



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

Case: S ECI 2021 04360

Filed on: 23/02/2026 09:01 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

SECOND FURTHER AMENDED CONSOLIDATED STATEMENT OF CLAIM

(Filed pursuant to the orders of Nichols J dated 12 February 2026)

Note to this pleading

This note is provided for ease of reference.

Amendments in red single underline (including amended particulars) were made pursuant to the orders of the Court dated 19 September 2025.

Amendments in green underline were made pursuant to the orders of the Court dated 12 February 2026.

Amendments in double green underline are corrections to errors in the pleading identified and corrected between 12 February 2026 and 23 February 2026.

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Filed on behalf of: The Plaintiffs

Solicitor's Code: 106092
DX: 236 Sydney NSW 2000

Prepared by: Shine Lawyers
Level 6, 299 Elizabeth St
Sydney NSW 2000

Telephone: (02) 8754 7270
Ref: 6326226
Email: jwertheim@shine.com.au

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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 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 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) 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(b) 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*.

12A. Anthony Castagna (**Castagna**) was, from 8 August 2019 to 18 November 2020:

- (a) a director of Nuix; and
- (b) an officer of Nuix within the meaning of s 9 of the *Corporations Act*.

12B. David Standen (**Standen**) was, from 9 June 2011 to 18 November 2020:

- (a) a director of Nuix; and
- (b) an officer of Nuix within the meaning of s 9 of the *Corporations Act*.

12C. Brian Krupczak (**Krupczak**) was, at all material times until 16 November 2020:

- (a) a company secretary of Nuix; and
- (b) an officer of Nuix within the meaning of s 9 of the *Corporations Act*.

12D. Michael Egan (**Egan**) was, at all material times from 9 October 2020:

- (a) a company secretary of Nuix;
- (b) the secretary of Nuix's Audit and Risk Management Committee; and
- (c) an officer of Nuix within the meaning of s 9 of the *Corporations Act*.

12E. Daniel Silveri (**Silveri**), at all material times:

- (a) was the Head of Financial Planning and Analysis of Nuix;
- (b) reported to Doyle;

- (c) was responsible for preparing Nuix's annual budgets, reporting on financial aspects of Nuix's business to Nuix's management and board, and tracking Nuix's financial performance over time against its internal budgets and forecasts; and
- (d) was an officer of Nuix within the meaning of s 9B(b)(i)–(ii) 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;
- (g) Castagna;
- (h) Standen;
- (i) Krupczak;
- (j) Egan; or
- (k) Silveri,

(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:

- (l) was information of which Nuix was aware within the meaning of r 19.12 of the ASX Listing Rules; further
- (m) 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) engaged as an underwriter of, and Joint Lead Manager (JLM) in relation to, the issue and sale of shares in Nuix pursuant to the Prospectus (the IPO); ~~and~~
- (b) involved in preparing the Prospectus;

Particulars

MCAL's involvement in preparing the Prospectus comprised:

- (a) acting as a member of the Due Diligence Committee, as pleaded below at paragraph 15(e);
- (b) its agents (as pleaded below at paragraphs 15A) having responsibility for preparing section 4 of the Prospectus (titled Financial Information), as follows:
 - (i) an email from Christian Fleury to Anuj Goel and Nick Brescia (all of Macquarie Capital) dated 20 August 2020 containing Mr Fleury's notes from a meeting which recorded "Need to prepare section 4 of the prospectus" (MAC.0001.0133.9882);
 - (ii) an email from Nick Brescia to Anuj Goel dated 1 September 2020 whereby Mr Bresica attached a draft of Section 4 of the Prospectus for Mr Goel's review. The draft stated, under the heading "version

control”. “Master / Pen: MacCap – Nick Brescia”
(MAC.0001.0092.0725 (email);
MAC.0001.0092.0726 (attached draft));

(iii) an email from Anuj Goel to numerous recipients including Doyle, Silveri, Castagna dated 1 September 2020 attached the “first draft of the financial section of the prospectus (Section 4)” (MAC.0001.0014.1277 at .1278);

(c) advising Nuix on the financial metrics to be included in the Prospectus, as follows:

(i) an email from Doyle to Anuj Goel and others dated 28 August 2020 at 1:13pm recorded Nuix’s recommendations for financial metrics to be considered for inclusion in the Prospectus (MAC.0001.0014.1277 at .1280);

(ii) an email in reply on 28 August 2020 at 2:45pm, Mr Goel commented on Doyle’s views as to what should be included in the Prospectus (MAC.0001.0014.1277 at .1280);

(iii) an email from Christian Fleury to Anuj Goel and Nick Brescia dated 2 September 2020 containing Mr Fleury’s notes from a ‘prospectus metrics call’, which recorded the decisions made in a meeting as to which financial metrics were to be included in the Prospectus, and Mr Goel’s additions to the meeting notes (MAC.0001.0014.1277 at .1277);

and

(d) advising Nuix on the terminology to be used in the Prospectus to describe its business, as follows:

(i) in an email chain dated 7 September to 13 September 2020, Nick Brescia advised Doyle, Castagna and

others regarding the use of the word 'subscription' to refer in the Prospectus to recurring revenues received by Nuix (MAC.0001.0138.6097).

~~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.~~

- (c) at all material times, a wholly owned subsidiary of Macquarie Corporate Holdings Pty Ltd (MCHPL), which owned approximately 76.2% of Nuix's shares prior to the IPO;

Particulars

The plaintiffs refer to page 215 of the Prospectus.

- (d) at all material times a licensed entity that provided certain services offered by the Macquarie Capital operating group in Australia, including the services of acting as a JLM;

Particulars

In a letter from MCAL's solicitors to the plaintiffs' solicitors dated 6 July 2023, MCAL's solicitors wrote that "...the business of the Macquarie Group has an operating group called 'Macquarie Capital'" and "MCAL is the licensed entity that provides certain types of services offered by the Macquarie Capital operating group in Australia (including the services of Joint Lead Manager)." The Macquarie Group of companies includes MCAL and MCHPL.

- (e) from at least 21 August 2020, a member of the Due Diligence Committee (DDC) that was established for the purposes of co-ordinating due diligence investigations in connection with the preparation of the Prospectus in relation to the IPO;

- (f) at all material times, including as part of the engagement pleaded at paragraph 15(a) above and in its role on the DDC pleaded at paragraph 15(e) above, represented by employees of MCHPL, being the legal entity within the Macquarie Group of companies that employs the Australian employees who work for the Macquarie Capital operating group;

Particulars

The plaintiffs refer to letters from MCAL's solicitors to the plaintiffs' solicitors dated 1 June 2023 and 6 July 2023 in which MCAL's solicitors wrote, inter alia, that "MCAL performed the Joint Lead Manager role by using employees of MCHPL who work for the Macquarie Capital operating group" (6 July 2023).

15A. By reason of the matters pleaded at paragraph 15(a) and (c)–(f), at all material times in relation to the roles performed by MCAL as pleaded at paragraph 15(a)–(b) and (e) above:

- (a) MCAL acted through certain employees of MCHPL;
- (b) employees of MCHPL acted for and on behalf of MCAL, and as agents of MCAL (the MCAL Agents).

Particulars

The MCAL Agents comprised the persons identified as members of the JLM team in a letter from MCAL's solicitors to the plaintiffs' solicitors dated 11 May 2023 (pursuant to the orders of the Hon. Justice Nichols dated 2 May 2023).

15B. By reason of the matters pleaded at paragraph 15(a),(c)–(f) and paragraph 15A, all relevant knowledge held by each MCAL Agent in relation to MCAL's engagement as pleaded at paragraph 15(a) above is also taken to be the knowledge of MCAL.

Particulars

The knowledge of the MCAL Agents is to be attributed to MCAL as a matter of law.

~~Further particulars may be provided after the provision of MCAL's lay evidence.~~

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~~ an initial public offering of fully paid ordinary shares by Nuix; and
 - (b) the sale of existing fully paid ordinary shares by Nuix SaleCo Limited;
- (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 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~~ February 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’)~~; and

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

(red lights). ~~and~~

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

Particulars

(a) *A Nuix presentation titled ‘Q1 2021 FY Product State of the Union – Draft’ (NXL.0001.0029.4960) attached to an email*

from Vawdrey to Stuart Clarke and Shane Jansz dated 9 January 2021 (NXL.0001.0029.4957) recorded, under the heading 'Overall Program Health Check' (page .4976), the following products were assigned "red lights":

- (i) Nuix Workstation, which was noted having increasing dechnical debt, lack of engineering capacity, and lost resources;
 - (ii) Nuix Cloud License Server, which was noted as causing an inability to roll out consumption-based pricing;
 - (iii) Nuix SDK, which was noted as "[m]oving forward ... effectively at a crawl";
 - (iv) Nuix Automation, which was noted as having "[n]o solid plan for GTM or long-term direction";
 - (v) Nuix Adaptive Security, for which it was noted that "[l]ack of QA is slowing development and leading to increased support/maintenance and customer dissatisfaction", and that there were "[l]ooming 'at scale' deployments ... which we are unprepared for"; and
 - (vi) Nuix Enterprise Collection Center, for which it was noted that there were "a significant number of challenges in corporations due to lack of enterprise agreements" and an inability to take on any server code-base development "due to lack of skillset on the remaining team".
- (b) A revised presentation titled 'Product State of the Union – Jan 2021' (NXL.0600.0006.6821) attached to an internal Nuix email dated 3 February 2021 (NXL.0600.0006.6820) repeated the Overall Program Health Check set out above (at .6842).

~~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) ~~[not used] Nuix had missed key budget forecasts; and~~
- (b) staff morale, and turnover were major headwinds for Nuix attrition, and internal culture, were major issues for Nuix, and that Nuix required new leadership.

Particulars

The materials for the presentation were contained in a slide deck titled 'Next Generation Nuix – Proposal to the Board' (NXL.0700.0187.0938), which was emailed from Danny Pidutti, Nuix Chief Product Officer, to Phillips and Standen on 14 April 2019 (NXL.0700.0187.0937). The first page of the deck recorded as authors Mr Pidutti, Rees, Geoff Sweeney, Treese, Rolf Krolke, and Jamie Olsen. The deck contained the following statements, inter alia:

- (a) "Leadership has suppressed the organization through the propagation of a toxic, no-trust, fear based culture" (at .0939);
- (b) "Vision isn't clear, innovation has stalled, attrition is unsustainable, and strategy isn't understood. This requires a leadership change after which it is fixable from within" (at .0940);
- (c) Under the heading 'issues' (at .0940):
 - (i) "Attrition running at 30% for 12+ months, staff are fed up";
 - (ii) "Revenue growth underperforming, hamstrung by changing priorities and a confused matrix structure overlaying primary functions";
 - (iii) "Staff not empowered, CEO intervention in decision making across all levels";
 - (iv) "Toxic, no-trust, fear-based culture";
- (d) "We all need to 're-set' our focus and culture" (at .0944).

The deck also included a proposed 'Press Release' announcing that Vawdrey was stepping aside (at .0943).

~~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 and ‘product’ team members it employed by ~~30%~~ around 20%; and
- (b) underspent its research and development (R&D) budget ~~by 16.5% of \$60.8 million~~ by \$10 million.

Particulars

- (a) As to subparagraph (a), the plaintiffs refer to:
 - (i) an Excel spreadsheet titled ‘FINAL 2020.08.05 Headcount map_FY20 close’ dated 23 September 2020 which recorded, in the sheet titled ‘2019-20 HC change analysis’ (NXL.0600.0022.6809), 226 staff labelled as “Engineering” or “Product” for the period Y19 (Column F); 177 staff labelled as “Engineering” or “Product” for the period FY20 (Column L). The difference is 49 employees, representing a decrease of around 20%;
 - (ii) a presentation titled ‘2020 Budget Integrated Plan’ (NXL.0700.0195.2443), which was attached to an email from Doyle to Phillips, Standen and another dated 7 July 2019 (NXL.0700.0195.2442). The presentation stated (at .2448) that the total R&D headcount (comprising Engineering and Product staff) was 223 as at FY19;
 - (iii) a spreadsheet titled ‘Headcount report - WE 03.07.2020.xlsx’ dated 3 July 2023 (NXL.0001.0009.4921), which recorded, in the sheet titled ‘Opening HC 29.06.2020’, 178 staff in the

“Research & Development” department (Column E).
The spreadsheet was attached to an email from Tram
Lee to Nuix’s executive committee dated 3 July 2020
(NXL.0001.0009.4919).

