulars

Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements.

Hutchison's involvement in the statements was solely as a director on behalf of Cudeco in releasing the said announcement.

<u>Hutchison repeats paragraph 79.3.</u>

Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of the announcement.

80.2. Otherwise denies the allegations in paragraph 80.1;

Particulars

The alleged representation is not implied in the particulars provided <u>and is inconsistent with the statement that Cudeco was in the process of updating the Ore Reserves Statement</u>.

80.3. As to the matters alleged in paragraph 80.2 and 80.3:

80.3.1. denies that Hutchison made the statements alleged therein;

Particulars

Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements.

Hutchison's involvement in the statements was solely as a director on behalf of Cudeco in releasing the said announcement.

Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of the announcement.

80.3.2. <u>Denies paragraph 80.2 because Hutchison's statements, if any, in respect of the financial position of the Cudeco were limited to the opinion stated at paragraph 85 of the FY2017 Annual Report</u>;

80.3.3. Otherwise admits in respect of Cudeco the matters alleged therein.

I.3 Implied Representations

81. As to the matters alleged in paragraph 81 of the statement of claim, Hutchison:

81.1. Repeats paragraphs 79 to 80 above in respect of the allegations that Cudeco and Hutchison made the statements alleged and repeats denials therein;

81.2. ~~Otherwise~~ <u>Consequently</u> denies the allegations.

Particulars

No such express statements were made.

The statement of claim provides no particulars upon which the alleged representation ought be implied or inferred.

No such representations are to be implied or inferred in light of:

- Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements;
- the express statements made in the each of the documents pleaded above, including the Prospectus Qualification and the Cudeco Qualification;
- The source of the information or representation being stated or provided in the document;
- Hutchison's participation in the Representations, if any, being as a director and upon the advice of other staff or contractors of Cudeco.

Hutchison repeats paragraph 79.3.

82. As to the matters alleged in paragraph 82 of the statement of claim, Hutchison:

82.1. Repeats paragraphs 36, 79, 80 and 81 above in respect of the allegations that Cudeco and Hutchison made the statements alleged and repeats the denials therein;

82.2. denies that Hutchison made representations thereby;

Particulars

Hutchison did not manage and was not responsible for Cudeco's ASX compliance or announcements.

Hutchison's involvement was solely as a director.

Hutchison does not otherwise recall and does not have access to the books and records of Cudeco to further particularise the circumstances of Cudeco's disclosure or alleged non disclosure over the relevant period.

82.3. Further denies that Hutchison made continuing representations because:

82.3.1. Hutchison was not able to control the issue or content of ASX announcements by Cudeco at all or alternatively from his termination as interim managing director on 19 May 2016;

82.3.2. <u>The Company not Hutchison was under a positive obligation of continuous disclosure pursuant to section 674 of the Act where matters arose which a reasonable person would expect, if they were generally available, to have a material effect on the price or value on its shares;</u>

82.4. Otherwise denies the matters alleged in paragraph 82 because:

82.4.1. <u>Of the matters pleaded in paragraph 82.1;</u>

82.4.2. The statements made by Cudeco which are alleged to form the FY2017 Representations were:

82.4.2.1. statements conveying independent opinions in respect of or based on the Rocklands ore reserve at the dates they were made, in respect of which Cudeco had obligations to update the market in their quarterly and annual reports;

82.4.2.2. statements conveying the financial position of Cudeco in respect of the period for which they were made, which representations were as to a point in time and were not of a continuing character;

82.5. Further or alternatively says that developments and changes in the planning and operation of the Rocklands Group Copper Project were disclosed by Cudeco pursuant to the following ASX announcements and consequently denies the matters alleged in paragraph 82 or alternatively says that the alleged representations were qualified or corrected:

82.5.1. On or about 31 October 2017 by the FY2017 Annual Report p 96 New Information, and inclusion only revenue from production and sale of copper products;

82.5.2. On or about 29 November 2017 by the ASX announcement “Presentation to Annual General Meeting” p 15 immediate goals include “commission cobalt circuit”, p 32 looking forward regarding investigation of cobalt circuit and finding a buyer for pyrite/ cobalt product;

82.5.3. On or about 29 November 2017 by the ASX announcement “Chairman’s Address to AGM” p 3-4 as to working with potential customers to explore the prospect for additional revenue from production of cobalt;

82.5.4. On or about 27 December 2017 by the December 2017 Announcement p 1;

82.5.5. On or about 31 January 2018 by the 2Q2018 Report p 2-3 as to processing issues, and p 4 as to production and sale of copper products alone;

82.5.6. On about 23 February 2018 by the ASX Announcement "Update on Non Compliance …" which restated that Cudeco would not be able to make a 30 June 2017 ore reserve statements until about 15 March 2018.

