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Details of Filing

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Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 7/12/2017 3:25:47 PM AEDT

Registrar

Important Information

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

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SecondThird Amended Statement of Claim

Filed pursuant to orders made by Lee J on 6 December 2017

No. NSD 1016 of 2014

Federal Court of Australia
District Registry: New South Wales
Division: General

REBECCA LOUISE DILLON
First Applicant

REBECCA JANE DOBSON
Second Applicant

RBS GROUP (AUSTRALIA) PTY LIMITED (ABN 78 000 862 797)
First Respondent

RBS ALTERNATIVE INVESTMENTS (AUSTRALIA) PTY LIMITED (ACN 154 251 671; ABN 85 154 251 671)
Second Respondent

RBS NOMINEES (AUSTRALIA) PTY LIMITED (as trustee) (ACN 094 599 989; ABN 35 094 599 989)
Third Respondent

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~~THE APPLICANTS AND GROUP MEMBERS~~

~~The First and Second Applicants (the Applicants)~~

1. Introduction to the relevant people and entities

1.1 The Applicants and the Group Members

1. ~~The First and Second Applicants (the Applicants)~~ commence these proceedings as representative parties pursuant to Part IVA of the *Federal Court of Australia Act 1976 (FCA)*.
2. The Group Members to whom these proceedings relate are persons who:
 - (a) during the period between February 2008 and March 2011 (**Claim Period**) acquired interests in one or more Unlisted Rolling Instalment Warrants or Managed Fund Instalment Warrants identified in Schedule 1 (**Claim Warrants**);
 - (b) acquired the Claim Warrants from the First Respondent (**RBS**);
 - (c) by reason of the matters pleaded and particularised in this ~~Second~~**Third** Amended Statement of Claim, have suffered loss and damage; and
 - (d) have not settled with RBS the claims the subject of these proceedings (**Group Members**).

(The person whom the Applicants represent in these proceedings will be referred to independently as the **Group Members**. The Applicants and Group Members collectively will be referred to as the **Claimants**. References to the First Applicant are references to Rebecca Dillon. References to the Second Applicant are references to Rebecca Dobson).

3. The claims of the Claimants arose in similar or related circumstances in that:
 - (a) at all times during the Claim Period the Claimants were clients of Navra Financial Services Pty Ltd (in liquidation) (ABN 72 092 743 096) (**Navra Financial Services**) who invested in warrants created, issued and manufactured by RBS, where the underlying asset was comprised in part or in whole, directly or indirectly, of shares or units or otherwise in one of the Navra Managed Funds (which is referred to in paragraph 18(b) herein), which includes the warrants in Schedule 1.
 - (b) the Claim Warrants were acquired by the Claimants on the advice of Navra Financial Services;
 - (c) the Claim Warrants acquired by the Applicants were either the same as those acquired by Group Members, or the terms of the Claim Warrants acquired by the Applicants were effectively the same as, or similar to or related to those of the Claim Warrants acquired by Group Members;

Particulars

- 1) The First Applicant acquired Claim Warrants which had the following warrant code: NRFUZZ, NRFKZB, NRFKZC, NRFKZF and NRFKZG. The Second Applicant acquired Claim Warrants which had the following warrant code: NRFUZZ, NRFKZA, NRFKZB and NRFKZE. In addition to the Claim Warrants mentioned above, some Group Members also acquired Claim Warrants which had the warrant code: NRFUZA. The terms of the NRFUZA warrants were the same as or similar to the NRFUZZ warrants. The difference between the NRFKZA warrants and those mentioned above is set out in paragraphs 37, 38, 40 and 42-45 herein.
 - 2) Further particulars will be provided after discovery.
- (d) the claims give rise to substantial common issues of law and fact which are set out below.

- 3A. The Claimants are greater than seven in number.

1.11.2 The First Respondent - RBS Group (Australia) Pty Ltd

4. At all material times, RBS:
- (a) was and is a corporation registered pursuant to the *Corporations Act 2001* (Cth) (**CA**) and capable of being sued in its own name;
 - (b) was, between 2 June 2006 and 15 March 2009, known as ABN AMRO Australia Pty Limited (ABN: 78 000 862 797) (**ABN AMRO**);
 - (c) was a provider of financial services or financial products within the meaning of:
 - (i) sections 12BAB and 12BAA of the *Australian Securities and Investments Act 2001* (Cth) (**ASIC Act**);
 - (ii) section 4 of the *Trade Practices Act 1974* (Cth) (**TPA**);
 - (iii) section 2 of the *Australian Consumer Law* (**ACL**); and or
 - (iv) section 761A of the CA.

(the Applicable Products and Services Law)

Particulars

- 1) The Claim Warrants were a financial product as they were a facility which could be used by the Applicants and Group Members to make a financial investment or manage a financial risk or otherwise. The First and Third Respondents provided a financial service to the Applicants and Group Members by permitting the Applicants and Group Members to apply for the Claim Warrants, dealing in and with Claim Warrants, making a market for a financial product, operating a registered scheme, or otherwise under section 12BAB of the ASIC Act.
- (d) carried on business as, *inter alia*, the creator, issuer or manufacturer of financial products including the Claim Warrants and the provision of financial services (**RBS Business**);
- (e) carried on the RBS Business in trade or commerce:
 - (i) in relation to financial products and or services within the meaning of the CA;
 - (ii) in relation to financial products and or services within the meaning of the ASIC Act;

- (iii) within the meaning of section 4 of the TPA; and or
- (iv) within the meaning of section 2 of the ACL.

(“the Trade and Commerce Requirements”)

5. At all material times, RBS:
- (a) carried on a financial services business within the meaning of section 761A of the CA;

Particulars

- 1) RBS issued the Claim Warrants which were acquired by the Applicants and the Group Members for the purpose of making a financial investment.
- (b) offered as part of its business, the provision of a financial service within the meaning of section 766A of the CA;

Particulars

- 1) The Claim Warrants were financial products as they were acquired by the Applicants and Group Members for the purpose of making a financial investment.
- (c) offered the Claim Warrants as part of its business and thereby were dealing in financial products within the meaning of section 766C of the CA;

Particulars

- 1) RBS issued the Claim Warrants.
- (d) held an Australian Financial Services Licence (**AFSL**) granted by the Australian Securities and Investments Commission pursuant to section 913B of the CA, being AFSL No. 247013; and
- (e) had specialised experience in manufacturing and issuing financial products, including the Claim Warrants.

6. At all material times, RBS was obligated under section 912A of the CA and by the conditions of its AFSL to, *inter alia*:
- (a) do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly;

- (b) have in place adequate arrangements for the management of conflicts of interest that may arise wholly or partially in relation to activities undertaken by RBS or a representative of RBS in the provision of financial services as part of the financial services business of RBS or its representatives;
- (c) comply with the financial services laws; (including the Product Disclosure Laws);
- (d) take reasonable steps to ensure that its representatives complied with the financial services laws; (including the Product Disclosure Laws);
- (e) ensure that its representatives were adequately trained, and were competent, to provide those financial services; and
- (f) have in place adequate risk management systems.

(Section 912A Obligations)-).

6A. The laws at the time of the issue of the Claim Warrants required that:

- (a) The information in a product disclosure statement must be up to date as at the time it was given to the Applicants (s 1012J of the CA);
- (b) The information in a product disclosure statement must be worded in a clear, concise and effective manner (s 1013C (3) of the CA);
- (c) The product disclosure statement not indicate that the product is underwritten, guaranteed or otherwise capital protected if it is not (s 1013C (6) of the CA);
- (d) The product disclosure statement was required to distinguish clearly between the role of Navra and the role of RBS (s 1013C (7) of the CA);
- (e) The product disclosure statement must give information that a retail client, such as the Applicants, would reasonably require for the purpose of making a decision about whether or not to buy the Claim Warrants, including:
 - (i) any significant benefit the Applicants would receive as holders of the Claim Warrants, including:
 1. the circumstances and times at which those benefits would be provided; and
 2. the way in which those benefits would be provided (s 1013D(1)(b) of the CA);
 3. Where the benefit was said by RBS to be a put option or stop loss, the benefit was to be expressed in dollar terms (s 1013D(1)(m) of the CA); and
 4. Where the benefit was said by RBS to be a put option or stop loss, the amount of the Applicants' equity protected was to be expressed in dollar terms (s 1013D(1)(m) of the CA).

- (ii) any significant risks associated with holding the Claim Warrants (s 1013D(1)(c) of the CA);
- (iii) the cost of the product (s 1013D(1)(d)(i) of the CA);
- (iv) the amounts that will or may be payable by the Applicants, and the times at which those amounts will or may be payable (s 1013D(1)(d)(ii) and (e) of the CA);
 - 1. This amount must be expressed in dollar terms (s 1013D(1)(m) of the CA).
- (v) the amounts that will or may be deducted from the equity or loan or total amount of the Claim warrant (s 1013D(1)(d)(iii) of the CA);
 - 1. This amount must be expressed in dollar terms (s 1013D(1)(m) of the CA).
- (vi) any significant characteristic or feature of the Claim Warrants (s 1013D(1)(f) of the CA);
- (vii) the methods of dispute resolution available to the Claim Warrant holders (s 1013D(1)(g) of the CA);
- (viii) any significant tax implications of the Claim Warrants, including significant tax implications of the Trust Deeds (s 1013D(1)(h) of the CA); and
- (ix) any other information that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to acquire the Claim Warrants (s1013E of the CA).
- (f) The product disclosure statement must be given to the Applicants or their agent by RBS (s 1015C(1) of the CA), and their agent cannot be Navra for the purposes of s 1015C (s 1015C (3) of the CA);
- (g) RBS engage in ongoing disclosure to the Applicants of material changes and significant events (s 1017B / 1017D(5)(f) of the CA);
- (h) RBS was required to notify the Applicants on specified intervals of
 - (i) The termination value of the Claim Warrants; and
 - (ii) The return on investment in the Claim Warrants (1017D(5)(b) and (e)).
- (i) The provisions of Part 7.9 of the CA (including ss 1012J to 1017D) cannot be contracted out of (s 1020D of the CA); and
- (j) The 912A Obligations would be complied with by RBS.

(Product Disclosure Laws)

**1.21.3 The Third Respondent - RBS Nominees
(Australia) Pty Limited (as trustee)**

7. At all material times, the Third Respondent RBS Nominees (Australia) Pty Limited:
- (a) was and is a corporation registered pursuant to the CA and capable of being sued in its own name;
 - (b) was, between 5 October 2000 and 8 February 2010 known as ABNED Nominees Pty Limited;
 - (c) was a provider of financial services or financial products within the meaning of the Applicable Products and Services Law;

Particulars

- 1) The Applicants repeat and rely on the particulars to paragraph 4(c) herein.
- (d) carried on the RBS Business as a corporate trustee of financial products and otherwise carried on a financial services business;

Particulars

- 1) Pursuant to a trust governed by Deed Polls dated 1 November 2007, 11 June 2008 and 25 May 2010 ("**Trust Deeds**") the Third Respondent held the underlying units acquired by the Applicants pursuant to the Claim Warrants on trust:
 - a) as security for any loan given by the RBS to the Applicants (called in the Trust Deeds the "**Security Interest**");
 - b) to the extent of any beneficial interest, for the Applicants.
- 2) The Applicants repeat and rely on the particulars to paragraph 5(a) herein.
- (e) carried on the RBS Business in a manner fulfilling the Trade and Commerce Requirements;
- (f) carried on a financial services business within the meaning of section 761A of the CA;

Particulars

- 1) The Applicants repeat and rely on paragraph 5(a) herein.
- (g) offered as part of its business, the provision of a financial service within the meaning of section 766A of the CA;

Particulars

- 1) The Applicants repeat and rely on paragraph 5(b) herein.
- (h) offered as part of its business, dealing in financial products within the meaning of section 766C of the CA; and

Particulars

- 1) The Applicants repeat and rely on paragraph 5(c) herein.
- (i) was subject to the Section 912A Obligations.
- (j) held a financial services licence numbered 246795, which commenced on 10 March 2004.
- (k) had a condition placed on its financial services licence, which commenced on or about 07 June 2011. This condition restricted the company from operating custodial or depository services, other than investor directed portfolio services, to retail and wholesale clients.

1.31.4 The Second Respondent - RBS Alternative Investments (Australia) Pty Ltd

8. Pursuant to a scheme of arrangement made by orders of Justice Ward of the Supreme Court of NSW (numbered 2011/00375890) on or about 2 February 2012, all assets of RBS comprising or pertaining to its Warrants Business (as defined in the order and its annexures) including, without limitation, all rights, property or interests vested in it under or pursuant to its Hedging Arrangements (as defined in the order and its annexures) were transferred to the Second Respondent, RBS Alternative Investments (Australia) Pty Limited (~~the scheme of arrangement~~).
9. Pursuant to the scheme of arrangement, the liabilities of RBS were to be the liabilities of the Second Respondent, insofar as they related to Claim Warrants having the following warrant codes:
- (a) NRFKZE;
- (b) NRFKZF;
- (c) NRFKZG.
10. Pursuant to the scheme of arrangement, court proceedings against RBS were to be continued against the Second Respondent, insofar as they related to Claim Warrants having the following warrant codes:

- (a) NRFKZE;
- (b) NRFKZF;
- (c) NRFKZG.

11. Insofar as liabilities or proceedings relate to any claim in relation to any Claim Warrant or Warrants other than those with the warrant codes NRFKZE, NRFKZF and NRFKZG, the proper party remains RBS or the Third Respondent (as trustee).
12. To the extent that Claim Warrants which did not have warrant codes NRFKZE, NRFKZF and NRFKZG were not assets or liabilities of RBS but instead were the property of the Third Respondent and were not the subject of the scheme of arrangement, and insofar as claims could not be made against RBS prior to the scheme of arrangement, then the Third Respondent (as trustee) is and continues to be the proper party.
13. At all material times, the Second Respondent:
- (a) was and is a corporation registered pursuant to the CA and capable of being sued in its own name;
 - (b) was and is a provider of financial products and services within the meaning of the Applicable Products and Services Law, except that it operated without a financial services licence pursuant to s 911A(2)(b) of the CA, pursuant to which RBS Equities Pty Ltd was appointed to make offers for the issue, variation or disposal of the Claim Warrants through its licence (numbered 240530) (~~the Caveat~~);
 - (c) carried and carries on the RBS Business in relation to or within the Trade and Commerce Requirements, given the Caveat;
 - (d) carried on a financial services business within the meaning of section 761A of the CA, given the Caveat;
 - (e) offered as part of its business, the provision of a financial service within the meaning of section 766A of the CA, given the Caveat;
 - (f) offered as part of its business, dealing in financial products within the meaning of section 766C of the CA, given the Caveat;
 - (g) had specialised experience in manufacturing and issuing financial products, including the Claim Warrants and in offering and providing financial services, given the Caveat.

1.41.5 **The Applicants**

14. At all material times during the Claim Period, each of the Applicants were 'consumers' within the meaning of:
- (a) section 12BC of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - (b) section 4B of the TPA;
 - (c) section 3 of the ACL;
 - (d) section **44B** of the *Competition and Consumer Act 2010* (Cth).

Particulars

- 1) The service provided to the Applicants by Navra Financial Service was the advice to acquire the Claim Warrants. In the case of the First Applicant the cost of that service was less than \$40,000 being an initial placement fee of \$5,006 and a subsequent placement fee of \$2,211 with trailing commissions of \$2,503 p.a. and \$1,106 p.a. respectively. In the case of the Second Applicant the cost of that service was less than \$40,000 being an initial placement fee of \$1,957.56 and a subsequent placement fee of \$986.99 with trailing commissions of \$978.78 p.a. and \$493.49 p.a. respectively. Further, the provision of the Claim Warrants was a service of a kind ordinarily acquired for personal and domestic use by each of the Applicants.
 - 2) In the alternative, the service provided by RBS to the Applicants was the provision of the Claim Warrants. Each of the costs associated with providing the Claim Warrants (which is referred to herein as the "Costs Payable", a term defined in paragraph 35 herein) which was charged to either Applicant by RBS was less than \$40,000.
15. Further, the contracts to acquire the Claim Warrants were consumer contracts within the meaning of section 23(3) of the ACL as they concerned the supply of goods or services which were wholly or predominantly for the Applicants' personal, domestic or household use or consumption.
- 15A. The Claim Warrants were acquired for predominantly personal, household or domestic use or consumption.

Particulars

- 1) The Applicants repeat paragraph 186 herein.

- 15B. The Claim Warrants and the provision directly or indirectly thereof were a type of financial product or service ordinarily acquired by retail (that is unsophisticated) clients for predominantly personal, household or domestic use or consumption.
- 15C. The Claim Warrants and the provision directly or indirectly thereof were a type of financial product or service predominantly acquired for personal, household or domestic use or consumption.
- 15D. The Applicants did not employ any person.
16. Each of the Applicants are individuals. The Applicants are each married.

(the matters pleaded in paragraphs 14 to 16 above are referred to as “**the Relevant Consumer Law and Facts**”)

4.51.6 **Navra Financial Services**

17. At all material times during the Claim Period, Navra Financial Services:
- was a financial services licensee within the meaning of section 761A of the CA;
 - was the holder of Australian Financial Services Licence No. 292605;
 - carried on a financial advisory business, which included the provision of financial product advice within the meaning of section 766B of the CA to its clients;
 - regularly referred its clients to RBS for the purposes of applying for the Claim Warrants; and
 - on 11 July 2011 was placed into creditors’ voluntary liquidation pursuant to a resolution of its creditors.
18. Navra Financial Services operated its financial advisory business by giving a standard format of advice to its clients (including the Applicants) which entailed:
- advising the Applicants to borrow money against their residential homes (**Home Loan funds**);
 - the Home Loan funds were then used by the Applicants to purchase units in managed investment schemes for which Navra Invest Limited (a related entity of Navra Financial Services) was the responsible entity (**Navra Managed Funds**);

- 1) The Navra Managed Funds included:
 - a) The Navra Blue Chip Australian Share Retail Fund;
 - b) The Navra Blue Chip Australian Share Wholesale Fund;
 - c) The Navra Blue Chip American Share Fund;
 - c) The Navra Asia Pacific Growth Fund.
 - (c) Navra Financial Services also advised the Applicants to acquire units in the Navra Managed Funds using cash, shares, superannuation or proceeds of insurance policies;
 - (d) Navra Financial Services then advised the Applicants to use their interests in the Navra Managed Funds (which in most cases were acquired using the Home Loan Funds) as a deposit or capital towards a margin loan (the deposit or capital used to acquire margin loans is called **Equity Contribution**);
 - (e) the Applicants then applied and received approval for a margin loan facility (**Margin Loans**) (the funds received from the Margin Loans were called **Margin Loan Funds**);
 - (f) Navra Financial Services then advised the Applicants to use the Margin Loan Funds to acquire further units in the Navra Managed Funds.
(the **Navra Investment Model**).
- 18A. In about early 2007, Navra Financial Services advised the Applicants to set an initial gearing level of 50 per cent in their Margin Loans.
- 18B. In about mid-2007, Navra Financial Services advised the Applicants to increase the gearing levels to about 60 per cent in their Margin Loans.
- 18C. As a result of investing in accordance with the Navra Investment Model the Applicants held '**Double Geared Investments**' because their units in the Navra Managed Funds were funded by the Home Loan Funds, which was used as the Equity Contribution to acquire the Margin Loan Funds.
- 18D. The standard advice that Navra Financial Services gave to its clients (which is referred to above) was generated by X-Plan (a software package that automates document creation after a human inputs the parameters necessary for the program to carry out the said process). The software after being programmed with certain characteristics of a Navra Financial Services client would output a document of financial advice.
- 18E. The financial advice referred to in the preceding paragraph would sometimes be generated by Navra Financial Services' computer using X-plan during a meeting

between a client and Navra Financial Services with the result that written advice would be given to the client at the conclusion of the meeting.

2 The Claim Warrants

1.62.1 Creation of the Claim Warrants

19. In or about October 2007 and following the 2007 Discussions (which are referred to in paragraph 61 herein), Navra Financial Services entered into discussions with RBS in relation to the creation of a new financial product (of a type described in the 2007 Discussions referred to in paragraph 61 to 63 herein) which would use the Navra Retail Fund or other Navra Managed Funds as its underlying asset, and which would provide an alternative to margin loans for the Navra Financial Services clients.

Particulars

- 1) The Applicants repeat and rely on the 2007 Discussions.
 - 2) Meeting or meetings between Mr Navra and representatives of the RBS including Tian, Stambulich (who is referred to in paragraph 63B herein) and other officers of RBS (the names of which the Applicants do not presently know but which included an officer of RBS who had travelled from Hong Kong in order to participate in the meeting), such meetings being held at the First Respondent's offices in Sydney in or about late 2007 (but prior to November 2007) and the purpose of the meetings being the creation of a new financial product of the type described by Tian in the 2007 Discussions.
 - 3) Further particulars will be provided after discovery and service of affidavits.
20. In or about November 2007, RBS, NavraInvest Limited (NavraInvest) and Navra Financial Services entered into an agreement, arrangement or understanding pursuant to which RBS agreed to create the first in the series of the Claim Warrants using the Navra Retail Fund or other Navra Managed Funds as the underlying asset. The result of this agreement, arrangement or understanding was the NRFUZA Claim Warrant (which was the first of the Claim Warrants produced by RBS) and the Product Disclosure Statement dated 30 November 2007.

Particulars

1) The agreement was in writing and was titled “Services Agreement in relation to ABN AMRO Unlisted Rolling Investment Warrants over units in the Navra Funds” (the Services Agreement).

2) The Services Agreement was dated 5 November 2007.

20AA. The Services Agreement had the following material terms or conditions:

(a) Each party to the Services Agreement appointed each other as a “service provider” to provide services in relation to the Claim Warrants, as set out in schedules to the Services Agreement;

Particulars~~will~~

1) Clause 3.1 of the Services Agreement.

(b) NavraInvest and Navra Financial Services each agreed to provide RBS such reasonable information as was necessary to enable RBS and its related bodies corporate to comply with their obligations at law in relation to the Claim Warrants;

Particulars

1) Clause 3.4 of the Services Agreement.

(c) Each party to the Services Agreement undertook to each other party that it would meet Service Standards in the provision of its respective services;

Particulars

1) Clause 4.1 of the Services Agreement.

2) The Service Standards were specified in Schedule 4 of the Services Agreement, and relevantly included obligations that each party would:

a) provide its services with all the skill, care and diligence to be expected from a qualified, competent, and experienced provider, and at least equal to the standards which RBS applied for other series of ABN AMRO Unlisted Instalment Warrants; and

b) ensure that its services were carried out by employees or agents who were properly trained, experienced, and accredited to perform the services.

(d) NavraInvest and Navra Financial Services each agreed to provide RBS, at its request, with verification that the Service Standards had been met, and to provide RBS access to records of the information used by NavraInvest or Navra Financial Services for the purposes of complying with the Service Standards;

Particulars

1) Clause 4.3 of the Services Agreement.

(e) Each party to the Services Agreement appointed a Contract Manager to represent it in its day-to-day dealings with the other parties in connection with the Services Agreement; review and discuss reports submitted by each party and matters relating to the Claim Warrants; raise any issues of concern or interest relating to the Services Agreement; and work in good faith to resolve any issues of concern;

Particulars

1) Clauses 8.1, 8.2 and 8.3 of the Services Agreement.

2) The Contract Managers for each party to the Services Agreement were:

a) NavraInvest – Julia Shebuldaeva;

b) Navra Financial Services – Mark Raymond; and

c) RBS – Elizabeth Tian.

(f) Navra Financial Services was entitled to be paid a monthly placement fee and an annual trailing commission by RBS;

Particulars

1) Clauses 9.1 and 9.2 of the Services Agreement.

(g) NavraInvest or Navra Financial Services were obliged to submit all marketing material which they prepared in relation to the Claim Warrants to RBS for RBS's approval prior to its release;

Particulars

1) Clause 11.2 of the Services Agreement.

(h) Each party to the Services Agreement agreed to indemnify each other party against all expenses, losses, damages, and costs that they might incur in relation to any breach of the Services Agreement; any fraud, negligence, or dishonesty by a party to the Services Agreement; and any claim by a party to the Services Agreement or by a third party arising out of a breach of the Services Agreement;

Particulars

1) Clauses 15.1 and 15.2 of the Services Agreement.

(i) Pursuant to Schedule 1 of the Services Agreement, RBS agreed to provide the following material services:

- 1 Provide product training in relation to the Claim Warrants to Navra Financial Services' helpdesk and distribution staff;
- 2 Provide information and assistance to Navra Financial Services to allow Navra Financial Services to answer applicants' and warrant holders' enquiries about the Claim Warrants, excluding personal advice or tax advice;
- 3 Process application forms for the Claim Warrants in accordance with its usual issuance practices;
- 4 Advise Navra Financial Services if it considered that an application form was incorrectly or incompletely filled out;
- 5 Generate and despatch "welcome letters" and taxation and distribution statements to warrant holders;
- 6 Review Navra Financial Services' "know your client" processes in order to be satisfied that those processes complied with regulatory requirements; and
- 7 Decide and announce the changes and impact of any Corporate Action on the Claim Warrants.
 - a) The term "Corporate Action" is defined in Section 9: Glossary of the Product Disclosure Statement.
 - b) Corporate Actions included any actions in relation to the Navra Fund or units in the Navra Fund which in RBS' reasonable opinion might have a dilutive or concentrative effect on the value of the units or the Claim Warrants.

(i) Pursuant to Schedule 2 of the Services Agreement, Navra Financial Services agreed to provide the following material services:

- 1 Respond to investor queries;
- 2 Distribute copies of the Product Disclosure Statement;
- 3 With RBS's consent, provide information in relation to changes to the Product Disclosure Statement on its website;
- 4 Keep a register of all distributors who had received training in relation to the Claim Warrants and permit the training register to be reviewed by RBS on a monthly basis;
- 5 Receive all applications to invest in Claim Warrants and payments or authorities to execute payment and ensure that such applications had been completed correctly, and that supporting documentation had been provided ~~after discovery and service of affidavits.~~;
- 6 Complete "know your client" checks; and
- 7 Communicate RBS' decisions in relation to Corporate Actions to warrant holders, with such documents and communications to be in a form satisfactory to RBS.

20A. Between about 2008 and 2010, RBS and Navra Financial Services entered into one or more agreements, arrangements or understandings pursuant to which the First Respondent agreed to create the second through to the eighth series of the Claim Warrants using the Navra Retail Fund or other Navra Managed Funds as the underlying asset and the associated Product Disclosure Statements dated 18 February 2008, 16 June 2008, 27 October 2008 and 28 May 2010.

Particulars

- 1) Particulars will be provided after discovery and service of affidavits.
- 2) Services Agreement between RBS and the Applicants.

21. If the Applicants acquired the Claim Warrants there was a risk that they could lose some or all of their Equity Contributions made in accordance with the Navra Investment Model (the **Claim Warrants Risk**).
22. The Claim Warrants created the Claim Warrants Risk because in the case of the Applicants, each:
 - (a) were unable to maintain a similar or lesser level of leverage in margin loans in the past and were at risk of margin calls in those loans;

- (b) had a double geared investment, consisting of a mortgage and then an additional level of leverage provided within each Claim Warrant;
- (c) had a high loan-to-value ratio;
- (d) were vulnerable in a market downturn, in that if the market went down, each would lose some or all of their Equity Contributions and at a magnified rate by reason of leverage in each part of the double geared investment;
- (e) were at risk of the fund collapsing if the market fell to a certain level or below;
- (f) were at risk of RBS' ability to enforce its security interest over the units should the Applicants not make the instalment payment on or before the Expiry Date which would result in the loss of some or all of their Equity Contributions.

Particulars

- 1) The Applicants repeat and rely on paragraphs 24 and 57 – 90 herein.

23. [blank]

24. The First Respondent knew of the Claims Warrants Risk to the Applicants.

Particulars

- 1) The Applicants repeat and rely on paragraphs 37-63M herein.
- 2) The First Respondent knew or ought to have known from the information provided in the Applicants' Application Forms (which are referred to in paragraph 46A herein) of the amount lent (or proposed to be lent) to each Applicant and the value of equity contributed by each Applicant to purchase the Claim Warrants (also called **Equity Contributions**) and from that information the loan to value ratio applicable to each Applicant and the fact that each Applicant was highly leveraged.
- 3) The First Respondent had the knowledge set out in paragraph 57 herein shown by the information contained in the Disclosure Statement dated 30 November 2007, and subsequent Product Disclosure Statements.
- 4) The First Respondent knew or ought to have known from Tian (paragraphs 58 to 63 herein) and as part of its due diligence which was or ought to have been undertaken by RBS when creating the Claim Warrants (paragraphs 111 and 113 herein) that the equity contributions made by the Applicants arose from an earlier loan normally secured against real property and that consequently the purchase of the Claim Warrants was a double geared investment and that loss of the money invested in the Claim Warrants would have an impact on the earlier loan or the

Applicants' ability to pay the earlier loan. There would also be a probability, in those circumstances, that the Applicants may not be able to pay their margin, stop-loss or similar calls.

- 5) The First Respondent's knowledge of the Claim Warrants Risk is shown by the terms of the November 2007 Contract and the subsequent Contracts (referred to in paragraphs 40 to 45 herein) which indicate, *inter alia*, that:
 - a) an investor may lose all of their investment if the underlying unit price falls below the Warrant Loan Amount (Part 2, 4.2);
 - b) the value of the investment in the underlying funds may fall and investor may receive back less than the value of their original investment (Part 1, 7(h));
 - c) investors should be aware that the overall return on the unlisted rolling instalments may be zero and investors may lose all of their purchase price paid for the unlisted rolling instalments (Part 2, 4.2);
 - d) an investor may lose all of their investment if the underlying unit price falls below the Loan Amount (Part 2, 4.2)
- 6) The First Respondent had an ostensible right pursuant to the Trust Deeds to enforce its security interest over the units should the Applicants not make the instalment payment on or before the Expiry Date which would result in the loss of some or all of their Equity Contributions (paragraph 54(e) herein).
- 7) Further particulars will be provided following discovery.

1.72.2 Acquisition of the Claim Warrants

25. By about late 2007, as a result of falls in global stock markets including the ASX and consequential falls in the value of the Navra Managed Funds, many of the Applicants' gearing levels in their Margin Loans were approaching levels where they would be at risk of receiving margin calls.
26. In or about February 2008, Navra Financial Services advised the Applicants and all of in the February 2008 Meeting (referred to in paragraph 148 herein) to:
 - (a) sell down their units in the Navra Managed Funds (or transfer those units and then use those units as security for a loan);
 - (b) pay out their Margin Loans; and

- (c) use all available funds remaining after repayment of the margin loans to acquire the first in the series of the Claim Warrants, being 'NRFUZA' or 'NRFUZZ', and also use such acquisitions of the said Claim Warrants as security for a loan to purchase the Claim Warrants or part thereof.
27. Following this advice, from about February 2008, the Applicants sold their interests in the Navra Managed Funds or transferred those units in the Navra Managed Funds and used them as security for a loan, paid out some or all of their Margin Loans, and used the remaining funds to acquire the 'NRFUZA' or 'NRFUZZ' series Claim Warrants (and also use such acquisitions of the said Claim Warrants as security for a loan to purchase the Claim Warrants or part thereof) from one or more of the Respondents.
28. In acquiring the Claim Warrants, the Applicants continued to hold Double Geared Investments because:
- (a) their interests in the Claim Warrants were funded by the Home Loan Funds; and
 - (b) the Claim Warrants were themselves geared to levels of between 50 to 90 per cent.
29. During the period June 2008 to March 2011, from time to time, and on the advice of Navra Financial Services, the Applicants rolled over from one series of Claim Warrants to another or acquired further Claim Warrants.

