IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

Case: S ECI 2021 04360
Filed on: 10/12/2024 05:14 PM

No. S ECI 2021 04360

B E T W E E N:

WILLIAM LAY

First Plaintiff

DANIEL JOSEPH BATCHELOR

Second Plaintiff

-and-

NUIX LIMITED (ACN 117 140 235)

First Defendant

MACQUARIE CAPITAL (AUSTRALIA) LIMITED (ACN 123 199 548)

Second Defendant

DANIEL PHILLIPS

Third Defendant

AMENDED CONSOLIDATED STATEMENT OF CLAIM

(*Filed pursuant to the orders of the Honourable Justice Nichols made on 2 December 2024*)

Date of Document: 10 December 2024
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A. PRELIMINARY

A.1. Plaintiffs and Group Members

1. The First Plaintiff (**Mr Lay**):

   (a) is a natural person; and

   (b) acquired interests in shares in the First Defendant (**Nuix**) on the Australian Securities Exchange (**ASX**) and/or Chi-X Australia (**Chi-X**) during the Inflation Period (as defined in paragraph 3 below).

Particulars

Mr Lay acquired interests in shares in Nuix ~~on the ASX~~ via the trading platform Superhero on 15 February 2021. Trades on Superhero may be executed on the ASX and/or Chi-X.

2. The Second Plaintiff (**Mr Batchelor**):

   (a) is a natural person; and

   (b) acquired shares in Nuix:

      (i) by subscription in the Initial Public Offering (as defined in paragraph 19 below); and

      (ii) on the ~~Australian Securities Exchange (ASX)~~ ASX and/or Chi-X during the Inflation Period.

Particulars

Mr Batchelor acquired shares in Nuix as set out in Annexure A.

Mr Batchelor used the trading platform CommSec to acquire shares in Nuix during the Inflation Period. Trades on CommSec may be executed on the ASX and/or Chi-X.

3. The Plaintiffs bring this proceeding as a group proceeding pursuant to Part 4A of the *Supreme Court Act 1984* (Vic) on behalf of themselves and all persons who acquired an

interest in shares in Nuix in the period from 18 November 2020 to 29 June 2021 inclusive (**Inflation Period**):

(a) by subscription in the Initial Public Offering; or

(b) ~~on the ASX~~ at any time during the Inflation Period;

and who:

(c) are alleged to have suffered loss or damage by reason of the matters set out below; and

(d) as at the date of commencement of this proceeding, are not:

(i) directors or officers, or a close associate (as defined by s 9 of the *Corporations Act 2001* (Cth) (***Corporations Act***) of any of the Defendants; or

(ii) a related party (as defined by s 228 of the *Corporations Act*) of any of the Defendants; or

(iii) a related body corporate (as defined by s 50 of the *Corporations Act*) of any of the Defendants; or

(iv) an associated entity (as defined by s 50AAA of the *Corporations Act*) of any of the Defendants; or

(v) a judge, associate justice or registrar of the Supreme Court of Victoria, or justice of the High Court of Australia;

(together and severally **Group Members**).

4. As at the date of the commencement of this proceeding there are, as against each Defendant, seven or more persons who have, against that Defendant, the claims set out herein.

A.2. Nuix

5. At all relevant times, Nuix was:

(a) a corporation incorporated under the *Corporations Act*, and capable of being sued;

(b) a trading corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (***ASIC Act***); and

(c) a person within the meaning of:

(i) s 1041E and 1041H of the *Corporations Act*;

(ii) s 12DA of the *ASIC Act*; and

(iii) s 18 of the Australian Consumer Law (**ACL**) set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**), as applicable pursuant to s 131 of the CCA and one or more of the following:

1. s 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);

2. s 28 of the *Fair Trading Act 1987* (NSW);

3. s 16 of the *Fair Trading Act 1989* (Qld);

4. s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);

5. s 19 of the *Fair Trading Act 2010* (WA);

6. s 14 of the *Fair Trading Act 1987* (SA);

7. s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT); and/or

8. s 27 of the *Consumer Affairs and Fair Trading Act* (NT)

(together and severally **ACL**).

6. At all material times, Nuix *inter alia* operated a business of selling investigative analytics and intelligence software.

Particulars

Nuix described itself in the Prospectus (as defined in paragraph 17 below) at section 2.1.1 as 'a leading provider of investigative analytics and intelligence software to customers in 78 countries'.

A.3. Nuix officers

7. Jeffrey Bleich (**Bleich**) was at all material times:

   (a) a director of Nuix;

   (b) the Chairman of Nuix; and

   (c) an officer of Nuix within the meaning of s 9 of the Corporations Act.

8. Rodney Vawdrey (**Vawdrey**) was at all material times:

   (a) an executive director of Nuix;

   (b) the Group Chief Executive Officer of Nuix; and

   (c) an officer of Nuix within the meaning of s 9 of the Corporations Act.

9. Iain Lobban (**Lobban**) was at all material times:

   (a) a director of Nuix;

   (b) a member of Nuix's Audit and Risk Management Committee; and

   (c) an officer of Nuix within the meaning of s 9 of the Corporations Act.

10. Sue Thomas (**Thomas**) was at all material times:

   (a) a director of Nuix;

   (b) the chair of Nuix's Audit and Risk Management Committee; and

   (c) an officer of Nuix within the meaning of s 9 of the Corporations Act.

11. Stephen Doyle (**Doyle**) was at all material times:

   (a) the Chief Financial Officer of Nuix; and

   (b) an officer of Nuix within the meaning of s 9 of the Corporations Act.

12. The Third Defendant, Daniel Phillips (**Phillips**), was at all material times:

(a) a director of Nuix;

(b) a member of Nuix's Audit and Risk Management Committee; and

(c) an officer of Nuix within the meaning of s 9 of the Corporations Act.

13. By reason of the matters pleaded in paragraphs 7 to 12 above, any information of which:

(a) Bleich;

(b) Vawdrey;

(c) Lobban;

(d) Thomas;

(e) Doyle; or

(f) Phillips;

(together and severally, during the periods identified respectively, **Nuix Officers**) became aware, or which reasonably ought to have come into his or her possession, in the course of the performance of his or her respective duties as an officer of Nuix:

(g) was information of which Nuix was aware within the meaning of r 19.12 of the ASX Listing Rules; further

(h) were matters the knowledge of which was to be attributed to Nuix.

A.4. Macquarie Capital

14. At all material times, the Second Defendant (**MCAL**) was:

(a) a corporation incorporated under the *Corporations Act 2001* and capable of being sued;

(b) a person within the meaning of:

(i) s 1041E and 1041H of the *Corporations Act*; and

(ii) s 12DA of the *ASIC Act*.

15. MCAL was:

(a) an underwriter of the issue and sale of shares in Nuix pursuant to the Prospectus; and

(b) involved in preparing the Prospectus.

Particulars

The involvement of MCAL in preparing the Prospectus is to be inferred from its role as underwriter and from the references to it throughout the Prospectus, including in sections 6.4.1 and 6.7.

Further particulars may be provided after discovery.

B. NUIX SECURITIES MARKET

B.1. Initial Public Offering

16. At all material times on and from 18 November 2020 (the **Prospectus Date**), there existed a market of investors or potential investors in Nuix Shares (**Nuix Securities Market**).

Particulars

The said investments were effected by:

i. subscription under the Prospectus; further or alternatively

*ii. trading on the ASX, Chi-X and/or other securities exchanges or markets on which Nuix Shares were available for acquisition (**Securities Exchanges**).*

Further particulars may be provided after discovery and receipt of experts' reports.

17. On the Prospectus Date, Nuix issued a prospectus (the **Prospectus**) in respect of:

(a) the issue of new ordinary shares; and

(b) the sale of existing ordinary shares;

(together and severally, **Nuix Shares**).

Particulars

The Prospectus was dated 18 November 2020 and stated that '[t]he offer contained in this Prospectus involves an initial public offering to acquire fully paid ordinary shares in the capital of Nuix (Shares) (the Offer)'. A copy of the Prospectus is available upon request from the plaintiff's solicitors.

Further particulars may be provided after discovery.

18. The Prospectus was required to comply with the provisions of Part 6D of the *Corporations Act*.

19. The Prospectus:

    (a) with MCAL's consent named MCAL as an underwriter of the ~~Prospectus~~ Offer; and

    (b) constituted an offer to sell Nuix Shares to investors or potential investors in the Nuix Securities Market;

    (**Initial Public Offering**).

Particulars

The Prospectus stated that '[t]he offer contained in this Prospectus involves an initial public offering to acquire fully paid ordinary shares in the capital of Nuix (Shares) (the Offer)'.

B.2. Secondary (on-market) trading

20. At all material times during the Inflation Period, Nuix Shares were:

    (a) listed on a financial market operated by the ASX;

    (b) ED securities within the meaning of s 111AE of the *Corporations Act*;

    (c) quoted ED securities within the meaning of s 111AM of the *Corporations Act*; and

(d) financial products within the meaning of the *Corporations Act*.

21. In the premises, at all material times during the Inflation Period, Nuix was:

(a) a listed disclosing entity within the meaning of s 111AL(1) of the *Corporations Act*; and

(b) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**).

22. By reason of the matters in paragraphs 20 to 21, Nuix was an entity to which:

(a) during the Inflation Period up to 22 March 2021—s 674(2) of the *Corporations Act* applied, as modified by:

(i) *Corporations (Coronavirus Economic Response) Determination (No. 2) 2020*; and

(ii) *Corporations (Coronavirus Economic Response) Determination (No. 4) 2020*;

(together, the **Coronavirus Determinations**); and

(b) during the Inflation Period on and from 23 March 2021—s 674(2) of the *Corporations Act* applied.

C. LEAD-UP TO IPO

C.1. Nuix Management Information

C.1.1. 'Red lights' on Nuix products

23. By not later than January 2021, Nuix had conducted internal reviews of its products and product development projects, which reviews:

(a) identified numerous significant projects as affected by critical problems (**'red lights**');

(b) reported serious doubts about the quality of Nuix products; and

(c) reported serious doubts as to Nuix's ability to achieve in FY21 revenue growth above its FY20 result.

Particulars

Insofar as the Plaintiffs say prior to discovery, Nuix conducted two internal reviews in the period, being a review in around mid-2020 and another in around January 2021.