83. As to the matters alleged in paragraph 83 of the statement of claim, Hutchison:

83.1. Repeats paragraphs 79 to 81 above in respect of the allegations that Cudeco and Hutchison made the representations alleged and repeats the non admissions and denials therein;

And otherwise:-

83.2. admits that Cudeco's conduct which is alleged to constitute the FY2017 Representations was in trade or commerce;

83.3. Admits the matters alleged in subparagraph 83.2(a)

83.4. Denies the matters alleged in subparagraph 83.2(b) because:

83.4.1. Cudeco's positive conduct was intended to comply with the ASX Listing Rules, and was not intended to influence people in relation to decisions regarding Cudeco shares;

83.4.2. Cudeco's omissions were not intended to influence people in relation to decisions regarding Cudeco shares;

83.5. Denies the particularised allegations in paragraph 176 to the extent that they form part of paragraph 83;

83.6. Admits the matters alleged in subparagraph 83.3.

J. True position in 2017

84. As to the matters alleged in paragraph 84 of the statement of claim, Hutchison:

84.1. Repeats paragraphs 36, 38 to 42 and 58 to 67 and 79 to 82 ~~64.1~~ above and repeats the denials therein;

84.2. Admits the matters in paragraph 84.1 to 84.4 to the extent of the impairment stated in the FY2017 Annual Report;

84.3. Otherwise denies ~~does not know and therefore cannot admit~~ the matters alleged in paragraph 84 of the statement of claim.

Particulars

Hutchison repeats paragraph 84.1.

Hutchison requires expert accounting evidence to address the application and effect of the pleaded AASB standards.

K. 2017 Contraventions

K.1 FY2017 Continuous Disclosure Contraventions

85. Hutchison denies ~~does not know and therefore cannot admit~~ the matters alleged in paragraph 85 of the statement of claim because the alleged information did not exist and because of the matters pleaded in paragraph 84 above and says that the said paragraph makes no allegations against him.

86. Hutchison denies ~~does not know and therefore cannot admit~~ the matters alleged in paragraph 86 of the statement of claim because the alleged information did not exist and because of the matters pleaded in paragraphs 84 to 85 above and says that the said paragraph makes no allegations against him.

K.2 FY2017 Representations – misleading and deceptive conduct

87. As to the matters alleged in paragraph 87 of the statement of claim, Hutchison:

87.1. repeats paragraphs 79 and 80~~.1~~ above, repeats the denials therein and consequently denies the matters alleged as regards Hutchison;

87.2. otherwise repeats paragraphs 36, 38 to 42 and 58 to 68 ~~64~~ above, repeats the denials therein, further relies on the particulars hereto, and consequently denies the allegations;

87.3. says that if the representations were those of Hutchison:

87.3.1. they remained correct, or alternatively;

87.3.2. were opinions, forecasts, forward looking statements or statements as to future matters;

87.3.3. made subject to the Cudeco Qualification and/or the Prospectus Qualification;

87.3.4. in the premises of the Cudeco Qualification and/or the Prospectus Qualification were representations only that Hutchison believed the opinions, forecasts, forward looking statements or statements as to future matters were reasonable;

87.4. actually held by Hutchison and further he had reasonable grounds for making them.

Particulars

Hutchison relied on board papers and other documents provided to him which were consistent with the subject matter of the representations.

Hutchison relied on management advice, the Ore Reserve Statement, the Feasibility Study, the KPMG audit of half yearly financial statements to December 2016, and KPMG's report to the Audit Committee, and the KPMG Audit Committee Reports dated 27 April 2017 and 20 October 2017.

The Mine Plan adopted by Cudeco had not been changed.

The performance of the plant and equipment, and the delay in commencing production of cobalt and magnetite were or were in the opinion of management, and the Board, of insufficient duration and nature as to affect the Mine Plan or the Ore Reserve Estimate.

By October 2017 updated modelling has been provided to KPMG and was subject of their report.

The assessed post-impairment value contained in the above Audit Committee Reports and adopted by CuDeco demonstrated that, or provided reasonable grounds for Hutchison's opinion that, the ore reserve as stated was economically mineable.

~~Hutchison does not have access to the books and records of Cudeco, which he requires to identify those documents~~.

