Case: S ECI 2021 04360
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IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

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

SIXTH FURTHER AMENDED CONSOLIDATED STATEMENT OF CLAIM

Note to this pleading

This version of the pleading was prepared based on the "clean" pleading provided to the chambers of the Honourable Justice Nichols on 25 June 2026, and incorporates the changes made in the 3FACSOC filed on 3 August 2026, the 4FACSOC filed on 11 August 2026 and the 5FACSOC filed on 18 August 2026. Amendments marked in orange are made by leave granted on 26 August 2026. Placeholders in the style of [*not used*] have been inserted for struckthrough text to preserve original paragraph numbering, including in several cases where the original marked up version of this document did not include such a placeholder on a full struckthrough sub-paragraph.

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Filed on behalf of: The Plaintiffs

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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. <u>Nuix</u>

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;

(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**);

    (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).

(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.

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**).*

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

(a) 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.

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. <u>Secondary (on-market) trading</u>

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 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; and

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

(**red lights**).

(c) [not used]

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).*

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*]

(b) staff morale, 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).

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 around 20%; and

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

C.1.3. [not used]

26. [*not used*]

C.1.4. Inability reliably to forecast financial performance

27. In the period from and including 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.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).*

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).*

29. In April 2019, Vawdrey 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; 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.*"*

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 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*".*

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 24 to 30 above.

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

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

32. [*not used*]

33. [*not used*]

C.1.5.1. Knowledge of Nuix as at Prospectus Date

34. By not later than the Prospectus Date, Nuix (by the Nuix Officers) knew, or ought reasonably to have known, of each of the matters in paragraphs 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.*

C.2. Nuix Structural Information

C.2.1. Customer shift towards consumption-based pricing

35. Further or in the alternative to the matters in paragraphs 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 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.*

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.

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).*

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 ought reasonably to have known, of the matters in paragraph 38 above (the **Structural Change Information**).

Particulars

See Annexure C.

C.3. <u>US Political Risk Information</u>

40. Further and in the alternative to the matters in paragraphs 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).

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) 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) The material uncertainty arose from:

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

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

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

(d) See further Annexure C.

42. By not later than the Prospectus Date, Nuix by the Nuix Officers knew, or ought reasonably to have known 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.

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, alternatively, AU$1.39 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], [325] to [332]; Reply Expert Report of Rowan Johnston dated 3 July 2026 (**Johnston Reply Report**) at [243], [292].*

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 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. On and from the Prospectus Date, 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) [*not used*]

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

(i) [*not used*]

(ii) materially less than $193.5m;

(**Prospectus Financial Forecasts Information**).

Particulars

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;

((b) as set out in the Skamser Report at [437]–[485], [493]–[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 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]–[485]; [493]–[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].

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 ought reasonably to have known, 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.

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) [*not used*]

(references to the **Prospectus Growth Forecasts** in this pleading and the expert evidence should hereafter be read as a reference to the Prospectus Revenue Growth Forecast).

D.2. Prospectus Omissions

46. [*not used*]

47. [*not used*]

48. [*not used*]

D.3. Misleading or deceptive conduct

49. At the time of making 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;

3. further or in the alternative to '2', indicated the existence of a likelihood or, alternatively, 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. [*not used*]

   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 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. 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. In the premises of paragraphs 43, 44 and 49A, the Prospectus Growth Forecasts were 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 $180.5 million and potential downside to $160.5 million; alternatively

Particulars

The Pathfinder dated 12 November 2020 is NXL.0009.0008.2215.

Skamser Report at [436]–[485], [493]–[513] ($172.5m base, $180.5m potential upside, $160.5m potential downside).

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

(c) Nuix's forecast statutory and pro forma revenue for FY21 was more than $180.5 million and less than $184.7 million,

(**Counterfactual Prospectus Growth Forecast**).

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 $3.79 (**Counterfactual Offer Price**);

Particulars

Johnston Report at [277]–[282], as corrected in Johnston Reply Report in Table RJ4, page 126.

(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 $2.82 to $3.79 set out in the Johnston Report at Table RJ4 (row commencing '5%').

