



R.H Kenna (L.S.)

Principal Registrar &
Chief Executive Officer

IN THE SUPREME COURT OF NEW SOUTH WALES
EQUITY DIVISION: CORPORATIONS LIST
REGISTRY: SYDNEY

No. 00459470 of 2024

**IN THE MATTER OF REGIONAL EXPRESS HOLDINGS LIMITED (ADMINISTRATORS
APPOINTED) ACN: 099 547 270**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

**REGIONAL EXPRESS HOLDINGS LIMITED (ADMINISTRATORS APPOINTED) (ACN 099
547 270) and others according to the schedule**

Defendants

STATEMENT OF CLAIM

PARTIES

- 1 The plaintiff (**ASIC**) is a body corporate:
 - (a) established by s 7 of the *Australian Securities Commission Act 1989* (Cth);
 - (b) continued by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
 - (c) able to sue in its corporate name by reason of s 8 of the ASIC Act.

- 2 The first defendant (**Rex**) is and was at all material times:
 - (a) an Australian corporation listed on the financial market known as the “ASX” operated by ASX Limited (**ASX**);
 - (b) a “listed disclosing entity” subject to the provisions of the ASX Listing Rules (**Listing Rules**) requiring Rex to notify the ASX of “information about specified events or matters as they arise” within the meaning of ss 674(1) and 674A(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**); and

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- (c) a holding company within a group of related companies (the **Rex Group**), including wholly owned subsidiaries:
- (i) Regional Express Pty Ltd (ACN 101 325 642) (**Rex Regional**), which operated Rex's regional airline business;
 - (ii) Rex Airlines Pty Ltd (ACN 642 400 048) (**RAL**), which operated Rex's domestic airline business;
 - (iii) Australian Airline Pilot Academy Pty Ltd (ACN 128 392 469), which operated pilot training academies;
 - (iv) AAPA Victoria Pty Ltd (ACN 118 837 586), which operated pilot training academies in Victoria;
 - (v) Australian Aero Propeller Maintenance Pty Ltd (ACN 131 278 889), which provided propeller maintenance services; and
 - (vi) Pel-Air Aviation Pty Ltd (ACN 002 858 013), which operated charter flight services.

3 The second defendant (**Lim**) was at all material times the chief executive officer and executive chairman of Rex.

4 The third defendant (**Sharp**) was at all material times the deputy chairman and a non-executive director of Rex.

5 The fourth defendant (**Khotkar**):

- (a) was at all material times a non-executive director of Rex;

Particulars

Khotkar was nominated by PAGAC Regulus Holdings Pte Ltd (**PAG**) to be a director of Rex and appointed on about 15 March 2021. The nomination and appointment was pursuant to a subscription agreement between Rex and PAG. The agreement is in writing and was executed on 18 November 2020.

Particulars of Khotkar's nomination by PAG under clause 7 of the subscription agreement will be provided following discovery.

(b) was at all material times a managing director of PAG.

6 The fifth defendant (**Pan**):

(a) was at all material times a non-executive director of Rex;

Particulars

Pan was nominated by PAG to be a director of Rex and appointed on about 15 March 2021. The nomination and appointment was pursuant to the subscription agreement referred to in the particulars to paragraph 5.

Particulars of Pan's nomination by PAG under clause 7 of the subscription agreement will be provided following discovery.

(b) was at all material times a partner at PAG.

2023 PROFIT REPRESENTATION

7 On 28 February 2023, Rex represented that:

(a) the Rex Group would have positive operating profits for the financial year ending 30 June 2023, barring any further external shocks;

(b) further or alternatively, it was likely that the Rex Group would have positive operating profits for the financial year ending 30 June 2023;

(c) further or alternatively, there were reasonable grounds to expect that the Rex Group would have positive operating profits for the financial year ending 30 June 2023,

(the **2023 Profit Representation**).

Particulars

The 2023 Profit Representation was made in writing in an ASX Release published on the ASX Market Announcement Platform on 28 February 2023 titled "Rex Announces 1HFY23 Financial Results" (the **28 February 2023 Announcement**) and it included the statement "Rex is optimistic that the Group will have positive operating profits for the full FY23 barring any further external shocks".

8 The 2023 Profit Representation was made:

- (a) in relation to a “financial product” within the meaning of ss 763A and 764A of the Corporations Act;
- (b) in relation to “financial services” within the meaning of s 12BAB of the ASIC Act;
- (c) with respect to a future matter within the meaning of s 769C of the Corporations Act and s 12BB of the ASIC Act; and
- (d) in trade or commerce.