(b) The matters in subparagraph (b) are admitted in Nuix’s
Defence to the ACSOC dated 23 December 2024.

~~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. [not used] Nature of FY20 earnings result

26. [not used] 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 reliably to forecast financial performance

27. In the period from and including ~~FY17~~ FY16 to the Prospectus Date, Nuix’s actual revenue results had repeatedly fallen short of its internal forecasts.

Particulars

(a) As to the period FY16 to 1H20, a document titled ‘Regional
Revenue Analysis’ (NXL.0001.0007.1156) which was

attached to an email from Denis Pipic to Vawdrey, Castagna and others dated 25 January 2020 (NXL.0001.0007.1083), stated that “[o]n a group basis Nuix has missed it’s [sic] budget for every period from FY16 to 1HFY20” (at .1158).

(b) As to FY16, Nuix budgeted to receive \$100 million in revenue, and received \$98 million (at .1158).

(c) As to FY17:

(i) A document titled ‘Nuix Consolidated Financials and Key Result Indicators For Period Ended May 31, 2017’, dated 1 June 2017, stated that Nuix’s revenue budget for FY17 was \$137.5 million ~~(NXL.0005.0005.0660 at .0674).~~ (NXL.0003.0032.8260 at .8274).

(ii) A document titled ‘Nuix Consolidated Financials and Key Result Indicators For Period Ended July 31, 2017’, dated 2 August 2017, stated that Nuix received revenue in FY17 of \$102.1 million (NXL.0700.0115.8493 at .8507).

(d) As to FY18–FY20, a document titled ‘Project Truth – **Financial Information Report on IPO of Nuix Limited**’, prepared by PwC and dated November 2020, stated (NXL.0006.0027.0077 at .0041):

(i) in FY18, Nuix received revenue of \$120.1 million against a budget of \$137.5 million (excluding the effect of post-audit restatements);

(ii) in FY19, Nuix received revenue of \$150.1 million against a budget of \$150 million (excluding the effect of post-audit restatements), which included revenue from the acquisition of Ringtail that was not budgeted for;

- (iii) in FY20, Nuix received revenue of \$180.7 million against a budget of \$189.7 million (excluding the effect of post-audit restatements).
- (e) As to the first quarter of FY21, a document titled 'Vendor Due Diligence Report – Volume 3 (Sep '20 Trading Update Addendum)', prepared by PwC and dated 14 October 2020, stated that Nuix received \$34.4 million in revenue against a budget of \$41.8 million (excluding the effect of post-audit adjustments) (PWC.2001.0002.2748 at .2764).

~~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, members of 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

In an email from Vawdrey to Doyle, Muller, Treese, Rees and others dated 3 April 2019, Vawdrey stated (inter alia) that "The board believes 180 is not achievable" (NXL.0001.0004.5828).

~~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 requested to Nuix's sales heads that they present to the Board the revenue they expected Nuix to receive in Q4 of FY19, and warned that the sales heads were not to present a forecast that was:~~
- (a) not able to be achieved; ~~and/or~~
 - (b) the product of a desire by the forecasts' authors to reflect budget numbers instead of being actual forecasts.

Particulars

In an email from Vawdrey to Doyle, Muller, Treese, Rees and others dated 3 April 2019, Vawdrey stated (inter alia) (NXL.0001.0004.5828):

"our board has asked that you present in AUD or USD the revenue you will achieve in Q4.

Do not present a number that you don't believe can be achieved

Do not plug a number that gets you to FY19 budget if you don't believe it."

~~*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

In an email from Doyle to Vawdrey, Silveri, Phillips, Standen, Castagna and others dated 3 October 2019, Doyle wrote (inter alia) (NXL.0700.0206.5921):

- (a) *"Guys the rolled up forecast submitted for December is \$11m USD off budget - 20%. It has been this way for all of Q1 despite requests and pleads to work the numbers towards a credible and realistic gap."*
- (b) *"As a group we cannot predict our numbers. 10 days out we stated \$42.6m expected forecast and \$47.3m best case forecast. We closed on \$39.31m...remembering this number was attained with the \$2.33m reseller gross up"*.

~~*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~~24 to 30 above.

Expert Report of Charles Skamser dated 30 January 2026 (Skamser Report) at [70]–[531].

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

C.1.5. [not used] Castagna's influence over Nuix management

32. [not used] 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. [not used] 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~~24 to 33 above (the **Management Information**).

Particulars

The matters which Nuix Officers knew, or ought to have known, including the identities of the relevant Officers, are set out in Annexure C to this Second Further Amended Consolidated Statement of Claim.

- ~~i. The matters in paragraph 23 were known to Vawdrey by reason of his sending of the email referred to in particular (a) to paragraph 23 (NXL.0001.0029.4957).~~
- ~~ii. 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.~~
- ~~iii. The matters in paragraph 25(a) were known to at least Doyle by reason of his sending or receipt of the documents referred to in particulars (a)(ii) (iii) to paragraph 25.~~

~~iv. The matters in paragraph 25(b) are admitted in Nuix's Defence to the ACSOC dated 23 December 2024.~~

~~v. The matters in particulars (a) and (b) to paragraph 27 were known to the Nuix officers who received the document. Nuix ought to have known the matters in particulars (d) and (e) to paragraph 27 by reason of those documents being prepared by PWC as part of the due diligence for the IPO. The Plaintiffs infer that Nuix Officers read those documents.~~

~~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 receipt of experts' reports.~~

C.2. Nuix Structural Information

C.2.1. Customer shift towards consumption-based pricing

35. Further ~~and~~ or in the alternative to the matters in paragraphs ~~23~~24 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~~ had the potential to have a negative impact on Nuix's operating results by causing revenue to be recognised in a later financial period, 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.

As to the matters pleaded in paragraph (a), the Financial Information Report stated that Nuix earned 'Consumption based' revenue as follows (NXL.0006.0027.0077 at _0028):

- (a) FY18: \$2.9 million;*
- (b) FY19: \$8.6 million;*
- (c) FY20: \$22.2 million.*

~~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

(a) In an email to Vawdrey, Standen, Phillips and others dated 24 September 2019, Castagna wrote that "The most important risk on which we are silent is that our revenue generation will move (at a yet indeterminant pace) towards consumption revenue; this is the instrumental variable that will impact our cash position going forward" (NXL.0001.0006.1142 at 0.1145).

(b) A response prepared by Silveri to an investor query dated 11 March 2021 stated, in response to a question as to whether the "shift to consumption-based and SaaS contracts" would "make it difficult to grow from the FY20 revenue base", that "as we are experiencing with the increased uptake of customer migration to SaaS, our revenue recognition profile will continuously shift to over time recognition, rather than up-front." (NXL.0001.0031.7945 at .7946).

~~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 21 April 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** receipt of experts’ reports.~~

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

See Annexure C.

~~i. Nuix’s knowledge of the said matters is to be inferred from the matters set out in the particulars to paragraph 38.~~

~~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~~24 to 39, at the Prospectus Date, a material portion of Nuix's customer base was comprised of United States public sector customers.

Particulars

(a) A Nuix presentation titled 'FY20 USA Government Revenue (as of June 2020)' stated that, in FY20, Nuix expected to receive \$24.081 million in revenue from United States public sector customers in FY20 (NXL.0001.0009.6304 at .6306), representing approximately 14% of Nuix's total revenues for that period (see NXL.0006.0027.0077 at 0026).

(b) A Group Revenue Forecast dated 10 November 2020 showed that Nuix expected to receive \$15.33 million in revenue from United States public sector customers in the first half of FY21 (NXL.0202.0002.0809 at .0812), representing approximately 15% of Nuix's total expected revenues for that period (at .0810).

~~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 expert 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

~~(a) 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.*

~~(b) ii.~~ *The material uncertainty arose from:*

~~(i) 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;*

~~(ii) b.~~ *whether there would be a change in presidency and how any transition might occur;*

~~(iii) c.~~ *government expenditure being delayed or restructured by covid-19.*

~~(e) A “USG Region Monthly Report” dated 4 November 2020 (NXL.0001.0022.0548) and sent by email from Dan Dorchinsky to Nuix’s executive committee on 6 November 2020 (NXL.0001.0022.0547), stated (inter alia) that:~~

~~“A continuing resolution was signed into federal law on 9/30/20 which funded the U.S. federal government through December 11th. However, during the first two weeks of the fiscal year, the Department of Treasury allocated \$0 to the executive agencies and upsell deals were limited, as expected.” (NXL.0001.0022.0548 at .0549).~~

~~“The ongoing global pandemic combined with the election has been having an effect on the state of State and Local government spend. Voter fraud and intimidation, as well as transparency surrounding Covid funds have caused SLG organizations to be scrutinized on public records requests.” (NXL.0001.0022.0548 at .0555).~~

~~(d) Skamser Report at [219]–[225], [269]–[271].~~

~~(e) See further Annexure C.~~

~~Further particulars may be provided after **discovery and** receipt of expert 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

See Annexure C.

~~*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

42A. On or around 2 June 2020, the board of Nuix approved a budget for FY21 which forecast that Nuix would receive A\$210.6 million in revenue in FY21 (**Board Budget**).

Particulars

Witness Statement of Daniel Silveri dated 4 November 2025 (Silveri Statement) at [45]–[74].

The Board Budget is documented in a presentation titled FY2021 Budget Proposal dated 2 June 2020 (NXL.0005.0010.1737), approved at the 2 June 2020 Board meeting (NXL.0006.0017.7771). The forecast revenue of A\$210.6 million was comprised of:

- (a) \$120.5 million in renewal business (renewals of existing customer contracts);
- (b) \$47.6 million in upsell business (sale of additional products and/or services to existing customers);
- (c) \$42.5 million in new business (customers that Nuix had not sold any products or services to in the past).

(NXL.0005.0010.1737_0003.) The definitions of ‘renewal’, ‘upsell’ and ‘new’ are as set out in the Witness Statement of Jonathan Rees dated 31 October 2025 at [22(b)].

42B. The Board Budget assumed a foreign exchange rate of US\$1 to AU\$1.45.

Particulars

Silveri Statement at [57]; see generally at [174]–[179].

42C. On or before 13 November 2020, Nuix engaged PricewaterhouseCoopers and PwC Securities (together or severally, **PwC**) to, *inter alia*, audit Nuix’s financial results for FY20 and provide a Financial Information Report in respect of the directors’ forecast and the directors’ pro forma forecast to be included in the Prospectus.

Particulars

PwC, Nuix Pty Limited Audit Committee Report dated 22 October 2020 (NXL.0001.0019.7366).

The terms of PwC’s engagement regarding the Financial Information Report are set out in an Engagement Letter dated 13 November 2020 (PWC.2001.0003.6297).

42D. As a result of PwC's audit of Nuix's historical financial results, PwC identified that:

- (a) revenue for support and maintenance (S&M) was required to be recognised across the duration of Nuix's software licence agreements, rather than up-front, as had been Nuix's historical practice; and
- (b) revenue from renewed software licences was required to be recognised from the day of the beginning of the renewal period, rather than from the date on which a temporary licence was issued (if prior to the existing licence period ending), as had been Nuix's historical practice.

Particulars

Silveri Statement at [114(a)–(b)], [116] to [135].

PwC, Nuix Pty Limited Audit Committee Report dated 22 October 2020 (NXL.0001.0019.7366 at .7370, .7372).

42E. As a result of an analysis by PwC of the sensitivities in Nuix's revenue forecast for the purpose of preparing the Financial Information Report, PwC identified that there did not appear to be reasonable grounds to support Nuix's assumption in the Board Budget that a multi-year contract with Ernst & Young (EY Deal) that was due for renewal in June 2021 would be converted to terms that would result in up-front revenue recognition of approximately \$18 million for a full 3-year term.

Particulars

PwC, Forecast Analysis – Risks and Sensitivities dated 18 September 2020 (NXL.0001.0013.4783 at .4784, attached to NXL.0001.0013.4781).

42F. PwC's audit findings pleaded in paragraph 42D above and sensitivity analysis pleaded in paragraph 42E above meant that the Board Budget:

- (a) included the forecast assumption that Nuix would receive \$5.1 million in FY21 in S&M revenue that would, under a correct accounting treatment, be received in future accounting periods (S&M Deferral);
- (b) included the forecast assumption that Nuix would receive approximately \$18 million in FY21 from the renewal of the EY Deal that would, under a correct accounting treatment, not be received by Nuix in FY21 and would instead be received in FY22 or across FY22–FY24; and
- (c) instead of (b), ought to have assumed that revenue of \$6 million would be received as revenue in FY21 from the third year of the contract with EY that was due for renewal, and that no revenue would be received in FY21 for the renewed EY Deal.

