CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL
No.: 500-06-001113-204

Class Actions Division
SUPERIOR COURT

P[redacted] D[redacted] L[redacted];

Applicant

-and-

TURQUOISE HILL RESOURCES LTD.;

-and-

ULF QUELLMANN;

-and-

LUKE COLTON;

-and-

BRENDAN LANE;

Respondents

RE-AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND FOR AUTHORIZATION TO BRING AN ACTION PURSUANT TO SECTION 225.4 OF THE QUÉBEC *SECURITIES ACT*

TO THE HONOURABLE JUSTICE MARTIN F. SHEEHAN OF THE SUPERIOR COURT OF QUÉBEC, DESIGNATED TO PRESIDE OVER THE PRESENT MATTER, SITTING IN AND FOR THE DISTRICT OF MONTREAL, IN SUPPORT OF HIS RE-AMENDED APPLICATION FOR AUTHORIZATION, THE APPLICANT RESPECTFULLY SUBMITS AS FOLLOWS:

I. DEFINITIONS

1. In this document, in addition to the terms that are defined elsewhere herein or in the Québec *Securities Act*, the following terms have the following meanings:

   a. "**AIF**" means Annual Information Form;

   b. "**Applicant**" means Mr. P[redacted] D[redacted] L[redacted];

c. “**Board**” means the board of directors of **TRQ**;

d. “**Bowley**” means whistleblower Richard Bowley;

d.1. “**Brinkmann**” means Grant Brinkmann, who was **Rio Tinto’s** Senior Area Manager of Shafts at **Oyu Tolgoi** from June 2016 through May 2018 and the senior-most manager with direct responsibility for **Shaft 2**;

e. “***CCP***” means the *Code of Civil Procedure*, CQLR c C-25.01;

f. “***CCQ***” means the *Civil Code of Quebec*;

f.1. “**CDO**” means Chief Development Officer;

g. “**CEO**” means Chief Executive Officer;

h. “**CFO**” means Chief Financial Officer;

i. “**Class**” and “**Class Members**” refer to the following group, other than the **Excluded Persons**:

> all persons and entities, wherever they may reside or may be domiciled who, during the **Class Period**, purchased **TRQ’s** securities in the secondary market and held all or some of those securities until after one or both of the **Corrective Disclosure**, and who:
>
> – are residents in Canada or were residents in Canada at the time of such acquisitions regardless of the location of the exchange on which they acquired **TRQ's** securities; or
>
> – acquired **TRQ's** securities in the secondary market in Canada or elsewhere, other than in the United States;

j. “**Class Period**” means the period from July 31, 2018 to July 31, 2019, inclusive;

k. "**Company**" means **TRQ**;

l. “**Corporate Disclosure Policy**” means **TRQ’s** Corporate Disclosure, Confidentiality and Securities Trading Policy;

m. “**Corrective Disclosures**” (each set being a **“Corrective Disclosure”**) means collectively: (1) the news release released by TRQ on July 15, 2019 and corresponding Material Change Report released by **TRQ** on July 24, 2019 communicated herewith as **Exhibits P-1 and P-2** respectively; and (2) the interim financial statements, **MD&A** and corresponding news release released by **TRQ** on July 31, 2019 communicated herewith as **Exhibits P-3, P-4, and P-5** respectively;

n. “**CSA**” means the Canadian Securities Administrators;

o. “**DC&P**” means Disclosure Controls and Procedures;

p. “**Disclosure Committee**” means the committee comprised of certain members of **TRQ’s** management that was responsible for overseeing **TRQ’s** disclosure practices;

q. “**Drawbells**” or “**Draw Bells**” (each being a **“Drawbell”** or **“Draw Bell”**) means the large rock funnels underneath the undercut that are created by blasting upwards from the upward sloping tunnels or “raises” leading to the haulage level underneath the main ore body, and which catch the crushed ore which is returned to the surface to be processed. The blasting of drawbells commences initial production at the underground **Mine**;

r. “**Duffy**” means whistleblower Dr. Maurice Duffy;

s. “**Equivalent Securities Acts**” means, collectively, the *Securities Act*, R.S.A. 2000, c. S-4, as amended; the *Securities Act*, R.S.B.C. 1996, c 418, as amended; *The Securities Act*, C.C.S.M. c. S50, as amended; the *Securities Act*, S.N.B. 2004, c. S-5.5, as amended; the *Securities Act*, R.S.N.L. 1990, c S-13, as amended; the *Securities Act*, S.N.W.T. 2008, c. 10, as amended; the *Securities Act*, R.S.N.S. 1989, c. 418, as amended; the *Securities Act*, S Nu 2008, c. 12, as amended; the *Securities Act*, R.S.P.E.I. 1988, c S-3.1, as amended; *Securities Act*, R.S.O. 1990, c. S.5, as amended; *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2, as amended; and the *Securities Act*, S.Y. 2007, c. 16, as amended;

t. “**Excluded Persons**” means the **Respondents**, members of the immediate families of the **Individual Respondents**, any entity in which the **Individual Respondents** hold a controlling interest, the directors, officers, subsidiaries, affiliates of **TRQ** and its subsidiaries, and **Rio Tinto** and its directors, officers, subsidiaries and affiliates and entity in which **Rio Tinto’s** directors or officers held a controlling interest;

t.1. “**Fields**” means Greg Fields, who served as both **Rio Tinto’s** General Manager of Underground at **Oyu Tolgoi** from May 2015 to December 2018 and General Manager of Project Execution from May 2013 to December 2018, and who was Grant **Brinkmann’s** direct superior;

u. “**ICFR**” means internal control over financial reporting;

u.1 “**ICG**” means Independent Consulting Group, which is a group of independent consultants hired by the **OT Special Committee** to investigate and report on the causes of cost overruns and delays to the underground development of the **Mine**;

u.2 “**ICG Report**” means the final report of **ICG** concerning its investigation titled “Independent Technical Review Oyu Tolgoi Underground Expansion Project” and dated July 31, 2021;

v. “**Impugned Documents**” (each being an “**Impugned Document**”) means the documents published by **TRQ** at the following times:

i. on July 31, 2018 on **SEDAR**, the interim financial statements for the three and six-month period ended June 30, 2018, communicated herewith as **Exhibit P-6**;

ii. on July 31, 2018 on **SEDAR**, the **MD&A** for the three and six-month period ended June 30, 2018, communicated herewith as **Exhibit P-7**;

iii. on July 31, 2018 on **SEDAR**, the **CEO** and **CFO** certifications on Form 52-109F2, communicated herewith as **Exhibits P-8** and **P-9** respectively;

iv. on July 31, 2018 on **SEDAR**, the news released titled “Turquoise Hill announces financial results and review of operations for the second quarter of 2018”, communicated herewith as **Exhibit P-10**;

v. on October 15, 2018 on **SEDAR**, the news released titled “Turquoise Hill announces third quarter 2018 production and provides underground development update”, communicated herewith as **Exhibit P-11**;

vi. on November 1, 2018 on **SEDAR**, the interim financial statements for the three and nine-month period ended September 30, 2018, communicated herewith as **Exhibit P-12**;

vii. on November 1, 2018 on **SEDAR**, the **MD&A** for the three and nine-month period ended September 30, 2018, communicated herewith as **Exhibit P-13**;

viii. on November 1, 2018 on **SEDAR**, the **CEO** and **CFO** certifications on Form 52-109F2, communicated herewith as **Exhibits P-14** and **P-15** respectively;

ix. on November 1, 2018 on **SEDAR**, the news released titled “Turquoise Hill announces financial results and review of operations for the third quarter of 2018”, communicated herewith as **Exhibit P-16**;

x. on or about November 2, 2018 on **TRQ’s** website, the presentation titled “Turquoise Hill: A Compelling Value Proposition”, communicated herewith as **Exhibit P-17**;

xi. on January 17, 2019 on **SEDAR**, the news released titled “Turquoise Hill announces fourth quarter 2018 production and 2019 operational guidance”, communicated herewith as **Exhibit P-18**;

xii. on or about January 17, 2019 on **TRQ’s** website, the presentation titled “A Leading Copper and Gold Producer, Developing the Next Tier-1 Copper Asset” given at the TD Securities Mining Conference held on

January 16 to 17, 2019 by Ulf Quellmann, communicated herewith as **Exhibit P-19**;

xiii. on February 27, 2019 on **SEDAR**, the news release dated February 26, 2019 titled "Turquoise Hill announces 2019 financial guidance and provides underground development update", communicated herewith as **Exhibit P-20**;

xiv. on March 14, 2019 on **SEDAR**, the **AIF** for the year ended December 31, 2018, communicated herewith as **Exhibit P-21**;

xv. on March 14, 2019, on **SEDAR**, the audited annual financial statements for the three and twelve-month period ended December 31, 2018, communicated herewith as **Exhibit P-22**;

xvi. on March 14, 2019 on **SEDAR**, the **MD&A** for the three and twelve-month period ended December 31, 2018, communicated herewith as **Exhibit P-23**;

xvii. on March 14, 2019 on **SEDAR**, the **CEO** certifications pursuant to 18 U.S.C. Section 1350 and the *Securities Exchange Act of 1934*, communicated herewith as **Exhibits P-24** and **P-25** respectively;

xviii. on March 14, 2019 on **SEDAR**, the **CFO** certifications pursuant to 18 U.S.C. Section 1350 and the *Securities Exchange Act of 1934*, communicated herewith as **Exhibits P-26 and P-27** respectively;

xix. on March 14, 2019 on **SEDAR**, the news released titled "Turquoise Hill announces financial results and review of operations for 2018", communicated herewith as **Exhibit P-28**;

xx. on March 14, 2019 on **SEDAR**, the management information circular dated March 13, 2019, communicated herewith as **Exhibit P-29**; and

xxi. on April 15, 2019 on **SEDAR**, the news release titled "Turquoise Hill announces first quarter 2019 production and provides underground development update", communicated herewith as **Exhibit P-30**.

w. "**Impugned Statements**" (each being an "**Impugned Statement**") means collectively:

i. the **TRQ** conference call conducted on August 1, 2018, a transcript of which is communicated herewith as **Exhibit P-31**;

ii. the **TRQ** conference call conducted on November 2, 2018, a transcript of which is communicated herewith as **Exhibit P-32**; and

iii. the **TRQ** conference call conducted on March 15, 2019, a transcript of which is communicated herewith as **Exhibit P-33**;

x. “**Individual Respondents**” (each being an “**Individual Respondent**”) means collectively Ulf Quellmann (individually, “**Quellmann**”), Luke Colton (individually, “**Colton**”), and Brendan Lane (individually, “**Lane**”);

x.1. “**Jacques**” means Jean-Sébastien Jacques, who was the **CEO** of **Rio Tinto** from July 1, 2016 to January 1, 2021;

x.2. “**Jacobs**” means Jacobs Engineering Group Inc., which was **Rio Tinto’s** main contractor that was given the principal engineering, procurement and construction management contract for the underground expansion project at **Oyu Tolgoi**;

x.3. “**Kinnell**” means Craig Kinnell, who was simultaneously a member on **Oyu Tolgoi LLC’s** board of directors as well as the **CDO** of Rio Tinto’s Copper & Diamonds division in charge of the **Oyu Tolgoi** project from December 2014 to March 2018, when he was replaced as **CDO** by **Sayed**;

y. “**MD&A**” means Management’s Discussion and Analysis;

z. “**Mine**” means **Oyu Tolgoi**;

aa. “**NEO**” means named executive officer;

bb. “**NI 43-101**” means the CSA’s National Instrument 43-101—*Standards of Disclosure for Mineral Projects,* as amended;

cc. “**NI 51-102**” means the CSA’s National Instrument 51-102—*Continuous Disclosure Obligations,* as amended;

dd. “**NI 52-109**” means the CSA’s National Instrument 52-109—*Certification of Disclosure in Issuers’ Annual and Interim Filings,* as amended;

ee. “**NYSE**” means the New York Stock Exchange;

ff. “**Operating Committee**” means the joint committee established by **Rio Tinto** and **TRQ** which gives the three directors each company nominates to the board of **Oyu Tolgoi LLC** their voting instructions. The **Operating Committee** is comprised of two nominees from each of **TRQ** and **Rio Tinto**, with a **Rio Tinto** nominee serving as chairperson of the **Operating Committee** and casting a vote in the case of a tie (effectively giving **Rio Tinto** final say over the decisions of the **Operating Committee**);

ff.1 “**OT Special Committee**” means a special committee of the board of directors of **Oyu Tolgoi LLC** comprised of two representatives of **TRQ** and two representatives of a Mongolian state-owned company on behalf of the Government of Mongolia, which was established to investigate the causes of cost overruns and delays to the underground development of the **Mine**;

gg. "**Oyu Tolgoi**" means the copper-gold mine in the South Gobi region of Mongolia in which **TRQ** indirectly holds a majority interest through its ownership of **Oyu Tolgoi LLC**, and which is managed by **Rio Tinto** on behalf of **Oyu Tolgoi LLC**;

hh. "**Oyu Tolgoi LLC**" means the Mongolian company that owns and manages the **Oyu Tolgoi Mine**, which is a joint venture that is 66% owned by **TRQ** and 34% owned by a Mongolian state-owned company on behalf of the Government of Mongolia;

<u>hh.1</u> <u>"**Peer Review**" means the peer review of the **ICG Report** dated July 28, 2021, prepared for the **OT Special Committee** by Allan Moss and John Barber;</u>

ii. "**Project Finance Facility**" means the $4.4 billion credit facility entered into by **Oyu Tolgoi LLC** to fund the underground development of the **Oyu Tolgoi Mine**;

jj. "**Q1**", "**Q2**", "**Q3**" and "**Q4**" means the three-month interim period ended March 31, June 30, September 30, and December 31, respectively;

kk. "***QSA***" means the Québec *Securities Act*, CQLR C V-1.1, as amended;

ll. "**Respondents**" (each being a "**Respondent**") refers to all defending parties collectively;

mm. "**Rio Tinto**" means collectively, Rio Tinto Plc and Rio Tinto Limited, which are two companies managed as a single economic unit, and which are collectively **TRQ's** largest shareholder, holding a 50.8% ownership interest in the **Company**;

nn. "**SailingStone**" means SailingStone Capital Partners, a significant **TRQ** shareholder that repeatedly raised concerns about **TRQ's** corporate governance and the lack of independence of **TRQ's** Board and senior management from **Rio Tinto**;

nn.1. "**Sayed**" means Arshad Sayed, who replaced **Kinnell** as the **CDO** for **Rio Tinto's** Copper & Diamonds division in March 2018;

oo. "**SEC**" means the United States Securities and Exchange Commission, the agency of the U.S. federal government tasked with *inter alia* regulating U.S. capital markets and protecting investors;

pp. "**SEDAR**" means the system for electronic document analysis and retrieval of the **CSA**;

qq. "**Shaft 2**" means the 10m diameter shaft sunk to a depth of nearly 1.3km under the surface of the ground at **Oyu Tolgoi** to accelerate the underground development project at the **Mine**, which was partly attributable for the delays with the project;

rr. "**Soirat**" means Arnaud Soirat, the **CEO** of **Rio Tinto's** Copper & Diamonds Division during the Class Period, and a member of the board of directors of **Oyu Tolgoi LLC** alongside **Quellmann** and **Colton**;

ss. “**Technical Committee**” means the joint committee established by **Rio Tinto** and **TRQ** to oversee and approve the underground development, operation and management of **Oyu Tolgoi**. Each of **Rio Tino** and **TRQ** appoint two members to the **Technical Committee**, with the chair (who gets a casting vote only in case of a tie) being appointed by **Rio Tinto**, effectively giving **Rio Tinto** final say over the decisions of the **Technical Committee**;

tt. "**TRQ**" refers to Turquoise Hill Resources Ltd.; and

uu. “**TSX**” means the Toronto Stock Exchange.

II. INTRODUCTION

1) Overview of Proposed Action

2. This securities class proceeding concerns reporting issuer TRQ and its management publishing documents (the “Impugned Documents”) and making public oral statements (the “Impugned Statements”) containing misrepresentations and omissions of material facts, as well as failing to make timely disclosure of material changes, all pertaining to the underground development project at TRQ’s Oyu Tolgoi Mine;

3. Specifically, the Respondents misrepresented and failed to make timely disclosure that the underground development project at Oyu Tolgoi would take years longer and cost over a billion dollars more than represented, and thus the net present value of the Mine was overstated and required an impairment. The Respondents further misrepresented that TRQ and its board of directors (the “Board”) and senior management were committed to the interests of TRQ and to transparency and robust corporate governance that mitigated any conflicts with TRQ’s majority shareholder, Rio Tinto;

<u>3.1</u> <u>At all times during the Class Period, TRQ represented that it was actively involved, “well plugged-in” and well aware of what was occurring with the underground development of Oyu Toloi, including receiving adequate data and updates from Rio Tinto and the external consultants who were working at the Mine, and being well informed about the cost and schedule of the Mine expansion project;</u>

4. TRQ is a Canadian mining company focused on the operation and development of the Oyu Tolgoi copper-gold mine in Southern Mongolia, which at all relevant times was (and remains) the Company’s principal and only material mineral resource property;

5. The Oyu Tolgoi Mine was initially developed as an open-pit mining operation. Over 80% of the Mine’s reserve value however, is located deep underground and accessible only by underground mining methods. Work on drilling the underground mine began in 2010, but was suspended in 2013 due to ongoing disputes between Rio Tinto and the Government of Mongolia (which is 34% owner of the Mine);

5.1 As part of the agreement process with the Government of Mongolia to resume work on the underground expansion, feasibility studies were presented to the Mongolian Government which would greatly increase the annual production at Oyu Tolgoi;

6. At all times during the Class Period, TRQ represented that the expansion and development of the underground mine at Oyu Tolgoi was the Company's main focus and "the key to unlocking Oyu Tolgoi's full value";

7. TRQ's controlling shareholder is Rio Tinto, which owns roughly 51% of the Company. Accordingly, Rio Tinto appoints 3 of the 7 members of TRQ's Board (including appointing TRQ's CEO) and hires all of TRQ's named executive officers ("NEOs") apart from the Company's CEO. Furthermore, Rio Tinto is also the manager of the Oyu Tolgoi Mine as well as the contractor for the underground construction, and as such is responsible for the day-to-day operational management and development of Oyu Tolgoi);

8. This relationship between TRQ and its controlling shareholder has consistently given other significant shareholders of TRQ cause for concern, as TRQ is wholly reliant on Rio Tinto for up-to-date technical information about the Oyu Tolgoi expansion, which is material to TRQ's other shareholders. To assuage the concerns of these minority shareholders, TRQ repeatedly represented that it was committed to transparency and had effective corporate governance, and that TRQ's Board and management had timely and adequate access to all technical information about the Oyu Tolgoi expansion and were providing accurate and complete disclosure about the project;

9. In 2016, TRQ publicly released a feasibility study, and subsequently a technical report study pursuant to NI 43-101 for the Oyu Tolgoi Project (the "2016 Technical Report"), communicated herewith as **Exhibit P-34**. In these documents the Company represented to the investing public that:

    a. the total cost to complete development of the underground project at Oyu Tolgoi would be USD $5.3 billion;

    b. initial production from the underground Mine would occur in mid-2020;

    c. sustainable production would be achieved in the first quarter of 2021;

    d. production ramp up would commence in early-2021;

    e. construction of the underground development project would be completed by early-2022;

    f. full production would be achieved in early-2027;

    g. the net present value of Oyu Tolgoi, after taxes, using a discount rate of 8% for all years was U.S $6.94 billion; and

    h. the payback period for the mine would take until January 2025;

10. TRQ and Rio Tinto continued to make these same representations for the next three years, including throughout the Class Period;

11. However unbeknownst to the Class and the general investing public, as soon as work on the underground expansion resumed in 2016, there were significant problems, including with the most critical mine shaft at Oyu Tolgoi, Shaft 2.

11.0.1 Both the ICG report (a report jointly commissioned by the Government of Mongolia and TRQ via an independent investigation into the causes of the delay and cost overruns at Oyu Tolgoi) ("**ICG Report**"), and the peer review of that report ("**Peer Review**", communicated herewith as **Exhibits P-72** and **P-73** respectively), found that the delays and cost overruns occurred from the very beginning of the project restart in 2016 (two years before the start of the Class Period), that senior managers at the Mine knew about the problems, including with Shaft 2, since at least 2016, and that geotechnical issues "were not a significant contributor to the schedule delays and cost overruns";

11.1 Work on Shaft 2 had begun in 2007 and further work had been conducted in 2010-2013 when the shaft was sunk to a depth of 1,167 metres, but as described by numerous former Oyu Tolgoi managers, the initial construction work on Shaft 2 was so deficient and dangerous that in 2016 when work on the underground expansion resumed, all work was stopped on the sinking of Shaft 2 until it could be fixed;

11.2 As reported in the *Australian Financial Review* on March 5, 2021 (communicated herewith as **Exhibit P-64**), Oyu Tolgoi managers were effectively forced to rebuild much of Shaft 2 from scratch—a project that required workers to replace more than 40,000 bolts and approximately 95% of the steel in the shaft's headframe—and predictably caused costs and schedule delays to greatly exceed what the Respondents were publicly representing. Rio Tinto's "Senior Area Manager of Shafts" who worked at Oyu Tolgoi from June 2016 through May 2018 has stated in the companion U.S. class action, that by May 2018 (before the Class Period began), Shaft 2 was 14 months behind schedule and that Rio Tinto's senior management knew about the delays and cost overruns before the Class Period had even commenced;

11.2.1 As unequivocally summarized in the Peer Review of the ICG Report:

> The project began to fall behind schedule almost from the beginning. The sinking (and commissioning) of Shafts #2 & #5 was critical to completing [Hugo North Lift 1 underground mine] on schedule. Shaft #2, critical to support development and construction activities for the project, was completed 461 days behind schedule. This caused a delay in the mobilization of development crews, which is the fundamental reason that mine development is behind schedule. The project team never recovered from this delay.