Particulars

- 1) The Applicants repeat and rely on:
 - a) Schedule 1 herein.
 - b) Each of the rollovers of each of the First and Second Applicants, as pleaded from paragraphs 69 – 74F and 79 to 89 herein.
30. At the time each of the Applicants first invested in the Navra Managed Funds in accordance with Navra Investment Model they had little or no experience:
- (a) in investing in managed funds or borrowing money to invest in managed funds;
 - (b) in investing in the stock market or borrowing money to invest in the stock market;
 - (c) in relation to margin loans.
- 30A. At the time each of the Applicants purchased the Claim Warrants or rolled over Claim Warrants into another series of Claim Warrants they had little or no experience with:
- (a) investing in the stock market;

- (b) dealing with or purchasing Claim Warrants or products similar to the Claim Warrants;
- (c) limited recourse loans;
- (d) leveraged exposure to a registered managed investment scheme;
- (e) investing in Unlisted Rolling Instalment Warrants or Managed Fund Instalment Warrants.

31. The Claimants acquired the Claim Warrants during the period February 2008 to about March 2011.

1.82.3 Introduction to the Claim Warrants and their suitability

32. The Claim Warrants:

- (a) were leveraged financial products providing the Applicants with exposure to units in the Navra Retail Fund or the Navra Managed Funds;
- (b) were held on trust by the Third Respondent;
- (c) were governed by the Trust Deeds dated 1 November 2007, 11 June 2008 or 25 May 2010;
- (d) provided the Applicants with the ability to purchase units in the Navra Retail Fund or the Navra Managed Funds by way of two payments, being an initial payment (called the 'First Payment') on the application date and a final payment (called the 'Instalment Payment') on the 'Expiry Date';
- (e) on each 'Reset Date', which occurred annually, the new 'Interest Amount' and any 'Borrowing Fee' would be added to the Loan Amount when the interest payment and fees were due (specifically the NRFKZ Series);
- (f) fund pricing and performance was dependent on the performance of the Navra Retail Fund or the Navra Managed Funds;
- (g) were not tradeable on ASX or any other exchange;
- (h) were illiquid, except at the discretion of RBS depending on RBS's ability to sell the underlying units in the Navra Retail Fund or the Navra Managed Funds;
- (i) each series of Claim Warrants could be rolled over into another series of Claim Warrants, subject to the payment of any further Equity Contribution required.

33. The 'First Payment' was between 10 per cent and 50 per cent of the value of the units in the Navra Retail Fund or other Navra Managed Funds.

34. In acquiring the Claim Warrants, the Applicants borrowed between 50 per cent and 90 per cent of the value of the Units in the Navra Retail Fund or the Navra Managed Funds from RBS (**Warrant Loan Amount**);
35. The fees payable by the Applicants in relation to the Warrant Loan Amount included:
- (a) a rate of interest that was unspecified but variable from day-to-day;
 - (b) a 'Borrowing Fee' of up to 2.2 per cent of the Warrant Loan Amount per Claim Warrant on the issue date;
 - (c) a 'Capital Protection Fee',
 - (d) a 'Placement Fee',
 - (e) 'Commissions';
 - (f) 'Costs of an Extraordinary Event'; and;
 - (g) 'Additional Interest Amount';
- (“the Fees Payable”)**
- (h) Additional items which constitute “Fees Payable” may be added following discovery.
36. Product Disclosure Statements were published by RBS in relation to the Claim Warrants. The Applicants otherwise refer to and rely on the Product Disclosure Statements in respect of the Claim Warrants as though set out herein in full.

Particulars

- 1) RBS Product Disclosure Statement dated 30 November 2007.
- 2) RBS Product Disclosure Statement dated 18 February 2008.
- 3) RBS Product Disclosure Statement dated 16 June 2008.
- 4) RBS Product Disclosure Statement dated 27 October 2008.
- ~~5) RBS Product Disclosure Statement dated 28 May 26 February 2010.~~
- 6) RBS Product Disclosure Statement dated 28 May 2010.

(the Product Disclosure Statements)

37. The 'NRFUZA' and 'NRFUZZ' Claim Warrants:
- (a) included a put option in favour of the Claimants who held those Claim Warrants (**Holder's Put Option**); and
 - (b) the Holder's Put Option entitled the relevant Claimants to dispose of the underlying units in the Navra Retail Fund or other Navra Managed Funds to RBS at the Expiry Date and for the Warrant Loan Amount to be discharged from the proceeds.

38. In the case of the 'NRFKZA', 'NRFKZB', 'NRFKZC', 'NRFKZE', 'NRFKZF' and 'NRFKZG' series of the Claim Warrants:
- (a) there was no capital protection, meaning that the Claimants who held these Claim Warrants were at risk of losing an amount equal to the value of their equity in the underlying units in the Navra Retail Fund or other Navra Managed Funds;
 - (b) the relevant Claimants were at risk of losing their entire Equity Contribution, if the Warrant Loan Amount exceeded the value of the underlying units in the Navra Retail Fund or other Navra Managed Funds;
 - (c) if the price of the units in the underlying Navra Retail Fund or other Navra Managed Funds fell to a particular price on a particular day, a 'Stop Loss Event' was deemed to have occurred;
 - (d) if a 'Stop Loss Event' occurred, the relevant Claimants were required to make a partial repayment of the Warrant Loan Amount (to maintain the requisite level of gearing), or to instruct RBS to sell down the necessary number of Claim Warrants and apply the proceeds to the Warrant Loan Amount, or pay out the Warrant Loan Amount in full.
39. The Claim Warrants were only suitable for investors:
- (a) intending high-risk ~~and medium to long term investment (of 5 years or more);~~ speculative investments, with a sense of gambling;
 - ~~(b) who had an above average tolerance for market price volatility;~~
 - (b) [blank.]
 - (c) who had sufficient cash reserves and the willingness to deploy those cash reserves to make payments to RBS in reduction of the Warrant Loan Amount following any Stop Loss Event;
 - (d) who were prepared to lose the entirety of their Equity Contributions;
 - (e) who understood the risks associated with highly geared financial products;

Particulars

Bewley 15 September 2017 Report at 2.10.

- (f) who had the knowledge or expertise to evaluate the merits and the risks of an investment in the Claim Warrants;
- (g) who had and would have had at least a 10% cash buffer; at all times;
- (h) who were speculative investors; ~~or~~ and only for a small proportion of that person's wealth; and
- (i) who, with full knowledge of the risks and specifications of the product, were prepared to accept the risk of investing in an illiquid product, and had the financial

capacity to sustain a long term (or permanent) fall in the capital value of that product.

1.92.4 **Contracts to acquire the Claim Warrants and their terms**

40. Contracts were entered into with RBS by the Claimants concerning the acquisition by the Claimants of the Claim Warrants. These contracts had the terms found in the following documents:
- (a) 30 November 2007 Product Disclosure Statement (the “**November 2007 Contract**”);
 - (b) 18 February 2008 Product Disclosure Statement (the “**February 2008 Contract**”);
 - (c) 16 June 2008 Product Disclosure Statement (the “**June 2008 Contract**”);
 - (d) 27 October 2008 Product Disclosure Statement (the “**October 2008 Contract**”);
 - (e) 16 March 2009 Supplementary Product Disclosure Statement (the “**March 2009 Contract**”);
 - (f) 28 May 2010 Product Disclosure Statement (the “**May 2010 Contract**”);
 - (g) any and all other Product Disclosure Statements or other contracts between the Claimants as customers of Navra Financial Services and RBS (the “**Other Contracts**”);
- (collectively “**the Contracts**”).
41. Each of the Contracts did not have an entire agreement clause.
42. The November 2007 Contract had the following material terms or conditions:
- (a) the Claimants (who acquired NRFUZA Claim Warrants) would buy “Navra Instalments”, being units in the Navra Retail Fund or other Navra Managed Funds which were issued by RBS, with only a partial payment for the Navra Instalments, the remaining amount to complete the purchase (called the “Instalment Payment”) being a loan by RBS (this loan was previously referred to as the Warrant Loan Amount);
 - (b) the Claimants would not be required to make the Instalment Payment;
 - (c) the Claimants would not need to outlay any further cash payments to service the loan during the currency of the loan;

- (d) the Claimants would never be subject to a margin call;
 - (e) the Claimants would receive all the major benefits of investing in the underlying units in the Navra Retail Fund (or further and in the alternative other Navra Managed Funds);
 - (f) the Claimants would receive 100% of the distribution yield from the Navra Instalments they had bought, even if they have not made the Instalment Payment;
 - (g) the Claimants could invest in the Navra Instalments for at least 5 years, being a medium to long term investment;
 - (h) the Navra Retail Fund or other Navra Managed Funds would be a diversified fund capable of standalone investment;
 - (i) the Claimants' investments were secured by insurance (known also as a 'put option');
 - (j) the Navra Instalments were liquid and could be sold to RBS before 5pm on the Business Day which is 5 Business Days before the expiry date as specified in the November 2007 Contract;
 - (k) sales of the Navra Instalments could only be to RBS (at RBS' complete discretion) and insofar as any individual Claimant wished to sell them to a third party, they could only do so with the approval of RBS and at RBS's complete discretion;
 - (l) RBS had the discretion in itself to:
 - (i) vary the Warrant Loan Amount on each 'reset date';
 - (ii) vary the interest amount daily to any amount it so wished;
 - (iii) nominate, in its own discretion, whether an extraordinary event had occurred, giving it certain early termination rights.
 - (m) the Claimants would not be permitted to sue Navra Financial Services;
 - (n) the legal owner of the Navra Instalments was to be the Third Respondent who was a trustee controlled or managed by RBS, and who would not sue Navra Financial Services on behalf of its beneficiaries for any reason;
 - (o) only RBS and the Third Respondent (being a Trustee controlled or managed by RBS) would have the power to amend the Trust Deed;
 - (p) payments out of the Navra Retail Fund or other Navra Managed Funds would, in all circumstances, give priority to payments of the profits and costs of RBS over payments to the Claimants as beneficiaries under the trust; and
 - (q) RBS had conflicts of interest that would not be explicitly detailed for investors, but through which RBS was entitled to act adversely to the interests of the Claimants,
- and all other such terms that the Court may see as material.

43. The February 2008 Contract (by which relevant Claimants acquired NRFUZZB Claim Warrants) had the same material terms or conditions as the November 2007 Contract, save for a change in the 'Key Dates' being the dates on which the February 2008 Contract opened and expired.
44. The June 2008 Contract had the following material terms or conditions:
- (a) the Claimants (who acquired NRFKZA Claim Warrants) would purchase "Unlisted Rolling Instalments" (which superseded Navra Instalments), being units in the Navra Retail Fund which were issued by RBS, with only a particular payment for the Unlisted Rolling Instalments, the remaining amount to complete the purchase (called an "Instalment Payment") being a loan from RBS (this loan was previously referred to as the Warrant Loan Amount);
 - (b) the Claimants would receive all the major benefits of investing in the underlying units in the Navra Retail Fund;
 - (c) the Navra Retail Fund would be a diversified fund capable of standalone investment;
 - (d) the Claimants would be required to pay down the loan by 30% of their distributions of income received from the Navra Retail Fund and that this would happen ~~by~~ automatically without the Claimants' input;
 - (e) the pay down percentages would be by agreement between RBS and Navra Financial Services and would be imposed on to the Claimants;
 - (f) stop loss calls (which are similar to margin calls) would prevent RBS from losing money, by preventing the value of the Unlisted Rolling Instalments going negative in value. This required the Claimants to either pay RBS a sum to reduce the loan, top-up the funds with RBS, or to sell their Unlisted Rolling Instalments;
 - (g) the Claimants could invest in the Unlisted Rolling Instalments for at least 5 years, being a medium to long term investment;
 - (h) sales of the Unlisted Rolling Instalments could only be to RBS and insofar as any individual Claimant wished to sell them to a third party, they could only do so with the approval of RBS and at RBS's complete discretion;
 - (i) the legal owner of the Unlisted Rolling Instalments was to be the Third Respondent who was a trustee controlled or managed by RBS;
 - (j) RBS would take a Security Interest over the unit held in the Navra Retail Fund by the trustee;
 - (k) the Claimants were not permitted to sue Navra Financial Services;

- (l) the legal owner of the Unlisted Rolling Instalments was the Third Respondent as a trustee and who was controlled or managed by RBS and who would not sue Navra Financial Services on behalf of its beneficiaries for any reason;
- (m) only RBS and the Third Respondent (who was a trustee controlled or managed by RBS) would have had the power to amend the Trust Deed;
- (n) RBS had conflicts of interest that would not be explicitly detailed for investors, but through which RBS was entitled to act adversely to the interests of the Claimants;
- (o) payments out of the Navra Retail Fund would, in all circumstances, give priority to payments of the profits and costs of RBS over payments to the Claimants as beneficiaries under the trust;

and all other such terms that the Court may see as material.

45. The October 2008 Contract, the March 2009 Contract and the May 2010 Contract (by which relevant Claimants acquired NRFKZC, NRFKZE, NRFKZF and NRFKZG Claim Warrants) had the same material terms and conditions as the June 2008 Contract, save for the following:
- (a) all distributions were to be at the sole discretion of RBS;
 - (b) RBS could allocate as much of the Claimant's distributions as it chooses for the purpose of paying off the relevant loan to itself.
46. No copy of the "Trust Deed" referred to in the Contracts was provided to any or both of the Applicants.
- 46A. Each of the Contracts were created by the provision to RBS by an Applicant (and its subsequent acceptance by RBS) of an application form (the **Application Form**) which formed part of the relevant Product Disclosure Statement and which included:
- (a) information about the relevant Applicants including personal details, payments options and (save in the case of NRFUZA and NRFUZZB warrants) instructions on what to do if a stop loss event occurred;
 - (b) an application to either purchase Claim Warrants (including the dollar amount which the Applicant is contributing) or to transfer units already held by the Applicant;
 - (c) acceptance of the conditions set out in the PDS to which the Application Form was attached;
 - (d) an acknowledgement that the Applicants were bound by the terms of the Trust Deed;

- (e) an acknowledgment and consent for RBS to collect the Applicants' personal information in order to provide and manage the financial products and services which the Applicants request from RBS;
- (f) the appointment of the Third Respondent (as trustee) as the Applicants' nominee and authorisation and a direction the trustee to do all things necessary for it to become the registered owner of the underlying units the subject of the purchased warrants and to do anything necessary to effect the transfer to the trustee of those underlying units;
- (g) the appointment of RBS as the Applicants' attorney to do anything which the Applicants may be obliged to do under or in relation to the Trust Deed relating to the Warrant Loan Amount;
- (h) an acknowledgement that the Applicants had the opportunity to obtain independent professional advice in relation to the investment in the Claim Warrants;
- (i) a declaration signed by each Applicant declaring that the credit to be provided by RBS was "to be applied wholly or predominantly for business or investment purposes (or for both purposes)";
- (j) a note that by signing the declaration as to business and investment purposes the Applicant may lose protection under the Consumer Credit Code.

Particulars

- 1) Each Application Form was completed in part or in whole by each Applicant, though some or all Application Forms were partially or wholly (save for the signature) completed by Navra Financial Services.

47. The Applicants were not shown or given a copy of the whole of the Application Form before they signed the relevant signature pages (within the meaning of paragraph 121(k)(i)).

23The Trusts

48. At all material times, each unit in the Navra Retail Fund or the Navra Managed Funds was held on trust by one of RBS Nominees (Australia) Pty Limited (as trustee) or RBS Alternative Investments (Australia) Pty Limited (as trustee or in its own right through the scheme of arrangement).
49. The trust with regard to each unit was purportedly governed by the Trust Deeds.

50. Copies of each of the relevant Trust Deeds were not given to the Applicants by either RBS or by Navra Financial Services (if Navra Financial Services ever had any of the Trust Deeds which is unknown by the Applicants).
51. The Applicants were also not given a copy of each of the relevant Trust Deeds.
52. Each Trust Deed purported to make each of the Applicants (referred to as Holders) parties, although they had no place for an Applicant to sign.
53. The 1 November 2007 Trust Deed purported to be executed and delivered by each of ABN AMRO Australia Pty Limited (now the First Respondent RBS Group (Australia) Pty Limited) as “Issuer” and “Lender” and ABNED Nominees Pty Limited (now the Third Respondent RBS Nominees (Australia) Pty Limited) as trustee.
54. The 1 November 2007 Trust Deed had the following material terms:
 - (a) the trustee was to hold the legal title of each Unlisted Rolling Instalment;
 - (b) the trustee was to hold on trust the beneficial title of each Unlisted Rolling Instalment;
 - (c) each unit was held in a separate trust;
 - (d) the trustee was to charge in favour of ABN AMRO (Australia) Pty Limited (now RBS) all the present and future value of each separate trust to secure each Claimant’s payments under each separate trust;
 - (e) the trustee was to hold on trust the security interest for ABN AMRO (Australia) Pty Limited;
 - (f) ABN AMRO (Australia) Pty Limited was the **Lender**;
 - (g) the Lender may charge a borrowing fee, in its absolute discretion, but only insofar as that fee covers its costs in providing the loan and no more;
 - (h) the trustee may dispose of trust assets in its own discretion and the Holder has “no right to challenge the validity” of the disposal or transfer;
 - (i) any member of the ABN AMRO Group, may, at any time, deal in the Unlisted Rolling Investments the subject of the trustee’s legal interest and the Claimants’ beneficial interests;
 - (j) ABN AMRO (Australia) Pty Limited may buy back the Unlisted Rolling Investments at any time;
 - (k) the trustee had a right to rely on ABN AMRO (Australia) Pty Limited to tell it:
 - (i) when the underlying units could be sold or redeemed;
 - ii) the number that could be sold or redeemed;
 - iii) the price at which they could be sold or redeemed; and

- (iv) the reserve prices below which the Underlying Units may not be sold or redeemed;
- (l) the manner of payment to the Claimants was to be agreed between the trustee and ABN AMRO (Australia) Pty Limited;
- (m) the trustee must sell the underlying units to ABN AMRO (Australia) Pty Limited if ABN AMRO (Australia) Pty Limited directs it to do so;
- (n) the Claimants cannot sue the trustee, ABN AMRO (Australia) Pty Limited or its related body corporate in connexion with the sale or redemption of an underlying unit, including the price thereof;
- (o) terms which purported to place contractual obligations upon Claimants:

Particulars

- 1) The following terms placed obligations on the Claimants in circumstances where the Claimants were not provided with copies of the Trust Deeds and were unaware of their terms and conditions:
 - a) the Claimants agreed to take all steps to execute documents and to do everything necessary to give effect to transactions authorised by this document;
 - b) the Claimants agreed to be bound by the terms of the document;
 - c) the Claimants agreed that they will have no right to vote, despite holding the beneficial interest;
 - d) the Claimants agreed that they have the sole responsibility for the investment;
 - e) the Claimants agreed that they must pay for the costs to ABN AMRO (Australia) Pty Limited for delays in the trustee receiving redemption payments;
 - f) the Claimants agreed to pay Transfer Taxes;
 - g) the trustee could act in a conflict of interest with the Claimants and profit from acting upon the conflict of interest;
 - h) the trustee need not keep itself generally informed about the market or circumstances and activities in the underlying fund;
 - i) the Claimants agreed to provide information to the trustee on request; and
 - j) the Claimants had no right to give instructions before the trustee acts.

and all other such terms that the Court sees as material.
(collectively **the Purported Obligations**)

55. The 11 June 2008 Trust Deed had the same material terms as the 1 November 2007 Trust Deed as set out above, save that a 'borrowing fee' was payable by each Claimant on the issue of the unlisted rolling instalments.
56. The 25 May 2010 Trust Deed had the same material terms as the 11 June 2008 Trust Deed, save that the trustee may take an action to enforce the security and upon doing so expire early that series of instalments.

34 RBS' Knowledge

57. Prior to 30 November 2007 the First Respondent knew that:
- (a) the Navra Retail Fund and the Navra Managed Funds were unlisted investment schemes registered with the Australian Securities and Investment Commission (**ASIC**) under the CA;
 - (b) NavraInvest Limited (**NavraInvest**) was the responsible entity and investment manager for the Navra Retail Fund or other Navra Managed Funds;
 - (c) the object of the Navra Retail Fund or other Navra Managed Funds was to generate positive annual returns and quarterly distributed income;
 - (d) NavraInvest actively managed the Navra Retail Fund or other Navra Managed Funds using management software called "NavTraDE Investment Management System";
 - (e) the Navra Retail Fund or other Navra Managed Funds were suitable for investors seeking exposure to an actively managed portfolio of blue chip shares;
 - (f) investment in the Navra Retail Fund or other Navra Managed Funds were a medium to long term investment of at least 5 years and was best suited to investors seeking:
 - (i) an exposure to an actively managed portfolio;
 - (ii) potentially higher distribution returns than would normally be achieved;
 - (iii) the potential to generate capital growth;
 - (g) the Navra Retail Fund or other Navra Managed Funds were more suitable to investors who were willing to accept the risk of a high degree of volatility in distribution and capital growth investment returns;
 - (h) there were risk factors associated with the management of the Navra Retail Fund or other Navra Managed Funds by NavraInvest namely:

- (i) share market volatility;
- (ii) returns being affected by the performance of companies into which the fund invests;
- (iii) economic risks associated with the domestic and world economies;
- (iv) unlisted rolling instalments are leveraged investments and the returns from them will be more volatile than the returns from the underlying units;
- (v) risks associated with an investment in unlisted rolling instalments is greater than in the case of a direct investment with the underlying units;
- (vi) the price of the unlisted rolling instalments is likely to vary more (in percentage terms) than the price of the underlying units; and
- (vii) a holder may lose all of their investment if the underlying unit price falls below the Warrant Loan Amount.

Particulars

- 1) Section 7 of Part 1 and Sections 4.1 and 4.2 of Part 2 of the First Respondent's Product Disclosure Statement entitled Unlisted Rolling Instalment Warrants dated 30 November 2007 and each of the Contracts in similar terms.

58. Prior to 30 November 2007 Elizabeth Tian (**Tian**) knew of the Navra Investment Model.

Particulars

- 1) Tian worked at Colonial Geared Investment (**Colonial**) between 2003 and 2007.
- 2) When she worked at Colonial, Tian:
 - a) was a business development manager who actively sought referrals of work from Navra Financial Services, particularly the provision by Colonial of margin loans to Navra Financial Services clients;
 - b) as part of her duties was required to understand the type of client that Navra Financial Services had and the type of investment advice that Navra Financial Services clients would receive;
 - c) had discussions with Mr Navra (the principal of Navra Financial Services) so that she could understand the type of client Navra Financial Services had and the type of investment advice given by Navra Financial Services in order to tailor Colonial's products to fit with the requirements of Navra Financial Services clients;
 - d) was told by Mr Navra about the structure of the Navra Investment Model, that Navra Financial Services clients would have a double

geared investment (which included exposure to a margin loan), and that the investment was made with the Navra Managed Funds which were primarily share market based funds;

- e) organised, assisted with and otherwise facilitated (and was the relevant relationship manager) in the creation of margin loans for some Navra Financial Services clients in order for those clients to invest in accordance with the Navra Investment Model.

59. Tian was employed by RBS between about 2007 and 2013, in the role of Director, Investor Products (Equity Derivatives Structured Product Sales) (**Position**).

60. Tian's knowledge of the Navra Investment Model can be imputed to RBS.

Particulars

- 1) Tian's Position was a role of seniority, knowledge and influence, or alternatively, the Position held a title denoting to those outside the organisation that she was to be looked upon as a senior person within the organisation, and was to be seen as directly and intimately connected with RBS.
- 2) Tian's Position required her to deal with structured derivative products, which required a level of knowledge about the risks of the products she was selling, the assets they would be secured against, the potential investors in those products and the market into which the products were being put.
- 3) Tian's Position required the generation of business through the creation and sale of Equity Derivatives and Structured Products. The full details of the clients or investors she was assisting would normally have been provided to all relevant internal parties assisting in the creation of those products.
- 4) Specifically, her Position and experience would require knowledge or consideration of the Navra Financial Services clients as investors, as this issue would be necessary in order to create claim warrants for Navra Financial Services clients.
- 5) Tian's Position caused Navra Financial Services clients and Navra Financial Services (including Mr Navra and the Applicants) to identify her with RBS and especially with its Equity Derivatives and Structured Products division. As such, she was seen and believed to be ~~the~~ RBS' representative and mouthpiece.

- 6) Tian's Position and experience meant that she was under a duty to direct information she had about the proposed investors of RBS' products to her employer, such that RBS could carry through approval processes on all relevant aspects of the product before finalising it for sale to the market.
- 7) From the content of the 2007 Discussions (which are referred to in paragraph 63 herein).

61. As part of her duties in her Position, in about October 2007 Tian contacted Mr Navra and met with him at the Navra Financial Services offices in Berry St North Sydney, to discuss the state of the global financial market, the gearing aspect of the Navra Investment Model, and Navra Financial Services client's positions under their margin loans (**2007 Discussions**).
62. At the time of the 2007 Discussions Tian knew from her Position that:
 - (a) the global financial market was volatile and that share markets were falling;
 - (b) falls in the share market would necessarily impact on Navra Financial Services' clients because of the Double Geared Investments in the Navra Managed Funds, which were primarily share market based funds;
63. During the 2007 Discussions with Navra Financial Services, Tian discussed with Mr Navra that:
 - (a) she was now working for RBS in the Position;
 - (b) she knew that the share market was falling in value and markets were generally in distress;
 - (c) she knew that the Navra Managed Funds would be falling in value along with the stock market generally;
 - (d) she understood that gearing made up a key aspect of the Navra Investment Model;
 - (e) she understood from her employment at Colonial, that a significant number of Navra Financial Services clients were engaged in Double Geared Investments and had Margin Loans;
 - (f) she knew that the Navra Managed Funds were primarily stock market-based funds and were subject to the present volatility in the stock market, particularly any fall in stock prices;
 - (g) she suspected that because of the fall in the stock market and the loan to value ratio used in the margin loans taken out by Navra Financial Services clients with Colonial, Navra Financial Services clients were geared to a point where they

were reaching the limit of the margin loans and were likely to receive margin calls;

- (h) she suspected that because of the double geared nature of the Navra Investment Model, Navra Financial Services clients had a high level of debt and may have difficulty in meeting any margin loans or servicing their debts;
- (i) if a Navra Financial Services client had difficulty in meeting a margin call this could result in a sell down of that client's units held in the Navra Managed Funds. With fewer funds under management this could impact on Navra Financial Services' business profitability;
- (j) she wanted to avoid Navra Financial Services clients receiving margin calls; and
- (k) her role at RBS would allow her to assist Navra Financial Services clients by the creation of a financial product (called a claim warrant) designed especially for Navra Financial Services clients, which would be a leveraged product but which had no margin loan attached to it and was not subject to margin calls. The claim warrant would allow Navra Financial Services clients to maintain the same, or roughly the same, dollar amount investment exposure to the Navra Retail Fund or other Navra Managed Funds (which assisted with Navra Financial Services' business profitability) but would not entail a margin loan because it would contain a non-recourse loan. The claim warrant would be a derivative product using the Navra Retail Fund or other Navra Managed Funds as the underlying asset.

63A. Tian attended the February 2008 Meeting on behalf of RBS to represent RBS and to answer questions of retail investors as or when asked. From her attendance at this meeting Tian was aware of all of Mr Navra's representations at the February 2008 Meeting.

63B. In 2007, Aaron Stambulich (**Stambulich**) was:

- (a) an executive director of RBS;
- (b) head of Equity Structured Products and Warrants;
- (c) responsible for all aspects of the RBS warrants and equity structured products business, including structuring, product management, sales, distribution, trading and risk management;
- (d) an employee of long standing with RBS having worked there for 7 years; and
- (e) held both a Bachelors and Masters degrees in economics.

63C. Stambulich's knowledge can be imputed to RBS because of his position as executive director and head of equity structured products and warrants:

- (a) was a role of seniority, knowledge and influence, or alternatively, the position held a title denoting to those outside the organisation that he was to be looked upon as a senior person within the organisation, and was to be seen as directly and intimately connected with RBS.
- (b) required him to deal with structured derivative products, which required a level of knowledge about the risks of the products he was selling, the assets they would be secured against, the potential investors in those products and the market into which the products were being put.
- (c) required the generation of business through the creation and sale of Equity Derivatives and Structured Products. The full details of the clients or investors he was assisting would normally have been provided to all relevant internal parties assisting in the creation of those products.
- (d) required a knowledge of Navra Financial Services, how it operated, who its clients were and the Navra Managed Funds in order to:
 - (i) create new financial products and services for clients of Navra Financial Services;
 - (ii) properly consider, brief and make representations to reinsurers used by RBS in relation to Navra Fund based financial products and services;
 - (iii) comply with financial services laws in line with the Section 912A Obligations.
- (e) caused Navra Financial Services (including Mr Navra) to identify him with RBS and especially with its Equity Derivatives and Structured Products division. As such, he was seen and believed to be ~~the~~ RBS' representative and mouthpiece.
- (f) placed him under a duty to direct information he had about the proposed investors of RBS' products to his employer, such that RBS could carry through approval processes on all relevant aspects of these products before finalising them for sale in the market.

63D. In or around September or October 2007, Mr Navra met with with Stambulich (in his capacity as executive director of RBS and head of equity structured products and warrants) and discussed the following:

- (a) Mr Navra's fear that the market could crash severely on the basis of substantial volatility in the market;
- (b) Mr Navra's fear that the market could crash severely on the basis of the general downwards movement in the market since the beginning of October 2007;
- (c) Mr Navra's concern that the market could crash at any minute;
- (d) Mr Navra's concern that the world's market was in such debt that it would have to collapse;

- (e) Mr Navra's concern that his own money was in the Navra Managed Funds and that a sudden outflow of investors at margin (or stop loss) call could cause a noticeable diminution of the value and stability of the funds;
- (f) Mr Navra's desire to acquire insurance (in the form of a put option) for his client's margin loans;
- (g) Stambulich's understanding that Mr Navra's desire for margin loan insurance was not practicable because of the structure of that type of financial product;
- (h) Stambulich's understanding that investment warrants, of a fixed term, were an appropriate structure for the insurance that Mr Navra sought for his clients;

Particulars

- 1) This understanding was formed after meeting with others in management at RBS (the names of which are not currently known).
 - (i) That Stambulich approached RBS' treasury to obtain insurance to protect the potential applicants and that approach included or ought to have included information concerning the risks that the Navra Managed Funds posed to insurers;
 - (j) their joint understanding that the Claim Warrants were structured by RBS to only protect clients up to a 40% decline in the market and no more or in the alternative that there was a maximum level of market decline that the Claim Warrants were structured or otherwise able to withstand given the underlying Navra Fund;
 - (k) that Navra Financial Services' clients would need a 10% or other cash buffer if the market ever declined around or more than 40%; and
 - (l) that Stambulich managed the warrant creation process at RBS.
- 63E. Stambulich made public statements in his capacity as executive director of RBS by means of online video and presentation dated 14 ~~Aug-07~~August 2007 found at FSITV and in an article by Stephen Blaxhall in InvestorDaily on 10 ~~Sep-07~~September 2007, to the effect that:
- (a) RBS was targeting advisor groups or any other relevant entity that sells to or signs up unsophisticated investors for warrants, or otherwise could sign up unsophisticated clients for warrants;
 - (b) ~~RBS~~RBS recognised that education was the important part of RBS stated aim of targeting unsophisticated investors on the basis that investors needed to understand what they were getting into.

