



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

Case: S ECI 2021 04360

Filed on: 23/12/2024 02:46 PM

No. S ECI 2021 04360

BETWEEN

WILLIAM LAY

First
Plaintiff

DANIEL JOSEPH BATCHELOR

Second Plaintiff

-and-

NUIX LTD (ACN 117 140 235)

First Defendant

-and-

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

Second Defendant

-and-

DANIEL PHILLIPS

Third Defendant

**DEFENCE OF THE SECOND DEFENDANT TO THE AMENDED CONSOLIDATED
STATEMENT OF CLAIM**

(Filed pursuant to order 30 of the orders made by the Honourable Justice Nichols on 2 December 2024)

Date of document: 23 December 2024
Filed on behalf of the Second Defendant
Prepared by:
Herbert Smith Freehills
161 Castlereagh Street
Sydney NSW 2000

Solicitors' code: 420
DX: 240 Melbourne
Tel: +61 2 9225 5000
Fax: +61 2 9225 5323
Ref: 82731702
Attention: Jason Betts
Email: jason.betts@hsf.com

In answer to the Amended Consolidated Statement of Claim dated 10 December 2024 ~~6 September 2022~~ (ACSOC), the Second Defendant (MCAL) says as follows.

NOTES:

- In this Defence, MCAL uses the headings and defined terms used in the ACSOC for convenience only and does not admit any factual allegations contained in, or implied by, such headings or defined terms.
- Where MCAL does not admit an allegation, it does so on the basis that it does not know, and therefore cannot say, whether the fact alleged is true or untrue.

A. PRELIMINARY

A.1. Plaintiffs and Group Members

1. As to paragraph 1, MCAL:
 - (a) admits subparagraph (a); and
 - (b) does not admit subparagraph (b).
2. As to paragraph 2, MCAL:
 - (a) admits subparagraph (a); and
 - (b) does not admit subparagraph (b).
3. MCAL admits paragraph 3.
4. As to paragraph 4, MCAL:
 - (a) admits that there are seven or more persons who have, as against each Defendant, claims within the meaning of s33C(1) of the *Supreme Court Act 1986* (Vic);
 - (b) otherwise denies the paragraph.

A.2. Nuix

5. MCAL admits paragraph 5.
6. MCAL admits paragraph 6.

A.3. Nuix officers

7. As to paragraph 7, MCAL:
 - (a) admits that Bleich was appointed as a director of Nuix on 11 January 2017 and remained in that role as at the date of the ACSOC;

- (b) admits that Bleich was appointed Chairman of Nuix on or about 18 November 2020 and remained in that role until approximately February 2023~~as at the date of the CSOC~~;
- (c) admits subparagraph (c) insofar as it concerns the period in subparagraph (a) above; and
- (d) otherwise denies the paragraph.

8. As to paragraph 8, MCAL:

- (a) admits that Vawdrey was appointed as a director of Nuix on 20 September 2017 and remained in that role until 3 December 2021;
- (b) admits that Vawdrey was appointed as Group Chief Executive Officer on or about 8 May 2017 and remained in that role until approximately January 2022;
- (c) admits subparagraph (c) insofar as it concerns the periods in subparagraphs (a) and (b) above; and
- (d) otherwise denies the paragraph.

9. As to paragraph 9, MCAL:

- (a) admits that Iain Lobban (**Lobban**) was appointed as a director of Nuix on 18 November 2020 and remained in that role as at the date of the ACSOC;
- (b) admits that Lobban was appointed as a member of Nuix's Audit and Risk Management Committee on or about 18 November 2020 and remained in that role as at the date of the CSOC;
- (c) admits subparagraph (c) insofar as it concerns the period in subparagraph (a) above; and
- (d) otherwise denies the paragraph.

10. As to paragraph 10, MCAL:

- (a) admits that Thomas was appointed as a director of Nuix on 18 November 2020 and remained in that role until 18 October 2023~~as at the date of the CSOC~~;

- (b) admits that Thomas was appointed as a member of Nuix’s Audit and Risk Management Committee on or about 18 November 2020 and remained in that role until approximately October 2023~~as at the date of the CSOC~~;
- (c) admits subparagraph (c) insofar as it concerns the period in subparagraph (a) above; and
- (d) otherwise denies the paragraph.