Particulars

Silveri Statement at [114(a)–(b)], [116]–[135].

PwC, Forecast Analysis – Risks and Sensitivities dated 18 September 2020 (NXL.0001.0013.4783 at .4784).

Financial Information Report (NXL.0006.0027.0077 at 0047).

42G. As at 30 September 2020, Nuix had received revenue on an underlying basis of \$33.3 million (before audit adjustments) against a Q1 forecast in the Board Budget of \$37.4 million, resulting in a shortfall of approximately \$4 million for the first quarter of FY21 (the Q1 Shortfall).

Particulars

Financial Information Report (NXL.0006.0027.0077 at 0037).

Skamser Report at [335]–[347].

42H. On or around the Prospectus Date, of the \$120.5 million forecast by Nuix to be received from renewed contracts in FY21, there were no identified customers in Nuix’s sales pipeline in respect of \$33.8 million of that revenue, which was \$19.8 million more than

as at the equivalent time in FY20, which led PwC to identify a risk sensitivity of \$10m – \$20m of FY20 revenue (**Renewals Risk**).

Particulars

Financial Information Report (NXL.0006.0027.0077 at 0059).

42I. Further, following PwC’s preparation of the Financial Information Report, Nuix:

- (a) identified that, for the purpose of the FY21 revenue forecasts to be included in the Prospectus, a “risk contingency” deduction of \$12 million should be applied by Nuix to the Board Budget to reflect potential risk in the level of new client revenue growth of \$42.5 million (**Risk Contingency**);

Particulars

Silveri Statement at [114(c)].

Financial Information Report (NXL.0006.0027.0077 at 0042).

- (b) nevertheless determined or remained of the view that, for the purpose of the FY21 revenue forecasts to be included in the Prospectus, Nuix would achieve approximately \$29.4m of revenue from ‘new business’ in FY21, representing an increase of \$7.5m or 34.4% relative to FY20 (the **New Business Revenue Assumption**).

Particulars

Prospectus, 4.12.2.1, p 174.

42J. For the purpose of determining the Prospectus Revenue Growth Forecast (pleaded at paragraph 45(a) below) of statutory revenue in FY21 of \$193.5m, Nuix:

- (a) started with the Board Budget revenue forecast of \$210.6 million;
- (b) assumed a currency conversion rate of US\$1 to AU\$1.45 for revenue earned in US Dollars;
- (c) deducted \$5.1 million for the S&M Deferral referred to in paragraph 42F(a) above;

- (d) deducted \$12 million in revenue from the EY Deal that would not be received in FY21 (referred to in paragraph 42F(b)–(c) above);
- (e) determined that the deduction in subparagraph (d) above would be offset by Nuix converting at least \$12 million worth of other existing annual contracts to multi-year contracts with revenue to be recognised in FY21 such that the net effect of the exclusion of the EY Deal from the forecasts being prepared for the Prospectus would be nil;
- (f) deducted \$12 million for the Risk Contingency referred to in paragraph 42H(a) above, but included or retained the New Business Revenue Assumption; and
- (g) made no other relevant adjustments.

Particulars

The matters in paragraph 42J above are addressed in the Silveri Statement at [114]–[179]. In particular:

- (a) *that the Prospectus Revenue Growth Forecast was determined by subjecting the Board Budget to certain adjustments is set out at [138]–[139].*
- (b) *the assumed currency conversion rate for revenue earned in US Dollars was US\$1 to AU\$1.45 is stated at [176];*
- (c) *the identification and calculation of the S&M deferral is set out at [118(a)] and [121]–[129];*
- (d) *the deduction of \$12 million in revenue from the EY Deal and its offsetting by other revenue is set out at [118(b)], [130]–[135] and [156]–[158];*
- (e) *the deduction of the Risk Contingency is set out at [114(c)], [147]–[161] and [165].*

Further, the matters in paragraph 42J are addressed in the Financial Information Report as follows:

- (f) *the S&M Deferral and Risk Contingency are addressed at NXL.0006.0027.0077 at 0041 to 0042;*

(g) the treatment of the EY Deal is addressed in NXL.0006.0027.0077 at 0047.

42K. Nuix ought reasonably to have assumed a currency conversion rate of US\$1 to AU\$1.37 for revenue earned in US Dollars during FY21, or alternatively to have adjusted its forecast based on updated foreign exchange assumptions (the **Incorrect FX Rate**).

Particulars

Expert Report of Rowan Johnston dated 30 January 2026 (Johnston Report) at [289]–[305], [313], [328], [331], [489(e)] [325] to [332].

Skamser Report at [406]–[434].

42L. Nuix lacked reasonable grounds for determining that the \$12 million in revenue from the EY Deal that would not be received in FY21 would be wholly or substantially offset by converting existing annual contracts to multi-year contracts in FY21 (the **EY Deal Offset**).

Particulars

Skamser Report at [175]–[243].

Johnston Report at [18(b)], [287], [333]–[442].

42M. Nuix lacked reasonable grounds for determining that the New Business Revenue Assumption, having regard to its historical performance in generating new revenue, its sales pipeline of potential new business as at the date of the Prospectus and Nuix's concerns regarding its ability to attract new business customers in FY21.

Particulars

Johnston Report at [18(c)], [288], [443]–[475].

Skamser Report [476] to [480].

42N. Nuix ought reasonably to have applied a Risk Contingency reduction to the Board Budget materially higher than \$12 million by reason of:

- (a) the Renewals Risk;
- (b) the Q1 Shortfall; and/or
- (c) the New Business Revenue Assumption,

(the Inadequate Risk Contingency).

Particulars

Skamser Report at [285]–[288] (regarding the Renewals Risk), [330]–[405] (regarding the Q1 Shortfall), [476]–[480] regarding the New Business Revenue Assumption, and [244]–[290] (regarding the inadequacy of the Risk Contingency generally).

Johnston Report at [18(c)], [288], [443]–[475].

43. ~~As at~~On and from 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 used] 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 used] 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, t*~~

The likelihood or material risk pleaded at paragraph 43 was that:

- (a) *by no later than 17 November 2020, alternatively, 28 December 2020, Nuix's expected statutory revenue for 1H21 was approximately \$85.2–\$85.3 million (PWC.2001.0003.5041); Silveri Statement at [238]; (NXL.0202.0002.2285; Skamser Report at [555]);*
- (b) *Nuix's statutory and pro forma revenue for FY21 would be no more than \$180.5 million;*
- (c) *Nuix's ACV for FY21 would be no more than \$192 million, ((b) and (c) as set out in the Skamser Report at [437]–[513]; further, (b) comprising a range of \$172.5m base, \$180.5m potential upside, \$160.5m potential downside as per the Skamser Report at Table 1A on page 86, and (b) comprising \$170.5m as per the Johnston Report at [489] to [492]).*

The likelihood or material risk pleaded in paragraph 43 (as identified above) arose from the following matters (together or separately to the extent proven) the subject of:

- (a) *the Management Information (excluding the red lights pleaded at paragraph 23 above);*
- (b) *the Structural Change Information;*
- (c) *the US Political Risk Information;*
- (d) *the matters pleaded at paragraphs 42A to 42L;*
- (e) *the matters (about the Prospectus Financial Forecasts Information) identified in the Skamser Report at [436]–*

[513] and [515]–[523], alternatively the Johnston Report at [489]–[592];

- (f) the matters (about the Incorrect FX Rate) identified in:
 - (i) the Johnston Report at [289]–[305], [313], [325]–[332];
 - (ii) the Skamser Report at [406]–[434];
- (g) the matters (about the EY Deal Offset) identified in:
 - (i) the Skamser Report at [175]–[243];
 - (ii) the Johnston Report at [18(b)], [287], [333]–[442];
 - (iii) the Silveri Statement at [114(b)], [118(b)], [130]–[135], [156]–[158];
 - (iv) the PWC Forecast Analysis – Risks and Sensitivities dated 18 September 2020 (NXL.0001.0013.4783 at .4784);
 - (v) the Financial Information Report (NXL.0006.0027.0077 at _0047));
- (h) the matters (about the Q1 Shortfall) identified in:
 - (i) the Skamser Report at [330]–[405];
 - (ii) the Financial Information Report (NXL.0006.0027.0077 at _0037);
- (i) the matters (about the Renewals Risk) identified in:
 - (i) the Skamser Report at [285]–[290];
 - (ii) the Financial Information Report (NXL.0006.0027.0077 at _0059);
- (j) the matters (about the New Business Revenue Assumption) identified in the Skamser Report at [476]–[480] and the Johnston Report at [18(c)], [288], [443]–[475];

(k) the matters (about the Inadequate Risk Contingency generally) in the Skamser Report at [244]–[290] and the Johnston Report at [18(c)], [443]–[475].

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

C.4.2. 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:

- (a) the Management Information (excluding the red lights at paragraph 23 above);
- (b) the Structural Change Information;
- (c) the Political Risk Information;
- (d) the Incorrect FX Rate;
- (e) the EY Deal Offset;
- (f) the Inadequate Risk Contingency; and/or
- (g) the Prospectus Financial Forecasts Information.

Particulars

See Annexure C.

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;~~

~~4. important to its business;~~

~~5. affecting Nuix's obligations under inter alia s 674 of the Corporations Act; and~~

~~6. 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.

As stated in the Silveri Statement at [114]–[179], in determining the Prospectus Revenue Growth Forecast, Nuix:

- (a) *started with the Board Budget revenue forecast of \$210.6 million (see at [138]–[139]);*
- (b) *assumed a currency conversion rate of US\$1 to AU\$1.45 for revenue earned in US Dollars (see at [176]);*

- (c) deducted \$5.1 million for revenue for support and maintenance that would, under a correct accounting treatment, be received in future accounting periods (see at [118(a)] and [121]–[129]);
- (d) deducted \$12 million in revenue from from the renewal of a multi-year contract with Ernst & Young that would, under a correct accounting treatment, not be received by Nuix in FY21 (see at [118(b)];
- (e) determined that the deduction in subparagraph (d) above would be offset by Nuix converting at least \$12 million of other existing annual contracts to multi-year contracts in FY21 such that the net effect of the exclusion of the contract with Ernst & Young from the forecasts prepared for the Prospectus would be nil (see at [118(b)], [130]–[135] and [156]–[158]);
- (f) deducted \$12 million for a “risk contingency” to reflect potential risk in the level of new client revenue growth of \$42.5 million, but included or retained the New Business Revenue Assumption (see at [114(c)], [147]–[161] and [165]); and
- (g) made no other relevant adjustments.

- (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.

~~(e) 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 likelihood or 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;
- (iv) the Incorrect FX Rate;
- (v) the EY Deal Offset;
- (vi) the Inadequate Risk Contingency; and/or

(vii) 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 likelihood or, alternatively, a material risk that the Prospectus Growth Forecasts would not be achieved, but instead would be missed by a material margin:
 - 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 ACV for FY21 would be materially less than \$199.6m;
 - C. Nuix's statutory and pro forma revenue for FY21 would be materially less than \$193.5m;
4. in the circumstances set out in paragraphs ~~23~~24 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*.

49A. Each of the Prospectus Growth Forecasts was a statement about a future matter within the meaning of s 728(2) of the *Corporations Act*, and is therefore taken to be misleading or deceptive if Nuix did not have reasonable grounds for making the statement.

49B. Further or in the alternative to paragraph 48, in the premises of paragraphs 43, 44 and 49A, the Prospectus Growth Forecasts were (separately or together) misleading or deceptive statements.

Particulars

The Plaintiffs refer to and repeat the particulars to paragraphs 43 and 44 above.

Nuix did not have reasonable grounds for the Prospectus Growth Forecasts by reason of the existence, and Nuix's awareness, of the following (which are intended to operate individually and cumulatively to the extent proven):

- (a) the Management Information;*
- (b) the Structural Change Information;*
- (c) the Political Risk Information;*
- (d) the Incorrect FX Rate;*
- (e) the EY Deal Offset;*
- (f) the Inadequate Risk Contingency; and/or*
- (g) the Prospectus Financial Forecasts Information.*

49C. In the premises of paragraphs 49A and 49B, by offering Nuix Securities under the Prospectus, Nuix contravened s 728(1)(a)(i) of the Corporations Act.