- 63F. At the time of publishing the Contracts, RBS knew or represented each of the terms of the Contracts set out at paragraphs 41 - 45.
- 63G. RBS performed due diligence on the Navra Managed Funds including the Navra Retail Fund or other Navra Managed Funds at least in or around quarter four of 2007.
~~(Particulars of the due diligence performed are not currently known.~~ (What RBS ought to have done or otherwise would have known through such due diligence process is set out in paragraphs 111 and 113 herein. The adequacy of the due diligence is challenged elsewhere in the pleading.)
- 63H. Mr Navra communicated with the compliance department of RBS about at least the November 2007 Contract:
- (a) Mr Navra repeatedly informed RBS' compliance department that the wording in the PDS was beyond the financial or legal literacy of the Applicants;
 - (b) RBS made a number of changes to its PDS on Mr Navra's recommendations; and
 - (c) RBS rejected at least some of Mr Navra's attempts to simplify the language of their PDS, calling his changes, on at least one occasion 'adolescent'.

Particulars

The Applicants cannot provide further particulars of the following facts until after discovery:

- 1) the number of times, who, or the way in which that Navra informed RBS' compliance department that the wording in the PDS was beyond the financial or legal literacy of the Applicants;
 - 2) the changes that RBS made to its PDS as a result of Mr Navra's recommendations;
 - 3) how, by whom and when Mr Navra was informed that that his changes were rejected or were adolescent.
- 63I. Navra Financial Services made direct contact at least twice by letter with Tian at RBS about the First Applicant's financial position, acquisition of Claim Warrants and rollover of Claim Warrants. The letters indicated that:

- (a) RBS knew that the First Applicant had a highly geared Margin Loan that was in distress, and that the First Applicant wished to have RBS pay out that Margin Loan and apply for Claim Warrants with a loan facility through RBS;
- (b) RBS knew that the First Applicant was rolling from one distressed investment to a similar investment; and
- (c) RBS were amenable to rolling over the First Applicant's distressed investment into further similar investments.

Particulars

- 1) Letter from Anubha Singh of Navra Group Pty Limited to Tian, dated 11 March 2008 including attachments showing the First Applicant's Navra Holdings Statement and ANZ Margin Lending account statement, regarding the First Applicant's First Acquisition via a unitholder application, and the position that RBS would re-finance the margin loan.
- 2) Letter from Serey Mam of Navra Financial Services to Tian dated 16 February 2010, regarding the First Applicant's First Rollover.

63J. Mr Navra corresponded with RBS in relation to the Applicants and the transfer from NRFKZB to NRFKZA or NRFKZC and stop loss warnings.

Particulars

- 1) Email from Tian to Dylan Navra, Steve Navra and others, dated 13 January 2009.
- 2) Email from Anne Hau to Dylan Navra and others, dated 24 February 2009.

63K. RBS directly corresponded with at least the First Applicant.

Particulars

- 1) Emails from Ann Hau to the First Applicant dated 17 March 2011 and 24 March 2011.

63L. RBS knew or ought to have known of the prevailing market conditions at all material times:

- (a) RBS was a large investment bank with wide market knowledge, both as an investment advisor and investor itself;

- (b) Each of Tian and Stambulich was an expert in the investments the subject of the Navra Managed Funds;
- (c) Each of Tian and Stambulich was an expert in the warrants and structured products the subject of the Contracts;
- (d) RBS advised many of its clients, retail and otherwise, of the prevailing market conditions and held itself out as an expert in that respect to those clients;
- (e) the Applicants repeat paragraphs 111 and 113 herein, each of the other paragraphs under the heading “RBS’ Knowledge” herein (being 57 to 63M), and paragraphs 41 – 45 herein;
- (f) RBS knew the volatility index level at all material times;
- (g) RBS knew the general status of the ASX and major worldwide stock markets at all material times;
- (h) RBS, its agents, delegates and or contractors carried out market research into the prevailing market conditions at all material times.

63M. RBS knew the personal circumstances of the Applicants, including that they were unsophisticated retail investors.

Particulars

- 1) The Applicants repeat and rely on the contents of the Application Forms;
- 2) The Applicants repeat and rely on the strategy of Stambulich in his public announcements referred to in paragraph 63E herein.
- 3) The Applicants repeat and rely on the conversations between Tian and Mr Navra pleaded under the current subheading, and also between Mr Navra and Stambulich also pleaded under the current subheading.
- 4) The Applicants repeat and rely on paragraphs 18F-M, 58, 61, 62, 63, 63A, 63D, 63E, 63G, 63H, 63I, 63J, 63K, 63L, 111 and 113 herein.

~~FIRST APPLICANT’S BACKGROUND~~

5 ~~63N~~ The First Applicant

5.1 First Applicant’s background

63Q. On or about 30 August 2006 the First Applicant and her husband Glenn Dillon provided information to Navra Financial Services contained in a document called “Financial Fact Finder”.

~~63063R~~. The information included:

- (a) their income;
- (b) that their short term and medium term goals were their childrens' education, home renovations and travel;
- (c) their assets and liabilities (including the equity held in their home);
- (d) a risk profile which indicated that they considered their willingness to take financial risks as average, that they would be prepared to borrow money to make an investment, that they would be uncomfortable ~~is~~if their losses were between 10% to 20%~~%~~.

64. In or about March 2008, and immediately prior to acquiring the Claim Warrants, the First Applicant:

- (a) was 34 years old;
- (b) in 1996, graduated with a Bachelor of Education (Human Movement) degree at the University of Sydney;
- (c) was and from about 1997, worked full-time until 2003, on a casual basis (from 2004-2009) and part-time (2010 to present) as a physical education teacher at Tyndale Christian School;
- (d) was married with two children aged 3 and 1, and was pregnant with her third child;
- (e) for the financial year ended 30 June 2007, earned a gross income of \$2,102;
- (f) for the financial year ended 30 June 2007, her husband earned a gross income of \$62,919;
- (g) prior to April 2007, had no experience in investing in the stock market or managed funds, or borrowing to invest in the stock market or managed funds;
- (h) did not know what a rolling instalment warrant was or how it operated.

3.15.2 First Applicant's acquisition of the Claim Warrants

3.1.15.2.1 Background

65. The First Applicant's relevant asset and liability position was as follows:

- (a) in or about February 2007, the First Applicant and her husband jointly owned a residential home in Glenmore Park, New South Wales, which was valued at

approximately \$450,000 and mortgaged to St George Bank in the sum of approximately \$123,000; (**First Applicant's St George Home Loan**);

- (b) on or about 19 February 2007, the First Applicant and her husband refinanced the First Applicant's St George Home Loan, borrowing a further \$216,000 mortgaged against their home, and acquired units in the Navra Retail Fund to the value of \$200,000;
- (c) on or about 27 February 2007, entered into a margin loan agreement with ANZ (**First Applicant's ANZ Margin Loan**) and:
 - (i) used the \$200,000 worth of Navra Retail Fund units as her Equity Contribution towards the First Applicant's ANZ Margin Loan;
 - (ii) drew down the sum of \$200,000 against the First Applicant's ANZ Margin Loan;
 - (iii) using the proceeds of the First Applicant's ANZ Margin Loan, acquired a further \$200,000 worth of units in the Navra Retail Fund;
- (d) as at 1 March 2007:
 - (i) the First Applicant had acquired 343,224 units in the Navra Retail Fund, acquired at an average cost of \$1.1526 per unit;
 - (ii) was indebted to ANZ in the sum of \$200,000, with interest being capitalised on the First Applicant's ANZ Margin Loan at the rate of 9.1 per cent per annum, or \$18,200 per annum;
 - (iii) was indebted to St George Bank in the sum of approximately \$339,000, with interest accruing on the First Applicant's St George Home Loan at the rate of 7.47 per cent per annum, or \$26,660 per annum;
 - (iv) the First Applicant's liabilities to pay interest on the First Applicant's St George Home Loan and the First Applicant's ANZ Margin Loan (\$44,860) exceeded her and her husband's combined after-tax income for the financial year ended 30 June 2007 (\$44,043).

66. On or about 21 May 2007, the First Applicant:

- (a) drew down a further \$105,000 against the First Applicant's ANZ Margin Loan;
- (b) acquired a further 84,972 units in the Navra Retail Fund at an average cost of \$1.2221 per unit;
- (c) was liable for interest on the First Applicant's St George Home Loan of approximately \$26,660 per annum and interest on her First Applicant's ANZ Margin Loan of approximately \$28,210 per annum, being a total of \$54,870 per annum;

- (d) was indebted beyond her means to make the interest payment on her First Applicant's St George Home Loan and her First Applicant's ANZ Margin Loan from her and her husband's income;
- (e) held a total of 428,196 units in the Navra Retail Fund.

3.1.25.2.2 First Applicant's termination of the First Applicant's ANZ Margin Loan

67. In or about February 2008, Navra Financial Services advised the First Applicant to cash out of her Margin Loan/s and reinvest all surplus funds in the Claim Warrants, particulars of which are set out in paragraph 32 herein.

Particulars

- 1) The Applicants repeat and rely on the February 2008 Meeting.

68. On or about 12 March 2008:
- (a) the First Applicant's ANZ Margin Loan had reached a loan to value ratio of approximately 73 per cent;
 - (b) the First Applicant would have received a margin call at 75 per cent;
 - (c) Navra Financial Services advised the First Applicant to sell down all her units in the Navra Retail Fund to pay out the First Applicant's ANZ Margin Loan, and to acquire the Claim Warrants using any surplus proceeds of sale;
 - (d) Following that advice, sold 225,253.7882 units in the Navra Retail Fund at an average price of \$0.9437, resulting in a capital loss of \$49,943.18.

3.1.35.2.3 First Applicant's acquisition of "NRFUZ" Series Claim Warrants

First Acquisition

69. [blank]
70. On or about 27 March 2008, the First Applicant:
- (a) on the advice of Navra Financial Services, refinanced her home loan with Westpac Banking Corporation (**First Applicant's Westpac Home Loan**);
 - (b) acquired 247,193 Series 'NRFUZB' Claim Warrants financed with:

- (i) \$139,120.22 received by the First Applicant from the surplus funds received from the sale of the units in the Navra Retail Fund after paying out the First Applicant's ANZ Margin Loan;
- (ii) \$148,315.80 by way of a loan funds from RBS;

(First Applicant's First Acquisition)-.L

Second Acquisition

71. On or about 28 March 2008, the First Applicant, on the advice of Navra Financial Services, acquired a further 85,265 Series 'NRFUZZ' Claim Warrants financed with:
- (a) \$35,001.28 drawn from the First Applicant's Westpac Home Loan;
 - (b) \$51,129.00 by way of loan funds from RBS;

(First Applicant's Second Acquisition)-.L

Third Acquisition

72. On or about 31 March 2008, the First Applicant, on the advice of Navra Financial Services, acquired a further 46,771 Series 'NRFUZZ' Claim Warrants financed with:
- (a) \$18,764.53 drawn from the First Applicant's Westpac Home Loan; and
 - (b) \$51,129.00 by way of loan funds from RBS;

(First Applicant's Third Acquisition)-.L

Fourth Acquisition

73. On or about 27 May 2008, the First Applicant, on the advice of Navra Financial Services, acquired a further 148,300 Series 'NRFUZZ' Claim Warrants financed with:
- (a) \$60,002.18 drawn from the First Applicant's Westpac Home Loan; and
 - (b) \$88,980.00 by way of loan funds from RBS;

(First Applicant's Fourth Acquisition)-.L

Position as at 30 June 2008

74. As at 30 June 2008, the First Applicant held 527,529 Series 'NRFUZZ' Claim Warrants financed as follows:
- (a) \$252,888.21 financed from the equity in her home from the First Applicant's St George Loan and the First Applicant's Westpac Home Loan; and
 - (b) \$339,553.80 financed by way of loan funds from RBS.

5.2.4 First Applicant's Rollovers of the Claim Warrants

First Rollover

- 74A. On or about 30 June 2008, the First Applicant, on the advice of Navra Financial Services, rolled over her interests in the Series 'NRFUZH' Claim Warrant into the 'NRFKZH' Claim Warrant.
- 74B. By rolling over her interests in the Claim Warrants as pleaded in paragraph 74A, the First Applicant thereby became exposed to the risk of 'Stop Loss Events' occurring.
- 74C. On or about 29 July 2008, the First Applicant, on the advice of Navra Financial Services, acquired a further 74,154 Series 'NRFKZH' Claim Warrants financed with:
- (a) \$20,000.08 obtained from the First Applicant's tax return for the financial year ended 30 June 2008; and
 - (b) \$44,863.17.00 by way of loan funds from RBS;

(First Applicant's First Rollover)

Second Rollover

- 74D. On or about 1 February 2010, the First Applicant, on the advice of Navra Financial Services:
- (a) rolled over her interests in the 'NRFKZH' Claim Warrant into the 'NRFKZC' Claim Warrant;
 - (b) paid the sum of \$70,216.41 to RBS in relation to the rollover, which was sourced from the First Applicant's Westpac Home Loan.

(First Applicant's Second Rollover)

Third Rollover

- 74E. On or about 25 June 2010, the First Applicant, on the advice of Navra Financial Services:
- (a) rolled over her interests in the 'NRFKZC' Claim Warrant into the 'NRFKZF' Claim Warrant;
 - (b) paid the sum of \$0.00 to RBS in relation to the rollover;

(First Applicant's Third Rollover)

Fourth Rollover

- 74F. On or about 11 October 2010, the First Applicant, on the advice of Navra Financial Services:
- (a) rolled over her interests in the 'NRFKZF' Claim Warrant into the 'NRFKZG' Claim Warrant; and
 - (b) paid the sum of \$88,387.23 to RBS in relation to the rollover, which was sourced from the First Applicant's Westpac Home Loan.

(First Applicant's Fourth Rollover)

3-1.45.2.5 First Applicant's redemption of Claim Warrants

- 74G. On or about 24 March 2011, the First Applicant:
- (a) redeemed all her interests in the Claim Warrants; and
 - (b) received a cash payment from RBS in the sum of \$145,667.45.
- 74H. The total amount of cash invested by the First Applicant in the Claim Warrants was \$431,491.93, resulting in a *prima facie* loss of \$285,824.48 (not including the withholding of distributions applied to reduce the First Applicant's leverage in the Claim Warrants).

6 The Second Applicant

3-26.1 Second Applicant's Background

75. In or about March 2008, and immediately prior to acquiring the Claim Warrants, the Second Applicant:
- (a) was 31 years old;
 - (b) was married with two children aged 3 and 1;
 - (c) In 1999, graduated with a Bachelor of Business degree at the University of Newcastle, majoring in Human Resources;
 - (d) as and from about 1999, worked as an HR professional full-time up to late 2004, then took 2 periods of maternity leave following the birth of her 2 children, in

between which time and after which time she worked on a permanent part-time basis;

- (e) for the financial year ended 30 June 2007, earned a gross income of \$27,657;
- (f) for the financial year ended 30 June 2007, her husband earned a gross income of \$86,048;
- (g) prior to November 2005:
 - (i) had minimal experience investing in the stock market aside from a small packet of BHP shares purchased with approximately \$1000 in savings and Promina shares issued under an employee share plan,
 - (ii) had no experience investing in managed funds,
 - (iii) had no experience borrowing to invest in the stock market or managed funds; and
 - (iv) did not know what a rolling instalment warrant was or how it operated.

3-36.2 Second Applicant's Acquisition of the Claim Warrants

3-3-16.2.1 Background

76. The Second Applicant's asset and liability position was as follows:

- (a) in or about November 2005, the Second Applicant and her husband jointly owned a residential home in Berowra Heights, New South Wales, which was:
 - (i) valued at approximately \$500,000;
 - (ii) mortgaged to Heritage Building Society in the sum of approximately \$335,000; (**Second Applicant's Heritage Home Loan**);
- (b) on or about 3 November 2005, the Second Applicant and her husband refinanced their home through St George Bank (**Second Applicant's St George Home Loan**) for a total loan value of \$420,000. The St George account was split into two sub accounts, with \$335,000 remaining in the mortgage account, and \$85,000 being placed into an Investment Account.
- (c) the Second Applicant's St George Home Loan was set up for interest only payments.
- (d) at the time, St George valued the house at \$530,000.

- (e) on or about 22 December 2005, the Second Applicant applied \$75,000 of the St George Home Loan Investment Account money to acquiring units in the Navra Retail Fund.
- (f) on or about 23 December 2005, the Second Applicant had entered into a margin loan agreement with Leveraged Equities (**Second Applicant's First Margin Loan**) and:
- (i) on 28 December 2005, used the \$75,000 worth of Navra Retail Fund units as her Equity Contribution towards the Second Applicant's First Margin Loan;
 - (ii) drew down the sum of \$75,000 against the Second Applicant's First Margin Loan;
 - (iii) using the proceeds of the Second Applicant's First Margin Loan, acquired a further \$75,000 worth of units in the Navra Retail Fund;
 - (iv) in total, the Second Applicant had acquired 133,162.5067 units in the Navra Retail Fund, acquired at an average cost of 1.106 per unit;
- (g) as at 20 December 2006, the Second Applicant:
- (i) was indebted to Leveraged Equities in the sum of \$75,000, with interest being capitalised on the First Margin Loan at the rate of 9.00% per cent per annum, or approximately \$ 7035.52 per annum;
 - (ii) was indebted to St George Bank in the sum of \$420,000, with interest accruing on the Second Applicant's St George Home Loan at the rate of 7.47% per cent per annum, or approximately \$ 32,470.77 per annum;
 - (iii) the Second Applicant's liabilities to pay interest on the Second Applicant's St George Home Loan and the Second Applicant's First Margin Loan required a large portion of her and her husband's combined after-tax income for the financial year ended 30 June 2007 (\$81,194);
 - (iv) had received a \$40,000 tax refund from an unrelated Navra investment and had used the \$40,000 tax refund to purchase further units in the Navra Retail Fund.
 - (v) was approved for a second margin loan through Leveraged Equities (**Second Applicant's Second Margin Loan**)

- (vi) used the \$40,000 worth of Navra Retail Fund units as her Equity Contribution towards the Second Applicant's Second Margin Loan, and then drew down a further \$40,000 to purchase additional units in the Navra Retail Fund.
 - (vii) purchased with the total funds a further 68,989.3066 units in the Navra Retail Fund for an average cost of \$1.1595 per unit; and
 - (viii) in total, now held 202,151.8133 units in the Navra Retail Fund.
- (h) on or about 27 December 2007, the Second Applicant:
- (i) was still indebted to St George Bank in the principal sum of \$420,000, with interest accruing on the Second Applicant's St George Home Loan at the rate of 7.97 per cent per annum, or approximately \$34,724.26 per annum;
 - (ii) had received a \$44,500 tax refund on an unrelated Navra investment and had used the \$34,000 tax refund to purchase further units in the Navra Retail Fund on the advice of Navra Financial Services;
 - (iii) was approved for a second tranche of credit through the Second Applicant's Second Margin Loan;
 - (iv) used the \$34,000 worth of Navra Retail Fund units as her Equity Contribution towards the second tranche of the Second Applicant's Second Margin Loan, and then drew down a further \$55,000 to purchase additional units in the Navra Retail Fund.
 - v) purchased with the total funds a further 79,372.1573 units in the Navra Retail Fund for an average cost of \$1.1213 per unit; and
 - (vi) in total, now held 281,523.9706 units in the Navra Retail Fund.
 - vii) was indebted to Leveraged Equities in the sum of \$188,474, with interest being capitalised on the Second Applicant's First Margin Loan and Second Applicant's Second Margin Loan at the rate of 9.50% per cent per annum, or approximately \$17,905 per annum;

3-3-26.2.2 Second Applicant's termination of Margin Loans

77. In or about February 2008, Navra Financial Services advised the Second Applicant to cash out of their Margin Loans and reinvest all surplus funds in the Claim Warrants.
78. On or about 1 March 2008:
- (a) the Second Applicant's First Margin Loan had reached a loan to value ratio of approximately 67.08 per cent;
 - (b) the Second Applicant's Second Margin Loan had reached a loan to value ratio of approximately 67.64 per cent;
 - (c) the Second Applicant would have received a margin call at 70 per cent;
 - (d) Navra Financial Services advised the Second Applicant to sell down some of her units in the Navra Retail Fund to pay out the Second Applicant's First Margin Loan and the Second Applicant's Second Margin Loan, and to acquire the Claim Warrants using any surplus proceeds of sale;
 - (e) sold 114,006.5146 units in the Navra Retail Fund at an average price of \$0.921 resulting in a capital loss of \$24,180.78.

3.3.36.2.3 **Second Applicant's acquisition of Claim Warrants**

Acquisition

79. On or about 13 March 2008, the Second Applicant:
- (a) used her remaining 167,517.456 units in the Navra Retail Fund as underlying security for a loan with RBS and thereby:
 - (i) or about 19 March 2008, acquired 167,518 Series 'NRFUZH' Claim Warrants at an average price of \$0.9104;
 - (ii) received a payment of about \$92,771.47 from RBS (the remaining value of her 167,517.456 units being used by RBS as the 'First Payment' for the acquisition of the 167,518 Claim Warrants); and
 - (b) suffered a further capital loss of \$97,042.33, making a total capital loss of \$121,223.11.

(Second Applicant's Acquisition)

6.2.4 Second Applicant's Rollovers

3.3.3.16.2.4.1 Termination of 'NRFUZ' series Claim Warrants and rollover to 'NRFKZ' series Claim Warrants

80. As and from about 30 June 2008, for reasons that will become known to the Applicants after discovery, RBS terminated the Series 'NRFUZA' and 'NRFUZZ' Claim Warrants, and in its place, offered the Applicants the option of rolling their interests over into the Series 'NRFKZA' or 'NRFKZB' Claim Warrant.
81. As pleaded in paragraphs 37 and 38 above:
- (a) the Series 'NRFUZZ' Claim Warrant included a put option entitling the Applicants to require RBS to acquire the underlying units in the Navra Retail Fund at the end of the term of the Claim Warrant, whereas;
 - (b) the Series 'NRFKZA' or 'NRFKZB' contained 'Stop Loss' provisions requiring Applicants to maintain a certain loan-to-value ratio by requiring the Applicants, upon the occurrence of a 'Stop Loss Event' to deposit additional cash or allow RBS to sell down units in the Navra Retail Fund to maintain that loan-to-value ratio.

First Rollover

82. On or about 30 June 2008, the Second Applicant, on the advice of Navra Financial Services, rolled over her interests in the Series 'NRFUZZ' Claim Warrant into the 'NRFKZB' Claim Warrant.
83. By rolling over her interests in the Claim Warrants as pleaded in paragraph 38 above, the Second Applicant thereby became exposed to the risk of 'Stop Loss Events' occurring.

(Second Applicant's First Rollover)

Second Rollover

84. On or about 6 March 2009, the Second Applicant, on the advice of Navra Financial Services:
- (a) rolled over her interests in the 'NRFKZB' Claim Warrant into the 'NRFKZA' Claim Warrant;

- (b) paid the sum of \$6,265.17 to RBS in relation to the rollover, which was sourced from the Second Applicant's St George Home Loan monies;

(Second Applicant's Second Rollover)-.2.

Third Rollover

85. At some stage after about 28 May 2010 the Second Applicant, on the advice of Navra Financial Services:

- (a) rolled over her interests in the 'NRFKZC' Claim Warrant into the 'NRFKZF' Claim Warrant;
- (b) paid an upfront sum of \$0.00 to RBS in relation to the rollover;.

(Second Applicant's Third Rollover)-.2.

3-3-46.2.5 Stop loss event

86. On 21 May 2010 a 'stop loss' event occurred in relation to the Claim Warrants.
87. As a result of the stop loss event, the Second Applicant paid RBS the sum of \$11,761.26 in relation to the stop loss event.

3-3-56.2.6 Second Applicant's redemption of Claim Warrants

88. On or about 29 June 2011, the Second Applicant:
- (a) redeemed all her interests in the Claim Warrants; and
- (b) received a cash payment from RBS that will be particularised after discovery.
89. The total amount of cash invested by the Second Applicant in the Claim Warrants was \$100,797.90, resulting in a prima facie loss of \$91,553.70 (not including the withholding of distributions applied to reduce the Applicant's leverage in the Claim Warrants).

3-46.3 Claim Warrants – Stop Loss Events

90. Stop Loss Events occurred in relation to the Claim Warrants on or about the following dates:
- (a) on or about 8 October 2008, in relation to the 'NRFKZA' Claim Warrant;
- (b) on or about 13 October 2008, in relation to the 'NRFKZA' Claim Warrant;

- (c) on or about 18 December 2008, in relation to the 'NRFKZB' Claim Warrant, in anticipation of a Stop Loss Event, RBS requested, and the Applicants, holding the 'NRFKZB' Claim Warrants, agreed, that any distributions payable to the Applicants for the December 2008 quarter be paid towards loan costs and expenses instead of to the Applicants, and this in fact occurred;
- (d) on or about 22 June 2009, in relation to the 'NRFKZB' Claim Warrant, in anticipation of a Stop Loss Event, RBS requested, and the Applicants, holding the 'NRFKZB' Claim Warrants, agreed, that any distributions payable to the Applicants for the June 2009 quarter be paid towards loan costs and expenses instead of to the Applicants, and this in fact occurred;
- (e) on or about 21 May 2010 and 21 June 2011, in relation to a Series of Claim Warrant to be fully particularised following discovery;
- (f) Further particulars will be provided after discovery.

47 ~~Breach of Contract~~ **Claims of the Applicants**

7.1 Breach of Contract and Related Claims

7.1.1 Due Care and Skill and Fitness for Purpose

7.1.1.1 Suitability claims

91. During the Claim Period, the Applicants ~~and~~ entered into contracts for the supply of financial services (namely dealing in a financial product being the Claim Warrants) within the meaning of section 12ED of the ASIC Act or alternatively section 74 of the TPA (these contracts are referred to in paragraph 40 and are defined there as the Contracts).

Particulars

- 1) In the case of the First Applicant, the First Applicant's First Acquisition, the First Applicant's Second Acquisition, the First Applicant's Third Acquisition, the First Applicant's Fourth Acquisition, the First Applicant's First Rollover, the First Applicant's Second Rollover, the First Applicant's Third Rollover and the First Applicant's Fourth Rollover.
- 2) In the case of the Second Applicant, the Second Applicant's Acquisition, the Second Applicant's First Rollover, the Second Applicant's Second Rollover and the Second Applicant's Third Rollover.

- 3) the terms of the Contracts are found in paragraph 42 to 45 herein.
- 4) the Contracts were for the supply of financial services because they deal with the purchase of the Claim Warrants. The subject of the Contracts was the provision of financial products, being the Claim Warrants.

92. The following implied warranties applied in each of the Contracts:

- (a) pursuant to section 12ED(1)(a) of the ASIC Act (or alternatively section 74(1) of the TPA, or section 60 of the ACL) there was an implied warranty that the services rendered and products created, issued and manufactured by RBS would be rendered with the due care and skill of an organisation specialised in the provision of financial advice and services (**Due Care and Skill Warranty**);
- (b) pursuant to section 12ED(2)(c) of the ASIC Act (or alternatively section 71 and or 74 of the TPA, or sections 55, 60 and 61 of the ACL), there was an implied warranty or condition that the services provided and products created, issued and manufactured by the First Respondent would be reasonably fit for the purpose for which they were supplied (**Fitness for Purpose Warranty**).

92A. 93. — In breach of the Due Care and Skill Warranty, RBS did not render with owed the Applicants a duty at common law that services rendered and products created, issued and manufactured by RBS would be rendered with the due care and skill the services of an organisation specialised in the provision of determining whether financial advice and services. This duty of care and skill was owed in circumstances where:

- (a) There was a reasonably foreseeable risk that a failure to render such services with due care and skill could result in the Applicants losing some or not all of their equity contribution;
- (b) There was a reasonably foreseeable risk that a failure to properly create, issue and manufacture the Claim Warrants were with due care and skill could result in the Applicants losing some or all of their equity contribution;
- (c) The risk of the Applicants losing some or all of their equity contribution at the time each of the Applicants entered into each Claim Warrant was not insignificant;
- (d) A reasonable organisation in the position of RBS would have taken reasonable precautions to warn the Applicants in clear, concise and efficient language understandable by a layperson retail investor of all of the material risks in the Claim Warrants including how those risks could reasonably eventuate;

Particulars

- 1) The Applicants repeat the particulars beneath 93(s) herein.

(e) A reasonable organisation in the position of RBS would have taken reasonable precautions to ensure the Applicants understood the material risks in the Claim Warrants including how those risks could reasonably eventuate;

(a) Particulars

1) The Applicants repeat the particulars beneath 93(s) herein.

(f) A reasonable organisation in the position of RBS would have adequately carried out the processes set out in paragraphs 111 and 113 herein.

(g) A reasonable organisation in the position of RBS would have adequately trained and supervised Navra.

Particulars

1) The Services Agreement requires RBS train Navra and requires they approve all marketing material of Navra.

2) RBS failed to test Navra after training to ensure he understood all aspects of the Claim Warrants.

3) RBS failed to assess samples of advice Navra gave in relation to the Claim Warrants.

4) RBS failed to approve or adequately approve all of Navra's marketing, including his 'optimisation workshops' and the February 2008 Meeting.

5) Discovery Documents 504.044.2010, 501.010.3547 and 500.001.4016

(h) A reasonable organisation in the position of RBS would have taken reasonable precautions to ensure that their product was sold to suitable investors;

(i) A reasonable organisation in the position of RBS would have taken reasonable precautions to ensure it complied with its Section 912A Obligations;

(j) RBS knew or ought to have known of each of the risks listed in this paragraph, being 92A (a), (b) and (c).

Particulars

1) Note without admission RBS' admission in paragraph 21(a)-(b) of their Further Amended Defence, where RBS says that holders may lose some or all of the purchase price paid for the investment purposes of the Applicants Claim Warrants. Accordingly, RBS knew that their product was a store of wealth and that it was possible for holders to lose some or all of the money the Applicants put in their Claim Warrants.

2) As the manufacturer, creator, structurer and issuer of the Claim Warrants, and having responsibility under the Services Agreement to approve all marketing of the Claim Warrants and

to train Navra in relation to the Claim Warrants, RBS ought to have known that their product was a store of wealth and that if they did not create a product to store that wealth with due care and skill, their negligence may cause the Applicants to lose some or all of that wealth. Moreover, RBS ought to have known that if they invested the Applicant's money into a fund that they did not perform proper due diligence on, that fund may not be an appropriate fund over which to construct their leveraged Claim Warrant and as RBS a result of RBS' negligence in choosing an improper fund to store wealth, the Claimants may lose some or all of that wealth. Moreover, RBS ought to have known that if they did not manufacture the Claim Warrants with due care and skill, the Claim Warrants may have a design defect caused by RBS' negligence, which could cause the Applicants to lose some or all of their equity contribution in the Claim Warrants.