88. As to the matters alleged in paragraph 88 of the statement of claim, Hutchison:

88.1. repeats paragraph 80.3 above, repeats the denial therein and consequently denies the matters alleged as regards Hutchison;

88.2. otherwise repeats paragraphs 36, 38 to 42, 58 to 67 ~~64, 65~~ and 79 to 84 and 87 above, repeats the non admissions and denials therein and consequently denies the allegations;

88.3. says that if the representations were those of Hutchison:

88.3.1. they remained correct, or alternatively;

88.3.2. were opinions, forecasts, forward looking statements or statements as to future matters;

88.3.3. made subject to the Cudeco Qualification and/or the Prospectus Qualification;

88.3.4. in the premises of the Cudeco Qualification and/or the Prospectus Qualification were representations only that Hutchison believed the opinions, forecasts, forward looking statements or statements as to future matters were reasonable;

88.3.5. actually held by Hutchison and further he had reasonable grounds for making them.

Particulars

Hutchison relied on board papers and other documents provided to him which were consistent with the subject matter of the representations.

Hutchison repeats paragraph 88.2.

~~Hutchison does not have access to the books and records of Cudeco, which he requires to identify those documents.~~

89. As to the matters alleged in paragraph 89 of the statement of claim, Hutchison:

89.1. repeats paragraphs 79 to 82 above, repeats the denies therein and consequently denies the matters alleged as regards Hutchison;

89.2. otherwise repeats paragraphs 87 to 88 above and consequently denies the allegations.

K.3 FY2017 Representations – false statement contraventions

90. As to the matters alleged in paragraph 90 of the statement of claim, Hutchison repeats paragraphs 36, 38 to 39 and/or 41, 58 to 68 and 85 to 89 ~~64~~, repeats the non admissions and denials therein and consequently denies the allegations.

91. As to the matters alleged in paragraph 91 of the statement of claim, Hutchison repeats paragraph 90 ~~paragraphs 38 to 39 and/or 41, and 64~~ above, repeats the non admissions and denials therein and consequently denies the allegations.

92. As to the matters alleged in paragraph 92 of the statement of claim, Hutchison:

92.1. Repeats paragraphs 82 and 64.1 above and repeats the non admissions and denials therein;

92.2. consequently denies the allegations ~~otherwise does not know and therefore cannot admit the matters alleged in therein~~.

93. As to the matters alleged in paragraph 93 of the statement of claim, Hutchison:

93.1. Repeats paragraphs 43 to 45, 58 to 69 ~~62~~, 64.1 and 66 and 85 to 89 above and repeats the non admissions and denials therein and consequently denies the allegations;

93.2. further denies that Hutchison ought reasonably have known the 2Q17 Representations and 3Q2017 Representations were false because of the matter pleaded in paragraph 93.1 above and because after his termination as interim managing director on 19 May 2016 the information provided to him in respect of those matters was limited.

~~Particulars~~

~~Hutchison does not have access to the books and records of Cudeco to further particularise the limits of the relevant information provided to him.~~

93.3. otherwise:

93.3.1. denies that Hutchison made the Representations;

93.3.2. denies the allegations.

94. As to the matters alleged in paragraph 94 of the statement of claim, Hutchison:

94.1. Repeats paragraphs 90 to 93 above and repeats the non admissions and denials therein;

94.2. Consequently:

94.2.1. denies that Hutchison made or disseminated the relevant statements or information;

94.2.2. otherwise denies the allegations therein;

94.3. further denies that Hutchison's relevant conduct:

94.3.1. breached s 1041E of the Corporations Act because of the matters pleaded in paragraphs 93~~.2~~ above;

94.3.2. breached s 12DB(1)(a) of the ASIC Act or s 29(1)(b) of the ACL because the representations were not representations as to the standard, quality, value or grade of relevant services.

L. Market effects of FY2017 Contravening Conduct

95. As to the matters alleged in paragraph 95 of the statement of claim, Hutchison:

    95.1. Repeats paragraphs 36, 38 to 39 and/or 41, 58 to 68 and 85 to 89~~ 64.1, 86, 89 and 94 above~~ and repeats the non admissions and denials therein;

    95.2. ~~Otherwise~~ Consequently denies the matters alleged therein.

Particulars

~~Hutchison repeats and relies on paragraph 64.1 above.~~

~~Hutchison otherwise requires expert accounting evidence to address the application and effect of the pleaded AASB standards.~~

IV. CASE AGAINST KPMG (OMITTED)

96. Paragraphs 96 to 160 of the statement of claim do not make allegations against Hutchison and he is not required to plead thereto.