11. As to paragraph 11, MCAL:

- (a) admits that Doyle was appointed as Chief Financial Officer of Nuix in or about August 2010 and remained in that role until approximately 21 June 2021;
- (b) does not admit that Doyle was an “officer” of Nuix within the meaning of the Corporations Act in the period in subparagraph (a) above; and
- (c) otherwise denies the paragraph.

12. As to paragraph 12, MCAL:

- (a) admits that Phillips was appointed as a director of Nuix on 9 June 2011 and remained in that role until his resignation on or about 31 August 2022;
- (b) admits that Phillips was appointed as a member of Nuix’s Audit and Risk Management Committee on or about 18 November 2020 and remained in that role until his resignation on or about 31 August 2022;
- (c) admits subparagraph (c) insofar as it concerns the period in subparagraph (a) above; and
- (d) otherwise denies the paragraph.

13. As to paragraph 13, MCAL:

- (a) admits the paragraph insofar as it alleges that, during the alleged Inflation Period, information that came into the possession of any of the persons referred to in subparagraphs (a), (b), (c), (d) and (f) of paragraph 13 of the ACSOC, or ought reasonably to have come into the possession of any of those persons, in the course of the performance of his or her duties as an officer of Nuix, was information of which Nuix was “aware” for the purposes of the ASX Listing Rules by reason of r 19.12 of the ASX Listing Rules;

- (b) by reason of the matters pleaded in paragraph 11(b) above, does not admit the paragraph insofar as it alleges the matters referred to in subparagraph (a) above in relation to Doyle;
- (c) denies that, during the alleged Inflation Period or otherwise, knowledge of information that came into the possession of an officer of Nuix, or ought reasonably to have come into the possession of an officer of Nuix, in the course of the performance of his or her duties as an officer of Nuix, was or is to be attributed to Nuix for purposes other than the application of the ASX Listing Rules; and
- (d) otherwise denies the paragraph.

A.4. Macquarie Capital

14. MCAL admits paragraph 14.

15. As to paragraph 15, MCAL:

- (a) admits subparagraph (a);
- (b) as to subparagraph (b):
 - (i) says that the words “involved in preparing” are vague and embarrassing;
 - (ii) under cover of that objection, refers to and relies upon the matters pleaded in subparagraphs (c) to (x) below; and
 - (iii) otherwise denies subparagraph (b);

Engagement Agreement – 18 August 2020

- (c) says that:
 - (i) on 18 August 2020, MCAL entered into an Engagement Agreement with Nuix (then Nuix Pty Ltd) (**Engagement Agreement**) under which MCAL agreed *inter alia* to act as a joint global co-ordinator, lead manager and bookrunner in relation to a proposed initial public offering (**IPO**) of Nuix securities;

Particulars

MCAL was engaged as a “joint” global co-ordinator, lead manager and bookrunner because, at that time, Morgan Stanley Australia Securities Ltd (**Morgan Stanley**) had already been engaged to undertake those roles.

- (ii) thereafter, and subject to subparagraphs (u) and (v) below, MCAL’s role and responsibilities in relation to the IPO were governed by the Engagement Agreement;
- (d) says further that, by cl 4 of the Engagement Agreement:
 - (i) Nuix promised MCAL that it would make reasonable inquiries and exercise due diligence to ensure that any **Disclosure Document** (as defined in the Engagement Agreement), including the Prospectus, did not contain any statements that were misleading or deceptive; and

Particulars

“Disclosure Documents” was defined in cl 4 of the Engagement Agreement to mean documents or any other disclosure or offering documents in relation to the Transaction and any marketing material used in relation to the Transaction. The “Transaction” was defined on p 1 of the Engagement Agreement to include the initial public offering of equity securities of Nuix on the Australian Securities Exchange.

- (ii) Nuix promised MCAL that it would make reasonable inquiries and exercise due diligence to ensure that any Disclosure Document did not omit any information required to be disclosed in the document;
- (e) says further that the contractual promises in the Engagement Agreement pleaded in subparagraph (d) above continued to bind Nuix at the point at which the Prospectus was lodged on 18 November 2020;

Particulars

The relevant promises in cl 4 were expressed to have prospective operation (“will make”). MCAL also refers to the matters pleaded at subparagraph (v) below and the particulars thereto.