(k) The burden of performing each of the obligations listed in this paragraph was not unreasonable.

(Due Care and Skill Obligation)

93. In breach of the Due Care and Skill Warranty and the Due Care and Skill Obligation, RBS did not render services and create, issue and manufacture products with the due care and skill of an organisation specialised in the provision of financial advice and services:

- (a) did not take any or adequate steps to determine whether or not the Claim Warrants were suitable for the investment purposes of the Applicants;
- (b) did not take any or adequate steps to determine whether the Claim Warrants were suitable for a Double Geared Investment in the Applicant's circumstances;
- (c) did not take any or adequate steps to determine whether the Applicants could afford to lose their Equity Contributions made towards the Claim Warrants;
- (d) did not take any or adequate steps to determine whether or not the Applicants understood the risk in providing the Home Loan Funds as their Equity Contribution for the purposes of acquiring the Claim Warrants;
- (e) did not take any or adequate steps to verify that the Applicants had sufficient cash reserves, or could otherwise afford, to pay any required sum upon the occurrence of a Stop Loss Event;
- (f) did not make any or adequate enquiries as to whether the Applicants had or could implement any reasonable or prudent plan to deal with the risks associated with a Double Geared Investment, including the risk of loss of each of the Applicants' family homes;

- (g) did not make any or adequate enquiries as to whether the Applicants could meet their day to day living expenses upon the loss of all or a part of their Equity Contribution or upon the occurrence of a Stop Loss Event;
- (h) despite representing that investment in the Navra Retail Fund or other Navra Managed Funds should be viewed as a medium to long term investment of at least 5 years, created a product that had a published three year life span, that, in the case of each Claim Warrant did not in fact last for three years, and in those circumstances, should have issued, but failed to issue, a warning to the effect that the Claim Warrants had a higher risk by virtue of having a timeframe less than one which was appropriate for an investment in shares;
- (i) did not disclose or did not adequately disclose to the Applicants that there was a real and appreciable risk that the value of the underlying fund could decrease significantly, and that the Applicants' losses would be magnified as a result of the leverage in the Claim Warrants;
- (j) did not comply with its Section 912A Obligations.

Particulars

- 1) RBS did not act honestly or fairly for the reasons set out in paragraphs 106 to 127, 173 to 195 and 57 to 63M herein.
- 2) RBS failed to have any or any adequate risk management system in place.
- 3) RBS failed to have any or any adequate management system for conflicts of interest in place.

(k) by at least early 2008, RBS was aware, or ought to have been aware, that the prevailing market circumstances (as set out in paragraph 63L) were such that it was foreseeable there was a real and appreciable risk that further market declines could result in the Applicants losing their entire Equity Contribution, but failed to warn the Applicants of this foreseeable risk;

Particulars

- 1) The Applicants repeat and rely on paragraphs 58, 61, 62, 63, 63A, 63D, 63F, 63G, 63H, 63I, 63J, 63K, 63L, 63M, 111 and 113 herein.
- (l) by about June 2008, RBS foresaw the risk of further market declines and terminated the 'NRFUZ' series of Claim Warrants and replaced them with the 'NRFKZ' series of Claim Warrants. In doing so RBS implemented a 'stop loss'

feature, thereby protecting itself from further falls in the market and transferring that risk to the Applicants, effectively turning the Claim Warrants into a limited recourse margin loan;

- (m) The Applicants repeat and rely on the particulars in paragraphs 37 to 63M and 95 herein.
- (n) did not take any or any adequate steps to consider each of the entries in each of the Application Forms it received.
- (o) did not take into account adequately or at all, the knowledge of at least Tian and Stambulich regarding the Applicants being unsophisticated retail investors.
- (p) did not perform any or adequate due diligence on the Navra Retail Fund before RBS' creation, manufacture and issuance of each of the Claim Warrants.

Particulars

- 1) The Applicants repeat paragraph 111(a).
- 2) RBS failed to properly assess whether the Navra Retail Fund would be a suitable fund to leverage within the structure of the Claim Warrants.
- (q) did not perform an adequate new product approval process as an ordinary prudent investment bank specialised in the provision of financial advice and services for each of the Claim Warrants.

Particulars

- 1) The Applicants repeat paragraphs 111 and 113 herein.
- 2) Had RBS performed an adequate new product approval process, it would have identified defects in the Claim Warrants and would not have sold them to the Applicants.
- (r) did not take any or adequate steps to ensure the Claim Warrants reasonably could create wealth in the prevailing market conditions at the times each of the Claim Warrants were issued to the Applicants by RBS.

Particulars

- 1) The Applicants repeat paragraphs 25, 63L, 96(b), 98, 116.
- 2) RBS failed to assess whether, given the performance of the Navra Retail Fund, Fees Payable and the loan to value ratio within the Claim Warrants, whether each Claim Warrant reasonably could create wealth in the prevailing market conditions at the times they were issued to the Applicants by RBS.

(s) did not adequately disclose, in plain English, the characteristics of the Claim warrants and the risks those characteristics create, as they related to the circumstances of the Applicants, Navra clients generally or at all, to the Applicants or Navra.

Particulars

- 1) The Applicants repeat paragraphs 21, 22, 24, 38, 39, 57(g), 57(h), 111, 116.
- 2) The Applicants repeat the obligation in 6A and 119(i) that RBS set out all the risks of the Claim Warrants in a full, fair and correct manner, and in plain English.
- 3) The Applicants repeat 119(i) that no disclosure in line with particular 2 was provided adequately or at all.

(t) did not take any or adequate steps to ensure the Applicants obtained independent financial advice.

Particulars

- 1) The Applicants repeat paragraphs 106(b), 119(d), 121(j) and 182.

(u) did not take any or adequate steps to explain the Fees Payable (as defined in paragraph 35 herein) in plain English to the Applicants before acquired each of the Claim Warrants.

Particulars

- 1) The Fees Payable were not located in a single place in the PDS.
- 2) The Fees Payable were not each or collectively expressed as a single dollar figure, or where expressed as a percentage were not expressed in an hypothetical but reasonable example.
- 3) The Applicants repeat paragraph 181.

(v) did not take any or adequate steps to ensure it gave correct and non-misleading information to Navra.

Particulars

- 1) The Applicants repeat Parts 7.5.2, 7.5.3 and 7.5.4 herein in so far as they relate to the Claim Warrant Acquisition Representations.

(w) did not take any or adequate steps to correct Navra when he engaged in misleading or false conduct or conduct likely to be misleading to the Applicants.

Particulars

1) The Applicants repeat Part 7.5.1 and paragraph 148 (and the paragraphs referenced therein), being the making of the Claim Warrants Acquisition Representations.

(x) did not take any or adequate steps to inform Navra or the Applicants of the Warrants Inherent Loss Trait that caused the Claim Warrants to lose money (being the Applicants' equity contribution) even where the Navra Retail Fund was making 7%.

94. In breach of the Fitness for Purpose Warranty:

- (a) the Claim Warrants were not reasonably fit for the investment purposes of the Applicants; and
- (b) the Claim Warrants were not of such a nature and quality that they would reasonably be expected to achieve the Applicants' investment purposes.

Particulars

- 1) The Applicants repeat paragraph 93 above.

7.1.1.2 Guaranteed loss claims

95. Further:

- (a) at all material times RBS was a financial services provider that manufactured financial products, provided financial services as well as invested for or on behalf of clients and held itself out as such;
- (b) the Applicants entered into the Contracts with RBS and by doing so engaged RBS' professional services in wealth creation, personal investment management and otherwise as provided by the Contracts; and
- (c) the subject of the Contracts with RBS were underlying units in a unit trust controlled by RBS, suitable, according to the Contracts drafted by RBS, for, *inter alia*, the purpose of wealth creation and or through income distributions.

96. It was an implied term of the Contracts that:

- (a) RBS would manufacture financial products, provide financial services and otherwise invest for or on behalf of the Applicants with the due care and skill of a prudent and reasonable specialist in providing financial products and services;
 - (b) RBS would invest (or would engage others to invest for or on its behalf) for or on behalf of the Applicants in financial products that could create wealth.
97. Each of the Contracts set out what were, in RBS' specialised opinion, the material risks of investing with it in the investments the subject of those Contracts.
98. It was an implied term of the Contracts that, if there was a material or inherent risk when investing in accordance with the Contracts, and investments could be made in such a way that would knowingly have a negative rate of return, then RBS would warn the Applicants of that risk.
99. Pursuant to the Contracts, RBS loaned the Applicants a substantial amount of money at a high rate of interest with additional Costs Payable (collectively "**the RBS Interest Rate**") and invested that money for or on behalf of the Applicants.
100. The investment product that RBS invested in for or on behalf of the Applicants (that is units in one or more of the Navra Managed Funds) was partially comprised of each of the following interest bearing investments:
- (a) cash ("**the Cash Interest Rate**"); and
 - (b) fixed interest products ("**the Fixed Interest Rate**").
- 100A. In carrying out the Contracts, RBS loaned the Applicants a substantial amount of money at the RBS Interest Rate, which was additional to the amount the Applicants had borrowed against their homes (defined before as the Double Geared Investment). RBS invested that money for or on behalf of the Applicants in circumstances where the money of each of the Applicants was borrowed from RBS and or otherwise at the "Double Geared Investment Rate".

Particulars

- 1) The Applicants repeat Tian's knowledge of the Double Geared Investments as set out under the subheading "RBS' Knowledge".
101. The interest rates of each of the Cash Interest Rate and the Fixed Interest Rate were:
- (a) at all times lower than the RBS Interest Rate ("**the First Rate Breach**").

- (b) at the time each of the relevant investments into cash and fixed interest products occurred, below the amount the Applicants paying for the RBS Interest Rate (“**the Second Rate Breach**”);

101A. The interest rates of each of the Cash Interest Rate and the Fixed Interest Rate were:

- (a) at all times lower than the Double Geared Investment Rate (“**the Third Rate Breach**”);
- (b) at the time each of the relevant investments into cash and fixed interest products occurred, below the amount the Applicants paying for the Double Geared Investment Rate (“**the Fourth Rate Breach**”).

102. In breach of the terms implied at common law (referred to in paragraphs 96 and 98 herein) of the Contracts, RBS failed:

- (a) to warn the Applicants adequately or at all of the possibility of each of the First, Second, Third and Fourth Rate Breaches (“**the Rate Breaches**”);
- (b) to inform the Applicants adequately or at all of the occurrence or occurrences of each of the Rate Breaches;
- (c) to manufacture financial products or provide financial services and to invest for or on behalf of the Applicants with the care and skill of a prudent and reasonable specialist in providing financial products and services, because of each of the Rate Breaches.

(“**the Common Law Breaches**”)

102A. The Common Law Breaches were also breaches of each of the Due Care and Skill Warranty and the Due Care and Skill Obligation and the Fitness for Purpose Warranty.

7.1.1.3 Further Implied Terms into the Contracts between RBS and the Applicants

102B. [Blank].

102C. Each of the Contracts had further express terms which were incorporated orally by the Claim Warrant Acquisition Representations (referred to in paragraph 148 herein).

These terms were:

- (a) the Claim Warrants carried no risk of margin calls;
- (b) the Claim Warrants offered protection not available with margin loans;

- (c) the Claim Warrants offered insurance against any downside;
- (d) the Claim Warrants would enable the Applicants to “ride out the storm”;
- (e) the Claim Warrants were a “flight to safety”;
- (f) the Claim Warrants were not a gamble and had little to no risk;
- (g) the Claim Warrants offered guaranteed distributions of a minimum of 10 to 15 per cent; and
- (h) the Claim Warrants were suitable for the Applicants’ needs.

102D. Each of the Contracts made in or after June 2008 had further express terms which were incorporated orally by the Claim Warrant Rollover Representations (referred to in paragraph 158 herein). These terms were:

- (a) the Claim Warrants still carried no risk of margin calls;
- (b) the ‘NRFKZ’ series of Claim Warrants had no insurance, but this did not matter because the Claim Warrants were cheaper and had a ‘stop loss’ level set at 90 per cent;
- (c) the Claim Warrants offered loans that were non-recourse;
- (d) the Claim Warrants offered guaranteed distributions of a minimum of 10 to 15 per cent; and
- (e) the Claim Warrants were suitable for the Applicants’ needs and specifically created for their circumstances.

102E. The express oral terms referred to in the last two paragraphs were breached.

Particulars

- 1) The Applicants repeat paragraphs 151 and 160 herein.

103. In the premises, the Applicants suffered loss and damage, being the difference between the position the Applicants are currently in (having lost their Equity Contributions) and the position they would have been in had they not acquired the Claim Warrants but instead acquired a product appropriate to their circumstances. Further and in the alternative, their loss was of each of their Equity Contributions.

Breach of Contract Claims

7.1.1.4 Group members

104. In addition, and in the circumstances set out above, RBS breached the Due Care and Skill Warranty and the Due Care and Skill Obligation, the Fitness for Purpose Warranty and the implied terms (set out in paragraphs 91 to 98 herein) of the Contracts of some or all of the Group Members. Further particulars may be provided following the trial of the common question or as the Court may otherwise direct.

Particulars

- 1). Rule 16.41 of the Federal Court Rules 2011 provides that a “party” must state in its pleading the “necessary particulars of each claim, defence or other matters pleaded by the party”. The Group Members are not parties to the proceeding, but the Applicants in their representative capacity has specified a number of claims made on behalf of Group Members, being claims for breach of contract, unconscionable conduct and liability as a “linked credit provider” pursuant to section 73 of the TPA.
- 2). If following the determination of the common issues, it is necessary to determine the individual claim of Group Members:
 - a-). the Applicants anticipate that contractual claims of the nature set out above will be brought by some or all of the Group Members; and
 - b-). further detailed particulars of those claims will be provided.

105. As a result of the breaches pleaded in the preceding paragraph, some or all of the Group Members have suffered loss and damage being the difference between the position each Group Member is currently in (having lost their Equity Contributions) and the position the Group Member would have in if the Claim Warrants had not been acquired but instead a product appropriate to their circumstances had been acquired. Further and in the alternative, their loss was of each of their Equity Contributions.

4.17.2 RBS’ Unconscionable Conduct –~~the Applicants~~

106. RBS knew (or should have known) that the advice given by Navra Financial Services to the Applicants to purchase the Claim Warrants pursuant to the Navra Investment Model:

- (a) was unlikely to be suited to their specific circumstances and financial needs and goals;

Particulars

- 1) The Applicants repeat the matters pleaded in paragraphs 57 to 63M, 111, 113 and 125 herein;

2) RBS' Faulty System of Selling the Claim Warrants.

- (b) was unlikely to be independent or adequate in relation to the level of gearing or illiquidity of the investment in the context of a volatile market.

Particulars

- 1) The Applicants repeat the matters pleaded in paragraphs 57 to 63M and 119(c) herein.
- 2) Report of Bewley, 15 September 2017, at 12.2.

107. By reason of the matters pleaded in paragraphs 57 to 63M, 111 and 113 above, RBS knew (or should have known) that the Navra Investment Model resulted or was likely to result in the Applicants being as highly leveraged (or more leveraged) if they acquired Claim Warrants as they had been in their Double Geared Investments which included a Margin Loan.

Particulars

- 1) RBS Discovery Document 504.072.7404.

108. Further, during the Claim Period, and at the time RBS lent money to the Applicants to acquire the Claim Warrants, RBS knew or ought to have known that the Applicants were vulnerable.

Particulars

- 1) The Applicants were inexperienced in investment, financial markets, market analysis, financial products and services, legal and commercial matters;
- 2) They had no formal training in investment, financial markets, market analysis, financial products and services, legal and commercial matters;
- 3) The relevant information the Applicants received on investment, financial markets, market analysis, financial products and services, legal and commercial matters was from Navra Financial Services in relation to the products and services they sold in conjunction with RBS;
- 4) There was an inequality of knowledge between the Applicants and each of Navra Financial Services and RBS;

Further Particulars of 4).

- 1) The Applicants repeat 173-174, 179, and 181 herein.
- 5) There was an inequality of bargaining power between the Applicants and each of Navra Financial Services and RBS;

Further Particulars of 5).

- 1) The Applicants repeat and rely on paragraphs 175, 176, 179, 180, 184 and 185.
- 2) None of the Applicants varied any terms of any of the Contracts.
- 3) Neither independent legal or financial advice was required by RBS to be sought by the Applicants.
- 4) The Applicants repeat and rely on paragraph 182, subparagraphs b, c, f, i, j, k, l.
- 6) As unsophisticated consumers of such financial products and services the Applicants had no practicable ability to negotiate any terms of the Contracts;
- 7) The Applicants were vulnerable to the terms of the Contracts and Trust Deeds that RBS could change using its own unilateral contractual power, such as a change to the applicable interest rates;
- 8) The Applicants were vulnerable to changes in the Trust Deeds that negatively affected them on the basis that they did not at any time know the contents of the Trust Deeds;
- 9) The literacy levels of the Applicants, (relevantly in legal and financial terms) were comparatively low compared with RBS;

Particulars

- 1) The Applicants repeat and rely on paragraphs 179, 181 and 173-174 herein.
- 10) The First Applicant's financial circumstances already involved significant financial distress in that she was likely to receive a margin call on her margin loan being an investor in the Navra Managed Funds;
- 11) The Second Applicant's financial circumstances also involved significant financial distress as a result of losses sustained from her margin loans as an investor in the Navra Managed Funds;

- 12) In the February 2008 Meeting (which is referred to in paragraph 148), Navra Financial Services marketed the Claim Warrants as a “non-recourse loan” that would serve to recoup the losses suffered in relation to their Margin Loans;
- 13) Further, in the February 2008 Meeting, Navra Financial Services stressed the importance to the Applicants and those attending the meeting of acting quickly to sell out their Margin Loan positions and acquire the Claim Warrants. Labouring under these misapprehensions, being placed under unreasonable and unnecessary time pressure, and already suffering significant financial distress, the Applicants were particularly vulnerable and therefore their capacity to make reasonably informed and considered decisions was compromised;
- 14) In the February 2008 Meeting, Navra Financial Services stressed to the Applicants and those attending the meeting that Navra Financial Services could make them and every one of its clients a million to a million and a half dollars by using the Claim Warrants over the next ten years with no downside and a loss guarantee;
- 15) Navra Financial Services in company with a director of RBS (Tian) made the Claim Warrant Acquisition Representations (referred to in paragraph 148 herein);
- 16) The Claim Warrants were not suitable for the Applicants within the meaning of paragraph 39 herein;
- 17) The Applicants repeat paragraphs 46A (d)-(j) herein;
- 18) The Applicants were not given copies of the Trust Deeds and did not receive a full, fair and correct explanation of their content, practical effect, and or legal effect in plain English or at all;

Particulars

- 1) The Applicants repeat and rely on the matters pleaded in paragraphs 37 to 63M, 111 and 113 herein;
 - 2) The Applicants repeat and rely on paragraphs 173 to 195 herein; and
 - 3) RBS and Navra Financial Services offered linked products or services and the Applicants repeat and rely on paragraph 168 herein to that effect;
- 19) RBS' Faulty System of Selling the Claim Warrants.

109. By virtue of the matters pleaded in preceding paragraph, RBS was on notice or ought to have been on notice of the Applicants' vulnerability.

Particulars

1) The Applicants repeat and rely on paragraphs 37 to 63M, 111 and 113.

109A. The unfairness and unjustness of the Contracts made the Applicants vulnerable.

Particulars

1) The Applicants repeat and rely on paragraphs 173-185 herein.

110. Further, RBS was on notice of the Applicants' vulnerability as RBS was aware, or ought to have been aware, that gearing levels of between 50 per cent to 90 per cent in the Claim Warrants had the consequence that in the event of a foreseeable downturn in the share market, there was a foreseeable risk that the Applicants could lose the entirety of their Equity Contributions and or be subjected to one or more Stop Loss Events;

Particulars

1) The Applicants repeat and rely on the matters pleaded in paragraphs 21 to 23, 37 to 63M, 111 and 113 herein.

111. As part of its corporate structure RBS had a section or division which considered potential credit risks that RBS may incur when it created and sold financial products and services. Through this credit risk section RBS:

- (a) went through a new product approval process by which it considered, assessed and approved the Navra Retail Fund or other Navra Managed Funds as being suitable as the Underlying Fund for the Claims Warrants, or should have done so as an ordinary prudent bank. This process included consideration of Navra Financial Services' financial products and services;
- (b) as part of its approval process of the Navra Retail Fund or other Navra Managed Funds and the financial products and services thereof, went through an approval process of Navra's clients or potential clients in order to determine the viability of the Claim Warrants, or should have done so as an ordinary prudent bank;
- (c) went through an approval process in assessing its security over the Navra Retail Fund or other Navra Managed Funds, or relied on the approval process set out above, or should have done so as an ordinary prudent bank.

112. In undertaking the approval process referred to above RBS was on notice, or ought to have been on notice, of the Applicants' vulnerability.

113. RBS should have engaged in a new product approval process as an ordinary prudent bank, such process would have involved the consideration of:
- (a) the type of clients presently with or sought by Navra Financial Securities;
 - (b) the risks associated with the product or service to people in the class of the Claimants;
 - (c) the risks of the product or service to RBS;
 - (d) the proposed advertising and actual marketing to the Claimants;
 - (e) an internal review consisting of the following elements:
 - (i) operational risk review;
 - (ii) market risk review;
 - (iii) legal risk review;
 - (iv) credit risk review;
 - (v) treasury risk review;
 - (vi) business unit risk review;
 - (vii) taxation risk review;
 - (f) a review of each and all of the fees, commissions and charges by Navra Financial Services;
 - (g) the type of investments the underlying fund made;
 - (h) the investment strategy of the underlying fund;
 - (i) the Navra Investment Model;
 - (j) the current state of the market, including the volatility in the market the subject of the financial product or service;
 - (k) whether the investors were managing superannuation, invested income or another class of assets;
 - (l) the level of financial sophistication of potential investors;
 - (m) the LVR (Loan to Value ratio) appropriate to each borrower based on their financial position;
 - (n) under what conditions any stop-loss event would occur;
 - (o) any detriment to RBS and the investors of any stop loss event;
 - (p) whether the investors could repay the fees and interest amounts and other costs associated with the investment as and when they became due and payable and how RBS would pay down the loan;
 - (q) whether the underlying fund or units therein were liquid;
 - (r) the potential exposure of RBS to fluctuations in the value of the underlying fund;
 - (s) whether a security interest could be taken over the underlying fund;
 - (t) the value of any security interest that could be taken over the underlying fund;

- (u) the purpose of the product as it would be understood by the class of investors it was offered to, in order to ascertain if it was 'fit for purpose';
- (v) the quality of the investors in terms of their ability to repay, manage or top-up any loan;
- (w) the diversification of investors, so that there were always investors with an ability to repay, manage or top-up any loan.

113A. A reasonable ordinary organisation in the position of RBS would have taken reasonable precautions to ensure it:

(a) Knew its client and knew its product;

Particulars

1) The Applicants repeat paragraphs 93 (a), (b), (c), (d), (e), (f), (g), (n), (o), (p), (q), and 111 and 113 herein.

(b) Did not sell the Claim Warrants to the Applicants, because the Claim Warrants were not suitable for the Applicants;

Particulars

1) The Applicants repeat paragraphs 93(a), (b), (c), (d), (e), (f), (g), (n) and (o) herein.

(c) Trained and supervised Navra:

Particulars

1) The Services Agreement required RBS to train Navra staff and to supervise its marketing of the Claim Warrants.

2) the Applicants repeat paragraph 6(e) herein and in relation to the representative designation, the Applicants repeat Part 7.6 herein

3) RBS supervised Navra's marketing of the Claim Warrants: RBS.500.001.4016 and RBS.504.044.2392.

4) In order to properly train and supervise Navra, RBS should have

1. Trained Navra in relation to the Claim Warrants;

2. Supervised Navra in giving advice and advertising in relation to the Claim Warrants;

3. Informed Navra in relation to the benefits, risks and workings of the Claim Warrants; and

4. Tested or examined to ensure Navra's staff had an adequate understanding of the benefits, risks and workings of the Claim Warrants.
5. Ensured Navra had an adequate knowledge of the client.
6. Ensure Navra marketed the product correctly and in a manner comprehensible to the Applicants.

(d) Carried out proper due diligence:

Particulars

1) The Applicants repeat paragraphs 93(a), (b), (c), (d), (e), (f), (g), (j), (k), (n), (o), (p), (q), (r), 111 and 113.

(e) Produced product disclosure statements capable of being understood by the Applicant;

Particulars

1) The Applicants repeat paragraph 181 herein.

(f) Produced product disclosure statements capable of being understood by Navra or in the alternative a reasonable financial advisor.

(g) Gave correct and non-misleading information to Navra.

Particulars

1) The Applicants repeat paragraphs 93(v).

(h) Took adequate steps to correct Navra when he engaged in misleading or false conduct or conduct likely to be misleading to the Applicants.

Particulars

1) The Applicants repeat paragraphs 93(w) and the Particulars thereto.

(i) Took adequate steps to inform Navra or the Applicants of the Warrants Inherent Loss Trait that caused the Claim Warrants to lose money (being

the Applicants' equity contribution) even where the Navra Retail Fund was making 7%.

Particulars

1) The Applicants repeat paragraphs 93(x).

(Collectively and individually, "Proper System for Selling the Claim Warrants")

113B. RBS did not adequately ensure that it:

- (a) Knew its client and product;
- (b) Did not sell the Claim Warrants to the Applicants on the basis that the Claim Warrants were not suitable for the Applicants;
- (c) Trained and supervised Navra;
- (d) Carried out due diligence;
- (e) Carried out further checks upon the receipt of a large number of clients into Claim Warrants from an advisor group the size of Navra;
- (f) Produced product disclosure statements capable of being understood by the Applicant; and
- (g) Produced product disclosure statements capable of being understood by Navra or in the alternative a reasonable financial advisor.
- (h) Gave correct and non-misleading information to Navra.
- (i) Took adequate steps to correct Navra when he engaged in misleading or false conduct or conduct likely to be misleading to the Applicants.
- (j) Took adequate steps to inform Navra or the Applicants of the Warrants Inherent Loss Trait that caused the Claim Warrants to lose money (being the Applicants' equity contribution) even where the Navra Retail Fund was making 7%.

Particulars

1) In relation to 113B(a) repeat the particulars beneath 113A(a), in relation to 113B(b) repeat the particulars beneath 113A(b), in relation to 113B(c) repeat the particulars beneath 113A(c), in relation to 113B(d) repeat the particulars beneath 113A(d), in relation to 113B(e) repeat the particulars beneath 113A(e), in relation to 113B(f) repeat the particulars beneath 113A(f), in relation to 113B(g) repeat the particulars beneath 113A(g), in relation to 113B(h) repeat the particulars beneath 113A(h), in relation to 113B(i) repeat the particulars beneath 113A(i), in relation to 113B(j) repeat the particulars beneath 113A(j).

(Collectively and individually "RBS' Faulty System of Selling the Claim Warrants")

114. Through at least one of Tian and Stambulich and the matters pleaded in paragraphs 57 to 63M herein RBS had knowledge of:
- (a) the types of investors in the Navra Retail Fund or other Navra Managed Funds;
 - (b) the leverage of the investors or potential investors in the Navra Retail Fund or other Navra Managed Funds;
 - (c) the general closeness of the customers of Navra Financial Services to margin or stop loss calls;
 - (d) the desire of Navra Financial Services to switch customers close to or at margin or stop loss call to another financial product or service that would allow the customers to continue their investment in the Navra Retail Fund or other Navra Managed Funds;
 - (e) the market as it was affecting the Navra Retail Fund or other Navra Managed Funds.
115. RBS worked together with Navra Financial Services to tailor the Claim Warrants to suit Navra clients.

Particulars

- 1) The Applicants repeat and rely on paragraphs 57 to 63M and 168 herein.

116. RBS was aware, or ought to have been aware, that the prevailing circumstances in the share market at the time were such that if the Applicants entered into the Contracts, there was a foreseeable risk that the Applicants could lose all or some of their Equity Contributions and or be subjected to one or more Stop Loss Events;

Particulars

- 1) The Applicants repeat and rely on paragraphs 37 to 63M herein.
- 2) The relevant time was 2007 until the last Claim Warrant was terminated.

117. RBS did not make any or adequate enquires as to whether:
- (a) the Claim Warrants were suitable for the Applicants;
 - (b) the Claim Warrants were suitable as Double Geared Investments for the Applicants;
 - (c) any advice had given to the Applicants by Navra Financial Services in relation to the Claim Warrants;
 - (d) the Applicants could afford to lose their Equity Contributions in relation to the Claim Warrants;

- (e) the Applicants understood the risk in providing the Home Loan Funds as their Equity Contribution for the purposes of acquiring the Claim Warrants;
- (f) the Applicants had sufficient cash reserves or could otherwise afford to pay any required sum upon the occurrence of a Stop Loss Event or otherwise pursuant to the Contracts;
- (g) the Applicants had or could implement any reasonable or prudent plan to deal with the risks associated with a Double Geared Investment, including the risk of loss of their family homes;
- (h) the Applicants could meet their day to day living expenses upon the loss of their Equity Contribution or upon the occurrence of a Stop Loss Event.

118. By reason of the facts pleaded in paragraph 57 to 63M and 106 to 117 above, RBS:

- (a) took advantage of the Applicants' vulnerability when entering into the Contracts;
- (b) was wilfully blind to the Applicants' vulnerability; and/or
- (c) was on notice of the Applicants' vulnerability or ought to have known of it when entering into the Contracts.

119. In addition, RBS took advantage of the Applicants' vulnerability as:

- (a) it did not ensure that the Applicants received the Trust Deeds in their entirety or at all.
- (b) it did not ensure that the Applicants received the relevant Product Disclosure Statements relevant to the Contracts in their entirety or at all with the result that:
 - (i) the Applicants (whether or not they received the Product Disclosure Statements) did not know of any or all terms that were particularly disadvantageous to them;
 - (ii) even if the Applicants did know of any or all of the material terms, it was not reasonably practicable for them to reject any particularly disadvantageous terms or any terms at all or to call for their variation.
- (c) The Applicants did not receive independent financial advice;

Particulars

- 1) The Applicants repeat paragraph 182 herein.
- 2) Mr Navra and or Navra Financial Services advised each of the Applicants.
- (d) RBS knew the Applicants received non-independent financial advice from Navra Financial Services, who stood to directly benefit from the Claim Warrants in circumstances where RBS recommended in the Contracts that non-independent financial advice be taken by the Applicants from Navra Financial Services;

- (e) the Applicants did not receive legal advice regarding the Claim Warrants;
- (f) the Applicants were not required to receive either independent financial or legal advice;
- (g) RBS gave no assistance, or failed to give to the Applicants an explanation of their financial products or services where assistance and explanation were necessary to understand the complex legal and financial provisions in the Product Disclosure Statements.
- (h) RBS did not enquire (and ~~therefor~~therefore were wilfully ignorant) as to what representations Navra Financial Services gave to the Applicants about the relevant financial products and services, or in the alternative knew Navra Financial Services made representations and should have provided adequate explanation or assistance in relation to those representations.