97. Paragraph numbers 98 to 160 of this defence are intentionally omitted.

V. LOSS AND DAMAGE

A. CORRECTIVE DISCLOSURE

A.1 December 2017 partial disclosure

161. As to the matters alleged in paragraph 161 of the statement of claim, Hutchison:

    161.1. admits that Cudeco made the statements alleged therein;

    161.2. further says:

        161.2.1. those parts of the December 2017 Announcement alleged at paragraph 161.3 and 161.4 were incorrect ~~for the reasons pleaded at paragraphs 38 to 40 above~~ and repeats and relies on the matter pleaded above as to the true position of Cudeco from time to time.

        ~~161.2.2. Hutchison does not know the content of the "Updated Mine Plan" nor whether non-alignment was identified in March 2017.~~

~~Particulars~~

~~Hutchison does not recall and does not have access to the books and records of Cudeco to determine the matters stated in 161.2.2.~~

162. As to the matters alleged in paragraph 162 of the statement of claim, Hutchison:

162.1. as to paragraph 162.1:

162.1.1. Says that the December Partial Disclosure related to the ore reserve at Rocklands, and to the revenue able to be generated from Rocklands;

162.1.2. Does not plead to the KPMG-related conduct as it makes no allegations against him;

162.1.3. otherwise repeats ~~paragraphs 57, 76 and 95 above, and~~ the denials made above in respect of the conduct alleged;

162.2. admits the matters alleged in paragraph 162.2;

162.3. as to paragraph 162.3:

162.3.1. Says that the December Partial Disclosure purported that it qualified, supplemented or partly corrected information available to the Market related to the ore reserve at Rocklands, and to the revenue able to be generated from Rocklands;

162.3.2. otherwise repeats paragraph 162.1 and consequently denies the matters alleged;

162.4. denies the allegations in subparagraphs 162.4 to 162.5 because:

162.4.1. the closing price of Cudeco share on 6 December 2017 was also 29 cents and the closing price of Cudeco shares on 29 December 2017 to 8 January 2018 was 30 cents;

162.4.2. it must be inferred that the market was already aware of and valued into the price of Cudeco shares the Company's position regarding its lack of confirmed ore reserve at December 2017, and the Company's expected future production of metal concentrates. ~~does not know and therefore cannot admit the matters alleged in paragraph 162.4;~~

~~162.5. does not know and therefore cannot admit the matters alleged in paragraph 162.5.~~

A.2 March 2018 partial disclosure

163. As to the matters alleged in paragraph 163 of the statement of claim, Hutchison:

163.1. says that CuDeco's shares entered a trading halt on or about 13 March 2018;

163.2. otherwise does not know and therefore cannot admit the matters alleged.

164. Hutchison admits the matters alleged in paragraph 164 of the statement of claim.

165. As to the matters alleged in paragraph 165 of the statement of claim, Hutchison:

165.1. as to paragraph 165.1:

165.1.1. Says that the March Partial Disclosure related to the ore reserve at Rocklands, and to the revenue able to be generated from Rocklands;

165.1.2. otherwise repeats the non admissions and denials made in respect of the conduct alleged in paragraph 165.1 and consequently denies the allegation because there was no contravening conduct ~~cannot admit the matters alleged~~;

165.2. admits the matters alleged in paragraph 165.2;

165.3. as to paragraph 165.3:

165.3.1. Says that the ~~December~~ March Partial Disclosure qualified, supplemented or partly corrected information available to the Market related to the ore reserve at Rocklands, and to the revenue able to be generated from Rocklands;

165.3.2. otherwise repeats paragraph 165.1 and consequently denies the allegation because there was no contravening conduct ~~cannot admit the matters alleged~~.

166. Hutchison admits the matters alleged in paragraph 166 of the statement of claim.

167. As to the matters alleged in paragraph 167 of the statement of claim, Hutchison:

167.1. denies the matters alleged in paragraph 167.1 because Cudeco stated that it was temporarily suspending mining and processing operations to allow for critical maintenance work;

167.2. further says that suspension in fact occurred in September 2018;

167.3. otherwise admits the matters alleged.