Johnston Report, page 85, as corrected in Johnston Reply Report, Table RJ4, page 126.

49F. [*not used*]

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

(a) [*not used*]

(b) [*not used*]

(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**);

(e) further or alternatively, in the case of Mr Batchelor and some Group Members, acquired Nuix Shares in reliance on:

(i) the Prospectus Revenue Growth Forecast; further or alternatively,

(ii) the Prospectus Implied Representations,

and thereby suffered No-Transaction Loss, Alternative Investment Loss, or Inflated Offer Price Loss,

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

Particulars

In deciding to purchase Nuix Shares in the IPO, the Second Plaintiff read and relied on, inter alia, the Prospectus Revenue Growth Forecast contained in the Prospectus (Outline of Evidence dated 1 August 2025, [16]–[29]). Mr Batchelor acquired 3,766 Nuix Shares by subscription in the IPO on 4 December 2020 (BAT.0001.0001.0118; BAT.0001.0001.0052).

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 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) [*not used*]

        (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*.

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 item 2 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) 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 $180.5 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) [*not used*]

(ii) [*not used*]

(iii) [*not used*]

(iiia) the Counterfactual Prospectus Revenue Forecast Information; alternatively

(iv) the Prospectus Financial Forecasts Information;

(v) on and from 11 February 2021, the February 2021 Phillips Information (pleaded at paragraph 74A below);

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*]

Particulars

See Annexure C.

56. Each of:

(a) [*not used*]

(b) [*not used*]

(c) [*not used*]

(ca) the Counterfactual Prospectus Revenue Forecast Information; further or alternatively

(d) the Prospectus Financial Forecasts Information;

(e) [*not used*]

(f) the February 2021 Phillips 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 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.

The plaintiffs further refer to and repeat the matters set out in paragraphs 23 to 44 and 55 above and their particulars.

(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*]

59. In the premises set out in paragraphs 57 and 59, on and from 4 December 2020 to 25 February 2021, or, in the case of the February 2021 Phillips Information, on and from 11 February 2021 to 25 February 2021, Nuix was required immediately to notify the ASX of the December Information.

60. 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.

61. In the premises, on and from 4 December 2020 to 25 February 2021, or, in the case of the February 2021 Phillips Information, on and from 11 February 2021 to 25 February 2021, Nuix contravened s 674(2) of the *Corporations Act*.

F.2. <u>Continuing effect of Prospectus – misleading conduct</u>

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*

            3. [*not used*]

Particulars

The plaintiffs refer to and repeat the matters set out in paragraphs 43, 44, 49A, 49B and 55 above and their particulars.

G. <u>SECONDARY MARKET – POST-DECEMBER DEVELOPMENTS</u>

G.1. Nuix corporate governance

63. [*not used*]

64. [*not used*]

65. [*not used*]

66. [*not used*]

67. [*not used*]

68. [*not used*]

69. [*not used*]

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

70. [*not used*]

71. [*not used*]

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

72. [*not used*]

73. [*not used*]

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

74. [*not used*]

G.3. <u>February 2021</u>

74A. As at 11 February 2021, Phillips and Nuix were 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.

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].*

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

77. [*not used*]

78. [*not used*]

79. At no time prior to 21 April 2021 did Nuix take any or any adequate steps to withdraw or qualify the February Reaffirmation, which was accordingly a continuing representation.

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

(a) statutory revenue for FY21 of $171.5 million, alternatively, $171.5 million with potential upside to $182 million and potential downside to $158 million;

(b) [*not used*]

(**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 and Nuix were 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;

(ab) [*not used*]

(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 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].

81A. [*not used*]

82. [*not used*]

83. [*not used*]

84. [*not used*]

84A. [*not used*]

84B. [*not used*]

84C. [*not used*]

G.5. <u>May 2021</u>

85. [*not used*]

86. [*not used*]

87. [*not used*]

88. [*not used*]

89. [*not used*]

90. [*not used*]

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 ;

(ab) [*not used*]

(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 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].