11.3 As recounted by whistleblower Dr. Maurice Duffy, as of 2017, Rio Tinto's top management, including its CEO, Jean-Sébastien Jacques, "knew without a doubt" that there were serious problems and setbacks with the Oyu Tolgoi underground expansion that would make achieving the above representations regarding schedule and cost impossible. Nonetheless the Respondents continued to repeat these misrepresentations until 2019;

11.4 In fact, Dr. Duffy set up a meeting with the head of human resources for Rio Tinto, who served as the intermediary for Jacques, on September 6, 2017 (nearly 11 months prior to the start of the Class Period), where he reported the problems he knew about Oyu Tolgoi.

According to Dr. Duffy, when Jacques made a surprise visit to Oyu Tolgoi in January 2018, it was because by that time, he knew the “wheels were coming off” of the project;

11.5 Clearly recognizing that there were major problems with the expansion, in late 2017 Rio Tinto hired a veteran contractor who had years of prior experience with the Oyu Tolgoi expansion, Richard Bowley, to examine the problems with the project and come up with a plan to address them. Mr. Bowley would not have been hired if the problems with the Mine were not evident by 2017;

11.6 The problems were so prevalent at Oyu Tolgoi that Mr. Bowley immediately identified hundreds of millions of dollars in cost overruns, and it was obvious to him the expansion was already months behind schedule. As of February 2018, Mr. Bowley began repeatedly alerting senior executives of Rio Tinto, including the Chief Development Officer (“CDO”) as well as the VP for Human Resources of Rio Tinto’s Copper & Diamonds Division, about the significant cost overruns and expected delays on the underground expansion of the Mine (as reported in the *Financial Times* on March 23, 2020, communicated herewith as **Exhibit P-35**);

12. On July 19, 2018, Mr. Bowley wrote to Rio Tinto’s VP of Human Resources (Copper & Diamonds) warning that the project was USD $300 million over budget and twelve months behind schedule, and notifying her to “[e]xpect this to rapidly escalate” (as reported in the *Australian Financial Review* on November 12, 2019, communicated herewith as **Exhibit P-36**). At the time, Ulf Quellmann, who was even then a director on TRQ’s Board, was also simultaneously VP, Strategic Projects (Copper & Diamonds) for Rio Tinto (i.e. the same business division of Rio Tinto as the VP and the CDO who Mr. Bowley contacted about the problems at Oyu Tolgoi);

13. Not only did TRQ not release a material change report disclosing this material change to its principal and only significant resource property as it was required to, instead on July 31, 2018, TRQ publicly doubled down on its misleading disclosure, stating to the investing public that June 2018 had achieved a “record level” of underground development at Oyu Tolgoi and representing that:

a. initial production remained planned for mid-2020;

b. sustainable production remained planned for 2021;

c. construction at Oyu Tolgoi was expected to complete in 2022;

d. full production would be achieved by 2027;

e. the net book value of Oyu Tolgoi as at June 30, 2018 was USD $8.05 billion;

14. Possibly most egregious, despite the very specific warnings about delays and cost overruns with the underground expansion at Oyu Tolgoi being conveyed to Rio Tinto by Bowley just days prior, in this July 31, 2018 Impugned Document (communicated herewith as Exhibit P-7), TRQ explicitly stated that during the fourth quarter of 2017, Rio Tinto had undertaken a schedule and cost review and provided TRQ “with a high-level overview of the review’s outcomes, in which Rio Tinto concluded there were no material changes in

project scope, cost or schedule. Following analysis of [Rio Tinto's] review's conclusions, Turquoise Hill is in agreement with the findings." [emphasis added];

15. Mr. Bowley continued to express concerns about the development and cost of the Oyu Tolgoi Project, sending another email in October 2018 to Rio Tinto's VP of Human Resources (Copper and Diamonds) who forwarded his email to the CEO of the division, that that there would be a "12-18 month delay in the underground project, with substantial cost implications" [emphasis added] (as reported in the *Financial Times* on February 16, 2020, communicated herewith as **Exhibit P-37**). He also outlined these concerns to the board of directors of Rio Tinto, who appoints TRQ's CEO and nearly half of TRQ's Board, and which employs all of TRQ's NEOs apart from its CEO (including Respondents Colton and Lane).

16. Despite the repeated and very specific warnings from Mr. Bowley, throughout the Class Period the Respondents continued to represent that the projections made in the 2016 Technical Report remained accurate. The Respondents did not at any point during the Class Period disclose that they knew or should have known that their repeated representations about the cost and schedule for the Oyu Tolgoi underground expansion were false and the project would cost over a billion dollars more and take years longer than the Respondents were publicly representing;

17. Specifically, at all relevant times during the Class Period, the Respondents made misrepresentations of material facts through affirmative false and/or misleading statements and omissions, as well as failed to make timely disclosure that could be broken down into three categories: (1) Misrepresentations about the status and timing for completion of the underground expansion project; (2) Misrepresentations about the cost of the underground expansion project; and (3) Misrepresentations about corporate governance, transparency and serving the interests of all TRQ shareholders, as explicated below:

a.1 Misrepresentations about the status and timing for completion of the underground expansion project included:

i. misrepresentations about the status of progress and completion of the underground development project, including specifically but not limited to updates about "Shaft 2";

ii. misrepresentations about the Mine design and that the key risks facing the underground development at Oyu Tolgoi were well understood and managed;

iii. misrepresentations that initial production at Oyu Tolgoi would occur in mid-2020;

iv. misrepresentations that sustainable production at Oyu Tolgoi would occur by the end of March 2021 (which was subsequently delayed in the middle of the Class Period to by the end of September 2021);

v. misrepresentations that construction of the underground development project would be completed by 2022; and

vi. misrepresentations that full production at the Mine would be achieved in 2027;

b.1 Misrepresentations about the cost of the underground expansion project included:

i. misrepresentations that the cost for the underground development project would be USD $5.3 billion;

ii. misrepresentations about how much the net present value of the Oyu Tolgoi Mine was, and that the net present value was based on management's best estimates of expected future revenues and costs and no impairment was required;

iii. misrepresentations that the payback period for the underground expansion of the Mine would be achieved by January 2025;

iv. misrepresentations that TRQ would fund the development and financing of the underground project using the funds drawn down from the Project Finance Facility and would not need additional/incremental financing to sustain its underground development program; and

v. misrepresentations that the management of TRQ had increased direct participation in matters pertaining to Oyu Tolgoi underground expansion cost and scheduling, and had adequate technical information and updates about the underground expansion project of the Oyu Tolgoi Mine, including Board members periodically visiting the Mine;

c.1 Misrepresentations about corporate governance, transparency and serving the interests of all TRQ shareholders included:

i. Misrepresentations that TRQ had effective corporate governance and that the Board and senior management of TRQ (much of whom were employees of Rio Tinto who were "seconded" to TRQ) were committed to transparency and robust corporate governance that mitigated any conflicts between TRQ and Rio Tinto, and were committed to serve the interests of TRQ and its shareholders (as opposed to the interests of Rio Tinto and its shareholders); (…)

ii. that TRQ had a *Corporate Disclosure, Confidentiality and Securities Trading Policy* which contained measures to avoid selective disclosure, as well a *Code of Business Conduct* that was applicable to all employees, officers and directors and that required them to uphold their commitment to a culture of honesty, integrity, accountability, and the highest standards of professional and ethical conduct (…)<u>; and</u>

iii. that the Respondents had designed internal controls over financial reporting ("**ICFR**") and disclosure controls and procedures (**DC&P**) that were effective and provided reasonable assurances that material information was made known and reported, and that TRQ's disclosures were reliable, fairly presented in all material respects the financial condition, results of operations and cash flows of TRQ, and did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statement made not misleading;

18. Mr. Bowley continued to warn senior executives of Rio Tinto of problems at the Project and that Rio Tinto's public statements (echoed by TRQ) "watered down the truth", were "inconsistent with the truth (a lie)", and "suicidal", until January 2019, at which point Rio Tinto retained independent counsel Baker McKenzie to investigate his concerns.

18.1 In February 2019, two days after Rio Tinto finished an internal compliance investigation into Bowley's whistleblowing, the Respondents began to admit that the Oyu Tolgoi underground expansion was in trouble. A month later, Mr. Bowley's employment contract with Rio Tinto was terminated with "immediate effect", and Mr. Bowley filed an "unfair dismissal" claim against Rio Tinto with the UK Employment Tribunal.

18.2 Once Dr. Duffy learned of Baker McKenzie's investigation into Bowley's claims, he attempted to get Rio Tinto's board to reconsider its findings as the investigation "excluded information" reported to Rio Tinto by his firm since 2017, but to no avail. Instead, Baker McKenzie sought the destruction of the data that Dr. Duffy's firm had collected, and was successful at doing so after the end of the Class Period.

19. After roughly sixteen months of misrepresenting the development schedule and cost of the Oyu Tolgoi underground development while its controlling shareholder and the entity it paid to manage Oyu Tolgoi was in actual knowledge to the contrary, on July 15, 2019 TRQ publicly issued a news release, communicated herewith as Exhibit P-1, that announced *inter alia* that:

a. there were stability risks with the existing Mine design and the Mine design would need to be changed;

b. sustainable production would be delayed by 16 to 30 months and was now expected between May 2022 and June 2023 (rather than March 2021 as previously represented);

c. the reasons for the delay were the unexpected and challenging geotechnical issues and complexities in the construction of Shaft 2 (despite the Company's past repeated representation that "[k]ey risks [of Oyu Tolgoi] were well understood and managed", despite the Company explicitly acknowledging it was aware of the "challenging ground conditions" in its press release of October 15, 2018 and despite Shaft 2 being largely excavated at the beginning of the Class Period);

d. the cost for the underground development project was expected to be USD $1.2 to $1.9 billion more than the USD $5.3 billion that had been represented since 2016 (an increase in cost of between 23% to 36%);

e. the issues with the Mine design were so uncertain that that it would take until the second half of 2020 to develop a revised design for the Mine; and

f. although further work was necessary to reach definitive conclusions, TRQ was assessing the net book value of its investment in Oyu Tolgoi and would announce any changes, along with any adjustments to deferred tax in its results for Q2 2020 released at the end of July, 2019;

20. The next day after the release of this partial Corrective Disclosure, the price of TRQ's common shares on the TSX dropped 43.2%, going from CAD $1.39 to $0.79 per share in one single day on more than 32-times the trading-volume of the prior day;

21. Then a couple weeks later on July 31, 2019, TRQ released its financial statements, MD&A and a corresponding news release for Q2 2019 (i.e. collectively, the final Corrective Disclosure), which are communicated herewith as Exhibits P-3, P-4 and P-5 respectively. This Corrective Disclosure repeated the corrections released on July 15, 2019 as well as making further disclosure about the status of the project, including that:

a. initial production was now expected between October 2021 and September 2022 (as opposed to mid-2020 as previously represented – a delay of 16 to 30 months);

b. although not expressly disclosed, the aforementioned delays made it apparent that construction at Oyu Tolgoi would not be completed in 2022 nor would full production be achieved by 2027 as previously represented;

c. TRQ was taking a USD $600 million impairment charge and a USD $400 million difference in deferred tax asset recognition (relative to the same quarter a year prior) due to the delays and increased costs with the Oyu Tolgoi underground development project;

d. the Net Book Value of Oyu Tolgoi was USD $9.04 Billion (rather than the expected USD $9.64 that it would have been absent the impairment);

e. the Company was recording a net loss of USD $736.7 million in Q2 2019 compared to a net profit of $204.4 million in Q2 2018, with the principal reason being the aforementioned $600 million impairment charge and the other reason being the aforementioned $400 million different in deferred tax asset recognition, both of which "were impacted by the Company's update on the Oyu Tolgoi underground project";

f. TRQ was taking a "deferred tax de-recognition adjustment" of $252.8 million in the quarter, which "was primarily due to updated operating assumptions in mine planning during the period, resulting primarily from timing of sustainable first production noted above as well as the revised estimates of underground development capital"; and

g. given the estimated impacts of the increases to underground development costs as well as delays to first sustainable production, TRQ no longer had enough funds on hand to complete the underground expansion project expects to now need incremental financing to sustain its underground development beyond 2020.

22. The next day after the release of this final Corrective Disclosure, the price of TRQ's common shares on the TSX dropped another 8.0%, going from CAD $0.75 to $0.69 per share. Overall between July 15 to August 1, 2019, the stock price of TRQ dropped by over 50% due to the correction of the previously released misrepresentations, eliminating roughly CAD $1.41 billion of market capitalization for TRQ's shareholders in just thirteen trading days;

22.1 Even at this time however, the Respondents were not fully honest. The delays and cost overruns with the Oyu Tolgoi expansion were partly blamed on "unexpected and challenging geotechnical issues" and "complexities in the construction of Shaft 2." <u>This assertion was expressly refuted by the ICG report</u>;

23. In truth, the problems with Shaft 2 – which had been worked on for years, sunk to a depth of 1,167m by 2013, and largely excavated before the beginning of the Class Period – (as announced by TRQ itself in January of 2018) – were internally documented, well known, and had been the subject of at least two whistleblower complaints, including from Bowley who sent numerous emails to Rio Tinto's management that Rio Tinto's public statements were false. Yet the Respondents did not disclose the severe mine design issues and up to USD $1.9 billion in additional project costs until the end of the Class Period;

<u>23.1</u> <u>Either TRQ was actively involved and "well plugged-in" and aware of the progress and cost of the underground development of the Mine as the Respondents repeatedly represented throughout the Class Period and the Respondents chose to omit the setbacks and cost overruns that were evident since before the start of the Class Period, or the Respondents misrepresented that they were aware of the true state of affairs of TRQ's Mine. Either way, the disclosures provided by the Respondents throughout the Class Period were misrepresentations</u>;

24. In fact, near the end of the Class Period on March 15, 2019 after the Respondents had just announced a minor delay to sustainable first production, Quellmann even stated that the Company had "identified some higher level of risks to the schedule" months prior, but inexplicably had simply chose to omit disclosure of those risks (as communicated herewith in Exhibit P-33);

25. Despite initially publicly representing that Mr. Bowley's claim with the UK Employment Tribunal was without merit and that Rio Tinto would "vigorously defend" against the claim, on September 30, 2020 Rio Tinto settled with Mr. Bowley for an undisclosed amount as reported in the *Australian Financial Review* on September 29, 2020, communicated herewith as **Exhibit P-38**);

26. Only after the end of the Class Period did it come to light that whistleblower Dr. Maurice Duffy had also repeatedly warned the board of directors of Rio Tinto of reporting and ethical issues pertaining to the Oyu Tolgoi project, and that the the independent so-called

investigation commenced in January 2019 by Rio Tinto's outside counsel Baker McKenzie into the problems raised by Mr. Bowley, "excluded information known by [Dr. Duffy's consulting firm] about Mongolia since 2017" (as reported in the *Australian Financial Review* on July 27, 2020 and in the *Financial Times* on November 10, 2020 communicated herewith as **Exhibits P-39** and **P-40** respectively). Instead of considering that information, Baker McKenzie successfully secured the destruction of Dr. Duffy's records;

2) The Parties

a. The Applicant

27. Mr. P[redacted] D[redacted] L[redacted] is a retiree who resides in Mission, British Columbia;

28. In reliance on the information contained in some or all of the Impugned Documents and/ or the Impugned Statements, as well as his belief that TRQ was making timely disclosure of all material changes in its affairs, on July 3, 2019, Mr. d[redacted] L[redacted] purchased 5000 TRQ securities, at an average price of CAD $1.612 per share for a total cost of CAD $8,0599.99 (including $9.99 in transaction fees), the whole as appears from the record of this transaction, a copy of which is communicated herewith as **Exhibit P-60**;

29. Mr. d[redacted] L[redacted] continued to hold these shares until after the end of the Class Period, thereby suffering damages when the release of the Corrective Disclosures removed the artificial inflation in TRQ's stock price;

b. Respondent TRQ

30. TRQ is a corporation formed under the laws of the Yukon Territory, which is headquartered in Montreal, Québec. TRQ is a reporting issuer in Québec and all other provinces and territories of Canada. TRQ's principal regulator is the Autorité des marchés financiers ("AMF"). At all times relevant to this action, TRQ's majority shareholder was Rio Tinto, which held (and continues to hold) a 50.8% equity ownership interest in TRQ;

31. TRQ's common shares are publicly-listed for trading on the TSX and the NYSE under the ticker symbol "TRQ", as well as on other secondary market trading venues elsewhere;

32. TRQ holds itself out as "an international mining company focused on the operation and further development of the Oyu Tolgoi copper-gold mine in southern Mongolia, which is the Corporation's principal and only material mineral resource property." At all times relevant to this action, the Oyu Tolgoi Mine was TRQ's only material asset. As such all material developments regarding the Mine were material to TRQ's overall business and operations;

33. As a reporting issuer in Québec, TRQ was required during the Class Period to issue and file with the AMF and on SEDAR:

    a. interim and annual financial statements;

b. MD&As coinciding with the financial statements explaining how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects;

c. AIFs, which are annual disclosure documents intended to provide material information about the Company and its business at a point in time in the context of its historical and future development and which must describe the Company, its operations and prospects, risks, and other external factors that impact the Company specifically; and

d. CEO and CFO certifications attesting that the aforementioned disclosure documents fairly and accurately disclosed the business and operations of the Company and were free from misrepresentations or omissions that would make the documents misleading;

34. TRQ is also a registrant with the United States SEC and files its disclosure documents through the SEC's filing system, "EDGAR";

c. Individual Respondent Quellmann

35. Ulf Quellmann was TRQ's CEO from August 1, 2018 and a director on its Board from May 12, 2017 until he was forced by Rio Tinto to resign both of those positions effective March 3, 2021 (as reported in *MINING.COM* on March 4, 2021, communicated herewith as **Exhibit P-61**);

35.1 Quellmann was also a director of Oyu Tolgoi LLC from September 2018 through to the end of the Class period alongside the CEO of the Copper & Diamond Division at Rio Tinto, Arnauld Soirat, who also served as a director of Oyu Tolgoi LLC from September 2018 through to the end of the Class Period;

36. In his capacity as TRQ's CEO, Quellmann certified each of the Impugned Documents that are quarterly and annual disclosures of TRQ that were released after July 31, 2018, and signed the AIF released on March 14, 2019;

37. Prior to being appointed CEO by Rio Tinto on August 1, 2018, Quellmann was simultaneously a director on TRQ's Board and part of the management of Rio Tinto's Copper & Diamond Division (acting as the Division's CFO from August 2016 to February 2018 and then a Vice President in the Division until August 1, 2018). Rio Tinto's Copper & Diamonds division was the division responsible for overseeing Oyu Tolgoi;

38. Quellmann was simultaneously both a director on TRQ's Board and a VP of Rio Tinto's Copper & Diamond Division during February to July of 2018 when whistleblower Richard Bowley was notifying the management of the Copper & Diamond Division of the delays and cost overruns at Oyu Tolgoi;

39. As of August 1, 2018 until after the end of the Class Period, Quellmann was a member of TRQ's Disclosure Committee, which was responsible for overseeing TRQ's disclosure practices;

40. At all times relevant to this action, Quellmann was not “independent” from Rio Tinto, as defined under applicable securities regulations, due to acting as an officer of Rio Tinto;

d. Individual Respondent Colton

41. Luke Colton has been seconded by Rio Tinto to act as TRQ’s CFO since October 9, 2017 and also served as the Company’s interim-CEO from July 1, 2018 until August 1, 2018 when he was replaced by Quellmann. Colton has also been a director of Oyu Tolgoi LLC since April 2018, where he was subsequently joined by Quellmann and Soirat in September 2018;

42. In his capacity either as CFO or interim-CEO (or both), Colton certified every single Impugned Document that was a quarterly or annual disclosure of TRQ, and signed the AIF released on March 14, 2019;

43. At all times relevant to this action, Colton was a member of TRQ’s Disclosure Committee, which was responsible for overseeing TRQ’s disclosure practices;

44. Prior to being seconded to TRQ, Colton was employed at Rio Tinto from 2004 until September 2017. At all times relevant to this action, Colton was not “independent” from Rio Tinto, as defined under applicable securities regulations, due to acting as an officer of Rio Tinto;

e. Individual Respondent Lane

45. Brendan Lane was seconded by Rio Tinto to act TRQ’s Vice-President, Operations and Development from February 1, 2016 until his departure in or after March of 2019. As Vice-President, Operations and Development of TRQ, Lane was responsible for monitoring and reviewing the underground development of Oyu Tolgoi. At all times relevant to this action, Lane was a NEO of TRQ;

46. In his capacity as Vice-President, Operations and Development, Lane made statements alleged to contain misrepresentations on TRQ’s conference calls held on August 1, 2018 and November 2, 2018;

47. At all times relevant to this action, Lane was a member of TRQ’s Disclosure Committee, which was responsible for overseeing TRQ’s disclosure practices;

48. From 2013 to January 2017, Lane was the Minera Escondida Limiteada and Grasberg Finance Director at Rio Tinto (Copper & Diamonds), and he previously held other positions at Rio Tinto. At all times relevant to this action, Colton was not “independent” from Rio Tinto, as defined under applicable securities regulations;

III. THE FACTS AND EVENTS OUT OF WHICH THIS ACTION ARISES

1) The Relationship Between TRQ and Rio Tinto

49. On or about July 30, 2012, Rio Tinto, which was already Ivanhoe Mines' (as TRQ's was then-named) largest shareholder and already appointed 7 of the 14 directors on Ivanhoe Mines' Board, purchased another USD $935 million worth of Ivanhoe Mines' shares, increasing its total interest in the company to roughly 51%. As part of the conditions to provide the additional funding, Rio Tinto required that Ivanhoe Mines change its name (which it did in August of 2012, to "Turquoise Hill Resources Ltd."), and its founder step down as the Company's CEO (which he did);

