



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: 30/04/2026 03:49 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 TO **SECOND FURTHER** AMENDED CONSOLIDATED STATEMENT OF CLAIM

*(filed pursuant to the orders of the Honourable Justice Nichols made on 12 February 2026 as varied by the orders made on 24 April 2026)*

---

Date of Document: 30 April 2026  
Filed on behalf of: Third Defendant  
Prepared by:  
Mangioni Biggs + Co  
Level 5, 179 Elizabeth Street  
SYDNEY NSW 2000

Solicitors Code:  
DX:  
Telephone: 02 8235 0333  
Ref: RAM 222 1077 SXJ  
Email: [rmangioni@mbclawyers.au](mailto:rmangioni@mbclawyers.au)  
[sjovcevska@mbclawyers.au](mailto:sjovcevska@mbclawyers.au)

---

The Third Defendant pleads as follows to the **Second Further** Amended Consolidated Statement of Claim filed on ~~23 February 2026~~ ~~19 September 2025~~ ~~10 December 2024~~ ~~6 September 2022~~ (**2FACSOC**), using headings and defined terms contained in the 2FACSOC (unless the context indicates otherwise), but without admitting any factual allegations expressly or impliedly contained in those headings and defined terms.

In answer to the **2FACSOC**, save to the extent that any matter is the subject of an express admission below, the Third Defendant ~~claims and reserves his right to claim the privilege against self-exposure to civil penalties, and~~ pleads as follows:

**A. PRELIMINARY**

**A.1. Plaintiffs and Group Members**

1. The Third Defendant admits paragraph 1(a) of the **2FACSOC**, but otherwise does not know and cannot admit the balance of matters pleaded at paragraph 1. For the avoidance of doubt, the Third Defendant does not plead to the particulars.
2. The Third Defendant admits paragraph 2(a) of the **2FACSOC**, but otherwise does not know and cannot admit the balance of matters pleaded at paragraph 2. For the avoidance of doubt, the Third Defendant does not plead to the particulars.

3. The Third Defendant admits paragraph 3 of the 2FACSOC.

~~Paragraph 3 of the FACSOC makes no allegation against the Third Defendant, and he therefore does not know and cannot admit the paragraph.~~

4. In answer to paragraph 4 of the 2FACSOC, the Third Defendant:

- a. admits that there are, as against each Defendant, seven or more persons who have, as against that Defendant, the ~~purported~~ claims set out in the 2FACSOC;
- b. says that those ~~purported~~ claims in so far as they are made against the Third Defendant should fail for the reasons pleaded in this defence have no merit; and
- c. otherwise denies the matters alleged.

#### A.2. Nuix

5. In answer to paragraph 5 of the 2FACSOC, the Third Defendant:

- 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; and
  - (iv) a reference in this Defence to “Nuix” is a reference to Nuix Pty Ltd or Nuix Ltd, as applicable; and
- b. otherwise admits the paragraph.

6. The Third Defendant admits paragraph 6 of the 2FACSOC. For the avoidance of doubt, the Third Defendant does not plead to the particulars.

#### A.3. Nuix officers

7. In answer to paragraph 7 of the 2FACSOC, the Third Defendant:

- a. says that:
  - (i) Jeffrey Laurence Bleich (**Bleich**) ~~has been was~~ a ~~non-executive~~ director of Nuix ~~since from~~ 11 January 2017 ~~to 19 November 2025~~;
  - (ii) Bleich ~~has been was~~ the Chairman of Nuix ~~since from~~ 18 November 2020 ~~to February 2023~~; and
  - (iii) Bleich ~~has been was~~ an officer of Nuix within the meaning of s 9 of the *Corporations Act 2001* (Cth) (**Corporations Act**) ~~since from~~ 11 January 2017 ~~to 19 November 2025~~; and
- b. otherwise denies the paragraph.

8. In answer to paragraph 8 of the [2FACSOC](#), the Third Defendant:

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 from 4 December 2020 to 3 December 2021;
- (iii) Vawdrey was the Group Chief Executive Officer of Nuix from 8 May 2017 to 3 December 2021; and
- (iv) Vawdrey was an officer of Nuix within the meaning of s 9 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 [2FACSOC](#), the Third Defendant:

a. says that:

- (i) Sir Iain Robert Lobban (**Lobban**) has been a ~~non-executive~~ director of Nuix since 18 November 2020;
- (ii) Lobban ~~has been~~ was appointed as a member of Nuix's Audit and Risk Management Committee ~~since on~~ 18 November 2020; and
- (iii) Lobban has been an officer of Nuix within the meaning of s 9 of the Corporations Act since 18 November 2020; and

b. otherwise denies the paragraph.

10. In answer to paragraph 10 of the [2FACSOC](#), the Third Defendant:

a. says that:

- (i) Susan Patricia Thomas (**Thomas**) ~~has been was~~ a ~~non-executive~~ director of Nuix ~~since from~~ 18 November 2020 to 18 October 2023;
- (ii) Thomas ~~has been was~~ the Chair of Nuix's Audit and Risk Management Committee ~~since from~~ 18 November 2020 until no later than 18 October 2023; and
- (iii) Thomas ~~has been was~~ an officer of Nuix within the meaning of s 9 of the Corporations Act ~~since from~~ 18 November 2020 to 18 October 2023; and

b. otherwise denies the paragraph.

11. In answer to paragraph 11 of the [2FACSOC](#), the Third Defendant:

a. says that Stephen Doyle (**Doyle**) was the Chief Financial Officer of Nuix from 4 December 2020 to 30 June 2021; and

b. otherwise denies the paragraph.

12. In answer to paragraph 12 of the [2FACSOC](#), the Third Defendant:

a. says that:

- (i) he was a ~~non-executive~~ director of Nuix from 9 June 2011 to 31 August 2022;
- (ii) he was a member of Nuix's Audit and Risk Management Committee from at least 18 November 2020 to 31 August 2022; and
- (iii) he was an officer of Nuix within the meaning of s 9 of the Corporations Act from 9 June 2011 to 31 August 2022; and

b. otherwise ~~admits~~ denies the paragraph.

12A. In answer to paragraph 12A of the [2FACSOC](#), the Third Defendant says that Castagna:

a. was a director of Nuix from:

- i. 15 November 2005 to 18 June 2013;
- ii. 28 October 2015 to 18 April 2018; and
- iii. 7 August 2019 to 18 November 2020.

b. was an officer of Nuix within the meaning of ~~Ss~~ s 9 of the Corporations Act during the periods referred to in sub-paragraph 12A(a) above;

c. was a chairman of Nuix's board from:

- i. 2005 to 18 June 2013; and
- ii. 2016 to 6 December 2017; and

d. Otherwise denies the paragraph.

12B. The Third Defendant admits paragraph 12B of the [2FACSOC](#).

12C. In answer to paragraph 12C of the [2FACSOC](#), the Third Defendant says that Krupczak:

a. was the company secretary of Nuix from 1 December 2015 to 18 November 2020; and

b. was an officer of Nuix within the meaning of ~~S~~ s 9 of the Corporations Act from 1 December 2015 to 18 November 2020; and

c. otherwise denies the paragraph.

