



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

No. S ECI 2021 04360

Case: S ECI 2021 04360

Filed on: 04/11/2022 03:40 PM

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

DEFENCE

Date of Document: 4 November 2022

Solicitors Code: 112 452

Filed on behalf of: First Defendant

Telephone: (02) 9263 4413

Prepared by: Gilbert + Tobin

Ref: 1048881

Level 35, Tower Two

Email: RHarris@gtlaw.com.au

International Towers Sydney

ANanayakkara@gtlaw.com.au

Barangaroo Avenue, Barangaroo NSW 2000

Headings are used in this Defence for convenience only. They do not form part of the First Defendant's response to the Consolidated Statement of Claim dated 6 September 2022 (**SOC**).

Unless the context requires otherwise, the First Defendant adopts the defined terms in the SOC, but does not admit any factual assertions contained in, or in any way implied by, any defined term used in the SOC and repeated in this Defence.

A. PRELIMINARY

A.1. Plaintiffs and Group Members

1 In answer to paragraph 1 of the SOC, the First Defendant (**Nuix**):

(a) admits paragraph (a);

(b) in response to paragraph (b), says that:

(i) a Joel William Lay (**Mr Lay**) purchased 88 Nuix shares on 15 January 2021;

(ii) on 1 March 2021, Mr Lay sold 88 Nuix shares; and

(c) otherwise denies the paragraph.

2 In answer to paragraph 2 of the SOC, Nuix:

- (a) admits paragraph (a);
- (b) in response to paragraph (b), says that:
 - (i) Mr Batchelor first purchased Nuix shares on 11 December 2020;
 - (ii) Mr Batchelor purchased 79,334 Nuix shares in the period between 18 November 2020 and 29 June 2021;
 - (iii) Mr Batchelor sold 49,334 Nuix shares in the period between 18 November 2020 and 29 June 2021; and
- (c) otherwise denies the paragraph.

3 In answer to paragraph 3 of the SOC, Nuix:

- (a) admits that the proceeding is commenced as a group proceeding pursuant to Part 4A of *Supreme Court Act 1986* (Vic) by the Plaintiffs on their own behalf and on behalf of persons who or which acquired Nuix shares in the period from 18 November 2020 to 29 June 2021 (**Relevant Period**) as described in the paragraph (together and severally **Group Members**);
- (b) denies that the Plaintiffs or Group Members have suffered loss or damage by reason of the matters set out in the SOC; and
- (c) otherwise denies the paragraph.

4 Nuix does not know and therefore cannot admit paragraph 4 of the SOC.

A.2. Nuix

5 In answer to paragraph 5 of the SOC, Nuix:

- (a) says that:
 - (i) Nuix Australia Pty Ltd was incorporated on 15 November 2005 as a proprietary company;
 - (ii) on 21 December 2005, Nuix Australia Pty Ltd changed its name to Nuix Pty Ltd;
 - (iii) on 6 November 2020, Nuix Pty Ltd became a public company known thereafter as Nuix Ltd and listed on the ASX on 4 December 2020;
 - (iv) a reference in this Defence to 'Nuix' is a reference to Nuix Pty Ltd or Nuix Ltd, as applicable; and
- (b) otherwise admits paragraph 5 of the SOC.

6 Nuix admits paragraph 6 of the SOC.

A.3. Nuix officers

7 In answer to paragraph 7 of the SOC, Nuix:

- (a) says that:

- (i) Jeffrey Laurence Bleich (**Bleich**) has been a director of Nuix since 11 January 2017;
 - (ii) Bleich has been an independent non-executive director of Nuix Ltd since 18 November 2020;
 - (iii) Bleich has been the Chairman of Nuix Ltd since 18 November 2020;
 - (iv) Bleich has been an officer of Nuix within the meaning of s9 of the *Corporations Act 2001* (Cth) (**Corporations Act**) since 11 January 2017; and
 - (b) otherwise denies the paragraph.
- 8 In answer to paragraph 8 of the SOC, Nuix:
- (a) says that:
 - (i) Rodney Graeme Vawdrey (**Vawdrey**) was a director of Nuix from 20 September 2017 to 3 December 2021;
 - (ii) Vawdrey was the Managing Director of Nuix Ltd from 4 December 2020 to 3 December 2021;
 - (iii) Vawdrey was the Group Chief Executive Officer of Nuix Ltd from 4 December 2020 to 3 December 2021;
 - (iv) Vawdrey was an officer Nuix within the meaning of s9 of the Corporations Act from 20 September 2017 to 3 December 2021; and
 - (b) otherwise denies the paragraph.
- 9 In answer to paragraph 9 of the SOC, Nuix:
- (a) says that Sir Iain Robert Lobban (**Lobban**) became an independent non-executive director of Nuix Ltd on 18 November 2020;
 - (b) says that Lobban became a member of Nuix's Audit and Risk Management Committee on 18 November 2020; and
 - (c) otherwise denies paragraph.
- 10 In answer to paragraph 10 of the SOC, Nuix:
- (a) says that Susan Patricia Thomas (**Thomas**) became an independent non-executive director of Nuix Ltd on 18 November 2020;
 - (b) says that Thomas was appointed as the Chair of Nuix's Audit and Risk Management Committee on 18 November 2020; and
 - (c) otherwise denies the paragraph.
- 11 In answer to paragraph 11 of the SOC, Nuix:
- (a) says that:
 - (i) Stephen Doyle (**Doyle**) was the Chief Financial Officer of Nuix Ltd from 4 December 2020 to 30 June 2021;

- (ii) Doyle was an officer of Nuix Ltd within the meaning of s9 of the Corporations Act from 4 December 2020 to 30 June 2021; and
 - (b) otherwise denies the paragraph.
- 12 In answer to paragraph 12 of the SOC, Nuix:
- (a) says that:
 - (i) Daniel Phillips (**Phillips**) was a director of Nuix from 9 June 2011 to 31 August 2022;
 - (ii) Phillips was a non-executive director of Nuix Ltd from 18 November 2020 to 31 August 2022;
 - (iii) Phillips was a member of Nuix Ltd's Audit and Risk Management Committee from 18 November 2020 to 31 August 2022;
 - (b) admits that Phillips was an officer of Nuix within the meaning of s9 of the Corporations Act from 9 June 2011 to 31 August 2022; and
 - (c) otherwise admits the paragraph.
- 13 In answer to paragraph 13 of the SOC, Nuix:
- (a) repeats paragraphs 7 to 12 above;
 - (b) admits that Nuix was aware of information within the meaning of r 19.12 of the Listing Rules of the ASX (**ASX Listing Rules**) if a Nuix Officer came, or ought reasonably to have come, into possession of the information in the course of the performance of their duties as an officer of Nuix; and
 - (c) otherwise denies the paragraph.

A.4. Macquarie Capital

- 14 Nuix admits paragraph 14 of the SOC.
- 15 Nuix admits paragraph 15 of the SOC.

B. NUIX SECURITIES MARKET

B.1. Initial Public Offering

- 16 Nuix admits paragraph 16 of the SOC.
 - 17 In answer to paragraph 17 of the SOC, Nuix:
 - (a) says that on the Prospectus Date Nuix issued the Prospectus;
 - (b) says that the Prospectus related to:
 - (i) an initial public offering of fully paid ordinary shares by Nuix; and
 - (ii) the sale of existing fully paid ordinary shares by Nuix SaleCo Limited;
- (collectively, the **Shares**),

- (c) relies on the Prospectus in its entirety; and
 - (d) otherwise denies the paragraph.
- 18 Nuix admits paragraph 18 of the SOC.
- 19 In answer to paragraph 19 of the SOC, Nuix:
- (a) says that MCAL consented to be named as Joint Lead Manager and underwriter of the Offer (as defined in the Prospectus as “an initial public offering to acquire fully paid ordinary shares in the capital of Nuix”), together with Morgan Stanley Australia Securities Limited;
 - (b) repeats sub-paragraph 17(b) above;
 - (c) relies on the Prospectus in its entirety; and
 - (d) otherwise denies the paragraph.