Particulars

The 2023 Profit Representation was made in trade or commerce in relation to shares in Rex, and in relation to dealing in the issuing of those shares, by reason of the publication of the 28 February 2023 Announcement on the ASX Market Announcement Platform.

- 9 Rex did not have reasonable grounds for making the 2023 Profit Representation.

Particulars

- (1) Rex did not prepare a financial forecast for the 2023 financial year before making the 2023 Profit Representation, or at all.
- (2) In the first half of the 2023 financial year (July to December 2022) the Rex Group recorded an operating loss of -\$30.4 million, and would have required a second half (January to June 2023) operating profit of more than \$30.4 million to achieve a full year operating profit.
- (3) On 23 February 2023, Lim received the year-to-date and monthly profit and loss figures for the Rex Group for January 2023, and Rex was thereby aware that the Rex Group had incurred an operating loss of approximately -\$5.3 million in January 2023 and a year-to-date operating loss of approximately -\$35.8 million (being the Group’s before-tax loss (approximately -\$23.6 million) less the gain (approximately \$14.7 million) and share of loss (approximately -\$2.5 million) on the National Jet Express (**NJE**) joint venture acquisition (**JV**)).
- (4) Accordingly, when the 2023 Profit Representation was made, the Rex Group would have had to generate an operating profit of more than \$35.8 million in the five months from February to June 2023 in order to achieve a full year operating profit.
- (5) In the second half of the financial year (January to June), Rex typically generated lower revenue than the first half of the financial year (July to December).

Further particulars may be provided, including particulars following or by way of expert evidence.

10 By reason of the matters set out in paragraphs 7 to 9, the 2023 Profit Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

- (a) s 1041H of the Corporations Act; and/or
- (b) s 12DA of the ASIC Act.

11 The contravention referred to in paragraph 10 continued until 20 June 2023.

Particulars

On 20 June 2023, Rex published an ASX Release on the ASX Market Announcement Platform titled “Rex Revises Interim Guidance”, which stated “Regional Express (Rex) announced today that the company is revising its interim profit guidance provided on the 28 February 2023 which forecast an operational profit for this Financial Year (FY)” and “Rex is now forecasting a Group Operational loss of \$35 million for the FY”.

LIM’S INVOLVEMENT IN THE 2023 PROFIT REPRESENTATION

12 Lim:

- (a) was involved in drafting, and authorised, the 2023 Profit Representation; and

Particulars

- (1) Lim was responsible for preparing market announcements and ensuring that Rex complied with its disclosure obligations.
 - (2) Lim prepared and commented on drafts of the 28 February 2023 Announcement on 25 and 26 February 2023.
 - (3) Lim authorised the 28 February 2023 Announcement.
- (b) knew or ought to have known that Rex did not have reasonable grounds for making the 2023 Profit Representation.

Particulars

- (1) Particular 3 to paragraph 9 is referred to and repeated.
- (2) As chief executive officer and executive chairman, Lim knew or ought to have known of each of the matters specified in particulars 1, 2, 4 and 5 of paragraph 9.
- (3) Lim was responsible for tracking, and updating the board of directors of Rex (**Board**) on, the financial performance of the Rex Group.

Further particulars may be provided.

- 13 A reasonable person acting as, and with the responsibilities of, chief executive officer and/or executive chairman of a company in the circumstances set out in paragraphs 7 to 12, and with the knowledge of Lim referred to in paragraph 12(b), would have taken reasonable steps to ensure that Rex:
- (a) did not publish the 28 February 2023 Announcement on the ASX Market Announcement Platform with the 2023 Profit Representation; and/or
 - (b) corrected or withdrew the 2023 Profit Representation after the 28 February 2023 Announcement was published.
- 14 By reason of paragraph 13, Lim:
- (a) failed to discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were chief executive officer and executive chairman of a company in Rex's circumstances; and
 - (b) contravened s 180 of the Corporations Act.
- 15 The contravention referred to in paragraph 14 was "serious" within the meaning of s 1317G(1)(b)(iii) of the Corporations Act.

Particulars

The contravention involved a departure from the requisite standard of care and diligence, and caused misleading or deceptive profit guidance information to be in the market. Further particulars may be provided, including particulars following or by way of expert evidence.