One or both of these reviews reported:

i. *that six of Nuix's key products had 'red lights' and that even if Nuix boosted resources it would take between 18 months and two years to "turn the situation around";*

ii. *"[Nuix] immediately need[ed] 8 people to slow the bleeding" and another 43 people to "turn" the situation; and*

iii. *"... lack of engineering capacity prohibits our ability to capture additional market share".*

In connection with the said reviews, Nuix executives prepared the table set out in Annexure B hereto (entitled 'Overall Program Health Check') in or around January 2021, listing ten (10) Nuix products, of which six (6) were given a 'red light' status denoting that those products were affected by critical problems for the reasons identified in the table.

Further particulars may be provided after discovery.

C.1.2. Engineering staff and R&D

24. On or about 30 March 2019, six (6) senior Nuix executives hosted a presentation for Phillips (amongst others), in which it was reported by the executives that or to the effect that, *inter alia*:

(a) Nuix had missed key budget forecasts; and

(b) staff morale and turnover were major headwinds for Nuix.

Particulars

Insofar as the Plaintiffs can say prior to discovery, the presentation was called 'Nuix 2.0'. Further particulars, including particulars of the identities of the executives, will be provided after discovery.

25. By 30 June 2020, Nuix over the course of FY20 had:

    (a) reduced the number of engineers it employed by 30%; and

    (b) underspent its research and development (**R&D**) budget by 16.5%.

Particulars

The reduction and underspend are described in an article published in the Australian Financial Review on 18 May 2021 entitled ''Slow the bleeding': Nuix review flashed red weeks after listing'.

Further particulars may be provided after discovery.

C.1.3. Nature of FY20 earnings result

26. Nuix's reported FY20 earnings result was materially derived from cuts to engineering headcount and underinvestment in R&D, and not growth in revenue relative to FY19.

Particulars

The matters are described in an article published in the Australian Financial Review on 17 May 2021 entitled 'The infighting behind the $2.7b Nuix meltdown'.

Further particulars will be provided after discovery and receipt of experts' reports.

C.1.4. Inability accurately to forecast financial performance

27. In the period from and including FY17 to the Prospectus Date, Nuix's actual revenue results had repeatedly fallen short of its internal forecasts.

Particulars

The matters are referred to in an article published in the Sydney Morning Herald on 17 May 2021 entitled ''Anaemic at best': The inside story of how the Macquarie-backed Nuix float went sour', and an article published in the Australian Financial Review on 9 June 2021 entitled 'ASIC turns blowtorch on who controlled Nuix IPO'.

Further particulars may be provided after discovery.

28. In April 2019, the Board of Nuix told Vawdrey (then Executive Director and Chief Executive Officer) that or to the effect that the Board did not believe that Nuix's forecast of $180m revenue in FY19 was achievable.

Particulars

The statement was recorded in an email sent by Vawdrey to persons presently unknown to the Plaintiff, and otherwise described in an article published in the Australian Financial Review on 9 June 2021 entitled 'ASIC turns blowtorch on who controlled Nuix IPO'.

Further particulars may be provided after discovery.

29. In April 2019, Vawdrey stated to Nuix staff that or to the effect that Nuix's sales forecasts were:

(a) not able to be achieved; and

(b) the product of a desire by the forecasts' authors to reflect budget numbers instead of being actual forecasts.

Particulars

The statement is recorded in an email sent by Vawdrey to persons presently unknown to the Plaintiff, and otherwise described in an article published in the Australian Financial Review on 9 June 2021 entitled 'ASIC turns blowtorch on who controlled Nuix IPO'.

Further particulars may be provided after discovery.

30. In October 2019, Doyle (being Chief Financial Officer) reported to Vawdrey and other Nuix executives that or to the effect that:

    (a) Nuix throughout Q1 had been tracking toward a miss against its sales forecast for 1H20; and

    (b) Doyle considered that Nuix's forecasting procedures were such that Nuix executives, as a group, were not able reliably to predict Nuix's financial results.

Particulars

The statements were described in an article published in the Australian Financial Review on 9 June 2021 entitled 'ASIC turns blowtorch on who controlled Nuix IPO'.

Further particulars may be provided after discovery.

31. During the period of preparation of the Prospectus, and at all times while the Prospectus was on issue, Nuix could not reliably produce accurate forecasts for its business.

Particulars

The Plaintiffs refer to the matters in paragraphs 23 to 30 above.

Further particulars may be provided after discovery.

C.1.5. Castagna's influence over Nuix management

32. From time to time during the period from March 2019 until 4 December 2020, Phillips and other officers of Nuix:

    (a) visited Anthony Castagna, a co-founder and former officer of Nuix (**Castagna**), whilst Castagna was serving a prison sentence;

    (b) during the said visits, discussed the management of Nuix's business with Castagna; and

    (c) thereafter followed directions given, or adopted suggestions made by Castagna regarding the management of Nuix's business.

Particulars

Castagna was found guilty of conspiracy to defraud, conspiracy to dishonestly cause loss to a third person, and dealing with proceeds of crime, by a jury of the Supreme Court of New South Wales on 18 April 2018 and was in prison from at least that date.

Phillips visited Castagna in prison on dates not presently known to the Plaintiffs but including on or around 30 March 2019.

The visits of Castagna by Phillips and other officers of Nuix are otherwise described in an article published in the Australian Financial Review *on 17 May 2021 entitled 'The infighting behind the $2.7b Nuix meltdown'.*

Castagna was later acquitted.

Further particulars, including the identities of other officers who visited Castagna may be provided after discovery and subpoenas.

33. At the times when Castagna was visited by the officers referred to in the paragraph above, Castagna held a substantial interest (within the meaning of the *Corporations Act*) in Nuix.

Particulars

Insofar as the Plaintiffs can say prior to discovery, Castagna was the beneficiary of a retirement fund maintained by Delrick

Limited, a company limited by guarantee incorporated in Vanuatu, which in turn owned Blackall Limited, a New Zealand incorporated company and legal and beneficial owner of 9.3% of Nuix Shares. The corporate structure is otherwise described on page 42 of the Prospectus.

Further particulars may be provided after discovery.

C.1.5.1. Knowledge of Nuix and MCAL as at Prospectus Date

34. By not later than the Prospectus Date, Nuix (by the Nuix Officers) knew, or by making enquiries ought reasonably to have obtained knowledge (within the meaning of s 710(b)(ii) of the *Corporations Act*), of each of the matters in paragraphs 23 to 33 above (the **Management Information**).

Particulars

i. *The matters in paragraphs 23, 24, 28, 29, 30 and 31 were known to the Nuix officers referred to therein as making or receiving the said communications.*

ii. *The matters in paragraphs 25, 26 and 27 relate to the actual financial performance of Nuix, and therefore were or ought reasonably to have been known by the Nuix Officers.*

iii. *The matters in paragraph 32 were known to the Nuix officers undertaking the visits or implementing the directions or suggestions.*

iv. *Knowledge of Castagna's interest in Nuix, referred to in paragraph 33, can be inferred in each of Nuix and MCAL because the said interests were described in the Prospectus (at page 42).*

Further particulars may be provided after discovery.

C.2. Nuix Structural Information

C.2.1. Customer shift towards consumption-based pricing

35. Further and in the alternative to the matters in paragraphs 23 to 34, Nuix at the Prospectus Date had a revenue recognition policy under which:

    (a) in relation to its contracts for software delivered on a customer's premises, or in a customer-hosted 'cloud' environment – the total revenue to be recognised in respect of such contracts, was known at the time of entry into the contract (**Non-Consumption Model**); and

    (b) in relation to its contracts for software delivered on a Nuix-hosted cloud environment – the total revenue to be recognised in respect of such contracts:

        (i) was calculated by reference to the amount of data processed or hosted by Nuix, and not known at the time of entry into the contract; and

        (ii) was recognised over the life of the contract;

    (**Consumption Model**).

Particulars

The revenue recognition policy is set out in section 4.2.4.1 of the Prospectus.

36. Licences sold by Nuix under the Consumption Model had a negative impact on Nuix's short-term revenues, relative to the impact of licences sold under the Non-Consumption Model.

Particulars

i. Nuix stated in its Prospectus at section 5.1.13 that 'If Nuix moves to a consumption-based pricing model, and the proportion of Nuix's revenue generated from Consumption Licences increases, Nuix expects to experience generally longer periods over which it collects cash from customers, which may have a negative impact on Nuix's operating

cash flows (in addition to impacting the timing of Nuix's recognition of affected revenue)'.

ii. *Nuix stated to the market on 21 April 2021 that the 'transition to consumption licences [has] a near-term negative impact on statutory revenue recognition'. A copy of the statement is available upon request from the plaintiff's solicitors.*

Further particulars may be provided after discovery and receipt of experts' reports.

37. From not later than July 2019:

(a) Nuix's customers were increasingly seeking to purchase software licences, including from Nuix, on a Consumption Model instead of a Non-Consumption Model; and

(b) by reason of (a), there was a substantial risk of a material negative impact on Nuix's revenues in at least the current and next following financial reporting periods.

Particulars

The acquisition of software licences by customers on a Consumption Model is more favourable to the customer in that it involves lower upfront costs, provides scalability and permits remote working, compared to software purchased under a Non-Consumption Model.

The trend toward greater uptake of Consumption Model licences was further accelerated during the COVID pandemic, as Nuix's customers tended to have more of their employees 'working from home'.

During FY19 and into FY20 Nuix was actively pursuing a strategy of transitioning some of its customers to Consumption Model pricing.

Further particulars may be provided after discovery and receipt of experts' reports.

38. At the Prospectus Date, Nuix was not able reliably to forecast:

(a) the rate of customer transition from Non-Consumption Model licences to Consumption Model licences referred to in the previous paragraph; or

(b) the likely financial consequences of (a) for Nuix.

Particulars

So far as the Plaintiffs are able to say prior to discovery and receipt of expert reports, the inability to forecast is to be inferred from:

i. the matters referred to in paragraphs 29 and 30 above; and

ii. an acknowledgement by Vawdrey to The Australian *newspaper reported on 7 June 2021 that 'The increasing rate of adoption of consumption licenses has happened faster than anticipated and means that some of the revenue upside expected for financial year 2021 will occur in future years in line with customer usage and data growth'.*

Further particulars may be provided after discovery.

C.2.2. Knowledge of Nuix as at Prospectus Date

39. By not later than the Prospectus Date, Nuix by the Nuix Officers knew, or by making enquiries ought reasonably to have obtained knowledge (within the meaning of s 710(b)(ii) of the *Corporations Act*), of the matters in paragraph 38 above (the **Structural Change Information**).