12D. In answer to paragraph 12D of the [2FACSOC](#), the Third Defendant:

a. Says in relation to (a):

- i. that Egan was the company secretary of Nuix with Doyle and Krupczak from 9 October 2020 to 18 November 2020; and
- ii. from 19 November 2020 to 22 August 2022 Egan was the sole company secretary for Nuix;

- b. says in relation to (b) that Egan was the secretary of Nuix's Audit and Risk Management Committee from 9 October 2020 to 29 June 2021; and
- c. says in relation to sub-paragraph (c) Egan was an officer of Nuix within the meaning of ~~S s 9~~ of the Corporations Act during the periods referred to in sub-paragraph 12D(a) above; and
- d. otherwise denies the paragraph.

12E. In answer to paragraph 12E of the 2FACSOC, the Third Defendant:

- a. says in relation to sub-paragraph (a) that Silveri was appointed the Head of Financial Planning and Analysis at Nuix in December 2018; and
- b. says that Silveri reported to Doyle from December 2018 to 29 June 2021; and
- c. says in relation to in sub-paragraph(c), Silveri's role included, from time to time, the matters pleaded in that sub-paragraph; and
- d. otherwise denies the paragraph.

13. In answer to paragraph 13 of the 2FACSOC, the Third Defendant:

- a. repeats paragraphs 7 to 12E above;
- b. ~~claims and reserves his right to claim the privilege against self exposure to civil penalties 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 any of the persons admitted to be officers of Nuix within the meaning of s 9 of the Corporations Act in paragraphs 7 to 12E above (Nuix Officers) 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 allegations in the paragraph.

#### **A.4. Macquarie Capital**

14. The Third Defendant admits paragraph 14 of the 2FACSOC.

15. In answer to paragraph 15 of the 2FACSOC, the Third Defendant:

- a. admits paragraph 15(a) of the 2FACSOC;
- b. ~~otherwise does not admit the paragraph for the avoidance of doubt, does not plead to the particulars.~~

15A. The Third Defendant does not know and therefore cannot admit paragraph 15A of the 2FACSOC.

In answer to paragraph 15A of the 2FACSOC, the Third Defendant:

- a. ~~says that Herbert Smith Freehills sent a letter addressed to Phi Finney McDonald and Shine Lawyers dated 11 May 2023;~~
- b. ~~otherwise does not admit paragraph 15A of the 2FACSOC as it does not contain any allegations against him.~~

15B. The Third Defendant does not know and therefore cannot admit paragraph 15B of the 2FACSOC.

as it does not contain any allegations against him.

## B. NUIX SECURITIES MARKET

### B.1. Initial Public Offering

16. The Third Defendant admits paragraph 16 of the 2FACSOC. For the avoidance of doubt, the Third Defendant does not plead to the particulars.

17. The Third Defendant admits paragraph 17 of the 2FACSOC. For the avoidance of doubt, the Third Defendant does not plead to the particulars.

~~, and relies on the contents of the Prospectus as if it were pleaded herein in full. In answer to paragraph 17 of the ACSOC, the Third Defendant:~~

~~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;~~

~~c. — relies on the contents of the Prospectus as if it were pleaded herein in full; and~~

~~d. — otherwise does not admit the paragraph.~~

18. The Third Defendant admits paragraph 18 of the 2FACSOC.

19. In answer to paragraph 19 of the 2FACSOC, the Third Defendant:

~~a. — relies on the contents of the Prospectus as if it were pleaded herein in full;~~

~~b. repeats paragraph 17(b) above;~~

~~c. says that the capitalised term Offer is not defined in the 2FACSOC;~~

~~d. says that the defined term Initial Public Offering is ambiguous and embarrassing in circumstances where the Prospectus contained both an initial public offering of fully paid ordinary shares by Nuix and an offer to sell existing fully paid ordinary shares by Nuix SaleCo Limited; and~~

~~da. for the avoidance of doubt, the Third Defendant does not plead to the particulars; and~~

~~e. otherwise admits the paragraph.~~

### B.2. Secondary (on market) trading

20. In answer to paragraph 20 of the 2FACSOC, the Third Defendant:

a. admits 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 2FACSOC, the Third Defendant:

a. admits 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; and

b. otherwise denies the paragraph.

22. In answer to paragraph 22 of the 2FACSOC, the Third Defendant:

a. admits that, between 4 December 2020 and 22 March 2021, s 674(2) of the Corporations Act applied to Nuix, as modified by:

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

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

b. admits that, between 23 March 2021 and 29 June 2021, s 674(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. In answer to paragraph 23 of the 2FACSOC, the Third Defendant:

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

b. denies the allegations in the paragraph; and

c. for the avoidance of doubt, does not plead to the particulars.

#### **C.1.2. Engineering staff and R&D**

24. In answer to paragraph 24 of the 2FACSOC, the Third Defendant:

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

b. denies the allegations in the paragraph; and

c. for the avoidance of doubt, does not plead to the particulars.

25. In answer to paragraph 25 of the 2FACSOC, the Third Defendant:

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties~~  
admits Nuix had spent \$50.8m on R&D in FY20 (against a budget of \$60.8m); and

- b. otherwise denies the allegations in the paragraph; and
- c. for the avoidance of doubt, does not plead to the particulars.

**C.1.3. ~~Nature of FY20 earnings result [not used]~~**

~~26. In answer to paragraph 26 of the FACSOC, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

**C.1.4. *Inability accurately to forecast financial performance***

27. In answer to paragraph 27 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- b. denies the allegations in the paragraph; and
- c. for the avoidance of doubt, does not plead to the particulars.

28. In answer to paragraph 28 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- b. denies the allegations in the paragraph; and
- c. for the avoidance of doubt, does not plead to the particulars.

29. In answer to paragraph 29 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties  
admits that Vawdrey sent an email on 3 April 2019 at 6:32am, to Nuix's Region Heads (NXL.0001.0004.5828); and~~
- b. admits that the email conveyed a request from the board that the Region Heads present to the board on, among other matters, the anticipated revenue for Q4 of FY2019;
- c. relies on the entirety of that email for its full meaning and effect;
- d. otherwise denies the allegations in the paragraph; and
- e. for the avoidance of doubt, does not plead to the particulars.

30. In answer to paragraph 30 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties  
admits that on 3 October 2019 Doyle sent an email to Vawdrey, Silveri, Phillips, Standen, Castagna and others (NXL.0700.0206.5921); and~~
- b. relies on the entirety of that email for its full meaning and effect;
- c. otherwise denies the allegations in the paragraph; and
- d. for the avoidance of doubt, does not plead to the particulars.