Particulars

- 1) RBS and Navra Financial Services offered linked products and or services and the Applicants repeat paragraph 168 herein to that effect;
 - 2) those linked products or services were the Claim Warrants, in relation to which the Applicants repeat and rely on paragraphs 37 to 57 herein;
 - 3) RBS knew or ought to have known the representations made about the Claim Warrants by Navra Financial Services, being knowledge of:
 - a) the matters pleaded in paragraphs 37 to 63M herein;
 - b) the representations in the February 2008 Meeting;
 - c) the Claim Warrant Rollover Representations; and
 - d) the Claim Warrant Acquisition Representations.
 - 4) RBS knew of the performance of the Navra Managed Funds at all material times and historically, and the Applicants repeat and rely on paragraphs 37 to 63M, 111 and 113 herein.
 - 5) RBS knew Navra Financial Services advertised, marketed, recommended or otherwise spruiked the Claim Warrants to its clients, as is pleaded in paragraphs 37 to 63M herein.
-
- (i) the Claim Warrants were complex financial products. Before the Applicants made a decision to invest in the Claim Warrants, they needed a full, fair and correct explanation of them in plain English and an understanding of the risks involved with the Claim Warrants and the potential adverse consequences. No such, or no adequate, explanation was provided.
 - (j) RBS entered into the Contracts with the Applicants.

- (k) one or more of the Respondents took, allowed another to take or otherwise charged the Applicants some or all of the Fees Payable.
- (l) one or more of the Respondents acquired the money or units or other form of equity or capital or money's worth of the Applicants.
- (m) one or more of the Respondents provided credit to the Applicants pursuant to the Contracts.
- (n) RBS made available the Contracts to the Applicants.
- ~~(o)~~ [blank].
- ~~(p)~~ [blank].
- (o) RBS made available to the Applicants a product that was affected by RBS' Faulty System of Selling the Claim Warrants.
- ~~(q)~~(p) RBS accepted the Contracts or the Application Forms substantially or fully completed by Navra Financial Services or the Applicants.
- ~~(r)~~(q) the Applicants repeat paragraphs 46A (d)-(j) herein.

Particulars for paragraph 119

- 1) The Applicants repeat and rely on paragraphs 18F -18L herein.

(r) RBS' Planned Removal of the Put Option removed the put option's protection for part of the Protection Period.

120. Further, RBS was aware, or ought to have been aware, of the Applicants' financial circumstances by reason of:

- (a) its Section 912A Obligations (the Applicants repeat paragraph 93(j) herein);
- (b) the association between RBS and Navra Financial Services pleaded in paragraphs 57 to 63M and 168, above;
- (c) the fact that the Claim Warrants were a bespoke product created by RBS for the specific purpose of being sold to clients of Navra Financial Services, including the Applicants as noted in the Contracts and referred to in paragraphs 57 to 63M above; and
- (d) the fact that Navra Financial Services received over 300 applications for Claim Warrants from clients of Navra Financial Services, including the Applicants;
- (e) the Applicants repeats the particulars concerning RBS knowledge in paragraphs 57 to 63M above;
- (f) the performance of the tasks outlined in 111 and 113 above;
- ~~(f)~~(g) its obligation to perform due diligence.

121. RBS enjoyed the following advantages under the Contracts to the detriment of the Applicants, or otherwise took advantage of the vulnerability of the Applicants as pleaded above:
- (a) RBS obtained substantial financial benefits in the form of:
 - (i) Fees Payable;
 - (ii) the prospect of further referrals (and therefore further income) from Navra Financial Services;
 - (b) RBS's risk of loss was substantially reduced by reason of the fact that it took a security interest in the underlying units in the Navra Retail Fund or other Navra Managed Funds (**Security Interest**);
 - (c) the Security Interest could be enforced by RBS on notice of one business day and without any further notice to the Applicants;
 - (d) the rate of return on the Claim Warrants was unlikely to be met having regard to the prevailing market conditions, the interest rate charged by RBS, the 'Borrowing Fee' charged by RBS, other fees chargeable by RBS, and administration and management fees charged by the responsible entity for the Navra Retail Fund or other Navra Managed Funds;
 - (e) RBS charged a rate of interest in the leveraged component of the Claim Warrants higher than the rate of interest generated by the cash and fixed income portion of the Navra Retail Fund or other Navra Managed Funds;
 - (f) RBS had the discretion to terminate the Claim Warrants early, and in fact did so in the case of the 'UZA' series of Claim Warrants;
 - (g) in about June 2008, RBS foresaw the risk of further market declines and terminated the 'NRFUZ' series of Claim Warrants and replaced them with the 'NRFKZ' series of Claim Warrants. In doing so, RBS implemented a 'stop loss' feature, thereby protecting itself from further falls in the market and transferring that risk to the Applicants, effectively turning the Claim Warrants into a limited recourse margin loan;
 - (h) despite representing that investment in the Navra Retail Fund or other Navra Managed Funds should be viewed as a medium to long term investment of at least 5 years, RBS created a product that had a three year life span, (or shorter), and in those circumstances, should have issued, but failed to issue, a warning to the effect that the Claim Warrants had a higher risk by virtue of having a timeframe less than one which was appropriate for such an investment;
 - (i) RBS took advantage of the Applicants lack of experience and knowledge (as pleaded above) in offering a product to them that was more complicated than they could understand and further failing to explain it in language that they could understand;

- (j) RBS took advantage of the non-independent financial advice given by Navra Financial Services to the Applicants, by issuing them with financial products and services without making inquiries as to whether the financial advice was full, fair and correct.
- (k) RBS took advantage of the Applicants' inability to negotiate by:
 - (i) allowing them to enter into the Claim Warrants without seeing any or all of the Contracts or Application Forms, except for the relevant signature page (or otherwise allowed Navra Financial Services to fill in all or many of the details thereof excepting the signature), where it would have been easily practicable to require each Applicant's signature on every page of Contracts; or
 - (ii) not allowing them any opportunity to vary, reject or negotiate the Contracts;
 - (iii) making the Contracts so full of technical jargon that it was not possible for a person with the Applicants class of knowledge and experience to understand the nature and content of the Contracts to a level that would allow them to negotiate their terms;
 - (iv) not making available in any form the Trust Deeds which are important parts of the Contracts.
- (l) allowing the Applicants to enter into the Claim Warrants without providing any or all of the Contracts or Application Forms, except for the relevant signature page (or otherwise allowed Navra Financial Services to fill in all or many of the details thereof excepting the signature), where it would have been easily practicable to require each Applicants signature on every page of the Contracts.
- (m) allowing the Applicants to acquire the Claim Warrants without the receipt, review and consideration of any of the Contracts, except for the relevant signature page (within the meaning of paragraph 121(k)(i)), where it would have been easily practicable to require their signature on every page of the Contracts;
- (n) RBS did not fully, fairly and correctly summarise in plain English the terms of each of the Contracts that were disadvantageous to the Applicants;
- (o) RBS took advantage of the Applicants poor financial position, in offering a very limited time offer in relation to the Claim Warrants in order to pressure the Applicants make a financial decision without the time necessary to make a reasonably informed and rational decision in their own best interests;
- (p) RBS similarly took advantage of the Applicants in relation to each rollover of the Claim Warrants.

- (q) RBS held itself out as a large financial institution of reputable standing, which was a representation that the Applicants would have been entitled to take into account in deciding whether to enter into the Contracts.
- (r) The Applicants repeat and rely on paragraph 119(j)-(n) herein.
- (s) The Applicants repeat and rely on paragraphs 57 to 63M, to the effect that although RBS knew that the Navra Fund could not withstand a decline in the market, they did not warn of that in the Contracts or otherwise. Further, RBS did not warn the Applicants to keep a 10% cash buffer for the purpose of topping-up the investment in stop-loss calls or similar, in the Contracts or otherwise.

122. For the reasons set out above, the Applicants' Sale Contracts and the circumstances surrounding them were unjust, unfair and or unconscionable.

123. [blank].

124. [blank].

125. Having regard to the number of applications it received from clients of Navra Financial Services and the short period of time in which those applications were received, RBS:
- (a) knew or ought to have known that Navra Financial Services was not providing financial services advices in accordance with each Applicant's specific needs and otherwise in accordance the Applicants' specific needs and otherwise in accordance with section 945A of the CA, but was instead providing generic advice in accordance with the Navra Investment Model;
 - (b) notwithstanding the matter in (a) above, failed to warn the Applicants that it was unlikely that Navra Financial Services was providing financial services advice in accordance with the Applicant's specific needs and otherwise in accordance with section 954A of the CA.
 - (c) knew or ought to have known that it was providing a financial product or service in the circumstances where there was inadequate regard to the Applicant's individual circumstances and that there was little or no consideration of whether the Claim Warrants were suitable for each Applicant's investment purposes.

Particulars

- 1) The Applicants repeat and rely on paragraphs 57 to 63M and 106(a) herein.

126. In the circumstances set out above under the current subheading, RBS:

- (a) knew that the Applicants were vulnerable for the reasons set out in paragraph 108 herein;
- (b) as a prudent bank would or ought to have undertaken a new product approval process prior to issuing the first Product Disclosure Statement (and every Product Disclosure Statement following where the product was sufficiently new or different), which would have provided it with knowledge of the Applicants vulnerability for the reasons set out in paragraphs 111 and 113 herein;
- (c) had the knowledge provided to it by Tian and Stambulich, particulars of which are set out in paragraphs 57 to 63M and paragraph 114 herein;
- (d) was aware, or ought to have been aware, that the prevailing circumstances in the share market at the time were such that if the Applicants entered into the Contracts, there was a foreseeable risk that the Applicants could lose all or some of their Equity Contributions and or be subjected to one or more Stop Loss Events;

Particulars

- 1) The Applicants repeat and rely on paragraphs 37 to 63M herein.
- (e) did not make any or adequate enquires as to whether:
 - (i) the Claim Warrants were suitable for the Applicants;
 - (ii) the Claim Warrants were suitable as Double Geared Investments for the Applicants;
 - (iii) any advice had given to the Applicants by Navra Financial Services in relation to the Claim Warrants;
 - (iv) the Applicants could afford to lose their Equity Contributions in relation to the Claim Warrants;
 - (v) the Applicants understood the risk in providing the Home Loan Funds as their Equity Contribution for the purposes of acquiring the Claim Warrants;
 - (vi) the Applicants had sufficient cash reserves or could otherwise afford to pay any required sum upon the occurrence of a Stop Loss Event or otherwise pursuant to the Contracts;
 - (vii) the Applicants had or could implement any reasonable or prudent plan to deal with the risks associated with a Double Geared Investment, including the risk of loss of their family homes;
 - (viii) the Applicants could meet their day to day living expenses upon the loss of their Equity Contribution or upon the occurrence of a Stop Loss Event.
 - (f) by reason of the facts pleaded above under the current subheading, RBS took advantage of the Applicants' vulnerability when entering into the Contracts.

127. By reason of the matters pleaded above under the current subheading, RBS engaged in:
- (a) conduct in trade or commerce in connection with the supply of financial services to the Applicants which were services ordinarily acquired for personal, domestic or household use that were unconscionable within the meaning of section 12CB of the ASIC Act;
 - (b) conduct in trade or commerce in connection with the services or financial products or goods to the Applicants which were in all the circumstances unconscionable, within the meaning of section 12CC of the ASIC Act and s 51AC TPA;
 - (c) conduct in trade or commerce in connection with the supply of services to the Applicants (other than financial services) and financial products which were services ordinarily acquired for personal, domestic or household use that were unconscionable within the meaning of section 51AB of the TPA or section 21 of the ACL;
 - (d) conduct in trade or commerce in relation to financial services which were unconscionable within the meaning of the unwritten law, within the meaning of section 12CA of the ASIC Act;
 - (e) conduct in trade or commerce which was unconscionable within the meaning of the unwritten law, within the meaning of section 51AA of the TPA or section 20 of the ACL;
 - (f) conduct in trade or commerce in connection with the supply of financial services to the Applicants, where the Applicants acquired the supply of services for trade or commerce, that was unconscionable in all the circumstances within the meaning of section 12CC of the ASIC Act;
 - (g) conduct in trade or commerce in connection with the supply of services or financial products or goods to the Applicants, where the Applicants acquired the supply of services or financial products or goods for trade or commerce, that was unconscionable in all the circumstances within the meaning of section 51AC of the TPA or section 21-22A of the ACL; and or alternatively
 - (h) the provision of at least a financial service, in a manner that in all the circumstances was unconscionable within the meaning of s 991A of the CA.
128. By reason of the conduct pleaded above, the Applicants have suffered loss and damage.

7.3 Linked credit provider

4.1.17.3.1 The Navra Financial Services Contracts

129. At all material times Navra Financial Services was a financial services provider that provided advice on manufactured financial products and advised clients in relation to their personal financial circumstances and held itself out as such.
130. Each of the Applicants entered into an agreement with Navra Financial Services (Navra Retainer) and by doing so engaged its professional services. Pursuant to the Navra Retainer agreements, for a fee, Navra Financial Services:
- (a) agreed to provide the Applicants with financial services including the provision and implementation of an initial investment plan and regular and continuing monitoring and advice in relation to their investments;
 - (b) pursuant to section 12ED(1)(a) of the ASIC Act or alternatively section 74(1) of the TPA, or alternatively section 278 of the ACL, or alternatively section 60 of the ACL, warranted that the services would be rendered with the due care and skill of a person specialised in the provision of financial advice and services (**the Navra Due Care and Skill Warranty**);
 - (c) pursuant to section 12ED(2) of the ASIC Act or alternatively section 74(2) of the TPA, or alternatively section 55 and 61 of the ACL, warranted that the services provided would be reasonably fit for the purpose for which they were supplied (**the Navra Fitness for Purpose Warranty**).

Particulars

- 1) The terms of the Navra Retainer agreements were express and implied.
- 2) To the extent that they were express, they were partly oral, partly in writing and partly implied by statute.
- 3) In the case of the First Applicant, to the extent that the terms were oral, in or about February 2007, she met with Mr Navra who offered to provide her with an initial investment plan and ongoing advice, and the First Applicant accepted that offer. To the extent that they were in writing, they were contained in a statement of advice that was issued retrospectively by Navra Financial Services to the First Applicant in or about June 2008 (but back-dated 14 March 2008).
- 4) In the case of the Second Applicant, to the extent that the terms were oral, in or about September 2005, she met with Mr Navra who offered to provide her with an initial investment plan and ongoing advice, and the Second Applicant accepted that offer. To the extent that they were in writing, they were contained in a statement of advice was issued

retrospectively by Navra Financial Services to the Second Applicant in or about 28 November 2005.

65) Each of the Navra Fitness for Purpose Warranty and the Navra Due Care and Skill Warranty were implied by statute.

131. Further, in each of the Navra Retainer agreements entered into with the Applicants, the Applicants acquired its services as ‘retail clients’ within the meaning of section 761A of the CA, and accordingly the agreements contained an implied term pursuant to section 945A of the CA that Navra Financial Services would provide the Applicants with personal financial advice that was appropriate to them after making reasonable enquiries in relation to their personal circumstances and having regard to those circumstances which was reasonable in the circumstances (“**the Section 945A Implied Term**”).
132. The services acquired by the Applicants pursuant to each of their Navra Retainer agreements:
- (a) were services of a kind ordinarily acquired for personal, domestic or household use or consumption;
 - (b) included the provision of “personal advice” within the meaning of section 766B(3) of the CA.
133. In the premises, by entering into the Navra Retainer agreements, Navra Financial Services agreed to, and did in fact, supply financial services to the Applicants as “consumers” within the meaning of section 12BC of the ASIC Act.
134. Further and in the alternative:
- (a) the price of each provision of each of Navra Financial Services’ advisory services to the Applicants was less than \$40,000; and
 - (b) as a result, Navra Financial Services agreed to, and did in fact, supply services to the Applicants as “consumers” within the meaning of the Relevant Consumer Law and Facts.

4.1.27.3.2 The breach of contract claims

134A. The Applicants repeat anyand rely on paragraphs 91-105 herein.

135. Prior to the Applicants entering into the Contracts for the Claim Warrants, Navra Financial Services knew or ought to have known that:
- (a) the Applicants had suffered significant losses in relation to their Margin Loans;
 - (b) the Applicants had funded their Equity Contributions for their Margin Loans from the Home Loan Funds;
 - (c) the Home Loan Funds were generally the only Equity Contributions available to the Applicants;
 - (d) the Applicants' Costs Payable exceeded or almost exceeded their incomes;
 - (e) the Applicants did not have sufficient funds to meet their day-to-day living expenses;
 - (f) the Applicants could not afford to suffer any further losses of their Equity Contributions;
 - (g) the Applicants were at risk of losing their family homes;
 - (h) in the prevailing market conditions that existed in February 2008, there was a real and appreciable risk that any investment in or connected to the share market could result in significant losses, including a total loss of capital.
136. Despite the matters pleaded in the preceding paragraph, in or about February 2008, Navra Financial Services advised the Applicants to acquire the Claim Warrants (**Warrant Acquisition Advice**).
137. In providing the Warrant Acquisition Advice, Navra Financial Services failed to act with due care and skill in providing financial advice to the Applicants, in breach of each of the Navra Due Care and Skill Warranty, Navra Fitness for Purpose Warranty and the Section 945A Implied Term.

Particulars

- 1) Failure to address adequately or at all the Applicants' requirements to protect their Equity Contributions, or what remained of their Equity Contributions.
- 2) Failure to adequately consider the consequences for each of the Applicants in acquiring the Claim Warrants, especially on cash flow and the ability of the Applicants to meet their Costs Payable and day-to-day living expenses, and of further market volatility including foreseeable downturns in the share market.
- 3) Failure to adequately consider the ability of the Applicants to make the Instalment Payment at the end of the term of the Claim Warrants.

- 4) Failure to consider the effect of foreseeable nil or negative annual investment growth upon the Applicants to meet their ongoing liabilities.
- 5) Failure to put adequate mechanisms in place to ensure that the Applicants maintained adequate cash reserves for their particular needs.
- 6) Failure to explain or explain adequately to the Applicants the risks associated with acquiring the Claim Warrants, including the risk of loss of their Equity Contribution in the event of a foreseeable significant downturn in the share market and or a change in the Applicants' circumstances which might compel the Applicants to realise their investments prematurely, with consequential capital loss.
- 7) Failure to explain to the Applicants adequately or at all that the Fees Payable would exceed the income of each Applicant.
- 8) Further particulars may be provided on the service of expert evidence.
- 9) Failure to provide full, fair and correct advice in relation to each of the Claim Warrant Acquisition Representation and Claim Warrant Rollover Representations.
- 10) Failure to advise or otherwise offer its clients (including the Applicants) fair and just contracts in the context of paragraphs 173 to 197 herein.
- 11) Failure to advise or otherwise to offer its clients (including the Applicants and some or all of the Applicants) financial products and services in good conscience, in the context of paragraphs 106-127 herein.
- 12) Failure to advise its clients (including the Applicants and some or all of the Applicants) adequately or at all of the risks in the Claim Warrants, including the Claim Warrants Risk.

138. In providing the Warrant Acquisition Advice, Navra Financial Services failed to provide the Applicants with advice that was reasonably fit for their investment purposes, in breach of the Navra Retainer agreements.

Particulars

- 1) The particulars set out in paragraph 137 are repeated and replied upon.

139. Further, in providing the Warrant Acquisition Advice, Navra Financial Services failed to provide the Applicants with advice that was personal financial advice that was appropriate to them having regard to their personal circumstances, in breach of section 945A of the CA.

Particulars

1) The particulars set out in paragraph 137 are repeated and replied upon.

140. In or about June 2008, Navra Financial Services advised the Applicants to roll over their Series 'NRFUZ' Claim Warrants to the 'NRFKZ' Claim Warrants (**Warrant Rollover Advice**).

141. In providing the Warrant Rollover Advice, Navra Financial Services failed to act with due care and skill in providing financial advice to the Applicants, in breach of each of the Navra Due Care and Skill Warranty and the Navra Fitness for Purpose Warranty and the Section 945A Implied Term.

Particulars

1) The particulars set out in paragraph 137 are repeated and replied upon.

142. Further, Navra Financial Services failed to have regard to whether the Applicants, in relation to the Warrant Rollover Advice, had the capacity to make any further required payment upon the occurrence of a Stop Loss Event.

143. In providing the Warrant Rollover Advice, Navra Financial Services failed to provide the Applicants with advice that was reasonably fit for their investment purposes, in breach of each of the Navra Due Care and Skill Warranty, the Navra Fitness for Purpose Warranty and the Section 945A Implied Term.

Particulars

1) The particulars set out in paragraph 137 are repeated and replied upon.

144. In providing the Warrant Rollover Advice, Navra Financial Services failed to provide the Applicants with advice that was personal financial advice that was appropriate for them having regard to their personal circumstances, in breach of section 945A of the CA.

Particulars

1) The particulars set out in paragraph 137 are repeated and replied upon.

145. The Applicants each relied on one or more of the Warrant Rollover Advice and the Warrant Acquisition Advice or other advice pleaded under this subheading in their purchase of the relevant financial products or the rollover of the relevant financial products, respectively.

146. The Applicants each relied on one or more of the Warrant Rollover Advice and the Warrant Acquisition Advice or other advice pleaded under this subheading in procuring financial products and services from RBS.

~~[Paragraphs 146A.— There was no entire agreement clause in any of, B, C and D have been moved under the Contracts.~~

~~146B.— Each of heading “Further Implied Terms into the Contracts had further express terms. These were incorporated orally by the Claim Warrant Acquisition Representations (referred to in paragraph 148 herein).~~

~~These terms were:~~

- ~~(a) — the Claim Warrants carried no risk of margin calls;~~
- ~~(b) — the Claim Warrants offered protection not available with margin loans;~~
- ~~(c) — the Claim Warrants offered insurance against any downside;~~

~~the Claim Warrants would enable between RBS and the Applicants to “ride out the storm”;”.]~~

- ~~(d) — the Claim Warrants were a “flight to safety”;~~
- ~~(e) — the Claim Warrants were not a gamble and had little to no risk;~~
- ~~(f) — the Claim Warrants offered guaranteed distributions of a minimum of 10 to 15 per cent;~~
- ~~(g) — the Claim Warrants were suitable for the Applicants’ needs;~~

Particulars

- 1) — The Applicants repeat and rely on the particulars to paragraph 18A herein.

~~146C.— Each of the Contracts made in or after June 2008 had further express terms. These were incorporated orally by the Claim Warrant Rollover Representations (referred to in paragraph 158 herein). These terms were:~~

- ~~(a) — the Claim Warrants still carried no risk of margin calls;~~
- ~~(b) — the ‘NRFKZ’ series of Claim Warrants had no insurance, but this did not matter because the Claim Warrants were cheaper and had a ‘stop loss’ level set at 90 per cent~~
- ~~(c) — the Claim Warrants offered loans that were non-recourse~~
- ~~(d) — the Claim Warrants offered guaranteed distributions of a minimum of 10 to 15 per cent~~
- ~~(e) — the Claim Warrants were suitable for the Applicants’ needs and specifically created for their circumstances~~

Particulars

~~1) The Applicants repeat and rely on the particulars to paragraph 18A herein.~~

~~146D. The express oral terms referred to in the last two paragraphs were breached.~~

Particulars

~~1) The Applicants repeat paragraphs 151 and 160 herein.~~

147. By reason of Navra Financial Services' breaches of contract ~~pleaded above~~ pleaded above, the Applicants have suffered loss and damage.

Particulars

- 1) If Navra Financial Services had not breached the Navra Retainer agreements, the Applicants would not have acquired the Claim Warrants and they would not have rolled over their interests in the Claim Warrants from the 'NRFUZ' series to the 'NRFKZ' series. The Applicants' loss and damage is therefore the difference between their current financial positions and the position they would have been in if they had not acquired the Claim Warrants.
- 2) The loss each of the Applicants' Equity Contributions.

4.1.37.3.3 Misleading and deceptive conduct claim

4.1.3.17.3.3.1 The Claim Warrant Acquisition Representations

148. In or about February 2008, Navra Financial Services in company of a director of RBS (Tian), made the following representations to the Applicants and other clients and potential clients of Navra Financial Services:
- (a) the Applicants should cash out of their Margin Loan arrangements because a margin call was imminent and transfer their investments into the Claim Warrants;
 - (b) the Claim Warrants carried no risk of margin calls;
 - (c) the Claim Warrants offered protection not available with margin loans;
 - (d) the Claim Warrants offered loans that were non-recourse loans;
 - (e) the Claim Warrants offered insurance against any downside;
 - (f) the Claim Warrants would enable the Applicants to "ride out the storm";
 - (g) the Claim Warrants were a "flight to safety";

- (h) the Claim Warrants were not a gamble and had little to no risk;
 - (i) the Claim Warrants offered guaranteed distributions of a minimum of 10 to 15 per cent;
 - (j) the Applicants would still be invested in the Navra Retail Fund or other Navra Managed Funds, so the Applicants' investments were diversified;
 - (k) the Claim Warrants were safer than banks;
 - (l) the Claim Warrants were suitable for the Applicants' needs;
 - (m) investment in the Claim Warrants was an exercise in risk management.
- (the **Claim Warrant Acquisition Representations**)-).

Particulars

- 1) The Claim Warrant Acquisition Representations pleaded in (a) to (m) above were express and oral, and made by Mr Navra at a meeting of the Applicants and other clients and potential clients of Navra Financial Services in or about February 2008 at the Vibe Hotel North Sydney ~~(the February 2008 Meeting)~~, and were repeated in substance in meetings around Australia (including Perth, Brisbane, Canberra and Melbourne) in or around February 2008 (the February 2008 Meeting).
- 2) The Claim Warrant Acquisition Representation pleaded in (l) above was also in writing, contained in an email dated about 30 March 2008 from Mr Navra to the Applicants.

149. The Claim Warrant Acquisition Representations were representations made by Navra Financial Services in trade or commerce.
150. At least some of the Claim Warrant Acquisition Representations were representations as to future matters.
151. The Claim Warrant Acquisition Representations:
- (a) to the extent that they included representations as to present matters, were misleading and deceptive or likely to mislead or deceive;
 - (b) to the extent that they included representations as to future matters, they were made without a reasonable basis;
 - (c) to the extent that the representations as to future matters were made without a reasonable basis, they were misleading; and or
 - (d) were inaccurate and false.

Particulars

- 1) The Claim Warrants did not offer non-recourse loans; rather, they offered limited recourse loans, with the Applicants still being exposed to the loss of their Equity Contributions.
- 2) The Claim Warrants did not offer any insurance against any downside; the Applicants still remained exposed to the loss of their Equity Contributions in the event of a downturn in the share market;
- 3) The Claim Warrants did not enable the Applicants to “ride out the storm”, that is, the existent market downturn, unless they had sufficient capital reserves to make the Instalment Payment at the end of the Claim Warrant term, or unless there was a significant recovery in the market.
- 4) The Claim Warrants did not offer guaranteed distributions of 10 to 15 per cent, and there was no reasonable basis for Navra Financial Services to make this assertion; the prevailing market conditions at the time were unfavourable, and the hurdle rate of return in the Claim Warrants having regard to the Costs Payable made it highly unlikely that the Applicants would receive any, or any significant positive return.
- 5) The Claim Warrants were not safer than banks.
- 6) The Claim Warrants were not suitable for the Applicants’ needs because the Applicants:
 - a) had already suffered significant losses in relation to their Margin Loans;
 - b) were still indebted to their mortgagees in relation to the Home Loan Funds;
 - c) were at risk of losing the entirety of their Equity Contributions if there was any further significant fall in the share market;
 - d) could not afford the Costs Payable on their current incomes; **and**
 - e) continued to be invested in a Double Geared Investment;
 - f) were not speculative investors with a sense of gambling; and
 - g) should not have held a product affected by RBS’ Faulty System of Selling the Claim Warrants.
- 7) The Claim Warrants were not an exercise in risk management. Rather, they represented a high risk strategy that depended on a significant recovery in the share market in circumstances where there was no reasonable basis to assume that such a recovery would occur.
- 8) The Claim Warrants carried significant risk.
- 9) The Claim Warrants were a highly leveraged financial product launched in a volatile market in a downturn, and insofar as representations were made to the effect that investment in Claim Warrants was low risk, no risk, not a

gamble, a flight to safety, protective, safer than banks or otherwise, each of those representations were made without a reasonable basis.

- 10) The Claim Warrants, because of their leveraged nature, were vulnerable to volatility and or downturns in the market.

152. To the extent that the Claim Warrant Acquisition Representations were representations as to future matters, the Applicants rely on section 51A(2) of the TPA, section 4 of the ACL, section 12BB(2) of the ASIC Act and or section 769C of the CA.

153. By reason of the matters pleaded and particularised in paragraphs 148 to 151 above, by making the Claim Warrant Acquisition Representations, Navra Financial Services engaged in conduct:

- (a) in trade or commerce;
- (b) in relation to financial services within the meaning of section 12DA(1) of the ASIC Act;
- (c) in relation to a financial product of financial service within the meaning of section 1041H of the CA;
- (d) in contravention of section 52 and or 53 of the TPA, section 18 and or 29 of the ACL, section 12DA of the ASIC Act and or section 1041H of the CA.

Particulars

1) In relation to ss 53 of the TPA and 29 of the ACL

a. In contravention of s 53(a) of the TPA and s 29(a) of the ACL, the Claim Warrants were falsely represented to be of a particular standard, quality, value, grade, composition, style;

- i. The Claim Warrants, as part of their composition, did not have a non-recourse loan component, where in fact recourse could be had to all of the equity the Applicants put into their Claim Warrants;
- ii. The Claim Warrants were not of a standard, grade or quality that they had little or no risk or provided a 10-15% minimum annual distribution or were suitable for the Applicants needs;
- iii. The Claim Warrants were not composed in such a way as to be diversified;
- iv. The Claim Warrants did not meet the standard of having no margin calls;
- v. The Claim Warrants did not have a particular quality or standard of protection not available with margin loans;
- vi. The Claim Warrants were not of a high enough quality or standard to let the Applicants ride out the storm or to provide a flight to safety or to be

safer than banks or to be an exercise in risk management or to offer insurance against any downside.

b. In contravention of s 53(c) of the TPA and s 29(g) of the ACL, the Claim

Warrants were falsely represented to have approval, performance characteristics, accessories, uses or benefits they did not have;

i. The Claim Warrants did not have the characteristic or benefit of having no margin calls, or having protection not available with margin loans, or of being non-recourse where recourse could be made to all the equity contribution of the Applicants into the Claim Warrants, or insurance against any downsides, of being diversified;

ii. The Claim Warrants did not have the performance or benefit of guaranteed distributions of 10-15%;

iii. The Claim Warrants did not have the benefit that they were a flight to safety, they would let the Applicants ride out the storm, and were of little or no risk (and not a gamble) and could not be used to fly to safety, ride out the storm or be a store of wealth that had little or no risk and was not a gamble;

iv. The Claim Warrants were not useful for the needs of the Applicants.

c. In contravention of s53(f) of the TPA and s29(l) of the ACL, the Claim Warrant Acquisition Representations were false insofar as they concerned the Applicants' need for any goods or services; and

i. The Claim Warrants were not suitable for the Applicants' needs.

d. In contravention of s53(g) of the TPA and s29(m) of the ACL insofar as the Claim Warrant Acquisition Representations went to insurance and the said non-recourse nature of the Claim Warrants, there was a false representation as to the existence of the insurance and non-recourse guarantees.

2) The representations made about the Claim Warrants are set out in sub-paragraphs 148(b) to (m) herein.