Particulars

i. Nuix's knowledge of the said matters is to be inferred from the matters set out in the particulars to paragraph 38 and paragraph 70 below.

ii. Further or alternatively, Nuix ought reasonably to have known the said matters because:

A. the matters set out in the particulars to paragraph 38 had been reported at senior management level and to directors within Nuix; and

B. the said matters related to Nuix's financial forecasts, being forecasts:

1. important to its business;

2. affecting Nuix's obligations under inter alia s 674 of the Corporations Act; and

3. in the premises in '1' and '2' – were matters of which its senior management ought to have been aware in the course of their duties.

Further particulars may be provided after discovery and receipt of expert reports.

C.3. US Political Risk Information

40. Further and in the alternative to the matters in paragraphs 23 to 39, at the Prospectus Date, a material portion of Nuix's customer base was comprised of United States public sector customers.

Particulars

Insofar as the Plaintiffs can say prior to discovery, as at the Prospectus Date, Nuix had established a subsidiary, Nuix USG Inc, to contract directly with United States public sector customers. Around 55.5% of the Nuix group's FY20 total revenue was from customers in the United States of America and Canada, and 19.9% from public sector customers.

Further particulars may be provided after discovery and receipt of experts' reports.

41. By not later than the Prospectus Date, Nuix by the Nuix Officers knew that there was material uncertainty as to:

(a) whether Nuix's United States public sector customers would renew their contracts with Nuix in FY21; further or alternatively

(b) the terms on which they might so renew.

(the **US Political Uncertainties**).

Particulars

i. The terms on which those United States public sector customers might renew their contracts which the Plaintiffs allege were affected by material uncertainty are the terms relating to the length of the contract, and at what points in the life of the contract Nuix would be paid and in what amounts.

ii. The material uncertainty arose from:

a. the budget of the United States government from 1 October 2020 to 11 December 2020 being set by a 'continuing resolution' which provided limited and temporary funding, instead of a regular appropriations bill;

b. whether there would be a change in presidency and how any transition might occur;

c. government expenditure being delayed or restructured by covid-19.

Further particulars may be provided after discovery and receipt of experts' reports.

42. By not later than the Prospectus Date, Nuix by the Nuix Officers knew, or by making enquiries ought reasonably to have obtained knowledge (within the meaning of s 710(b)(ii) of the *Corporations Act*), that the US Political Uncertainties materially increased the inability of Nuix reliably to forecast:

    (a) its financial performance, referred to in paragraph 31 above (beyond the unreliability referred to therein); further or alternatively

    (b) the rate of transitions by customers, referred to in paragraph 38 above (beyond the unreliability referred to therein);

    (the **Political Risk Information**).

Particulars

The said information ought reasonably to have been known because the fact of US Political Uncertainties was disclosed in the Prospectus:

i. together with the risk that developments in respect of the Uncertainties could result in an 'unexpected change to Nuix's financial performance or prospects', but

ii. without disclosure that Nuix's existing forecasting systems already were not able reliably to forecast its financial performance.

C.4. Prospectus Financial Forecasts Information

43. As at the Prospectus Date, alternatively during the period while the Prospectus was on issue, it was likely, alternatively there was a material risk that:

    (a) Nuix's revenue for 1H21 would be less than, alternatively not materially different from, Nuix's revenue for 1H20 of $88.8m;

    (b) Nuix's annualised contract value (**ACV**) for FY21 would be:

        (i) not materially different from its pro forma ACV for FY20 of $168.4m; further or alternatively

(ii) materially less than $199.6m;

(c) Nuix's statutory and pro forma revenue for FY21 would be:

(i) not materially different from its pro forma revenue for FY20 of $175.9m; further or alternatively

(ii) materially less than $193.5m;

(**Prospectus Financial Forecasts Information**).

Particulars

So far as the plaintiffs are able to say prior to discovery, the likelihood arose from the matters the subject of the Management Information, the Structural Change Information and the US Political Risk Information.

Further particulars may be provided after discovery and receipt of expert reports.

C.4.1. Knowledge of Nuix as at Prospectus Date

44. By not later than the Prospectus Date, Nuix by the Nuix Officers knew, or by making enquiries ought reasonably to have obtained knowledge, (within the meaning of s 710(b)(ii) of the *Corporations Act*) of the Prospectus Financial Forecasts Information.

Particulars

Nuix's knowledge of the said matters is to be inferred from the matters set out in the particulars to paragraph 43 above and the matters in paragraph 70 below.

Further or alternatively, Nuix and Phillips ought reasonably to have known the said matters because:

a. the matters set out in the particulars to paragraph 43 had been reported at senior management level and to directors within Nuix including Phillips; and

b. the said matters related to Nuix's financial forecasts, being forecasts:

1. important to its business;

2. affecting Nuix's obligations under inter alia s 674 of the Corporations Act; and

3. in the premises in '1' and '2' – were matters of which its senior management and officers (including Phillips) ought to have been aware in the course of their duties.

Further particulars may be provided after discovery and receipt of expert reports.

D. IPO CONTRAVENTIONS

D.1. Prospectus Growth Forecasts

45. The Prospectus included forecasts that:

(a) Nuix statutory and pro forma revenue for FY21 would be $193.5m, reflecting approximately 10% growth over its pro forma FY20 result of $175.9m (**Prospectus Revenue Growth Forecast**).

Particulars

The Prospectus Revenue Growth Forecast is set out at pp 38 and 135 of the Prospectus.

(b) Nuix's ACV for FY21 would be $199.6m, reflecting approximately 18.6% growth over its FY20 result of $168.4m (**Prospectus ACV Growth Forecast**);

Particulars

The Prospectus ACV Growth Forecast is set out at pp 39 and 137 of the Prospectus.

(c) the Prospectus Revenue Growth Forecast and Prospectus ACV Growth Forecast were to both be understood as subject to seasonality, and that the said forecasts would not be distributed evenly across the financial year.

Particulars

The seasonality is referred to at pp 155 and 175 of the Prospectus.

(the Prospectus Revenue Growth Forecast and Prospectus ACV Growth Forecast, together and severally **Prospectus Growth Forecasts**).

D.2. Prospectus Omissions

46. At the Prospectus Date, each of:

(a) the Management Information;

(b) the Structural Change Information;

(c) the Political Risk Information; further or alternatively

(d) the Prospectus Financial Forecasts Information;

was information that investors and their professional advisers would have reasonably required to make an informed assessment of the assets and liabilities, financial position and performance, profits and losses and prospects of Nuix, within the meaning of s 710 of the *Corporations Act*.

47. The Prospectus omitted:

(a) the Management Information;

(b) the Structural Change Information;

(c) the Political Risk Information; and

(d) the Prospectus Financial Forecasts Information.

48. In the premises set out in the preceding paragraph, Nuix contravened s 728(1)(b) of the *Corporations Act.*

D.3. Misleading or deceptive conduct

49. Further and in the alternative, at the time of making each of the Prospectus Growth Forecasts:

    (a) Nuix, by providing the said Forecasts in the Prospectus, implied to the Nuix Securities Market that or to the effect that:

        (i) Nuix had undertaken all necessary and reasonable investigations before making the Forecasts, and had satisfied itself on reasonable grounds following those investigations that the Forecasts were based on reasonable grounds and were not misleading or deceptive in any respect; further or alternatively

        (ii) no information had come to the attention of Nuix that:

            1. was likely to be material to an assessment of the reliability of the Forecasts or otherwise material to the investment decisions of investors, and that investors would expect to be disclosed but which had not been disclosed; or

            2. reasonably indicated any material risk that Nuix would fall materially short of the Forecasts;

    (together and severally the **Prospectus Implied Representations**);

    (b) each of:

        (i) the Management Information;

        (ii) the Structural Change Information;

        (iii) the Political Risk Information; and

        (iv) the Prospectus Financial Forecasts Information;

    was information that:

1. existed;

2. indicated that Nuix did not have reasonable grounds for the Prospectus Growth Forecasts or any of them;

3. further or in the alternative to '2', indicated the existence of a material risk that the Prospectus Growth Forecasts would not be achieved, but instead would be missed by a material margin;

4. in the circumstances set out in paragraphs 23 to 44, was known or ought reasonably to have been known by each of Nuix and Phillips; and

5. in the premises, was material to an assessment of the reliability of the Prospectus Growth Forecast; and

(c) in the premises in 'a' and 'b':

(i) the Prospectus Growth Forecasts were misleading or deceptive statements within the meaning of s 728(1)(a)(i) of the *Corporations Act*; and

(ii) Nuix, by making the Prospectus Growth Forecasts, contravened s 728(1)(a)(i) of the *Corporations Act.*

E. IPO CONTRAVENTIONS – LOSSES AND LIABILITIES

E.1. Causation and losses

50. By reason of the contraventions referred to in the two preceding paragraphs (**IPO Contraventions**), Mr Batchelor and some of the Group Members (**IPO Claimants**):

(a) acquired Nuix Shares by subscription under the Prospectus and/or on ~~the ASX~~ Securities Exchanges in the period after 4 December 2020:

(i) at a price that was:

1. set by Nuix at 4 December 2020 reflecting all material information concerning those shares that was disclosed by Nuix in accordance with the ASX Listing Rules and the *Corporations Act*;

2. higher than the price they would have been willing to pay but for the said contraventions; further or alternatively

3. higher than the price at which Nuix would have been able successfully to issue the shares but for the said contraventions;

(the extent of the said higher price being **Inflation**);

(ii) further or alternatively to 'i' – in reliance on:

1. the Prospectus Growth Forecasts; further or alternatively

2. the Prospectus Implied Representations;

(b) thereafter retained the said Nuix Shares:

(i) while the price at which they traded on ~~the ASX~~ Securities Exchanges (**Trading Price**) declined, and thereby suffered loss and damage (**Transaction Loss**); further or alternatively

(ii) until after one or more of Disclosure Events (as defined at paragraph 110 below), and thereby suffered loss and damage (**Inflation Loss**) when the market reactions to Disclosure Events resulted in a decline in the Trading Price reflecting a correction to remove the Inflation;

(the losses in 'i', further or alternatively 'ii', being **IPO Claimants' Loss and Damage**).