168. Hutchison admits the matters alleged in paragraph 168 of the statement of claim.

169. Hutchison admits the matters alleged in paragraph 169 of the statement of claim.

170. Hutchison admits the matters alleged in paragraph 170 of the statement of claim.

171. Hutchison admits the matters alleged in paragraph 171 of the statement of claim.

172. Hutchison does not know and therefore cannot admit the matters alleged in paragraph 172.

173. Hutchison does not know and therefore cannot admit the matters alleged in paragraph 173.

B. CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS

174. Hutchison does not know and therefore cannot admit the matters alleged in paragraph 174.

B.1 Market Conditions

175. As to the matters alleged in paragraph 175 of the statement of claim, Hutchison:

175.1. admits the matters alleged in paragraph 175.1;

175.2. admits the matters alleged in paragraph 175.2;

175.3. as to the matters alleged in paragraphs 175.3, repeats and relies on the matters pleaded in paragraph 18 above;

175.4. does not know and therefore cannot admit the matters alleged in paragraph 175.4;

175.5. as to the matters alleged in paragraph 175.5:

175.5.1. Does not plead to the KPMG-related conduct as it makes no allegations against him;

175.5.2. otherwise repeats ~~paragraphs 57, 76 and 95 above, and~~ the above denials made in respect of the conduct alleged and therefore denies that such conduct occurred;

175.6. as to the matters alleged in paragraph 175.6:

175.6.1. denies the matters alleged in paragraph 175.6(a)(i) and (ii) because of the matters pleaded in paragraph 46 and 56 above;

175.6.2. otherwise does not admit the matters alleged in paragraph 175.6(a)(iii) and (iv) because of the matters pleaded in paragraphs 67 and 86 above;

175.6.3. repeats the above denials made in respect of the conduct alleged and therefore denies that such conduct occurred;

175.7. as to the matters alleged in paragraph 175.7:

175.7.1. denies the matters alleged in paragraph 175.7(a) to ~~(e) and~~ (g) because of the matters pleaded in paragraphs 49, 54, 55, 70, 75, 89 and 94 above;

175.7.2. repeats the above denials made in respect of the conduct alleged and therefore denies that such conduct occurred;

~~175.7.3. does not admit the matters alleged in paragraph 175.7(f) because of the matters pleaded in paragraph 89 above;~~

175.7.4. Does not plead to the KPMG-related contraventions as it makes no allegations against him.

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

176. As to the matters alleged in paragraph 176 of the statement of claim, Hutchison:

176.1. repeats and relies on his earlier non admissions and denials in respect of the Market Contraventions and therefore denies them;

176.2. says that:

176.2.1. the market was aware of the matters pleaded at paragraph 36.5 above which constituted disclosure or alternatively partial disclosure of the subject matter of the Market Contraventions;

176.2.2. the market price of Cudeco shares declined throughout the Relevant Period;

176.2.3. consequently the market had priced in wholly or in part Cudeco's expected future performance as a result of its performance to that time and its ASX announcements, and further or alternatively had priced in wholly or in part the subject matter of the Market Contraventions;

176.3. otherwise does not know and therefore cannot admit the matters alleged.

177. As to the matters alleged in paragraph 177 of the statement of claim, Hutchison:

177.1. repeats and relies on his earlier non admissions and denials in respect of the Disclosure Contraventions and Misleading Conduct Contraventions and therefore denies them;

177.2. says that:

177.2.1. the market was aware of the matters pleaded at paragraph 36.5 above which constituted disclosure or alternatively partial disclosure of the subject matter of the Disclosure Contraventions and the Misleading Conduct Contraventions;

177.2.2. the market price of Cudeco shares declined throughout the Relevant Period;

177.2.3. consequently the market had priced in wholly or in part Cudeco's expected future performance as a result of its performance to that time and its ASX announcements, and further or alternatively had priced in wholly or in part the subject matter of the Disclosure Contraventions and the Misleading Conduct Contraventions;

177.3. otherwise does not know and therefore cannot admit the matters alleged.

B.3 Market based causation – Rights Issue

178. As to the matters alleged in paragraph 178 of the statement of claim, Hutchison:

178.1. Says that the opening and closing dates of the Rights Issue offer were 20 April 2016 and 6 May 2016 and consequently denies the allegations as to the dates Cudeco invited acquisition of shares;

178.2. Otherwise admits the matters alleged.

179. As to the matters alleged in paragraph 179 of the statement of claim, Hutchison:

179.1. admits the matters alleged at paragraphs 179.1 to 179.2;

179.2. denies the matters alleged at paragraphs 179.3 to 179.4 because of the matters pleaded ~~in paragraphs 36, 46 and 56~~ above.

179A. Hutchison denies the allegation in paragraph 179A because:

179A.1 the alleged Market contraventions incorporate conduct after the close of the Rights Issue; and because

179A.2 he denies that the Market Contraventions occurred.