E. IPO CONTRAVENTIONS – LOSSES AND LIABILITIES

E.1. Causation and losses

49D. Had Nuix not engaged in the contraventions pleaded at paragraphs 49 and/or 49C, in place of the Prospectus Revenue Growth Forecast, the pathfinder prospectus presented to

potential investors to gauge interest in advance of the IPO (**Pathfinder**), or alternatively the Prospectus, would have included a forecast that:

- (a) Nuix's forecast statutory and pro forma revenue for FY21 was \$172.5 million, alternatively \$170.5 million;
- (b) alternatively, Nuix's forecast statutory and pro forma revenue for FY21 was \$172.5 million, alternatively \$170.5 million, with potential upside to \$180~~3~~.5 million and potential downside to \$160.5 million;

(Counterfactual Prospectus Growth Forecast).

Particulars

The Pathfinder dated 12 November 2020 is
NXL.0009.0008.2215.

Skamser Report at [436]–[513] (\$172.5m base, \$180.5m
potential upside, \$160.5m potential downside).

Johnston Report at [489]–[492] (\$170.5m).

49E. If the Pathfinder or Prospectus included the Counterfactual Prospectus Growth Forecast in place of the Prospectus Revenue Growth Forecast:

- (a) the Initial Public Offering would not have proceeded either on the date that it in fact did or at all due to a lack of sufficient investor interest;
- (b) alternatively, the price at which Nuix Shares were offered under the Initial Public Offering would have been no more than \$2.84 \$3.83 (**Counterfactual Offer Price**);

Particulars

Johnston Report at [277]–[282].

- (c) alternatively, the price at which Nuix shares were offered under the Initial Public Offering would have been materially less than the offer price of \$5.31.

Particulars

If the Pathfinder or Prospectus included a forecast that Nuix's forecast statutory and pro forma revenue for FY21 was no more than \$180.5 million (per paragraph 49D above), and the IPO proceeded, that would have:

- (a) represented a revenue multiple of less than 5;
- (b) which would have, in turn, resulted in an offer price lower than the range of \$2.84 to \$3.83 set out in the Johnston Report at Table RJ4 (row commencing '5%').

Johnston Report, page 85.

49F. Alternatively to paragraphs 49D and 49E, if the Pathfinder, or alternatively the Prospectus, included, in addition to the Prospectus Growth Forecasts:

- (a) the Management Information;
- (b) The Structural Change Information;
- (c) the Political Risk Information; and/or
- (d) the Prospectus Financial Forecasts Information,
then
- (e) the Initial Public Offering would not have proceeded either on the date that it in fact did or at all due to a lack of sufficient investor interest;
- (f) alternatively, the price at which Nuix Shares were offered under the Initial Public Offering would have been no more than \$2.84 \$3.83 (**Alternative Counterfactual Offer Price**);
- (g) alternatively, the price at which Nuix Shares were offered under the Initial Public Offering would have been materially less than the offer price of \$5.31.

Particulars

As to an offer price that was “materially less than” \$5.31 as pleaded in paragraph 49F(g), the Plaintiffs repeat the particulars to paragraph 49E(c).

50. By reason of the contraventions referred to in ~~the two preceding paragraphs~~ paragraphs 48, 49 and/or 49C (IPO Contraventions), Mr Batchelor and ~~some of the~~ Group Members who acquired Nuix Shares by subscription under the Prospectus (IPO Claimants):

(a) [not used] ~~Nuix Shares by subscription under the Prospectus and/or on 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) [not used] ~~thereafter retained the said Nuix Shares:~~

- (i) ~~while the price at which they traded on 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;~~

- (c) acquired Nuix Shares in circumstances where, in the premises of paragraph 49E(a), alternatively 49F(a), but-for the IPO Contraventions, no Nuix Shares would have been available to be acquired, and therefore suffered loss per share in the amount of:
- (i) the purchase price paid for the Nuix Shares, less the true or market value of those shares at the time of purchase, alternatively, the purchase price paid for the Nuix Shares, less the value of those shares “left in hand” as at trial or as realised upon a sale of those shares (**No-Transaction Loss**); or
 - (ii) alternatively, the difference between, on one hand, the purchase price paid for the Nuix Shares, less the true or market value of those shares at the time of purchase, alternatively, the purchase price paid for the Nuix Shares, less the value of those shares “left in hand” as at trial or as realised upon a sale of those shares; and, on the other, the position that the Group Member would have been in had the Group Member made an alternative investment (**Alternative Investment Loss**);
- (d) alternatively, acquired Nuix Shares by subscription under the Prospectus for the offer price of \$5.31, and suffered loss per share in the amount of the difference between the offer price and the Counterfactual Offer Price, alternatively, the Alternative Counterfactual Offer Price, alternatively the offer price that would have prevailed but-for the IPO Contraventions, less the amount of any inflation recouped upon sale of those shares during the Inflation Period (**Inflated Offer Price Loss**),
- (the losses in “i” (c), further or alternatively “ii” (d), 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.~~

50A. On and from 4 December 2020 until 20 April 2021, each of:

- (a) the Prospectus Growth Forecasts; and
- (b) the Prospectus Implied Representations;

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

50B. Further or alternatively to paragraph 50, by reason of the IPO Contraventions, Mr Batchelor, Mr Lay and Group Members who acquired Nuix Shares on the ASX and/or Chi-X in the period 4 December 2020 to 20 April 2021 (**Post-IPO Claimants**):

- (a) acquired Nuix Shares in circumstances where, in the premises of paragraph 49E(a), alternatively 49F(a), but-for the IPO Contraventions, no Nuix Shares would have been available to be acquired, and therefore suffered loss per share in the amount of:
 - (i) No-Transaction Loss; or
 - (ii) alternatively, Alternative Investment Loss;
- (b) alternatively, acquired Nuix Shares on the ASX and/or Chi-X at a price which reflected all material information concerning those shares (including the Prospectus Growth Forecasts), alternatively, in reliance on the Prospectus Growth Forecasts, and suffered loss per share in the amount of the difference between:
 - (i) the price at which the Nuix Shares were in fact acquired; and
 - (ii) the price at which the Nuix Shares would have traded but-for the IPO Contraventions,

less the amount of any inflation recouped upon sale of those shares during the Inflation Period,

(the losses in (a), further or alternatively, (b), being **Post-IPO Claimants' Loss and Damage**).

E.2. Nuix's liability

51. In the premises set out in paragraphs 48, ~~49~~ and/or ~~49C~~, Nuix is liable pursuant to s 729(1) of the *Corporations Act* for the IPO Claimants' Loss and Damage and the Post-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 an underwriter of the 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 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. [not used] 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’;~~

~~iiia. the matters in paragraph 30; and~~

~~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 receipt of experts’ reports.~~

53. By reason of the matters in paragraph 52(a), MCAL is liable for the IPO Claimants' Loss and Damage and the Post-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 and the Post-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

54A. On and from 4 December 2020 until no later than 25 February 2021, Nuix was aware (within the meaning of Rule 3.1 of the ASX Listing Rules) that Nuix's:

- (a) forecast expected statutory revenue for 1H21 was approximately \$85.3 million;
- (b) alternatively to (a), actual statutory revenue for 1H21 was \$85.3 million;
- (c) Nuix's forecast statutory and pro forma revenue for FY21 was \$172.5 million;
- (d) alternatively, Nuix's forecast statutory and pro forma revenue for FY21 was \$172.5 million, with potential upside to \$1803.5 million and potential downside to \$160.5 million;

(Counterfactual Prospectus Revenue Forecast Information).

Particulars

As to the Counterfactual Prospectus Forecasts, the Plaintiffs repeat the particulars to paragraph 49D above.

As to Nuix's awareness, see Annexure C.

55. On and from 4 December 2020 to no later than 25 February 2021:
- (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

(iiia) the Counterfactual Prospectus Revenue Forecast Information; 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) ~~[not used] 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

See Annexure C.

~~*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;
- ~~(ca) the Counterfactual Prospectus Revenue Forecast Information; further or alternatively~~
- (d) the Prospectus Financial Forecasts Information;
- (e) ~~[not used] 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~~ 25 February 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

See Annexure C.

~~*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 and 55 above and their particulars. 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. ~~[not used] 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 57 and 59, on and from 4 December 2020 to 25 February 2021, Nuix was required immediately to notify the ASX of the December Information.
60. ~~During the Inflation Period~~ From 4 December 2020 to 25 February 2021, 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 to 25 February 2021, Nuix contravened s 674(2) of the *Corporations Act*.

F.2. Continuing effect of Prospectus – misleading conduct

62. Further and in the alternative, on and from 4 December 2020 to 25 February 2021, 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 ACL³².

Particulars

The plaintiffs refer to and repeat the matters set out in paragraphs ~~23 to 43~~, 44, 49A, 49B and 55 above and their particulars. 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 Nuix's half year end until the business day after the release of 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 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

- (a) As to the Management Information, the Plaintiffs refer to the matters in paragraphs 25(a), 28, 29, and 30 and their particulars, and to particulars (iii), (vi) and (vii) to paragraph 34.
- (b) As to the Structural Change Information, it is to be inferred that Doyle knew the information by virtue of his role as Chief Financial Officer.
- (c) As to the Political Risk Information, the Plaintiffs refer to and repeat particulars (a)(ii)–(iii) to paragraph 42.
- (d) As to the Prospectus Financial Forecasts Information, the Plaintiffs refer to and repeat paragraph 44 and its 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;

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**);

Particulars

Ross Doyle and Black Hat sold Nuix shares as follows:

<u>Date</u>	<u>Shareholder</u>	<u>Shares disposed</u>	<u>Total consideration</u>
<u><i>22 January 2021</i></u>	<u><i>Black Hat</i></u>	<u><i>100,000</i></u>	<u><i>\$1,100,056.32</i></u>
<u><i>25 January 2021</i></u>	<u><i>Black Hat</i></u>	<u><i>58,546</i></u>	<u><i>\$658,439.97</i></u>
<u><i>27 January 2021</i></u>	<u><i>Black Hat</i></u>	<u><i>7,678</i></u>	<u><i>\$86,976.38</i></u>
<u><i>5 February 2021</i></u>	<u><i>Ross Doyle</i></u>	<u><i>200,000</i></u>	<u><i>\$2,002,383.20</i></u>

<u>11 February 2021</u>	<u>Black Hat</u>	<u>86,886</u>	<u>\$784,337.30</u>
<u>12 February 2021</u>	<u>Black Hat</u>	<u>1,546,890</u>	<u>\$13,213,070.31</u>
<u>Total</u>		<u>2,000,000</u>	<u>\$17,845,263.48</u>

- (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

74A. As at 11 February 2021, Phillips was aware that Nuix would achieve FY21 revenue of no more than \$186.7 million (February 2021 Phillips Information).

Particulars

See Annexure C.

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.

*Expert Report of Frank Torchio dated 30 January 2026 (**Torchio Report**) at [116]–[144].*

~~*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.~~

76A. The February Reaffirmation was was a representation about a future matter, and, under s 769C of the Corporations Act, s 12BB of the ASIC Act, and s 4 of the ACL, is therefore taken to be misleading or deceptive if Nuix did not have reasonable grounds for making the statement.

77. [not used] ~~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. ~~[not used] 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 the February Reaffirmation, which ~~were~~ was accordingly a continuing representations.

79A. On and from 26 February 2021 until no later than 20 April 2021, the true position was that Nuix's forecast a reasonable forecast was that Nuix would achieve:

- (a) statutory revenue for FY21 was of \$171.5 million, alternatively, \$171.5 million with potential upside to \$182 million and potential downside to \$158 million;
- (b) annualised contract value (ACV) for FY21 was of \$176.9 million, alternatively, \$176.9 million with potential upside to \$187.7 million and potential downside to \$163 million,

(Counterfactual February Forecast).

Particulars

Skamser Report at [613]–[619].

79B. On and from 26 February 2021 until no later than 20 April 2021, Nuix was aware (within the meaning of Rule 3.1 of the ASX Listing Rules) of the matters in paragraph 79A(a) and (b) above (Counterfactual February Downgrade).

Particulars

See Annexure C.

79C. Further or in the alternative, on and from 26 February 2021 until no later than 20 April 2021, the Prospectus Financial Forecasts Information was information:

- (a) that existed;
- (b) that Nuix had; and
- (c) of which Nuix was aware (within the meaning of Rule 3.1 of the ASX Listing Rules).

Particulars

See Annexure C.

G.4. April 2021

79D. As at 9 April 2021, alternatively 14 April 2021, Phillips was aware that Nuix would achieve FY21 revenue of no more than \$185 million, alternatively \$180m to \$186m (April 2021 Phillips Information).