MATERIAL NON-DISCLOSURE

- 16 For the purposes of Listing Rule 3.1, by:
- (a) 28 February 2023;
 - (b) alternatively, 21 March 2023;
 - (c) alternatively, 14 April 2023;
 - (d) alternatively, 24 April 2023;

- (e) alternatively, 4 May 2023;
- (f) alternatively, 11 May 2023;
- (g) alternatively, 16 May 2023,

Rex was aware that:

- (h) the Rex Group would not, or was not likely to, have positive operating profits for the financial year ending 30 June 2023;
- (i) further or alternatively, the Rex Group would have, or was likely to have, an operating loss for the financial year ending 30 June 2023; and
- (j) further or alternatively, the Rex Group did not have reasonable grounds to forecast an operating profit for the financial year ending 30 June 2023,

(the **2023 Profit/Loss Information**).

Particulars

- (1) As to (a), ASIC repeats paragraph 9 and the particulars thereto.
- (2) As to (b), in addition to (1), on 21 March 2023, Lim received the year-to-date and monthly profit and loss figures for the Rex Group for February 2023, and Rex was thereby aware that the Rex Group had incurred an operating loss of approximately -\$10.8 million in February 2023 and a year-to-date operating loss of approximately -\$46.2 million (being the Group's before-tax loss (approximately -\$34.8 million) less the gain (approximately \$14.7 million) and share of loss (approximately -\$3.3 million) on the NJE JV).
- (3) As to (c), in addition to (1)–(2), on 14 April 2023, Lim made a request by email to Pan and Khotkar (copying Sharp) requesting \$10 million in funding from PAG, describing the company's cash reserves as "critically low", domestic sales as "disappointingly and bewilderingly bad", the February results as having "crashed" and a lack of recovery in March, and attaching a spreadsheet "RAL KPI.xlsx" identifying that RAL had recorded a before-tax loss of -\$7,192,909 in February 2023 and an estimated before-tax loss of -\$2,500,000 for March 2023.
- (4) As to (d), in addition to (1)–(3), on 24 April 2023, Lim received the year-to-date and monthly profit and loss figures for the Rex Group for March 2023, and Rex was thereby aware that the Rex Group had incurred an operating loss of approximately -\$3.5 million in March 2023 and a year-to-date operating loss of approximately -\$49.7 million (being the Group's before-tax loss (approximately -\$38.3 million) less the gain (approximately \$14.7

million) and share of loss (approximately -\$3.3 million) on the NJE JV).

- (5) As to (e), in addition to (1)–(4), on 4 May 2023, Khotkar sent by email to Pan an analysis of the “route performance” of Rex, observing that “Rex’s load factor seems to have dropped more than the industry” and “April doesn’t seem to be showing significant improvement”. The analysis stated “Rex’s load factor was tracking with industry averages between Sep-22 and Nov-22 but has since declined well below industry averages (to 64% vs. 78% in Feb-23)”.
- (6) As to (f), in addition to (1)–(5), on 11 May 2023, Lim received the year-to-date and monthly profit and loss figures for the Rex Group for April 2023, and Rex was thereby aware that the Rex Group had incurred an operating loss of approximately -\$3.6 million in April 2023 and a year-to-date operating loss of approximately -\$53.4 million (being the Group’s before-tax loss (approximately -\$40.7 million) less the gain (approximately \$14.7 million) and share of loss (approximately -\$2 million) on the NJE JV).
- (7) As to (g), in addition to (1)–(6), on 16 May 2023, at a meeting of the Board attended by Lim, Sharp, Khotkar and Pan, the Board reviewed the financial performance of the Rex Group for the financial year to April 2023, and noted:
 - (i) Rex Regional recorded a year-to-date before-tax loss.
 - (ii) RAL recorded a year-to-date before-tax loss.
 - (iii) Rex Regional passenger numbers for April 2023 were “especially poor”.
 - (iv) April passenger numbers on the Rex traditional network (excluding regulated routes) fell 9% compared to the same period pre-covid.
 - (v) It was expected that passenger numbers in May 2023 would remain low before improving from June 2023.
- (8) In addition to (1)–(7), in March, April and May 2023, Lim, Sharp, Khotkar and Pan received Rex’s “Weekly Worm Report”, which comprised spreadsheets and graphs which set out, amongst other things, the Rex Group’s daily, weekly and monthly passenger revenue. On 10 May 2023, for example, Lim, Sharp, Khotkar and Pan received a Weekly Worm Report which disclosed that Rex Group’s monthly passenger revenue in each of the first (January), second (February), third (March) and fourth (April) months of the second half of the 2023 financial year was less than it had been in, respectively, the first to fourth months of the first half of the 2023 financial year.