B.4 Reliance

180. Hutchison does not know and therefore cannot admit the matters alleged in paragraph 180.

181. As to the matters alleged in paragraph 181, Hutchison:

181.1. repeats and relies on his earlier non admissions and denials in respect of the Disclosure Contraventions and Misleading Conduct Contraventions and therefore denies them;

181.2. say that the market had priced in wholly or in part Cudeco's expected future performance as a result of its performance and ASX announcements from time to time, and was aware of the Cudeco Qualification and the Prospectus Qualification;

181.3. ~~does not know and~~ therefore denies ~~cannot admit~~ the matters alleged in paragraph 181.

B.5 Loss and damage

182. Hutchison denies ~~does not know and therefore cannot admit~~ the matters alleged in paragraph 182.

VIA. INSURANCE

182A Hutchison does not plead to the allegations in paragraph 185A as they contain no allegations against him.

182B Hutchison does not plead to the allegations in paragraph 185B as they contain no allegations against him.

182C Hutchison does not plead to the allegations in paragraph 185C as they contain no allegations against him.

182D Hutchison does not plead to the allegations in paragraph 185D as they contain no allegations against him.

182E Hutchison does not plead to the allegations in paragraph 185E as they contain no allegations against him.

182F Hutchison does not plead to the allegations in paragraph 185F as they contain no allegations against him.

182G Hutchison does not plead to the allegations in paragraph 185G as they contain no allegations against him.

182H Hutchison does not plead to the allegations in paragraph 185H as they contain no allegations against him.

182I Hutchison does not plead to the allegations in paragraph 185I as they contain no allegations against him.

182J Hutchison does not plead to the allegations in paragraph 185J as they contain no allegations against him.

182K Hutchison does not plead to the allegations in paragraph 185K as they contain no allegations against him.

182L Hutchison does not plead to the allegations in paragraph 185L as they contain no allegations against him.

VI. ENTITLEMENT TO RELIEF

183. Hutchison does not plead to paragraph 183 as it makes no allegations against him.

184. As to the matters alleged in paragraph 184 of the statement of claim, Hutchison:

184.1. Does not plead to the allegations against Cudeco, Chen and KPMG;

184.2. Denies the matters alleged against him in accordance with his earlier denials of the contraventions alleged.

185. As to the matters alleged in paragraph 185 of the statement of claim, Hutchison:

185.1. denies the matters alleged in paragraph 185 because of his earlier denials of contravention of s 728 of the Corporations Act;

185.2. in the alternative says that:

185.2.1. he made all inquiries that were reasonable in the circumstances;

185.2.2. thereafter believed on reasonable grounds that the prospectus was not misleading nor deceptive nor contained relevant omissions;

185.2.3. he placed reasonable reliance on information given to him by other directors, employees and agents of Cudeco;

185.2.4. pursuant to s 731 and 733 of the Corporations Act, Hutchison consequently bears no liability under s 729 of the Corporations Act

Particulars

Hutchison referred to and relied inter alia on the 2015 Ore Reserves Statement, the Feasibility and the Company's then-existing mine plan in respect of the Prospectus.

Hutchison repeats paragraph 47 and the particulars thereto.

~~Hutchison does not have access to the books and records of Cudeco, which he requires to identify other management reports, board papers and other documents which record or constitute the subject matter of his inquiries.~~

185A. Hutchison does not plead to the allegations in paragraph 185A as they contain no allegations against him.

V CONTRIBUTORY NEGLIGENCE, PROPORTIONATE LIABILITY AND RELIEF

186. If Hutchison has contravened s 1041H of the Corporations Act or 12DA of the ASIC Act by making the Rocklands Representations, the FY2016 Representations or the FY2017 Representations or in any other manner alleged, then:

186.1. any group member who, in buying or selling Cudeco shares:

186.1.1. failed to read or take into account the matters pleaded in paragraph 28.4 above being the Prospectus Qualification, or the CuDeco Qualification;

186.1.2. did not review the announcements pleaded in paragraph 36.5 above (or such of those announcements as existed at the time of their decision as to whether to buy or sell shares in Cudeco); and/or

186.1.3. failed to identify or act on the withdrawal, qualification or correction to the alleged representations contained therein; -

failed to take reasonable care in relation that purchase or sale of Cudeco shares;

186.2. Hutchison did not intend to cause loss or damage arising from the purchase or sale of Cudeco shares and did not act fraudulently;

Particulars

Hutchison sought to promote the interests of the Company and shareholders at all times in his actions as board member, interim managing director and interim chairman.