31. In answer to paragraph 31 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and says that all forecasts are subject to uncertainty;~~
- ~~b. says that the fact a company fails to achieve a forecast metric (or conversely exceeds a forecast metric) does not mean that the forecast was inaccurate or unreliable at the time it was prepared;~~
- ~~c. otherwise denies the allegations in the paragraph; and~~
- ~~d. for the avoidance of doubt, does not plead to the particulars.~~

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

~~32. In answer to paragraph 32 of the FACSOC, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

~~33. In answer to paragraph 33 of the FACSOC, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

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

34. In answer to paragraph 34 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and repeats paragraphs 24 to 33 above~~
- ~~b. otherwise denies the allegations in the paragraph; and~~
- ~~c. for the avoidance of doubt, does not plead to the particulars.~~

**C.2. Nuix Structural Information**

**C.2.1. Customer shift towards consumption-based pricing**

35. In answer to paragraph 35 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and says that, at the Prospectus Date, Nuix's revenue recognition policy for statutory revenue was as follows:~~
  - ~~(i) in relation to multi-year contracts for software delivered on a customer's premises or in a customer-hosted "cloud" environment:~~
    - ~~1. the "support and maintenance" component of the contract consideration was separated from the balance of the consideration, with the recognition of that support and maintenance component deferred in accordance with Nuix's accounting policies;~~
    - ~~2. the balance of the contract consideration was recognised either pro rata over the~~

term of the contract or upfront, depending on terms of the contract, as follows:

- (a) where a contract included a cancellation or termination clause (and all other relevant criteria were satisfied), the balance of the contract consideration was recognised pro rata over the term of the contract, with such contracts known as “annual multi-year deals”;
  - (b) where the contract did not include a cancellation or termination clause (and all other relevant criteria were satisfied), the balance of the consideration was recognised upfront, with such contracts referred to as “upfront multi-year deals”; and
- (ii) in relation to delivery of software Nuix-hosted cloud environment:
- 1. Nuix would assess the contractual terms of the software licence;
  - 2. revenue from “right to access licences” under AASB 15, were recognised based on the value of the services provided in the relevant period referred to as “usage basis” revenue recognition (provided that all other relevant criteria were satisfied);
  - 3. usage basis revenue recognition was applied to “Consumption Licences”

#### **Particulars**

##### Section 4.2.4 of the Prospectus.

b. otherwise denies the allegations in the paragraph.

36. In answer to paragraph 36 of the 2FACSOC, the Third Defendant:

- a. ~~claims and reserves his right to claim the privilege against self-exposure to civil penalties refers to paragraph 35 above; and~~
- 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;
- c. otherwise denies the allegations in the paragraph; and
- d. for the avoidance of doubt, does not plead to the particulars.

37. In answer to paragraph 37 of the 2FACSOC, the Third Defendant:

- a. ~~claims and reserves his right to claim the privilege against self-exposure to civil penalties 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 allegations in the paragraph; and
- c. for the avoidance of doubt, does not plead to the particulars.

38. In answer to paragraph 38 of the 2FACSOC, the Third Defendant:

- a. ~~claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- b. denies the allegations in the paragraph; and

- c. for the avoidance of doubt, does not plead to the particulars.

### C.2.2. Knowledge of NuiX as at Prospectus Date

39. In answer to paragraph 39 of the 2FACSOC, the Third Defendant:

- a. ~~claims and reserves his right to claim the privilege against self-exposure to civil penalties refers to paragraph 38 above; and~~
- b. otherwise denies the allegations in the paragraph; and
- c. for the avoidance of doubt, does not plead to the particulars.

### C.3. US Political Risk Information

40. In answer to paragraph 40 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- b. denies the allegations in the paragraph; and
- c. for the avoidance of doubt, does not plead to the particulars.

41. In answer to paragraph 41 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- b. denies the allegations in the paragraph; and
- c. for the avoidance of doubt, does not plead to the particulars.

42. In answer to paragraph 42 of the 2FACSOC, the Third Defendant:

- a. ~~claims and reserves his right to claim the privilege against self-exposure to civil penalties refers to paragraphs 31 and 38 above; and~~
- b. otherwise denies the allegations in the paragraph; and
- c. for the avoidance of doubt, does not plead to the particulars.

### C.4. Prospectus Financial Forecasts Information

42A. In answer to paragraph 42A of the 2FACSOC, the Third Defendant:

- a. says that on 2 June 2020, the board of NuiX approved an internal budget for FY21, with an internal revenue target of A\$210.6 million (**Board Budget**);
- b. says that on 2 June 2020, the board of NuiX approved an internal budget for FY21, with an internal revenue stretch target of A\$218.4 million (**Field Budget**); and
- c. otherwise denies the paragraph.

42B. Third Defendant admits paragraph 42B of the 2FACSOC.

42C. In answer to paragraph 42C of the 2FACSOC, the Third Defendant:

- a. says that, on or before 28 May 2020, Nuix engaged PricewaterhouseCoopers Securities Ltd (PwCS) to prepare an independent financial and tax due diligence report for a trade sale of Nuix;

**Particulars**

Letter dated 28 May 2020 from PwCS to Nuix and Macquarie [NXL.0700.0250.0407].

- b. says that, before 2 October 2020, Nuix expanded the scope of PwCS's engagement referred to at paragraph 42C(a) above to include the assessment of Nuix's trading performance in Q1 FY21;

**Particulars**

Letter dated 2 October 2020 from PwCS to Nuix and Macquarie [PWC.2001.0002.2233].

- c. says that, on or before August 2020, Nuix engaged its existing auditor, PricewaterhouseCoopers (PwC) as its auditor, to undertake the FY20 audit;

**Particulars**

Audit Plan dated September 2020 from PwC to Nuix [NXL.0201.0013.0509].

- d. says that, from at least 31 July 2020, Nuix engaged PwCS to provide services in connection with the prospectus proposed to be issued by Nuix for the initial public offering and by SaleCo for the secondary public offering.

**Particulars**

Letter of engagement dated 13 November 2020, expressed to be effective from 31 July 2020 [PWC.2001.0003.6297].

- e. relies on the entirety of the particularised documents for their full meaning and effect; and  
 f. otherwise denies the paragraph.

42D. In answer to paragraph 42D of the 2FACSOC, the Third Defendant:

- a. says that PwC prepared a report entitled "Nuix Pty Limited Audit Committee Report – for presentation to the Audit Committee dated 22 October 2020" [NXL.0001.0019.7366], which summarises PwC's opinion about recognising revenue from support and maintenance and software licences;
- b. admits that the PwC report expressed the view that support and maintenance revenue should be recognised periodically over the contractual term rather than at the inception of the contract;
- c. admits that the PwC report expressed the view that it was appropriate for Nuix to recognise revenue from renewal software licences from the date of the beginning of the renewal period (rather than from the date on which a temporary licence was issued to the customer);
- d. relies on the entirety of the PwC report for its full meaning and effect; and
- e. otherwise denies the paragraph.

42E. In answer to paragraph 42E of the 2FACSOC, the Third Defendant:

- a. says that in its capacity as investigating accountant PwCS issued a discussion document dated 18 September 2020 and titled "Forecast Analysis – Risks and Sensitivities" (PwC Sensitivities Analysis) [NXL.0001.0013.4783];
- b. says that the PwC Sensitivities Analysis contains PwCS's analysis, as at that date, as to PwCS' opinion as to the multi-year contract with Ernst & Young that was due for renewal;
- c. admits that in the PwC Sensitivities Analysis, PwCS expressed the view that there did not appear to be reasonable grounds to support up front revenue recognition in FY21 for the full 3 year term based on the current state of negotiations with Ernst & Young;
- d. relies on the entirety of the PwC Sensitivities Analysis for its full meaning and effect; and
- e. otherwise denies the paragraph.