Particulars

The loss suffered by each IPO Claimant is the greater of:

*i. the difference between the price at which each IPO Claimant acquired Nuix Shares and the value of those shares "left in hand" at trial, or as realised upon a sale of those shares during the Inflation Period (**Left-in-hand Loss**);*

*ii. alternatively, the amount of the difference in (i) attributable to the correction of information effected by the IPO Contraventions, net of market movements or unrelated movements in the Trading Price (**Peak Inflation Loss**);*

iii. *alternatively, Peak Inflation Loss, less any inflation recovered upon a sale of any Nuix Shares during the Inflation Period (**Net Inflation Loss**);*

iv. *alternatively, the difference between the price at which they acquired their interest in Nuix Shares and the price at which the shares would have been set had the contraventions not occurred (**Potts v Miller Loss**);*

v. *alternatively, for those IPO Claimants who, but for the IPO Contraventions, would have acquired an alternative investment—the difference, at the date of hearing, between:*

a. *their actual position as a result of having acquired an interest in Nuix Shares; and*

b. *the position in which they would have been had they made the alternative investment;*

*(**"No Transaction" Loss**).*

Particulars of Mr Batchelor's loss will be provided following expert evidence.

Particulars of the individual losses of other IPO Claimants will be provided following the trial of common questions.

E.2. Nuix's liability

51. In the premises set out in paragraphs 48 and 49, Nuix is liable pursuant to s 729(1) of the *Corporations Act* for the IPO Claimants' Loss and Damage caused by its contraventions of s 728 of the *Corporations Act*.

E.3. Liability of MCAL and Phillips

52. Further to paragraph 51:

(a) MCAL was ~~the~~ an underwriter of the ~~Prospectus~~ Offer contained in the Prospectus:

(i) omitting the information referred to in paragraph 47;

(ii) conveying the Prospectus Implied Representations; further or alternatively

(iii) containing the Prospectus Growth Forecasts;

within the meaning of item 4 in s 729(1) of the *Corporations Act*; further or alternatively

(b) Phillips:

(i) was member of the Board of Nuix;

(ii) in the premises in (i) – was a director of Nuix which was making the ~~offer~~ Offer in the Prospectus within the meaning of item 2 in s 729(1) of the *Corporations Act*;

further

(iii) by the time the Prospectus was issued, had the information referred to in:

1. paragraph 24 (concerning the matters the subject of 'Nuix 2.0');

2. paragraph 30 (concerning the matters the subject of achievability of its forecasts);

3. paragraph 32 (concerning the interactions between him and Castagna);

(iv) as a member of the Board of Nuix, approved the issue of the Prospectus;

(v) in the premises in 'iii' and 'iv' – was knowingly concerned in:

1. the omissions referred to in paragraph 47;

2. the misleading statement referred to in paragraph 49; further or alternatively

3. the inclusion in the Prospectus of the Prospectus Growth Forecasts; and

(vi) in the premises in (v) – was involved in the IPO Contraventions within the meaning of item 6 in s 729(1) of the *Corporations Act*.

Particulars

So far as the Plaintiffs are able to say prior to discovery:

A. Phillips' receipt of the information the subject of the omissions referred to in paragraph 47 is to be inferred from:

i. the matters in paragraph 12 concerning the roles held by him;

ii. the matters in paragraph 24 concerning his being made aware of the matters the subject of 'Nuix 2.0'; and

~~c.~~ iii. his participation in decisions made by the board of Nuix to respond to 'Nuix 2.0'.

B. Phillips' participation in deliberations as to the terms and final approval of the Prospectus in the terms in which it was released, including the financial information set out at p 122 of the Prospectus, is to be inferred from his position as a director of Nuix at the time of issue of the Prospectus.

Further particulars may be provided after discovery.

53. By reason of the matters in paragraph 52(a), MCAL is liable for the IPO Claimants' Loss and Damage, pursuant to item 4 of s 729(1) of the *Corporations Act.*

54. Further or alternatively, by reason of the matters in paragraph 52(b), Phillips is liable for the IPO Claimants' Loss and Damage, pursuant to items 2 and 6 of s 729(1) of the *Corporations Act*.

F. SECONDARY MARKET – DECEMBER 2020

F.1. Continuing effect of Prospectus – continuous disclosure contraventions

55. On and from 4 December 2020:

(a) each of:

(i) the Prospectus Growth Forecasts; and

(ii) the Prospectus Implied Representations;

remained current in the Nuix Securities Market, being information provided by Nuix and not withdrawn or corrected;

(b) each of:

(i) the Management Information;

(ii) the Structural Change Information;

(iii) the Political Risk Information; further or alternatively

(iv) the Prospectus Financial Forecasts Information;

was information:

1. that existed;

2. that Nuix had; and

3. of which Nuix was aware (within the meaning of Rule 3.1 of the ASX Listing Rules);

(c) Nuix by the Nuix Officers ought reasonably to have known that:

(i) it did not have reasonable grounds for the Prospectus Growth Forecasts; further or in the alternative

(ii) there existed a material risk that the Prospectus Growth Forecasts would not be achieved but instead would be missed by a material margin;

(the **Prospectus Correction Information**).

Particulars

The plaintiffs repeat the particulars as to state of mind in or under paragraphs 23 to 44 above. and 70 below).

Further particulars may be provided after discovery and receipt of expert reports.

56. Each of:

(a) the Management Information;

(b) the Structural Change Information;

(c) the Political Risk Information;

(d) the Prospectus Financial Forecasts Information; further or alternatively

(e) the Prospectus Correction Information;

(together and severally, **December Information**) was information that was not generally available to the Nuix Securities Market, within the meaning of s 676 of the *Corporations Act*.

57. During the Inflation Period up to 22 March 2021, Nuix (by the Nuix Officers):

(a) knew or ought reasonably to have known the December Information would or was likely to influence investors in deciding whether to acquire or dispose of Nuix shares;

Particulars

That Nuix by the said Officers knew or ought reasonably to have known of the matters alleged is to be inferred:

i. insofar as it concerns the Management Information—from the change in the price of Nuix Shares as a result of the 17 May Press Disclosure and the 18 May Press Disclosure (as defined in paragraphs 85 and 87 below);

ii. insofar as it concerns the Political Risk Information—from Nuix's disclosure to the market in a statement dated 8 March 2021 in which Nuix referred to 'a delay in spending with the US government associated with the US election';

iii. insofar as it concerns the Structural Change Information—from Nuix's disclosure to the market in the Transitions Partial Disclosure (as defined in paragraph 80(b)(i) below).

The plaintiffs further refer to and repeat the matters set out in paragraphs 23 to 44 above and 70 below.

Further particulars may be provided after discovery and expert evidence.

(b) omitted to correct or withdraw:

(i) the Prospectus Growth Forecasts; further or alternatively

(ii) the Prospectus Implied Representations; and

(c) in the premises, within the meaning of s 674(2)(c) of the *Corporations Act* (as modified by the Coronavirus Determinations):

(i) knew;

(ii) was reckless as to whether; alternatively

(iii) was negligent as to whether;

the December Information would have a material effect on the price or value of Nuix Shares.

58. Further, during the Inflation Period on and from 23 March 2021, the December Information was information that a reasonable person would have expected to have a material effect on the price or value of Nuix Shares, within the meaning of:

(a) Rule 3.1 of the ASX Listing Rules; and

(b) s 674(2) of the *Corporations Act*.

59. In the premises set out in the three preceding paragraphs, on and from 4 December 2020, Nuix was required immediately to notify the ASX of the December Information.

60. During the Inflation Period, Nuix took no or no adequate step or steps to notify the ASX of the December Information in full.

Particulars

Insofar as any step or steps taken notified the ASX of the December Information, those steps did so only to the limited extent and at the times of the February Express Representations, February Implied Representations, April Express Representations, April Implied Representations, 18 May Implied Representations, 31 May Express Representations and 31 May Implied Representations.

61. In the premises, on and from 4 December 2020, Nuix contravened s 674(2) of the *Corporations Act*. ~~**(Post-Prospectus continuous disclosure contraventions)**~~

F.2. Continuing effect of Prospectus – misleading conduct

62. Further and in the alternative, on and from 4 December 2020, Nuix, by failing to correct or withdraw:

(a) the Prospectus Growth Forecasts; further or alternatively

(b) the Prospectus Implied Representations;

(i) engaged in conduct that was false or misleading in contravention of:

1. s 12DB of the *ASIC Act*; further or alternatively

2. s 1041E of the *Corporations Act*; further or alternatively

(ii) misleading or deceptive, or likely to mislead or deceive, in contravention of:

1. s 12DA of the *ASIC Act*;

2. s 1041H of the *Corporations Act*; further or alternatively

3. s 18 of the ACL~~;~~.

~~**(Post-Prospectus misleading conduct contraventions).**~~

Particulars

The plaintiffs refer to and repeat the matters set out in paragraphs 23 to 44 above. Further particulars may be provided following discovery and receipt of experts' reports.

G. SECONDARY MARKET – POST-DECEMBER DEVELOPMENTS

G.1. Nuix corporate governance

63. Nuix:

(a) on or about 18 November 2020 published; and

(b) on or about 4 December 2020 released to the ASX;

a 'Code of Conduct' (**Code**).

Particulars

A copy of the Code is available upon request from the plaintiffs' solicitors.

64. At all material times on and from 18 November 2020 Nuix publicly stated that or to the effect that:

(a) all of Nuix's directors, officers and servants were required by Nuix to act with honesty, integrity and in a manner consistent with the reasonable expectations of investors and the broader community;

Particulars

The statement is at p 1 of the Code.

(b) the purpose of the Code was to set 'ethical standards for [Nuix's] personnel and reflects the Directors' intention to ensure that the duties and responsibilities of all staff of [Nuix] are performed with the utmost integrity';

Particulars

The statement is at section 6.6.5.2 of the Prospectus.

(c) all suspected breaches of the Code would be investigated by Nuix, and that appropriate and proportionate disciplinary and remedial action would be taken by Nuix in respect of contraventions of the Code.

Particulars

The statement is at section 6.6.5.2 of the Prospectus.

65. Further, on or about 4 December 2020, Nuix released to the ASX a '*Securities Trading Policy*' (**STP**).

Particulars

A copy of the STP is available upon request from the plaintiffs' solicitors.