50. Rio Tinto has anti-dilution rights that permit it to acquire additional securities of TRQ so as to maintain Rio Tinto's controlling proportionate equity interest in TRQ. Consequently at all times relevant to this action, Rio Tinto beneficially owned approximately 50.8% of all of the issued and outstanding common shares of TRQ, giving it control over the Company;

51. As 50.8% owner of TRQ's equity, Rio Tinto has control over the selection of TRQ's Board of Directors and can block any nomination to the Board or force any resignation. At all times relevant to this Action, three out of the seven directors on TRQ's Board, including TRQ's CEOs (first Colton, then Quellmann), were not "independent" from Rio Tinto, as defined under applicable securities regulations;

52. At all relevant times, all of the NEOs of TRQ apart from Quellmann were "secondees" of Rio Tinto. This means that all NEOs aside from Quellmann were employed by Rio Tinto and then appointed by TRQ to their respective executive officer positions at TRQ. As such, the base salary, incentive award opportunities, awards based on reaching certain objectives and milestones, employee benefits, and all other renumeration of all of the NEOs of TRQ aside from Quellmann were established by Rio Tinto in "secondment agreements" reached between each NEO and Rio Tinto directly (and not TRQ). Rio Tinto would then charge the cost of such salaries and benefits back to TRQ;

52.1 Before Quellmann became CEO of TRQ on August 1, 2018, all of the NEOs of TRQ (including the interim-CEO, Colton), were seconded to TRQ by Rio Tinto. After the end of the Class Period, Rio Tinto intervened to force the resignation of Quellmann, who was the sole NEO who was not a Rio Tinto employee during the Class Period, after he took actions in support of TRQ's minority shareholders that were contrary to Rio Tinto's interests (as communicated herewith in Exhibit P-61);

53. Rio Tinto and TRQ have established a joint committee (the "Technical Committee") to oversee and approve the underground development, operation and management of Oyu Tolgoi. The Technical Committee consists of two members appointed by Rio Tinto, two members appoints by TRQ, and a chair appointed by Rio Tinto. The chair of the Technical Committee has a casting vote in the case of a tie (effectively giving Rio Tinto final say over the decisions of the Technical Committee);

54. Rio Tinto and TRQ have also established another joint committee (the "Operating Committee") which gives the three directors that each company nominates to the board of Oyu Tolgoi LLC their voting instructions. The Operating Committee is comprised of two

nominees from each of TRQ and Rio Tinto, with a Rio Tinto nominee serving as chairperson of the Operating Committee. All decisions of the Operating Committee, other than decisions in respect of certain defined “special matters”, require a majority vote of the members, with the chairperson casting a vote in the case of a tie (once again effectively giving Rio Tinto final say over the decisions of the Operating Committee);

54.1 In its annual MD&A for the years ended December 31, 2017 and December 31, 2018 (Exhibit P-23), TRQ described Rio Tinto’s control over its operations and over the Oyu Tolgoi development project as such:

> RTIH, as the holder of a majority of [TRQ’s] Common Shares, as manager of Oyu Tolgoi, and as manager of a substantial portion of Turquoise Hill’s receivables and liquid asset deposits, has the ability to exert a significant degree of control over [TRQ], Oyu Tolgoi LLC and Oyu Tolgoi.
>
> RTIH, a wholly-owned subsidiary of Rio Tinto, together with other Rio Tinto affiliates, owns a majority of the outstanding [TRQ] Common Shares and can exercise its voting power to elect all of the members of the Board of Directors, subject to applicable securities legislation. RTIH can also exercise its majority voting power to unilaterally pass any ordinary resolution submitted to a vote of [TRQ]’s shareholders, except for resolutions in respect of which RTIH is an interested party and for which disinterested shareholder approval is required. In addition, under the HoA [i.e., the December 2010 Heads of Agreement between Turquoise Hill and RTIH], RTIH was appointed as manager of Oyu Tolgoi which provides RTIH with responsibility for the management of Oyu Tolgoi.
>
> RTIH is also able to exert a significant degree of control over the management, development and operation of Oyu Tolgoi, as well as [TRQ], through a series of governance mechanisms and restrictive covenants established under the Private Placement Agreement, the HoA and other agreements entered into with Rio Tinto. These include the Technical Committee established under the Private Placement Agreement and the Operating Committee established under the HoA, through which RTIH is able to control decisions respecting the business of Oyu Tolgoi LLC subject to a veto of [TRQ] in respect of certain special matters.

2) The Project Finance Facility

55. In December of 2015, Oyu Tolgoi LLC entered into a $4.4 billion credit facility to fund the underground development of the Oyu Tolgoi Mine (the “Project Finance Facility”). The Project Finance Facility was provided by a syndicate of international financial institutions and export credit agencies representing the governments of Canada, the U.S. and Australia, along with fifteen commercial banks;

56. In order to facilitate the $4.4 billion Project Finance Facility, Rio Tinto provided “completion support”, which allocated risk based on capabilities. The sovereign risk is absorbed by the international lending syndicate, while Rio Tinto accepts the risk of Mine development;

57. In consideration for providing completion support, Rio Tinto is compensated an annual fee equal to 2.5% of the amounts drawn under the Project Finance Facility by TRQ. This is in addition to the hundreds of millions of dollars that Rio Tinto has charged TRQ for management service payments for managing the Oyu Tolgoi Mine;

58. As even further compensation for the Project Finance facility and the completion support provided by Rio Tinto, TRQ signed a financing support agreement with Rio Tinto dated December 15, 2015 (the “Financing Support Agreement”, communicated herewith as **Exhibit P-41** and described in a Material Change Report communicated herewith as **Exhibit P-42**). Among other rights, this Financing Support Agreement gives Rio Tinto the right to force TRQ to engage in an equity offering (thereby diluting TRQ’s other shareholders apart from Rio Tinto itself) if circumstances occur which:

    a. affects or could reasonably be expected to affect TRQ’s ability to meet its obligations under the guarantees it provided to guarantee certain debts owed by Oyu Tolgoi LLC; or

    b. gives rise to an event of default or completion default under the agreements entered into in connection with the Project Finance Facility;

59. Essentially, the Financing Support Agreement gives Rio Tinto the ability to dilute and punish all TRQ shareholders for delays and cost overruns caused by its own mismanagement at the Oyu Tolgoi Mine. In such a circumstance, TRQ has the right to propose an alternative financing proposal to Rio Tinto, but that proposal requires Rio Tinto’s consent to implement;

3) The Oyu Tolgoi Mine

60. Oyu Tolgoi, which means “Turquoise Hill” in Mongolian, is a copper-gold mining project in Mongolia, located roughly 50 miles north of Mongolia’s border with China. Once it achieves full capacity, the mine is expected to be the third largest copper mine in the world, estimated to be able to produce more than 500,000 tonnes of copper (worth over CAD $5.5 billion at July 2021 prices) each year;

61. The Oyu Tolgoi Mine is owned by Oyu Tolgoi LLC, which is a joint venture between TRQ and the Government of Mongolia. TRQ owns 66% of Oyu Tolgoi LLC (and thereby the Mine), with the other 34% owned by a Mongolian state-owned company on behalf of the Mongolian Government. TRQ has agreed to fund the Mongolian Government’s equity stake and pro-rata share of development capital for the Oyu Tolgoi Mine, which is to be repaid from future cash flows once the underground mine is commissioned;

62. Rio Tinto manages the operation at the Oyu Tolgoi Mine on behalf of TRQ and the Mine’s other owner (the government of Mongolia), and is also the underground construction contractor for Oyu Tolgoi. As such, Rio Tinto has the timeliest, most “on-the-ground”

details about the operations at Oyu Tolgoi, and is the party most directly responsible for the USD $1.2 to $1.9 billion cost overrun at Oyu Tolgoi;

63. Despite being the party with the greatest ownership interest in Oyu Tolgoi with a 66% stake, TRQ has only five employees and no permanent presence at the Oyu Tolgoi Mine. Rio Tinto exercises near-total control over the Oyu Tolgoi expansion, including control over TRQ's public statements about the Mine. In fact, TRQ and Rio Tinto explicitly agreed (as documented in an April 2012 memorandum of agreement) that "any and all public disclosure regarding the OT [Oyu Tolgoi] project" or "OT Disclosures", would be "consistent with the information provided by the Rio Tinto Manager" and that TRQ "would not file or issue any OT Disclosure without providing the Rio Tinto Manager with a reasonable opportunity to review and comment thereon.";

64. (...)

64.1 Rio Tinto had a contractual right to review and comment on any TRQ public disclosures concerning Oyu Tolgoi, and required TRQ's public disclosures concerning the Oyu Tolgoi mine to be consistent with information provided by Rio Tinto. Despite Respondent Quellmann's public statements at the beginning of the Class Period that TRQ had "good visibility" and was "well plugged-in" to the costs and developments at the Oyu Tolgoi expansion, TRQ admitted after the Class Period in its motion to dismiss the parallel U.S. class action about these same matters (communicated herewith as **Exhibit P-62**) that:

> TRQ's disclosures consisted essentially entirely of information that the project manager [Rio Tinto] provided … With no physical presence or office in Mongolia, and no operational employees, TRQ did not have the on-site access to progress at Oyu Tolgoi and is wholly reliant on the project manager in this regard.

64.2 Work on a large-diameter concrete-lined critical mine shaft called Shaft 2 – which was by far the most important of the five planned mine shafts at Oyu Tolgoi as it was to serve as the main logistics hub for the transportation of personnel and equipment to build the remaining Mine infrastructure, for ventilation underground, and to transport ore to the surface – began in 2007. Work on Shaft 2 was conducted in 2007 and again in 2010-2013, when the sinking reached a depth of 1,167 meters;

65. In August of 2013, development of the underground mine at Oyu Tolgoi was halted due to certain disputes between TRQ, Rio Tinto and the Government of Mongolia including approval of a feasibility study for the project by the Mongolia Minerals Council and agreement of a comprehensive funding plan for the underground development project;

66. By May of 2015, the significant issues between TRQ, Rio Tinto and the Government of Mongolia were largely resolved, and in May of 2016 TRQ announced that Oyu Tolgoi LLC had received formal notice of approval to proceed from the Board of TRQ, and each of the boards of Rio Tinto and Oyu Tolgoi LLC, which was the final requirement for the re-start of the underground development project, and as part of that process, the 2016 Feasibility Study had been completed;

67. Construction of the underground development project began in mid-2016 and was estimated to result in sustainable first production (when the Mine would begin generating cash flows) in the first quarter of 2021. The key to achieving the estimated timetable for the underground expansion, and thus the profitability of the Mine, was the construction of Shaft 2;

67.0.1 There was an original exploration shaft, known as Shaft 1, which predated Shaft 2 and was sunk in 2007 to access the underground ore-body. However, Shaft 1 was much smaller and moved far more slowly than Shaft 2, thereby severely limiting the capacity for hoisting rock and moving workers and materials. Whereas Shaft 2 was capable of moving 300 people at a time into the underground Mine in just 2.5 minutes, Shaft 1 could only move 60 people at a time and at much slower speeds;

67.0.2 As recounted in the ICG Report, it was well known and forecasted in the 2016 feasibility study and the Underground Development Plan for Oyu Tolgoi "that mining progress was dependent upon the ability to mobilise underground mining crews and their associated equipment." However, despite this importance, the enabling infrastructure for Shaft 1, the Shaft 1 crusher and systems, were delayed for months. For example, the ICG Report found that the 2016 feasibility study "indicated that the Shaft #1 ore bin and jaw crusher system would be commissioned in March 2017, but this did not occur until the end of September 2017. This only served to increase the crushing capacity to match the shaft hoisting capability, which still limited the number of crews that could be utilised efficiently."

67.0.3 Further, it was known and reported in both a 2014 feasibility study (OTFS 14) for the Mine and the 2016 feasibility study (OTFS 16) that even once the enabling infrastructure of Shaft 1 (termed critical facilities) were completed, it would still not suffice as adequate and required the completion of Shaft 2. As reported by the ICG:

> The OTFS14 study and subsequently OTFS16 both showed that as … the number of mining crews and construction crews increased, Shaft #1 would become the bottleneck until such time as Shaft #2 was commissioned fully. With over 350 people underground the shift change was taking up to 3 hours thus reducing the effective time at the work face, particularly in the construction areas. At times only 6 hours of effective work per day was achieved.

67.1 As former TRQ CEO Jeff Tygesen explained on a November 2017 investor call (communicated herewith as **Exhibit P-63**), TRQ and Rio Tinto were intently focused on "Shaft 2 development including further mass excavation and final sinking before 2018 fit-out" because "Shaft 2 is key to future increases in lateral development." Tygesen assured investors that the "sinking of Shafts 2 and 5 continue to move deeper" and that TRQ "maintain[ed] our expectation of first draw bell around mid-2020 and first sustainable production in early 2021";

67.2 Despite these assurances however, it was known to senior Rio Tinto and Oyu Tolgoi management even before construction restarted on the underground expansion in 2016 that there were numerous potentially catastrophic issues with the engineering and construction of Shaft 2 that presented “immediate safety concerns” and that caused and would contribute to substantial delays and cost overruns;

67.3 During the shutdown of the underground expansion project at Oyu Tolgoi from 2013-2016, inspections of the headframes for Shafts 2 and 5 identified multiple significant issues with the work that had previously been done by a Chinese contractor. Specifically, engineers found multiple potentially catastrophic problems on the Shaft 2 headframe, including structural steel not properly installed, bolts not tightened, bolts missing, extremely poor welds, missing welds, as well as significant steel fabrication issues. According to the project manager for Red Path Mining, which was the main contracting company responsible for sinking Shafts 2 and 5, the initial Shaft 2 headframe construction would have been considered “illegal” if built in North America and not addressed, and the work required to fix it was extensive. While Oyu Tolgoi managers had originally decided to fix these problems while the underground expansion was on pause from 2013-2016 due to the issues with the Mongolian government, the work only began once the underground expansion restarted in 2016;

67.4 These problems were so extensive that the Respondents were required to perform a massive amount of work to address the safety concerns before construction could even restart in 2016. The problems were so severe and presented such a clear safety risk that all work was stopped on the sinking of Shaft 2 until a team led by Red Path Mining was able to restore the headframe to a functional condition. Because of the need to fix the headframe, by the summer of 2016 (i.e., two years before the Class Period even began), Shaft 2 was already delayed by at least 8 months more than what the Respondents were publicly representing. Further, the headframe issues required over USD $30 million in additional costs, meaning the amount required to fix the headframe just so that Shaft 2 construction could begin accounts for 10% of the Shaft 2 budget;

67.5 The aforementioned project manager for Red Path Mining would provide daily, weekly and monthly progress reports on this work to his supervisors, who would sign off on them and provide them to senior Oyu Tolgoi executives including Armando Torres, Oyu Tolgoi LLC’s CEO since May 2017 who during the Class Period reported to and served on Oyu Tolgoi LLC’s board of directors with Respondents Quellmann and Colton and with Arnauld Soirat of Rio Tinto;

67.6 In addition to the problems with the Shaft 2 headframe, the steel supplied for Shaft 2 from January 2016 right through to after the end of the Class Period was consistently subpar, had structural defects and issues with fabrication (including steel parts not being made to specifications), had poor joints, and was otherwise unusable and dangerous. As a result, approximately 95% of the steel in Shaft 2 had to be worked on before being installed. <u>This was confirmed by the ICG Report which found that [t]he delays included multiple rework of fabricated steel; late ordering and delivery of steel; [and] drilling and epoxy grouting for brackets in the lower reaches of the shaft”, among other issues.</u> In order to address the deficiencies, Oyu Tolgoi workers had to ultimately replace significant amounts of steel in the headframes, working underneath the defective steel while slowly replacing it over time;

67.7 These issues raised by Red Path Mining were known to and confirmed by Rio Tinto's management on the ground at Oyu Tolgoi as well. As reported herewith in Exhibit P-64, Grant Brinkmann, who was Rio Tinto's Senior Area Manager of Shafts at Oyu Tolgoi from June 2016 through May 2018 and who was the senior-most manager with direct responsibility for Shaft 2, confirmed that they had to go through and replace every bolt in the Shaft 2 headframe because they were not the right grade, that a significant portion of the structural steel had to be replaced because it was wrong and defective and compromised the safety of the design, and that the steel quality problems presented such safety concerns that Oyu Tolgoi LLC was required to redesign how the shafts were roped up because the infrastructure was simply not strong enough. <u>The ICG Report also confirms that steelwork issues contributed significantly to cost overruns at the Mine. In its description of commodity increases of USD $351 million, the ICG Report found that "[t]he problem areas were again steelwork, piping and electrical disciplines. It is a trend that seems to carry throughout this area."</u> Brinkmann estimated that by May 2018 (more than 2 months prior to the start of the Class Period), Shaft 2 was already 14 months behind its scheduled commissioning deadline;

<u>67.7.1 Unsurprisingly, after the Class Period, the ICG Report concluded that the delays related to Shaft 1's "critical facilities" and Shaft 2 was estimated to be on the order of 21.4 months – i.e., the vast majority of the delay that the Respondents eventually disclosed.</u>

67.8 Just as one example to illustrate the magnitude of the critical delays, the central heating plant for the mine, which is required by law to ensure that underground work can be done at safe temperatures and was critical to getting the underground development progressing, was scheduled to have been fully operational by Christmas 2017, but did not come online until nearly two years later in September 2019;

<u>67.8.1 Additionally, the mishandling of the construction and completion of primary crusher 1 ("**PC1**") greatly contributed to the delays and cost overruns, and these delays were evident from before the start of the Class Period;</u>

<u>67.8.2 PC1 was the first of two primary gyratory crushers that are needed to reduce size of the ore to bring it to the Mine surface. The 2016 feasibility study had indicated a 30% design review of the PC1 system would occur in August 2016 followed by issue of the design envelope needed to size the actual excavation that was required in September 2016. However, the ICG Report noted that "[f]or reasons the ICG were unable to discern, the 30% Design Review was not carried out until April 2017, some 8 months later than planned, with the design envelopes completed in May/June 2017." Work on the PC1 chamber commenced after that in August 2017 (nearly a year before the start of the Class Period);</u>

<u>67.8.3 The ICG Report revealed that the excavation for PC1 took 23 months, instead of the planned 15 months, because "[d]espite the long delay in issuing drawings, it appears that there were major issues with the excavations as detailed not being designed large enough to cater for construction" (in other words, the failure to dig a large enough hole). The ICG Report expressly noted "that this is not a 'geotechnical' issue as it was driven by a design</u>

change to the chamber size" (i.e., an active decision that TRQ was or should have been aware of). The ICG report found that the delay to the construction and installation work on PC1 was "one of the key drivers of the overall delay to First Drawbell and Sustainable Production";

67.9 After Brinkmann was fired in May 2018, the senior Oyu Tolgoi manager who took over some of Brinkmann's responsibilities held weekly integration meetings with the leadership from Rio Tinto, TRQ, Jacobs (Rio Tinto's principal contractor at Oyu Tolgo) and Red Path Mining, where he identified over 60 remediation actions that were needed to address the delays at Oyu Tolgoi and in his words get things "back to being remotely on schedule". However, not one of the remediation actions was taken, and the meetings were cancelled six months after they began;

67.10 The schedule and cost overruns resulting from the faulty construction and steel quality problems were well known to Rio Tinto's and Oyu Tolgoi LLC's senior management **from well before the beginning of the Class Period**, and should have also been known to TRQ. The dangers posed by these construction defects were repeatedly discussed in meetings with senior leadership, including Oyu Tolgoi LLC's CEO Torres. Additionally, according to Brinkmann, Rio Tinto senior management, including Rio Tinto's Oyu Tolgoi Managing Director, Michael Charron, and Rio Tinto's Global Head of Projects, David Joyce (who reported directly to Rio Tinto's CEO Jacques) knew the underground expansion was delayed beyond what they were representing by 2017 at the latest (as communicated herewith in Exhibit P-64). Brinkmann also confirmed that senior Rio Tinto management were aware of the problems with the Shaft 2 headframe in 2016 and could have – but did not address them – prior to the restart of the underground expansion in 2016.

67.10.1 The fact that these delays and associated cost overruns were evident and that fact that it was "inconceivable" that they were not known by senior management before the start of the Class Period was confirmed by the ICG Report and Peer Review of the ICG Report;

4) ICG Report and Peer Review

67.10.2 In December of 2020, TRQ Announced that a special committee of the board of directors of Oyu Tolgoi LLC has been created comprised of two representatives from TRQ and two from the Government of Mongolia ("**OT Special Committee**") to investigate the delays and cost overruns at the Mine. The OT Special Committee hired a group of independent consultants, referred to as the Independent Consulting Group, or ICG, to conduct a review of the causes of the cost overruns and schedule delays to the underground development of the Mine, and whether these problems were caused by geotechnical issues or controllable factors. The ICG was composed of eight highly experienced and qualified mining professionals, five of whom had previously worked directly on the Oyu Tolgoi project for TRQ and/or Rio Tinto. The ICG created a report on its investigation that was submitted to OT Special Committee (which included representatives of TRQ) on or about August 3, 2021;

67.10.3 As summarized in the ICG Report itself:

The Purpose of the Review was for the ICG to determine, based on the information from the Definitive Estimate 2020 (DE2020), the reasons and causes that have contributed to the schedule delays and cost overruns when compared to the Baseline Budget and Schedule from the Oyu Tolgoi Feasibility Study 2016 (OTFS16).

Further elements of the review include a study of the geotechnical data for the mine to determine what is the real impact, if any, of major changes that have occurred post the feasibility study and what the cost and schedule impacts of these changes has been.