- (f) says further that it will rely on the full terms and effect of the Engagement Agreement at trial;

Participation in the due diligence process – 21 August 2020 to 18 November 2020

- (g) says further that, from at least 21 August 2020, MCAL was a member of the Due Diligence Committee (**DDC**) established for the IPO, together with the following other members:

- (i) Nuix (represented both by certain members of Nuix management and by certain members of the Nuix board);
- (ii) Nuix SaleCo Ltd;
- (iii) Clayton Utz;
- (iv) PricewaterhouseCoopers Securities Ltd (**PwCS**); and
- (v) Morgan Stanley;

Particulars

MCAL was represented at the DDC by a number of representatives, including two appointed representatives.

- (h) says further that the purposes of the due diligence process established for the IPO 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 omit information required to be included in the Prospectus;

Particulars

MCAL refers to the Due Diligence Planning Memorandum, cl 4.1.

- (i) says further that, prior to the lodgement of the Prospectus, the DDC held scheduled meetings on the following dates (each of which was attended by MCAL representatives)
 - (i) 21 August 2020;
 - (ii) 26 August 2020;
 - (iii) 11 September 2020;
 - (iv) 18 September 2020;
 - (v) 25 September 2020;
 - (vi) 30 September 2020;
 - (vii) 9 October 2020;
 - (viii) 19 October 2020;

- (ix) 26 October 2020;
 - (x) 10 November 2020;
 - (xi) 11 November 2020; and
 - (xii) 18 November 2020;
- (j) says further that meetings of the DDC were supplemented by *ad hoc* meetings and email correspondence;
- (k) says further that 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;

Particulars

The “Reporting Persons” were:

- Clayton Utz (as “Australian Legal Advisor”) who designed the due diligence process (as noted in the Due Diligence Planning Memorandum, which they prepared) and advised on the proper implementation of the due diligence process. Clayton Utz personnel performed the functions of DDC Chair and Secretary. Clayton Utz provided *inter alia* a legal opinion on the Prospectus content that contained opinions that:
 - nothing had come to the attention of Clayton Utz that would cause them to believe, and that Clayton Utz did not believe, that the Prospectus contained a statement that was misleading or deceptive or that there was an omission from the Prospectus of material required by the Corporations Act to be included in it;
 - the inquiries conducted by the DDC in accordance with the due diligence process would be likely to be held to constitute all inquiries (if any) that were reasonable in the circumstances within the meaning of sections 731(1) and 731(2) of the *Corporations Act*, respectively;
 - to the extent a DDC member had relied on information provided by another person and such information was provided under, and such reliance was contemplated by, the due diligence process, that the implementation of the due diligence process would likely be held to constitute reasonable reliance on information within the meaning of section 733(1) of the *Corporations Act*, provided the relevant information was sourced from

someone other than a director, employee or agent of that DDC member; and

- the due diligence process had been implemented, completed or conducted, in all material respects, in accordance with the terms of the Due Diligence Planning Memorandum adopted by the Due Diligence Committee.

Clayton Utz also provided Verification Guidelines (explaining the importance of and methods used in the verification process) and a “Verification Certificate (Legal)” (confirming that statements for which Clayton Utz was responsible had been verified in accordance with the Verification Guidelines).

- Sidley Austin, A&L Goodbody and Romulo Mabanta Buenaventura Sayoc & De Los Angeles (known, together with Clayton Utz, as the “Due Diligence Legal Advisors”) who provided foreign law contributions to the legal due diligence report.
- PwCS (as “Investigating Accountant”) who considered and commented on successive drafts of the Prospectus and reviewed the financial information (including financial forecasts) in the Prospectus, including the “Prospectus Growth Forecasts” as defined in paragraph 45 of the [ACSOC](#).

- (l) says further that the DDC received reports from and presentations by *inter alios* “Reporting Persons”, Nuix management and external experts;

Particulars

MCAL refers to Annexure A.

- (m) says further that the joint lead managers (as defined below at paragraph (u)) retained legal counsel for the IPO of Nuix shares in Australia and in the United States (the **US Offer**);

Particulars

MCAL refers to Annexure A.

- (n) says further that 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;

Particulars

MCAL refers to Annexure A.