Further particulars may be provided, including particulars following or by way of expert evidence.

- 17 The 2023 Profit/Loss Information was not generally available within the meaning of ss 674(2)(c), 674A(2)(c) and 676 of the Corporations Act.

- 18 The 2023 Profit/Loss Information was information that a reasonable person would have expected, if it had been generally available, to have had a material effect on Rex's share price within the meaning of ss 674(2)(d) and 677(1) of the Corporations Act.

Particulars

Information as to Rex achieving an operating loss and not an operating profit in the financial year would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of shares in Rex. Further particulars may be provided following or by way of expert evidence.

- 19 Rex knew that, alternatively was reckless or negligent with respect to whether, the 2023 Profit/Loss Information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of shares in Rex, within the meaning of ss 674A(2)(d) and 677(2) of the Corporations Act.

Particulars

- (1) The Board, including Lim, Sharp, Khotkar and Pan approved, and Lim authorised, the publication of the 28 February 2023 announcement, and Rex thereby made the 2023 Profit Representation.
- (2) The Board, including Lim, Sharp, Khotkar and Pan, knew or ought to have known, alternatively foresaw, or ought to have foreseen, that the 2023 Profit Representation would, or would be likely to, influence the buying or selling of Rex shares on the market.
- (3) The Board, including Lim, Sharp, Khotkar and Pan, knew or ought to have known, alternatively foresaw, or ought to have foreseen, that, once the 28 February 2023 Announcement had been published and the 2023 Profit Representation made, information correcting or contrary to the 2023 Profit Representation would, or would be likely to, influence the buying or selling of Rex shares on the market.

- 20 By reason of the matters set out in paragraphs 16 to 19, from 28 February 2023, alternatively 21 March 2023, 14 April 2023, 24 April 2023, 4 May 2023, 11 May 2023 or 16 May 2023, Rex was required to notify the ASX of the 2023 Profit/Loss Information:
- (a) under Rule 3.1 of the Listing Rules and s 674(2) of the Corporations Act;
 - (b) alternatively, under Rule 3.1 of the Listing Rules and s 674A(2) of the Corporations Act.

- 21 Rex did not notify the ASX of the 2023 Profit/Loss Information until 20 June 2023.

Particulars

On 20 June 2023, Rex published an ASX Release on the ASX Market Announcement Platform titled “Rex Revises Interim Guidance”, which stated “Regional Express (Rex) announced today that the company is revising its interim profit guidance provided on the 28 February 2023 which forecast an operational profit for this Financial Year (FY)” and “Rex is now forecasting a Group Operational loss of \$35 million for the FY”.

- 22 By reason of the matters set out in paragraphs 16 to 21, Rex contravened:

- (a) s 674A(2) of the Corporations Act;
- (b) alternatively, s 674(2) of the Corporations Act,

in the period on and from 28 February 2023, alternatively 21 March 2023, 14 April 2023, 24 April 2023, 4 May 2023, 11 May 2023 or 16 May 2023, continuing until 20 June 2023, by failing to notify the ASX of the 2023 Profit/Loss Information.

- 23 The contravention referred to in paragraph 22(a) was “serious” within the meaning of s 1317G(1)(b)(iii) of the Corporations Act.

Particulars

- (1) The contraventions caused misleading or deceptive profit guidance information to be in the market from 28 February 2023 (alternatively 21 March 2023, 14 April 2023, 24 April 2023, 4 May 2023, 11 May 2023 or 16 May 2023) until 20 June 2023.
- (2) On 21 June 2023, trading in REX shares closed 11.2% below the last closing price.

Further particulars may be provided, including particulars following or by way of expert evidence.

LIM’S INVOLVEMENT IN THE MATERIAL NON-DISCLOSURE

- 24 By 28 February 2023, alternatively, 21 March 2023, 14 April 2023, 24 April 2023, 11 May 2023 or 16 May 2023, Lim was aware of the 2023 Profit/Loss Information.

Particulars

Particulars (1)–(4) and (6)–(8) to paragraph 16 are referred to and repeated.

25 Lim:

- (a) knew that the 2023 Profit/Loss Information was not generally available; and

Particulars

The particulars to paragraph 12(a) are referred to and repeated.

- (b) knew that, or was reckless or negligent with respect to whether, the 2023 Profit/Loss Information was information that a reasonable person would have expected, if it had been generally available, to have had a material effect on Rex's share price.