93. [*not used*]

94. [*not used*]

95. [*not used*]

G.6. 29 June – final corrective disclosure

96. [*not used*]

97. [*not used*]

H. SECONDARY MARKET – POST-DECEMBER CONTRAVENTIONS

H.1. Continuous disclosure

98. At all material times:

(a) the February Update;

(b) further or alternatively, by and following 9 April 2021, alternatively 14 April 2021;

(c) [*not used*]

(d) [*not used*]

each of:

(i) [*not used*]

(ii) [*not used*]

(iii) [*not used*]

(iiia) [*not used*]

(iiib) the Counterfactual February Downgrade (from 26 February 2021 until no later than 20 April 2021);

(iiic) the April 2021 Phillips Information (from 9 April 2021, alternatively 14 April 2021, until no later than 20 April 2021);

(iiid) [*not used*]

(iv) the Prospectus Financial Forecasts Information;

(v) [*not used*]

(vi) [*not used*]

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

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) [*not used*];

(iv) from 26 February 2021 to 20 April 2021 – the February Reaffirmation;

(v) [*not used*];

(vi) [*not used*]

(vii) [*not used*]

(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) alternatively, in the case of the April 2021 Phillips Information, on and from 9 April 2021, alternatively 14 April 2021, until no later than 20 April 2021;

(c) [*not used*];

(d) [*not used*];

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, until no later than 20 April 2021;

(b) alternatively, in the case of the April 2021 Phillips Information, on and from 9 April 2021, alternatively 14 April 2021, until no later than 20 April 2021;

(c) [*not used*];

(d) [*not used*]

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, the:

(a) February Reaffirmation;

(b) [*not used*]

(c) [*not used*]

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, 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, Nuix:

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

(i) February Re-affirmation;

(ii) [*not used*]

accordingly, the February Reaffirmation was 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*;

(iii) [*not used*]

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*]

109. By reason of the matters in paragraph 107, Nuix contravened:

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

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

(c) [*not used*]

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; alternatively

3. from 11 February 2021, disclosed the February 2021 Phillips 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, or after making, the February Reaffirmation; alternatively

3. from 9 April 2021, disclosed the April 2021 Phillips Information.

(iii) [*not used*]

(iv) [*not used*]

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 Growth Forecasts;

B. Prospectus Implied Representations;

C. [*not used*];

D. February Reaffirmation;

E. [*not used*]

F. [*not used*]

G. [*not used*]

H. [*not used*]

I. [*not used*]

J. [*not used*]

as predated each such acquisition (the matters in 'A' to 'D', 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) [not used]

(b) [not used]

(c) [not used]

(d) [not used]

*(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**);*

i. alternatively, for those On-Market Claimants who, but for the contraventions, would have acquired an alternative investment — Alternative Investment loss.

Particulars of the Plaintiffs' loss will be provided 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*;

(iii) [*not used*].

J.2. Phillips' involvement

112. [*not used*]

113. [*not used*]

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, Prospectus Financial Forecasts Information, Counterfactual February Downgrade, February 2021 Phillips Information, or April 2021 Phillips Information existed;

(b) whether and if so at what time(s) Nuix had the Management Information, Political Risk Information, Structural Change Information, Prospectus Financial Forecasts Information, or Counterfactual February Downgrade, February 2021 Phillips Information, or April 2021 Phillips 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 Prospectus Financial Forecasts Information, Counterfactual February Downgrade, February 2021 Phillips Information, or April 2021 Phillips Information, 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*;

e. [*not used*]

B. Interest.

C. Costs.

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

Dated: 10 August 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.

The Third Further Amended Consolidated Statement of Claim was prepared by P Collinson, K Burke, J Page, T Rawlinson and K Browne.

The Fourth Further Amended Consolidated Statement of Claim was prepared by P Collinson, K Burke, J Page, T Rawlinson and K Browne.

The Fifth Further Amended Consolidated Statement of Claim was prepared by P Collinson, K Burke, J Page, T Rawlinson and K Browne.

The Sixth Further Amended Consolidated Statement of Claim was prepared by P Collinson, K Burke, J Page, T Rawlinson and K Browne.