3) The facts upon which it is said that the representations about the Claim Warrants were false are set out in the particulars to sub-paragraph 151(d) herein.

4) The Applicants repeat paragraph 227 (insofar as the Claim Warrant Acquisition Representations concerned the protection of capital) and 243 herein.

154. By reason of the matters pleaded and particularised in paragraphs 148 to 151 above, by making the Claim Warrant Acquisition Representations, Navra Financial Services engaged in negligent or innocent misrepresentation as:

- (a) the Claim Warrant Acquisition Representations were in the form of fact, professional advice or professional opinion;
 - (b) each representation was inaccurate, false or misleading;
 - (c) Navra Financial Services, having been engaged by each of the Applicants specifically for the provision of financial advice, knew or ought to have known that the Claim Warrant Acquisition Representations would be relied upon by the Applicants;
 - (d) Navra Financial Services owed each of the Applicants a duty of care, including a duty to advise each with due care and skill; and
 - (e) Navra Financial Services carried on the business of giving financial product advice and information, manufacturing financial products or parts thereof and providing financial services; further Navra Financial Services held itself out as possessing those relevant skills and competences in the fields relevant to the products and services they provided or offered to each Applicant.
155. In the premises of the current subheading and paragraphs 27 and ~~63N~~63Q-89 herein, the Applicants relied on the Claim Warrant Acquisition Representations in deciding to purchase the Claim Warrants.
156. If Navra Financial Services had not made the Claim Warrant Acquisition Representations and instead informed the Applicants about the true position in relation to the Claim Warrants, the Applicants would not have acquired the Claim Warrants.
157. By reason of the conduct of Navra Financial Services pleaded in paragraph 148 to 153 above, the Applicants have suffered loss and damage.

Particulars

- 1) If Navra Financial Services had informed the Applicants about the true position in relation to the Claim Warrants, the Applicants would not have acquired the Claim Warrants. The Applicants' loss and damage is therefore the difference between their current financial positions and the position they would have been in if they had not acquired the Claim Warrants.
- 2) The loss of each of the Applicants' Equity Contributions.

4.1.3.27.3.3.2 The Claim Warrant Rollover Representations

158. In or about June 2008, Navra Financial Services made the following representations to the Applicants and to some other clients and potential clients of Navra Financial Services:
- (a) the Applicants should roll over their interests in the Claim Warrants from the 'NRFUZ' series to the 'NRFKZ' series of Claim Warrants;
 - (b) the Claim Warrants still carried no risk of margin calls;
 - (c) the 'NRFKZ' series of Claim Warrants was a better product than the previous Claim Warrants;
 - (d) the 'NRFKZ' series of Claim Warrants had no insurance, but this did not matter because the Claim Warrants were cheaper and had a 'stop loss' level set at 90 per cent;
 - (e) the Claim Warrants offered loans that were non-recourse;
 - (f) the risks of the Claim Warrants were minimised due to the setting of the 'stop loss' levels';
 - (g) the Claim Warrants would enable the Applicants to "ride out the storm";
 - (h) the Claim Warrants offered guaranteed distributions of a minimum of 10 to 15 per cent;
 - (i) the Applicants would still be invested in the Navra Retail Fund or other Navra Managed Funds, so the Applicants' investments were diversified;
 - (j) the Claim Warrants were suitable for the Applicants' needs and specifically created for their circumstances;
 - (k) the Claim Warrants were jointly made by RBS and Navra Financial Services as a unique product tailored specifically to the needs of people in the class of the Applicants.
- (the **Claim Warrant Rollover Representations**).

Particulars

- 1) In the case of the First Applicant, the Claim Warrant Rollover Representations were:
 - a) express and written, and made by Mr Navra in a letter written to the First Applicant on 19 June 2008; and
 - b) express and oral, and made by Mr Navra to the First Applicant during a conversation in about June 2008.
- 2) In the case of the Second Applicant the Claim Warrant Rollover Representations were:
 - a) express and written, and made by Mr Navra in a letter written to the Second Applicant on 19 June 2008; and

- b) express and oral, and made by Mr Navra to the Applicant during a conversation in about late June 2008;
- 3) the Applicants repeat and rely on the facts pleaded in paragraph 146C herein.

159. The Claim Warrant Rollover Representations:

- (a) were representations made by Navra Financial Services in trade or commerce; and
- (b) at least some of the Claim Warrant Acquisition Representations were representations as to future matters.

160. The Claim Warrant Rollover Representations:

- (a) to the extent that they included representations as to present matters, were misleading and deceptive or likely to mislead or deceive;
- (b) to the extent that they included representations as to future matters, they were made without a reasonable basis;
- (c) to the extent that the representations as to future matters were made without a reasonable basis, they were misleading;
- (d) were inaccurate and false.

Particulars

- 1) The Claim Warrants did not offer non-recourse loans; rather, they offered limited recourse loans, with the Applicants still being exposed to the loss of their Equity Contributions.
- 2) The Claim Warrants contained a 'Stop Loss' mechanism, with the result that the Applicants still remained exposed to the loss of some or all of their Equity Contributions in the event of a downturn in the share market.
- 3) The Claim Warrants did not enable the Applicants to "ride out the storm", that is, the existent market downturn, unless they had sufficient capital reserves to make the Stop Loss payments upon the occurrence of a Stop Loss Event, or unless there was a significant recovery in the market.
- 4) The Claim Warrants did not offer guaranteed distributions of 10 to 15 per cent, and there was no reasonable basis for Navra Financial Services to make this assertion; the prevailing market conditions at the time were unfavourable, and the hurdle rate of return in the Claim Warrants having regard to interest, fees and other charges made it highly unlikely that the Applicants would receive any, or any significant return.

- 5) Stop Loss Events (which are referred to in paragraph 90), in fact occurred at least on 8 October 2008 and 13 October 2008.
- 6) The Claim Warrants were not suitable for the Applicants needs because the Applicants:
 - a) had already suffered significant losses in relation to their Margin Loans;
 - b) were still indebted to their mortgagees in relation to the Home Loan Funds;
 - c) were at risk of losing the entirety of their Equity Contributions if there was any further significant fall in the share market;
 - d) could not afford the Costs Payable on their current incomes;
 - e) carried significant risk;
 - f) were a highly leveraged financial product launched in a volatile market in a downturn, and insofar as representations were made to the effect that investment in Claim Warrants were at no risk of margin calls and that it did not matter that there was no insurance or otherwise, those representations were made without a reasonable basis;
 - g) were leveraged in nature and were vulnerable to volatility and or downturns in the market;
 - h) they continued to provide the Applicants with a Double Geared Investment; ~~and~~
 - i) were not an exercise in risk management. Rather, they represented a high risk strategy that depended in its entirety on a significant recovery in the share market in circumstances where there was no reasonable basis to assume that such a recovery would occur;
 - j) were not speculative investors with a sense of gambling; and
 - k) should not have held a product affected by RBS' Faulty System of Selling the Claim Warrants.

161. To the extent that the Claim Warrant Rollover Representations were representations as to future matters, the Applicants rely on section 51A of the TPA, section 4(1) of the ACL, 12BB of the ASIC Act and/or section 769C of the CA.

162. By reason of the matters pleaded and particularised in paragraphs 158 to 160 above, by making the Claim Warrant Rollover Representations, Navra Financial Services engaged in conduct:

- (a) in trade or commerce;
- (b) in relation to financial services within the meaning of section 12DA(1) of the ASIC Act;
- (c) in relation to a financial product or financial service within the meaning of section 1041H of the CA;
- (d) in contravention of section 52 and or 53 of the TPA, section 18 and or 29 of the ACL, section 12DA, 12DB(1)(a) and (g), 12DF of the ASIC Act and or section 1041H of the CA.

Particulars

1) In relation to ss 53 of the TPA and 29 of the ACL

- a. In contravention of s 53(a) of the TPA and s 29(a) of the ACL, the Claim Warrants were falsely represented to be of a particular standard, quality, value, grade, composition, style;
 - i. The Claim Warrants did not meet the standard of having no margin calls;
 - ii. The NRFKZ Series Claim warrants were not of such a quality, grade or standard as to be a better product than the NRFUZ Series.
 - iii. It was false to represent that it did not matter that the put option was replaced with a stop loss, as the stop loss was of a lower quality, standard and grade than the put option.
 - iv. The Claim Warrants, as part of their composition, did not have a non-recourse loan component, where in fact recourse could be had to all of the equity the Applicants put into their Claim Warrants;
 - v. The stop loss was not of such a quality, standard or grade as to minimise the risk in the Claim Warrants.
 - vi. The Claim Warrants were not of a standard, grade or quality that they had little or no risk or provided a 10-15% minimum annual distribution or were suitable for the Applicants' needs.
 - vii. The Claim Warrants were not of a high enough quality or standard to let the Applicants ride out the storm.
 - viii. The Claim Warrants were not composed in such a way as to be diversified.
- b. In contravention of s 53(c) of the TPA and s 29(g) of the ACL, the Claim Warrants were falsely represented to have approval, performance characteristics, accessories, uses or benefits they did not have;
 - i. The Claim Warrants did not have the characteristic or benefit of having no margin calls, or of being non-recourse where recourse could be made to

- all the equity contribution of the Applicants into the Claim Warrants, or of being diversified;
- ii. The Claim Warrants did not have the performance or benefit of guaranteed distributions of 10-15%;
- iii. The Claim Warrants did not have the benefit that they would let the Applicants ride out the storm;
- iv. The Claim Warrants did not have the benefit of the minimisation of risk due to the setting up of the stop loss levels as the equity contribution of the Applicants was still at risk;
- v. The Claim Warrants were not useful for the needs of the Applicants.
- vi. The introduction of the stop loss was not a benefit that meant that the removal of the insurance put option did not matter.
- c. In contravention of s 53(f) of the TPA and s 29(l) of the ACL, the Claim Warrant Rollover Representations were false insofar as they concerned the Applicants' need for any goods or services; and
- i. The Claim Warrants were not suitable for the Applicants' needs.
- d. In contravention of s 53(g) of the TPA and s 29(m) of the ACL, insofar as the Claim Warrant Rollover Representations went to insurance and the said non-recourse nature of the Claim Warrants, there was a false representation as to there being a non-recourse guarantee, and there was a false representation to the effect that there was insurance or the equivalent thereof in the form of a stop loss (the purported equivalence being what was false, as it was said that it did not matter if there was no insurance if there was a stop loss in its place).
- 2) The representations made about the Claim Warrants are set out in sub-paragraphs 158(b) to (k) herein.
- 3) The facts upon which it is said that the representations about the Claim Warrants were false are set out in the particulars to sub-paragraph 160(d) herein.
- 4) The Applicants repeat paragraph 243 herein.

163. By reason of the matters pleaded and particularised in paragraphs 158 to 160 above, by making the Claim Warrant Rollover Representations, Navra Financial Services engaged in negligent or innocent misrepresentation as:
- (a) the Claim Warrant Rollover Representations were in the form of fact, professional advice or professional opinion;
 - (b) each representation was inaccurate, false or misleading;
 - (c) Navra Financial Services, having been engaged by each of the Applicants specifically for the provision of financial advice, knew or ought to have known that

the Claim Warrant Rollover Representations that it made would be relied upon by the Applicants;

- (d) Navra Financial Services owed each of the Applicants a duty of care, including a duty to advise each with due care and skill; and
- (e) Navra Financial Services carried on the business of giving financial product advice and information, manufacturing financial products or parts thereof and providing financial services; further Navra Financial Services held itself out as possessing those relevant skills and competences in the fields relevant to the products and services they provided or offered to each Applicant.

164. In the premises of the current subheading and pursuant to paragraph 27 and ~~63N63Q-~~89 herein, the Applicants relied on the Claim Warrant Rollover Representations in deciding to purchase the Claim Warrants.

165. If Navra Financial Services had not made the Claim Warrant Rollover Representations and instead informed the Applicants about the true position in relation to the Claim Warrants, the Applicants would not have acquired the Claim Warrants.

166. By reason of the conduct of Navra Financial Services pleaded above, the Applicants have suffered loss and damage.

Particulars

- 1) If Navra Financial Services had informed the Applicants about the true position in relation to the Claim Warrants, the Applicants would not have acquired the Claim Warrants. The Applicants' loss and damage is therefore the difference between their current financial positions and the position they would have been in if they had not acquired the Claim Warrants.
- 2) The Applicants loss of each of their Equity Contributions.

4.1.47.3.4 ~~RBS~~ RBS' liability as a linked credit provider

167. At all material times, RBS was a corporation, within the meaning of the TPA, or alternatively the ACL, which provided, in the course of carrying on a business by RBS, credit to consumers in relation to the acquisition of goods and services.

168. At all material times from at least November 2007:
- (a) Navra Financial Services and RBS had a contract, arrangement or understanding relating to the business carried on by Navra Financial Services and RBS;
 - (b) Navra Financial Services manufactured the Navra Retail Fund or other Navra Managed Funds (a financial good/product or part thereof), based on the Navra Investment Model;
 - (c) the Navra Retail Fund or other Navra Managed Funds were designed to be a leveraged financial good/product, however Navra Financial Services at no time provided the credit that 'leveraged' the said financial good/product;
 - (d) the Navra Retail Fund or other Navra Managed Funds were designed to be a leveraged financial good/product, however Navra Financial Services at no time provided access to the Navra Retail Fund or other Navra Managed Funds to the Applicants except through each of the Applicants contracting with RBS to buy Claim Warrants manufactured in part or in whole by Navra Financial Services and obtain some credit provided in part or in whole by RBS;
 - (e) Navra Financial Services, by arrangement with RBS, regularly referred its clients to RBS for the purposes of obtaining credit;
 - (f) the credit obtained by each Applicants from RBS to leverage the investment in the Navra Managed Funds was a feature of investment in the Navra Managed Funds advertised or otherwise promoted or marketed by each of Navra Financial Services and RBS;
 - (g) Navra Financial Services by arrangement with RBS, made available to its clients RBS's contracts, application forms and offers of credit;
 - (h) RBS made available to Navra Financial Services (and through Navra Financial Services to its clients) its contracts, application forms and offers of credit, intending that one or more would be used in conjunction with at least one of the Navra Managed Funds good/product or service;
 - (i) Navra Financial Services and RBS jointly manufactured the Claim Warrants, with Navra Financial Services providing, *inter alia*, the underlying Navra Retail Fund or other Navra Managed Funds, and RBS, *inter alia*, providing credit;
 - (j) by arrangement or understanding between Navra Financial Services and RBS, RBS's contracts, application forms and offers of credit could be signed by clients of Navra Financial Services at the premises of Navra Financial Services or via email through representatives of Navra Financial Services; and/or
 - (k) the Applicants would purchase part of each of the Claim Warrants and would enjoy most or the full benefits of ownership of the said Claim Warrants, and at some later point each Applicant could have, if they chose, bought the said Claim Warrants outright.

169. By reason of the matters pleaded in the preceding paragraph, at all material times during the Claim Period, RBS was a “linked credit provider” in relation to Navra Financial Services within the meaning of section 73(14) of the TPA.
170. By reason of the matters pleaded at paragraphs 32 to 39 above and paragraphs 14 to 15 above, by acquiring the Claim Warrants from RBS, the Applicant entered into a contract for the provision of credit in respect of the supply by Navra Financial Services to the Applicants as consumers.
171. The Contracts each constituted an agreement by which the Applicants entered into a contract with RBS for the supply by RBS of financial services or goods/products, Applicants suffered loss or damage as a result of Navra Financial Services’:
- (a) breaches of contract pleaded in paragraphs 91 to 105 above, including breach of warranties or other terms implied by statute; and/or
 - (b) misrepresentations, as contained in the Claim Warrant Acquisition Representations and the Claim Warrant Rollover Representations pleaded in paragraphs 148 to 166 above.
172. By reason of the matters pleaded in paragraphs 167 to 171 above, pursuant to section 73(1)(b) of the TPA or alternatively section 278(1) of the ACL, Navra Financial Services and RBS are jointly and severally liable to the Applicants for the amount of loss or damage suffered by the Applicants as a result of the breaches of contract and misrepresentations by Navra Financial Services pleaded above, in so far as such loss and damage arises from the Applicants entry into the Navra Retainer agreements and the Contracts.

Particulars

- 1) If Navra Financial Services had not breached the Navra Retainer agreements, the Applicants would not have acquired the Claim Warrants and they would not have rolled over their interests in the Claim Warrants from the ‘NRFUZ’ series to the ‘NRFKZ’ series. The Applicants loss and damage is therefore the difference between their current financial positions and the position they would have been in if they had not acquired the Claim Warrants.
- 2) If Navra Financial Services had informed the Applicants about the true position in relation to the Claim Warrants, the Applicants would not have acquired the Claim Warrants. The Applicants loss and damage is

therefore the difference between their current financial positions and the position they would have been in if they had not acquired the Claim Warrants.

- 3) The loss of each of the Applicants Equity Contributions.

4.27.4 The Contracts were unfair or unjust

173. At all relevant times the Applicants:

- (a) were persons without any or otherwise any formal education or training in finance, law and/or banking.
- (b) were persons inexperienced in financial products, services and market analysis;
- (c) were persons without any or any relevant experience in commercial matters.

174. At all relevant times RBS:

- (a) was a major international bank or subsidiary thereof;
- (b) was a bank operating in the Commonwealth of Australia;
- (c) was an institution comprised of numerous experts in finance, law and/or banking.

175. At all times after the First Acquisition by the First Applicant and the Acquisition by the Second Applicant, RBS held all of the Applicants invested capital in circumstances where the only way to redeem that capital was at a price agreeable to RBS or by sale to a third party who was approved by RBS in their sole discretion.

176. At the time the Applicants entered into the Contracts all contractual provisions were dictated by RBS and were not open for negotiation.

Particulars

- 1) At no relevant time were the Applicants invited to or otherwise given the opportunity to negotiate the terms of the Contracts. The Contracts were standard form contracts.

177. It was not reasonably practicable for the Applicants to negotiate any alteration of the terms of the Contracts or to reject the particularly disadvantageous terms or any terms of any of the Contracts.

Particulars

- 1) The Applicants repeat the particulars in paragraph 176 above.
- 2) The particularly disadvantageous terms in the Contracts, and the Trust Deeds, were not brought to the attention of the Applicants.

- 3) The legal and practical effect of the material terms of the Contracts and the Trust Deeds were not adequately or accurately explained to the Applicants.
- 4) The material terms of each of the Contracts and the Trust Deeds and particularly material terms disadvantageous to the Applicants were often so complicated by complex wording that they were incomprehensible to them.
- 5) Some or all of each of the Contracts and Trust Deeds were not shown to the Applicants prior to their signing as only the page requiring their signature was provided and the Applicants were not provided with the whole of the relevant Product Disclosure Statement or the relevant Trust Deeds prior to signing or at all;
- 6) cost payable to RBS pursuant to the Contracts (such as the interest rate charged on the loans) were changeable by RBS at their own discretion, on a daily basis without any reasonably practicable chance for such fees to be negotiated with the Applicants.

178. RBS imposed on the Applicants conditions which were unreasonably difficult to comply with, and further or in the alternative, were not reasonably necessary for the protection of the legitimate interests of RBS.

Particulars

- 1) RBS issued the Applicants with loans that, given the disclosed financial situation of the Applicants, could only be serviced by the Applicants so long as the market was generally going up.
- 2) RBS issued the Applicants with loans, given the disclosed financial situation of the Applicants, which the Applicants could not afford taking into account the costs, interest rates, commissions and other monies collected by RBS and/or Navra Financial Services.
- 3) RBS made margin or stop loss calls or otherwise made repayment requirements that required or pressured the Applicants to provide additional funds which came from loans secured against their residences.
- 4) RBS removed the insurance (or 'put option') without consultation with the Applicants.

- 5) RBS removed the insurance (or 'put option') without fully, fairly and accurately disclosing the legal and practical effect of such a change of material terms.
- 6) RBS ceased allowing the Applicants, at some point, from receiving some (and later from receiving all) of the distributions from the instalments held.
- 7) RBS took a security interest out over the Navra Retail Fund or other Navra Managed Funds.
- 8) RBS appointed the Third Respondent, which was a related company with conflicts of interest, to administer the trust.
- 9) RBS appointed a related company with directors, company secretaries or employees such as Mr Martin James Conley, company secretary of both the RBS Trustee and the related RBS entity, who signed the 2007 and 2010 Trust Deeds on behalf of both entities, and Mr Trevor Watson who signed the 2008 Deed on behalf of both entities, who had conflicts of interest between their duties as trustee to their beneficiaries and to the related RBS entity.
- 10) RBS set up a legal structure pursuant to which it believed, by its own admission in the Contracts, that the Navra Fund could not be sued, even where it acted unlawfully.
- 11) RBS set up a system where it knew or suspected by its own words and admissions in the Contracts that it or a trustee that it controlled or was otherwise related to would be in conflict with its beneficiaries (being the Applicants) and did not fully, fairly and accurately disclose the legal and practical effect of that.
- 12) RBS made stop loss calls (similar to margin loan calls) that were not within the financial means of the Applicants to meet as disclosed by the Applicants.
- 13) According to the Trust Deeds, the Third Respondent as trustee could dispose of trust assets at its own discretion with the Applicants having no right to challenge the validity of that action, despite the Applicants being beneficiaries and holding the beneficial interest in the trust property.
- 14) According to the Trust Deeds, RBS could buy back or otherwise deal with the unlisted rolling instalments in its own discretion at any time.
- 15) According to the Trust Deeds, RBS could tell the trustee when to sell/redeem underlying units, and at what price and in what quantity.

- 16) According to the Trust Deeds, the Applicants could not sue the trustee or its related body corporate in relation to the sale or redemption of an underlying unit, including the price thereof.
- 17) According to the Trust Deeds, the Applicants were required to comply with the Purported Obligations.
- 18) The Applicants neither knew about nor agreed to be bound by the Purported Obligations.
- 19) According to the Trust Deeds, the Third Respondent as trustee could act to enforce RBS' security interest and could diminish the property of its beneficiaries (including the Applicants) and also expire early the relevant series of instalments.
- 20) The Applicants repeat paragraph 46A (d)-(j) herein.

179. Each of the ~~Applicants~~Applicants' economic circumstances, educational background and financial, commercial and legal literacy were far inferior to that of RBS.

Particulars

- 1) The Applicants repeats paragraph 108.

180. The Applicants economic circumstances, educational background and financial, commercial and legal literacy were also far inferior to that of Navra Financial Services, because Navra Financial Services was:

- (a) an experienced provider of financial products and services;
- (b) a company comprised of numerous experts in fields relevant to the financial products and services offered to the Applicants.

181. The language in the Contracts was difficult to understand and otherwise was not transparent.

Particulars

- 1) The material terms of each of the Contracts and the Trust Deeds and particularly material terms disadvantageous to the Applicants were often enveloped or enshrouded from view by verbosity and verbiage.
- 2) The Contracts were replete with financial, legal and taxation jargon, none (or not all) of which was fully, fairly, clearly and correctly explained in plain English to the Applicants.
- 3) In addition, some or all of the practical and legal implications of the terms of the Contracts were not explained fully, fairly, clearly and correctly in plain English to the Applicants or at all.

- 4) Each of the Contracts and the Trust Deeds were documents of substantial length.
- 5) The language in each of each of the Trust Deeds were often tautological or repetitive in places and in other places was, to a lay person or otherwise, contradictory.
- 6) The full versions of any or all of each of the Contracts and the Trust Deeds were not supplied to the Applicants by RBS or otherwise prior to signing the agreement/s or at all.
- 7) RBS failed to summarise the material terms of each of the Contracts and the Trust Deeds, and their legal and practical effect, in plain English or at all.
- 8) RBS failed to highlight or otherwise draw the Applicants' attention to terms of each of the Contracts and the Trust Deeds that were particularly detrimental to them.
- 9) RBS failed to explain all terms of the Contracts in the simplest and most correct manner.
- 10) The Applicants repeat paragraph 63H herein.

182. Neither independent legal or financial advice was sought by the Applicants or required to be sought by RBS.

Particulars

- 1) The Applicants did not seek independent legal or financial advice.
- 2) The Applicants were not required to seek independent legal or financial advice.
- 3) RBS did not explain to the Applicants the benefit of independent legal and financial advice adequately or at all.
- 4) The legal and practical effect of the provisions within the Contracts, and the Trust Deeds, were not adequately or accurately explained or explained at all to the Applicants.
- 5) The Applicants did not understand the legal and practical effect of the provisions in the Contracts.
- 6) The full versions of any or all of the Contracts, and the Trust Deeds were not supplied to the Applicants by RBS or otherwise prior to signing the Contracts or at all.
- 7) The Applicants repeat and rely on paragraphs 173-174 herein.
- 8) The only financial advice received by the Applicants was from Navra Financial Services who was not independent by reason that it received

fees and commissions based on the Applicants acquisition of the Claim Warrants.

- 9) RBS knew that Navra Financial Services was providing non-independent financial advice and knew of its conflict of interest.
- 10) RBS knew that it had conflicts of interest in providing information about its fees and commissions, and ongoing charges, and admitted the existence of this conflict in the Contracts and Trust Deeds although it did not fully disclose it.
- 11) Mr Navra at the February 2008 speech informed the Applicants (and a number of other customers and potential customers who attended the meeting) that he was not operating to enrich himself and thereby implied that his advice and/or actions were not infected by any conflict of interest.
- 12) RBS benefitted from the non-independent financial advice of Navra Financial Services by way of the custom it received from it.
- 13) Navra Financial Services received commissions or other Costs Payable for advising its clients to use the Claim Warrants².
- 14) Navra Financial Services maintained the stability of its fund or funds by ensuring all or most Navra Financial Services clients (including the Applicants) moved their Margin Loans invested in the Navra Managed Funds to Claim Warrants which also invested in the Navra Managed Funds².
- 15) Mr Navra had himself invested in the Navra Managed Funds. More people investing in the funds increased the value of the stocks underlying the fund and accordingly increased the share value. Oppositely an outflow of Navra Financial Services clients (including the Applicants) would diminish the value of Mr Navra's own investment in the Navra Managed Funds².
- 16) Each of Mr Navra and Navra Financial Services was a client of RBS. The Applicants were clients of RBS. There were actual or potential conflicts of interest between RBS' duties to each of Mr Navra and Navra Financial Services and the Applicants.
- 17) The Applicants repeat and rely on paragraphs 37 to 63M and 106 herein.
- 18) The Applicants repeat and rely on the Expert Report of Bewley of 15 September 2017 at 12.2.

183. Unfair tactics or pressure was used against the Applicants in order for them to enter in the Contracts.

Particulars

- 1) RBS put substantially more emphasis on the benefits of its products than any disadvantage.
- 2) RBS explained the benefits of its products in more simple English than the disadvantages of it.
- 3) The ~~Applicant swere~~Applicants were told there were strict and short time limits for filling out the application and applying for the Claim Warrants.
- 4) The full versions of any or all of the Contracts were not supplied to the Applicants by RBS or otherwise prior to signing the Contracts or at all.
- 5) The First Applicant was induced to enter into further of the Contracts after the stock market crash in February 2008 by the Claim Warrant Acquisition Representations which were contained in a speech given by Mr Navra of Navra Financial Services at the February 2008 Meeting which the First Applicant attended, she was told that:
 - a) the crash was good for the Applicants financial products or services as provided by Navra Financial Services and RBS.
 - b) no Claimants, including the Applicant, had lost money as a result of the crash.
 - c) further investments with RBS and Navra Financial Services would be a flight to safety where the Applicants would be taking little or no risk.
 - d) Claimants' (including the Applicant) investments had 'gone backwards' as a result of the crash.
 - e) investments through the Claim Warrants would not be a gamble.
 - f) the downside risk was guaranteed not to eventuate.
 - g) the Applicant, and all attendees, could make \$1 – 1.5 million over the next 10 years.
 - h) the Claimants' (including the Applicant's) money was insured.
 - i) there was no downside risk at all.

184. The commercial setting and reality of the Contracts was that Navra Financial Services and RBS knew that:

- (a) Mr Navra would spruik RBS' offering of the Claim Warrants on behalf of Navra Financial Services for the benefit of Navra Financial Services and RBS;

- (b) RBS would set up in each of the Contracts and the Trust Deed, and additionally through the use of a trust, a legal framework that would prevent the Applicants having any recourse against Mr Navra, Navra Financial Services, RBS, or the Third Respondent as trustee.
- (c) further, by attempting to 'deem' the Contracts and or the Trust Deeds as being entered into for business or business investment purposes, RBS attempted to denude the Applicants, being for the most part unsophisticated – who are colloquially referred to as 'mum, dad, grandma and grandpa' investors – of the benefit of the *Contracts Review Act* and other statutory protection. In doing so, RBS did not fully, fairly and accurately disclose the practical and legal implications of doing so.
- (d) by this arrangement RBS, the Third Respondent as trustee, and Navra Financial Services believed that they were immune from any claim or claims against them based on misrepresentations, misleading conduct or other unlawful activity, so long as they separated out their roles as described above, and that this was unfair to the Applicants.
- (e) the Contracts were standard form.
- (f) RBS labelled the Trust Deeds as deed polls, whilst signing each as deeds which purported to bind the Applicants.
- (g) if the market declined by 40% then the Navra Managed Funds would not be able to protect Navra Financial Services clients (including the Applicants), as it would collapse or otherwise not be able to sustain itself.
- (h) it had not warned the Applicants to keep a 10% cash buffer for the purpose of topping-up the investment in stop-loss calls or similar, in the Contracts or otherwise.

Particulars for (g) and (h)

- 1) The Applicants repeat paragraphs 57 to 63M.
- (i) the advice of Navra Financial Services was in a standard form and followed the Navra Investment Model.

Particulars

- 1) The Applicants repeat and rely on paragraphs 37 to 63M and 119 herein, and the terms of the Contracts and Trust Deeds.
- 2) RBS required the Applicants to purport that the Contracts were entered into for business or investment purposes without explaining to the

Applicants the legal or practical implications of such a declaration fully, fairly and correctly.

185. There was a significant imbalance of rights and obligations pursuant to each of the Contracts and the Trust Deeds.

Particulars

- 1) RBS, over the course of the Contracts, made terms which were increasingly unfavourable to the Applicants. For example,
 - a) the right of the Applicants to receive distributions went from 100% down to 0%; and
 - b) the Put Option insurance was replaced with no insurance at all.
- 2) The Applicants repeat the material terms of each of the Contracts and the Trust Deeds.
- 3) According to the terms of the Trust Deeds, the manner of payment to the Applicants was to be determined between the Third Respondent as Trustee and a related RBS entity and not with the Applicants.
- 4) According to the terms of the Trust Deeds, the Third Respondent as trustee must sell the underlying units to the related RBS entity if the related RBS entity required it to do so.
- 5) According to the terms of the Trust Deeds, the Third Respondent as trustee could choose whether to charge a borrowing fee in its 'absolute discretion'.

- 185A. RBS acted unconscionably.

Particulars

- 1) The Applicants repeat paragraphs 106-126 herein.

186. The Applicants entered into the Contracts to provide additional personal, household or domestic use or consumption and to prepare for retirement.

Particulars

- 1) The First Applicant's answers in the Financial Fact Finder prepared by potential Navra Financial Services clients. It stated that the short term goals relevant to the money generated by the financial products or

services the subject of the Contracts were “children’s education” and “home renovation”. The medium term goals were stated as “children’s education” and “travel”. In the long term there were plans for retirement, travel, and purchases including the purchase of a new home.