~~Hutchison does not have access to the books and records of Cudeco, which he requires to identify further particulars.~~

186.3. In the premises of this paragraph the damages recoverable by any group member who falls within the criteria of 186.1 above must be reduced to the extent the Court thinks just and equitable to account for the group member's share of responsibility for their loss, pursuant to s 1041I(1B) of the Corporations Act, s 12GF(1B) of the

ASIC Act, s 137B of the *Competition and Consumer Act 2010 (Cth)* and ss 26 of the *Wrongs Act 1958 (Vic)*.

Particulars

Hutchison will provide further particulars of group member conduct and appropriate reduction following discovery and provision of evidence.

187. In the Relevant Period Cudeco had the following further directors (**Further Directors**):

187.1. Dr Noel White as non-executive chairman until his resignation on or about 16 February 2017;

187.2. Dr Chen until his resignation on or about 12 February 2017, who was managing director from 19 May 2016 until his resignation;

187.3. Paul Keran, non-executive director;

187.4. Hongwei Liu, non-executive director;

187.5. Zhijun Ma, non-executive director

187.6. Zhu Mu Po, alternate director to Zhijun Ma

187.7. Zhaohui Wu, non-executive director

187.8. Wang Chiwei, non-executive director from 12 January 2017;

187.9. Benjamin Zhai, non-executive director from 18 May 2017.

188. Any liability of Hutchison:

188.1. arising under s 1041H and 1041I of the Corporations Act is apportionable pursuant to ss 1041L and 1041N of the Corporations Act;

188.2. arising under s 12GF of the ASIC Act is apportionable pursuant to ss 12GP and 12GR of the ASIC Act;

188.3. arising under s 236 of the ACL is apportionable pursuant to s 87CD of the *Competition and Consumer Act 2010 (Cth)* and/or ss 24AF, 24AH and 24AI of the *Wrongs Act 1958 (Vic)*.

189. If Hutchison has contravened s 1041H of the Corporations Act or 12DA of the ASIC Act or s 18 of the ACL by making the Rocklands Representations, the FY2016 Representations or the FY2017 Representations and has incurred liability thereby, then:

189.1. Each of Cudeco, each of the Further Directors who was a director at the time of the relevant contravention, and persons with responsibility for managing ASX compliance, is a concurrent wrongdoer in relation to the Rocklands Representations, the FY2016 Representations or the FY2017 Representations in that:

189.1.1. Hutchison's liability derives from his approval of ASX announcements as a member of the Board of Cudeco;

189.1.2. Cudeco and the Board approved the said announcements;

189.1.3. Persons within Cudeco other than Hutchison, being the company secretary who was Bruno Bamonte until 18 May 2017 and thereafter Leni Stanley during the Relevant Period, managed and were responsible for Cudeco's ASX compliance and announcements.

Particulars

The Company Secretary was responsible for identifying matters which required ASX disclosure, for drafting or assistance with managing the drafting of announcements, and for consulting with the Board and thereafter releasing the announcement, or where required recommending the announcement to and ensuring its approval or adoption by the Board.

189.1.4. in the premises alleged in the statement of claim to establish liability for Hutchison, Cudeco, each of the Further Directors and the persons with responsibility for managing ASX compliance contravened s 1041H of the Corporations Act or 12DA of the ASIC Act or s 18 of the ACL in a like manner to Hutchison's contraventions;

189.2. in respect of the liability of Hutchison, Cudeco and the Further Directors and the Company Secretaries:

189.2.1. Cudeco bears primary liability as the entity by which and further or alternatively on behalf of which the representations were made by directors acting in the course of their duties;

189.2.2. The company secretaries bear proportionately greater responsibility than ordinary board members;

189.2.3. In the period to Hutchison's termination as interim managing director, the liability of Hutchison and the Further Directors is otherwise equal in that Hutchison as interim managing director ensured that the Board was informed of matters relevant to the said representations and the board members participated equally in approval of ASX announcements;

189.2.4. In the period from Hutchison's termination as interim managing director, Hutchison bears less responsibility than the replacement managing director and other board members as Hutchison:

189.2.4.1. was provided limited information as to matters the subject of the FY 2016 Representations and the FY2017 Representations;

189.2.4.2. had no or a limited influence on the making of the said representations;