Shine Lawyers

Solicitors for the Plaintiffs

L. INDEX TO DEFINED TERMS

[not used]
'**red lights**' is defined in paragraph 23.
[not used]
[not used]
[not used]
31 May Downgrade is defined in paragraph 91(ab).
31 May Express Representations is defined in paragraph 91.
[not used]
ACL is defined in paragraph 5(c)(iii).
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.
April Express Representations is defined in paragraph 80.
[not used]
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).
[not used]
[not used]
[not used]
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).
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Counterfactual Prospectus Revenue Forecast Information is defined in paragraph 54A.
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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.
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February Reaffirmation is defined in paragraph 75(b).
February Update is defined in paragraph 75.
[not used]
Group Members is defined in paragraph 3.
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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).
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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.
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.
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MCAL is defined in paragraph 14.
MCHPL is defined in paragraph 15(c).
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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.
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Post-IPO Claimants' Loss and Damage is defined in 50B.
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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.
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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.
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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 ($)
4/12/2020	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 auidence.		Add additional engineering resources. Additional resources required.
Nuix SDK	Moving forward as best as possible with 1 engineer and shared testing resources but effectively at a crawl. Heavy dependences on CLS & engine.		Drive alignment across engineering, marketing, training, documentation to do more with less. Specific staffing requests & justifications already submitted.
Nuix Automation	No solid plan for GTM or long-term direction. Betas ongoing with Key Customers.		Automation PM starts Feb. 1st to begin putting together the plan
Nuix Discover®	Dev capacity not aligned with business needs/goals. Unpredictable backlog makes planning and delivery estimation challenging.		Continue to actively recruit for open positions and bring new hires up to to speed.
Nuix Investigate®	Steady, but slow progress towards enterprise readiness. Chat & Mobile features well received by market and continue to be focus. Progressing A&I replacement blocked by competing Engine priorities. Falling behind competition in delivering best in market analytics and dashboards. Current license model needs updating due to high availability changes.		Actively recruiting for open positions.
Nuix Adaptive Security	Lack of QA is slowing development and leading to increased support/maintenance and customer dissatisfaction. Looming "at scale" deployments at Pfizer and FAA which we are unprepared for.		Stop most feature development to address scaling issues at the architectural level
Nuix Enterprise Collection Center	Encountering a significant number of challenges in corporations due to lack of enterprise requirements. Unable to take on any development that touches server code-base due to lack of skillset on the remaining team.		Put together a hiring plan to bring on experienced server developer w/ enterprise product experience
Nuix Collector Suite	Slight declining trend in directly attributed revenue, likely due to decrease in bundles being used.		Create a unified collections/connector platform which drives monetization through increased data volumes

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	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).	
		Standen, Phillips, Vawdrey	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*".	It is to be inferred that the email from Standen to Phillips and Vawdrey was prepared in response to the pleaded presentation.
		Doyle		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" (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 (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)]. 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 that Nuix had spent $50.5 million against a budget of	

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)
			$60.8 million on 'Total Research and Development' (at .5120) in FY20, representing a $10.3 million underspend.	
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, which was attached to an email from Marivic Buela-Baje to Doyle dated 5 June 2017 (NXL.0005.0005.0659). The document stated that Nuix's revenue budget for FY17 was $137.5 million (NXL.0005.0005.0660 at .0674). Receipt of a document titled 'Nuix Consolidated Financials and Key Result Indicators For Period Ended July 31, 2017', dated 2 August 2017 (NXL.0003.0032.8260), which was attached to an email	

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)
			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).	
34	**[27] particular (d)** Management Information – matters alleged regarding shortfall against FY18–FY20 forecast specifically	Doyle, Silveri	Receipt of a draft of the Financial Information Report (NXL.0001.0018.7842) by email dated 19 October 2020 (NXL.0001.0018.7841), which contained the same information as set out in the particulars to paragraph 27 at sub-paragraph (d).	
		Bleich, Vawdrey, Lobban, Phillips, Castagna, Standen, Krupczak, Thomas	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	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). 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).	
		Bleich, Vawdrey, Doyle, Thomas, Castagna,	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 unaudited revenue in Q1FY2021 of approximately $33.4	

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	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). 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). 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).	
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 "*The board believes 180 is not achievable*".	
34	**[29]** Management Information –	Vawdrey, Doyle	Email from Vawdrey to Doyle and others dated 3 April 2019 (NXL.0001.0004.5828) in which Vawdrey stated	

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)
	matters alleged regarding warning to sales heads about achievable forecasts		(inter alia): "*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*."	
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): "*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*"; and "*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*".	
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].
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.	