42F. In answer to paragraph 42F of the 2FACSOC, the Third Defendant:

- a. admits that the Board Budget included the forecast that Nuix would receive in FY21 \$5.1 million in S&M revenue;
- b. admits that the Board Budget included the forecast that Nuix would receive in FY21 approximately \$18 million from the renewal of the EY Deal;
- c. relies on the entirety of the Board Budget for its full meaning and effect; and
- d. otherwise denies the paragraph.

42G. In answer to paragraph 42G of the 2FACSOC, the Third Defendant:

- a. says that Nuix achieved revenue of \$37.9m in Q1 against the forecast \$34.6m post-audit adjustments; and

**Particulars**

PwCS's **Financial Information Report** dated 18 November 2020 [NXL.0006.0027.0077 at .0037].

- b. otherwise denies the paragraph.

42H. In answer to paragraph 42H of the 2FACSOC, the Third Defendant:

- a. says that he relied on Nuix management, PwCS, and the Due Diligence Committee (DDC) to calculate, advise, and approve the forecasts in the Prospectus, including by making any necessary adjustments;
- b. admits that the Financial Information Report stated that of the \$120.3 million revenue referable to renewed contracts in FY21, \$33.8 million was so-called "go get revenue" (at .0060);
- c. admits that Financial Information Report identified a risk sensitivity of \$10.0m - \$20.0m in relation to "go get revenue" (at .0060);
- d. relies on the entirety of the Financial Information Report for its full meaning and effect; and
- e. otherwise denies the paragraph.

42I. In answer to paragraph 42I of the 2FACSOC, the Third Defendant:

- a. says he relied on Nuix management, PwCS, and the DDC to calculate, advise, and approve each of the forecasts in the Prospectus, including by making any necessary adjustments;
- b. admits that following PwCS's work as Investigating Accountant for the IPO, Nuix:
  - (i) for the purposes of arriving at the FY21 forecasts included in the Prospectus, reduced the new business component of the Board Budget by approximately \$12 million to address the potential risk in the level of new client revenue growth;
  - (ii) in the FY21 forecasts included in the Prospectus, assumed it would achieve \$29.4 million of revenue from new customers in FY21, representing an increase of \$7.5 million or 34.4% relative to FY20;
- c. relies on the entirety of the Financial Information Report and the Prospectus for their full meaning and effect; and
- d. otherwise denies the paragraph.

42J. In answer to paragraph 42J of the 2FACSOC, the Third Defendant:

- a. says that he relied on Nuix management, PwCS, and the DDC to calculate, advise, and approve the **Prospectus Revenue Growth Forecast** (pleaded at paragraph 45(a) of the 2FASOC), including by making any necessary adjustments;
- b. admits that the process of arriving at the Prospectus Revenue Growth Forecast included:
  - (i) consideration of the Board Budget;
  - (ii) an assumed currency conversion rate of US\$1 to AU\$1.45 for revenue earned, and costs incurred, in US dollars;
  - (iii) the deduction from the Board Budget of \$5.1 million in respect of S&M revenue;
  - (iv) the deduction from the Board Budget of approximately \$12 million to be recognised in FY21, referable to the recognition of revenue from the EY Deal;
  - (v) an assumption that Nuix would be able to convert other deals to MYDs that could have revenue recognised up front in FY21;
  - (vi) a risk contingency of approximately \$12 million;
  - (vii) assumed a new customer revenue contribution of \$29.4 million; and
- c. otherwise denies the paragraph.

42K. The Third Defendant denies paragraph 42K of the 2FACSOC.

42L. In answer to paragraph 42L of the 2FACSOC, the Third Defendant:

- a. says that he relied on Nuix management, PwCS, and the DDC to calculate, advise, and approve the Prospectus Revenue Growth Forecast including making any necessary adjustment; and
- b. otherwise denies the paragraph.

42M. In answer to paragraph 42M of the 2FACSOC, the Third Defendant:

- a. says that he relied on Nuix management, PwCS, and the DDC to calculate, advise, and approve the Prospectus Revenue Growth Forecast including making any necessary adjustment; and
- b. otherwise denies the paragraph.

42N. In answer to paragraph 42N of the 2FACSOC, the Third Defendant:

- a. says that he relied on Nuix management, PwCS, and the DDC to calculate, advise, and approve the Prospectus Revenue Growth Forecast including making any necessary adjustment; and
- b. otherwise denies the paragraph.

43. In answer to paragraph 43 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- b. denies the allegations in the paragraph;
- c. says further the fact that the forecasts contained in the Prospectus were subject to known and unknown risks and uncertainties was disclosed in the Prospectus; and
- d. for the avoidance of doubt, does not plead to the particulars.

#### **C.4.1. Knowledge of Nuix as at Prospectus Date**

44. In answer to paragraph 44 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- b. denies the allegations in the paragraph; and
- c. for the avoidance of doubt, does not plead to the particulars.

### **D. IPO CONTRAVENTIONS**

#### **D.1. Prospectus Growth Forecasts**

45. In answer to paragraph 45 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~ says that the Prospectus stated that 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 (at p 38);
- ~~b. denies the allegations in the paragraph.~~ says further that the Prospectus stated that 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 \$168.2m (at p 39);
- c. says further that the Prospectus further stated that (at p 125), 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 at Sections 4.2.4, 4.2.5, 4.12, 4.13, 8;

- d. says further that the Prospectus stated that Nuix's forecast was based on a USD exchange rate of A\$1 to USD\$1.45 and included sensitivities based on changes in that exchange rate;

**Particulars**

**Section 4.13.**

- e. relies on the contents of the Prospectus as if it were pleaded herein in full;
- f. otherwise denies the paragraph; and
- g. for the avoidance of doubt, does not plead to the particulars.

**D.2. Prospectus Omissions**

46. ~~In answer to The Third Defendant denies~~ paragraph 46 of the 2FACSOC,

~~, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~and~~
- ~~b. denies the allegations in the paragraph.~~

47. In answer to paragraph 47 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~  
~~refers to paragraphs 34 to 42 and 46 above;~~
- ~~b. relies on the contents of the Prospectus, as if it were pleaded herein in full; and~~
- ~~bc. otherwise~~ denies the allegations in the paragraph.

48. ~~In answer to The Third Defendant denies~~ paragraph 48 of the 2FACSOC,

~~, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

**D.3. Misleading or deceptive conduct**

49. In answer to paragraph 49 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~  
~~says that he relied on Nuix management, PwCS, and the DDC to calculate, advise, and~~  
~~approve each of the forecasts in the Prospectus, including by making any necessary~~  
~~adjustments;~~
- ~~b. denies the allegations in the paragraph.~~ relies on the contents of the Prospectus, as if it were  
pleaded herein in full;
- ~~c. says 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 purpose of s 728(1)(a);~~
- ~~d. says that Nuix had reasonable grounds for the forecasts contained in the Prospectus; and~~

e. otherwise denies the allegations in the paragraph.

49A. The Third Defendant admits paragraph 49A of the 2FACSOC.

49B. In answer to paragraph 49B of the 2FACSOC, the Third Defendant:

- a. denies the paragraph; and
- b. for the avoidance of doubt, does not plead to the particulars.

49C. The Third Defendant denies paragraph 49C of the 2FACSOC.