Particulars

See Annexure C.

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~~

(ab) forecast ACV for FY21 would not be \$199.6m, but instead be between \$168m and \$177m

(paragraphs (a) and (ab) the **April Downgraded Forecast**):

- (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 \$5.07 at the opening of trade to \$4.29 at the close of trade.

Torchio Report at [145]–[162].

~~*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.~~

81A. The April Downgraded Forecast was a representation about a future matter, and, under s 769C of the Corporations Act, s 12BB of the ASIC Act, and s 4 of the ACL, is therefore taken to be misleading or deceptive if Nuix did not have reasonable grounds for making the statement.

82. [not used] ~~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. [not used] ~~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.~~

84. ~~At no time prior to the end of the Inflation Period 31 May 2021 did Nuix take any or any adequate steps to withdraw or qualify any of the April Express Representations or April Implied Representations the April Downgraded Forecast, which were~~ was accordingly a continuing representations.

84A. ~~On and from 21 April 2021 until no later than 30 May 2021, the true position was that Nuix's forecast~~ a reasonable forecast was that Nuix would achieve:

- (a) statutory revenue for FY21 of \$179 million, alternatively, \$179 million with potential upside to \$182 million and potential downside to \$179 million;
- (b) annualised contract value (ACV) for FY21 of \$169.2 million, alternatively, \$169.2 million with potential upside to \$176.5 million and potential downside to \$160.9 million,

(Counterfactual April Forecast).

Particulars

Skamser Report at [697]–[706]

84B. On and from 21 April until no later than 30 May 2021, Nuix was aware (within the meaning of Rule 3.1 of the ASX Listing Rules) of the matters in paragraph 84A(a) and (b) above (Counterfactual April Downgrade).

Particulars

See Annexure C.

84C. In the alternative, on and from 21 April until no later than 30 May 2021, Nuix was aware (within the meaning of Rule 3.1 of the ASX Listing Rules) that:

- (a) Nuix's statutory and pro forma revenue for FY21 would be materially lower than \$180 million;
- (b) Nuix's ACV for FY21 would be materially lower than \$168 million,

(Alternative April Information).ParticularsSee Annexure C.**G.5. May 2021**

85. [not used] 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. [not used] 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. ~~[not used] 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. ~~[not used] 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. ~~[not used] 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 April Downgraded Forecast;~~
- ~~(together and severally, the 18 May Implied Representations).~~

90. ~~[not used] 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 between \$173m and \$182m ~~\$177.5m~~ **(31 May Downgrade); and**

(ab) forecast ACV for FY21 would not be between \$168m and \$177m but instead would be between \$165m and \$172m

(paragraphs (a) and (ab) the **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 \$3.37 at the opening of trade to \$2.77 at the close of trade.

Torchio Report at [163]–[178].

~~*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. ~~[not used]~~ 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 31 May Downgrade;~~

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

94. ~~[not used]~~ 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. ~~[not used] 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.

Torchio Report at [179]–[208].

~~*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; further or alternatively
- (c) [not used] ~~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;~~
- (iiia) the February 2021 Phillips Information;
- (iiib) the Counterfactual February Downgrade (from 26 February 2021 until no later than 20 April 2021);
- (iiic) the April 2021 Phillips Information;

(iiid) the Counterfactual April Downgrade (from 21 April 2021 until no later than 30 May 2021);

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

(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, 54A, 55, 74A, 79A, 79B, 79C, 84B, 84C.

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) the Corporate Governance Implied Representation;

- (iv) from 26 February 2021 to 20 April 2021 – the February Reaffirmation Express Representations or the February Implied Representations;
 - (v) from 21 April 2021 to 30 May 2021 – the April Downgrade Express Representations or the April Implied Representations; and
 - (vi) [not used] ~~from 18 May 2021~~ – the 18 May Implied Representations;
 - (vii) [not used] ~~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.

Particulars

The Plaintiffs refer to and repeat paragraphs 55, 57, 79C and 84C above.

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 Management Information, Structural Change Information, Political Risk Information, Incorrect FX Rate, EY Deal Offset, Inadequate Risk Contingency, the Prospectus Financial Forecasts Information, (in the case of the February Reaffirmation) the February 2021 Phillips Information and the Counterfactual February Downgrade, and (in the case of the April Downgraded Forecast) the April 2021 Phillips Information and the Counterfactual April Downgrade ~~matters in paragraphs 23 to 41 and 70~~, each of the:

- (a) February Reaffirmation ~~re-affirmation of the Prospectus Revenue Growth Forecast in the February Update (February Re-affirmation)~~; further or alternatively
- (b) April ~~Express Representations~~ Downgraded Forecast; 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~~ 34, 39, 42, 43, 44, 54A, 74A, 79B, 79A, and 84B.

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 Management Information, Structural Change Information, Political Risk Information, Incorrect FX Rate, EY Deal Offset, Inadequate Risk Contingency, the Prospectus Financial Forecasts Information, (in the case of the February Reaffirmation) the February 2021 Phillips Information and the Counterfactual February Downgrade, and (in the case of the April Downgraded Forecast) the April 2021 Phillips Information and the Counterfactual April Downgrade ~~matters in paragraphs 23 to 41 and 70~~, Nuix:

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

- (i) February Re-affirmation; or
- (ii) April Downgraded Forecast;

accordingly, made representations that were misleading the February Reaffirmation and/or the April Downgraded Forecast 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.

Particulars

Skamser Report at [534]–[612], [620]–[638] (as to the February Re-affirmation); [641]–[696], [698]–[741] (as to the April Downgraded Forecast).

108. [not used] 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

I.1. Causation

109A. If Nuix had not engaged in 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);

Nuix would have:

- (i) in the period 4 December 2020 to 25 February 2021:
 - 1. disclosed the Counterfactual Prospectus Revenue Forecast; alternatively
 - 2. disclosed the Prospectus Financial Forecasts Information;
- (ii) in the period 26 February 2021 to 20 April 2021:
 - 1. disclosed the Counterfactual February Downgrade in place of, or after making, the February Reaffirmation; alternatively
 - 2. disclosed the Prospectus Financial Forecasts Information in place of, after making, the February Reaffirmation;

- (iii) in the period 21 April 2021 to 30 May 2021:
 - 1. disclosed the Counterfactual April Downgrade in place of, or after making, the April Downgraded Forecast; alternatively
 - 2. disclosed the Alternative April Information in place of, or after making the April Downgraded Forecast;
- (iv) at all material times during the Inflation Period, disclosed the Corporate Governance Deficiencies.

I.2. Loss and damage

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 (**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~~ Prospectus Growth Forecasts;
 - B. Prospectus Implied Representations;
 - C. Corporate Governance Implied Representation;

- D. February ~~Express Representations~~ Reaffirmation;
- E. February ~~Implied Representations~~;
- F. April Downgraded Forecast ~~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 ‘e’ to ‘i’ ‘A’ to ‘D’, ‘F’ and ‘I’ being the **Disclosure Events**);

- (ii) by reason of the Inflation, paid a higher price than the On-Market 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 Claimants’ Loss and Damage**).

Particulars

The method for calculating the Inflation is set out in the Torchio Report at [26]–[100], [209]–[224], [226]–[259].

The loss suffered by each On-Market_Claimant is the greater of:

- ~~(a) Left-in-hand loss;~~
- ~~(b) Peak Inflation Loss;~~
- ~~(c) Net Inflation Loss;~~
- ~~(d) Potts v. Miller loss;~~

- (e) the difference between the price at which each On-Market 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**);
- (f) alternatively, the amount of the difference in (i) attributable to the correction of information effected by the contraventions, net of market movements or unrelated movements in the Trading Price (**Peak Inflation Loss**);
- (g) alternatively, Peak Inflation Loss, less any inflation recovered upon a sale of any Nuix Shares during the Inflation Period (**Net Inflation Loss**);
- (h) 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**);
- ± alternatively, for those On-Market Claimants who, but for the contraventions, would have acquired an alternative investment — ~~No Transaction~~ Alternative Investment loss.

Particulars of the Plaintiffs’ loss will be provided ~~following expert evidence~~ before trial.

Particulars of the individual losses of other 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 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 knowledge of:
 - (i) the Management Information;
 - (ii) the Structural Change Information;
 - (iii) the Political Risk Information; ~~further or alternatively~~
 - (iiia) the EY Deal Offset;
 - (iiic) the Inadequate Risk Contingency;
 - (iiid) the February 2021 Phillips Information (from 11 February 2021);
 - (iiie) the April 2021 Phillips Information (from 9 April 2021); and
 - (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;*
- ii. the matters in paragraph 24 concerning his being made aware of the matters the subject of 'Nuix 2.0';*
- iii. his participation in decisions made by the board of Nuix to respond to 'Nuix 2.0';*
- iv. Phillips receipt of an email from Castagna dated 24 September 2018 concerning the Structural Change Information (NXL.0001.0006.1142 at 0.1145);*
- v. Phillips' receipt of the Financial Information Report by email dated 19 October 2020 (NXL.0001.0018.7841);*
- vi. Phillips' attendance at a meeting of the DDC on 19 October 2020 at which the contents of the Financial Information Report were presented and discussed, as recorded in the minutes (MAC.9000.0001.0051);*
- vii. the matters in paragraph 74A and its particulars;*
- viii. the matters in paragraph 79A and its particulars.*
- ~~viii. the matters in paragraph 32 concerning his regularly visiting Castagna in prison and taking direction from Castagna;~~*

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

(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

- (a) **Prospectus Revenue Growth Forecast and Prospectus ACV Growth Forecast: the minutes of the meeting of Nuix's Board held on 18 November 2020 (NXL.0006.0022.3706) record that:**
 - (i) Phillips was present as a "New Director" (at .3706);
 - (ii) the Board resolved that the Prospectus be approved for lodgment with ASIC (at .3717); and
 - (iii) the Consents to Lodgment be approved and signed by each Director (at .3718).
- (b) **February Express Representations: the minutes of the meeting of Nuix's Board held on 25 February 2021 (NXL.0201.0007.0024) record that:**
 - (i) Phillips was present as a Director (at .0024); and
 - (ii) the Board approved and authorised the finalisation, signing and issue of the 1H FY21 Financial Results, which contained the February Express Representations (at .0024).
- (c) **April Express Representations:**
 - (i) the minutes of the meeting of Nuix's Board held on 9 April 2021 (NXL.0201.0007.0018) record that Phillips was present as a Non-executive Director, that Nuix's "current best estimate of statutory revenue forecast for full year 2021 stands at ~\$185 million compared to prospectus revenue forecast of \$193.5 million", and that a proposed ASX

announcement be prepared and circulated by 14 April (at .0018); and

(ii) by an email dated 15 April 2021 (NXL.0001.0032.8206), Phillips provided comments on a draft ASX release containing the April Express Representations (NXL.0001.0032.8210).

(d) **31 May Express Representations:** the minutes of the meeting of Nuix's Board held on 29 May 2021 (NXL.0201.0029.1018) record that:

(i) Phillips was present as a Non-executive Director (at .1018), and

(ii) "given the revised expected revenue is below the previously announce revenue range, an announcement should be made to the market without delay" (at .1019).

~~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 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, Counterfactual February Downgrade, Counterfactual April Downgrade, or April Alternative 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, Counterfactual February Downgrade, Counterfactual April Downgrade, or April Alternative 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, Counterfactual February Downgrade, Counterfactual April Downgrade, or April Alternative 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 Claimants' Loss and

Damage, Post-IPO Claimants' Loss and Damage, or On-Market Claimants' Loss and Damage; and

- (k) what are the applicable principles for measuring the compensable amount of the IPO Claimants' Loss and Damage, Post-IPO Claimants' Loss and Damage, or 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: 23 February 2026

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.

The Further Amended Consolidated Statement of Claim was prepared by P Collinson,

K Burke, J Page and T Rawlinson.

The Second Further Amended Consolidated Statement of Claim was prepared by P Collinson,

K Burke, J Page and T Rawlinson.

Shine Lawyers

Solicitors for the Plaintiffs

L. INDEX TO DEFINED TERMS

~~[not used] 17 May Press Disclosure~~ is defined in paragraph 85.

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

~~[not used] "No Transaction" Loss~~ is defined in paragraph 50 Particulars v.

~~[not used] 18 May Press Disclosure~~ is defined in paragraph 87.

~~[not used] 18 May Implied Representations~~ is defined in paragraph 89.

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

31 May Express Representations is defined in paragraph 91.

~~[not used] 31 May Implied Representations~~ is defined in paragraph 93.