67.10.4 Additionally, a Peer Review of the ICG Report was conducted "by two world-renowned experts" (as described in the ICG Report itself) with extensive experience in building and operating large block caves (such as the Oyu Tolgoi underground mine). In fact, one of these two peer reviewers was Rio Tinto's own former block caving expert. The Peer Review was submitted to the OT Special Committee alongside the ICG Report;

67.10.5 The ICG Report found and the Peer Review confirmed that:

- **At project restart in 2016**, Shaft #5 and Shaft #2, which were critical to the project schedule, **fell behind schedule from the very beginning, and the project never recovered from these delays**" [emphasis added];

- "The end result was a project falling behind schedule within the first six months and continuing to fall further and further behind as time progressed. In addition to this, **the reporting of overall progress was misleading (at best)… It did not provide a clear understanding of progress (or lack thereof)"** [emphasis added];

- Oyu Tolgoi senior managers knew of the problems with Shaft 2's headframe for years before the start of the Class Period, these deficiencies and others were documented in a May 2015 audit, and although Redpath was awarded a contract to complete the rectification work by June 2016, "the critical remedial works were not completed in time and permits to commence sinking [of Shaft 2] were delayed" as a result;

- "**It became obvious to most people on the ground that the Project was falling further and further behind schedule**. The split between the construction and mining teams became more pronounced to the point that people were working in silos with one group blaming the other for any failings. **This apparently reached the top of the organisation with Senior Executives also trying to apportion blame**, unable to agree on how the Project should move forward" [emphasis added];

- It was "**inconceivable that the Senior Management both on the Project site and in the higher-level committees were not aware of these shortcomings**, as reports were generated on a regular basis by the schedulers who were working in the Project Controls section and by the relevant area managers" [emphasis added];

- <u>The schedule delays resulted in significant increases in costs;</u>

- <u>Geotechnical issues were not a significant contributor to the schedule delays and cost overruns, no evidence was found that ground conditions were different than anticipated, no evidence was found that the rock quality was significantly different to that forecast in the 2016 Technical Report, and in fact there was evidence that in some instances the rock quality "was better than anticipated";</u>

- <u>"ICG does not consider ground support variances due to design changes Key Geotechnical Parameter changes. The Rio Tinto statement that these isolated poorer than expected ground conditions significantly impacted the schedule is misleading and not supported in the documents reviewed";</u>

67.11 These problems were only further confirmed by whistleblower Richard Bowley, who Rio Tinto brought in specifically to investigate and address the issues with the Oyu Tolgoi underground expansion project.

(…) <u>5</u>) Whistleblower Richard Bowley

68. (...)

69. (...)

70. (...)

70.1 As described above, by 2017 senior Rio Tinto management knew that the Oyu Tolgoi underground expansion was significantly behind schedule and over budget. Accordingly, two senior Rio Tinto executives – Arnaud Soirat who had been the CEO of Rio Tinto's Copper & Diamonds division since July 2016, and Craig Kinnell who was the CDO of Rio Tinto's Copper & Diamonds division in charge of the Oyu Tolgoi Project from December 2014 to July 2018 – hired experienced mining executive, Richard Bowley, specifically in order to examine the problems at Oyu Tolgoi and come up with a plan to address them;

70.2 Bowley had extensive knowledge about Oyu Tolgoi as he had previously worked at the Mine from 2011 through 2015 as an employee of the mining company that was engaged to develop the underground study, value, and detailed engineering for the Oyu Tolgoi underground expansion, and hence was extremely qualified to come up with a plan to address the problems with the Oyu Tolgoi expansion;

70.3 In fact, before Bowley had even been officially hired by Rio, on July 3, 2017 he wrote to Rio Tinto (Copper & Diamonds) CDO, Craig Kinnell, that "two out of three of your senior guys on the project have told me Jacobs are failing badly … We both know that mess will lead straight to OTs door in the shape of schedule overruns and cost." Kinnell immediately responded, agreeing that "the project was in trouble" and that "it is all getting messy Richard and needs intervention to stop it from getting significantly worse." In this email Kinnell explicitly acknowledged that the "problem was with scheduling work and potential capital expenditure" (as described in Exhibit P-65);

70.4 Bowley also identified that the concrete sets that were to be placed in Shaft 2 and secured with steel bolts in precast holes in the concrete were misaligned, and the steel work was badly engineered, making it necessary to redo all the steel bolts. This faulty design of the sets led to over 40,000 steel bolts that were installed in Shaft 2 having to be removed and reinstalled, which caused significant delay and added considerable cost. Bowley also investigated and identified substantial procurement problems at Oyu Tolgoi and found that the wrong types of steel and other supplies for fitting out the shaft were procured, and that those issues alone caused at least three to six months of additional delay;

70.5 Further, in addition to the engineering and procurement problems, Bowley identified that the construction phase of Shaft 2 also encountered serious setbacks. During the construction phase of building a shaft, the drilling of the shaft and the construction of the built elements in the shaft have to be done seamlessly and concurrently. However, Bowley found that there was no synchronization of mining and construction at the Oyu Tolgoi project. The shaft was inadequate for moving the necessary people and equipment for both mining and construction up and down, and there were conflicts between the mining personnel and the construction personnel over-use of the shaft. These problems caused additional delays and cost overruns;

70.6 In or about November 2017, Bowley was hired by Rio Tinto's Copper & Diamonds division as general manager for strategic projects and chief advisor for the Oyu Tolgoi project. Within a few months he was able to confirm the concerns with the Oyu Tolgoi underground expansion, and as reported in Exhibit P-35, by February of 2018, Bowley definitively informed Kinnell, Soirat, and other Rio Tinto executives that Rio Tinto could neither complete the underground project for $5.3 billion nor achieve sustainable first production in the first quarter of 2021;

70.7 On February 1, 2018, Bowley provided a presentation at Rio Tinto's London headquarters where he went over the cost overruns, schedule delays and Shaft 2 problems to Kinnell and a direct subordinate of Soirat, Rosemary Fagen (who relayed the contents of the presentation to Soirat);

71. As reported by the *Financial Times* at Exhibit P-37, Bowley's warnings that it was not possible for the Oyu Tolgoi expansion to be completed at the cost and on the schedule that was being represented to investors continued throughout 2018, including a March 6, 2018 email, a phone call and email in May 2018, and at least 3 emails in July 2018 – the last one on July 19, 2018 bluntly stating: "Latest update. 12 months behind schedule. $300mill capital over budget. Expect this to rapidly escalate" (as reported in Exhibit P-66 and detailed in Exhibit P-65);

71.1 In other words, by the start of the proposed Class Period on July 31, 2018, Rio Tinto had received written confirmation just days prior from the very expert it had hired to investigate and fix the scheduling delays and cost overruns at Oyu Tolgoi, that the project was 12 months behind schedule and USD $300 million over budget, and that these amounts and delays were expected to escalate rapidly;

72. Bowley continued to press the issues at Oyu Tolgoi with Rio Tinto executives – including sending multiple very explicit emails to senior management in August, October and November of 2018 and expressly raising his concerns with the board of directors of Rio

Tinto (which appoint TRQ's CEO and nearly half of its Board) – until January 2019 when Rio Tinto finally retained independent counsel, Baker Mckenzie, to launch an investigation into Mr. Bowley's warnings;

73. Mr. Bowley alleges that Rio Tinto intentionally delayed for over a year after he first alerted the company of the cost overruns and delays to disclose these facts to the public, and during this time Rio Tinto intentionally misled investors. In a public statement reported on by the *Financial Times* at Exhibit P-35, Mr. Bowley revealed that:

> I indicated [delay] to the schedule in the early part of 2018, which would lead to serious risk related to capital required to complete the project. This risk only grew throughout 2018, but was not disclosed to investors … Clear evidence exists through the project reporting, email correspondence and other documents [that] Rio Tinto were fully aware of the delays to the project and the effects these would cause.

74. In March of 2019, Mr. Bowley was fired by Rio Tinto, which he claims was retaliation for pressing the issues pertaining to the underground development of Oyu Tolgoi internally at Rio Tinto. He filed an unfair dismissal claim against Rio Tinto with the U.K. Employment Tribunal;

74.1 In connection with that proceeding, on March 16, 2020 Mr. Bowley filed a 62-page witness statement (the "Witness Statement") which was signed under penalty of contempt of court. Under the U.K. Employment Tribunal's rules, Mr. Bowley's Witness Statement would remain non-public unless and until a public hearing was held on his claims, at which point the Witness Statement and other evidence in his case would become publicly available;

74.2 Although Rio Tinto issued a statement that Mr. Bowley's claim before the U.K. Employment Tribunal was without merit and that Rio Tinto would vigorously defend against the claim, Rio Tinto reached a settlement with Mr. Bowley of his unfair dismissal claim the very day before Mr. Bowley's hearing before the U.K. Employment Tribunal was set to begin (as reported in the *Australian Financial Review* communicated herewith as Exhibit P-38), thereby keeping the Witness Statement and other evidence in his case from becoming made public. While Mr. Bowley's Witness Statement has not been made public, its contents have partially been reproduced in the Amended Consolidated Complaint filed on March 17, 2021 in the corresponding U.S. Class Action pertaining to the same events at issue as in this proceeding, communicated herewith as **Exhibit P-65**;

75. In March of 2020, it was reported by numerous news outlets including the *Financial Times*, communicated herewith as P-35*,* that Mr. Bowley had filed whistleblower complaints with financial regulators in several countries, including the SEC in the United States and the U.K. Serious Fraud Office;

76. (...)

77. In September of 2020, it was reported by various news outlets (including the *Financial Times* and the *Whistleblower News Network*, communicated herewith as **Exhibits P-43** and **P-44** respectively) that the SEC was examining Rio Tinto stemming from Mr. Bowley's claims, and were examining the allegations that Rio Tinto was aware of the problems with

the underground development project at Oyu Tolgoi months before publicly acknowledging that the project was delayed and substantially over budget;

(…) 6) Whistleblower Dr. Maurice Duffy

77.1 At the same time that Rio Tinto's senior management hired Bowley to investigate the delays and cost overruns with the Oyu Tolgoi expansion, Rio Tinto's long-time executive consulting firm, headed by Dr. Maurice Duffy, was also identifying problems at Oyu Tolgoi it had learned through its work in Mongolia.

78. Dr. Duffy is a performance coach for executives, who has coached leading executives for large corporations around the world. His company, GFI Blackswan had a decade-long relationship with Rio Tinto, and Dr. Duffy personally provided leadership development services to Rio Tinto's senior leadership – including to every CEO and every member of Rio Tinto's executive committee – from 2007 until 2017, when GFI Blackswan terminated its contract with Rio Tinto. Dr. Duffy oversaw executive coaching services for Rio Tinto's CEO, Jacques and the CEO of Rio Tinto's Copper & Diamonds Division, Soirat, for several years;

78.1 Blackswan began performing executive coaching services in Mongolia in or about 2015, providing those services to around 50 of Rio Tinto's senior management stationed there and in London. In connection with that work, Dr. Duffy said that he began to hear reports and concerns from senior leaders in Mongolia about unethical behavior and "potential overstatements" at OT in around 2016;

78.2 Blackswan had always provided monthly and quarterly reports about its work and interactions with senior Rio Tinto leaders in Mongolia to the head of Rio Tinto's human resources department who delivered those reports to Rio Tinto's CEO and the chair of Rio Tinto's board of directors. However, in mid-2017, Dr. Duffy was expressly instructed to discontinue providing these reports, which substantiated the same cost overruns and schedule delays at Oyu Tolgoi that Bowley had reported;

78.3 These developments were so troubling to Duffy that he felt compelled to bring his concerns — including concerns about the cost overruns and schedule delays at Oyu Tolgoi — to the attention of Rio Tinto's senior leadership in London. He did so by specifically raising them with Rio Tinto's Head of Human Resources, who was an intermediary for Rio Tinto's CEO Jacques, at a meeting on September 6, 2017. He was told in response to drop and disregard his concerns, that Jacques would not appreciate hearing the concerns about Mongolia, and that Duffy "will regret it" if he continues to report concerns about Rio Tinto's conduct in Mongolia. Nonetheless, Duffy understood that this Rio Tinto executive would pass along what he had told her to Jacques;

78.4 Uncomfortable with this response, and with other "serious misgivings" after reporting "multiple, unprofessional [and] unethical behaviors" by Rio's most senior executives since Respondent Jacques took over as CEO to Rio's Board and chairman—who "took no action" in response—Duffy resigned and terminated his firm's contract with Rio in December 2017 (as communicated herewith in Exhibits P-39 and P-40). Duffy explicitly communicated to Rio Tinto's senior leadership that concerns about unethical behavior in Mongolia was a reason for him terminating his contract;

78.5 According to Dr. Duffy, Rio Tinto's CEO Jacques "knew without a doubt" about the problems at Oyu Tolgoi by 2017. Dr. Duffy has stated that it was clear Jacques knew the "wheels were coming off" the underground expansion at Oyu Tolgoi in January 2018, when Jacques personally traveled to Mongolia to meet with the Mongolian prime minister.

79. After hearing about the investigation by Rio Tinto's external counsel, Baker McKenzie had conducted into Mr. Bowley's allegations, Duffy contacted Rio Tinto's board of directors and its counsel to request they reconsider their findings, as the investigation "excluded information" reported to Rio Tinto since 2017. As reported in the *Australian Financial Review* and the *Financial Times* at Exhibits P-39 and P-40 respectively, in a November 26, 2019 letter emailed by Dr. Duffy to Rio Tinto's board of directors, its CEO, its entire executive committee, its external counsel Baker McKenzie, and some of its large institutional shareholders, Dr. Duffy revealed that GFI Blackswan had terminated its £1m-a-year consultancy contract with Rio Tinto because of "serious misgivings about unethical behaviour". The contract with Rio Tinto was Blackswan's largest contract, and represented about 70% of its business;

80. (…)

81. In this same November 2019 email, Dr. Duffy further revealed that the independent so-called investigation commenced in January 2019 by Rio Tinto's outside counsel Baker McKenzie into the problems raised by Mr. Bowley, "excluded information known by [Blackswan] about Mongolia since 2017";

82. Dr. Duffy also revealed that prior to ending the consultancy agreement, he had reported "the potential overstatements that [Blackswan] were informed of in Mongolia and Mozambique, which we first informed [Rio Tinto] of in 2017." For context, in October of 2017, Rio Tinto's then-CEO and CFO were charged with fraud by the SEC "for inflating the value of coal assets" in Mozambique;

83. In another email sent to Rio Tinto's board of directors in January 2019, Dr. Duffy complained that "[w]e have informed your organisation many times since 2017 that we have information that might be pertinent on some legal and ethical grounds";

83.1 Rather than consider this information, Baker McKenzie pursued Dr. Duffy through the Class period seeking to destroy the data his firm had collected from Rio Tinto executives – including data about Oyu Tolgoi – and successfully did so after end of the Class Period;

84. Dr. Duffy subsequently submitted his allegations to various financial regulators, including the SEC, which have been examining his claims. It was reported in the companion U.S. class action (communicated herewith as Exhibit P-65) that at least certain of the data collected by Dr. Duffy's firm was provided to regulators in the U.K. before Rio Tinto was able to secure the destruction of the data in his possession, but that data is not publicly available;

85. It was first reported in July of 2020 that Rio Tinto had reached a confidential settlement with Dr. Duffy, which included a non-disclosure clause;

(…) 7) The Material Events and Disclosures

a. Prior to the Start of the Class Period

86. On **May 6, 2016** prior to the commencement of the proposed Class Period, TRQ filed a news release on SEDAR dated May 5, 2016 (communicated herewith as **Exhibit P-45**), announcing that a feasibility study had been completed for the Oyu Tolgoi mine (the "Feasibility Study") and disclosed select "highlights" from the Feasibility Study. Among these highlights, it was represented that:

   a. the cost to complete the development of the underground project at Oyu Tolgoi would be USD $5.3 billion; and

   b. construction was to take five years, with first underground production in 2021 and a five to seven year ramp up period to full production;

87. Construction of the underground development project began in mid-2016.

88. On **October 21, 2016**, TRQ publicly released the 2016 Technical Report pursuant to NI 43-101 for the Oyu Tolgoi Project, communicated herewith as Exhibit P-34. The 2016 Technical Report actually made slightly more optimistic representations regarding the construction timeline for Oyu Tolgoi, representing among other things that:

   a. the total cost to complete development of the underground project at Oyu Tolgoi would be USD $5.3 billion;

   b. the "First Drawbell" would be blasted (resulting in initial production) in mid-2020;

   c. production ramp up (after initial production) would commence in early-2021;

   d. sustainable production would be achieved in the first quarter of 2021;

   e. the conveyor to surface system would be commissioned (and thus construction of the underground development project would be completed) by early-2022;

   f. that full production of 95,000 tonnes per day would be achieved in early-2027;

   g. the net present value of Oyu Tolgoi, after taxes, using a discount rate of 8% for all years was U.S $6.94 billion; and

   h. the payback period for the mine would be eight-years from the start of 2017 (or until 2025);

88.1 Unbeknownst until the ICG Report was revealed in August of 2021, a third-party advisory firm, Broadleaf, was engaged to undertake an analysis of a project re-forecast undertaken in **September 2017**. Broadleaf concluded there was a mere 2% chance that the Oyu Tolgoi schedule would be achieved;

89. On **January 22, 2018**, TRQ announced the completion of the sinking of Shaft 2, including reaching final depth, shaft bottom, mass excavation and concrete floor installation, supposedly “marking an early milestone in the development progress” (communicated herewith as **Exhibit P-46**);

90. On **February 1, 2018**, well before the proposed Class Period began, significant TRQ shareholder SailingStone Capital Partners (“SailingStone”) released a public letter raising concerns about the corporate governance issues that existed at TRQ in relation to Rio Tinto and the fact that TRQ’s shareholders received all technical information through Rio Tinto, a copy of which letter is communicated herewith as **Exhibit P-47**. This letter prophetically raised warnings about the harm that could befall TRQ’s shareholders due to TRQ’s unreasonable deferral to Rio Tinto to provide technical updates about the underground development project to TRQ’s shareholders:

> … we remain concerned about corporate governance, given the potential for conflicts of interest which exist between Rio Tinto (“Rio”), your majority shareholder and the operator of Oyu Tolgoi, and the minority shareholders of Turquoise Hill. Specifically, we believe that basic corporate governance standards require an independent and informed management team and board of directors. …
>
> … The current management team is comprised of seconded Rio Tinto executives, who operate without employment contracts from TRQ. …
>
> **In terms of being informed, TRQ independent directors and management are solely reliant on Rio Tinto for information. By extension, this means that anyone who is interested in learning about OT [Oyu Tolgoi] or TRQ is also solely reliant on what Rio Tinto will provide. The last four technical reports, which are the basis for publicly available data on the project, have been prepared by the same firm working in close coordination with Rio Tinto management and operations teams. To our knowledge, there has been no attempt to independently verify either the assumptions being used or the outputs**, beyond the detailed audit and benchmarking analysis which SailingStone previously provided to the board. **In addition, TRQ is regularly excluded from technical updates, including the most recent cost and timing review conducted by Rio Tinto. As a result, there is no way to determine how the project is progressing versus plan and what the capital spending is, independent of Rio Tinto**. … Unfortunately, despite the existence of language in the 2010 Heads of Agreement (Schedule E, p 9) which specifically provides the minority shareholders with “reasonable access to the OT Project (including to all information, books, records and data) including for the purpose of…preparing technical reports; and carrying out such procedures as may be necessary in order for (Turquoise Hill) to comply fully with its disclosure and reporting obligations”, **independent directors as well as TRQ management and staff often are not given full**

and unfettered access to data. As a result, it is difficult to provide the market with material updates unless the information is first pried from and then vetted by Rio Tinto internal processes. Rio is free to do what it likes with its own information, but should have no input on what is material to TRQ minority shareholders. That is best determined by an independent, incentivized management team and the independent directors.

Lastly, we are concerned that Turquoise Hill has no on-the-ground representation and no direct dialogue with the government of Mongolia, despite the fact that it is TRQ, and not Rio Tinto, that actually holds the license and permits to the project. The recent press release from Rio Tinto, highlighting the creation of its new office in Ulaanbaatar and announcing a re-commitment to Mongolia with no mention of or coordination with Turquoise Hill is explicit acknowledgement of Rio's attitude towards minority shareholders. They simply don't exist.

As a result of these concerns, and Rio Tinto's repeated refusal to speak with SailingStone representatives despite numerous requests for meetings, including offering to fly to their London headquarters at Rio's convenience, we ask that the board of directors consider the following:

1. **Conducting an independent technical report so that we can be certain that existing estimates of capital intensity and the development schedule are reasonable. Given the size and duration of this project, and the obvious potential conflicts of interest that exist between Rio Tinto and the minority shareholders, we believe that this decision is necessary** to protect our multi-billion dollar investment.

2. **Creating a fully-staffed TRQ technical team who will have complete access to the OT project and will report back regularly to TRQ management and the independent directors. This would provide management and directors with the information necessary to determine what and when material updates should be made to the market**, and could be the basis for more fruitful engagement with the host government.

3. **Implementing employment contracts for management and restructuring compensation plans to remove any real or perceived conflicts with Rio Tinto and to significantly improve alignment with TRQ shareholders**. This could include increasing available cash compensation opportunities towards industry median levels, an increase in equity grants available to be earned based on specific performance targets and improved disclosure of

managements' and directors' vested and unvested exposure to TRQ's and Rio Tinto's stock price.

<u>As Turquoise Hill is a publicly traded company, and is not a subsidiary of Rio Tinto, it is critical that the board of directors and management team of TRQ be independent, informed and incented exclusively to generate long-term value for all TRQ shareholders</u>. …
[emphasis added]

91. (...)