49D. In answer to paragraph 49D of the 2FACSOC, the Third Defendant:

- a. denies the paragraph; and
- b. for the avoidance of doubt, does not plead to the particulars.

49E. In answer to paragraph 49E of the 2FACSOC, the Third Defendant:

- a. denies the paragraph; and
- b. for the avoidance of doubt, does not plead to the particulars.

49F. In answer to paragraph 49F of the 2FACSOC, the Third Defendant:

- a. denies the paragraph; and
- b. for the avoidance of doubt, does not plead to the particulars.

## **E. IPO CONTRAVENTIONS – LOSSES AND LIABILITIES**

### **E.1. Causation and losses**

50. In answer to paragraph 50 of the 2FACSOC, the Third Defendant:

- a. ~~claims and reserves his right to claim the privilege against self-exposure to civil penalties~~  
refers to paragraphs 48, 49 and 49C above; and
- b. otherwise denies the allegations in the paragraph.

50A. In answer to paragraph 50A of the 2FACSOC, the Third Defendant:

- a. repeats paragraphs 45 and 49 above; and
- b. otherwise denies the paragraph.

50B. In answer to paragraph 50B of the 2FACSOC, the Third Defendant:

- a. repeats paragraphs 50 above; and
- b. otherwise denies the paragraph.

### **E.2. Nuis liability**

51. In answer to paragraph 51 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties repeats paragraphs 48, 49 and 49C above; and~~
- b. otherwise denies the allegations in the paragraph.

### E.3. Liability of MCAL and Phillips

52. In answer to paragraph 52 of the 2FACSOC, the Third Defendant:

- ~~aa. does not plead to sub-paragraph (a) as it contains no allegations against him;~~
- a. repeats paragraphs 12, 14, 15, and 19 above;
- ~~b. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~ba. as to sub-paragraph (b)(i), admits that he was a director of Nuix from 9 June 2011 to 31 August 2022;~~
- bb. admits sub-paragraph (b)(ii); and
- c. otherwise denies the allegations in the paragraph.

53. Paragraph 53 of the 2FACSOC makes no allegation against the Third Defendant, and he does not plead to it.

~~In answer to paragraph 53 of the 2FACSOC, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

54. In answer to paragraph 54 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties refers to paragraph 52(b) above and paragraphs 54AA to 54AG and 118 below; and~~
- b. otherwise denies the allegations in the paragraph.

### Due diligence defence of reasonable inquiries and reasonable belief statements - s 731 Corporations Act

54AA. The Third Defendant says further that:

- ~~a. from at least 21 August 2020, Nuix and SaleCo were members of the DDC established for the IPO, together with:~~
  - ~~(i) Clayton Utz;~~
  - ~~(ii) PwCS;~~
  - ~~(iii) Morgan Stanley; and~~
  - ~~(iv) the second defendant, MCAL~~
- ~~b. he was a representative of Nuix and SaleCo on the DDC;~~
- ~~c. the purposes of the IPO due diligence process included assisting members of the DDC to be~~

satisfied that the Prospectus complied with the requirements of the Corporations Act and did not contain any statement that was misleading or deceptive or omitted information required to be included in the Prospectus;

### Particulars

#### Due Diligence Planning Memorandum, cl 4.1.

- d. the DDC held scheduled meetings on the following dates, each of which was attended by the Third Defendant on 21 and 26 August, 11, 18, 25 and 30 September, 9, 19, and 26 October 2020; 10, 11 and 18 November 2020;
- e. the DDC received reports from and presentations by “Reporting Persons”, Nuix management and external advisors and subject matter experts;
- f. meetings of the DDC were variously supplemented by *ad hoc* meetings, correspondence and communications between the members of the DDC and their representatives, including, from time to time, the Third Defendant;
- g. the DDC investigated and considered issues for potential disclosure in the Prospectus, including by allocating issues to several professional advisers appointed as “Reporting Persons” in their relevant areas of expertise to undertake due diligence inquiries and to provide presentations, reports and “sign-offs” to the DDC;
- h. the DDC identified matters that could potentially meet agreed quantitative and qualitative materiality thresholds and, if those matters were assessed as meeting the agreed materiality thresholds, considered and discussed how they should be disclosed in the Prospectus;
- i. the DDC undertook a process of verifying information to be included in the Prospectus, including sign-offs from “Reporting Persons”, and a formal verification process undertaken by Nuix and Clayton Utz;
- j. during the due diligence process, the Third Defendant requested further information from other members of the DDC;
- k. as part of his participation in the due diligence process, including through his membership of the DDC, the Third Defendant considered presentations to the DDC, reviewed reports, opinions and other materials provided to the DDC and sought to satisfy himself, and ultimately did satisfy himself, that there were no misleading statements in the Prospectus or omissions of information that was required to be included in the Prospectus; and
- l. on 18 November 2020 prior to the lodgement of the Prospectus, each member of the DDC confirmed *inter alia* that the member was satisfied, that nothing had come to the member’s attention that caused the member to believe, and they do not believe that the Prospectus does not comply with the Corporations Act, and that the DDC issued a report in those terms (**DDC Report**).

54AB. By making any or all of the following inquiries (alternatively, by making any combination of the following inquiries):

- a. participating in the due diligence process over approximately four months, including considering and interrogating the material presented to him or otherwise received by him as part of that due diligence process, as pleaded in paragraph 54A above; and
- b. seeking and obtaining from members of the DDC, on 18 November 2020, immediately prior to the lodgement of the Prospectus, express representations, warranties and undertakings that

there were no misleading statements in the Prospectus, and that there had been no omissions from the Prospectus of information required to be included in it by the *Corporations Act*, including express representations, warranties and undertakings specifically as to the Prospectus Growth Forecasts, as pleaded in paragraph 54A above.

the Third Defendant made all inquiries that were reasonable in the circumstances as to whether the Prospectus contained a misleading or deceptive statement, and as to whether there was any omission from the Prospectus of material required to be disclosed by s 710 of the *Corporations Act*.

54AC. By reason of the matters pleaded in paragraphs 54AA and 54AB above, and the fact and nature of the due diligence process itself, the Third Defendant:

- a. believed that the Prospectus was not misleading or deceptive;
- b. believed that there was no omission from the Prospectus of material required to be disclosed by s 710 of the *Corporations Act*; and
- c. held the beliefs referred to in sub-paragraphs (a) and (b) on reasonable grounds.

54AD. By reason of the matters pleaded in paragraphs 54AA, 54AB and 54AC above, pursuant to s 731 of the *Corporations Act*, the Third Defendant cannot be liable under s 729 of the *Corporations Act* for any contraventions of s 728 of the *Corporations Act* by Nuix.

#### **Reasonable reliance defence - s 733 *Corporations Act***

54AE. The Third Defendant relied on the information (being information for the purposes of s 733 of the *Corporations Act*) given to him as part of the due diligence process, being that referred to in paragraph 54AA above.

#### **Particulars**

*The Third Defendant refers to clause 3 of the DDC Report.*

54AF. By reason of:

- a. the information having been sought and obtained on 18 November 2020, immediately prior to the lodgement of the Prospectus; and
- b. further, or in the alternative, the context in which the information in paragraph 54AE above was provided to the Third Defendant, as pleaded in paragraph 54AA above, including the confirmations in the DDC Report there pleaded,

the Third Defendant's reliance as pleaded in paragraph 54AE above was reasonable.