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)
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 "*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 .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 "*shift to consumption-based and SaaS contracts*" would "*make it difficult to grow from the FY20 revenue base*", that "*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*." (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 "*make it difficult to grow from the FY20 revenue base*", and the fact that the transition to consumption pricing was underway as at the Prospectus Date.
41	There was material uncertainty as to whether Nuix's US customers would renew, and as to the	Doyle, Silveri	Silveri understood from working with Doyle in September and October 2020 that, in preparing the Prospectus Growth Forecasts, Nuix had reduced expectations of expenditure from US government agencies due to the US elections in FY21 and the risk	

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)
	terms upon which they would renew		that political uncertainty in the region had the potential to affect sales in the US government domain for FY21: Silveri Statement at [186].	
		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	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: "*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); and "*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).	
42	Political Risk Information – The US Political Uncertainties materially increased the inability of Nuix	Silveri, Doyle, Phillips and Standen, as well as Vawdrey and Castagna by reason of subsequent emails indicating	See the particulars to [41] above. Additionally, Silveri, Vawdrey and/or Doyle knew of the matters in paragraph 40 by reason of: • Silveri's receipt of the presentation referred to in particular (a) to paragraph 40 by email dated	The officers identified in Column C ought reasonably to have concluded, based on the information known to them, that the US Political Uncertainties materially increased the inability of Nuix reliably to forecast its

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)
	reliably to forecast its financial performance or rate of customer transitions to consumption-based pricing.	they were a recipient of emails addressed to the 'Executive Committee' distribution list	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).	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		
44	**Particular (b)** — Structural Change Information	See particulars to [39] 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 (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 Financial Information Report referred to above which quantified of Nuix's Q1FY21 FX gains(losses) at -$1.0m (NXL.0001.0018.7842 at .7877) was presented	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, alternatively, AU$1.39 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] and the Johnston Reply Report at [243], [292]. 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)
			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 attaching NXL.0001.0024.7979 at .8015), 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 Vawdrey, Doyle, Silveri and each	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. It is to be inferred that Vawdrey, Doyle, Silveri and each member of Nuix's Board were aware of the deduction of	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]–[243] and the Johnston Report at [287], and [333]–[442].

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)
		member of Nuix's Board	$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 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).	
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 in inclusion in the Prospectus at p 174. 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	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 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)
			and Thomas were present, as stated in the minutes (MAC.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 (MAC.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.	
44	**Particular (g)** — Prospectus	The Officers identified in the particulars (a) to (f)		The Nuix Officers identified in Column C who ought reasonably to have obtained knowledge 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)
	Financial Forecast Information	of paragraph 44, being Vawdrey, Doyle, Silveri and each member of Nuix's Board.		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.	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). 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).	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.
55	**[55(b)]** – Nuix's awareness of the Management Information,	See particulars to [34], [39], [42], [44] and [54A] 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)
	Structural Change Information, Political Risk Information, Counterfactual Prospectus Revenue Forecast Information, and Prospectus Financial Forecasts Information			
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 "to form a judgment as to whether or not it is material" (NXL.0001.0029.3599).	

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)
			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 Structural Change Information	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)
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 Financial Forecasts Information (as pleaded in paragraph 79C and particularised below), being

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, 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, Borcherdt, 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.	
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	

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)
			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].
79D	Phillips was aware of the **April 2021 Phillips**	Phillips	Attendance at a meeting of the Nuix Board on 9 April 2021, at which Vawdrey informed Nuix's directors 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)
	Information — being that Nuix would achieve FY21 revenue of no more than $185 million, alternatively $180m to $186m		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	[*not used*]			
84C	[*not used*]			