- (o) says further that the DDC undertook a process of verifying information to be included in the Prospectus, including a formal verification process undertaken by Nuix and Clayton Utz, which formal verification process included:
- (i) where possible, checking each statement against an independent source, with particular focus on material statements, information or data;
 - (ii) where statements were statements of opinion or as to a future matter or based on analysis, gathering evidence to demonstrate the basis on which that statement had been made with a view to establishing that the statement was based on reasonable grounds;
 - (iii) a Nuix representative verifying an allocated statement in a Verification Schedule and executing a Verification Certificate which confirmed that:
 - 1. they had read the allocated statements in the Verification Schedule and believed them to be true and accurate; and
 - 2. nothing had come to their attention that caused them to believe, and they did not believe, that: (i) any allocated statement was misleading or deceptive, including by omission; or (ii) there was an omission from the Prospectus of material that was required by the Corporations Act to be included in relation to the statements;

Particulars

MCAL refers to Annexure A.

- (iv) the provision of opinions and “sign-offs” from Reporting Persons and Nuix management;

Particulars

MCAL refers to Annexure A.

- (p) says further that MCAL had the role of coordinating the preparation of Section 4 of the Prospectus, relying on information and assurances received from Nuix, PwCS, various other members of the DDC and advisers;

Particulars

MCAL refers to Annexure A.

- (q) says further that, during the due diligence process, representatives of MCAL requested further information from Nuix and its advisers, including based on those MCAL representatives' review of information provided to them;

Particulars

MCAL refers to Annexure A.

- (r) says further that MCAL attended drafting sessions in relation to the Prospectus to coordinate the drafting of the Prospectus by Nuix and other advisers;
- (s) says further that, as part of its participation in the due diligence process, including through its membership of the DDC, MCAL considered presentations to the DDC, reviewed reports, opinions and other materials provided to the DDC and sought to satisfy itself, and ultimately did satisfy itself, that there were no misleading statements in the Prospectus or omissions of information that was required to be included in the Prospectus;
- (t) says further that, on 18 November 2020 prior to the lodgement of the Prospectus, each member of the DDC (including Nuix) confirmed *inter alia* that the member was satisfied, as was the fact in the case of MCAL, that nothing had come to the member's attention that caused the member to believe, and that member did not believe, that the Prospectus did not comply with the content requirements of the Corporations Act, and, in particular, that:
- (i) any statement in the Prospectus was misleading or deceptive; or
 - (ii) there was an omission from the Prospectus of any information that was required by the Corporations Act to be included in it;

Particulars

MCAL refers to the Due Diligence Committee Report, cl 2.2.

Underwriting Agreement – 18 November 2020 (prior to the issue of the Prospectus)

- (u) says further that, on 18 November 2020 prior to the issue of the Prospectus, MCAL entered into an Underwriting Agreement with Nuix (**Underwriting Agreement**) under which MCAL agreed *inter alia* to be appointed together with Morgan Stanley as a joint lead manager (**JLM**) to arrange and manage the **Offer** (as defined in the

Underwriting Agreement), and to act as a bookrunner for and underwriter of the Offer on the terms and conditions set out in the Underwriting Agreement;

Particulars

“Offer” was defined in cl 1.1 of the Underwriting Agreement to mean the “Broker Firm Offer” and the “Institutional Offer”. Those terms were in substance defined respectively in cl 1.1 as the offer of a firm allocation of Nuix shares to brokers for allocation to the clients and the offer of Nuix shares under the bookbuild.

- (v) says further that, thereafter, MCAL’s role and responsibilities in relation to the IPO were governed by both the Underwriting Agreement and the Engagement Agreement, with the latter continuing to apply save to the extent of any inconsistency (in which case the Underwriting Agreement prevailed);

Particulars

MCAL refers to cl 5 of the Engagement Agreement, which provided: “After entry into an underwriting agreement, the terms of the underwriting agreement will prevail over the Engagement Agreement to the extent they are inconsistent, but the Engagement Agreement otherwise continues to apply”.

- (w) says further that, on 18 November 2020 prior to the issue of the Prospectus, Nuix expressly represented, warranted and undertook to MCAL:
- (i) that at the time of publication and at all times before completion of the IPO there would not be any omissions from any **Offer Document** (which included the Prospectus) of material required by *inter alia* the Corporations Act to be included in the Offer Document (by cl 9.1(f));

Particulars

“Offer Document” was defined in cl 1.1 of the Underwriting Agreement to include “the Prospectus ... and any Supplementary Prospectus”.