ACL is defined in paragraph 5(c)(iii).

ACV is defined in paragraph 43(b).

Alternative April Information is defined in paragraph 84C.

Alternative Counterfactual Offer Price is defined in paragraph 49F(f).

Alternative Investment Loss is defined in paragraph 50(c)(ii).

April 2021 Phillips Information is defined in paragraph 79D.

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

April Express Representations is defined in paragraph 80.

~~[not used] 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 Listing Rules is defined in paragraph 21(b).

ASX is defined in paragraph 1(b).

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

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

Black Hat is defined in paragraph 70(b).

Bleich is defined in paragraph 7.

Board Budget is defined in paragraph 42A.

Castagna is defined in paragraph 12A.

CCA is defined in paragraph 5(c)(iii)

Chi-X is defined in paragraph 1(b).

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).

Counterfactual April Downgrade is defined in paragraph 84B.

Counterfactual April Forecast is defined in paragraph 84A.

Counterfactual February Downgrade is defined in paragraph 79B.

Counterfactual February Forecast is defined in paragraph 79A.

Counterfactual Offer Price is defined in paragraph 49E(b).

Counterfactual Prospectus Growth Forecast is defined in paragraph 49D.

Counterfactual Prospectus Revenue Forecast Information is defined in paragraph 54A.

DDC is defined in paragraph 15(e).

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 offloading date is defined in paragraph 70(d).
Doyle is defined in paragraph 11.
Egan is defined in paragraph 12D.
EY Deal is defined in paragraph 42E.
EY Deal Offset is defined in paragraph 42L.
February 2021 Phillips Information is defined in paragraph 74A.
February Express Representations is defined in paragraph 75.
~~**[not used] February Implied Representations** is defined in paragraph 77.~~
February Reaffirmation is defined in paragraph 75(b).
February Update is defined in paragraph 75.
~~**[not used] First May Update** is defined in paragraph 88.~~
Group Members is defined in paragraph 3.
Inadequate Risk Contingency is defined in paragraph 42N.
Incorrect FX Rate is defined in paragraph 42K.
Inflated Offer Price Loss is defined in paragraph 50(d).
Inflation Loss is defined in paragraph 50(b)(ii).
Inflation Period is defined in paragraph 3.
Inflation is defined in paragraph 50(a)(i).
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.
IPO is defined in paragraph 15(a).
JLM is defined in paragraph 15(a).
Johnston Report is defined in paragraph 42K Particulars.
June Fairfax Articles is defined in paragraph 96.
June Press Disclosure is defined in paragraph 96.
Krupczak is defined in paragraph 12C.
Left-in-hand Loss is defined in paragraph 50 Particulars i.
Lobban is defined in paragraph 9.
Management Information is defined in paragraph 34.
MCAL Agents is defined in paragraph 15A(b).
MCAL is defined in paragraph 14.
MCHPL is defined in paragraph 15(c).
Mr Batchelor is defined in paragraph 2.
Mr Lay is defined in paragraph 1.
Net Inflation Loss is defined in paragraph 50 Particulars iii.
New Business Revenue Assumption is defined in paragraph 42I(b).
Non-Consumption Model is defined in paragraph 35(a).
No-Transaction Loss is defined in paragraph 50(c)(i).
Nuix Officers is defined in paragraph 13.
Nuix Securities Market is defined in paragraph 16.
Nuix Shares is defined in paragraph 17.
Nuix is defined in paragraph 1(b).
On-Market Claimants is defined in paragraph 110.
On-Market Claimants' Loss and Damage is defined in paragraph 110(d).
Pathfinder is defined in paragraph 49D.
Peak Inflation Loss is defined in paragraph 50 Particulars ii.
Phillips is defined in paragraph 12.

Political Risk Information is defined in paragraph 42.
Post-IPO Claimants is defined in 50B.
Post-IPO Claimants' Loss and Damage is defined in 50B.
Potts v Miller Loss is defined in paragraph 50 Particulars iv.
Prospectus is defined in paragraph 17.
Prospectus ACV Growth Forecast is defined in paragraph ~~45(b)~~ **42A**.
~~**[not used]-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(a)**.
Prospectus is defined in paragraph 17.
PwC is defined in paragraph 42C.
Q1 Shortfall is defined in paragraph 42G.
R&D is defined in paragraph 25(b).
Renewals Risk is defined in paragraph 42H.
Risk Contingency is defined in paragraph 42I(a).
Ross Doyle is defined in paragraph 70(b)(ii).
S&M is defined in paragraph 42D(a)
S&M Deferral is defined in paragraph 42F(a).
Second May Update is defined in paragraph 91.
Securities Exchanges is defined in the particulars to paragraph 16.
Silveri Statement is defined in paragraph 42A Particulars.
Silveri is defined in paragraph 12E.
Skamser Report is defined in paragraph 31 Particulars.
Standen is defined in paragraph 12B.
STP is defined in paragraph 65.
Structural Change Information is defined in paragraph 39.
Thomas is defined in paragraph 10.
Trading Price is defined in paragraph 50(b)(i).
Transaction Loss is defined in paragraph 50(b)(i).
Transitions Partial Disclosure is defined in paragraph 80(b)(i).
US Political Uncertainties is defined in paragraph 41.
Vawdrey is defined in paragraph 8.

**ANNEXURE A—SECOND PLAINTIFF’S ACQUISITION AND DISPOSAL OF NUIX
SHARES DURING THE INFLATION PERIOD**

Date	Type	Quantity	Average price per share (\$)
8 <u>4</u> /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

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 audience.		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. 1 st 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

ANNEXURE C – PARTICULARS OF NUIX’S AWARENESS OF INFORMATION

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
34	[24(b)] Management Information – matters alleged regarding staff morale	Phillips, Standen Standen, Phillips, Vawdrey Doyle	Receipt of a slide deck titled “Next Generation Nuix – Proposal to the Board” (NXL.0700.0187.0938), which was emailed from Danny Pidutti, Nuix Chief Product Officer, to Phillips and Standen on 14 April 2019 (NXL.0700.0187.0937). <u>Email from Standen to Phillips and Vawdrey dated 15 April 2019 (NXL.0700.0187.1650), which included a draft narrative from Phillips stating (inter alia): “the Nuix Board has consulted with the senior Nuix leadership team regarding concerns expressed that the company is being led through a culture of “distrust and fear” which is leading to poor decision-making and adversely affecting the performance of the company”.</u>	It is to be inferred that the email from Standen to Phillips and Vawdrey was prepared in response to the pleaded presentation. Reasonable information systems or management procedures ought to have resulted in the information pleaded at [24(b)] coming to Doyle’s attention, having regard to his role and responsibilities as CFO.
34	[25(a)] Management Information – matters alleged regarding product	Doyle, Phillips, Standen, Castagna	Receipt of a presentation titled ‘2020 Budget Integrated Plan’ (NXL.0700.0195.2443), which was attached to an email from Doyle to Phillips, Standen and Castagna dated 7 July 2019 (NXL.0700.0195.2442). The presentation stated (at .2448) that the total R&D	Doyle, Phillips, Standen and/or Castagna, having received the information in the documents set out in Column D, knew or ought reasonably to have known of the

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
	team headcount reduction	Vawdrey	headcount (comprising Engineering and Product staff) was 223 as at FY19. Receipt of a spreadsheet titled “Headcount report – WE 03.07.2020.xlsx” dated 3 July 2023 (NXL.0001.0009.4921), which recorded, in the sheet titled ‘Opening HC 29.06.2020’, 178 staff in the “<i>Research & Development</i>” department (Column E). The spreadsheet was attached to an email from Tram Lee to Nuix’s Executive Committee (which included Doyle, Phillips, Standen, Castagna and others) dated 3 July 2020 (NXL.0001.0009.4919).	matters alleged at [25(a)] by identifying the differences in headcount between FY19 and FY20 between the documents. Reasonable information systems or management procedures ought to have resulted in the information pleaded at [25(a)] coming to Vawdrey’s attention, having regard to his role and responsibilities as CEO.
34	[25(b)] Management Information – underspending of R&D budget	Admitted in Nuix’s defence to the ACSOC. Doyle, Standen, Phillips, Castagna, Bleich, Vawdrey and Lobban	Nuix admits that underspent its R&D budget: Nuix Defence dated 10 October 2025, [25(a)]. <u>Receipt of a presentation titled ‘Board Meeting - Finance Presentation’ (NXL.0001.0009.5116), which was attached to an email from Doyle to Vawdrey, Phillips, Standen, Lobban, De Ambrosis, Bleich and Castagna dated 7 July 2020. The presentation identified</u>	

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
			<u>that Nuix had spent \$50.5 million against a budget of \$60.8 million on ‘Total Research and Development’ (at .5120) in FY20, representing a \$10.3 million underspend.</u>	
34	[27] particular (a) Management Information – matters alleged regarding shortfalls against FY16–FY20 forecasts	Vawdrey, Castagna	Receipt of a document titled ‘Regional Revenue Analysis’ (NXL.0001.0007.1156), which was attached to an email from Denis Pipic to Vawdrey, Castagna and others dated 25 January 2020 (NXL.0001.0007.1083). The document stated that “[o]n a group basis Nuix has missed it’s [sic] budget for every period from FY16 to 1HFY20” (at .1158).	
34	[27] particular (b) Management Information – matters alleged regarding shortfall against FY16 forecast specifically	Vawdrey, Castagna	Receipt of a document titled ‘Regional Revenue Analysis’ (NXL.0001.0007.1156), which was attached to an email from Denis Pipic to Vawdrey, Castagna and others dated 25 January 2020 (NXL.0001.0007.1083). The document indicated, as to FY16, Nuix budgeted to receive \$100 million in revenue, and received \$98 million (NXL.0001.0007.1156 at .1158)	
34	[27] particular (c) Management Information – matters alleged regarding shortfall against FY17 forecast specifically	Doyle	Receipt of a document titled ‘Nuix Consolidated Financials and Key Result Indicators For Period Ended May 31, 2017’, dated 1 June 2017, <u>which was attached to an email from Marivic Buena-Baje to Doyle dated 5 June 2017 (NXL.0005.0005.0659).</u> The document stated that Nuix’s revenue budget for FY17 was \$137.5 million (NXL.0005.0005.0660 at .0674). <u>Receipt of a document titled ‘Nuix Consolidated Financials and Key Result Indicators For Period Ended July 31, 2017’, dated 2 August 2017</u>	

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
			<u>(NXL.0003.0032.8260), which was attached to an email from Marivic Buela-Baje to Doyle dated 3 August 2017 (NXL.0003.0032.8259). The document stated that Nuix received revenue in FY17 of \$102.1 million (NXL.0003.0032.8260 at .8274).</u>	
34	[27] particular (d) Management Information – matters alleged regarding shortfall against FY18–FY20 forecast specifically	Doyle, Silveri Bleich, Vawdrey, Lobban, Phillips, Castagna, Standen, Krupczak, Thomas	Receipt of a <u>draft of the Financial Information Report (NXL.0001.0018.7842)</u> by email dated 19 October 2020 (NXL.0001.0018.7841), <u>which contained the same information as set out in the particulars to paragraph 27 at sub-paragraph (d).</u> Attendance at a meeting of the DDC on 19 October 2020 at which the contents of the Financial Information Report (NXL.0001.0018.7842) were presented and discussed, as recorded in the minutes (MAC.9000.0001.0001 at .0051 and see .0053).	
34	[27] particular (e) Management Information – matters alleged regarding shortfall against Q1FY21 forecast specifically	Doyle, Silveri, Phillips, and Vawdrey Egan, Standen, Bleich, Castagna, Lobban, Doyle and Vawdrey Bleich, Vawdrey, Doyle, Thomas, Castagna,	Receipt of an email dated 14 October 2020 from Justin Herbert of PwC (NXL.0001.0018.3171) attaching a final draft of the Vendor Due Diligence Report dated 14 October 2020 (NXL.0001.0018.3178). <u>Attendance at a meeting of the Board held on 19 October 2020, at which Vawdrey gave an update on current trading (NXL.0006.0023.3496).</u> <u>Attendance at a meeting of the DDC on 9 October 2020, at which Doyle gave a presentation titled ‘DDC 7 Briefing Finance’, which stated that Nuix had achieved</u>	

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
		Krupczak, Lobban and Phillips	<u>unaudited revenue in Q1FY2021 of approximately \$33.4 million against an internal budget of \$41.8 million (prior to a \$6.1 million audit adjustment) (NXL.0001.0017.2690 at .2692), as recorded in the minutes (MAC.9000.0001.0001 at .0049).</u> <u>Attendance at a meeting of the DDC on 19 October 2020 at which the contents of the Financial Information Report (NXL.0001.0018.7842) were presented and discussed, as recorded in the minutes (MAC.9000.0001.0001 at .0051).</u> <u>Attendance at a meeting of the DDC on 18 November 2020 at which the final Financial Information Report (NXL.0001.0024.7979 at .8016) was tabled, which included a slide titled ‘YTD Sep-20 revenue bridge) which identified Nuix’s Q1FY21 pre-audit revenue of \$33.3m against a Q1FY21 forecast of \$37.4m on a comparable basis (NXL.0006.0027.0077 at .0037, as recorded in the minutes (MAC.9000.0001.0085 at .0087 and .0089).</u>	
34	[28] Management Information – matters alleged regarding achievability of FY19 revenue forecast	Vawdrey, Doyle	Email from Vawdrey to Doyle and others dated 3 April 2019 (NXL.0001.0004.5828), in which Vawdrey stated (inter alia) that “ <i>The board believes 180 is not achievable</i> ”.	