2) The First Applicant is a part time school teacher.

187. The Applicants were both “consumers”, pursuant to the Relevant Consumer Law and Facts.
188. The Contracts and the Trust Deeds were not entered into in the course of or for the purpose of a trade, business or profession carried on by the Applicants or proposed to be carried on by the Applicants.
189. The Contracts were signed in New South Wales.
190. The services and/or products the subject of the Contracts were provided to the Applicants in New South Wales and/or were benefitted from by the Applicants in New South Wales.
191. The registered office of RBS is in New South Wales.
192. In the premises, the law of the Contracts and the Trust Deeds is New South Wales.
193. The Contracts and the Trust Deeds were for the provision of financial products, services and/or credit.
194. In the circumstances set out in 173 to 193 above:
- (a) at the time the Sale Contract were entered into by the Applicants there was an inequality of bargaining power between the Applicants, RBS and the Third Respondent as trustee;
 - (b) the Contracts and the Trust Deeds and the circumstances in which they were made were unjust or unfair pursuant to each of s 9 of the *Contracts Review Act 1980*, Part 2-3 of the *Australian Consumer Law*, Part 2, Sch 2 of the *Trade Practices Act 1974*, Part 2, Div 2, Subdiv BA of the *Australian Securities and Investments Commission Act 2001*, ss 68-70 of the *Consumer Credit Code* and s 147 of the *Credit Act 1984*.
195. For the reasons outlined above:

- (a) at the time the Contracts were entered into by each Applicant there was an inequality of bargaining power between that Applicant, RBS and the Third Respondent as trustee;
- (b) the Contracts and the Trust Deeds and the circumstances in which they were made were unjust or unfair pursuant to each of s 9 of the *Contracts Review Act 1980*, Part 2-3 of the *Australian Consumer Law*, Part 2, Sch 2 of the *Trade Practices Act 1974*, Part 2, Div 2, Subdiv BA of the *Australian Securities and Investments Commission Act 2001*, ss 68-70 of the *Consumer Credit Code* and s 147 of the *Credit Act 1984*.

196. [blank]

197. In the premises, the Applicants and some or all of the Group Members suffered loss or damage.

Date:

7.5 Misleading and deceptive conduct of RBS

7.5.1 Misleading and deceptive conduct by silence

Claim Warrant Acquisition Representations

199. RBS engaged in misleading conduct by its silence, because

(a) Navra made the Claim Warrant Acquisition Representations in the presence of

RBS and the Applicants: paragraphs 200, 201, 202 herein;

(b) The Claim Warrant Acquisition Representations were misleading or were likely to mislead, or were false: paragraph 203 herein;

(c) Each of Navra and the Applicants had a reasonable expectation that RBS would correct Navra if Navra said something misleading or likely to mislead in relation to the Claim Warrants, and further or in the alternative RBS was otherwise obliged to correct Navra if he did this: paragraphs 205-211 herein;

(d) RBS did not correct Navra: paragraph 212 herein;

(e) The Applicants relied on the Claim Warrant Acquisition Representations: paragraph 204 herein;

(f) The Applicants suffered loss and damage in consequence of their reliance which is actionable: paragraphs 213, 216 and 217 herein.

(g) RBS' conduct was in trade or commerce: paragraphs 214-215 herein.

200. RBS attended, by their director, employee or representative, Elizabeth Tian, the February 2008 Meeting.

201. Elizabeth Tian was introduced to the attendees of the February 2008 Meeting as a director, employee or representative of RBS.

202. The Claim Warrant Acquisition Representations were made at the February 2008 Meeting in the presence of Elizabeth Tian.

203. The Claim Warrant Acquisition Representations were false, misleading or were likely to mislead.

Particulars

1) The Applicants repeat paragraphs 150-152 and 154 herein, generally.

2) The Applicants repeat the particulars to paragraph 153 herein.

204. The Applicants relied on the Claim Warrant Acquisition Representations.

Particulars

1) The Applicants repeat paragraphs 155-156 herein.

205. A reasonable financial advisor in the position of Navra would rely on RBS, having been present at the February 2008 Meeting, to correct any representation in relation to the operation, risk or characteristics of the Claim Warrants, made by the financial advisor, that was misleading or likely to mislead or false.

Particulars

1) The Applicants repeat paragraphs 200, 201 and 202 above.

2) RBS was the only structurer and manufacturer of the Claim Warrants and was aware of the workings and features of the Claim Warrants by reason of those matters.

3) The Services Agreement required that RBS approve all marketing material of Navra and also required RBS to train Navra.

4) The RBS representative, employee or director, Tian, was present at the February 2008 Meeting in her capacity as a representative of RBS.

5) Those present at the February 2008 Meeting, who bought into warrants or rolled over existing warrants, would have contracted directly with RBS and so a reasonable financial advisor would

reasonably expect RBS would not accept applications that potential customers applied for the Claim Warrants on the basis of representations that were misleading or were likely to mislead or were false.

6) RBS supervised Navra's marketing of the Claim Warrants: RBS.500.001.4016 and RBS.504.044.2392.

7) the operation, risk or characteristics of the Claim Warrants are set out at paragraph 148, subparagraphs (b)-(m). These representations were misleading, or likely to mislead or false for the reasons set out in paragraphs 151 and the particulars to 153 herein.

206. Navra relied on RBS to correct any representation that he made in relation to the operation or risk characteristics of the Claim Warrants that were misleading or likely to mislead or false.

207. Navra was required by the terms of the Services Agreement to have its marketing of the Claim Warrants approved by RBS.

Particulars

1) The Services Agreement between Navra and RBS at 11.

2) RBS supervised Navra's marketing of the Claim Warrants: RBS.500.001.4016 and RBS.504.044.2392.

208. RBS should have taken all reasonable steps to correct each of the Claim Warrant Acquisition Representations (including disclosing in clear and comprehensible language able to be easily understood by a lay person the position in relation to each of the matters represented absent false, misleading or deceptive conduct) to each of Navra and the Applicants ("the Disavow Obligation").

209. Each of the Applicants and Navra had a reasonable expectation that RBS would comply with the Disavow Obligation.

Particulars

1) The Applicants repeat paragraphs 200, 201, 205, 206, 207, 208 herein. In those circumstances: a reasonable person would expect that where statements were made about the Claim Warrants in the presence of RBS by its director, employee or representative, Tian, that RBS would have corrected statements insofar as they were misleading, likely to mislead or false;

210. A reasonable financial advisor in the position of Navra would expect RBS to comply with the Disavow Obligation.

Particulars

1) The Applicants repeat the particulars to paragraph 209.

211. An ordinary retail investor in the position of the Applicants would expect RBS to comply with the Disavow Obligation.

Particulars

1) The Applicants repeat the particulars to paragraph 209.

212. At no point did RBS through its employees, directors or representatives correct the Claim Warrant Acquisition Representations and therefore at no point did they comply with their Disavow Obligation.

213. After the Claim Warrant Acquisition Representations were made, RBS accepted Application Forms for the Claim Warrants from the Applicants.

214. The Claim Warrant Acquisition Representations were made in trade or commerce.

215. RBS, through its director, employee or representative Tian was at the February 2008 Meeting in the course of business, and RBS' silence in relation to the Claim Warrant Acquisition Representations and RBS' failure to comply with the Disavow Obligation, was conduct in trade or commerce.

216. As a result of the matters set out from paragraphs 200 to 125 herein, RBS, engaged in conduct that was false, misleading or deceptive or was likely to mislead or deceive within the meaning of s 18 and or 29 of the Australian Consumer Law and or s 52 and or 53 of the Trade Practices Act and or 1041H of the *Corporations Act* and or 12DA, 12DB and or 12DF of the *ASIC Act*.

217. As a result of RBS' conduct, the Applicants suffered loss and damage.

Particulars

- 1) If RBS had informed the Applicants, either directly or through Navra about the position absent false, misleading or deceptive conduct alleged, in relation to the Claim Warrants, the Applicants would not have acquired the Claim Warrants. The Applicants' loss and damage is therefore the difference between their current financial positions and the position they would have been in if they had not acquired the Claim Warrants.
- 2) The loss of each of the Applicants' Equity Contributions.

7.5.2 RBS's misleading and deceptive conduct in relation to the product disclosure statements

218. RBS engaged in misleading conduct through its product disclosure statements, because

- (a) RBS structured and manufactured the Claim Warrants: paragraphs 220 and 221 herein;
- (b) RBS made the following representations in its product disclosure statements (paragraph 222 herein) about the Claim Warrants
 - (i) The Capital Protection Representation, being a representation that some or all of the investor's capital would be protected: paragraph 224 herein;
 - (ii) The Protection Period representation, being a representation that the Claim Warrants would protect some or all of the investor's capital until 30 June 2010, which, depending on when the holder bought the warrants, was a period up to 3 years: paragraph 225 herein;
 - (iii) The Investment Length representation, being a representation that investment in the Claim Warrants was a long term investment of at least 5 years: paragraph 226 herein;
 - (iv) The put option was a key feature of the NRFUZA and NRFUZZB Claim Warrants: paragraph 223 herein.
- (c) These representations were misleading or were likely to mislead, or were false, including because RBS was planning to remove the put option from the Claim Warrants before either of the Applicants bought Claim Warrants: paragraphs 227-229 herein, and RBS never warned the Applicants or Navra that they were planning to remove the key feature of the NRFUZA and NRFUZZB claim warrants, being the put option, before the Applicants bought the Claim Warrants: paragraphs 229-231 herein.

(d) Navra relied on these representations in paragraphs 232 and 234 herein, and communicated these representations to the Applicants in paragraphs 236 and 237 herein.

(e) The Applicants relied on the Claim Warrant Acquisition Representations: paragraph 238 herein;

(f) The Applicants suffered loss and damage in consequence of their reliance which is actionable: paragraphs 239 and 240 herein.

(g) RBS' conduct was in trade or commerce: paragraph 233 herein.

219. The Applicants repeat paragraphs 200 to 215 herein.

220. RBS structured the Claim Warrants.

221. RBS manufactured the Claim Warrants and the Applicants repeat and rely on paragraph 40(d) herein.

222. RBS published all of the Product Disclosure Statements for the Claim Warrants and the Applicants repeat paragraph 40 herein.

223. The Product Disclosure Statements for the NRFUZA and NRFUZH each contain a put option:

(a) The "put option" in the NRFUZA and NRFUZH Product Disclosure Statements represents that it protects the Applicant's capital, including

(i) "Exercise Your Holder's Put Option on Expiry" (at Part 2, 2.4(iv) in the NRFUZA warrant PDF and in the NRFUZH warrant PDF – which represents that

1. The put option is exercisable by the Applicants; and
2. The Applicants may wait until the Expiry Date of the warrant to exercise their put option.

(ii) "Capital Protection Fee ¶¶ When you acquire an Unlisted Rolling Instalment you also acquire the Holder's Put Option" (at Part 2, 5.2 in the NRFUZA warrant PDF and in the NRFUZH warrant PDF) – which represents that

1. The purpose of the put option is for the protection of the holder's capital, being their equity contribution.

(b) At no place in the PDS is the working of the put option explained with the use of examples.

- (c) At no place in the PDS is the put option explained in a clear, concise and effective manner comprehensible by the Applicants.
- (d) At no place in the PDS is the put option explained in a clear, concise and effective manner comprehensible by an ordinary holder in the class of the Applicants.
- (e) At no place in the PDS is the put option explained in a clear, concise and effective manner comprehensible by reasonable financial advisor.
- (f) The put option was a key feature of the NRFUZA and NRFUZB Claim Warrant.

224. By reason of the matters pleaded in the previous paragraph, RBS, in each of its NRFUZA and NRFUZB Product Disclosure Statements, represented that the Claim Warrants insured or otherwise protected some or all of the capital invested by the Applicants (“**Capital Protection Representation**”).

225. In the premises of the Capital Protection Representation, RBS, in each of its NRFUZA and NRFUZB Product Disclosure Statements, represented that those Claim Warrants were a product expiring on 30 June 2010, being an investment term described in each PDS as ‘up to 3 years’ (“**the Protection Period**”).

Particulars

1) This quantity of time was expressed under the heading “3. Key Dates and Commercial Terms”, on or about page 3.

226. RBS, in each of its NRFUZA and NRFUZB Product Disclosure Statements, represented that the Claim Warrants were a product with an investment length recommended of ‘at least 5 years’ (“**the Investment Length**”).

Particulars

1) This quantity of time was expressed under the heading 7. ... “(b) For whom is the Navra Fund Suited”, on or about page 4.

227. The Capital Protection Representation was false because the Claim Warrants did not in fact:

(a) Protect; or

(b) Insure; or

(c) provide no recourse to

some or all of the equity invested by the Applicants for the Protection Period, the Investment Length Period or at all.

Particulars

- 1) Given the Planned Removal of the Put Option being put into effect and the put option being removed, the Applicants were required to exit the NRFUZZB warrants on or before 30 June 2008 and therefore did not enjoy the put option for the Protection Period, or Investment Length Period.
- 2) The reset dates diminished the protection of the put option, but that consequence was not clearly, concisely and effectively set out in the NRFUZZA and NRFUZZB Product Disclosure Statements in language comprehensible to a lay person. The reset dates of the NRFUZZB warrants were in fact utilised by RBS to prevent the Applicants from investing in their NRFUZZB warrants for the entire length of the Protection Period, or Investment Length Period.
- 3) There was no protection of the equity contribution of the Applicants into their NRFUZZB warrants.
- 4) RBS had full recourse to all of the equity contribution of the Applicants.

228. In the premises of paragraphs 222-227 herein the Capital Protection Representation was misleading or was likely to mislead a reasonable financial advisor and or was false.

229. At or before the time when the Capital Protection Representation was made:
- (a) RBS was planning on removing the put option;
 - (b) RBS was aware that the put option warrant would likely be terminated if it continued on its current trend;
 - (c) RBS did not warn the Applicants of the matters in subparagraphs a and b before their acquisition of the Claim Warrants or at all; and
 - (d) RBS knew the matters in subparagraphs a, b and c.

Particulars

- 1) On 1 September 2007 Elizabeth Tian sent an e-mail about the limited longevity of the put option feature in the warrant.
- 2) See also discovery document 504.124.3710, in which RBS planned the stop loss warrant in or about April 2008.
- 3) RBS was aware that the put option warrant would be terminated on its current LVR trend. RBS did not warn either of the Applicants or Navra (or ensure they were otherwise

informed) that the current ratio (LVR) of UZA at around the time of the February 2008 Meeting was about 0.7. If the market continued on its then current trajectory that RBS, by its employee, Mr Iqbal, predicted that by the time RBS reset the Claim Warrants in June the ratio would be 0.8 or greater either as a result of the market or as a result of the increase in instalment payment thus triggering an early termination. RBS further did not advise the Applicants that the UZA was teetering on a 0.8 LVR on or around 14 March 2008, and thus the downward spiral had accelerated since Mr Iqbal's prediction. As set out in paragraph 70 herein the First Applicant acquired the Claim Warrants on or about 27 March 2008 and the Second Applicant on or about 19 March 2008 at paragraph 79. (See discovery document 501.011.7501 and 504.062.4379)

4) The NRFUZA and NRFUZZB Product Disclosure Statement did not have any lapsing characteristic at 80%. (Bewley September 2017 Report at paragraph 11.17.5.d.)

("the Planned Removal of the Put Option")

230. RBS did not warn Navra in the NRFUZA or NRFUZZB Product Disclosure Statements or at or around the time of the Capital Protection Representation or otherwise before the Applicant's acquisition of the Claim Warrants, of the Planned Removal of the Put Option.

231. RBS did not warn Navra in the NRFUZA or NRFUZZB Product Disclosure Statements or at or around the time of the Capital Protection Representation or otherwise before the Applicant's acquisition of the Claim Warrants, that these two types of Claim Warrant would not last for the Protection Period or the Investment Length.

232. A reasonable financial advisor would rely on the matters written in the Product Disclosure Statement.

Particulars

1) The Applicants repeat the particulars beneath paragraph 247 herein.

233. The Product Disclosure Statements were written, published and disseminated by RBS in trade or commerce.

234. Navra relied on the matters written in the Product Disclosure Statements.

235. Navra made the Claim Warrant Acquisition Representations.

236. The Claim Warrant Acquisition Representations communicated, *inter alia*, the Capital Protection Representation, Protection Period and the Investment Length representations, as well as the key feature of the NRFUZA and NRFUZZB warrant being the put option.

Particulars

1) The Applicants repeat and rely on paragraph 148 (b), (c), (d), (e), (f) (because of the length of each of the Protection Period and the Investment Length, and the fact of the put option insurance), (g), (h) and (m) of the Claim Warrant Acquisition Representations.

237. The Capital Protection Representation, Protection Period and the Investment Length representations, as well as the key feature of the NRFUZA and NRFUZZB warrant being the put option, was misleading or was likely to mislead the Applicants and or was false.

Particulars.

A. The facts upon which it is said that the representations about the Claim Warrants were misleading, likely to mislead or false are set out in the particulars to sub-paragraph 151(d) and 153 herein.

238. The Applicants relied on the Claim Warrant Acquisition Representations, and the Applicants repeat paragraphs 155-156 herein.

239. By reason of the matters pleaded in paragraph 219 to 238 RBS, engaged in conduct that was false, misleading or deceptive or was likely to mislead or deceive within the meaning of s 18 and or 29 of the *Australian Consumer Law* and or s 52 and or 53 of the *Trade Practices Act* and or 1041H of the *Corporations Act* and or 12DA, 12DB and or 12DF of the *ASIC Act*.

240. As a result of RBS' conduct, the Applicants suffered loss and damage.

Particulars

1) If RBS had informed the Applicants, either directly or through Navra, about the position in relation to the Claim Warrants absent the false, misleading or deceptive conduct alleged, the Applicants would not have acquired the

Claim Warrants. The Applicants' loss and damage is therefore the difference between their current financial positions and the position they would have been in if they had not acquired the Claim Warrants.

2) The loss of each of the Applicants' Equity Contributions.

7.5.3 RBS's misleading and deceptive conduct in relation to its communications (other than through its PDS')

241. RBS engaged in misleading conduct other than through its product disclosure statements.

(a) RBS structured and manufactured the Claim Warrants: paragraph 242 herein;

(b) There were a number of Representations to Navra by RBS about the Claim Warrants that RBS structured and manufactured. Further, RBS failed to communicate the Warrants Inherent Loss Trait: paragraphs 243, 244 herein.

(c) The Representations to Navra by RBS were each misleading, likely to mislead or further and in the alternative false and the non-communication of the Warrants Inherent Loss Trait was misleading or likely to mislead Navra: paragraphs 245, 246 herein.

(d) Navra had a reasonable expectation that RBS would correct itself if RBS engaged in conduct that was misleading, likely to mislead; or RBS was otherwise obliged to correct itself: paragraphs 246, 247 herein;

(e) Navra relied on the conduct of RBS: paragraph 250 herein;

(f) As a result, Navra made the Claim Warrant Acquisition Representations and the Claim Warrant Rollover Representations which contained the Representations to Navra by RBS and did not inform the Applicants that the Warrants Inherent Loss Trait: paragraph 251, 252 herein;

(g) That communication by Navra to the Applicants was misleading, likely to mislead or false: paragraph 253 herein;

(h) The Applicants relied: paragraph 254 herein; and

(i) The Applicants suffered loss and damage in consequence of their reliance which is actionable: paragraph 255, 256 herein.

(j) The conduct of RBS was in trade or commerce: paragraph 248, 249 herein.

242. RBS created, manufactured and issued the Claim Warrants.

Particulars

1) The Applicants repeat paragraph 4(d) herein.

243. In or about August 2007 to October 2007, RBS made representations to Navra in relation to the Claim Warrants as follows:

- (a) warrants are lower risk than margin lending;
- (b) warrants are a long-term strategy;
- (c) 40 to 60% leverage was a conservative investment;
- (d) warrants will suit investors experienced with investing;
- (e) warrants would be suitable for Navra's clients;
- (f) warrants would be suitable for the Navra Retail Fund;
- (g) warrants will suit investors comfortable with medium to long-term view on blue-chip shares;
- (h) warrants have no setup or exit fees;
- (i) the warrants borrowing fee is usually a very small part of the overall funding costs;
- (j) warrants are non-recourse; and
- (k) warrants are free of margin calls.

("Representations to Navra by RBS")

Particulars of Representations to Navra by RBS

- 1) In relation to subparagraphs a, b, c, d, g, h and i, above, these representations were express, including in Discovery Document 502.005.1508.
- 2) In relation to subparagraph j above, these representations were express, including in Discovery Document 502.026.3328.
- 3) In relation to subparagraph k above, these representations were express, including in the Product Disclosure Statements, Discovery Documents 502.005.1432 and 504.062.4518.
- 4) In relation to subparagraphs e and f above, these representations were implied 1) by the fact that the Claim Warrants were offered exclusively over the Navra Fund, 2) by the fact that the Claim Warrants were offered exclusively to Navra clients, and 3) because RBS was under legal obligation to provide a product that was fit for purpose in circumstances where the Claim Warrants were to be provided only to Navra customers, and were express also in that RBS specifically marketed its warrants to Navra, including in Discovery Document 500.001.0134.

244. At all material times

(a) The equity contribution of the holder of a Claim Warrant would decrease even if the Navra Retail Fund grew at 7%;

("Warrants Inherent Loss Trait")

Particulars

1) RBS predicted that even with a fund growth rate of 7% the equity contribution of the Applicants would decrease. Discovery document 504.065.3059 and 502.029.1193.

2) The value of the Navra funds would have had to rise considerably (at an unrealistic market growth rate) to make sufficient profit after all Fees Payable were taken into account to pay off the loan in full from the clients' own resources. (Bewley Report at 8.5.2 and executive summary, Green Report, 19 September 2017 at 6.4.7-6.4.9.) For the put option warrant, assuming a loan of 70% of total underlying securities, the yield, to be cash flow positive, would need to have been at least 12.25% and for the stop loss variant at least 9.25%, which were unrealistic growth rates in the prevailing market conditions at the time (Green Report, 19 September 2017, at 6.6.10).

(b) RBS did not communicate to either of the Applicants or Navra the Warrants Inherent Loss Trait.

245. The Representations to Navra by RBS were each false or inaccurate because:

(a) warrants were not lower risk than margin lending;

(b) warrants were not a long-term strategy;

(c) of the matters within paragraphs 222 – 227 herein, which the Applicants repeat;

(d) 40 to 60% leverage was not a conservative investment;

(e) 40 to 60% leverage was not a conservative investment when made in the Navra Retail Fund;

(f) warrants would not suit investors experienced with investing;

(g) warrants would not suit Navra's clients;

(h) warrants would not suit investors comfortable with medium to long-term view on blue-chip shares;

(i) warrants had setup fees;

(j) warrants had exit fees, if RBS allowed customers to sell their warrants;

- (k) the warrants borrowing fee was more than a very small part of the overall funding costs;
- (l) warrants were not non-recourse;
- (m) RBS did not explain to Navra that recourse could be made to all of the client's capital invested in the warrant;
- (n) warrants were not free of margin calls;
- (o) warrants were planned to include a feature akin to margin calls, being stop loss calls;
- (p) warrants included a feature akin to margin calls, being stop loss calls; and
- (q) of the Planned Removal of the Put Option.

Particulars

- 1) The Applicants repeat paragraph 151 and the particulars to paragraph 153 herein.
- 2) The Navra Retail Fund was not a conservative investment if it was leveraged at all.

246. The Representations to Navra by RBS and the non-disclosure of the Warrants Inherent Loss Trait was misleading or was likely to mislead a reasonable financial advisor as a reasonable financial advisor would rely on (and would expect that they could rely on) what they were told by RBS in relation to the operation, risk and characteristics of the Claim Warrants.

247. A reasonable financial advisor would expect to be informed by RBS of the Warrants Inherent Loss Trait and would rely on their expectation.

Particulars

Steve Navra actually relied on RBS to inform him of the Warrants Inherent Loss Trait and the matters within paragraph 245. Alternatively, that reliance ought be implied by reason of the following:

- 1) Navra invited Tian to presentations of Navra (Affidavit or Serey Mam at paragraphs 35 and 41; Particulars of Evidence of Steve Navra at paragraph 26) in circumstances where the Services Agreement required RBS to approve Navra's marketing and train Navra, and further in the following circumstances:
 - a) Navra had had limited or no experience in unlisted rolling instalment warrants prior to the Claim Warrants.

- b) The Claim Warrants are bespoke products tailored specifically by RBS for Navra's Retail Fund and Navra's clients.
- c) RBS had a large range of experts in financial products, including the structure of the Claim Warrants and Navra would have been aware that RBS was a large investment bank with expertise in financial products and services, such as the Claim Warrants.
- 2) RBS had a right and an obligation under the Services Agreement to train Navra and to approve Navra's marketing.
- 3) Vincents Report at 5.1.24, 5.1.31, 6.2.29, 6.3.9, 6.3.10.
- 4) Navra asked RBS for assistance in answering questions about the Claim Warrants that it did not understand, including in the following discovery documents
- a) RBS.503.006.5142;
 - b) RBS.503.055.0562;
 - c) RBS.503.053.5802;
 - d) RBS.502.005.2264;
 - e) RBS.503.022.5644;
 - f) RBS.503.024.2896;
 - g) RBS.502.006.4455;
 - h) RBS.501.020.1410;
 - i) RBS.503.019.0216;

248. The Representations to Navra by RBS were made by RBS in trade or commerce.

198-249. The conduct of RBS, in knowing of, but not communicating to Navra the Warrants Inherent Loss Trait was in trade or commerce.

Particulars

The Applicants repeat paragraph 244 and the particulars thereto.

250. Navra relied on the conduct of RBS pleaded under this subheading, being the Representations to Navra by RBS about the Claim Warrants that RBS structured and manufactured, and RBS' failure to communicate the Warrants Inherent Loss Trait.

251. Navra made the Claim Warrant Acquisition Representations and the Claim Warrant Rollover Representations.

252. The Claim Warrant Acquisition Representations and the Claim Warrant Rollover Representations communicated, *inter alia*, the Representations to Navra by RBS and did not communicate the Warrants Inherent Loss Trait.

Particulars

1) The Applicants repeat paragraph 148 (b), (c), (d), (e)/(g)/(h) (as the loans were said to be non-recourse and to be conservative), (f) (as the warrants were said to suit investors comfortable with medium to long-term view), (j), (l) and (m).

2) The Applicants repeat paragraph 158 (b), (e), (g), (i), (j) and (k) (in relation to the suitability representations).

253. The Representations to Navra by RBS and the non-communication of the Warrants Inherent Loss Trait insofar as they were communicated to the clients of Navra via the Claim Warrant Acquisition Representations and the Claim Warrant Rollover Representations were misleading or were likely to mislead the Applicants or were false.

Particulars

1) The Applicants repeat paragraphs 151, 160 and the particulars to 153 herein.

254. The Applicants relied on the Claim Warrant Acquisition Representations and the Claim Warrant Rollover Representations, and the Applicants repeat paragraphs 155, 156, 164 and 165 herein.

255. By reason of the matters pleaded in 242 to 254 above, RBS, engaged in conduct that was misleading or deceptive or was likely to mislead or deceive within the meaning of s 18 and or 29 of the *Australian Consumer Law* and or s 52 and or 53 of the *Trade Practices Act* and or 1041H of the *Corporations Act* and or 12DA, 12DB and or 12DF of the *ASIC Act*.

256. As a result of RBS' conduct, the Applicants suffered loss and damage.

Particulars

1) If RBS had informed the Applicants, either directly or indirectly or through Navra, about the position in relation to the Claim Warrants **absent the misleading or deceptive conduct alleged**, the Applicants would not have acquired the Claim Warrants. The Applicants' loss and damage is therefore the difference between their current financial positions and the position they would have been in if they had not acquired the Claim Warrants.

2) The loss of each of the Applicants' Equity Contributions.

7.5.4 RBS' failure to comply with Product Disclosure Laws

257. RBS engaged in conduct that was misleading, likely to mislead or false in relation to their compliance with product disclosure laws and the disclosure of all relevant matters in their product disclosure statements.

(a) RBS published the Product Disclosure Statements;

(b) RBS represented, by the publication of its Product Disclosure Statements, that

(i) it was disclosing all relevant matters in relation to the operation, risk and characteristics of the Claim Warrants to an ordinary financial advisor and a potential Navra and RBS Claim Warrant client: paragraph 258 herein;

(ii) its Product Disclosure Statements complied with the Product Disclosure Laws: paragraph 259 herein;

(c) RBS breached the Product Disclosure Laws: paragraph 260 herein (being RBS' Failure to Comply with Product Disclosure Laws);

(d) Further, Navra, in reliance on the conduct of RBS made the Claim Warrant Acquisition Representations and the Claim Warrant Rollover Representations without telling the Applicants about RBS' Failure to Comply with Product Disclosure Laws (misleading and false conduct): paragraphs 261, 262, 263, 264, 265, 266 and 267 herein;

(e) Navra relied on the conduct of RBS: paragraph 264 herein;

(f) The Applicants relied on the Claim Warrant Acquisition Representations and Claim Warrant Rollover Representations: paragraph 267 herein;

(g) As a result, the Applicants suffered loss and damage which is actionable: paragraphs 268 and 270 herein.

(h) RBS' conduct was in trade or commerce: paragraph 269 herein.

258. RBS, by the publication of its Product Disclosure Statements, represented that it was disclosing all relevant matters in relation to the operation, risk and characteristics of the Claim Warrants to an

(a) ordinary financial advisor; and

(b) a potential Navra and RBS Claim Warrant client.

Particulars

1) This representation is implied by the very nature of a product disclosure statement being a document issued to potential investors for the purpose of informing them about the operation, risk and characteristics of the Claim Warrants;

2) The Product Disclosure Laws set out in paragraph 6A herein are statutory requirements in relation to Product Disclosure Statements and it was implied by the publication and issuance of the Claim Warrants' Product Disclosure Statements that those statutory requirements had been complied with.

259. RBS, by the publication of its Product Disclosure Statements, represented that it was compliant with the laws governing product disclosure statements at the time of issue, including the Product Disclosure Laws set out in paragraph 6A herein.

Particulars

1) The Applicants repeat the particulars beneath the previous subparagraph.

260. In its Produce Disclosure Statements and the Application Forms therein, RBS failed to comply with the Product Disclosure Laws in the following respects:

(a) failed to adequately disclose clearly, concisely and effectively, to the Applicants as retail investors,

(i) the significant features of the Claim Warrants;

(ii) the significant characteristics of the Claim Warrants;

(iii) benefits (expressed in dollar terms and the circumstances and way in which each benefit would be provided) of the Claim Warrants;

(iv) significant risks of the Claim Warrants;

(v) costs of the Claim Warrants (and expressed in dollar terms);

(vi) the amounts payable (and the times those amounts are payable) by the Applicants in respect of the Claim Warrants;

(vii) the amounts that will or may be deducted from the equity or loan or total amount payable in respect of the Claim Warrants;

(viii) the tax implications of the Claim Warrants;

(ix) any other information that might be reasonably expected to have a material influence on the decision of a reasonable person and

that a retail client, such as each of the Applicants (or their financial planner such as Navra), would reasonably require for the purpose of making a decision about whether or not the Applicants should buy the Claim Warrants.