B.2. Secondary (on-market) trading

- 20 In answer to paragraph 20 of the SOC, Nuix:
- (a) says that, between 4 December 2020 and 29 June 2021, Nuix’s shares were:
 - (i) listed on a financial market operated by the ASX;
 - (ii) ED securities within the meaning of s 111AE of the Corporations Act;
 - (iii) quoted ED securities within the meaning of s 111AM of the Corporations Act; and
 - (iv) financial products within the meaning of the Corporations Act; and
 - (b) otherwise denies the paragraph.
- 21 In answer to paragraph 21 of the SOC, Nuix:
- (a) says that between 4 December 2020 and 29 June 2021 Nuix was:
 - (i) a listed disclosing entity within the meaning of s 111AL(1) of the *Corporations Act*; and
 - (ii) subject to and bound by the ASX Listing Rules;
 - (b) otherwise denies the paragraph.
- 22 In answer to paragraph 22 of the SOC, Nuix:
- (a) says that, between 4 December 2020 and 22 March 2021, s 674(2) of the *Corporations Act* applied to Nuix, as modified by:
 - (i) Corporations (Coronavirus Economic Response) Determination (No. 2) 2020; and
 - (ii) Corporations (Coronavirus Economic Response) Determination (No. 4) 2020;
 - (b) admits that, between 23 March 2021 and 29 June 2021, s674(2) of the Corporations Act applied to Nuix; and

(c) otherwise denies the paragraph.

C. LEAD-UP TO IPO

C.1. Nuix Management Information

C.1.1. 'Red lights' on Nuix products

23 Nuix denies paragraph 23 of the SOC.

C.1.2 Engineering staff and R&D

24 Nuix denies paragraph 24 of the SOC.

25 In answer to paragraph 25 of the SOC, Nuix:

(a) admits it spent \$50.8m on R&D in FY20 (against a budget of \$60.8m); and

(b) otherwise denies paragraph.

C.1.3. Nature of FY20 earnings result

26 Nuix denies paragraph 26 of the SOC.

C.1.4. Alleged inability to accurately forecast financial performance

27 Nuix denies paragraph 27 of the SOC.

28 Nuix denies paragraph 28 of the SOC.

29 Nuix denies paragraph 29 of the SOC.

30 Nuix denies paragraph 30 of the SOC.

31 Nuix denies paragraph 31 of the SOC.

C.1.5. Castagna's alleged influence over Nuix management

32 Nuix denies paragraph 32 of the SOC.

33 Nuix denies paragraph 33 of the SOC.

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

34 Nuix denies paragraph 34 of the SOC.

C.2. Nuix Structural Information

C.2.1. Customer shift towards consumption-based pricing

35 In answer to paragraph 35 of the SOC, Nuix:

(a) says that as at the Prospectus Date, Nuix had the following statutory revenue recognition policy for the delivery of Nuix software on-premise or in a customer-hosted cloud environment:

- (i) where a multi-year deal contained cancellation or termination clauses (**annual multi-year deals**), the remaining contract value would be recognised on an annual revenue recognition basis, assuming other relevant criteria are satisfied;
 - (ii) where a multi-year deal contained no cancellation or termination clauses (**upfront multi-years deals**), the remaining contract value would be recognised as revenue at the time the contract was entered into, assuming other relevant criteria are satisfied;
 - (b) says that, as at the Prospectus Date, Nuix had the following statutory revenue recognition policy for the delivery of Nuix software in a Nuix-hosted cloud environment:
 - (i) before any revenue recognition decision was made, Nuix would assess each software licence based on the contract's terms;
 - (ii) if considered "right to access licences" under AASB 15 and other relevant criteria were satisfied, revenue would be recognised based on the value of the services provided in the relevant period (referred to as "**usage basis**" revenue recognition);
 - (c) says that as at the Prospectus Date, usage basis revenue recognition was applied to **Consumption Licences** delivered via a Nuix-hosted cloud environment; and
 - (d) otherwise denies the paragraph.
- 36 In answer to paragraph 36 of the SOC, Nuix:
- (a) refers to and repeats paragraph 35 above;
 - (b) admits that the effect of Nuix's accounting policy was that statutory revenue from upfront multi-year deals may, depending on the date of the relevant deals, be recognised as statutory revenue in earlier accounting periods than for Consumption Licences in Nuix's accounts; and
 - (c) otherwise denies the paragraph.
- 37 In answer to paragraph 37 of the SOC, Nuix:
- (a) admits that, from not later than July 2019, some of Nuix's customers were demonstrating a preference for purchasing Consumption Licences; and
 - (b) otherwise denies the paragraph.
- 38 Nuix denies paragraph 38 of the SOC.