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
34	[29] Management Information – matters alleged regarding warning to sales heads about achievable forecasts	Vawdrey, Doyle	Email from Vawdrey to Doyle and others dated 3 April 2019 (NXL.0001.0004.5828) in which Vawdrey stated (inter alia): “ <i>our board has asked that you present in AUD or USD the revenue you will achieve in Q4. Do not present a number that you don’t believe can be achieved Do not plug a number that gets you to FY19 budget if you don’t believe it.</i> ”	
34	[30] Management Information – matters alleged regarding Doyle’s report to Vawdrey regarding missed forecast for 1HFY20	Doyle, Castagna, Vawdrey, Silveri, Phillips, Standen	Receipt of an email from Doyle to Vawdrey, Silveri, Phillips, Standen, Castagna and others dated 3 October 2019 (NXL.0700.0206.5921), in which Doyle wrote (inter alia): “ <i>Guys the rolled up forecast submitted for December is \$11m USD off budget - 20%. It has been this way for all of Q1 despite requests and pleads to work the numbers towards a credible and realistic gap</i> ”; and “ <i>As a group we cannot predict our numbers. 10 days out we stated \$42.6m expected forecast and \$47.3m best case forecast. We closed on \$39.31m...remembering this number was attained with the \$2.33m reseller gross up</i> ”.	
34	[31] Management Information – inability of Nuix to reliably produce accurate forecasts for its business.	Vawdrey, Doyle	As set out in the particulars above, Vawdrey and Doyle knew (or ought reasonably to have known) of the matters pleaded at paragraphs 24, 25, 27, 28, 29 and 30.	By reason of their awareness of the matters pleaded at paragraphs 24, 25, 27, 28, 29 and 30, Vawdrey and/or Doyle ought reasonably to have obtained knowledge of Nuix’s inability to reliably produce accurate forecasts for its business; see also the matters stated in the Skamser Report at [70]–[531].

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
34	Management Information – overall	Vawdrey, Doyle	As set out in the particulars above, Vawdrey and Doyle knew (or ought reasonably to have known) of each item of the Management Information.	
39	[38(a)] – Structural Change Information – Nuix’s inability to forecast the rate of consumption licence transition	Castagna, Phillips, Standen, and Vawdrey Doyle	Email from Castagna to Vawdrey, Standen, Phillips and others dated 24 September 2019 (NXL.0001.0006.1142), in which Castagna wrote that <i>“The most important risk on which we are silent is that our revenue generation will move (at a yet indeterminant pace) towards consumption revenue; this is the instrumental variable that will impact our cash position going forward”</i> (NXL.0001.0006.1142 at .1145).	Reasonable information systems or management procedures ought to have resulted in the information pleaded at [38(a)] coming to Doyle’s attention, having regard to his role and responsibilities as CFO.
39	[38(b)] – Structural Change Information – Nuix’s inability to forecast the financial impact of consumption rate transition	Doyle, Vawdrey and Silveri	By reason of their receipt of an email from Marco Anselmi to Doyle and Vawdrey dated 11 March 2021 (NXL.0001.0031.7945), which contained a response prepared by Silveri to an investor query that stated, in response to a question as to whether the <i>“shift to consumption-based and SaaS contracts”</i> would <i>“make it difficult to grow from the FY20 revenue base”</i> , that <i>“this is correct ... Similarly, and as we are experiencing with the increased uptake of customer migration to SaaS, our revenue recognition profile will continuously shift to over time recognition, rather than up-front.”</i> (NXL.0001.0031.7945 at .7946).	It is to be inferred from Silveri’s statements that Doyle, Vawdrey and Silveri were aware that (a) Nuix was unable to forecast the financial impact of the customer transitions to Consumption Model licences, and (b) these matters were known as at the Prospectus Date, based on Silveri’s acknowledgment that the transition would <i>“make it difficult to grow from the FY20 revenue base”</i> , and the fact that the transition to consumption pricing was underway as at the Prospectus Date.
41	There was material uncertainty as to	Doyle, Silveri	<u>Silveri understood from working with Doyle in September and October 2020 that, in preparing the</u>	

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
	whether Nuix's US customers would renew, and as to the terms upon which they would renew	Doyle, Phillips and Standen, as well as Vawdrey and Castagna by reason of subsequent emails indicating they were a recipient of emails addressed to the 'Executive Committee' distribution list	<u>Prospectus Growth Forecasts, Nuix had reduced expectations of expenditure from US government agencies due to the US elections in FY21 and the risk that political uncertainty in the region had the potential to affect sales in the US government domain for FY21: Silveri Statement at [186].</u> Receipt of a 'USG Region Monthly Report' dated 4 November 2020 (NXL.0001.0022.0548), which was attached to email from Dan Dorchinsky to Nuix's executive committee on 6 November 2020 (NXL.0001.0022.0547). The report stated (inter alia) that: <i>"A continuing resolution was signed into federal law on 9/30/20 which funded the U.S. federal government through December 11th. However, during the first two weeks of the fiscal year, the Department of Treasury allocated \$0 to the executive agencies and upsell deals were limited, as expected"</i> (NXL.0001.0022.0548 at .0549); and <i>"The ongoing global pandemic combined with the election has been having an effect on the state of State and Local government spend. Voter fraud and intimidation, as well as transparency surrounding Covid funds have caused SLG organizations to be scrutinized on public records requests."</i> (NXL.0001.0022.0548 at .0555).	
42	Political Risk Information – The US Political Uncertainties	Silveri, Doyle, Phillips and Standen, as well as Vawdrey and	See the particulars to [41] above. Additionally, Silveri, Vawdrey and/or Doyle knew of the matters in paragraph 40 by reason of:	The officers identified in Column C ought reasonably to have concluded, based on the information known to them, that

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
	materially increased the inability of Nuix reliably to forecast its financial performance or rate of customer transitions to consumption-based pricing.	Castagna by reason of subsequent emails indicating they were a recipient of emails addressed to the ‘Executive Committee’ distribution list	• Silveri’s receipt of the presentation referred to in particular (a) to paragraph 40 by email dated 15 July 2020 (NXL.0001.0009.6303, attaching NXL.0001.0009.6304); • The sending by Silveri and receipt by Vawdrey and Doyle of the Group Revenue Forecast referred to in particular (b) to paragraph 40 by email dated 10 November 2020 (NXL.0202.0002.0808, attaching NXL.0202.0002.0809).	the US Political Uncertainties materially increased the inability of Nuix reliably to forecast its financial performance or rate of customer transitions to consumption-based pricing for the reasons stated in the Skamser Report at [219]–[225] and [269]–[271]. Further, or alternatively, it is to be inferred that, by approving the Prospectus for lodgement, Bleich, Phillips, Lobban, Vawdrey and Thomas knew or ought reasonably to have known of the Political Risk Information because (a) the fact of US Political Uncertainties was disclosed in the Prospectus together with the risk that developments in respect of the Uncertainties could result in an ‘unexpected change to Nuix’s financial performance or prospects’; and (b) Vawdrey ought to have been aware of the matters pleaded in [31].
44	Particular (a) — Management Information	See particulars to [34] above		

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
44	Particular (b) — Structural Change Information	See particulars to [39] above		
44	Particular (c) — Political Risk Information	See particulars to [42] above		
44	Particular (d) — Incorrect FX Rate [defined in paragraph 42K]	Bleich, Phillips, Vawdrey, Castagna, Lobban, Thomas, Doyle and Silveri	It is to be inferred that the Nuix Officers who approved the Prospectus, and Silveri, knew that the Board Budget and the Prospectus Growth Forecasts assumed a foreign exchange rate of US\$1 to AU\$1.45 by reason of the matters stated in the Silveri Statement at [57] and [176], and by the Board's approval of the Board Budget (as pleaded in paragraph 42A and its particulars) and by the inclusion of that exchange rate in the Prospectus. Receipt of an email by Vawdrey, Castagna, Doyle and others from Phillips (NXL.0001.0018.7543) on 19 October 2020 attaching a draft Financial Information Report which quantified the impact of Nuix's Q1FY21 FX gains (losses) at -\$1.0m (NXL.0001.0018.7617 at .7652). Silveri's receipt of the draft Financial Information Report by email on 19 October 2020 (NXL.0001.0018.7841). Attendance by Phillips, Bleich, Vawdrey, Doyle, Thomas and Castagna at a meeting of the DDC on 19 October 2020 at which the contents of the draft	The Nuix Officers identified in Column C ought reasonably to have obtained knowledge that Nuix ought reasonably to have assumed a currency conversion rate of US\$1 to AU\$1.37 for revenue earned in US Dollars during FY21 by reason of the matters set out in the documents in Column D and the Johnston Report at [289]–[305], [308], [313], and [325]–[332]. Alternatively, the Nuix Officers identified in Column C ought reasonably to have obtained knowledge that the currency conversion rate in the Prospectus warranted an adjustment to its Prospectus Growth Forecast based on updated foreign exchange assumptions by reason of the matters set out in the Skamser Report at [406]–[435].

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
			Financial Information Report referred to above which quantified of Nuix's Q1FY21 FX gains(losses) at - \$1.0m (NXL.0001.0018.7842 at .7877 NXL.0006.0027.0077 at .0036) was presented and discussed, as recorded in the minutes (MAC.9000.0001.0001 at .0051 and see .0052). Attendance by Phillips, Lobban, Bleich, Vawdrey, Doyle, and Thomas at a meeting of the DDC on 18 November 2020 at which the contents of the Financial Information Report, which quantified of Nuix's Q1FY21 FX gains(losses) at -\$1.0m, were tabled (NXL.0001.0024.7977 NXL.0006.0027.0075 attaching NXL.0001.0024.7979 at .8015 NXL.0006.0027.0077 at .0036), as recorded in the minutes (MAC.9000.0001.0085 at .0087 and .0089).	Further or alternatively, the Nuix Officers identified in Column C ought reasonably to have obtained knowledge that the Incorrect FX Rate was materially below the prevailing FX rate by reason of the matters set out in the Johnston Report at [327]–[329].
44	Particular (e) — EY Deal Offset [defined in paragraph 42L]	Phillips, Vawdrey, Castagna, Standen, Bleich, Lobban, Egan and Doyle	By receipt of an email from Phillips to Vawdrey, Castagna, Standen, Bleich, Lobban, Egan and Doyle (NXL.0001.0020.6876) attaching an Audit Committee Report dated 22 October 2020 (NXL.0001.0019.7366), and by minutes of Nuix's Board meeting dated 30 October 2020 (PWC.2002.0001.5163) recording that the Audit Committee Report had been circulated to the Nuix Board, Nuix was aware by the Nuix Officers that, under a correct accounting treatment, \$12 million in revenue from the EY Deal would not be received by Nuix in FY21 and would instead be received in FY22.	The Nuix Officers identified in Column C ought reasonably to have obtained knowledge that it lacked reasonable grounds for determining that the \$12 million in revenue from the EY Deal that would not be received in FY21 would be wholly or substantially offset by converting existing annual contracts to multi-year contracts in FY21 by reason of the matters set out in the Skamser Report at [175]–