91.1 Also on **February 1, 2018**, Richard Bowley made a presentation at Rio Tinto's London headquarters where he went over the cost overruns, schedule delays and Shaft 2 problems with the Oyu Tolgoi expansion project. This presentation was made to Craig Kinell, who was the CDO of Rio Tinto's Copper & Diamonds division in charge of the Oyu Tolgoi Project, and Rosemary Fagen, who was the Vice President for Human Resources for Rio Tinto's Copper & Diamonds group since July 2016 and for Rio Tinto Copper since September 2014, reported directly to Arnauld Soirat, participated in the meeting on behalf of Soirat, and reported the substance of the meeting to Soirat;

92. On **March 14, 2018** explicitly in response to the February 1, 2018 letter from SailingStone (Exhibit P-47), the TRQ Board issued a news release which contained a public letter to TRQ's shareholders, communicated herewith as **Exhibit P-48**. In this letter, the Company represented that the Board and senior management of TRQ:

a. recognized that their responsibility is to serve the interests of TRQ and its shareholders (as opposed to the interests of Rio Tinto and its shareholders);

b. were committed to the principles of transparency and good governance;

c. were committed to robust and effective corporate governance that appropriate mitigated any conflicts that may arise between TRQ and Rio Tinto;

d. had improved the alignment of TRQ's senior management with the interests of TRQ's shareholders; and

e. were always open to enhancing transparency and the effectiveness of TRQ's corporate governance;

92.1 During a monthly progress report during **the first week of April 2018**, Rio Tinto's Senior Construction Manager at Oyu Tolgoi, Andrew Duff, told Rio Tinto's Global Head of Projects, David Joyce, that Shaft 2 was, by that time, at least five months behind schedule. The five-month delay in April 2018, forecasted out, meant that the commissioning of Shaft 2 was approximately 14 months behind schedule—a fact that was known and reported internally to senior Rio Tinto management;

92.2 A short while after this meeting still in **April of 2018**, Joyce asked Andrew Duff's boss, Grant Brinkmann – who was Rio Tinto's senior-most manager with direct responsibility for

Shaft 2 – to get documentation evidencing his efforts to get Jacobs back on schedule because the delays reported by Duff had been reported to Rio Tinto's CEO, Jacques, as well as to Rio Tinto's leadership in London, UK;

92.3 In **May 2018** in the face of escalating costs and delays, Rio Tinto terminated Grant Brinkmann, who had been Rio Tinto's Area Manager of Shafts at the Oyu Tolgoi project since June 2016 and who had repeatedly warned senior management about Jacobs' poor performance and about steel-quality issues. Mr. Brinkmann's termination provides clear evidence that Rio Tinto knew that there were material setbacks with Shaft 2 and the Oyu Tolgoi expansion in general, and indicates that Rio Tinto was aware that the Respondents' public statements about the schedule and cost of the Oyu Tolgoi expansion were false;

93. On **May 3, 2018**, TRQ released a news release, again explicitly responding to the concerns raised by SailingStone (communicated herewith as **Exhibit P-49**). In this news release TRQ expressly represented that both it and Rio Tinto recognized that TRQ's independence and its participation in all material and relevant Oyu Tolgoi matters were important to facilitating the maximization of Oyu Tolgoi's value for all Turquoise Hill shareholders. TRQ further represented that the Company was "appropriately informed" about Oyu Tolgoi matters, but nonetheless its Board had met with Rio Tinto and were taking specific actions to enhance their working relationship on relevant Oyu Tolgoi matters, including:

a. increasing direct participation by TRQ's management on Oyu Tolgoi matters, including in the upcoming Oyu Tolgoi cost and schedule reviews;

b. Enhancing the independence of Turquoise Hill's technical personnel; and

c. Establishing a project management office at Oyu Tolgoi as an additional

93.1 On **July 3, 2018**, Bowley emailed Soirat's immediate subordinate, Fagen, reporting (as detailed in Exhibit P-65) that he had been informed by Rio Tinto's main contractor, Jacobs, which was primarily responsible for the engineering, procurement and construction management ("EPCm") work at Oyu Tolgoi, that due to the delays to Shaft 2, Jacobs was falling behind schedule because it was not getting sufficient cage space for moving people and equipment up and down the much smaller Shaft 1, and that it wanted to offset the increased costs against Rio Tinto. Jacobs EPCm contract provided for a target cost of USD $240 million on a reimbursable cost basis for its management of the supply chain, construction companies, procurement, and other functions, but this money was going to run out in December 2018. Bowley further reported that it would cost at least an additional USD $120 million for the EPCm work at current expectations, and that Rio Tinto's Growth & Innovation ("G&I") Division was panicking and considering firing Jacobs and doing the work themselves:

> Budget for the EPCm runs out by Christmas
>
> Entry for EPCm $240mill / expected exit just on current expectations $360mill
>
> Massively under performing

> The kicker !!! G&I are considering binning Jacobs and "self managing/ performing.
>
> A self performing operator trust me is more risk than an under performing engineering group !!
>
> I will get some exact detail on this but senior OT [Oyu Tolgoi] / G&I people told me this last Sunday.

93.2 That same day, Bowley sent a second email to Fagen (also detailed in Exhibit P-65) stating in relevant part about the cost overruns about which he had previously warned:

> I am not blowing my own trumpet, but this has been coming from day one !! … The realization and magnitude of what is happening is starting to dawn I think on a few.

93.3 Fagen responded that same day, acknowledging the problems were well known to Rio Tinto, including Arnauld Soirat:

> Oh don't worry, we've known it from the start, just haven't been able to do anything about it. Arnauld has played a very card [sic] here, which is why you now see 'things' surfacing.

94. On **July 19, 2018** (i.e., twelve days before the start of the Class Period), Bowley emailed Fagen again alerting her that the project was USD $300 million over budget and twelve months behind schedule (as reported in the *Australian Financial Review* at Exhibit P-36, as well as in the *Global Investigations Review* on September 28, 2020 communicated herewith as **Exhibit P-66**):

> **From:** Richard Bowley (OT)
> **Sent:** 19 July 2018 05:20
> **To:** Fagen, Rosemary (RTHQ) <Rosemary.Fagen@riotinto.com>
> **Subject:** RE: Call
>
> Latest update.
>
> 12 months behind schedule.
>
> $300mill capital over budget. Expect this to rapidly escalate.

b. During the Class Period

95. Not only did TRQ not release a material change report disclosing the material change to its principal and only significant resource property brought to Rio Tinto's attention by Bowley as it was required to under applicable securities regulations, instead on **July 31, 2018**, TRQ released its interim financial statements, MD&A, and corresponding CEO and CFO certifications on Form 52-109F2, as well as a news release, for the three and six-

month period ended June 30, 2018 (i.e. Q2 2018, communicated herewith as Exhibits P-6 to P-10 respectively), which doubled-down on the Company's prior misrepresentations. In these Impugned Documents and despite the very explicit warnings from Bowley less than two weeks prior, TRQ represented *inter alia* that:

a. underground development continued to progress during the second quarter of 2018, and June 2018 had achieved a "record-level" of equivalent underground development;

b. during the fourth quarter of 2017, Rio Tinto had undertaken a schedule and cost review and provided TRQ "with a high-level overview of the review's outcomes, <u>in which Rio Tinto concluded there were no material changes in project scope, cost or schedule. Following analysis of [Rio Tinto's] review's conclusions, Turquoise Hill is in agreement with the findings.</u>" [emphasis added];

c. production from first Drawbell (i.e. initial production) remained planned for mid-2020;

d. sustainable first production remained planned for 2021;

e. construction at Oyu Tolgoi was expected to complete in 2022 (with the completion of the convey-to-surface system);

f. full production would be achieved by 2027; (…)

g. the net book value of Oyu Tolgoi as at June 30, 2018 was USD $8.05 billion; <u>and</u>

<u>g.1</u> <u>that the filings did not contain untrue statements of material fact or omit a material fact required to be stated, and that Respondent Colton was responsible for establishing and maintaining DC&P and ICFR, had designed DC&P or caused it to be designed to provide reasonable assurance that material information relating to TRQ was made known to him and information required to be disclosed was summarized and reported, had designed ICFR or caused it to be designed to provide reasonable assurance regarding the reliability of financial reporting in accordance with GAAP, and that there were no changes that occurred in the period that had materially affected TRQ's ICFR (which had been represented as being effective as of the end of the previous fiscal year);</u>

96. There was nothing in the July 31, 2018 MD&A to disclose the very specific warnings about delays and cost overruns at Oyu Tolgoi being given to Rio Tinto by Richard Bowley;

97. On **August 1, 2018**, TRQ conducted a conference call to discuss its earnings that were released the prior day (a transcript of which is communicated herewith as Exhibit P-31). On this call, Lane represented unequivocally that "we will remain on target for the first drill point blast in mid-2020 and sustainable production in early 2021." Lane further represented that:

a. The convey-to-surface system would be ready for the continued ramp up in 2022 (i.e. when construction would be completed); (…)

b. The Shaft 5 ventilation system was fully commissioned during the quarter and was now operational and adding additional air capacity to the mine; and

c. That Shaft 2 equipping was “well underway”;

98. Quellmann and Colton repeated Lane’s representations on this call, with both Individual Respondents stating at different points on the call that TRQ had completed a major milestone with the completion of Shaft 5, and both reaffirming that initial production from first Drawbell would occur in mid-2020 and sustainable production in 2021;

98.1 These representations about Shaft 5 being operational were false, because at the time when they were made, the Shaft 5 heating unit, which is required by law to ensure that underground work can be done at safe temperatures and is critical to underground development, was in fact at least eight months behind schedule. Thus, it was not possible to properly perform Shaft 5’s ventilation function and it was a misrepresentation to claim that Shaft 5 was “fully operational”;

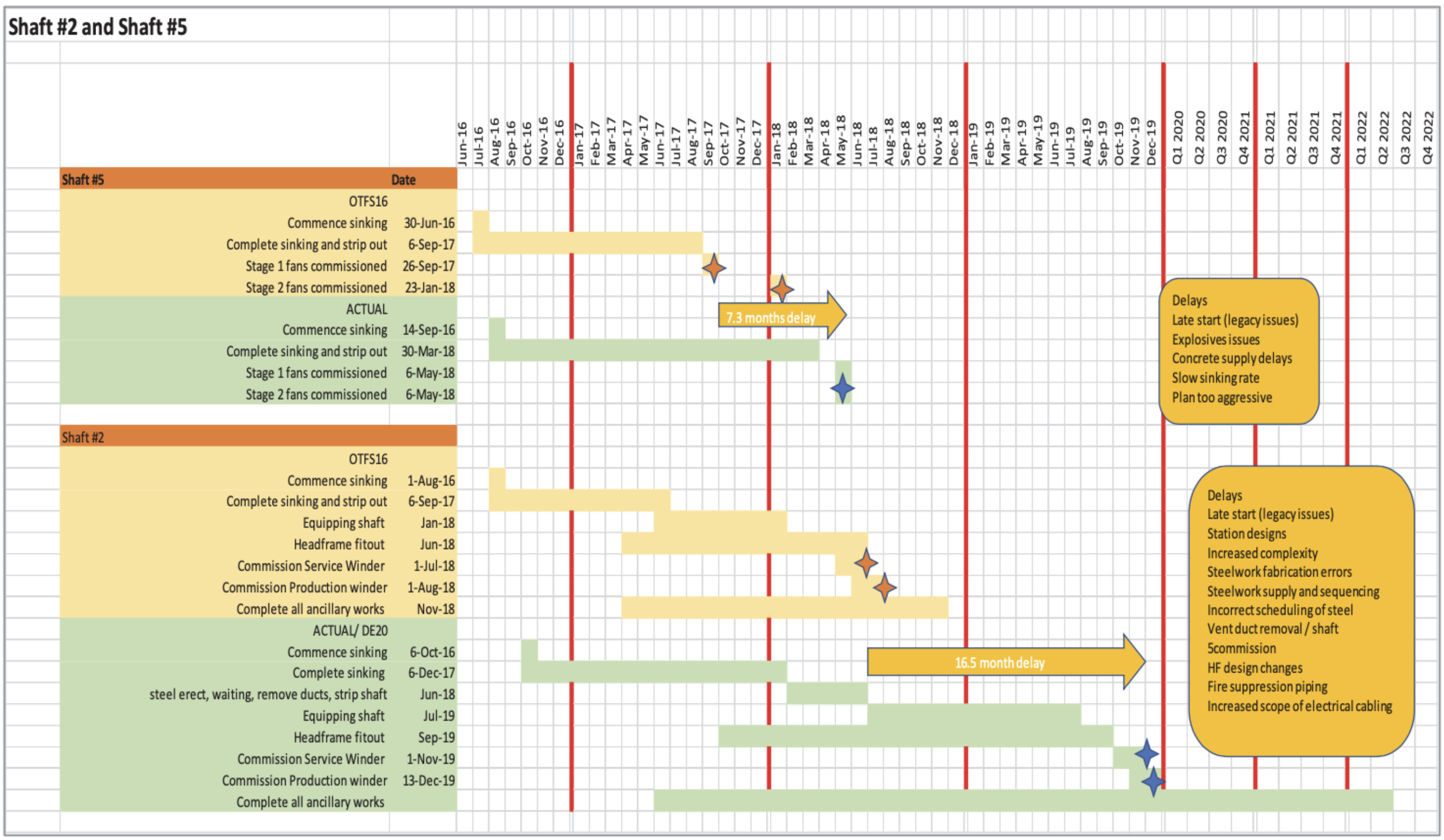
98.1.1 Additionally, the representation that Shaft 2 equipping was “well underway” was false as Shaft 2 was already facing significant challenges by July of 2018, including specifically regarding its equipping;

98.1.2 This was the same conclusion reached by the ICG in its investigation, The ICG Report expressly found that:

> **The delay to Shaft #5 had a major impact on Shaft #2**. In order to increase ventilation to the underground mine two large ducts were installed in Shaft #2 and connected to exhaust fans at the 1148 level. These ducts needed to be kept in place until Shaft #5 and the main exhaust fans were fully commissioned, **which then delayed the start of equipping of Shaft 2**. …
>
> **The plan was to strip out the entire shaft sinking equipment then commence shaft equipping** from the top of the shaft downward. However, the temporary exhaust ducts in place above 1148 level could not be removed **until the completion and commissioning of Shaft #5, which as noted in the previous section, was late by 7.3 months.** [emphasis added]

98.1.3 To provide additional context, Shaft 2 sinking was scheduled to commence on August 1, 2016 and to be completed by April 27, 2017. The ICG Report found that in reality, Shaft 2 sinking didn’t even start until October 6, 2016 and took until December 6, 2017 or 7 months later than planned. The strip out of Shaft 2 which was supposed to be completed by September 6, 2017 (and before equipping would commence), in reality took until June of 2018. Further, the equipping of Shaft 2 mentioned above, which was scheduled to have been **completed** by January 2018, **didn’t even start** in earnest until June of 2018, and as the ICG Report found, "[o]nce equipping could start in earnest there were several major delays". This meant that before the start of the Class Period, the vital Shaft 2 was already known to be months behind schedule, and given that it was essential for transporting mining crews and equipment underground, it was well known that the delays to completing Shaft 2 would cascade into exponentially greater delays for the rest of the underground expansion. A chart summarizing the delays to Shaft #2 and Shaft #5 and their impact from the ICG Report can be found below:

Chart 3.2.2.1 Shaft #2 and Shaft #5 Delays Impact



98.2 In direct response to analysts' questions regarding the reliability of TRQ's statements about the progress at Oyu Tolgoi and the concern that TRQ was somewhat on the "outside looking in", Quellmann reassured investors that he and TRQ had "good visibility" and were "well plugged-in" to the "various processes, cost reviews and the like," including with respect to the "the progression of the underground construction." On this call, Quellmann specifically committed to transparency and touted his and TRQ's intimate knowledge of the actual facts on the ground at Oyu Tolgoi: "where I am today, what I see, I think we're in a good place [and] we'll continue to monitor that, we'll make sure that we are set—well set up to provide good visibility to the board and to our shareholders." In a follow up to that question inquiring as to why the Respondents could remark that they were very plugged into the discussion at the Oyu Tolgoi Mine, Respondent Colton stated that "at an OT level we – there are definitely members of the TRQ senior leadership team that are directors on the OT board. So we definitely have visibility through our board representation. … So we do have representation and we do get good visibility from O,T, not just in relation to the sort of day-to-day stuff but some of these more strategic issues as well";

99. During the week of **October 2, 2018** in a presentation given to investors in New York and posted on Rio Tinto's website (communicated herewith as **Exhibit P-50**), the CEO of Rio Tinto's Copper & Diamonds division (the division to which Richard Bowley wrote his July 31, 2018 warning), Arnauld Soirat, who was Quellmann's long-time boss until only eight weeks prior and a fellow member on the Oyu Tolgoi LLC board of directors alongside Quellmann and Colton, said that the underground development was "on budget and on schedule", that "[f]irst drawbell production [was] expected mid 2020", and that the project had maintained "$5.3 billion development capex projected", despite Rio Tinto being expressly and repeatedly told otherwise by Bowley;

100. On **October 15, 2018**, TRQ released a news release (Exhibit P-11) where it announced an underground development "update" and "re-forecast". In this press release, TRQ disclosed for the first time that despite making significant progress in the underground development project, Rio Tinto, in its role as manager of Oyu Tolgoi and underground construction contractor had notified TRQ that there had been certain delays that were expected to result in sustainable production start being delayed from the first quarter of 2021 to late in the third quarter of 2021. This disclosure attributed the reason to be delays to "the completion of Shaft 2, which includes over four months of schedule contingency, and challenging ground conditions." However, despite this roughly nine-month expected delay, the Company unequivocally represented that:

> … capital costs remain in line with the overall [USD] $5.3 billion budget … lateral development has progressed well, [project] construction completion schedule remains on track for 2022 and the project is expected to be completed at the $5.3 billion budget estimate disclosed in the 2016 Oyu Tolgoi Feasibility Study and the 2016 Oyu Tolgoi Technical Report. … First draw bell remains on track for mid-2020, partly due to a change in the draw bell sequencing strategy.

100.1 The statements about the re-forecast were intentionally misleading. The (…) Respondents developed and publicly reported this re-forecast of the project timeline to create the false impression that TRQ was only a bit behind schedule and still on budget, and reassured investors that the "re-forecast" included "over four months of schedule contingency". However, the re-forecast was accomplished specifically by transferring costs and projects related to the major infrastructure of Shaft 2 to later phases — providing the Company with a false basis to claim a closer adherence to the original schedule, while slyly increasing costs and the ultimate length of schedule. The re-forecast involved reducing the scope of various projects such that if a task entails steps "A" through "I", you reduce that to steps "A" to "D", and make steps "E" to "I" a whole new project and push that project into a secondary phase. The re-forecasting simply delayed and defunded tasks, such as commissioning work, that would still need to be done eventually. It just moved the project to further down in the process and actually served to add costs (as contractors were essentially being paid twice for time and materials to do the work that was de-scoped from their original project, but for which they had been paid). However, it also made it appear as if TRQ was more closely adhering to the schedule;

100.1.1 This was the same conclusion reached by the ICG Report, which examined the re-forecast of the schedule and found that the effect of the re-forecast was to provide "misleading" reporting about the actual progress of the underground development. As stated in the ICG Report:

> Progress was misleadingly reported. Areas such as the Oyut Camp (which was ahead of schedule) was used to balance the more critical areas such as the shafts that were falling further behind. Almost all the reporting focussed on overall monthly achieved targets against the latest targets. These target dates were changing. throughout the first three years (OTFS16 to FC1 to FC2 plus numerous mining plan changes) to better align actual progress against "plan" without altering the final completion dates. This reporting was misleading.

100.2 The tasks that were being "de-scoped" however, were critical infrastructure tasks that had to be completed before the vital Shaft 2 could become active. The weekly progress reports generated by Jacobs for the underground expansion reflected that, before the re-forecast, by August of 2018 the total overall progress was at least 14% behind the original schedule (which over the life of the four-year project equates to months of delay and cost overruns of approximately USD $750 million over budget). However, by replacing the original plan with this new re-forecasted schedule, the project's delays were artificially lowered from 14% to only 5% instantaneously. Shaft 2 was repeatedly "de-scoped" throughout the Class Period, such that by the second quarter of 2019, 10% of the entire schedule for Shaft 2 had been de-scoped in this way;

100.3 Not only were the representations about being on budget and only nine-months behind schedule false, the representations about lateral development progressing well were also false, as from the end of 2017 until June 2019, lateral expansion was consistently behind schedule by 100-200 meters per month (as the schedule required construction of 800 meters per month). Additionally, in this news release, TRW represented that it had achieved lateral development of 2.3 kilometres during the third quarter of 2018, when in fact only approximately 1.8 to 2.1 kilometres had been completed because of lateral expansion being consistently behind schedule. TRQ was forced to later admit that the lateral expansion figure it reported for the third quarter of 2018 was false, overstated and had to be revised downwards;

100.4 The very next day (October 16, 2018), Bowley emailed Arnauld Soirat's direct subordinate, Rosemary Fagen (as detailed in Exhibit P-65), that TRQ had not disclosed "the real truth" even though Rio Tinto and Arnauld Soirat had known the true state of affairs for over a year (as Bowley had previously told Soirat that the project was 12-15 months behind schedule and at least USD $500M over budget):

> I see TRQ put out a very watered down statement of the truth regarding the Underground yesterday. **It's a good job the market does not know the real truth, and that Rio knew this was very likely over 12 months ago**. I think GoM [Government of Mongolia] and our other shareholders may want heads. Arnaud [Soirat] needs to be clever here. **He has consistently put out messages to the market the project was on schedule and budget. He may take some heat in terms of not seeing what was coming, even though he knew**. [emphasis added]

100.5 As Bowley subsequently recounted in his sworn Witness Statement submitted to the U.K. Employment Tribunal in connection with his unfair dismissal claim, which is partly reproduced in the U.S. Complaint communicated herewith at Exhibit P-65:

> Extraordinarily, in October 2018, Arnaud Soirat issued a press release which included a review of the OT project....At page 12 it states that OT is one of the world's highest quality developments with projected capital expenditures of US$5.3bn. It states emphatically, "Underground project on budget and schedule" with productivity improvement across project and operations and an excellent safety performance. This was completely untrue and I raised this with Rosemary Fagen on 16 October 2018 in an email entitled "TRQ share price."