189.2.5. In the period from Hutchison's appointment as interim chairman, the liability of Hutchison and the Further directors is otherwise equal in that Hutchison as interim chairman received the same information and advice from management and participated equally in approval of ASX announcements;

189.3. KPMG is a concurrent wrongdoer in respect of the FY2016 Annual Report Impairment Statement, the FY2016 Financial Report Representations and the FY2017 Financial Report Representations in that:

189.3.1. The FY2016 Annual Report Impairment Statement, the FY2016 Financial Report Representations and the FY2017 Financial Report Representations for part of the Rocklands Representations, the FY2016 Representations and the FY2017 Representations;

189.3.2. KPMG committed the KPMG FY2016 Misleading Conduct Contravention and failed to correct or qualify it in the manners pleaded at paragraphs 123 to 126 of the Statement of claim;

189.3.3. KPMG committed the KPMG FY2017 Misleading Conduct Contravention and failed to correct or qualify it in the manners pleaded at paragraphs 144 to 147 of the statement of claim;

189.3.4. KPMG's said contraventions caused the FY2016 KPMG Inflation and the FY2016 KPMG Inflation;

189.3.5. Group Members acquired share in the market affected by the said contraventions and in reliance on the FY2016 Annual Report Impairment Statement, the FY2016 Financial Report Representations and the FY2017

Financial Report Representations, leading to loss and damage, as pleaded at paragraphs 174 to 177 and 180 to 182 of the statement of claim;

189.4. Any financial advisor of a group member who, in advising on the buying or selling Cudeco shares:

189.4.1. failed to read or take into account the matters pleaded in paragraph 28.4 above being the Prospectus Qualification, or the CuDeco Qualification;

189.4.2. did not review the announcements pleaded in paragraph 36.5 above (or such of those announcements as existed at the time of their advice to the group member); or

189.4.3. failed to identify the withdrawal, qualification or correction to the alleged representations; or

189.4.4. Failed to advise their client of the matters in 189.4.1 to 189.4.2 prior to advising the group member on the purchase or sale of Cudeco shares;-

is a concurrent wrongdoer in that they breached their common law and/or contractual (whether express or implied) duty to exercise reasonable skill and care in giving advice to the said group member.

Particulars

Particulars of apportionment will be given following discovery and provision of evidence.

190. In the premises of paragraphs 187 to 189, any liability to group members arising from the Rocklands Representations, the FY2016 Representations or the FY2017 Representations must be apportioned amongst Hutchison and the concurrent wrongdoers in such proportion as the Court sees fit to reflect their blameworthiness and causative potency of the conduct of their conduct.

191. If Hutchison has contravened s 1041E or s 1041H of the Corporations Act as alleged, then:

191.1. Hutchison has acted honestly;

Particulars

Hutchison repeats and relies on paragraphs 25, 28, 31, 33, 36, 38, 47, 59, 60, 62, 68, ,69, 79, 87, 88 ~~68.2, 69.3, 87.3, 88.3~~ and 185.2.

Hutchison sought to progress the development of the Rockland Project in accordance with the Feasibility Study in the circumstances as they developed.

Hutchison acted as part of the Board of Cudeco in accordance with Board decision, and in accordance with advice and actions of those tasked with ASX compliance.

Hutchison does not have access to the books and records of Cudeco, which he requires for particulars.

191.2. Having regard to all the circumstance of the case, including Hutchison's varying levels of control of or engagement in the affairs of Cudeco pleaded at 189.2.3 to 189.2.5 above, Hutchison ought fairly to be excused for contraventions either wholly or in the periods pleaded in at 189.2.4 and/or 189.2.5 above; -

and pursuant to ss1041I(4) and 1317S and/or 1318 of the Corporations Act, the Court should relieve Hutchison for liability for any of his contraventions, wholly or part.

~~**Particulars**~~

~~Hutchison does not have access to the books and records of Cudeco, which he requires to particularise all of the relevant circumstances.~~

Date: ~~31 March 2023~~ 15 December 2025

Signed by Shaun Fergus
Lawyer for the Second Respondent

This amended pleading was prepared by Martin Taylor of Counsel

Certificate of lawyer

I SHAUN FERGUS certify to the Court that, in relation to the defence filed on behalf of the Second 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: ~~31 March 2023~~ 15 December 2025

Signed by Shaun Fergus
Lawyer for the Second Respondent

Schedule of Parties

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

First Respondent

Peter Robert Hutchison

Second Respondent

Dianmin Chen

Third Respondent

KPMG (A FIRM) ABN 51 194 660 183

Fourth Respondent