C.2.2. Knowledge of Nuix as at Prospectus Date

39 Nuix denies paragraph 39 of the SOC.

C.3. US Political Risk Information

40 Nuix denies paragraph 40 of the SOC.

41 Nuix denies paragraph 41 of the SOC.

42 Nuix denies paragraph 42 of the SOC.

C.4. Prospectus Financial Forecasts Information

43 Nuix denies paragraph 43 of the SOC.

C.4.1. Knowledge of Nuix as at Prospectus Date

44 Nuix denies paragraph 44 of the SOC.

D. ALLEGED IPO CONTRAVENTIONS

D.1. Prospectus Growth Forecasts

45 In answer to paragraph 45 of the SOC, Nuix:

- (a) says that the Prospectus stated that:
 - (i) Nuix's forecast statutory and pro forma revenue for FY21 was \$193.5m, which equated to approximately 10% growth over its historical pro forma FY20 result of \$175.9m;
 - (ii) Nuix's forecast pro forma ACV for FY21 was \$199.6m, which equated to approximately 18.6% growth over its historical pro forma FY20 result of \$175.9m;
- (b) says that the Prospectus further stated (at p. 125) that, due to its nature, forecast financial information does not represent the actual or prospective financial performance of Nuix, and should be read in conjunction with the other information in the Prospectus, including:
 - (i) Nuix's accounting policies, estimates and judgments described in Sections 4.2.4 and 4.2.5;
 - (ii) the general and specific assumptions set out in Section 4.12;
 - (iii) the sensitivity analysis described in Section 4.13; and
 - (iv) the Independent Limited Assurance Report in Section 8;
- (c) relies on the whole of the Prospectus for its full meaning and effect as though set out here in its entirety; and
- (d) otherwise denies the paragraph.

D.2. Prospectus Omissions

46 Nuix denies paragraph 46 of the SOC.

47 In answer to paragraph 47 of the SOC, Nuix:

- (a) refers to and repeats paragraphs 34 to 43 and 46 above;
- (b) says further that Section 5 of the Prospectus included statements concerning political risk, including, inter alia, statements to the effect that:
 - (i) Nuix's financial performance had been impacted by softer government expenditure in the United States (p. 203);

- (ii) Nuix's business may be impacted by shifts in the political environment including as a result of the 2020 United States Presidential election, and that these developments could result in an unexpected change to Nuix's financial performance or prospects (p. 203);
 - (iii) there was a risk that Nuix is unable to maintain or increase revenues derived from government contracts, including because of changes in government policies and funding and changes in the political environment (p. 196);
 - (c) says further that the Management Information, Structural Change Information, Political Risk Information and Prospectus Financial Forecasts otherwise either did not exist or was not information that Nuix was aware of and could not reasonably have become aware of, and therefore could not be included in the Prospectus;
 - (d) relies on the entirety of the Prospectus for its full meaning and effect; and
 - (e) otherwise denies the paragraph.
- 48 Nuix denies paragraph 48 of the SOC.