Particulars

The particulars to paragraph 12(a) and 19 are referred to and repeated.

26 By reason of paragraphs 12, 24 and 25, Lim:

- (a) was knowingly concerned in, or party to, and thereby involved in, within the meaning of s 79(c) of the Corporations Act, the contravention referred to in paragraph 22(a); and
- (b) thereby contravened s 674A(3) of the Corporations Act.

27 The contravention referred to in paragraph 26 was "serious" within the meaning of s 1317G(1)(b)(iii) of the Corporations Act.

Particulars

The particulars to paragraph 23 are referred to and repeated.

28 In the circumstances set out in paragraphs 16 to 21, and with the knowledge of Lim set out in paragraphs 24 and 25, a reasonable person acting as, and with the responsibilities of, chief executive officer, executive chairman and a member of the Board:

- (a) would have reached the view that Rex was required to:
 - (i) correct the 28 February 2023 Announcement; and/or
 - (ii) disclose the 2023 Profit/Loss Information; and

- (b) would have taken reasonable steps to ensure that Rex:
 - (i) corrected the 28 February 2023 Announcement;
 - (ii) disclosed the 2023 Profit/Loss Information; and/or
 - (iii) did not fail to disclose the 2023 Profit/Loss Information.

29 By reason of paragraphs 24, 25 and 28, Lim:

- (a) failed to discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were chief executive officer, executive chairman and/or a member of the board of a company in Rex's circumstances; and
- (b) contravened s 180 of the Corporations Act.

30 The contravention referred to in paragraph 29 was "serious" within the meaning of s 1317G(1)(b)(iii) of the Corporations Act.

Particulars

The contravention involved a departure from the requisite standard of care and diligence, and caused misleading or deceptive profit guidance information to be in the market from 28 February 2023 (alternatively 21 March 2023, 14 April 2023, 24 April 2023, 11 May 2023 or 16 May 2023) until 20 June 2023. Further particulars may be provided.

KHOTKAR'S INVOLVEMENT IN THE MATERIAL NON-DISCLOSURE

31 By 14 April 2023, alternatively 4 May 2023 or 16 May 2023, Khotkar was aware of the 2023 Profit/Loss Information.

Particulars

Particular (5) to paragraph 9 and particulars (3), (5), (7) and (8) to paragraph 16 are referred to and repeated.

32 Khotkar knew, or ought to have known, that:

- (a) the 2023 Profit/Loss Information was not generally available; and

Particulars

The particulars to paragraph 19 are referred to and repeated.

- (b) the 2023 Profit/Loss Information was information that a reasonable person would have expected, if it had been generally available, to have had a material effect on Rex's share price.

Particulars

The particulars to paragraph 19 are referred to and repeated.

33 In the circumstances set out in paragraphs 16 to 21, and with the knowledge of Khotkar set out in paragraphs 31 and 32, a reasonable person acting as, and with the responsibilities of, a director and member of the Board:

- (a) would have reached the view that Rex was required to:
- (i) correct the 28 February 2023 Announcement; and/or
 - (ii) disclose the 2023 Profit/Loss Information; and
- (b) would have taken reasonable steps to ensure that Rex:
- (i) corrected the 28 February 2023 Announcement;
 - (ii) disclosed the 2023 Profit/Loss Information; and/or
 - (iii) did not fail to disclose the 2023 Profit/Loss Information.

34 By reason of paragraphs 31 to 33, Khotkar:

- (a) failed to discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director and member of the board of a company in Rex's circumstances; and
- (b) contravened s 180 of the Corporations Act.

35 The contravention referred to in paragraph 34 was "serious" within the meaning of s 1317G(1)(b)(iii) of the Corporations Act.

Particulars

The contravention involved a departure from the requisite standard of care and diligence, and caused misleading or deceptive profit guidance information to be in the market from 14 April 2023 (alternatively, 4 May

2023 or 16 May 2023) until 20 June 2023. Further particulars may be provided.

PAN'S INVOLVEMENT IN THE MATERIAL NON-DISCLOSURE

36 By 14 April 2023, alternatively 4 May 2023 or 16 May 2023, Pan was aware of the 2023 Profit/Loss Information.

Particulars

Particular (5) to paragraph 9 and particulars (3), (5), (7) and (8) to paragraph 16 are referred to and repeated.

37 Pan knew, or ought to have known, that:

- (a) the 2023 Profit/Loss Information was not generally available; and

Particulars

The particulars to paragraph 19 are referred to and repeated.