100.6 On **October 26, 2018**, Bowley met Arshad Sayed, who had replaced Craig Kinell as the Chief Development Officer of Rio Tinto's Copper & Diamonds division in charge of the Oyu Tolgoi Project, where Bowley again repeated that the project was currently 12 months behind schedule and that the representations made in Rio Tinto/and Arnauld Soirat's October 2, 2018 presentation that the underground "project is on time to deliver mid-2020 and that "all material assumptions underpinning these production targets continuing to apply and not having changed materially" were not true;

101. On **October 29, 2018**, Bowley sent an email again to Sayed repeating that there would be a "<u>12-18 month delay</u> in the underground project, with <u>substantial cost implications</u>" [emphasis added] (as reported in the *Financial Times* at Exhibit P-37). Referencing the nine-month delay the Respondents had disclosed on October 15, Bowley told his manager that "stating this [delay] will have a limited impact on first drawbell again is a suicidal statement.";

101.1 The next day on **October 30, 2018**, Bowley sent an email to Rosemary Fagen (as detailed in Exhibit P-65) regarding TRQ's statement about the expected delay and the supposed "challenging ground conditions" that had been the purported cause of the setbacks to Shaft 2, which included in relevant part:

> **You and me both know the TRQ statement is a little light on the truth. Nine months is already twelve months**, and if you don't know commissioning being one of the biggest risks to any project **may add a further three to six months**. … if the decline and the conveyors are not

> commissioned, I am not sure how people think we get that ore to the surface ??? **The risks are only going to get bigger**.
>
> I know **in shaft 2 this month the target was [to install] 100 sets. Month to date I think its around 3 !!!!!!** You do the numbers ?? It's not rocket science, **and it's certainly not a Geo issue as TRQ stated, it's purely construction**. [emphasis added]

102. On **November 1, 2018**, TRQ released its interim financial statements, MD&A, and corresponding CEO and CFO certifications on Form 52-109F2, as well as a news release, for the three and nine-month period ended September 30, 2018 (i.e., Q3, communicated herewith as Exhibits P-12 to P-16 respectively). In these Impugned Documents and despite the very clear warnings from Bowley, TRQ represented *inter alia* that:

a. during the third quarter of 2018, Oyu Tolgoi continued to maintain strong crew productivity and underground development;

b. Rio Tinto, in its role as manager of Oyu Tolgoi had undertaken its second annual schedule and cost-reforecast for the project; and TRQ had commenced its own review of the schedule and cost reforecast with the assistance of TRQ's own independent Qualified person;

c. production from first Drawbell remained planed for mid-2020;

d. sustainable first production would now occur by the end of the third quarter of 2021, instead of the first quarter of 2021 as previously and repeatedly represented;

e. lateral development had progressed well and construction at Oyu Tolgoi remained on track to be completed in 2022;

<u>e.1</u> <u>lateral development of 2.3 kilometres had been achieved in the third quarter of 2018</u>

f. the underground development project remained on budget and was expected to be completed costing USD $5.3 billion as disclosed in the 2016 Oyu Tolgoi Feasibility Study and the 2016 Oyu Tolgoi Technical Report;

g. the net book value of Oyu Tolgoi as at September 30, 2018 was USD $8.40 billion; (…)

h. Rio Tinto and TRQ would commence a definitive estimate review that would provide the next cost and schedule review for the underground development project and would be concluded early in the third quarter of 2019; <u>and</u>

<u>h.1</u> <u>that the filings did not contain untrue statements of material fact or omit a material fact required to be stated, and that Respondents Quellmann and Colton were responsible for establishing and maintaining DC&P and ICFR, had designed</u>

DC&P or caused it to be designed to provide reasonable assurance that material information relating to TRQ was made known to them and information required to be disclosed was summarized and reported, had designed ICFR or caused it to be designed to provide reasonable assurance regarding the reliability of financial reporting in accordance with GAAP, and that there were no changes that occurred in the period that had materially affected TRQ's ICFR (which had been represented as being effective as of the end of the previous fiscal year);

103. There was nothing in the November 1, 2018 Impugned Documents disclosing the very specific warnings about delays and cost overruns at Oyu Tolgoi being given to Rio Tinto by Bowley just a few weeks prior to the release of these Impugned Document, nor that such delays and cost overruns were indicators of an impairment in the net book value of Oyu Tolgoi;

104. On **November 2, 2018**, TRQ conducted a conference call to discuss its earnings that were released the prior day, a transcript of which is communicated herewith as Exhibit P-32). On that call, Colton once again reaffirmed that the total underground cost estimate of USD $5.3 billion remained unchanged, that initial production from first Drawbell remained on track for mid-2020 and that construction completion remained on schedule for 2022. With regards to the need for additional funding due to the delay in revenue from underground production, Colton explicitly stated that TRQ "may have flexibility elsewhere to mitigate the impact of delaying revenue and minimize the need to source additional funding." Quellmann also stated that "[o]ur financing plan is robust. We have $3.8 billion of liquidity available, over 1/3 of the estimated underground development capital has already been deployed, and OT has the capacity to raise an additional $1.7 billion in debt, which we call supplemental debt under the existing financing agreements";

105. On this conference call, in response to an analyst's question as to why the 9-month delay would not cause the $5.3 billion cost to increase, Quellmann also stated that:

> **(…) [A] lot of the key data points that would've formed part of the re-forecast and preliminary conclusions actually confirmed the existing assumptions. So costs, as you just referred to, stay the same. We're referring to the final completion date as well as the first draw bell. It's really the first sustainable production which has been pushed out** … because some of the delays that are incorporated are ones that already happened, (…) in particular, in relation to Shaft 2 … (…) So now, where we're (…) with the information what we've provided, **we confirm the $5.3 billion total budget** (…)[emphasis added]

106. In response to an analyst on the conference call looking for help to "get comfortable that this [delay] doesn't turn into something longer (…)", Quellmann responded in part that:

> … We believe that we've got one of the best operators in the industry with Rio Tinto as the project manager of the open pit as well as constructing the underground mine … And we think we've got one of the best world-class operators to be able to do this for us. We also think that the governance

> mechanisms are robust. … (…) In the big scheme of things, we think that the controls that are in place are strong.

107. Lane also made comments on this call that some of the ground condition problems and related problems with Shaft 2 that had caused the delay in sustainable production, had occurred in the past and were behind TRQ;

107.1 Additionally, on this call, Respondent Quellmann stated that “[b]oth [TRQ’s] management and the board were at site only a few weeks ago, and … it is truly impressive to see the level of activity and the rate of progress that’s being achieved” and represented that “I’ve got extensive relationships with Rio [Tinto] and understand their approach to projects and operations. We will continue to work closely with them and we’ll be closely involved with key decisions and project reviews.” Quellmann further represented that there were numerous mechanisms that allowed TRQ to oversee and review the work at Oyu Tolgoi, and that TRQ worked alongside Rio Tinto to assess the costs and schedule of the underground development at the mine:

> … I would say, the way -- **if you look at the way we manage, how we operate and how we govern and oversee Oyu Tolgoi from a TRQ perspective, there's obviously a number of mechanisms, bodies in place that allow TRQ, just from a management perspective, to review performance, improve budgets, and that'll be done at the board level, at the committee level and that's regularly the ordinary course of operating**. When you refer to independent studies, **what tends to happen is in relation to the underground costs and shape of the re-forecast we just talked about, of course, we, as the TRQ management team, review the work and are working with OT and Rio to do that together** … [emphasis added]

107.2 In fact, an analyst on the call expressly asked whether TRQ was kept informed and actively involved in the review of the schedule and costs of the Mine development or that was just within the knowledge and control of Rio Tinto, and Respondent Quellmann explicitly represented that TRQ was actively involved in Mongolia and informed of the underground development:

> Orest Wowkodaw *Scotiabank Global Banking and Markets, Research Division - Senior Equity Research Analyst of Base Metals*:
>
> Okay. And just wanted to clear, do you have a seat at the table with respect to this -- the new study and the review? Or is this something Rio is doing?
>
> Ulf Quellmann *Turquoise Hill Resources Ltd. - CEO & Director*:
>
> Well, so Rio is the manager of the project, but **TRQ certainly has a seat at the table. First of all, we have a seat at the table, we're on the OT LLC**

> **Board**. So that's really where the first round of work really happens and takes place **because the OT LLC Board of Directors obviously have to sign off on regular budgets, and certainly, that includes the underground**. And then there are a number of other committees **… So those are bodies and mechanisms that we have to obtain information. So those are the formal arrangements that are there, that we avail ourselves of**. And then in addition, **I would say, we think that we have a very good and a very productive working relationship both with the project team at OT itself as well as the Rio team that's going to start the project work. And as I said before, that's why Brendan [Lane] is in Mongolia at the moment to go through the data, together with the external consultant to do that. So we're well positioned, Orest, to, as you said, have a seat at the table and to understand, review and provide input, and ultimately, sign off on the underground expansion**. [emphasis added]

108. In conjunction with the November 2, 2018, conference call, TRQ released a corresponding slideshow presentation, which it also posted on its website (communicated herewith as Exhibit P-17). Within this slideshow the company represented that the Oyu Tolgoi underground had "Robust Fundamentals Relative to Comparable Projects" which "Result[ed] In Low Capital Intensity". Further, under a slide with the heading "Turquoise Hill" A Compelling Value Proposition", the Company represented that:

   a. "TRQ's market valuation is deeply discounted relative to its fundamental strengths";

   b. The Oyu Tolgoi project had "[r]obust project fundamentals"; and

   c. The "[k]ey risks [were] well understood and managed";

108.1 On **November 12, 2018**, Bowley sent another email to Sayed (described in Exhibit P-65) regarding the discrepancy between the Respondents' public statements and the true facts, wherein he once again identified TRQ's statements and the purported reasons given for the delay to Shaft 2 to be false:

> **[T]he October 15th TRQ news release, as I told you this was a very watered down version of what are actually the issues**. Shaft 2 is behind schedule due to construction and procurement issues, **and not geo issues as TRQ state. Our schedule issues are of our own making**.
>
> **At the present my belief is we will be around 12 months behind schedule**, but what no one will talk about and is always one of our biggest risks on any project is commissioning. **Commissioning I believe will add a further 3-6 months of schedule risk, which may entail we finally come in around 18 months behind schedule**. [emphasis added]

108.2 On **November 26, 2018**, Bowley wrote to Fagen (as detailed in Exhibit P-65), stating in relevant part:

> …**we are a country mile behind schedule on Shaft 2** which should of [sic] now been accommodating the additional 350 people a day we need underground to meet the staffing histogram for the project...If they do not want to listen Rosemary, **honestly the business in [sic] a bad place, and if our stakeholders and GOM [the Government of Mongolia] wake up, next year could be a nightmare for OT [Oyu Tolgoi] and Rio Tinto**. [emphasis added]

108.3 Fagen did not dispute Bowley's assessment, but simply responded the next day, "Thank you Richard very thorough assessment, have you discussed with Arshad [Sayed]?";

108.4 On **December 10, 2018**, Bowley again wrote to Fagen, warning her of the severe implications for the business and reminding her that the delays had been known for a long time and that Rio Tinto could only ignore the truth for so long "before it will slap us in the face properly along with GOM [Government of Mongolia] and other TRQ shareholders....sorry to be honest.";

108.5 Fagen replied on **December 13, 2018**, simply that "Hi Richard I hear you!!!! I will have a discussion with Arshad [Sayed] and Arnaud [Soirat] – again!" (indicating that Rio Tinto's senior management had already been informed of these issues before);

108.6 In **December of 2018**, and specifically because Rio Tinto's primary contractor Jacobs could not meet its USD $240 million contractual target cost for finishing its engineering, procurement and construction management work, the board of Oyu Tolgoi LLC – **which included Respondents Quellmann, Colton and Lane** (in addition to Soirat) – approved Jacobs' request to raise the target cost by 50% to USD $360 million. Whistleblower Richard Bowley had raised this exact issue with Fagen just prior to the start of the Class Period, on July 3, 2018;

109. On **January 17, 2019**, TRQ released a news release providing operational guidance for 2019, communicated herewith as Exhibit P-18. Despite the explicit and very specific warnings from Bowley and the recent approval of a 50% increase in target EPCm costs, the only information disclosed about the underground development project was that underground lateral development was expected to advance 15 to 16 kilometres during 2019;

110. Also on or about **January 17, 2019,** TRQ posted on its website a presentation given at the TD Securities Mining Conference held on January 16 to 17, 2019 (communicated herewith as Exhibit P-19). In this presentation, TRQ represented *inter alia* that:

a. TRQ was "well position to address key challenges";

b. "Key risks [of Oyu Tolgoi] were well understood and managed";

c. There was significant underground progress with first sustainable production expected in 2021;

d. First Drawbell would be blasted (commencing initial production) in the third quarter of 2020; and

e. The ramp-up of sustainable production would occur in the third quarter of 2021;

110.1 In **January 2019**, Rio Tinto told Bowley — who had repeatedly warned that Rio Tinto and TRQ's statements about Oyu Tolgoi were false — that he was being terminated without reason. The following day, Bowley wrote a critical email to Sayed and Fagen stating that Rio Tinto's compliance was deficient. Within three days of sending that letter, Bowley received a phone call from Rio Tinto's compliance manager, Jason Landers, who said he was coming to Mongolia to investigate Bowley's allegations.

110.2 Bowley provided Landers with a description of his communications with Rio Tinto's senior management about the true costs and schedule at Oyu Tolgoi, including email dates and subjects, and identified the monthly reports that would detail the costs and budget problems. While Bowley had been cut off from Rio Tinto's IT systems and no longer had access to email, he forwarded to Landers the communications he had from his personal Hotmail account. Those emails included an exchange Bowley had with Kinnell on July 3, 2017—a year before the Class Period began—in which he reported that OT managers had told him "Jacobs are failing badly" and Kinnell confirmed "[i]t is all getting messy Richard and needs intervention to stop it getting significantly worse.";

110.3 Landers completed his investigation in six days in late-January 2019, and concluded that there were no compliance breaches. However, Landers explicitly revealed to Bowley in a phone call on **February 25, 2019** that he had not reviewed the documents that Bowley had cited and urged him to review, which Bowley claimed evidenced the knowing misrepresentations, because it was impossible to do so in the time allotted to him as doing so would take six people three months. Nonetheless he told Bowley his investigation concluded that there was "no evidence" supporting Bowley's claims.

111. Two days later on **February 27, 2019** prior to markets open, TRQ released a news release dated February 26, 2019 (communicated herewith as Exhibit P-20), where it began to reveal for the first time that there were problems at Oyu Tolgoi that were "ultimately expected to result in an overall schedule delay to sustainable first production beyond the end of Q3'21". However, rather than reveal the truth, TRQ blamed the delays on "challenging ground conditions" (the exact same excuse given for the delay on October 15, 2018 when TRQ represented there were contingencies built into the schedule) instead of the specific cost overruns and delays that Bowley had reported to Rio Tinto's senior management for a year and to its compliance officer just days prior. Specifically, the Company represented *inter alia* that:

a. significant progress on the Oyu Tolgoi underground development project continued through 2018;

b. during the fourth quarter of 2018, TRQ had carried out its own review of Rio Tinto's second annual schedule and cost re-forecast that had concluded that a delay to sustainable first production was expected from Q1 2021 to the end of Q3 2021 with the assistance of an independent Qualified Person, and had found that there was an increasingly likely risk of a further delay to sustainable first production beyond the third quarter of 2021, but that nonetheless the "<u>project cost was expected to remain within the [USD] $5.3 billion budget</u>" (emphasis added); and

c. After the TRQ had completed its own independent Review of Rio Tinto's second annual schedule and cost re-forecast, Rio Tinto had advised TRQ that delays are expected to result in an overall schedule delay to sustainable first production beyond the third quarter of 2021 as previously represented;

112. Upon the release of this news, TRQ's share price on the TSX immediately dropped 13.7% just on February 27, 2019 and 18.3% overall over the next two days. However, despite the obviously material change disclosed in the news release (as evidenced by the market's surprise and the corresponding precipitous drop in the Company's share-price), TRQ inexplicably chose not to file a Material Change Report in violations of applicable securities regulations. This February 27, 2019 news release did not disclose that project costs were known or should have been known to increase beyond USD $5.3 billion, nor did it disclose that the delays to sustainable production and cost overruns were indicators of an impairment to the net book value of Oyu Tolgoi;

113. Also on **February 27, 2019**, Rio Tinto issued its 2018 Annual Report, communicated herewith as **Exhibit P-51**, in which it represented *inter alia* that the capital cost of Oyu Tolgoi was USD $5.3 billion. Rio Tinto further represented that while that was "a deterioration in some internal and external indicators of value for the Oyu Tolgoi CGU and ha[d] therefore prepared an assessment of recoverable amount", Rio Tinto had nonetheless concluded that no impairment had taken place;

114. On **March 14, 2019,** TRQ released its AIF, audited annual financial statements, MD&A, and corresponding CEO and CFO certifications, as well as a news release, for its fiscal year ended December 31, 2018 (communicated herewith as Exhibits P-21 to P-28 respectively). In these Impugned Documents and despite the warnings from Bowley, TRQ represented or reaffirmed *inter alia* that:

a. <u>despite admitting that it had overstated lateral development for the previous quarter which it revised downwards by 200 metres (or about 9%),</u> significant progress on the Oyu Tolgoi underground development project continued through 2018, and underground lateral development had advanced 68.9% more than in 2017 (which had been represented to have made "good progress");

b. the cost of the Oyu Tolgoi underground development would remain within the USD $5.3 billion budget;

c. TRQ's independent review found that some critical areas had been impacted by delays, including <u>PC1,</u> Shaft 2 and Shaft 5 (despite the representations about Shaft 5 being completed and fully operational made by the Respondents nearly eight-months prior);

d. after the TRQ had completed its own independent Review of Rio Tinto's second annual schedule and cost re-forecast, Rio Tinto had advised TRQ that delays are expected to result in an overall schedule delay to sustainable first production beyond the third quarter of 2021, as previously represented (although the AIF still included in a section that "[s]ustainable first production is expected to occur by the end of Q3'21, with the first draw bell on track for mid-2020");

e. construction at Oyu Tolgoi had progressed but had "slipped slightly behind the latest forecast for the period" (without any date now specified for construction completion);

f. the net book value of Oyu Tolgoi as at December 31, 2018 was USD $8.84 billion;

g. At December 31, 2018, TRQ had conducted an impairment analysis on the Oyu Tolgoi underground mine and <u>concluded that there was an indicator of impairment, but TRQ's assessment indicated that no impairment charge needed to be taken</u> [emphasis added]; (…)

h. The delays in the schedule for underground development would not reduce the recoverable amount of Oyu Tolgoi to below the net book value; <u>and</u>

<u>h.1</u> <u>that the filings did not contain untrue statements of material fact or omit a material fact required to be stated, that the financial statements and other financial information fairly presented in all material respects the financial condition, results of operation and cash flows of the issuer, and that Respondents Quellmann and Colton were responsible for establishing and maintaining DC&P and ICFR, had designed DC&P or caused it to be designed to provide reasonable assurance that material information relating to TRQ was made known to them and information required to be disclosed was summarized and reported, had designed ICFR or caused it to be designed to provide reasonable assurance regarding the reliability of financial reporting in accordance with GAAP, and that they had evaluated TRQ's DC&P and ICFR and had concluded that as of the end of December 31, 2018, TRQ's DC&P and ICFR were effective;</u>

115. There was nothing in the March 14, 2019 MD&A to disclose the very specific warnings about delays and cost overruns at Oyu Tolgoi being given to Rio Tinto by Bowley, nor the investigation Rio Tinto had asked its independent legal counsel to undertake as a result of the whistleblowing from Bowley;

116. Additionally in its annual financial statements for fiscal 2018 released on March 14, 2019 (communicated herewith as Exhibit P-22), TRQ represented *inter alia* that:

a. the net book value of Oyu Tolgoi was determined using the net present value of expected future pre-tax cash flows;

b. the cash flow forecasts are based on <u>management's best estimates</u> of expected future revenues and costs [emphasis added]; and

c. the net book value was reviewed for impairment whenever events or changes in circumstances indicated that the full carrying amount may not be recoverable;

117. Also on **March 14, 2019**, TRQ released its management information circular for its annual general meeting to be held on May 14, 2019, communicated herewith as Exhibit P-29. This Core Document represented *inter alia* that:

a. during 2018 underground lateral development had advanced 68.9% more than in 2017 (which had been represented to have made “good progress”);

b. TRQ had a Corporate Disclosure Policy which contained measures to avoid selective disclosure;

c. TRQ had a Disclosure Committee responsible for overseeing the Company’s disclosure practices, which was made up of Quellmann, Colton, Lane, and two others;

d. “Board members have full access to [TRQ’s] records. [TRQ’s] General Counsel also provides regular updates to the Directors on corporate governance best practices, regulatory changes and other relevant developments. In addition, Directors periodically visit the Oyu Tolgoi mine (“Oyu Tolgoi”) to view the operations, the underground development …” including in October of 2018 (presumably to emphasize that despite nearly half of TRQ’s Board not being independent from Rio Tinto, the Board was still providing accurate disclosure about Oyu Tolgoi to TRQ’s shareholders);

e. the Board “believe that regular, transparent communication is essential to Turquoise Hill’s long-term success”;

f. TRQ considered good corporate governance practices to be an important factor in the success of the Company, TRQ was committed to adopting and adhering to high standards in corporate governance, and the Board and management of TRQ continually worked at maintaining and improving corporate governance (including providing a list of examples of how TRQ’s board and management were purportedly maintaining and improving corporate governance practices); and

g. TRQ had a *Code of Business Conduct* that was applicable to all employees, officers and directors regardless of their position in TRQ, and required that all employees, officers and directors uphold their commitment to a culture of honesty, integrity, accountability, and the highest standards of professional and ethical conduct;