D.3. Alleged misleading or deceptive conduct

- 49 In answer to paragraph 49 of the SOC, Nuix:
- (a) relies on the entirety of the Prospectus for its full meaning and effect including, without limitation:
 - (i) the general and specific assumptions detailed in Section 4.12 of the Prospectus;
 - (ii) the Risk Factors identified at Section 5 of the Prospectus; and
 - (iii) the PwC Investigation Accountant's Report: Independent Limited Assurance report on Nuix Limited Forecast Financial Information and Financial Services Guide appearing at Section 8 of the Prospectus;
 - (b) says further that if any implied representation was made to the Nuix Securities Market (which is denied), it was not a statement in the disclosure document for the purposes of s728(1)(a); and
 - (c) says further that Nuix had reasonable grounds for the forecasts contained in the Prospectus; and

Particulars

Nuix, through its finance and sales teams, prepared and tracked its revenue and ACV on a constant basis. Nuix's management, the Due Diligence Committee for Nuix's IPO, and PwC as Nuix's Investigating Accountant for the IPO, approved Nuix's forecasts of estimated future revenue and ACV based on revenue received to date and best available assessments of revenue to be received.

- (d) otherwise denies the paragraph.

E. ALLEGED IPO CONTRAVENTIONS – LOSSES AND LIABILITIES

E.1. Alleged Causations and losses

- 50 Nuix denies paragraph 50 of the SOC.

E.2. Nuix's alleged liability

51 Nuix denies paragraph 51 of the SOC.

E.3. Alleged liability of MCAL and Phillips

52 Nuix does not plead to paragraph 52 of the SOC, as the paragraph does not make any allegation against it.

53 Nuix does not plead to paragraph 53 of the SOC, as the paragraph does not make any allegation against it.

54 Nuix does not plead to paragraph 54 of the SOC, as the paragraph does not make any allegation against it.

F. SECONDARY MARKET – DECEMBER 2020

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

55 Nuix denies paragraph 55 of the SOC.

56 In answer to paragraph 56 of the SOC, Nuix:

- (a) says that the December Information was information that was not generally available to the Nuix Securities Market, within the meaning of s676 of the *Corporations Act*, because that information did not exist;
- (b) further or in the alternative, says that to the extent that all or part of the Political Risk Information existed (which is denied) then that was information that was generally available to the Nuix Securities Market within the meaning of s676 of the *Corporations Act*, including because of the disclosures made in Section 5 of the Prospectus; and
- (c) otherwise denies the paragraph.

57 Nuix denies paragraph 57 of the SOC.

58 Nuix denies paragraph 58 of the SOC.

59 In answer to paragraph 59 of the SOC, Nuix:

- (a) repeats paragraphs 56 to 58 above;
- (b) says further that, to the extent the December Information existed and was information that Nuix was aware of (both of which are denied), Rule 3.1A of the ASX Listing Rules applied to that information because:
 - (i) the information comprised matters of supposition and/or was insufficiently definite to warrant disclosure;
 - (ii) the information was confidential and the ASX had not formed the view that the information had ceased to be confidential;
 - (iii) a reasonable person would not expect the information to be disclosed; and
- (c) otherwise denies the paragraph.

- 60 In answer to paragraph 60 of the SOC, Nuix:
- (a) repeats paragraphs 56 to 59 above;
 - (b) admits that it did not notify the ASX of the December Information, as pleaded;
 - (c) relies on the terms of the Prospectus and each of the February Update, April Update, First May Update and Second May Update for their full force and effect; and
 - (d) otherwise denies the paragraph.

61 Nuix denies paragraph 61 of the SOC.

F.2. Continuing effect of Prospectus – alleged misleading conduct

62 Nuix denies paragraph 62 of the SOC.

G. SECONDARY MARKET – POST-DECEMBER DEVELOPMENTS

G.1. Nuix corporate governance

63 Nuix admits paragraph 63 of the SOC.

64 In answer to paragraph 64 of the SOC, Nuix:

- (a) relies on the Code of Conduct in its entirety;
- (b) says that the Code of Conduct applied only to Nuix's employees; and
- (c) otherwise admits the paragraph.