66. There were terms of the STP that or to the effect that:

(a) directors and employees of Nuix in possession of 'inside information' must not:

(i) deal in Nuix Securities,

(ii) procure another person to deal in Nuix Securities, or

(iii) cause information to be communicated to another person if the director or employee knows or ought reasonably to know that the other person would

or would be likely to deal in Nuix Securities, or procure a third person to deal in Nuix Securities;

in contravention of the insider trading provisions of the Corporations Act;

Particulars

STP clauses 1.1, 2.1 and Schedule 1 (definition of 'Trade').

(b) directors and employees of Nuix must assume that information is 'inside information' unless it has been released to the ASX;

Particulars

STP cl.2.2.

(c) directors and employees must, *inter alia*, comply with the general principle that they must not derive personal advantage from information which is not generally available and which has been obtained by reason of their connection with Nuix and its Group companies;

Particulars

STP cl.3.1(b).

(d) directors and employees must not, *inter alia*, deal in Nuix Securities or procure another person to deal in Nuix Securities (**Trade**) from ~~the Company's~~ Nuix's half year end until the business day after the release of ~~the Company's~~ Nuix's half yearly results to the ASX;

Particulars

STP cl.3.4(b).

(e) directors and Restricted Employees, including *inter alia* the CFO, must provide the Company Secretary with subsequent written notification of all Trading in Nuix

Securities within two business days, regardless of whether prior written approval had been given by Nuix for that Trading.

Particulars

STP cl.3.6.

67. During the Inflation Period on and from 4 December 2020 Nuix took no or not adequate step to inform the market that or to the effect that Nuix:

(a) was not, by its directors and employees, complying with the STP;

(b) had no or no adequate steps to monitor compliance with the STP by its directors and employees.

68. By the conduct set out in:

(a) paragraph 64 (regarding its Code); further or alternatively

(b) paragraph 67 (regarding the STP);

Nuix impliedly represented to the Nuix Securities Market that or to the effect that:

(i) the STP was a policy that Nuix would observe, by its directors and employees and in particular its Restricted Employees including its CFO; and

(ii) Nuix had sufficient systems to monitor and enforce compliance with the ~~Policy~~ STP by its directors and employees such as would:

1. provide reasonable assurance of compliance; and thereby

2. establish "best practice procedure" to protect the reputation of Nuix from allegations or perceptions that its directors and employees might act in their own interests or the interests of persons related to them (within the meaning of the Corporations Act) when trading in Nuix

Securities, rather than in the interests of Nuix or of the shareholders of Nuix considered as a whole;

(**Corporate Governance Implied Representations**).

Particulars

A copy of the STP is available upon request from the plaintiffs' solicitors. Further particulars may be provided following discovery and receipt of experts' reports.

69. At no time prior to 29 June 2021 did Nuix take any or any adequate steps to withdraw or qualify the Corporate Governance Implied Representations, which were accordingly continuing representations.

G.2. STP implementation – Doyle dealings in Nuix shares

70. Doyle:

(a) by the Prospectus Date knew:

(i) the Management Information;

(ii) the Structural Change Information;

(iii) the Political Risk Information; further or alternatively

(iv) the Prospectus Financial Forecasts Information;

Particulars

Doyle's knowledge is to be inferred from the matters set out below in this paragraph.

(b) in or about November 2020 caused Black Hat Pte Ltd (**Black Hat**) to be incorporated:

(i) in Singapore;

(ii) with Doyle's brother Ross (**Ross Doyle**) as a director;

(iii) with a sole shareholder being Black Knight Foundation, an entity registered in Lichtenstein;

(iv) with beneficial ownership vested in Doyle, his father Ronald Doyle, and an entity Signa Consulting Treunterenhmen ~~(**SCT**)~~;

Particulars

So far as the plaintiffs are able to say prior to discovery, Black Hat was a client of Moelis Australia Securities Pty Ltd and held trading account number Y1675913.

(c) in or about late November 2020 caused:

(i) a transfer of a substantial part of his holdings of Nuix shares to Ross Doyle; and

(ii) Ross Doyle to transfer the said shares to Black Hat;

(d) on a date between 22 January 2021 and 12 February 2021 known to Doyle but not presently known to the plaintiffs (**Doyle offloading date**) – caused Ross Doyle and Black Hat to sell (**Black Hat offloading**) their entire holding of Nuix shares (the matters herein being the **Black Hat offloading information**);

(e) on or about 15 February 2021 caused Nuix to announce that it would present its 1HFY21 financial results on 26 February 2021.

71. Nuix during the Inflation Period after the Doyle offloading date:

(a) took no or no adequate step to monitor dealings by its directors or officers in Nuix Securities, for possible contraventions of its STP or Code or both;

(b) in the premises in (a), did not have adequate systems to:

(i) provide reasonable assurance of compliance by its directors and officers with the STP or Code or both;

(ii) meet best practice in Australia, in relation to systems to assure against potential insider trading by or facilitated or assisted by directors or officers, or non-compliance with the Code, or both; or

(iii) protect Nuix from allegations or perceptions that its directors and officers might act in their own interests or the interests of persons related to them (within the meaning of the Corporations Act) when trading in Nuix Securities, rather than in the interests of Nuix or of the shareholders of Nuix considered as a whole, or act contrary to the Code, or both;

(the information in (b) being the **Corporate Governance Deficiencies**)

(c) took no or no adequate step to qualify, amend or withdraw:

(i) the Code or STP; further or alternatively

(ii) the Corporate Governance Implied Representations

(**Corporate Governance Misleading Conduct**).

G.2.1. False or misleading conduct – Corporate Governance systems

72. In the premises set out in the preceding paragraph, by the Corporate Governance Misleading Conduct Nuix disseminated information that was:

(a) false in a material particular or materially misleading;

(b) was likely to:

(i) induce persons in this jurisdiction to dispose of or acquire Nuix Shares; and/or

(ii) have the effect of increasing, reducing, maintaining or stabilising the price of trading in Nuix Shares; and

(c) disseminated when Nuix knew or ought reasonably to have known that it was false in a material particular or was materially misleading.

73. In the premises set out in the preceding paragraph, Nuix contravened:

(a) s 1041E of the *Corporations Act*;

(b) s 12DB of the *ASIC Act*.

G.2.2. Misleading or deceptive conduct – Corporate Governance systems

74. Further or in the alternative, Nuix by the Corporate Governance Misleading Conduct engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, within the meaning of:

(a) s 12DA of the *ASIC Act*;

(b) s 1041H(1) of the *Corporations Act*; further or alternatively

(c) s 18 of the ACL.

G.3. February 2021

75. On 26 February 2021, Nuix released to the ASX an update (**February Update**) which included:

(a) information that or to the effect that revenue for 1H21 was $85.3m, being 4.0% lower than the previous corresponding period and 44% of the full year revenue forecast; but also

(b) a re-affirmation of the Prospectus Growth Forecasts (**February Reaffirmation**);

(together, the **February Express Representations**).

Particulars

The February Update was entitled '1H FY21 Financial Results', and the matters which comprise the February Express Representations are set out at pp 10 and 15.

The Prospectus ACV Growth Forecast was re-affirmed by way of being rounded up to a forecast of $200m.

76. The February Express Representations caused the removal of some but not all of the Inflation in the price of Nuix Shares.

Particulars

The price of Nuix Shares fell on 26 February 2021 from $8.97 at the opening of trade to $6.06 at the close of trade.

So far as the Plaintiffs are able to say prior to discovery and receipt of expert reports:

i. the information in paragraph 75(a) slightly reduced expectations in the Nuix market as to Nuix's likely financial performance, and thereby removed some of the Inflation impounded in the Trading Price as a consequence of the misleading conduct alleged in paragraph 62, but

ii. the corrective effect was offset by the re-affirmation of the Prospectus Growth Forecasts and the effect of the February Implied Representations referred to below.

Further particulars may be provided after receipt of experts' reports.

77. By the February Reaffirmation, Nuix represented to the Nuix Securities Market that or to the effect that:

(a) it had undertaken all necessary and reasonable investigations before making the February Express Representations and had satisfied itself on reasonable grounds following those investigations that the Prospectus Growth Forecasts were substantially accurate and not misleading or deceptive in any respect; and

(b) no information had come to its attention that:

(i) was likely to be material to the assessment of the reliability of the February Express Representations or otherwise material to the investment decisions of investors, and that investors would expect to be disclosed, but which had not been disclosed; or

(ii) meant that there was any material risk that Nuix would fall materially short of the forecasts the subject of the February Express Representations;

(together and severally, the **February Implied Representations**).

78. The February Implied Representations were a cause of the Trading Price of Nuix Shares continuing to be higher than it would have been but for the said Representations.

Particulars

But for the February Implied Representations, Nuix would have disclosed to the effect that it was not able reliably to maintain the Prospectus Growth Forecast, or reliably forecast any revenue growth above FY20 results, alternatively that it was not able to offer a forecast as to its FY21 financial performance.

Further particulars may be provided after discovery and receipt of experts' reports.

79. At no time prior to 21 April 2021 did Nuix take any or any adequate steps to withdraw or qualify any of the February Express Representations or February Implied Representations, which were accordingly continuing representations.

G.4. April 2021

80. On 21 April 2021, Nuix released to the ASX an update (**April Update**) in which it stated that or to the effect that:

(a) forecast revenue for FY21 would not be $193.5m, but instead be between $180m and $185m (**April Downgraded Forecast**); and

(b) the April Downgraded Forecast was due to:

(i) faster-than-anticipated transitioning of Nuix's customer base to product models which were on financial terms less favourable to Nuix (**Transitions Partial Disclosure**); and

(ii) a failure to complete sales of new licences that had previously been anticipated;

(together, the **April Express Representations**).

Particulars

The April Update was entitled 'Nuix revises FY21 forecasts', a copy of which is available upon request from the plaintiff's solicitors.

81. The April Express Representations caused the removal of some but not all of the Inflation in the price of Nuix Shares.

Particulars

The price of Nuix Shares fell on 21 April 2021 from ~~$4.48~~ $5.07 at the opening of trade to $4.29 at the close of trade.

So far as the Plaintiffs are able to say prior to discovery and receipt of expert reports:

i. the April announcement slightly reduced expectations in the Nuix market as to Nuix's likely financial performance, and thereby removed some of the Inflation impounded in the trading price as a consequence of the misleading conduct alleged in paragraph 62, but

ii. the corrective effect was limited by the small quantum of the April Downgraded Forecast and the effect of the April Implied Representations referred to below.

Further particulars may be provided after receipt of experts' reports.