54AG. By reason of the matters pleaded in paragraphs 54AE and 54AF above, pursuant to s733 of the *Corporations Act*, the Third Defendant cannot be liable under s 729 of the *Corporations Act* for any contraventions of s 728 of the *Corporations Act* by Nuix.

## **F. SECONDARY MARKET – DECEMBER 2020**

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

54A. In answer to paragraph 54A of the 2FACSOC, the Third Defendant:

- a. denies the paragraph; and

b. for the avoidance of doubt, does not plead to the particulars.

55. In answer to paragraph 55 of the 2FACSOC, the Third Defendant:

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

b. denies the allegations in the paragraph; and

c. for the avoidance of doubt, does not plead to the particulars.

56. ~~In answer to The Third Defendant denies~~ paragraph 56 of the 2FACSOC,

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

57. In answer to paragraph 57 of the 2FACSOC, the Third Defendant:

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

b. denies the allegations in the paragraph; and

c. for the avoidance of doubt, does not plead to the particulars.

58. ~~[not used] In answer to paragraph 58 of the FACSOC, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

59. In answer to paragraph 59 of the 2FACSOC, the Third Defendant:

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties refers to paragraphs 56 to 58 above; and~~

~~aa. 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~~

b. otherwise denies the allegations in the paragraph.

60. In answer to paragraph 60 of the 2FACSOC, the Third Defendant:

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and refers to paragraphs 56 to 59 above;~~

~~aa. admits that NuiX did not notify the ASX of the December Information from 4 December 2020~~

to 25 February 2021;

b. otherwise denies the allegations in the paragraph.

61. ~~In answer to The Third Defendant denies~~ paragraph 61 of the 2FACSOC,

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

## **F.2. Continuing effect of Prospectus – misleading conduct**

62. ~~In answer to The Third Defendant denies~~ paragraph 62 of the 2FACSOC,

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

## **G. SECONDARY MARKET – POST-DECEMBER DEVELOPMENTS**

### **G.1. Nuix corporate governance**

63. The Third Defendant admits paragraph 63 of the 2FACSOC.

64. In answer to paragraph 64 of the 2FACSOC, the Third Defendant:

a. relies on the contents of the Code of Conduct as if it were pleaded herein in full;

b. says that the Code of Conduct applied only to Nuix's employees; and

c. otherwise admits the paragraph.

65. The Third Defendant admits paragraph 65 of the 2FACSOC.

66. In answer to paragraph 66 of the 2FACSOC ~~of the CSOC~~, the Third Defendant:

~~a. relies on the contents of the STP as if it were pleaded herein in full; and~~ admits that the STP contained terms to the effect of paragraphs (a), (c), (d) and (e);

~~aa. 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;~~

~~ab. relies on the entirety of the STP for its full meaning and effect;~~

b. otherwise denies the paragraph; and

c. for the avoidance of doubt, does not plead to the particulars.

67. ~~In answer to The Third Defendant denies~~ paragraph 67 of the 2FACSOC,

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

68. ~~In answer to The Third Defendant denies~~ paragraph 68 of the 2FACSOC,

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

69. In answer to paragraph 69 of the 2FACSOC, the Third Defendant:

a. ~~claims and reserves his right to claim the privilege against self-exposure to civil penalties; and repeats paragraphs 64 to 68 above;~~

aa. ~~says further that to the extent Nuix made the Corporate Governance Implied Representations (which is denied), admits that Nuix did not withdraw or qualify those representations; and~~

b. otherwise denies the allegations in the paragraph.

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

70. The Third Defendant does not know and therefore cannot admit ~~pled to~~ paragraph 70 of the 2FACSOC as the paragraph contains no allegations against him.

71. ~~In answer to The Third Defendant denies the allegations in~~ paragraph 71 of the 2FACSOC,

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

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

72. ~~In answer to The Third Defendant denies~~ paragraph 72 of the 2FACSOC,

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

73. ~~In answer to The Third Defendant denies~~ paragraph 73 of the 2FACSOC,

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

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

74. ~~In answer to The Third Defendant denies~~ paragraph 74 of the 2FACSOC,

~~, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

### G.3. February 2021

74A. The Third Defendant denies paragraph 74A of the 2FACSOC.

75. In answer to paragraph 75 of the 2FACSOC, the Third Defendant:

- a. admits that Nuix released to the ASX the February Update on 26 February 2021;
- ~~b. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and 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*

~~ba. relies upon the entirety of the February Update as if it were pleaded herein in full; and~~

- ~~c. otherwise admits~~ ~~denies the allegations in~~ the paragraph.

76. ~~In answer to The Third Defendant denies~~ paragraph 76 of the 2FACSOC,

~~, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

76A. In answer to paragraph 76A of the 2FACSOC, the Third Defendant:

- a. admits that s 769C of the *Corporations Act*, s 12BB of the *Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act)*, and s 4 of the *Australian Consumer Law (ACL)* require a representation about a future matter to have reasonable grounds for it not to be taken to be misleading or deceptive;
- b. admits that the February Reaffirmation was a representation about a future matter under s 769C of the *Corporations Act* and s 12BB of the *ASIC Act*;
- c. says that ACL does not apply by the operation of s 131A of *Competition and Consumer Act 2010 (Cth) (CCA)*; and
- d. otherwise denies the allegations in the paragraph.

77. ~~[not used] In answer to paragraph 77 of the FACSOC, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

78. ~~[not used] In answer to paragraph 78 of the FACSOC, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

79. In answer to paragraph 79 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties~~ admits that Nuix did not withdraw or qualify the February Reaffirmation prior to 21 April 2021; and
- ~~b. denies the allegations in the paragraph.~~

79A. In answer to paragraph 79A of the 2FACSOC the Third Defendant:

- a. denies the allegations in the paragraph; and
- b. for the avoidance of doubt, does not plead to the particulars.

79B. In answer to paragraph 79B of the 2FACSOC, the Third Defendant:

- a. refers to paragraph 79A above;
- b. otherwise denies the allegations in the paragraph; and
- c. for the avoidance of doubt, does not plead to the particulars.

79C. In answer to paragraph 79C of the 2FACSOC, the Third Defendant:

- a. denies the allegations in the paragraph; and
- b. for the avoidance of doubt, does not plead to the particulars.

#### **G.4. April 2021**

79D. In answer to paragraph 79D of the 2FACSOC, the Third Defendant:

- a. denies the allegations in the paragraph; and
- b. for the avoidance of doubt, does not plead to the particulars.

80. In answer to paragraph 80 of the 2FACSOC, the Third Defendant:

- a. admits that Nuix released to the ASX the April Update on 21 April 2021;
- ~~b. claims and reserves his right to claim the privilege against self-exposure to civil penalties~~ relies on the entirety of the April Update for its full meaning and effect; and
- c. says that the allegation at subparagraph (b) is ambiguous and embarrassing insofar as it pleads "financial terms less to Nuix"; and
- ~~d. otherwise denies the allegations in the paragraph; and~~
- ~~e. for the avoidance of doubt, does not plead to the particulars.~~

81. In answer to paragraph 81 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- b. denies the allegations in the paragraph; and
- c. for the avoidance of doubt, does not plead to the particulars.