65 Nuix admits paragraph 65 of the SOC.

66 In answer to paragraph 66 of the SOC, Nuix:

- (a) admits that the STP contained terms to the effect of paragraphs (a), (c), (d) and (e);
- (b) says that cl 2.2 of the STP stated that directors and employees must assume that information is generally available only if it has been announced to the ASX;
- (c) relies on the entirety of the STP for its full meaning and effect; and
- (d) otherwise denies the paragraph.

67 Nuix denies paragraph 67 of the SOC.

68 Nuix denies paragraph 68 of the SOC.

69 In answer to paragraph 69 of the SOC, Nuix:

- (a) repeats paragraphs 64 to 68 above;
- (b) says further that to the extent it made the Corporate Governance Implied Representations (which is denied), admits that it did not withdraw or qualify those representations; and
- (c) otherwise denies the paragraph.

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

70 In answer to paragraph 70 of the SOC, Nuix:

- (a) denies paragraphs (a), (c), (d) and (e); and
- (b) does not admit paragraph (b).

71 In answer to paragraph 71 of the SOC, Nuix:

- (a) refers to and repeats paragraphs 64 to 67 above; and
- (b) otherwise denies the paragraph.

G.2.1. Alleged false or misleading conduct – Corporate Governance systems

72 Nuix denies paragraph 72 of the SOC.

73 Nuix denies paragraph 73 of the SOC.

G.2. Alleged misleading or deceptive conduct – Corporate Governance systems

74 Nuix denies paragraph 74 of the SOC.

G.3. February 2021

75 In answer to paragraph 75 of the SOC, Nuix:

- (a) refers to and repeats paragraphs 45 and 49 above;
- (b) says further that Nuix had reasonable grounds for the February Reaffirmation;

Particulars

Nuix, through its finance and sales teams, prepared and tracked its revenue and ACV on a constant basis. Nuix's management approved Nuix's forecasts of estimated future revenue and ACV based on revenue received to date and best available management assessments of revenue likely to be received.

- (c) relies upon the entirety of the February Update for its full meaning and effect; and
- (d) otherwise admits the paragraph.

76 Nuix denies paragraph 76 of the SOC.

77 Nuix denies paragraph 77 of the SOC.

78 Nuix denies paragraph 78 of the SOC.

79 In answer to paragraph 79 of the SOC, Nuix:

- (a) refers to and repeats paragraph 75 to 77 above;
- (b) admits that it did not withdraw or qualify the February Express Representations or, if they were made (which is denied), the February Implied Representations, prior to 21 April 2021; and

- (c) otherwise denies the paragraph.

G.4. April 2021

80 In answer to paragraph 80 of the SOC, Nuix:

- (a) says that the April Update stated that its forecast pro forma revenue for FY21 was \$180m to \$185m, versus \$193.5m forecast in the Prospectus;
- (b) says that the April Update explained that the revision in the forecast revenue was because of:
 - (i) a significant and larger than expected number of Nuix's customers electing to transition from subscription licence models to Consumption Licences; and
 - (ii) some of Nuix's law firm, advisory and service provider customers having a reduced add-on requirement for existing licences;
- (c) says further that the April Update explained that the transition to Consumption Licences had impact on short-term statutory revenue, but did not impact Nuix's growth prospects which remained strong;
- (d) relies on the entirety of the 21 April 2021 Announcement for its full meaning and effect;
- (e) says that Nuix had reasonable grounds for the revised forecast revenue; and

Particulars

Nuix through its finance and sales teams prepared and tracked its revenue and ACV on a constant basis. Nuix's management approved Nuix's forecasts of estimated future revenue and ACV based on revenue received to date and best available management assessments of revenue likely to be received.

- (f) otherwise denies the paragraph.

81 Nuix denies paragraph 81 of the SOC.

82 Nuix denies paragraph 82 of the SOC.

83 Nuix denies paragraph 83 of the SOC.

84 Nuix denies paragraph 84 of the SOC.

G.5. May 2021

85 In answer to paragraph 85 of the SOC, Nuix:

- (a) relies on the articles published in The Australian Financial Review newspaper on 17 May 2021 in their entirety for their full meaning and effect; and
- (b) otherwise denies the paragraph.