82. By the April Express Representations, Nuix represented to the Nuix Securities Market that or to the effect that:

(a) it had undertaken all necessary and reasonable investigations before making any statement or representation as to the state of its business and accounts and had

satisfied itself on reasonable grounds following those investigations that the public statements were substantially accurate and not misleading or deceptive in any respect; and

(b) no information had come to its attention that:

(i) was likely to be material to the investment decisions of investors, and that investors would expect to be disclosed, but which had not been disclosed; or

(ii) meant that there was any material risk that it would not achieve the April Downgraded Forecast;

(together and severally, the **April Implied Representations**).

83. The April Implied Representations were a cause of or materially contributed to the Trading Price of Nuix Shares continuing to be higher than it would have been but for the said Representations.

Particulars

But for the April Implied Representations, Nuix would have disclosed to the effect that it was not able reliably to maintain the Prospectus Growth Forecast, alternatively reliably forecast any revenue growth above FY20 results, alternatively that it was not able to offer a forecast as to its FY21 financial performance. Further particulars may be provided after discovery and receipt of experts' reports.

84. At no time prior to the end of the Inflation Period did Nuix take any or any adequate steps to withdraw or qualify any of the April Express Representations or April Implied Representations, which were accordingly continuing representations.

G.5. May 2021

85. On 17 May 2021, articles were published in *The Australian Financial Review* newspaper which included aspects of the Management Information referred to at paragraphs 24, 25, 26 and 31 above (**17 May Press Disclosure**).

Particulars

The articles were entitled 'Nuix defends corporate culture as shares plunge', 'Nuix investors urge leadership overhaul', 'Nuix share price collapse hurts Macquarie's brand' and 'The infighting behind the $2.7b Nuix meltdown'.

86. The 17 May Press Disclosure caused the removal of some but not all of the Inflation in the price of Nuix Shares.

Particulars

The price of Nuix Shares fell on 17 May 2021 from $3.32 at the opening of trade to $3.06 at the close of trade.

So far as the Plaintiffs are able to say prior to discovery and receipt of expert reports, the 17 May Press Disclosure:

i. *slightly increased risk assessments applied by the Nuix Securities Market to Nuix's previous forecasts, but*

ii. *did not disclose the whole of the Management Information, the Political Risk Information, the Structural Change Information, the Prospectus Financial Forecasts Information or the Prospectus Correction Information, and did not disclose at all the Corporate Governance Deficiencies.*

Further particulars may be provided after receipt of experts' reports.

87. On 18 May 2021, articles were published in *The Sydney Morning Herald* and *The Australian Financial Review* newspapers which included further aspects of the

Management Information referred to at paragraphs 23 and 24 above (**18 May Press Disclosure**).

Particulars

The articles were entitled ''Slow the bleeding': Nuix review flashed red weeks after listing', 'Nuix class action predicted by Macquarie shareholder', ''Building trust our top priority,' says embattled Nuix chairman', and 'Nuix documents reveal internal concerns weeks after Macquarie-led IPO'.

88. On 18 May 2021, Nuix delivered to investors, and released to the ASX, a presentation (**First May Update**) in which it did not amend or qualify the April Downgraded Forecast.

Particulars

The First May Update was entitled 'Investor Day Presentation'.

89. By reason of the matters in the preceding paragraph, Nuix represented to the Nuix Securities Market that or to the effect that:

(a) it had undertaken all necessary and reasonable investigations before making any statement or representation as to the state of its business and accounts and had satisfied itself on reasonable grounds following those investigations that the public statements were substantially accurate and not misleading or deceptive in any respect;

(b) no information had come to the attention of it that:

(i) was likely to be material to the investment decisions of investors, and that investors would expect to be disclosed, but which had not been disclosed; or

(ii) meant that there was any material risk that it would not achieve the ~~Prospectus Growth Forecasts~~April Downgraded Forecast;

(together and severally, the **18 May Implied Representations**).

90. In the circumstances in paragraphs 85 to 87, and by reason of the matters in the preceding paragraph, the 18 May Implied Representations:

(a) reinstated the Inflation which had otherwise been removed by the 17 May Press Disclosure, and

(b) otherwise caused the price of Nuix Shares to be higher than the price they would have been but for the said representations.

Particulars

The price of Nuix Shares rose on 18 May 2021 from $3.07 at the opening of trade to $3.50 at the close of trade, part or all of which is re-inserted Inflation.

But for the said representations, Nuix would have disclosed to the effect that it was not able reliably to maintain the Prospectus Growth Forecast, alternatively reliably forecast any revenue growth above FY20 results, alternatively that it was not able to offer a forecast as to its FY21 financial performance.

Further particulars will be provided after receipt of experts' reports.

91. On 31 May 2021, Nuix released to the ASX an update (**Second May Update**) in which it stated that or to the effect that:

(a) forecast revenue for FY21 would not be between $180m and $185m but instead would be $177.5m (**31 May Downgrade**); and

(b) the 31 May Downgrade was due to completing fewer sales of new licences than had previously been anticipated;

(together, the **31 May Express Representations**).

Particulars

The Second May Update was entitled 'Nuix Revises FY21 Forecast Range', in which the matters which comprise the 31 May Express Representations were stated.

92. The 31 May Express Representations caused the removal of some but not all of the Inflation in the price of Nuix Shares.

Particulars

The price of Nuix Shares fell on 31 May 2021 from ~~$3.05~~ $3.37 at the opening of trade to $2.77 at the close of trade.

So far as the Plaintiffs are able to say prior to discovery and receipt of expert reports:

i. the 31 May Express Representations Forecast slightly reduced expectations in the Nuix Securities Market as to Nuix's likely financial performance, and thereby removed some of the Inflation impounded in the trading price as a consequence of the misleading conduct alleged in paragraph 62 and the Corporate Governance Misleading Conduct, but

ii. the corrective effect was limited by the small quantum of the downgrade announced and the effect of the 31 May Implied Representations referred to below.

Further particulars may be provided after receipt of experts' reports.

93. By the 31 May Express Representations, Nuix represented to the Nuix Securities Market that or to the effect that:

(a) it had undertaken all necessary and reasonable investigations before making any statement or representation as to the state of its business and accounts and had satisfied itself on reasonable grounds following those investigations that the public statements were substantially accurate and not misleading or deceptive in any respect;

(b) no information had come to the attention of it that:

(i) was likely to be material to the investment decisions of investors, and that investors would expect to be disclosed, but which had not been disclosed; or

(ii) meant that there was any material risk that it would not achieve the ~~FY21 Revenue Further Downgrade~~ 31 May Downgrade;

(together and severally, the **31 May Implied Representations**).

94. The 31 May Implied Representations were a cause of or materially contributed to the Trading Price of Nuix Shares continuing to be higher than it would have been but for the said Representations.

Particulars

But for the 31 May Implied Representations, Nuix would have disclosed to the effect that it was not able reliably to maintain the Prospectus Growth Forecast, alternatively reliably forecast any revenue growth above FY20 results, alternatively that it was not able to offer a forecast as to its FY21 financial performance. Further particulars may be provided after discovery and receipt of experts' reports.

95. At no time prior to the end of the Inflation Period did Nuix take any or any adequate steps to withdraw or qualify any of the 31 May Implied Representations, which were accordingly continuing representations.

G.6. 29 June – final corrective disclosure

96. On 29 June 2021, articles were published in *The Sydney Morning Herald* and *The Age* (**June Fairfax Articles**) which included the information that a former officer of Nuix was the subject of a criminal investigation into allegations of insider trading (**June Press Disclosure**).

Particulars

The articles were entitled 'Nuix rocked by insider trading allegations against former executive' and 'Watchdog seeks emergency travel ban on relative of terminated Nuix CFO'.

Copies of the articles are available on request from the plaintiff's solicitors.

The information in the article 'Nuix rocked by insider trading allegations against former executive' included the Black Hat offloading Information.

97. The June Press Disclosure caused the removal of the remaining Inflation in the price of Nuix Shares.

Particulars

The price of Nuix Shares fell on 30 June 2021 from $2.54 at the close of trade (on 29 June 2021) to $2.21 at the close of trade.

So far as the Plaintiffs are able to say prior to discovery and receipt of experts' reports, the said price reaction reflected the net result of investors' reactions to the disclosure of a material risk that Nuix's did not have adequate systems for monitoring compliance with the STP, contrary to the Corporate Governance Implied Representations.

In the premises, following the June Fairfax Articles, and as a result of all of the February Express Representations, April Express Representations, 17 May Press Disclosure, 18 May Press Disclosure, 31 May Express Representations and the June Press Disclosure, the Nuix Securities Market had all of the information which ought to have been disclosed by Nuix at the start of the Inflation Period, and accordingly incorporated all of that information into the Trading Price of Nuix Shares.

Further particulars may be provided after expert evidence.

H. SECONDARY MARKET – POST-DECEMBER CONTRAVENTIONS

H.1. Continuous disclosure

98. At all material times by and following:

(a) the February Update;

(b) the April Update;

(c) the First May Update; further or alternatively

(d) the Second May Update;

each of:

(i) the Management Information;

(ii) the Structural Change Information;

(iii) the Political Risk Information;

(iv) the Prospectus Financial Forecasts Information;

(v) the Prospectus Correction Information; further or alternatively

(vi) the Corporate Governance Deficiencies;

(together and severally, the **Disclosable Information**) was not generally available (within the meaning of subsection 676 of the *Corporations Act*).

99. At all material times referred to in the preceding paragraph Nuix had the Disclosable Information, within the meaning of:

(a) Rule 3.1 of the ASX Listing Rules; and

(b) s 674(2) of the *Corporations Act*.

Particulars

The plaintiffs refer to the matters in paragraphs 13(e), 34, 39, 42, 44 and 70.

In relation to the Corporate Governance Deficiencies, Nuix had the information by reason of the circumstance that Doyle had the

information. The plaintiffs refer to and repeat the matters set out in paragraphs 70 and 71 above.