81A. In answer to paragraph 81A of the 2FACSOC, the Third Defendant:

- a. admits that s 769C of the Corporations Act, s 12BB of the ASIC Act, and s 4 of the ACL require a future matter to have reasonable grounds for it not to be taken to be misleading or deceptive;
- b. admits that the April Downgraded Forecast was a representation about a future matter under s 769C of the Corporations Act and s 12BB of the ASIC Act;
- c. says that ACL does not apply by the operation of s 131A of the CCA; and
- d. otherwise denies the paragraph.

82. ~~[not used] In answer to paragraph 82 of the FACSOC, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

83. ~~[not used] In answer to paragraph 83 of the FACSOC, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

84. ~~In answer to The Third Defendant denies paragraph 84 of the 2FACSOC,~~

~~, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

84A. The Third Defendant denies paragraph 84A of the 2FACSOC.

84B. In answer to paragraph 84B of the 2FACSOC, the Third Defendant:

- a. denies the allegations in the paragraph; and
- b. for the avoidance of doubt, does not plead to the particulars.

84C. In answer to paragraph 84C of the 2FACSOC, the Third Defendant:

- a. denies the allegations in the paragraph; and
- b. for the avoidance of doubt, does not plead to the particulars.

## **G.5. May 2021**

85. ~~[not used] In answer to paragraph 85 of the FACSOC, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

86. ~~[not used] In answer to paragraph 86 of the FACSOC, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

87. ~~[not used] In answer to paragraph 87 of the FACSOC, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

88. ~~[not used] In answer to paragraph 88 of the FACSOC, the Third Defendant:~~

- ~~a. admits that Nuix released to the ASX the First May Update on 18 May 2021;~~
- ~~b. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~c. denies the allegations in the paragraph.~~

89. ~~[not used] In answer to paragraph 89 of the FACSOC, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

90. ~~[not used] In answer to paragraph 90 of the FACSOC, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

91. In answer to paragraph 91 of the 2FACSOC, the Third Defendant:

- a. admits that Nuix released to the ASX the Second May Update on 31 May 2021;
- ~~b. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~  
~~relies on the entirety of the Second May Update for its full meaning and effect;~~
- ba. ~~says that Nuix had reasonable grounds for the revised revenue forecast; and~~
- c. otherwise denies the allegations in the paragraph.

92. ~~In answer to The Third Defendant denies paragraph 92 of the 2FACSOC and, for the avoidance of doubt, does not plead to the particulars.~~

~~, the Third Defendant:~~

- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

93. ~~[not used] In answer to paragraph 93 of the FACSOC, the Third Defendant:~~
- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~
94. ~~[not used] In answer to paragraph 94 of the FACSOC, the Third Defendant:~~
- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~
95. ~~[not used] In answer to paragraph 95 of the FACSOC, the Third Defendant:~~
- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

#### **G.6. 29 June – final corrective disclosure**

96. ~~In answer to The Third Defendant admits~~ paragraph 96 of the 2FACSOC and for the avoidance of doubt, does not plead to the particulars.
- ~~, the Third Defendant.:~~
- ~~a. admits that the articles particularised were published on 29 June 2021; and~~
- ~~b. otherwise does not admit the content of these publications.~~
97. ~~In answer to The Third Defendant denies~~ paragraph 97 of the 2FACSOC and, for the avoidance of doubt, does not plead to the particulars.
- ~~, the Third Defendant.:~~
- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~

#### **H. SECONDARY MARKET – POST-DECEMBER CONTRAVENTIONS**

##### **H.1. Continuous disclosure**

98. ~~In answer to The Third Defendant denies~~ paragraph 98 of the 2FACSOC,
- ~~, the Third Defendant:~~
- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~
- ~~b. denies the allegations in the paragraph.~~
99. ~~In answer to The Third Defendant denies~~ paragraph 99 of the 2FACSOC and for the avoidance of doubt, does not plead to the particulars.
- ~~, the Third Defendant:~~
- ~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

100. ~~In answer to The Third Defendant denies paragraph 100 of the 2FACSOC and, for the avoidance of doubt, does not plead to the particulars.~~

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

101. In answer to paragraph 101 of the 2FACSOC, the Third Defendant:

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

b. denies the allegations in the paragraph;

c. 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;

(i) the information was confidential and the ASX had not formed the view that the information had ceased to be confidential;

(ii) a reasonable person would not expect the information to be disclosed.

102. ~~In answer to The Third Defendant denies paragraph 102 of the 2FACSOC,~~

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

103. ~~In answer to The Third Defendant denies paragraph 103 of the 2FACSOC,~~

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

104. ~~In answer to The Third Defendant denies paragraph 104 of the 2FACSOC,~~

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

## H.2. False or misleading statements

105. ~~In answer to The Third Defendant denies paragraph 105 of the 2FACSOC and, for the avoidance of doubt, does not plead to the particulars.~~

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

106. ~~In answer to The Third Defendant denies paragraph 106 of the 2FACSOC,~~

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

## H.3. Misleading or deceptive conduct

107. ~~In answer to The Third Defendant denies paragraph 107 of the 2FACSOC,~~

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

108. ~~[not used] In answer to paragraph 108 of the FACSOC, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

109. ~~In answer to The Third Defendant denies paragraph 109 of the 2FACSOC,~~

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

## I. LOSS AND DAMAGE – SECONDARY MARKET CONTRAVENTIONS

109A. The Third Defendant denies paragraph 109A of the 2FACSOC.

110. ~~In answer to The Third Defendant denies paragraph 110 of the 2FACSOC and, for the avoidance of doubt, does not plead to the particulars.~~

~~, the Third Defendant:~~

~~a. claims and reserves his right to claim the privilege against self-exposure to civil penalties; and~~

~~b. denies the allegations in the paragraph.~~

## J. LIABILITY – SECONDARY MARKET CONTRAVENTIONS

### J.1. Nuix's liability

111. The Third Defendant ~~denies does not admit plead to~~ paragraph 111 of the 2FACSOC,  
~~, as the paragraph does not make any allegation against him.~~

### J.2. Phillips' involvement

112. In answer to paragraph 112 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self exposure to civil penalties; and~~
- b. denies the allegations in the paragraph; and
- c. for the avoidance of doubt, does not plead to particulars.

113. In answer to paragraph 113 of the 2FACSOC, the Third Defendant:

- ~~a. claims and reserves his right to claim the privilege against self exposure to civil penalties; and~~
- b. denies the allegations in the paragraph;
- c. says further that, pursuant to s 674A(4) of the Corporations Act, he is not liable under s 674 of the Corporations Act because he:
  - (i) took all steps that were reasonable in the circumstances to ensure that Nuix complied with its obligations under s 674A(2) of Corporations Act; and
  - (ii) after doing so, believed on reasonable grounds that Nuix was complying with its obligations under s 674A(2) of Corporations Act.

#### Particulars

Witness statement of Daniel Phillips dated 30 April 2026, at [481] to [529], [574] to [664], [653] to [662].

## K. COMMON QUESTIONS

114. The Third Defendant does not ~~admit plead to~~ paragraph 114 of the 2FACSOC as it makes no allegation against him, however in doing so he makes no admission as to the appropriateness of the common questions identified.