Particulars

1) The Applicants repeat paragraphs 93 (h), (i), (k), (r), (s), (u), (x) and paragraph 94.

(b) Failed to make clear that the product was not underwritten, guaranteed and or otherwise capital protected when it was not to the level represented or at all.

Particulars

1) The Applicants repeat paragraphs 151(d) and 160(d).

2) The Applicants repeat the Planned Removal of the Put Option in circumstances of the Capital Protection Representation, Protection Period and Investment Length representations.

(c) Failed to distinguish clearly between the role of Navra and the role of RBS.

(d) Failed to comply with their s 912A obligations

Particulars

1) The Applicants repeat paragraph 93(j).

(e) Failed to take any or adequate steps to manage conflicts of interest to ensure the Applicants obtained independent financial advice

Particulars

1) The Applicants repeat paragraph 93(t).

(f) Failed to inform the Applicants at the intervals required by s 1017D of the CA of the:

(i) Termination value of the Claim Warrants; and

(ii) The return on investment of the Claim Warrants.

("RBS' Failure to Comply with Product Disclosure Laws")

261. RBS did provide the Product Disclosure Statements to Navra.

262. The representations in each of paragraphs 258 and 259 herein were false and inaccurate because of RBS' Failure to Comply with Product Disclosure Laws.

263. In the premises of paragraph 262 herein, RBS engaged in conduct that was misleading or was likely to mislead.

264. Navra relied on the conduct of RBS pleaded beneath this subheading, being paragraphs 258, 259, 260, 261, 262 and 263 herein.

265. Navra made the Claim Warrant Acquisition Representations and the Claim Warrant Rollover Representations.

266. The Claim Warrant Acquisition Representations and the Claim Warrant Rollover Representations did not communicate the matters constituting RBS' Failure to Comply with Product Disclosure Laws.

267. The Applicants relied on the Claim Warrant Acquisition Representations and the Claim Warrant Rollover Representations, and the Applicants repeat paragraphs 155, 156, 164 and 165 herein.

268. In the premises (set out in paragraph 257 herein), RBS engaged in:
(a) False, misleading or deceptive conduct, which is unlawful because it is a breach of one or more of:

- (i) s 18 of the *Australian Consumer Law* and or
- (ii) s 52 of the *Trade Practices Act* and or
- (iii) s 1041H of the *Corporations Act* and or
- (iv) ss 12DA, 12DB and or 12DF of the *ASIC Act*.

269. RBS published its Product Disclosure Statements in trade or commerce.

270. As a result of RBS' conduct, the Applicants suffered loss and damage.

Particulars

1) If RBS had informed the Applicants either directly or through Navra, about the position in relation to the Claim Warrants absent the false, misleading or deceptive conduct alleged, the Applicants would not have acquired the Claim Warrants. The Applicants' loss and damage is therefore the difference between their current financial positions and the position they would have been in if they had not acquired the Claim Warrants.

2) The loss of each of the Applicants' Equity Contributions.

7.6 Navra was an agent or representative of RBS

271. Navra Financial Services was authorised by RBS to promote, market and sign-up customers to the Claim Warrants as:

(a) Navra Financial Services was the only entity to offer the Claim Warrants to the general public;

Particulars

- 1) RBS.504.045.7456;
- 2) RBS.504.045.7457;
- 3) RBS.502.027.8920;
- 4) RBS.504.062.4518;
- 5) RBS.501.010.3547;
- 6) RBS.500.001.4016;
- 7) Affidavits of Mark Raymond and Serey Mam.

(b) RBS:

(i) did not market the Claim Warrants itself;

Particulars

- 1) RBS.502.027.8920;
- 2) RBS.504.045.9328;
- 3) RBS.504.063.3484;
- 4) RBS.504.044.2392.

(ii) knew and permitted Navra Financial Services to market the Claim Warrants;

Particulars

- 1) RBS.502.027.8920;
- 2) RBS.504.045.9328;
- 3) RBS.504.063.3484;
- 4) RBS.504.044.2392;
- 5) RBS.500.001.0134;
- 6) RBS' knowledge is implied from the attendance by Tian at the February 2008 Meeting at which Navra clients were advised to acquire the first in the series of Claim Warrants (particulars of which are found in paragraphs 26 and 148 of the TASOC). Further particulars may be added after discovery;
- 7) Section 11 of the Services Agreement..

(iii) provided Application Forms to Navra Financial Services for the purpose of signing up new and transfer customers to the Claim Warrants;

Particulars

- 1) RBS.502.027.8920;
- 2) RBS.501.010.3547;
- 3) RBS.500.001.4016;
- 4) RBS.502.005.1603;
- 5) RBS.504.034.4190;
- 6) RBS.500.001.0134;
- 7) Affidavit of Serey Mam

(iv) permitted Navra Financial Services to fill out some or all of the Application Forms of each of the Applicants in whole or in part for the benefit of RBS;

Particulars

- 1) RBS.502.027.8920;
- 2) RBS.501.010.3547;
- 3) RBS.500.001.4016;
- 4) RBS.500.001.0134;
- 5) RBS.502.005.1603;
- 6) RBS.504.034.4190;
- 7) RBS.504.044.2392;
- 8) RBS.502.027.6388;
- 9) RBS.502.005.2037;
- 10) RBS.502.005.2132;
- 11) RBS.501.012.0648;
- 12) RBS.502.006.2610;
- 13) RBS.504.116.8900;
- 14) RBS.504.031.9419;
- 15) RBS.502.032.7921;
- 16) RBS.503.024.2896;
- 17) Affidavit of Serey Mam.

(v) gave a power of attorney to Navra in relation to Application Forms;

Particulars

- 1) The Services Agreement.

(vi) entrusted Navra Financial Services to perform certain duties namely:

1. conducting the interviews of the Applicants;
2. gathering some or all of the information that RBS needed to provide the Applicants with Claim Warrants, in particular the information contained in the Application Forms;
3. determining the eligibility of the prospective applicants for Claim Warrants;
4. assisting the Applicants to prepare their Application Forms or in the alternative the Contracts;
5. completing the 'know your client' checks;
6. performing some or all of the marketing of the Claim Warrants;
7. performing some or all of the customer relationship management;
8. communicate RBS' decisions in relation to "corporate actions" to warrant holders, with such documents and communications to be in a form satisfactory to RBS;
9. respond to investor queries;

- 10. distribute copies of the Product Disclosure Statement;
- 11. performing some or all of the giving of advice to the Applicants;
- 12. performing the tasks, duties, obligations and other matters set out in paragraph 168 of the TASOC;
- 13. seeking out potential customers; and
- 14. the duties on Navra set out in the Services Agreement.

Particulars

- 1) RBS.502.027.8920;
- 2) RBS.501.010.3547;
- 3) RBS.500.001.4016;
- 4) RBS.500.001.0134;
- 5) RBS.504.044.2392;
- 6) RBS.504.116.8900;
- 7) RBS.504.031.9419;
- 8) RBS.502.032.7893;
- 9) RBS.502.032.7921;
- 10) RBS.504.034.4190;
- 11) RBS.503.011.3907;
- 12) RBS.502.006.3774;
- 13) RBS.503.024.2896;
- 14) RBS.502.006.3824;
- 15) RBS.503.030.1540;
- 16) RBS.503.008.3582.

- (vii) permitted Navra Financial Services to perform each of the tasks, duties, obligations and other matters referred to in subparagraph (vi);

Particulars

- 1) RBS.502.027.8920;
- 2) RBS.502.005.1603;
- 3) RBS.504.034.4190.

- (viii) provided product training in relation to the Claim Warrants so that Navra Financial Services could properly perform each of the tasks, duties, obligations and other matters referred to in subparagraph (v);
- (ix) provided information and assistance to Navra Financial Services to allow Navra Financial Services to answer applications' and holders' enquiries about the Claim Warrants, excluding personal advice or tax advice;

Particulars

- 1) RBS.503.006.5142;

- 2) RBS.502.006.3874;
- 3) RBS.502.006.3379;
- 4) RBS.502.006.4455;
- 5) RBS.502.032.8433;
- 6) RBS.503.030.1540;
- 7) RBS.503.053.5802.

(x) advised Navra Financial Services if it considered that an application form was incorrectly or incompletely filled-out;

Particulars

- 1) RBS.503.029.2787
- 2) RBS.502.006.2610
- 3) RBS.501.012.0650

(xi) Reviewed Navra Financial Services “know your client” processes in order to be satisfied that those processed complied with regulatory requirements; and

Particulars

- 1) RBS.504.062.4789
- 2) RBS.504.116.8900

(xii) relied on Navra Financial Services to properly perform each of the tasks, duties, obligations and other matters referred to in subparagraph (v).

Particulars

- 1) RBS.501.010.3547;
- 2) RBS.500.001.4016;
- 3) RBS.502.027.8920;
- 4) RBS.500.001.0134;
- 5) RBS.504.034.4190

272. Navra Financial Services was acting on behalf of RBS when it promoted, marketed and signed-up customers to the Claim Warrants as:

- (a) Navra Financial Services was the only entity that offered the Claim Warrants to RBS’ clients and signed-up its clients;
- (b) Navra Financial Services was the only entity that marketed the Claim Warrants to its clients as RBS:
 - (i) did not market the Claim Warrants itself; and
 - (ii) knew and permitted Navra Financial Services to market the Claim Warrants.

Particulars

1) The knowledge of RBS is implied from the attendance by Tian at the February 2008 Meeting at which Navra Financial Services clients were advised to acquire the first in the series of Claim Warrants (particulars of which are found in paragraphs 26 and 148 of the TASOC).

2) The Services Agreement.

(c) RBS granted Navra a power of attorney;

Particulars

1) The Services Agreement.

(d) Navra could only market the Claim Warrants with RBS' approval;

(e) at the February 2008 Meeting (which was attended by Tian) attendees were told that Claim Warrants were to be obtained only through Navra Financial Services and as such RBS held out Navra Financial Services as the only conduit through which investment in the Claim Warrants could take place; and

(f) the Application Forms for Claim Warrants were:

(i) only provided to Navra Financial Services by RBS for the purpose of signing up (or marketing to) new and transfer customers and potential customers to the Claim Warrants;

(ii) obtained by the Applicants from Navra Financial Services;

Particulars

- 1) RBS.502.027.8920;
- 2) RBS.501.010.3547;
- 3) RBS.500.001.4016;
- 4) RBS.500.001.0134;
- 5) RBS.502.005.1603
- 6) Affidavit of Serey Mam and Affidavits of the Applicants

(iii) not given by the First and Second Applicants directly to RBS but, once the Application Forms had been completed by each Applicant (or Navra Financial Services), Navra Financial Services collected them for RBS and then provided them to RBS; and

Particulars

- 1) RBS.502.027.8920;
- 2) RBS.501.010.3547;
- 3) RBS.500.001.4016;
- 4) RBS.500.001.0134;

- 5) RBS.504.034.4190;
- 6) RBS.504.062.4787;
- 7) RBS.502.005.1603;
- 8) RBS.502.027.6388;
- 9) RBS.502.005.2132;
- 10) RBS.501.012.0648;
- 11) RBS.502.005.2037;
- 12) RBS.504.116.8900;
- 13) RBS.504.044.2392;
- 14) RBS.502.006.2610;
- 15) RBS.504.031.9419;
- 16) RBS.502.032.7921;
- 17) RBS.503.024.2896;
- 18) Affidavit of Serey Mam, and Affidavits of the Applicants.

(iv) a copy of the whole of the Application Form was not shown or given to either the First or Second Applicant before they signed it.

273. Navra Financial Services was authorised to act on behalf of RBS with regard to the sale of the Claim Warrants or, in the alternative, its authority to act on behalf of RBS can be implied.

Particulars

- 1) The Applicants repeat and rely on the facts pleaded in the subparagraphs to paragraphs 68 and 69 herein.
- 2) RBS.502.027.8920;
- 3) RBS.501.010.3547;
- 4) RBS.500.001.4016;
- 5) RBS.502.005.1603;
- 6) RBS.500.001.0134;
- 7) RBS.504.034.4190;
- 8) Affidavit of Serey Mam.

274. RBS held out Navra Financial Services as being able to act, or was capable of acting, on its behalf as it:

- (a) authorised or otherwise permitted Navra Financial Services to market the Claim Warrants and sign-up customers;
- (b) did not itself sign up any customers to the Claim Warrants;
- (c) made Navra Financial Services a primary source of product and service information for each of the Claim Warrants;
- (d) required each applicant to obtain the Claim Warrants only through Navra Financial Services;
- (e) made Application Forms for Claim Warrants only available from Navra Financial Services and not directly from RBS or any other source;

- (f) did not contradict any of Mr Navra's Claim Warrant Acquisition Representations (which are set out in paragraph 148 of the TASOC), despite its director Tian being present with him during the making of each of the said representations;
- (g) remained silent when representations were made by Mr Navra about the Claim Warrants and the Contracts at the February 2008 Meeting (particulars of which are found in paragraph 41, 43, 44, and 148 of the TASOC) in circumstances where the meeting was attended by its director Tian who was present with Mr Navra during the making of each of the said representations;
- (h) did not withdraw from Mr Steve Navra the right to make representations about the Claim Warrants;
- (i) did not inform its clients that any representations by Mr Steve Navra, Navra Financial Services and employees of Navra Financial Services at the February 2008 Meeting were not representations of RBS;
- (j) did not seek to correct any representations made by Mr Steve Navra, Navra Financial Services and employees of Navra Financial Services at the February 2008 Meeting;
- (k) had an agreement, arrangement or understanding with Navra Financial Services to promote, market and sign-up customers and potential customers to the Claim Warrants, particulars of which are in paragraphs 20, 20A, 20AA and 168 of the TASOC:
- a. Within Section 11 of the Services Agreement, Navra is authorised to market the Claim Warrants under the supervision of RBS who must approve Navra's marketing of the Claim Warrants;
- (l) authorised Navra Financial Services to fill out some or all of the Application Forms of each of the Applicants in whole or in part for the benefit of RBS;
- (m) did not directly market the Claim Warrants, but authorised Navra Financial Services to market the Claim Warrants;

Particulars

- 1) Navra Financial Services' authority to market the Claim Warrants is implied from the Claim Warrant Acquisition Representations which are set out in paragraph 148 of the TASOC.
- 2) RBS.502.027.8920;
- 3) RBS.501.010.3547;
- 4) RBS.500.001.4016;
- 5) RBS.502.005.1603;
- 6) RBS.504.044.2392;
- 7) RBS.500.001.0134;
- 8) RBS.504.034.4190;
- 9) RBS.504.045.9328;

- 10) RBS.504.063.3484;
- 11) RBS.504.044.2392;
- 12) RBS.502.027.6388;
- 13) RBS.502.005.2037;
- 14) RBS.502.005.2132;
- 15) RBS.501.012.0648;
- 16) RBS.502.006.2610;
- 17) RBS.504.116.8900;
- 18) RBS.504.031.9419;
- 19) RBS.502.032.7921;
- 20) Affidavit of Serey Mam.

- (n) did not sell the Claim Warrants independently of Navra Financial Services;
- (o) entrusted Navra Financial Services to perform certain duties which had the consequence that RBS and Navra Financial Services each represented or held out that Navra Financial Services acted on behalf of RBS in the performance of these duties. The duties which were entrusted by RBS to Navra Financial Services to perform are listed under paragraph 271(vi) herein and are repeated and relied on by the Applicants; and

Particulars

- (b) The Services Agreement

- (p) approved the completed Application Forms or alternatively the Contracts.

Particulars

- 1) RBS.502.027.8920;
- 2) RBS.501.010.3547;
- 3) RBS.500.001.4016;
- 4) RBS.502.005.1603;
- 5) RBS.500.001.0134;
- 6) RBS.504.034.4190.

- 275. RBS ratified and adopted Navra Financial Services' promotional or marketing activities in relation to the Claim Warrants and the completion of the Application Forms and Contracts.

Particulars

- (a) The Applicants repeat the particulars in paragraphs 69 and 70 herein and paragraphs 57 to 63B, 63F to 63H and 63M of the TASOC.
- (b) RBS made contracts available to Navra Financial Services to enable Navra Financial Services to market RBS Claim Warrants and in doing so authorised Navra Financial Services to sign-up (or complete parts of the necessary steps

therefor) new clients to the RBS Claim Warrants and further, in doing so, authorised Navra Financial Services to market to potential or new clients of the RBS Claim Warrants.

- (c) RBS accepted some or all of the completed Contracts or Application Forms for Claim Warrants that Navra Financial Services provided to it.
- (d) RBS received and kept such benefits as flowed to it by Navra Financial Services' provision to it of the completed Contracts or alternatively the completed Application Forms at a time when it knew at least through Tian's attendance at the February 2008 Meeting that some or all of the Claimants, including the Applicants, were likely put themselves in a position of disadvantage or potential disadvantage by reason of the matters pleaded within paragraphs 151 and 152 of the TASOC.
- (e) RBS received and kept such benefits as flowed to it by Navra Financial Services provision to it of the completed Contracts or alternatively the completed Application Forms.
- (f) RBS knew at least through Tian's attendance at the February 2008 Meeting that some or all of the Claimants, including the Applicants, did or would sign-up to the (or newer) Claim Warrants for benefit of each of Navra Financial Services and RBS and by reason of the Claim Warrant Acquisition Representations would likely put themselves in a position of disadvantage or potential disadvantage by reason of the matters pleaded within paragraphs 151 – 152 of the TASOC.
- (g) RBS 504.044.2392.

276. RBS had the knowledge set out in paragraphs 57 to 63M of the TASOC.

277. It was not possible for:

- (a) RBS to offer the Claim Warrants without Navra Financial Services' provision of the units in the Navra Managed Funds;
- (b) RBS to offer the Claim Warrants to the Claimants without Navra Financial Services' access to its clients; and
- (c) Navra Financial Services to offer the Claim Warrants to clients without RBS structuring, sourcing insurance, sourcing additional leverage and otherwise providing its skills, reputation and know-how in creating the Claim Warrants.

Particulars

- 1) The Applicants repeat and rely on paragraph 168 herein.

278. In the premises set out in paragraphs 271 to 277 above:

(a) Navra and RBS both consented to the agency relationship set out beneath this heading;

(b) RBS gave Navra the authority to act as set out beneath this heading;

(c) RBS retained substantial control and or a right of substantial control over its agent, Navra.

279. In the premises set out in paragraphs 271 to 278 above, Navra Financial Services was:

(a) an agent of RBS; and or

(b) an agent of RBS within the meaning of section 769B of the CA; and or

(c) an "other person" within the meaning of section 769B of the CA; and or

(d) a representative of RBS within the meaning of section 912A and 910A of the CA as:

(i) it was authorised to be a representative of RBS in that it:

1. had actual authority to act on behalf of RBS; and or

2. alternatively, had implied authority to act on behalf of RBS; and or

3. alternatively, had apparent or ostensible authority to act on behalf of RBS; and or

4. alternatively, was otherwise authorised as a representative of RBS; and or

(ii) it was otherwise acting on behalf of RBS; and or

(e) Navra Financial Services was authorised to act on behalf of RBS generally with regard to the sale of the Claim Warrants; and or

(f) An agent or representative of RBS because Navra Financial Services acted as agent or as a representative of RBS; and or

(g) the acts of Navra Financial Services were not independent of RBS, but rather were for or on its behalf.

("RBS' Vicarious Responsibility".)

280. Not used.

281. Navra

(a) provided advice to the Applicants (including the Warrant Acquisition Advice and Warrant Rollover Advice),

(b) made the Claim Warrant Acquisition Representations to the Applicants and the Claim Warrant Rollover Representations to the Applicants,

(c) breached the Navra Due Care and Skill Warranty,

- (d) breached the Navra Fitness for Purpose Warranty,
- (e) breached the section 945A Implied Term, and
- (f) orally incorporated the terms set out in paragraph 146B herein into the Contracts,
each of which was within the scope of the agency or was done in the
representative capacity of Navra Financial Services in relation to RBS.

282. As a result, the Applicants suffered loss and damage for which RBS is liable.

Particulars

- 1) If RBS had informed the Applicants about the position in relation to the
Claim Warrants absent the wrongful conduct alleged, the Applicants would
not have acquired the Claim Warrants. The Applicants' loss and damage is
therefore the difference between their current financial positions and the
position they would have been in if they had not acquired the Claim
Warrants. The Applicants repeat paragraph 281 herein.
- 2) The loss of each of the Applicants' Equity Contributions.

7.7 RBS was knowingly concerned

283. RBS was concerned in the making of the Claim Warrant Acquisition
Representations by Navra Financial Services to the Applicants and its other
clients and potential clients, as pleaded in paragraph 148 herein, because

- (a) The Claim Warrant Acquisition Representations were made by Navra at
the February 2008 Meeting in the presence of Tian in the circumstances
pleaded in paragraphs 200-202 herein.
- (b) RBS had a right under the Services Agreement to review and approve all
of Navra Financial Services' marketing material in relation to the Claim
Warrants, as pleaded in paragraph 20AA(g) herein.
- (c) RBS was obliged under the Services Agreement to provide product
training and information about the Claim Warrants to Navra Financial
Services' staff to assist them to answer clients' queries about the Claim
Warrants, as pleaded in paragraph 20AA(i) herein.

(d) Tian did not correct the Claim Warrant Acquisition Representations made by Navra.

(e) Tian was appointed under the Services Agreement to be RBS's Contract Manager in relation to all day-to-day issues concerning the Claim Warrants, as pleaded in paragraph 20AA(e) herein.

284. From at least February 2008, RBS knew that:

(a) To the extent that they included representations as to present matters, the Claim Warrant Acquisition Representations, save for those pleaded in paragraphs 148(a) and (j) herein, were misleading or deceptive, or likely to mislead or deceive;

(b) To the extent that they included representations as to future matters, the Claim Warrant Acquisition Representations, save for those pleaded in paragraphs 148(a) and (j) herein, were made without a reasonable basis.

Particulars

1) It may be inferred that RBS knew that the Claim Warrants were not suitable for the Applicants' needs, contrary to the Claim Warrant Acquisition Representation pleaded in paragraph 148(l) herein, because:

a) By at least February 2008 RBS, by its employees Tian and Stambulich, knew that the majority of Navra Financial Services' clients were unsophisticated investors of limited financial or legal literacy.

(i) The Applicants repeat paragraphs 63B, 63C, 63E, 63H, and 63M herein.

b) By at least October 2007 RBS had been advised by Navra, and itself knew, by its employees Fiona Whitten and Michael Iгла, that the Product Disclosure Statement was a dense and legalistic document which was likely to be beyond the comprehension of Navra Financial Services' clients.

(i) RBS.504.071.6582.

- (ii) The Applicants repeat paragraph 63H herein.
- c) RBS deliberately refrained from conducting any credit risk assessments of Navra Financial Services' clients:

 - (i) RBS 502.005.1425.
 - (ii) RBS.504.072.7404.
 - (iii) RBS.501.011.7940.
- d) By at least February 2008 RBS, by its employees James Poon, Jessica Carpenter, Stambulich, Andrew Santone, Greg Shields, John Penton, Melanie de Cressac, and Michael Iгла, knew that Navra Financial Services' clients were likely to fail any credit risk assessment by reason of their Margin Loan arrangements.

 - (i) RBS.504.072.7404.
- e) By at least August 2007 RBS, by its employee Tian, knew that Navra Financial Services' clients were already highly leveraged, and that the equity contributions made by them in applying for Claim Warrants flowed from an earlier loan, generally secured against real property.

 - (i) RBS.502.005.1432.
 - (ii) The Applicants repeat paragraphs 20AA(e), 58, 59, 60, 61, 62, and 63 herein.
- f) By at least August 2007 RBS knew that the purchase of the Claim Warrants would be a double-gearred investment.

 - (i) RBS's knowledge may be inferred from the matters particularised in subparagraph (e) above.
- g) RBS knew that the Claim Warrants had a high probability of needing to be rolled over within or at the end of their term because the value of the Navra Managed Funds was so low that warrant holders would be unable to make a sufficient profit after interest

and option costs to be able to pay the second instalment in full from their own resources.

- (i) Report of Bewley at 8.5.2.
 - (ii) RBS's knowledge may be inferred from:
 - (A) Its knowledge of the current volatility in global financial markets; and
 - (B) The fact that it had devised, structured, and created the Claim Warrants.
- 2) It may be inferred that RBS knew that the Claim Warrants were in fact a high-risk investment product, contrary to the Claim Warrant Acquisition Representations pleaded in paragraphs 148(f), (g), (h), (k), and (m) herein, because by February 2008:
- a) RBS knew that the global financial market was volatile and share markets were falling.
 - b) RBS, by its employees Tian, Stambulich, and Michael Igla, knew that the Navra Managed Funds were primarily share funds, and falls in the share market caused the value of the Navra Managed Funds to decline accordingly.
 - (i) The Applicants repeat paragraphs 20AA(e), 60, 61, 62, 63, 63B, 63C, 63D, and 63L herein.
 - (ii) RBS.504.063.2833.
 - c) RBS, by its employees Tian, Stambulich, and Michael Igla, knew that a decline in the value of the Navra Managed Funds would cause the loan-to-value ratio of any loan which was secured by units in the Fund to increase.
 - (i) The Applicants repeat paragraphs 20AA(e), 60, 61, 62, 63, 63B, 63C, 63D, and 63L herein.
 - d) RBS, by its employee Tian, knew that the Claim Warrants were intended to be issued to Navra Financial Services' clients, and were in fact issued, at a loan-to-value ratio of generally around 60%.

(i) RBS.502.005.1425.

(ii) RBS.502.005.1432.

3) RBS knew that the Claim Warrants did not offer non-recourse loans, did not offer effective insurance against the downside, and were not free of the risk of margin calls, contrary to the Claim Warrant Acquisition Representations pleaded in paragraphs 148(b), (c), (d), and (e) herein, because:

a) The put option in the NRFUZA series increased the chance that warrant holders would make a loss, compared with a margin loan at a suitable gearing level.

(i) Report of Bewley at 8.5.5.

b) It may be inferred that RBS knew of this feature of the Claim Warrants by reason of the fact that it devised, planned, structured, and issued them in that manner to increase the protection for its own position.

(i) Report of Bewley at 11.17.5.

(ii) RBS.504.062.4379.

4) RBS knew that the Claim Warrants did not offer guaranteed distributions of 10 to 15 per cent, and that there was no reasonable basis for making this assertion, contrary to the Claim Warrant Acquisition Representation pleaded in paragraph 148(i) herein, because:

a) Navra, by its employee Ray Tse, advised RBS, by its employee Tian, that Navra's "investment objective" was a maximum positive annual return of 10 per cent per annum, and further, that this was not a formal projection but a "guideline" based on past performance which was routinely quoted by Navra.

(i) RBS.501.010.3552.

(ii) RBS.501.010.3574.

b) RBS was aware of the current volatility and steep declines in global share markets and knew that the Navra Managed Funds were exposed to the volatility of the share market.

(i) The Applicants repeat paragraphs 20AA(e), 60, 61, 62, 63, 63B, 63C, 63D, and 63L herein.

285. By reason of the matters pleaded at paragraphs 283 and 284 herein, RBS was at all relevant times directly, or in the alternative indirectly, knowingly concerned in Navra Financial Services' misleading and deceptive conduct in respect of the Claim Warrant Acquisition Representations, save for those pleaded in paragraphs 148(a) and (j) herein, within the meaning of section 75B(1) of the TPA, or section 2 of the ACL, or section 79 of the CA, or section 12GF of the ASIC Act.

286. RBS was concerned in the making of the Claim Warrant Rollover Representations by Navra Financial Services to the Applicants and its other clients, as pleaded in paragraph 158 herein, because Tian amended and settled the document by which the Claim Warrant Rollover Representations were conveyed to the Applicants and other clients of Navra Financial Services.

Particulars

a) RBS.502.006.3874.

b) RBS.502.006.3875.

c) RBS.502.006.3876.

d) RBS.502.006.3877.

e) RBS.502.006.3878.

f) RBS.502.006.3879.

g) The Applicants repeat paragraph 20AA(g) herein.

287. From at least June 2008, RBS knew that:

(a) To the extent that they included representations as to present matters, the Claim Warrant Rollover Representations, save for those pleaded in paragraphs 158(a) and (i) herein, were misleading or deceptive, or likely to mislead or deceive; and

(b) To the extent that they included representations as to future matters, the Claim Warrant Rollover Representations, save for those pleaded in paragraphs 158(a) and (i) herein, were made without a reasonable basis.

Particulars

1) As to the Claim Warrant Rollover Representations pleaded in paragraphs 158(g), (h), (j), and (k) herein, the Applicants repeat the particulars subjoined to paragraph 284 herein.

2) RBS knew that the setting of the stop loss level did not minimise the risks associated with the Claim Warrants, contrary to the Claim Warrant Rollover Representations pleaded in paragraphs 158(b), (c), (d), (e) and (f) herein, because:

a) The stop loss order was tantamount to a margin call, made it difficult for warrant holders to recover their losses, and had the effect of locking in capital losses during the term of the Claim Warrants.

(i) Report of Bewley at 8.5.13 – 8.5.17.

b) It may be inferred that RBS had knowledge of these features of the Claim Warrants by reason of the fact that it devised, planned, structured, and issued them in that manner to increase the protection for its own position.

(i) Report of Bewley at 11.17.5.

(ii) RBS.504.062.4379.

288. By reason of the matters pleaded at paragraphs 286 and 287 herein, RBS was at all relevant times directly, or in the alternative indirectly, knowingly concerned in Navra Financial Services' misleading and deceptive conduct in respect of the Claim Warrant Rollover Representations, save for those pleaded in paragraphs 158(a) and (i) herein, within the meaning of section 75B(1) of the TPA, or section 2 of the ACL, or section 79 of the CA, or section 12GF of the ASIC Act.

Date: 7 December 2017



Signed by Vicky Antzoulatos
Solicitor for the Applicants

This pleading was prepared by ~~Douglas Campbell QC, Quintin Rares~~ Counsel for the Applicants and Shine Lawyers.

SCHEDULE 1: Claim Warrants

Claim Warrants

No.	Warrant Code	Warrant Name	Issuer
1	NRFUZA	Unlisted Rolling Instalment Warrant	ABN AMRO Australia Pty Limited
2	NRFUZH	Unlisted Rolling Instalment Warrant	ABN AMRO Australia Pty Limited
3	NRFKZA	Unlisted Rolling Instalment Warrant	ABN AMRO Australia Pty Limited
4	NRFKZH	Unlisted Rolling Instalment Warrant	ABN AMRO Australia Pty Limited

5	NRFKZC	Unlisted Rolling Instalment Warrant	ABN AMRO Australia Pty Limited
6	NRFKZE	Managed Fund Instalment Warrant	RBS Group (Australia) Pty Limited
7	NRFKZF	Managed Fund Instalment Warrant	RBS Group (Australia) Pty Limited
8	NRFKZG	Managed Fund Instalment Warrant	RBS Group (Australia) Pty Limited

Further claim warrants may be added to the above list following discovery.

Certificate of lawyer

I, ~~Simon Morrison~~Vicky Antzoulatos, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 7 December 2017

A handwritten signature in black ink, appearing to read 'Vicky Antzoulatos', with a long horizontal stroke extending to the right.

Signed by Vicky Antzoulatos
Solicitors for the Applicants

SCHEDULE 2: Defined terms, where defined

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