100. During the Inflation Period up to 22 March 2021, Nuix (by the Nuix Officers):

(a) knew or ought reasonably to have known the Disclosable Information would or was likely to influence investors in deciding whether to acquire or dispose of Nuix Shares;

(b) omitted to correct or withdraw:

(i) the Prospectus Growth Forecasts; further or alternatively

(ii) the Prospectus Implied Representations;

(iii) Corporate Governance Implied Representation;

(iv) from 26 February 2021 – the February Express Representations or the February Implied Representations;

(v) from 21 April 2021 – the April Express Representations or the April Implied Representations;

(vi) from 18 May 2021 – the 18 May Implied Representations;

(vii) from 31 May 2021 – the 31 May Express Representations or the 31 May Implied Representations; and

(c) in the premises, within the meaning of s 674(2)(c) of the *Corporations Act* (as modified by the Coronavirus Determinations):

(i) knew;

(ii) was reckless as to whether; alternatively

(iii) was negligent as to whether;

the Disclosable Information would have a material effect on the price or value of Nuix Shares.

101. Further, during the Inflation Period on and from 23 March 2021, the Disclosable Information was information that a reasonable person would have expected to have a material effect on the price or value of Nuix Shares, within the meaning of:

(a) Rule 3.1 of the ASX Listing Rules; and

(b) s 674(2) of the *Corporations Act*.

102. In the premises set out in the three preceding paragraphs, on and from the time of:

(a) the February Update;

(b) the April Update;

(c) the First May Update; further or alternatively

(d) the Second May Update;

Nuix was required immediately to notify the ASX of the Disclosable Information.

103. During the Inflation Period, Nuix took no or no adequate step or steps to notify the ASX of the Disclosable Information.

104. In the premises, on and from the time of:

(a) the February Update;

(b) the April Update;

(c) the First May Update; further or alternatively

(d) the Second May Update;

Nuix contravened s 674(2) of the *Corporations Act*.

H.2. False or misleading statements

105. By reason of the matters in paragraphs 23 to 41 and 70, each of the:

(a) re-affirmation of the Prospectus Revenue Growth Forecast in the February Update (**February Re-affirmation**);

(b) April Express Representations; further or alternatively

(c) 31 May Express Representations;

was:

(i) false in a material particular or materially misleading;

(ii) a statement or information that was or was likely to:

1. induce persons in this jurisdiction to dispose of or acquire Nuix Shares; and/or

2. have the effect of increasing, reducing, maintaining or stabilising the price of trading in Nuix Shares;

(iii) made when Nuix knew or ought reasonably to have known, that the statements or information were false in a material particular or were materially misleading, or did not care whether the statements or information were true.

Particulars

That Nuix knew or ought reasonably to have known of the false or misleading nature of the statements or information, or did not care whether the statements or information were true, is to be inferred from Nuix's knowledge as alleged in paragraphs 31 and 39.

106. By reason of the matters in paragraph 105, Nuix contravened:

(a) s 1041E of the *Corporations Act*;

(b) s 12DB of the *ASIC Act*.

H.3. Misleading or deceptive conduct

107. Further or in the alternative, by reason of the matters in paragraphs 23 to 41 and 44, Nuix:

(a) did not have reasonable grounds for making either of the:

(i) February Re-affirmation; or

(ii) April Downgraded Forecast;

(b) accordingly, made representations that were misleading.

108. Further or in the alternative, by reason of the matters in paragraphs 23 to 41 and 44, the:

(a) February Re-affirmation;

(b) February Implied Representations;

(c) April Express Representations;

(d) April Implied Representations;

(e) 18 May Implied Representations;

(f) 31 May Express Representations; further or alternatively

(g) 31 May Implied Representations;

were misleading or deceptive or likely to mislead or deceive within the meaning of:

(i) s 12DA of the *ASIC Act*;

(ii) s 1041H(1) of the *Corporations Act*; further or alternatively

(iii) s 18 of the ACL.

109. By reason of the matters in paragraphs 107 to 108, Nuix contravened:

(a) s 12DA of the *ASIC Act*;

(b) s 1041H(1) of the *Corporations Act*; further or alternatively

(c) s 18 of the ACL.

I. LOSS AND DAMAGE – SECONDARY MARKET CONTRAVENTIONS

110. By reason of the contraventions alleged in:

(a) paragraph 61 (regarding Nuix's contraventions of s 674 in relation to the December Information);

(b) paragraph 104 (regarding Nuix's contraventions of s 674 in relation to the Disclosable Information);

(c) paragraph 106 (regarding the false or misleading statements); further or alternatively

(d) paragraph 109 (regarding the misleading or deceptive conduct);

the Plaintiffs and some or all of the Group Members (~~ASX~~**On-Market Claimants**) on or after 4 December 2020:

(i) acquired Nuix Shares:

1. at a price which reflected all material information concerning those shares that was disclosed by Nuix in accordance with the ASX Listing Rules and the *Corporations Act*;

2. further or alternatively to '1', in reliance on some or all of such of the:

a. Prospectus Revenue Growth Forecast and Prospectus ACV Growth Forecast;

b. Prospectus Implied Representations;

c. Corporate Governance Implied Representation;

d. February Express Representations;

e. February Implied Representations;

f. April Express Representations;

g. April Implied Representations;

h. 18 May Implied Representations;

i. 31 May Express Representations; and

j. 31 May Implied Representations;

as predated each such acquisition (the matters in 'c' to 'i' being the **Disclosure Events**);

(ii) by reason of the Inflation, paid a higher price than the On-Market~~ASX~~ Claimants otherwise would have paid;

(iii) thereafter retained the said shares:

1. while the Trading Price declined, and thereby suffered Transaction Loss; further or alternatively

2. until after one or more of the Disclosure Events, and thereby suffered Inflation Loss;

(the losses in '1', further or alternatively '2', being **On-Market~~ASX~~ Claimants' Loss and Damage**).

Particulars

The loss suffered by each ~~ASX~~ On-Market Claimant is the greater of:

i. Left-in-hand loss;

ii. Peak Inflation Loss;

iii. Net Inflation Loss;

iv. Potts v. Miller loss;

v. alternatively, for those ~~ASX~~ On-Market Claimants who, but for the contraventions, would have acquired an alternative investment — No Transaction loss.

Particulars of the Plaintiff's loss will be provided following expert evidence.

Particulars of the individual losses of other ~~ASX~~ On-Market Claimants will be provided following the trial of common questions or otherwise as the Court may direct.

J. LIABILITY – SECONDARY MARKET CONTRAVENTIONS

J.1. Nuix's liability

111. In the premises set out in paragraph 110, Nuix is liable for the ~~ASX~~ On-Market Claimants' Loss and Damage:

(a) caused by Nuix's contraventions of s 674 of the *Corporations Act* – pursuant to s 1317HA of the *Corporations Act*;

(b) caused by Nuix's false and misleading conduct – pursuant to:

(i) s 12GF of the *ASIC Act*; further or alternatively

(ii) s 1041I of the *Corporations Act*;

(c) caused by Nuix's misleading and deceptive conduct – pursuant to:

(i) s 12DA of the *ASIC Act*;

(ii) s 1041H of the *Corporations Act*; further or alternatively

(iii) s 18 of the ACL.

J.2. Phillips' involvement

112. Phillips:

(a) from not later than 4 December 2020 had:

(i) the Management Information;

(ii) the Structural Change Information;

(iii) the Political Risk Information; further or alternatively

(iv) the Prospectus Financial Forecasts Information;

Particulars

Phillips' knowledge of the said information is to be inferred from:

i. the matters in paragraph 12 concerning the roles held by him;

i. the matters in paragraph 24 concerning his being made aware of the matters the subject of 'Nuix 2.0';

ii. his participation in decisions made by the board of Nuix to respond to 'Nuix 2.0';

iii. the matters in paragraph 32 concerning his regularly visiting Castagna in prison and taking direction from Castagna;

Further particulars may be provided after discovery.

(b) as a director of Nuix, approved or authorised:

(i) the Prospectus Revenue Growth Forecast and Prospectus ACV Growth Forecast;

(ii) the February Express Representations;

(iii) the April Express Representations; further or alternatively

(iv) the 31 May Express Representations;

Particulars

So far as the Plaintiffs are able to say prior to discovery, the said Representations were approved or authorised by the Board of Nuix, of which Phillips was at all material times a member and in whose deliberations Phillips participated. Further particulars may be provided after discovery.

(c) despite the matters in (a) and (b), failed to take any or adequate steps to correct or withdraw, or cause Nuix to correct or withdraw the representations in (b) above;

(d) in the premises in (c), was knowingly concerned in the contraventions alleged in:

(i) paragraph 61 (regarding Nuix's contraventions of s 674 in relation to the December Information);

(ii) paragraph 104 (regarding Nuix's contraventions of s 674 in relation to the Disclosable Information) (so far as they relate to the information referred to in paragraph (a) above);

(iii) paragraph 106 (regarding the false or misleading statements); further or alternatively

(iv) paragraph 109 (regarding the misleading or deceptive conduct).

113. In the premises set out in paragraph 112, Phillips is liable for the ~~ASX~~ On-Market Claimants' Loss and Damage:

(a) caused by Nuix's contraventions of s 674 of the *Corporations Act* – because of him being knowingly concerned in (and therefore having been involved in) those contraventions, and pursuant to ss 1317E(4) and 1317HA of the *Corporations Act*;

(b) caused by Nuix's false and misleading conduct – because of him being knowingly concerned in (and therefore having been involved in) that conduct, and pursuant to:

(i) s 12GF of the *ASIC Act*; further or alternatively

(ii) s 1041I of the *Corporations Act*;

(c) caused by Nuix's misleading and deceptive conduct – because of him being knowingly concerned in (and therefore having been involved in and having engaged in) that conduct, and pursuant to:

(i) s 12DA of the *ASIC Act*;

(ii) s 1041H of the *Corporations Act*; further or alternatively

(iii) s 18 of the ACL.

K. COMMON QUESTIONS

114. The common questions of fact and law are:

(True position)

(a) whether and if so at what time(s) the Management Information, Political Risk Information, Structural Change Information or Prospectus Financial Forecasts Information existed;

(b) whether and if so at what time(s) Nuix had the Management Information, Political Risk Information, Structural Change Information or Prospectus Financial Forecasts Information;

(Prospectus)

(c) whether Nuix contravened s 728 of the *Corporations Act* in respect of the Management Information, Political Risk Information, Structural Change Information or Prospectus Financial Forecasts Information, and if so how;

(d) if Nuix contravened s 728 of the *Corporations Act*, whether:

(i) MCAL; further or alternatively

(ii) Phillips;

is also liable for the said contravention;

(Continuous disclosure)

(e) whether Nuix contravened s 674 of the *Corporations Act* in respect of the Management Information, Political Risk Information, Structural Change Information, Prospectus Financial Forecasts Information or Corporate Governance Deficiencies, and if so when and how;

(f) if Nuix contravened s 674 of the *Corporations Act*, whether Phillips was involved in and liable for the said contravention;

(Misleading etc conduct)

(g) whether Nuix made the alleged false or misleading statements;

(h) whether Nuix engaged in the alleged misleading or deceptive conduct;

(i) if Nuix contravened the provisions referred to in Questions (g) or (h):

(i) whether Phillips was involved in and liable for the said contraventions;

(Causation and measurement)

(j) what are the applicable principles for establishing whether any of the contraventions referred to in Questions (a) to (i) was a cause of the IPO or ~~ASX~~ On-Market Claimants' Loss and Damage; and

(k) what are the applicable principles for measuring the compensable amount of the IPO or ~~ASX~~ On-Market Claimants' Loss and Damage.