118. On **March 15, 2019**, TRQ conducted a conference call to discuss its earnings that were released the prior day, a transcript of which is communicated herewith as P-33. On this call, Quellmann essentially confirmed that TRQ had known about material risks to the schedule for months, but had chosen not to disclose them publicly. Specifically, Quellmann stated that in October of 2018 when TRQ had announced a maximum delay of only nine-months to sustainable production and confirmed the costs would remain at $5.3 billion, the Respondents:

> had identified some higher level of risks to the schedule, <u>but not enough to warrant to change the indication to the market</u>. Since then, if we fast forward to February of this year, it became obvious that Shaft 2 was delayed more than expected. [emphasis added]

<u>118.0.1 On this call, Respondent Quellmann also represented that “we have a continued constructive dialogue with our partners and Government of Mongolia on the various issues.” Additionally, on this call, Respondents Quellmann and Colton repeatedly represented they had “significant liquidity”, undrawn funds on the project finance facility, and access to additional sources of funding to fund the underground expansion of the Mine, and that TRQ had headroom before they had to look at alternative financing measures;</u>

118.1 On **April 2, 2019** after Rio Tinto had closed its compliance investigation concluding that there was no evidence of wrongdoing, Bowley emailed longtime Rio Tinto board member, Ann Godbehere as well as its CEO, Jacques, to tell them how behind schedule the project was. The global head of Rio Tinto’s Ethics and Integrity section, Stephen Storey, responded to Bowley that they wanted his evidence. Rio Tinto then engaged the law firm, Baker McKenzie, to do a compliance review, and Storey asked Bowley to help Baker McKenzie;

119. On **April 15, 2019**, TRQ issued a news release, communicated herewith as Exhibit P-30, in which it quoted Quellmann as representing that Shaft 2 would be completed by the end of October 2019;

119.1 On **May 9, 2019**, Bowley had a two-hour call with Baker McKenzie, wherein he informed the partner in charge of the law firm’s team that Rio Tinto would only give Baker McKenzie selected information so that the law firm would conclude that there were no compliance violations;

(…) <u>8</u>) The Corrective Disclosures

120. After a year of making representations that Rio Tinto knew from Mr. Bowley’s to be false, on **July 15, 2019** after the TSX had ceased trading for the day, TRQ released a news release (with a corresponding material change report released on July 24, 2019, communicated herewith as Exhibits P-1 and P-2 respectively) that finally corrected some (but still not all) of its previously released misrepresentations and revealed that:

a. sustainable first production would be delayed by 16 to 30 months compared to the estimate made in the 2016 feasibility study that it would be achieved in the first quarter of 2021, and was now expected between May 2022 and June 2023;

b. the reasons for the delay were the unexpected and challenging geotechnical issues and complexities in the construction of Shaft 2 (despite the Company’s past repeated representation that “[k]ey risks [of Oyu Tolgoi] were well understood and managed”, despite the Company explicitly acknowledging it was aware of the “challenging ground conditions” in its press release of October 15, 2018 and despite Shaft 2 being largely excavated at the beginning of the Class Period);

c. the existing mine design would need to be changed;

d. the cost for the underground development project was expected to be USD $1.2 to $1.9 billion more than the USD $5.3 billion that had been represented since 2016 and reaffirmed repeatedly throughout the Class Period (an increase in cost of between 23% to 36%);

e. the issues with the mine design were so uncertain that that it would take until the second half of 2020 to develop a revised design for the mine; and

f. although further work was necessary to reach definitive conclusions, TRQ was assessing the carrying value (i.e. the net book value) of its investment in Oyu Tolgoi and would announce any changes, along with any adjustments to deferred tax in its results for Q2 2020 released at the end of July, 2019;

121. As a result of this news, the very next day on July 16, 2019, TRQ's common stock price on the TSX closed at $0.79 per share, down 43.2% from the prior day's closing price of $1.39 per share, on more than 32 times the trading-volume of the prior day;

122. On **July 31, 2019**, TRQ released its financial statements, MD&A and a corresponding news release for the three and six-month period ended June 30, 2019 (communicated herewith as Exhibits P-3 to P-5 respectively). In these Core Documents, the Company repeated the corrections released on July 15, 2019 as well as made further corrections of past misrepresentations, including that:

a. first Drawbell (initial production) was now expected between October 2021 and September 2022 (as opposed to mid-2020 as previously represented – a delay of 16 to 30 months);

b. although not expressly disclosed, the aforementioned delays made it apparent that construction at Oyu Tolgoi would not be completed in 2022 nor would full production be achieved by 2027, as previously represented;

c. TRQ was taking a USD $600 million impairment charge and a USD $400 million difference in deferred tax asset recognition (relative to the same quarter a year prior) due to the delays and increased costs with the Oyu Tolgoi underground development project;

d. The indicator of impairment of Oyu Tolgoi was collectively: (1) the delay to sustainable production; and (2) the increase in project development cost, specifically the things that Bowley had been warning about since February of 2018;

e. the Net Book Value of Oyu Tolgoi was USD $9.04 Billion (rather than the expected USD $9.64 that it would have been absent the impairment);

f. the Company was recording a net loss of USD $736.7 million in Q2 2019 compared to a net profit of $204.4 million in Q2 2018, with the principal reason being the aforementioned $600 million impairment charge and the other reason being the aforementioned $400 million different in deferred tax asset recognition, both of which "were impacted by the Company's update on the Oyu Tolgoi underground project";

g. TRQ was taking a "deferred tax de-recognition adjustment" of $252.8 million in the quarter, which "was primarily due to updated operating assumptions in mine planning during the period, resulting primarily from timing of sustainable first production noted above as well as the revised estimates of underground development capital"; and

h. given the estimated impacts of the increases to underground development costs as well as delays to first sustainable production, TRQ no longer had enough funds on hand to complete the underground expansion project and now expected to need incremental financing to sustain its underground development beyond 2020;

123. The Corrective Disclosures also revealed that despite TRQ's consistent and repeated representations to the contrary about the net book value of Oyu Tolgoi at various times during the proposed Class Period, in truth:

a. the net book value of Oyu Tolgoi was not determined using management's best estimates of the net present value of expected future pre-tax cash flows, because management was aware for over a year that the expected future revenues and costs of Oyu Tolgoi were to be negatively impacted by delays and cost overruns; and

b. the net book value was not reviewed for impairment when events or changes in circumstances indicated that the full carrying amount may not be recoverable, or else it would have been impaired prior to the release of the first Impugned Document on July 31, as Mr. Bowley had begun definitely warning Rio Tinto about the delays and cost overruns at Oyu Tolgoi as of at least February 2018;

123.1 The Corrective Disclosures further revealed that despite the Respondents' consistent and repeated representations to the contrary, TRQ did not have effective DC&P and ICFR, material information required to be disclosed was not summarized and reported, TRQ's financial reporting was not reliable, and TRQ's disclosure policies and practices either were ineffective at avoiding selective disclosure or were not adhered to;

124. As a result of this news, the very next day on July 16, 2019, TRQ's common stock price on the TSX closed at $0.69 per share, down 8.0% from the prior day's closing price of $0.75 per share. Overall between July 15 to August 1, 2019, the stock price of TRQ dropped by over 50% due to the correction of the previously released misrepresentations, eliminating roughly $1.41 billion of market capitalization for TRQ's shareholders in just 13 trading days;

124.1 Following the end of the Class Period, multiple individuals with first-hand knowledge of the Oyu Tolgoi expansion have affirmed that the cost overruns and schedule delays were not due to geotechnical issues, but rather that Rio Tinto and TRQ had falsely blamed geological problems because this type of problem is outside their control, whereas the concealed engineering and procurement problems were within their control;

124.2 Specifically, in addition to Mr. Bowley, a senior Red Path Mining manager at Oyu Tolgoi from 2013 to 2019 whose company was responsible for sinking Shaft 2 and Shaft 5 and who had seen all the progress reports, stated that he "would have been intimately aware of any rock instability" and that it "was just not present". As reported in Exhibit P-64 and detailed in Exhibit P-65, he further stated that the notion that the geological issues cited by Respondents was the primary driver of the delays was "one hundred percent pure horseshit. … It was a management issue and an engineering issue. … The project was being delayed because of engineering and execution. There may have been some pockets of bad ground, but that's expected in any mine."

124.3 This was also the same conclusion reached by analysts at Scotiabank who visited Oyu Tolgoi and also concluded that in light of the evidence, "it is now clear to us that the ~15 month delay in completing shaft 2 . . . appears to be the primary driver behind the recently disclosed Phase II development delay and capex overrun" as opposed to any geo-technical issues, which appear to be "manageable.";

124.4 In fact, TRQ's own description of events undermines the notion that the delays and cost overruns can be blamed on geotechnical issues. After the Class Period, TRQ's own Chief Operating Officer, Joanne Dudley, explained to investors visiting the mine that the geotechnical problem is only in the ore body and does not cause delay because after the first team puts in the originally planned steel bolts and mesh, a separate team can put in extra steel bolts and stronger steel mesh to keep the ceiling and walls of the tunnels from collapsing for $5,000 per meter, or a total of USD $100 million. Thus, any geotechnical problems around the orebody account for only a small part of the $1.2-$1.9 billion cost overruns and do not account for the delays. Rather, the delays were caused by the problems with Shaft 2;

<u>124.4.1 This was also the same conclusion reached by the ICG in its report to the OT Special Committee after the end of the Class Period. The ICG's investigation found that the underground expansion project's delays and cost overruns began as soon as work resumed in 2016 and were caused by engineering, procurement, and construction problems related to Shaft 2 and associated work in completing Shafts 1 and 5, and not by any geotechnical issues;</u>

124.5 In addition, to the extent that geotechnical problems did cause any of the delays and cost overruns associated with Shaft 2 or the lateral tunnels, as explained above the Respondents were aware of these problems before the Class Period and actively suppressed them during the Class Period;

(…) <u>9</u>) Events Post Corrective Disclosures

125. As reported in the *Australian Financial Review* and the *Financial Times* at Exhibits P-39 and P-40, on **November 26, 2019**, Dr. Maurice Duffy of GFI Blackswan wrote a letter to *inter alia* the board of Rio Tinto, its outside legal counsel Baker McKenzie, and some of Rio Tinto's largest shareholders, revealing that:

a. before his company had terminated its consultancy contract in 2017, he had reported “multiple, unprofessional [and] unethical behaviours” by Rio’s most senior executives to the then-chairman and members of the board, “who took no action”; and

b. the supposedly independent investigation commenced in January 2019 by Baker McKenzie into the problems raised by Mr. Bowley, “excluded information known by [GFI Blackswan] about Mongolia since 2017”;

125.1 On **March 16, 2020**, in connection with his employment dispute before the U.K. Tribunal, Mr. Bowley provided a 62-page sworn Witness Statement detailing the Respondents’ misrepresentations, which he signed under penalty of contempt of court (as reported by the *Global Investigations Review*, communicated herewith as Exhibit P-66). The portion of Mr. Bowley’s Witness Statement which provides a summary of his action is reproduced in Exhibit P-65, and reads as follows:

> My case, in a nutshell, is as follows:
>
> 4.1 In 2017, Craig Kinnell said that he had concerns about the OT [Oyu Tolgoi] project.
>
> 4.2 He recruited me to address his concerns and to suggest solutions.
>
> 4.3 I reported my concerns and suggested solutions to Craig and Rosemary Fagen in London.
>
> 4.4 Despite repeating those concerns about schedule delay and cost overrun and proposing solutions, Rio Tinto made no disclosure of the true facts to their partners and investors or the market.
>
> 4.5 I was then sidelined but was not released from my contract and the confidentiality obligations that went with it.
>
> 4.6 Not only did RT not disclose the true facts but Arnaud Soirat, Craig Kinnell’s boss, told the market that the project was on schedule and on budget, misleading the Government of Mongolia and others.
>
> 4.7 I continued to report my findings and fears over a) non-disclosure and b) misleading the market until my contract was brought to an early end, having continued to be sidelined and left completely unoccupied until then, marooned in Mongolia.
>
> 4.8 Being sidelined and then dismissed was the direct result of my whistleblowing reports to the Company.
>
> 5. Having reported the true facts to Rio Tinto, and having seen the misreporting of the facts to the market, I conclude that Rio Tinto is

> seeking to suppress my reports and, by delay, to enable it to shape the narrative for its later disclosures to stakeholders and the market generally regarding the state of the OT project. It has had every opportunity to take corrective action based upon my reports but has declined to do so. Not only has it suppressed my reports but it has made misleading statements to the market regarding the OT project which I was instructed to investigate and report on in London. There were no major geographical [sic] reasons for the delay in the project although this is what Rio Tinto claimed in order to conceal the true causes.

125.2 On **March 20, 2020**, TRQ released its MD&A for the 2019 fiscal year (communicated herewith as **Exhibit P-67**), wherein it disclosed that it would require at least an additional USD $4.5 billion in financing to complete the Oyu Tolgoi underground expansion, and said that this financing was required in addition to the USD $2.2 billion that TRQ had in available liquidity.

126. On **July 2, 2020**, TRQ released a news release announcing that the revised feasibility study for Oyu Tolgoi had been completed, communicated herewith as **Exhibit P-52**. The study made recommendations which had the effect of reducing the estimated mineral reserves for the mine. TRQ further revealed in this news release that it estimated that the increase in capital costs would cost an additional USD $1.5 billion (with a range of USD $1.3 billion to $1.8 billion);

127. On **August 28, 2020**, TRQ released an updated technical report for the Oyu Tolgoi Mine, communicate herewith as **Exhibit P-53**. This document further revealed the extent of the Respondents' misrepresentations during the Class Period, revealing:

    a. first Drawbell would be blasted (i.e. initial production) in May 2022;

    b. sustainable production would be achieved in February 2023;

    c. the conveyor to surface would be commissioned in the third quarter of 2023;

    d. full production would be achieved in the first half of 2029; and

    e. the payback period would be a further 6 years from January 1, 2021 (i.e. would be until 2027);

128. On **September 10, 2020**, TRQ released a news release announcing that it had signed a non-binding memorandum of understanding with Rio Tino concerning the funding of Oyu Tolgoi that reflected the parties' intentions to pursue a re-profiling of existing project debt, communicated herewith as **Exhibit P-54**. Under the reprofiling, while the time for repayment is extended, the value of the debt is not marked down. TRQ further announced that Rio Tinto would not allow TRQ to take on more than $500 million of additional debt to address the funding shortfall for the underground development project, and that the remaining funding gap for the underground mine would be met through a TRQ equity offering, which would reach "at least US 1.7 billion" if no other debt or hybrid financing

option was successfully completed. Such an equity offering would severely dilute TRQ's shareholders (apart from Rio Tinto itself who has anti-dilution rights that permit it to acquire additional securities of TRQ so as to maintain its controlling proportionate equity interest in TRQ). TRQ further explicitly stated that "Turquoise Hill has been informed by Rio Tinto that it does not currently support, or expect to consent to, additional debt or other <u>non-equity sources</u> of funding at Turquoise Hill or Oyu Tolgoi…" [emphasis added];

129. On **October 15, 2020**, TRQ released a news release, communicated herewith as **Exhibit P-55**, announcing that the Company had received an independent consultant's report with respect to the delay and cost overruns at Oyu Tolgoi, and that the management and independent directors of the Company were currently reviewing the report with their advisors;

130. On **November 4, 2020**, TRQ released a news release, communicate herewith as **Exhibit P-56**, announcing that following the discussions with Rio Tinto relating to the re-profiling of the Oyu Tolgoi project debt announced on September 10, 2020, it was commencing arbitration proceedings against Rio Tinto seeking a declaration to clarify Rio Tinto's role and obligations to support TRQ in seeking additional financing for the Oyu Tolgoi underground development project. TRQ expressly disclosed in this release that a special committee of its Board had commenced the arbitration because it had:

> concluded that Rio Tinto's approach to the financing of the Oyu Tolgoi project <u>is incompatible with the Company's announced strategy to maximize debt and / or hybrid financing for the Oyu Tolgoi project so as to minimize the size, and defer the timing, of an equity rights offering (if any)</u> [emphasis added].

131. On **November 25, 2020**, Rio Tinto shareholder Odey Asset Management LLP ("Odey") – a self-identified short-seller of TRQ's shares who stands to gain from the decline in TRQ's stock price – wrote a public letter to Rio Tinto, communicated herewith as **Exhibit P-57**. This public letter demanded among other things that Rio Tinto force TRQ to conduct an equity rights issue, as was Rio Tinto's right under the Financing Support Agreement in the event of delay, cost overruns and impairment of Oyu Tolgoi. Odey stated that Rio Tinto not triggering the rights issue was "causing material damage to Rio Tinto's shareholders, Turquoise Hill's prospective shareholders, and the Government of Mongolia [by] allowing the creation of … a false market to form in the trading of Turquoise Hill's shares…" Odey noted that although TRQ initiating arbitration proceedings against Rio Tinto "has subtly indicated to the market that Rio Tinto may intend to take a course of action in line with Odey's view", nonetheless it demanded that Rio Tinto immediately formalize that intention. The thrust of Odey's letter in relevant part was that Rio Tinto and TRQ were understating the true amount of equity financing that TRQ would have to raise, and were thus still artificially inflating the true value of the Company's equity securities:

> **In Odey's opinion, the outcome of this conservative scenario is that, if Rio Tinto acts in the interests of its stakeholders, Turquoise Hill would be required to seek a minimum rights issue of $8.9 billion.** …

> In the absence of this transparency on the part of Rio Tinto, Odey believes that Turquoise Hill's stock is trading with materially misrepresented views of the risk profile compared to reality. Odey notes the great increase in the number of retail investors who have acquired Turquoise Hill's stock recently, who Odey feel do not understand the detail behind the Turquoise Hill investment case. Odey believes has the potential effect of great value destruction to Rio Tinto shareholders given the entry price of such a large rights issue will be substantially higher than would otherwise be the case should Rio Tinto puruse [sic] this approach. [emphasis in original, internal citation removed]

132. On **November 30, 2020**, one of TRQ's largest minority shareholders, Pentwater Capital Management ("Pentwater"), which owns nearly 10% of TRQ, released an open letter, communicated herewith as **Exhibit P-58**, stating that it was prepared to file an oppression action unless Rio Tinto allowed TRQ to take on more debt to fund the development project at Oyu Tolgoi, rather than forcing the Company to issue billions of dollars of equity and greatly dilute TRQ's other shareholders. In this letter Pentwater expressly made reference to the fact that Bowley had "confirmed that Rio was fully aware of the budget overruns and schedule delay a year in advance of the disclosure to the market and intentionally hid those facts from the market and the government of Mongolia";

133. On **December 1, 2020**, TRQ released a news release, communicated herewith as **Exhibit P-59**, which announced *inter alia* that the board of directors of Oyu Tolgoi LLC had approved a resolution establishing a special board committee <u>(i.e., the OT Special Committee)</u> to conduct an independent investigation into the causes of the cost overruns and delays to the Oyu Tolgoi underground expansion. Reports indicated that while Rio blamed an **uncontrollable factor** – namely weaker than expected geology in the underground section of Oyu Tolgoi – as the source of delays and cost overruns, "Rio has been less forthcoming about the degree to which **controllable factors** played a role in the blowouts; something the Mongolian government is particularly keen to investigate" [emphasis added]. Rio Tinto was unsurprisingly, opposed to the creation of the special board committee and the independent investigation;

133.1 On **December 18, 2020**, TRQ released a news release, communicated herewith as **Exhibit P-68**, wherein it announced that Rio Tinto had completed and delivered a "Definitive Estimate" which refined the forecast contained in the updated Technical Report filed on August 28 2020. The results of the Definitive Estimate included:

a. A revised based case project development capital cost estimate of USD $6.75 billion (a 27.4% increase over the original $5.3 billion estimate); and

b. Sustainable first production forecast to occur in October 2022 (as opposed to the first quarter of 2021 as originally represented).

133.2 On **January 11, 2021** before the TSX had commenced trading for the day, TRQ released a news release, communicated herewith as **Exhibit P-69**, which announced *inter alia* that the Government of Mongolia had advised Rio Tinto that it was "dissatisfied with the results of the Definitive Estimate" and that it was "concerned that the significant increase in the development costs of the Oyu Tolgoi project has eroded the economic benefits it anticipated to receive therefrom." This press release further stated that [i]n particular, the Government of Mongolia had expressed its intention to initiate discussions with respect to the termination and replacement of the" Oyu Tolgoi deal with Rio Tinto, explaining that the "Government of Mongolia has indicated that if the Oyu Tolgoi project is not economically beneficial to the country, it would be necessary to review and evaluate whether it can proceed". TRQ' share price on the TSX fell precipitously on January 11, 2021 after release of this news, to close the day 18.7% lower than the prior day's closing price.

133.3 On **March 3, 2021**, Respondent Ulf Quellmann was forced by Rio Tinto to resign as CEO of TRQ and as a director on TRQ's Board, after the took actions seen to be in support of TRQ's minority shareholders that were contrary to Rio Tinto's interests. As reported in Exhibit P-61, in downgrading TRQ's stock from a "Hold" to a "Sell" the next morning, Canaccord Genuity remarked:

> Goodbye good governance – we hardly knew ye! Mr. Quellmann was the first CEO in our long history with TRQ that we believed actually pushed back on Rio and stood up for decisions that were in the best interests of all of all shareholders.

133.4 On **March 4, 2021**, BMO Capital analyst Jackie Przybylowski also downgraded TRQ's stock (as reported in Exhibit P-61) and in doing so remarked:

> In our view, Mr. Quellmann had prioritized the defence of minority shareholder interest; with his departure, it's increasingly likely that project funding will be dilutive to Turquoise Hill Minority equity holders.