## L. OTHER MATTERS

115. ~~Third Defendant reserves the right to advance in his case additional material in support of his defence, the details whereof will be disclosed by amending this paragraph after the judgment hearing in relation to alleged contravention in Federal Court proceeding NSD 827 of 2022.~~

If (which is denied) the Third Defendant is found liable to the First Plaintiff, the Second Plaintiff or any Group Member under s 1041H of the Corporations Act or s 12DA of the ASIC Act or s 18 of the ACL set out in Schedule 2 of the CCA for any loss and damage caused by his alleged misleading and deceptive conduct as pleaded at paragraphs 23 to 45, 49, 49A, 49B, 62, 75, 80, 81A, 91, 107 and 109 of the 2FACSOC (Misleading and Deceptive Conduct Claims) then:

- a. the Misleading and Deceptive Conduct Claims are apportionable within the meaning of:

- (i) s 1041L of the Corporations Act;
- (ii) s 12GP of the ASIC Act; and
- (iii) s 87CB of the CCA.

b. by reason of the matters pleaded in paragraph 116 below, PwCS is a concurrent wrongdoer with respect to the Misleading and Deceptive Conduct Claims within the meaning of:

- (i) s 1041L of the Corporations Act;;
- (ii) s 12GP of the ASIC Act; and
- (iii) s 87CB of the CCA.

c. pursuant to s 1041N of the Corporations Act, s 12GR of the ASIC Act and s 87CD of the CCA:

- (i) The Third Defendant'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 the Third Defendant's responsibility of that loss; and
- (ii) any judgment against the Third Defendant on the Misleading and Deceptive Conduct Claims is not to be for more than that amount.

116. If, which is denied, the Third Defendant 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, the Third Defendant:

- a. says that PwCS prepared the Assurance Report, which report was included in Nuix's Prospectus;
- b. says that in the Assurance Report, PwCS 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, 49A, 49B, 62, 75(b), 76A, 80, 81A, 91, 107, and 109 of the 2FACSOC, and says that, if those allegations are established (which is denied), then:
  - (i) PwCS did not have reasonable grounds for expressing the Assurance Opinion; and
  - (ii) by expressing the Assurance Opinion, PwCS engaged in misleading or deceptive conduct in contravention of:
    - 1. s 1041H of the Corporations Act;
    - 2. s 12DA of the ASIC Act; and/or
    - 3. s 18 of the ACL;
- d. repeats paragraph 110 of the 2FACSOC, and says that, if that allegation is established (which is denied), then the contraventions by PwCS 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 PwCS' contraventions of:

- (i) s 1041H of the Corporations Act;
- (ii) s 12DA of the ASIC Act; and
- (iii) s 18 of the ACL.

117. Further or alternatively, if, the Third Defendant 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, the Third Defendant:

- a. says that, in providing the Financial Information Report and the Assurance Report to Nuix, PwCS expressly and/or impliedly represented that it had carried out its review of Nuix's forecasts with the degree of care, skill and diligence that could be reasonably expected of an investigating accountant in its position (**PwCS Review Standard Representation**);

#### Particulars

To the extent that the PwCS Review Standard Representation is express, it arises from the reference to the standard of review (including that it will be in accordance ASAE 3450 Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information) in the PwCS Engagement Letter dated 13 November 2020 (**PWC.2001.0003.6297**).

To the extent the representation is implied, it is to be implied from the fact that PwCS was a member of the PwC group and held itself out as a skilled professional adviser on matters relevant to the engagement.

- b. says that, if the allegations in paragraphs 42K to 42N are proved (which allegations are denied), then a reasonable independent accountant in PwCS' position would have identified and reported to Nuix, its directors (including the Third Defendant) and the DDC that:
  - (i) it was unreasonable or inappropriate for Nuix to use a foreign exchange rate of AUD\$1 to USD\$1.45;
  - (ii) Nuix lacked reasonable grounds to assume that \$12m in revenue from the EY Deal in FY21 could be wholly or substantially offset by new MYDs;
  - (iii) there were no reasonable grounds for Nuix to assume that it would achieve approximately \$29.4m in revenue from new business in FY21 having regard to its historical performance and sales pipeline;
  - (iv) the risk contingency of approximately \$12m was inadequate;

#### (the Forecast Errors)

- c. says that PwCS did not identify the Forecast Errors or report the Forecast Errors to Nuix, its directors (including the Third Defendant) or the DDC in the Financial Information Report, or by any other means, prior to the release of the Prospectus or at any time thereafter;
- d. says that, by reason of the matters pleaded in (b) and (c) above, the PwCS Review Standard Representation was misleading or deceptive in contravention of:
  - (i) s 1041H of the Corporations Act;

- (ii) s 12DA of the ASIC Act; and
  - (iii) s 18 of the ACL;
- e. says that Nuix, its directors (including the Third Defendant) and/or the DDC relied on the PwCS Review Standard Representation in deciding to:
- (i) release the Prospectus;
  - (ii) include the Prospectus Growth Forecasts in the Prospectus; and
  - (iii) issue the February Reaffirmation;
- f. says that had PwCS not made the PwCS Review Standard Representation and/or not issued the Assurance Report, then the Third Defendant would not have approved the issue of the Prospectus containing the Prospectus Growth Forecasts;
- g. says that had either of the circumstances pleaded in (f) above occurred, the Third Defendant would not have approved Nuix to make:
- (i) the Prospectus Growth Forecast Representations;
  - (ii) the February Reaffirmation; or
  - (iii) the April Downgraded Forecast;
- h. repeats paragraphs 109A and 110 of the 2FASOC, and says that, if that allegation is established (which is denied), then the contraventions by PwCS referred to in (d) above caused or contributed to the same loss or damage to the Plaintiffs or Group Members as there pleaded; and
- i. says that, in the premises of (a) to (h) 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 PwCS' contraventions of:
- (i) s 1041H of the Corporations Act;
  - (ii) s 12DA of the ASIC Act; and
  - (iii) s 18 of the ACL.
118. If, which is denied, the Third Defendant is liable to the First Plaintiff, the Second Plaintiff or any Group Member pursuant to:
- a. s 729(1) of the Corporations Act for the matters alleged in any or all of paragraphs 51, 52, and 54 of the 2FASOC; and/or
  - b. ss 1317E(4), 1317HA, s 1041I, s 1041H of the Corporations Act, s 12GF and s 12DA of the ASIC Act, and/or s 18 of the ACL for the matters alleged in any or all of paragraphs 112 and 113 of the 2FASOC,

the Third Defendant says that:

- c. the matters alleged by the Plaintiffs also establish that at all material times he acted honestly;
- d. having regard to all the circumstances of the case, the Third Defendant ought fairly to be excused for any contravention, negligence, default, or breach of duty; and

e. relieved from any liability (in whole, or alternatively, in part) to which he would otherwise be subject.

pursuant to s 1317S and s 1318 of the Corporations Act.

**PATRICK KNOWLES SC  
ELIZABETH STEER**

Dated: ~~17 December 2024~~ ~~10 October 2025~~ 30 April 2026

**Mangioni Biggs + Co**  
Solicitors for the Third Defendant