86 Nuix denies paragraph 86 of the SOC.

87 In answer to paragraph 87 of the SOC, Nuix:

- (a) relies on the articles published in The Sydney Morning Herald and The Australian Financial Review newspaper on 18 May 2021 in their entirety for their full meaning and effect; and
 - (b) otherwise denies the paragraph.
- 88 In answer to paragraph 88 of the SOC, Nuix:
- (a) says that on 18 May 2021 it further informed the market of Nuix's financial performance and the April Downgraded Forecast; and
 - (b) otherwise denies the paragraph .
- 89 Nuix denies paragraph 89 of the SOC.
- 90 Nuix denies paragraph 90 of the SOC.
- 91 In answer to paragraph 91 of the SOC, Nuix:
- (a) says that the Second May Update stated that:
 - (i) its forecast pro forma revenue for FY21 was \$173m to \$183m, versus the \$180m to \$185m forecast provided in the April Update;
 - (ii) the revised forecast was due to several key factors, including the expected timing of closure of some upsell opportunities and new potential customers;
 - (iii) the revised forecasts were susceptible to a number of risk factors, including final customer negotiations and licence types, timing of deals and potential FX rate variability;
 - (b) relies on the entirety of the ASX announcement released on 31 May 2021 for its full meaning and effect; and
 - (c) says that Nuix had reasonable grounds for the revised revenue forecast; and

Particulars

Nuix through its finance and sales teams prepared and tracked its revenue on a constant basis. Nuix's management approved Nuix's forecasts of estimated future revenue based on revenue received to date and best available management assessments of revenue likely to be received.

- (d) otherwise denies the paragraph.
- 92 Nuix denies paragraph 92 of the SOC.
- 93 Nuix denies paragraph 93 of the SOC.
- 94 Nuix denies paragraph 94 of the SOC.
- 95 Nuix denies paragraph 95 of the SOC.

G.6. 29 June – alleged final corrective disclosure

- 96 Nuix admits paragraph 96 of the SOC.

97 Nuix denies paragraph 97 of the SOC.

H. SECONDARY MARKET – ALLEGED POST-DECEMBER CONTRAVENTIONS

H.1. Continuous disclosure

98 Nuix denies paragraph 98 of the SOC.

99 Nuix denies paragraph 99 of the SOC.

100 Nuix denies paragraph 100 of the SOC.

101 In answer to paragraph 101 of the SOC, Nuix:

- (a) denies the paragraph;
- (b) says further that to the extent the Disclosable Information existed and was information that Nuix was aware of (both of which are denied), Rule 3.1A of the ASX Listing Rules applied to that information because:
 - (i) the information comprised matters of supposition and/or was insufficiently definite to warrant disclosure;
 - (ii) the information was confidential and the ASX had not formed the view that the information had ceased to be confidential;
 - (iii) a reasonable person would not expect the information to be disclosed.

102 Nuix denies paragraph 102 of the SOC.

103 Nuix denies paragraph 103 of the SOC.

104 Nuix denies paragraph 104 of the SOC.

H.2. Alleged false or misleading statements

105 Nuix denies paragraph 105 of the SOC.

106 Nuix denies paragraph 106 of the SOC.

H.3. Alleged misleading or deceptive conduct

107 Nuix denies paragraph 107 of the SOC.

108 Nuix denies paragraph 108 of the SOC.

109 Nuix denies paragraph 109 of the SOC.

I. ALLEGED LOSS AND DAMAGE – ALLEGED SECONDARY MARKET CONTRAVENTIONS

110 Nuix denies paragraph 110 of the SOC.

J. ALLEGED LIABILITY – SECONDARY MARKET CONTRAVENTIONS

J.1. Nuix's alleged liability

111 Nuix denies paragraph 111 of the SOC.

J.2. Phillips' alleged involvement

- 112 Nuix does not plead to paragraph 112 of the SOC, as the paragraph does not make any allegation against it.
- 113 Nuix does not plead to paragraph 113 of the SOC, as the paragraph does not make any allegation against it.