133.5 On **July 29. 2021**, TRQ disclosed that it required an additional USD $2.4 billion in incremental funding for the development of the Oyu Tolgoi Mine;

133.6 On or about **August 3, 2021**, the ICG Report and Peer Review undertaken in connection with the OT Special Committee's investigation (referenced in paragraph 133) were delivered to TRQ. The ICG Report and Peer Review found that the delays and associated cost overruns were well known before the start of the Class Period and simply not disclosed, and were not due to unforeseen geotechnical issues;

133.7 On **August 9, 2021**, numerous media reports were released (including in the Financial Times and the Australian Financial Review, communicated herewith as **Exhibits P-75** and **P-76** respectively), regarding the ICG Report and Peer Review and the fact that the cost overruns and delays at Oyu Tolgoi were known before the Class Period and were not disclosed, as well as the fact that the stated justification that they were caused by geotechnical issues was not true;

133.8 Also on **August 9. 2021**, and expressly in response to media reports concerning the ICG Report and Peer Review, TRQ released a news release (communicated herewith as **Exhibit P-74**) which in part admitted that "[t]he ICG Report raises certain questions in relation to the project management process surrounding the increase in cost and schedule extension and suggests that changes in geotechnical parameters did not contribute significantly thereto";

133.9 On **October 14, 2021**, TRQ released a news release (and a corresponding Material Change Report on **October 20, 2021**, communicated herewith as **Exhibit P-78**) disclosing that sustainable production would be delayed "**until at least** January 2023" [emphasis added], and that TRQ now required incremental funding of USD $3.6 billion for the development of the Mine - $1.2 billion (i.e., 50% more than the $2.4 billion it had disclosed it needed less than 3 months prior). This news release further disclosed that work on the underground development would be delayed until the representatives of the Mongolian Government on the Oyu Tolgoi LLC board agreed to increase the underground development capital, and that any significant further delays would result in further unfavourable impact to the underground development, including further delays to the timing of sustainable production and the amount of required underground capital expenditures;

133.10 These revelations caused TRQ's stock price to further plummet and the Company's analysts to wonder "how such a material change to sequencing and cost emerged over the past three months" (as reported in *MINING.com*, communicated herewith as **Exhibit P-77**). Contemporaneously, it was further reported that TRQ's partner at the Mine, the government of Mongolia, was concerned about the truth and lack of transparency about the causes of the cost overruns and delays during the Class Period, with a government spokesperson stating that a letter from Rio Tinto about the discrepancies between the findings in the ICG Report and Rio Tinto's (and TRQ's) position was not "satisfactory, in terms of responding to our specific queries and specific concerns over why there is a cost overrun and scheduled delays, why there's very different conclusions in the independent review report" (as reported in a *CNBC* article, communicated herewith as exhibit **P-79**).

IV. THE RESPONDENTS' DUTIES, WHICH THEY VIOLATED

133.11 At all material times, the Individual Respondents were directors and/or officers of TRQ. As such, pursuant to 124 (1) of the Yukon *Business Corporations Act*, RSY 2002, c 20, the Individual Respondents each had duties to:

a. act honestly and in good faith with a view to the best interests of TRQ; and

b. exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;

133.12 Furthermore, as Members of TRQ's Disclosure Committee, the Individual Respondents had duties to:

a. monitor and oversee TRQ's disclosure practices;

b. assess controls, procedures and policies with respect to all electronic, written and oral disclosure of corporate information;

c. educate all of TRQ's other directors, officers and employees on all matters related to corporate disclosure;

d. establish procedures to ensure that they are fully apprised of all pending Company developments that may require public disclosure;

e. determine when developments affecting TRQ's business require or justify public disclosure;

f. review and authorize all disclosure in advance of public releases;

g. ensure the correctness, adequacy and integrity of the Company's disclosures and recommend to the Board that they be approved prior to their release;

h. ensure that the Company's control practices comply with regulatory requirements and adhere to best practices; and

i. scrutinize the effectiveness of and compliance with their disclosure controls, procedures and policies.

133.13 Additionally, TRQ and the Individual Respondents had duties placed on them pursuant to TRQ's *Corporate Disclosure, Confidentiality and Securities Trading* Policy which *inter alia* outlined how they were to interact with the public and required that they avoid selective or incomplete disclosure;

133.14 Furthermore, the Individual Respondents had duties placed on them pursuant to TRQ's mandatory *Code of Business Conduct* which *inter alia* required that all employees, officers and directors:

a. uphold their commitment to a culture of honesty, transparency, integrity, accountability, and the highest standards of professional and ethical conduct;

b. report any violations of laws, policies or standards (including using TRQ's whistle-blowing system if necessary), and to follow up on any reported violations including by whistleblowers; and

c. avoid any conflicts of interest or even the appearance of conflicts of interest;

133.15 Additionally, TRQ, Quellmann and Colton had duties pursuant to *National Instrument 52-109* (*Certification of Disclosure in Issuers' Annual and Interim Filings*) to *inter alia*:

a. establish, maintain and certify that TRQ had effective DC&P and ICFR; and

b. review any Core Documents (MD&A, AIF, financial statements, etc.) released during the Class Period, and ensure and certify that the Core Documents do not contain any untrue statements or omissions of materials facts and fairly present the financial condition, result of operations and cash flows of TRQ;

133.16 TRQ and the Individual Respondents also had a duty to properly communicate the material information regarding TRQ's business, its financial position and its financial performance, pursuant to the QSA and its subsidiary instruments, including *National Instrument 51-102* (*Continuous Disclosure Obligations*);

133.17 By failing to make certain that TRQ took proper care to ensure that TRQ's disclosure documents and their public statements were free of misrepresentations and that it made timely disclosure of all material changes, as set out above, TRQ and the Individual Respondents violated the duties applicable to them.

V. THE CLASS' DAMAGES

133.18 At all material times, common shares of TRQ traded in efficient markets that incorporated the publicly available information about TRQ, including information regarding the cost and progress of the underground expansion at Oyu Tolgoi, into the price of the Company's securities;

133.19 The Respondents knew and intended that the market price or value of TRQ's securities would reflect the information that they communicated to the market, including the misrepresentations alleged herein.

133.20 The Applicant and the Class suffered damages and losses as a result of the Respondents' misrepresentations, failure to make timely disclosure and improper conduct as alleged herein, as the Class Members purchased or acquired TRQ's securities at prices that were artificially inflated due to the actions of the Respondents.

(…) VI. THE RIGHTS OF ACTION

134. The Applicant, on his own behalf and on behalf of the other Class Members, advances the following causes of action against the Respondents:

a. a claim under art. 225.8 of the *QSA,* and if necessary, the concordant provisions of the Equivalent Securities Acts in relation to the dissemination of the Impugned Documents containing misrepresentations within the meaning of the *QSA*;

b. a claim under art. 225.9 of the *QSA,* and if necessary, the concordant provisions of the Equivalent Securities Acts in relation to the dissemination of the Impugned Statements containing misrepresentations within the meaning of the *QSA*;

c. a claim under art. 225.11 of the *QSA,* and if necessary, the concordant provisions of the Equivalent Securities Acts in relation to TRQ's failure to make timely disclosure of a material change; and

d. a civil law claim under art. 1457 of the *CCQ* for breach of the Respondent's general duty of diligence owed to all Class Members and for omissions and misstatements of material facts;

1) Statutory Right of Action for Misrepresentation in Impugned Documents and in Impugned Statements and for Failure to Make Timely Disclosure Pursuant to the *QSA*

135. On behalf of himself and the other Class Members, the Applicant asserts as against Respondents TRQ, Quellmann and Colton, the rights of action found in articles 225.8 and 225.11 of the *QSA,* and if necessary, the concordant provisions of the Equivalent Securities Acts;

136. The claim under art. 225.8 is being asserted in respect of the Impugned Documents, which contained misrepresentations within the meaning of the *QSA*, as particularized herein;

137. At all relevant times, TRQ was a reporting issuer in Québec under art. 68 of the *QSA*;

138. At all relevant times, TRQ's head office, domicile and principal establishment was located in Québec, and the Company significantly connected to Québec for the purposes of Title VIII, Chapter II, Division II of the QSA;

139. Respondents Quellmann and Colton were directors of TRQ at the time of the release of all Impugned Documents. Colton was an officer of TRQ at all of those times and signed all certifications released during those times. Quellmann was an officer at all of those times after July 31, 2018 and signed all CEO certifications after that date;

140. In respect of the Impugned Documents that are non-Core Documents, Respondents TRQ, Quellmann and Colton: (a) knew, at the time that each of such documents was released, that the document contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time; or (b) were guilty of a gross fault in connection with the release of each of such documents;

141. The corrections about *inter alia* the cost overruns and delays of the underground expansion of Oyu Tolgoi were material changes in the affairs of the Company and TRQ, Quellmann and Colton are liable under art. 225.11 of the *QSA* for not making timely disclosure of these material changes;

142. On behalf of himself and the other Class Members, the Applicant asserts as against all of the Respondents the right of action found in section 225.9 of the *QSA,* and if necessary, the concordant provisions of the Equivalent Securities Acts;

143. The claim under art. 225.9 of the *QSA* is being asserted in respect of the Impugned Statements, which contained misrepresentations within the meaning of the *QSA*, as particularized herein;

144. All of the Individual Respondents were mandataries or other representatives of TRQ who made public oral statements in the Impugned Statements relating to TRQ's business or affairs that contained misrepresentations;

145. The Respondents (a) knew or should have known at the time the Impugned Statements were made that the Impugned Statements contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time; or (b) were guilty of a gross fault in connection with the making of each of such statements;

146. In light of the Respondents' failure to disclose material adverse facts, their portrayal of TRQ's business, affairs and operations was inaccurate and incomplete;

147. Had these material facts been disclosed, the Applicant and Class Members would not have purchased TRQ's securities or would not have purchased them at artificially-inflated prices;

148. The Respondents knew that the Impugned Statements and Impugned Documents would be disseminated to the public who relied on these statements and documents to make informed financial decisions;

2) Article 1457 of the Civil Code of Quebec

149. On behalf of himself and all Class Members, the Applicant asserts a civil right of action under art. 1457 *CCQ*, against all of the Respondents for breach of their general duty of diligence owed to all Class Members and for omissions and misstatements of material facts;

150. The Respondents' violations of their duty of diligence are particularized herein;

151. The Respondents did not fulfill their legal obligations warranted by their special relationship with the Class Members;

152. By authorizing, permitting and acquiescing to the publication and dissemination of false and misleading information by way of news releases and public statements, the Respondents did not fulfill the legal obligations warranted by their relationship with the Class Members as required by law;

153. The Respondents committed a fault which caused significant monetary damages to the Class Members. The Respondents are solidarily liable to the Class Members;

154. The Applicant and Class Members relied on the fact that the Respondents' portrayal of TRQ's business, affairs and operations were truthful and accurate;

155. The information about the underground development project at Oyu Tolgoi underpinned the Applicant's and Class Members' transactions in TRQ's securities;

156. The Applicant and Class Members would not have purchased TRQ's securities had they been aware of the Respondents' misrepresentations and omissions of fact as the Respondents' misrepresentations and omissions of fact were material;

157. The negligence, gross negligence, faults, wilful acts and breaches of the Respondents' duties and applicable laws and regulations were committed in Québec;

158. Additionally, pursuant to art. 1463 *CCQ*, TRQ is vicariously liable for the faults committed by the Individual Respondents or any other officer, director, agent or employee of TRQ;

159. As alleged herein, the Individual Respondents committed a fault by allowing the publication of documents and dissemination of public statements which they knew or ought to have known contained misrepresentations of material facts. In doing so, the Individual Respondents breached the duty of diligence owed to the Applicant and Class Members under art. 1457 *CCQ*;

160. In exchange for their work as the Company's management, the Individual Respondents received compensation by way of salaries and other consideration from TRQ (either directly, or through Rio Tinto who would then charge TRQ the amount of that renumeration);

161. While performing their duties, the Individual Respondents were legally under the direction and control of TRQ;

162. TRQ benefited directly from their misrepresentations and failure to make timely disclosure of material changes as it artificially inflated the price of TRQ's stock price;

163. In view of the foregoing, TRQ is solidarily liable towards the Class Members for the faults committed by the Individual Respondents in the performance of their duties;

3) Forward-Looking Statements

164. The statutory defence provided for by s. 225.22 and 225.23 of the *QSA* regarding forward-looking information in a document does not apply to any misrepresentations alleged herein since these misrepresentations related to then-existing facts and conditions;

(…) VII. THE CRITERIA OF ARTICLE 575 CCP

1) The Facts Alleged Appear to Justify the Conclusions Sought

165. The Applicant Alleges that the Impugned Documents and Impugned Statements, contained misrepresentations of material fact and failed to make timely disclosure of material changes in light of the facts alleged above;

166. TRQ's Impugned Documents that were annual or interim disclosure statements were signed by Quellmann and/or Colton, who also provided certifications under Forms 52-109F1 and 52-109F2 or under applicable U.S. securities laws, in each case confirming that these documents did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading;

167. At all relevant times during the Class Period, the Respondents omitted to disclose and misrepresented material facts regarding TRQ's affairs and operations which artificially increased the value of TRQ's securities;

168. The Respondents knowingly authorized, permitted and acquiesced to the publication and dissemination of false and misleading information, thus violating the *QSA* and, if necessary, the concordant provisions of the Equivalent Securities Acts as well their general duty of diligence owed to all Class Members;

169. The Applicant and Class Members bought TRQ's securities at artificially-inflated prices and suffered damages following the publication of the Corrective Disclosures;

170. In light of the above, and as detailed herein, the faults committed by the Respondents support the Applicant's and Class Members' claims;

2) The Claims of the Class Members raise Identical, Similar or Related Issues of Law or Fact

171. At all relevant times, the Respondents had legal obligations pursuant to the *QSA* and the Equivalent Securities Acts to make periodic and timely disclosure of material facts and changes as well as provide accurate financial disclosure. They violated those legal obligations;

172. Additionally, the (…) <u>Respondents</u> owed Class Members duties under article 1457 *CCQ*. These duties were informed by the *QSA* and Equivalent Securities Acts, subsidiary instruments including NI 43-101, NI 51-102, NI 52-109, U.S. securities laws, and TRQ's own stated policies including the Code of Business Conduct and Corporate Disclosure Policy;

173. During the Class Period, the Respondents committed a fault in respect of the Class by failing to comply with their duties and responsibilities and by making the misrepresentations pleaded herein;

174. The Individual Respondents oversaw the preparation and reporting of TRQ's public disclosures to the market and/or made public statements to the market, and knew or should have known of the misleading statements and the omissions of material facts these Impugned Documents and Impugned Statements contained;

175. Respondents Quellmann and Colton authorized, permitted or acquiesced to the release of TRQ's public disclosure documents during the Class Period by TRQ which contained the omissions of material facts and the misrepresentations;

176. In addition to its direct liability, TRQ is liable for the faults committed by the Individual Respondents and its other officers, directors, partners and/or employees;

177. As a result of the Respondents' failure to make timely disclosure of material changes in TRQ's affairs and their misrepresentations in TRQ's disclosure documents, TRQ's securities traded at artificially inflated prices during the Class Period and the Class Members acquired those securities at prices that were inflated and that did not reflect their

true value. When the truth began the emerge, the market price or value of TRQ's securities plummeted, causing significant losses and damages to the Applicant and the Class;

178. In light of the foregoing, the principle issues of fact and law to be dealt with collectively are the following:

a. did the Impugned Documents or Impugned Statements, or any of them, contain one or more misrepresentations within the meaning of the *QSA*, and if necessary, the Equivalent Securities Acts? If so, what Impugned Documents and/or what Impugned Statements contained what misrepresentations?

b. did TRQ fail to make timely disclosure of a material change pursuant to the *QSA*, and if necessary, the Equivalent Securities Acts?

c. are any of the Respondents liable to the Applicant and the Class Members, or any of them, under Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the concordant provisions of the Equivalent Securities Acts? If so, what Respondent is liable and to whom?

d. did any of the Respondents owe a duty of diligence to the Applicant and the Class Members, or any of them, under the general private law of Quebec? If so, what Respondent owed a duty of diligence and to whom?

e. if some or all of the Respondents owed a duty of diligence to the Applicant and the Class Members, or any of them, did any of the Respondents violate such duty of diligence and commit a fault under article 1457 of the *CCQ*? If so, what Respondent committed a fault and with respect to whom?

f. what damages are sustained by the Applicant and the other Class Members?

g. are any of the Respondents liable to the Applicant and the Class Members, or any them for damages? If so, is that liability solidary and if not, which Respondent is liable and for what amount? and

h. is TRQ vicariously liable for the actions of the Individual Respondents?

179. The majority of the issues to be dealt with are issues common to every Class member;

180. The interests of justice favor that this Application be granted in accordance with its conclusions.

181. Consequently, the Applicant and the Class Members seek for this Honourable Court to authorize the following conclusions to the proposed proceedings:

GRANT this class action on behalf of the Applicant and the Class;

GRANT the Applicant and the Class' claim for damages against the Respondents in respect of the rights of action asserted against the

Respondents under Title VIII, Chapter II, Divisions II of the *QSA* (and if necessary, the concordant provisions of the Equivalent Securities Acts) and article 1457 of the *CCQ*;

CONDEMN the Respondents to solidarily pay to the Applicant and the Class compensatory damages for all monetary losses;

ORDER collective recovery in accordance with articles 595 to 598 of the *Code of Civil Procedure*;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

3) The composition of the group makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings

182. TRQ is a public company which at all times during the Class Period had issued and outstanding 2,012,314,469 common shares which are publicly traded on worldwide stock exchanges, alternative electronic stock exchanges, over-the-counter exchanges and dark pools;

183. There are thousands of investors that could be members of the putative Class and that are likely located throughout the world;

184. In this context, it would be impracticable for each member of the Class to bring a separate action;

4) The Applicant who is requesting to be appointed as Representative Plaintiff, is in a position to properly represent the Class Members

185. The Applicant understands the requirements of time and dedication required of his role and is prepared to devote the required resources to carry forward this proposed class action on behalf of the Class;

186. The Applicant has the resources, knowledge, time and dedication required to act as the representative Applicant of the Class and to advance the case on behalf of the Class;

187. The Applicant purchased TRQ's securities during the Class Period, held them until after the Corrective Disclosures, and suffered a financial loss;

188. The Applicant has no conflict of interest with other Class Members and is represented by counsel that are experience at litigating shareholders' claims in class actions against multinational corporations that list their securities on multiple exchanges;

189. The Applicant has given the mandate to the undersigned attorneys to post the present matter on their firm website in order to keep the Class members informed of the progress of these proceedings and in order to more easily be contacted or consulted by said Class members;

190. The present Application is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

AUTHORIZE the institution of a Class Action in the form of an originating application on behalf of the Class as described herein;

APPOINT the Plaintiff P[redacted] D[redacted] L[redacted] as the Class Representative Plaintiff representing the Class as described herein;

IDENTIFY the principal issues of law and fact to be treated collectively as the following:

a. did the Impugned Documents or Impugned Statements, or any of them, contain one or more misrepresentations within the meaning of the *QSA*, and if necessary, the Equivalent Securities Acts? If so, what Impugned Documents and/or what Impugned Statements contained what misrepresentations?

b. did TRQ fail to make timely disclosure of a material change pursuant to the *QSA*, and if necessary, the Equivalent Securities Acts?

c. are any of the Respondents liable to the Applicant and the Class Members, or any of them, under Title VIII, Chapter II, Division II of the *QSA* and, if necessary, the concordant provisions of the Equivalent Securities Acts? If so, what Respondent is liable and to whom?

d. did any of the Respondents owe a duty of diligence to the Applicant and the Class Members, or any of them, under the general private law of Quebec? If so, what Respondent owed a duty of diligence and to whom?

e. if some or all of the Respondents owed a duty of diligence to the Applicant and the Class Members, or any of them, did any of the Respondents violate such duty of diligence and commit a fault under article 1457 of the *CCQ*? If so, what Respondent committed a fault and with respect to whom?

f. what damages are sustained by the Applicant and the other Class Members?

g. are any of the Respondents liable to the Applicant and the Class Members, or any them for damages? If so, is that liability solidary and if not, which Respondent is liable and for what amount? and

h. is TRQ vicariously liable for the actions of the Individual Respondents?

IDENTIFY the conclusions sought by the action to be instituted as being the following:

GRANT this class action on behalf of the Applicant and the Class;

GRANT the Applicant and the Class' claim for damages against the Respondents in respect of the rights of action asserted against the Respondents under Title VIII, Chapter II, Divisions II of the *QSA* (and if necessary, the concordant provisions of the Equivalent Securities Acts) and article 1457 of the *CCQ*;

CONDEMN the Respondents to solidarily pay to the Applicant and the Class compensatory damages for all monetary losses;

ORDER collective recovery in accordance with articles 595 to 598 of the *Code of Civil Procedure*;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

AUTHORIZE these class action proceedings under section 225.4 of the *Québec Securities Act*;

APPROVE the notice to the members of the Class in the form to be submitted to the Court;

ORDER the publication of the notice to the members of the Class no later than forty-five (45) days after the date of the Judgment authorizing the class proceedings in accordance with Article 579 *CCP*;

ORDER that the deadline for a member of the Class to exclude themselves from the Class action proceedings shall be sixty (60) days from the publication of the notice to the Class members;

DECLARE that all Class members who have not requested their exclusion from the Class in the prescribed delay to be bound by any Judgment to be rendered on the class action to be instituted;

THE WHOLE WITH COSTS including experts' fees and all costs related to the publication of the notices to Class Members and the *timbre judiciaire*.

MONTREAL, (…) January 7, 2022

(S) Lex Group Inc.

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And

TORONTO, (…) January 7, 2022

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