- (ii) that at the time of publication and at all times before completion of the IPO any Offer Document would not contain any statements that were misleading or deceptive (including, without limitation, misleading statements within the meaning of s 728(2) of the Corporations Act) (by cl 9.1(f));

- (iii) that Nuix had conducted and would continue until the completion of the IPO to make all reasonable inquiries to ensure that there were no omissions from the Offer Documents of material required by *inter alia* the Corporations Act to be included in those documents and that the statements included in the Offer Documents were true and not misleading or deceptive in any respect (by cl 9.1(m));
- (iv) that each statement in the Offer Documents that related to a future matter, and each expression of opinion, belief, expectation or intention, was made on reasonable grounds and after due and careful inquiry in good faith using assumptions believed by Nuix management to be reasonable; that the issue and distribution of the Offer Documents would not constitute conduct that was misleading or deceptive; and that Nuix would not engage in conduct that was misleading or deceptive in connection with the issue and distribution of the Offer Documents (by cl 9.1(f), (k) and (s));
- (v) that the statutory forecast income statement and statement of cash flows for the year ending 30 June 2021 as well as the pro forma forecast income statement and statement of cash flows for the year ending 30 June 2021 (including in each case the notes thereto and assumptions described therein) contained in the Prospectus, which included the “Prospectus Growth Forecasts” as defined in paragraph 45 of the [ACSOC](#), had been prepared after due and careful inquiry using reasonable assumptions and presented the information they contained fairly (by cl 9.1(i));
- (vi) that there had been no change in the financial performance or prospects of Nuix from those set out in the last audited financial statements included in the Prospectus except for changes in the ordinary and usual course of business (by cl 9.1(j)); and
- (vii) that all information supplied to the JLMs on behalf of Nuix with its knowledge and consent was at the time of supply, and would be in its final form (except to the extent corrected before the issue of the Prospectus), true, complete and accurate and not misleading or deceptive (including by omission) (by cl 9.1(l)); and

- (x) says further that it will rely on the full terms and effect of the Underwriting Agreement at trial.

B. NUIX SECURITIES MARKET

B.1. Initial Public Offering

16. MCAL admits paragraph 16.

17. MCAL admits paragraph 17.

18. MCAL admits paragraph 18.

19. MCAL admits paragraph 19. As to paragraph 19, MCAL:

~~(a) denies that it was named as underwriter “of the Prospectus”;~~

~~(b) says that it was instead named with its consent, together with Morgan Stanley, as an underwriter of the “Offer”, which was defined in the Prospectus as “an initial public offering to acquire fully paid ordinary shares in the capital of Nuix”;~~

Particulars

~~MCAL refers to pp 2, 48 and 273 of the Prospectus.~~

~~(c) admits that the Prospectus contained the “Offer” as described in subparagraph (b) above; and~~

~~(d) otherwise denies the paragraph.~~

B.2. Secondary (on-market) trading

20. As to paragraph 20, MCAL:

(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. As to paragraph 21, MCAL:

- (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. As to paragraph 22, MCAL:

- (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. As to paragraph 23, MCAL:

- (a) insofar as it is alleged that the internal reviews referred to in paragraph 23 of the ACSOC were conducted after the lodgement of the Prospectus on 18 November 2020, says that those internal reviews can have no bearing on the alleged liability of MCAL under s 729 of the Corporations Act in relation to alleged contraventions by Nuix of s 728(1)(a)(i) and (b) of the Corporations Act; and
- (b) otherwise does not admit the paragraph.

C.1.2. Engineering staff and R&D

24. MCAL does not admit paragraph 24.

25. As to paragraph 25, MCAL:

(a) does not admit subparagraph (a); and

(b) as to subparagraph (b):

(i) admits that Nuix underspent its research and development budget in FY20; and

(ii) otherwise denies subparagraph (b).

C.1.3. Nature of FY20 earnings result

26. MCAL does not admit paragraph 26.

C.1.4. Inability accurately to forecast financial performance

27. As to paragraph 27, MCAL:

(a) admits that, in FY18 and FY20, the actual revenue result was below revenue budgeted by internal management; and

(b) otherwise does not admit the paragraph.

28. MCAL does not admit paragraph 28.

29. MCAL does not admit paragraph 29.

30. As to paragraph 30, MCAL:

(a) admits that, in October 2019, Doyle sent an email to Vawdrey and other Nuix executives that *inter alia* stated: “As a group we cannot predict our numbers”;

(b) refers to the full terms and effect of the email; and

(c) otherwise does not admit the paragraph.