K. COMMON QUESTIONS

- 114 Nuix does not admit that the questions in paragraph 114 of the SOC amount to or involve common issues of fact or law or that, to the extent that any such questions are common, that they are common to the Plaintiffs and any or all Group Members.

L. PROPORTIONATE LIABILITY

- 115 If (which is denied) Nuix is found liable to the First Plaintiff, the Second Plaintiff or any Group Member under s1041H of the Corporations Act or s12DA of the *ASIC Act 2001* (Cth) (**ASIC Act**) or s18 of the Australian Consumer Law (**ACL**) set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**) for any loss and damage caused by Nuix's alleged misleading and deceptive conduct as pleaded at paragraphs 23 to 45, 49, 62, 75(b), 77, 80, 82, 89, 91, 93, 107, 108 and 109 of the SOC (**misleading and deceptive conduct claims**) then:
- (a) the misleading and deceptive conduct claims are apportionable within the meaning of:
 - (i) s1041L of the Corporations Act;
 - (ii) s12GP of the ASIC Act; and
 - (iii) s87CB of the *Competition and Consumer Act 2010* (Cth).
 - (b) by reason of the matters pleaded in paragraph 116 below, PricewaterhouseCoopers Securities Ltd (ACN 003 311 617) (**PwC**) is a concurrent wrongdoer with respect to the misleading and deceptive conduct claims within the meaning of:
 - (i) s1041L of the Corporations Act;
 - (ii) s12GP of the ASIC Act; and
 - (iii) s87CB of the CCA.
 - (c) pursuant to ss 1041N of the Corporations Act, 12GR of the ASIC Act and 87CD of the CCA:
 - (i) Nuix's liability in respect of the misleading and deceptive conduct claims is limited to an amount reflecting that proportion of the damage or loss claimed that the Court considers just having regard to the extent of Nuix's responsibility of that loss;
 - (ii) any judgment against Nuix on the misleading and deceptive conduct claims is not to be for more than that amount.
- 116 If, which is denied, Nuix is found liable to the First Plaintiff, the Second Plaintiff or any Group Member in respect of the Misleading and Deceptive Conduct Claims, and for the purposes of this apportionment defence only Nuix:

- (a) says that PwC prepared an Independent Limited Assurance Report on Nuix Limited Forecast Financial Information and Financial Services Guide (**Assurance Report**), which report was included in Nuix's Prospectus;
- (b) says that in the Assurance Report, PwC represented that nothing had come to its attention which caused it to believe that the Prospectus Growth Forecasts were not based on reasonable grounds or were themselves unreasonable (the **Assurance Opinion**);
- (c) repeats the allegations in paragraphs 23 to 45, 49, 62, 75(b), 77, 80, 82, 89, 91, 93, 107, 108 and 109 of the SOC, and says that if those allegations are established (which is denied), then:
 - (i) PwC did not have reasonable grounds for expressing the Assurance Opinion;
 - (ii) by expressing the Assurance Opinion, PwC engaged in misleading or deceptive conduct in contravention of:
 - (A) s1041H of the Corporations Act;
 - (B) s12DA of the ASIC Act; and/or
 - (C) s18 of the ACL;
- (d) repeats paragraph 110 of the SOC, and says that, if that allegation is established (which is denied), then the contraventions by PwC referred to in sub-paragraph (c) caused or contributed to the same loss or damage to the Plaintiffs or Group Members as there pleaded; and
- (e) says that, in the premises of sub-paragraphs (a) to (d) above, the First Plaintiff, the Second Plaintiff and any Group Members' loss and damage (if any, which is denied) has been caused in whole or in part by PwC's contraventions of:
 - (i) s1041H of the Corporations Act;
 - (ii) s12DA of the ASIC Act; and
 - (iii) s18 of the ACL.

Dated: 4 November 2022

MATTHEW J. DARKE SC

JEROME ENTWISLE



Gilbert + Tobin

Solicitors for the First Defendant