- (b) the 2023 Profit/Loss Information was information that a reasonable person would have expected, if it had been generally available, to have had a material effect on Rex's share price.

Particulars

The particulars to paragraph 19 are referred to and repeated.

38 In the circumstances set out in paragraphs 16 to 21, and with the knowledge of Pan set out in paragraphs 36 and 37, a reasonable person acting as, and with the responsibilities of, a director and member of the Board:

- (a) would have reached the view that Rex was required to:
 - (i) correct the 28 February 2023 Announcement; and/or
 - (ii) disclose the 2023 Profit/Loss Information; and
- (b) would have taken reasonable steps to ensure that Rex:
 - (i) corrected the 28 February 2023 Announcement;
 - (ii) disclosed the 2023 Profit/Loss Information; and/or

(iii) did not fail to disclose the 2023 Profit/Loss Information.

39 By reason of paragraphs 36 to 38, Pan:

(a) failed to discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director and member of the board of a company in Rex's circumstances; and

(b) contravened s 180 of the Corporations Act.

40 The contravention referred to in paragraph 39 was "serious" within the meaning of s 1317G(1)(b)(iii) of the Corporations Act.

Particulars

The particulars to paragraph 35 are referred to and repeated.

SHARP'S INVOLVEMENT IN THE MATERIAL NON-DISCLOSURE

41 By 14 April 2023, alternatively 16 May 2023, Sharp was aware of the 2023 Profit/Loss Information.

Particulars

Particular (5) to paragraph 9 and particulars (3), (7) and (8) to paragraph 16 are referred to and repeated.

42 Sharp knew, or ought to have known, that:

(a) the 2023 Profit/Loss Information was not generally available; and

Particulars

The particulars to paragraph 19 are referred to and repeated.

(b) the 2023 Profit/Loss Information was information that a reasonable person would have expected, if it had been generally available, to have had a material effect on Rex's share price.

Particulars

The particulars to paragraph 19 are referred to and repeated.

43 In the circumstances set out in paragraphs 16 to 21, and with the knowledge of Sharp set out in paragraphs 41 and 42, a reasonable person acting as, and with the responsibilities of, the deputy chairman and/or a director and member of the Board:

- (a) would have reached the view that Rex was required to:
 - (i) correct the 28 February 2023 Announcement; and/or
 - (ii) disclose the 2023 Profit/Loss Information; and
- (b) would have taken reasonable steps to ensure that Rex:
 - (i) corrected the 28 February 2023 Announcement;
 - (ii) disclosed the 2023 Profit/Loss Information; and/or
 - (iii) did not fail to disclose the 2023 Profit/Loss Information.

44 By reason of paragraphs 41 to 43, Sharp:

- (a) failed to discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were the deputy chairman or a director and member of the board of a company in Rex's circumstances; and
- (b) contravened s 180 of the Corporations Act.

45 The contravention referred to in paragraph 44 was "serious" within the meaning of s 1317G(1)(b)(iii) of the Corporations Act.

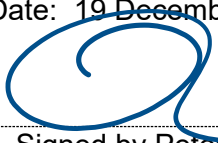
Particulars

The contravention involved a departure from the requisite standard of care and diligence, and caused misleading or deceptive profit guidance information to be in the market from 14 April 2023 (alternatively 16 May 2023) until 20 June 2023. Further particulars may be provided.

AND THE PLAINTIFF CLAIMS THE RELIEF SET OUT IN THE ORIGINATING PROCESS FILED IN THIS PROCEEDING.

This statement of claim was prepared by Rudi Kruse and settled by Michael Borsky KC.

Date: 19 December 2024

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Signed by Peter Cash
Lawyer for the plaintiff

SCHEDULE OF PARTIES

IN THE SUPREME COURT OF NEW SOUTH WALES
EQUITY DIVISION: CORPORATIONS LIST
REGISTRY: SYDNEY

No. 00459470 of 2024

IN THE MATTER OF REGIONAL EXPRESS HOLDINGS LIMITED (ADMINISTRATORS
APPOINTED)

ACN: 099 547 270

Plaintiff AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

First Defendant REGIONAL EXPRESS HOLDINGS LIMITED (ADMINISTRATORS
APPOINTED) (ACN 099 547 270)

Second Defendant LIM KIM HAI

Third Defendant THE HONOURABLE JOHN SHARP AM

Fourth Defendant SIDDHARTH DILIP KHOTKAR

Fifth Defendant LINCOLN LIN FENG PAN

Date: 19 December 2024