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
		Vawdrey, Doyle, Silveri and each member of Nuix's Board	It is to be inferred that Vawdrey, Doyle, Silveri and each member of Nuix's Board were aware of the deduction of \$12 million in revenue from the EY Deal and its offsetting by other revenue by reason of the matters set out in the Silveri Statement at [114(b)], [118(b)], [130]–[135] and [156]–[158], and by their receipt of the <u>PWC Forecast Analysis – Risks and Sensitivities dated 18 September 2020 (NXL.0001.0013.4783 at .4784) and the Financial Information Report (NXL.0006.0027.0077 at _0047).</u>	[243] and the Johnston Report at [287], and [333]–[442].
44	Particular (f) — Inadequate Risk Contingency [defined in paragraph 42N]	Vawdrey, Doyle, Silveri and each member of Nuix's Board	It is to be inferred that Vawdrey, Doyle, Silveri and each member of Nuix's Board were aware of: - the Risk Contingency reduction to the Board Budget, by reason of the matters in the Silveri Statement at [114(c)] and the Financial Information Report (NXL.006.0027.0077 at _0042); - the Renewals Risk, by reason of the Financial Information Report (NXL.006.0027.0077 at _0059); - the Q1 Shortfall, by reason of the Financial Information Report (NXL.006.0027.0077 at _0037); - the New Business Revenue Assumption, by reason of its inclusion in the Prospectus at p 174.	The Nuix Officers identified in Column C ought reasonably to have obtained knowledge that Nuix ought reasonably to have applied a Risk Contingency reduction to the Board Budget materially higher than \$12 million (ie, that the Risk Contingency was Inadequate) by reason of the matters set out in the Skamser Report at [244]–[290] (re the Risk Contingency reduction and the Inadequate Risk Contingency generally), [285]–[290] (re the Renewals Risk), [330]–[405] (re the Q1 Shortfall), and [476]–[480] (re the New Business Revenue

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
			The Financial Information Report (NXL.0001.0018.7842) was first presented in draft at the meeting of the DDC on 19 October 2020, at which Krupczak, Phillips, Lobban, Bleich, Vawdrey, Doyle and Thomas were present, as stated in the minutes (MAC9.9000.0001.0001 at .0051). The final copy of the Financial Information Report (NXL.0001.0024.7977 attaching NXL.0001.0024.7979) was tabled at the final meeting of the DDC on 18 November 2020, at which Krupczak, Phillips, Lobban, Bleich, Vawdrey, Doyle and Thomas were present, as stated in the minutes (MAC9.9000.0001.0085 at .0089). It is to be inferred that Silveri was aware of: - the Risk Contingency, from the matters stated at [114(c)] and [165] of the Silveri Statement and his receipt of the draft Financial Information Report on 19 October 2020 (NXL.0001.0018.7841); - the Renewals Risk, by reason of his receipt of the draft Financial Information Report on 19 October 2020 (NXL.0001.0018.7841); - the Q1 Shortfall, from the matters stated at [103]–[113] of the Silveri Statement his receipt of the draft Financial Information Report on 19 October 2020 (NXL.0001.0018.7841); and - the New Business Revenue Assumption, from the matters stated at [147]–[161] and [165] of the Silveri Statement.	Assumption), and the Johnston Report at [288], [443]–[475].

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
44	Particular (g) — Prospectus Financial Forecast Information	The Officers identified in the particulars (a) to (f) of paragraph 44, being Vawdrey, Doyle, Silveri and each member of Nuix’s Board.		The Nuix Officers identified in Column C who ought reasonably to have obtained knowledge of the matters set out in particulars (a) to (f) of paragraph 44, which are intended to operate individually and cumulatively to the extent proven, ought reasonably to have obtained knowledge of the Prospectus Financial Forecasts Information by reason of the matters set out in the Skamser Report at [436]–[513] and [515]–[523], alternatively the Johnston Report at [489]–[492].
54A	[54(a)] Counterfactual Prospectus Revenue Forecast Information – Nuix was aware that Nuix’s forecast statutory revenue for 1H21 was approximately \$85.3m	The Nuix Officers who ought reasonably to have obtained knowledge of the matters set out in paragraph 44(a)–(g), being Vawdrey, Doyle, Silveri and each member of Nuix’s Board.	<u>As to paragraph (a) of the Counterfactual Prospectus Revenue Forecast Information, as at 17 November 2020, Silveri was aware that Nuix’s internal target for revenue in 1H21 was \$85.2 million. Silveri Statement at [238]; PWC.2001.0003.5041 (annexed at p 2309 of Ex. DNS-1).</u> <u>As to paragraph (b) of the Counterfactual Prospectus Revenue Forecast Information, by email from Silveri dated 5 January 2021, Silveri, Vawdrey and Doyle became aware that Nuix’s statutory revenue result for 1H21 was approximately \$85.3 million (NXL.0001.0029.2921).</u>	By reason of the matters expressed in the Skamser Report at [436]–[513], the Nuix Officers identified in Column C, who ought reasonably to have obtained knowledge of the matters set out in paragraph 44(a)–(g) ought reasonably to have obtained knowledge of paragraphs (c) and (d) of the Counterfactual Prospectus Revenue Forecast Information.

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
55	[55(b)] – Nuix’s awareness of the Management Information, Structural Change Information, Political Risk Information, Counterfactual Prospectus Revenue Forecast Information, and Prospectus Financial Forecasts Information	See particulars to [34], [39], [42], [44] and [54A] above		
57	Awareness of materiality of December information.	Vawdrey, Bleich, Lobban, Phillips, Standen, Thomas and Doyle	By email from Thomas to Vawdrey, Bleich, Lobban, Phillips, Standen, Castagna and Doyle dated 6 January 2021 in which Thomas (inter alia) raised the issue as to “whether we still expect to meet prospectus forecasts”, and stated that “as part of the DD process, we agreed that we would have to announce if we do not believe Nuix has a realistic chance of achieving the prospectus forecasts (with a tolerance of 5%)” (NXL.0001.0029.3599). By email from Silvery to Doyle dated 14 January 2021 in which Silveri stated to the effect that a FY21 revenue forecast of \$182.5 million was an expected variation in earnings compared to Nuix’s published earnings guidance of between 5% and 10%, which required Nuix	

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
			“to form a judgment as to whether or not it is material” (NXL.0001.0029.3599). By email from Doyle to Vawdrey and Silveri dated 21 January 2021 with the subject line “continuous reporting disclosures”, in which Doyle stated that “One of the matters on the [Audit and Risk Committee] list is reporting to [the Board of Directors] on status of forecast” (NXL.0005.0011.4352 at .4353). By email from Vawdrey to Silveri and Doyle dated 25 January 2021 with the subject line “Re: continuous reporting disclosures”, in response to an email from Silveri that stated to the effect that Nuix forecast FY21 revenue of \$188 million, in which Vawdrey stated “We need to review in detail and see how we can get back to 193/194 as a minimum” (NXL.0005.0011.4352). By email from Silveri to Vawdrey and Doyle dated 10 February 2021, in which Silveri stated that a forecast of \$186.7 million “provides a degree of confidence in maintaining full year guidance (<+/-5% variance) albeit with little margin for error” (NXL.0005.0011.5301).	
70	[70(a)(i)] — Doyle knew of the Management Information	Doyle	See particulars to [34]	
70	[70(a)(ii)] — Doyle knew of the	Doyle	See particulars to [39]	

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
	Structural Change Information			
70	[70(a)(iii)] — Doyle knew of the Political Risk Information	Doyle	See particulars to [42]	
70	[70(a)(iv)] — Doyle knew of the Prospectus Financial Forecasts Information	Doyle	See particulars to [44]	
74A	Phillips was aware of the February 2021 Phillips Information — being that Nuix would achieve FY21 revenue of no more than \$186.7 million	Phillips	Receipt of a draft 1H Board pack emailed by Vawdrey to Phillips and others on 11 February 2021 (NXL.0001.0030.5688, NXL.0001.0030.5689).	
79B	Counterfactual February Downgrade	Vawdrey, Bleich, Thomas, Lobban, Phillips, Doyle, Egan, and/or Silveri		By reason of the matters expressed in the Skamser Report at [613]–[619], the Nuix Officers identified in Column C, who ought reasonably to have obtained knowledge of the Prospectus

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
				Financial Forecasts Information (as pleaded in paragraph 79C and particularised below), being Vawdrey, Bleich, Thomas, Lobban, Phillips, Doyle, Egan, and/or Silveri, ought reasonably to have obtained knowledge of the Counterfactual February Downgrade.
79C	Prospectus Financial Forecasts Information (as at 26 February 2021)	See particulars as to state of mind to [43], [44], and [54A] above.		
79C	Ibid	Silveri, Doyle	Receipt of a draft Board pack prepared by Silveri on or around 9 March 2021 (NXL.0202.0019.4873) which was attached to an email from Silveri to Doyle, Borchardt, and McGilvery dated 9 March 2021 (NXL.0202.0019.4872). The Board pack forecast FY21 revenue of \$188.2 million (NXL.0202.0019.4873 at .4879).	
79C	Ibid	Silveri, Vawdrey, Doyle	Receipt of an email from Silveri to Vawdrey, Doyle, Treese, Dorchinsky, Rees, Diora, Carroll and Tram dated 7 April 2021 (NXL.0001.0032.5810), in which Silveri advised that 50% of the open pipeline in 4Q21 had an expected close date in the last week of the quarter, and noted that deals that closed in FY21 but contained a licence start date in FY22 would not count towards FY21 revenue.	

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
79C	Ibid	Silveri, Vawdrey, Doyle	Receipt of a document titled “FY21 Forecast Guidance Update” (NXL.0005.0011.7383) which was attached to an email from Silveri to Vawdrey and Doyle dated 8 April 2021 (NXL.0005.0011.7382), in which Silveri informed Vawdrey and Doyle that he proposed updating Nuix’s FY21 statutory revenue guidance to the range of \$180–\$185m.	
79C	Ibid	Bleich, Lobban, Thomas, Phillips, Vawdrey, Egan, Doyle, Silveri	Attendance at a meeting of the Nuix Board on 9 April 2021, where Vawdrey informed Nuix’s directors that the current best estimate of statutory revenue forecast for FY21 was \$185 million (NXL.0201.0007.0018).	
79C	Ibid	Vawdrey, Bleich, Thomas, Lobban, Phillips, Doyle, Egan	Receipt of a draft narrative to form basis of an ASX disclosure (NXL.0202.0003.0074) which was attached to an email from Vawdrey to Bleich, Thomas, Lobban, Phillips, Doyle, Egan, and Clegg dated 14 April 2021 (NXL.0202.0003.0073). The disclosure referred to a revised statutory revenue range of \$180m to \$186m.	
79C	Ibid	Vawdrey, Bleich, Thomas, Lobban, Phillips, Doyle, Egan, Silveri	The matters in Column D above pertaining to paragraph 79C.	The Nuix Officers identified in Column C who knew of the matters set out in Column D, individually and cumulatively to the extent proven, ought reasonably to have obtained knowledge of the Prospectus Financial Forecasts Information by reason of the matters set out in the Skamser Report at [436]–[513], [532]–[619], and [620]–[638].

A. Paragraph	B. Information	C. Officer(s) aware of information	D. Document(s) or fact(s) evidencing awareness	E. Basis for inference of constructive awareness by officer (if applicable)
79D	Phillips was aware of the April 2021 Phillips Information — being that Nuix would achieve FY21 revenue of no more than \$185 million, alternatively \$180m to \$186m	Phillips	Attendance at a meeting of the Nuix Board on 9 April 2021, at which Vawdrey informed Nuix’s directors that the current best estimate of statutory revenue forecast for FY21 was \$185 million (NXL.0201.0007.0018). Receipt of an email from Vawdrey on 14 April 2021, attaching a draft ASX disclosure that referred to a revised statutory revenue range of \$180m to \$186m (NXL.0202.0003.0073, NXL.0202.0003.0074, NXL.0202.0003.0079)	
84B	Counterfactual April Downgrade.	Doyle, Silveri	<u>Receipt of a document titled “Draft – Forecast Validation” by email to Doyle and Silveri dated 19 April 2021 (NXL.0001.0032.8836, attaching NXL.0001.0032.8841).</u>	By reason of the matters expressed in the Skamser Report at [642]–[706] and [708]–[741], the Nuix Officers in Column C ought reasonably to have been aware of the Counterfactual April Downgrade.
84C	Alternative April Information.	Doyle, Silveri	<u>Receipt of a document titled “Draft – Forecast Validation” by email to Doyle and Silveri dated 19 April 2021 (NXL.0001.0032.8836, attaching NXL.0001.0032.8841).</u>	By reason of the matters expressed in the Skamser Report at [642]–[706] and [708]–[741], the Nuix Officers in Column C ought reasonably to have been aware of the Alternative April Information.