AND THE PLAINTIFFS CLAIM on their own behalf and on behalf of the group members:

A. Compensation pursuant to:

a. s 729 of the *Corporations Act*;

b. s 1041I of the *Corporations Act*;

c. s 1317HA of the *Corporations Act*;

d. s 12GF of the *ASIC Act*; further or alternatively

e. s 236 of the ACL

B. Interest.

C. Costs.

D. Such further or other orders as the Court may deem appropriate.

Dated: ~~5 September 2022~~

10 December 2024

The Consolidated Statement of Claim was settled by L W L Armstrong and M W Guo.

The Amended Consolidated Statement of Claim was settled by P Collinson and T Rawlinson.

Shine Lawyers

Solicitors for the Plaintiffs

L. INDEX TO DEFINED TERMS

April Downgraded Forecast is defined in paragraph 80(a).

April Express Representations is defined in paragraph 80.

April Implied Representations is defined in paragraph 82.

April Update is defined in paragraph 80.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth) and is defined in paragraph 5(b).

ASX is defined in paragraph ~~2(b)(ii)~~ 1(b).

~~**ASX Claimants** is defined in paragraph 110.~~

~~**ASX Claimants' Loss and Damage** is defined in paragraph 110(d).~~

ASX Listing Rules is defined in paragraph 21(b).

Black Hat is defined in paragraph 70(b).

Black Hat offloading information is defined in paragraph 70(d).

Bleich is defined in paragraph 7.

Castagna is defined in paragraph 32(a).

Code is defined in paragraph 63.

Consumption Model is defined in paragraph 35(b).

Coronavirus Determinations is defined in paragraph 22(a).

Corporate Governance Deficiencies is defined in paragraph 71(b).

Corporate Governance Implied Representations is defined in paragraph 68.

Corporate Governance Misleading Conduct is defined in paragraph 71(c).

Corporations Act means the *Corporations Act 2001* (Cth) and is defined in paragraph 3(d)(i).

December Information is defined in paragraph 56.

Disclosable Information is defined in paragraph 98.

Disclosure Events is defined in paragraph 110(d)(i)2.

Doyle is defined in paragraph 30.

Doyle offloading date is defined in paragraph 70(d).

February Express Representations is defined in paragraph 75.

February Implied Representations is defined in paragraph 77.

February Reaffirmation is defined in paragraph 75(b).

February Update is defined in paragraph 75.

First May Update is defined in paragraph 88.

Group Members is defined in paragraph 3.

Inflation is defined in paragraph 50(a)(i).

Inflation Loss is defined in paragraph 50(b)(ii).

Inflation Period is defined in paragraph 3(b).

Initial Public Offering is defined in paragraph 19.

IPO Claimants is defined in paragraph 50.

IPO Claimants' Loss and Damage is defined in paragraph 50(b).

IPO Contraventions is defined in paragraph 50.

June Fairfax Articles is defined in paragraph 96.

June Press Disclosure is defined in paragraph 96.

Left-in-hand Loss is defined in paragraph 50 Particulars i.

Lobban is defined in paragraph 7.

Management Information is defined in paragraph 34.

MCAL is defined in paragraph 14.

~~**MGL** is defined in paragraph 6.~~

Net Inflation Loss is defined in paragraph 50 Particulars iii.

"No Transaction" Loss is defined in paragraph 50 Particulars v.

Non-Consumption Model is defined in paragraph 35(a).

Nuix is defined in paragraph 2(b).

Nuix Officers is defined in paragraph 13

Nuix Securities Market is defined in paragraph 16.

Nuix Shares is defined in paragraph 17.

On-Market Claimants is defined in paragraph 110.

On-Market Claimants' Loss and Damage is defined in paragraph 110(d).

Peak Inflation Loss is defined in paragraph 50 Particulars ii.

Phillips is defined in paragraph12.

Political Risk Information is defined in paragraph 42.

Potts v Miller Loss is defined in paragraph 50 Particulars iv.

Prospectus is defined in paragraph 17.

Prospectus Correction Information is defined in paragraph 55(c).

Prospectus Date is defined in paragraph 16.

Prospectus Financial Forecasts Information is defined in paragraph 43.

Prospectus Growth Forecasts is defined in paragraph 45.

Prospectus Implied Representations is defined in paragraph 49(a).

Prospectus Revenue Growth Forecast is defined in paragraph 45.

Prospectus ACV Growth Forecast is defined in paragraph 42A.

R&D is defined in paragraph 25(b).

'**red lights**' is defined in paragraph 23(a).

Ross Doyle is defined in paragraph 70(b)(ii).

Second May Update is defined in paragraph 91.

Securities Exchange is defined in the particulars to paragraph 16.

STP is defined in paragraph 65.

Structural Change Information is defined in paragraph 39.

Thomas is defined in paragraph 10.

Transitions Partial Disclosure is defined in paragraph 80(b)(i).

Trading Price is defined in paragraph 50(b)(i).

Transaction Loss is defined in paragraph 50(b)(i).

US Political Uncertainties is defined in paragraph 41.

Vawdrey is defined in paragraph 28.

17 May Press Disclosure is defined in paragraph 85.

18 May Implied Representations is defined in paragraph 89.

18 May Press Disclosure is defined in paragraph 87.

31 May Downgrade is defined in paragraph 91(a).

31 May Express Representations is defined in paragraph 91.

31 May Implied Representations is defined in paragraph 93.

M. ANNEXURE A—SECOND PLAINTIFF'S ACQUISITION AND DISPOSAL OF NUIX SHARES DURING THE INFLATION PERIOD

Date	Type	Quantity	Average price per share ($)
8/12/2020	Buy	3,766	5.31
9/12/2020	Buy	9,334	8.57
3/03/2021	Buy	11,234	5.74
9/03/2021	Buy	6,663	5.00
22/03/2021	Buy	8,337	5.00
6/04/2021	Sell	-20,568	5.30
7/05/2021	Buy	20,000	3.60
1/06/2021	Buy	20,000	2.80
11/06/2021	Sell	-23,994	2.73
15/06/2021	Sell	-4,772	2.73

N. ANNEXURE B—'RED LIGHTS' REFERRED TO IN PARAGRAPH 23

Overall Program Health Check

Product	Notes	Status	Go to Green Plan (If Applicable)
Nuix Workstation Nuix Engine	Technical debt continues to increase leading to poor customer experience and delayed releases. Lack of engineering capacity prohibits our ability to capture additional market share. Resource allocation not aligned with revenue share. Lost resources due to team realignment, resignations.		Increase technical debt allocation from 8-10% to 20-25%. Additional resources required.
Nuix Connectors	New customer requests for additional connectors far exceeds our ability to deliver in expected timeframe . Current resource (1.5 Dev 1 test)		Add additional engineering resources. Acquiring or partnering options need to be pursued.
Nuix Cloud License Server	Currently unable to expand CLS to a wider audience due to delays in authentication implementation due to customer commitments. Further delays to occur with only 1.5 resources assigned. Inability to roll our consumption-based pricing to a wider auidence.		Add additional engineering resources. Additional resources required.
Nuix SDK	Moving forward as best as possible with 1 engineer and shared testing resources but effectively at a crawl. Heavy dependences on CLS & engine.		Drive alignment across engineering, marketing, training, documentation to do more with less. Specific staffing requests & justifications already submitted.
Nuix Automation	No solid plan for GTM or long-term direction. Betas ongoing with Key Customers.		Automation PM starts Feb. 1st to begin putting together the plan
Nuix Discover®	Dev capacity not aligned with business needs/goals. Unpredictable backlog makes planning and delivery estimation challenging.		Continue to actively recruit for open positions and bring new hires up to to speed.
Nuix Investigate®	Steady, but slow progress towards enterprise readiness. Chat & Mobile features well received by market and continue to be focus. Progressing A&I replacement blocked by competing Engine priorities. Falling behind competition in delivering best in market analytics and dashboards. Current license model needs updating due to high availability changes.		Actively recruiting for open positions.
Nuix Adaptive Security	Lack of QA is slowing development and leading to increased support/maintenance and customer dissatisfaction. Looming "at scale" deployments at Pfizer and FAA which we are unprepared for.		Stop most feature development to address scaling issues at the architectural level
Nuix Enterprise Collection Center	Encountering a significant number of challenges in corporations due to lack of enterprise requirements. Unable to take on any development that touches server code-base due to lack of skillset on the remaining team.		Put together a hiring plan to bring on experienced server developer w/ enterprise product experience
Nuix Collector Suite	Slight declining trend in directly attributed revenue, likely due to decrease in bundles being used.		Create a unified collections/connector platform which drives monetization through increased data volumes

1. Place of trial—Melbourne.

2. Mode of trial—Judge.

3. This consolidated statement of claim was filed for the Plaintiffs by Shine Lawyers, Level 6, 299 Elizabeth Street, Sydney NSW 2000.

4. The address of the First Plaintiff is 24 Leichardt Crescent, Reservoir VIC 3073.

5. The address of the Second Plaintiff is Level 3, 325 Flinders Lane, Melbourne VIC 3000.

6. The address for service of the First and Second Plaintiff is Level 6, 299 Elizabeth Street, Sydney NSW 2000.

7. The email address for service of the First and Second Plaintiffs is ~~callsopp~~jwertheim@shine.com.au.

8. The address of the First Defendant is Level 27, 1 Market Street, Sydney NSW 2000.

9. The address of the Second Defendant is Level 6, 50 Martin Place, Sydney NSW 2000.

10. The address of the Third Defendant is 203/10-18 Cliff Street, Milsons Point NSW 2061.