31. As to paragraph 31, MCAL:

(a) says that any forecast is inherently subject to uncertainty;

(b) refers to the contractual assurances given to MCAL by Nuix as pleaded in paragraph 15(w)(iv) and 15(w)(v) above; and

- (c) in the premises, denies the paragraph.

C.1.5. Castagna's influence over Nuix management

32. MCAL does not admit paragraph 32.

33. As to paragraph 33, MCAL:

- (a) refers to paragraph 32 above;
- (b) says that, as at the Prospectus Date, Blackall Ltd, which was a company ultimately owned by Delrick Ltd, which in turn maintained a retirement fund for Castagna, owned 9.3% of the shares in Nuix on a fully diluted basis; and
- (c) otherwise denies the paragraph.

Particulars

MCAL refers to pages 42 and 215 of the Prospectus.

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

34. As to paragraph 34, MCAL:

- (a) refers to paragraphs 23 to 30 and 32 above;
- (b) in the premises, does not admit the paragraph insofar as it relates to those paragraphs;
- (c) refers to paragraphs 31 and 33 above; and
- (d) in the premises, denies the paragraph insofar as it relates to those paragraphs.

C.2. Nuix Structural Information

C.2.1. Customer shift towards consumption-based pricing

35. As to paragraph 35, MCAL:

- (a) says that, at the Prospectus Date, Nuix's revenue recognition policy involved the following elements:
 - (i) in relation to multi-year contracts for software delivered on a customer's premises or in a customer-hosted "cloud" environment:

1. Nuix would segregate the “support and maintenance” component of the contract value and defer recognition of that support and maintenance component in accordance with its accounting policies (which support and maintenance component was recognised as deferred revenue on Nuix’s statement of financial position);
 2. the total contract value (excluding the support and maintenance component) would be recognised either on a pro rata basis over the term of the contract or an upfront recognition basis, depending on terms of the contract, on the following basis:
 - a. where the contract included a cancellation or termination clause, the total contract value (excluding the support and maintenance component) was recognised on a pro rata basis over the term of the contract (assuming other relevant criteria were satisfied), and such contracts were described as “annual multi-year deals”;
 - b. where the contract did not include a cancellation or termination clause, the total contract value (excluding the support and maintenance component) was recognised on an upfront recognition basis (assuming other relevant criteria were satisfied), and such contracts were referred to as “upfront multi-year deals”; and
- (ii) Nuix applied usage basis revenue recognition (under which the customer was charged based on the volume of data processed or under management in each licence period) to certain licences referred to as “Consumption Licences”, which were often delivered via a Nuix-hosted cloud environment; and

Particulars

MCAL refers to section 4.2.4 of the Prospectus.

- (b) otherwise denies the paragraph.

36. As to paragraph 36, MCAL:

- (a) says that licences sold by Nuix under the Consumption Model had the potential to have a negative impact on Nuix's operating results (including Nuix's operating cash flows) relative to the impact of licences sold under the Non-Consumption Model; and

Particulars

MCAL refers to section 5.1.13 of the Prospectus.

- (b) otherwise denies the paragraph.

37. As to paragraph 37, MCAL:

- (a) admits subparagraph (a); and
- (b) denies subparagraph (b).

38. As to paragraph 38, MCAL:

- (a) repeats paragraph 31(a) above;
- (b) refers to the contractual assurances given to MCAL by Nuix as pleaded in paragraph 15(w)(iv) and 15(w)(v) above; and
- (c) in the premises, denies the paragraph.

C.2.2. Knowledge of Nuix as at Prospectus Date

39. As to paragraph 39, MCAL:

- (a) refers to paragraph 38 above; and
- (b) denies the paragraph.

C.3. US Political Risk Information

40. MCAL does not admit paragraph 40.

41. MCAL does not admit paragraph 41.

42. As to paragraph 42, MCAL:

- (a) repeats paragraph 31(a) above;

- (b) refers to the contractual assurances given to MCAL by Nuix as pleaded in paragraph 15(w)(iv) and 15(w)(v) above; and
- (c) in the premises, denies the paragraph.

C.4. Prospectus Financial Forecasts Information

43. As to paragraph 43, MCAL:

- (a) refers to paragraph 15(w)(v) above; and
- (b) in the premises, denies the paragraph.

C.4.1. Knowledge of Nuix as at Prospectus Date

44. As to paragraph 44, MCAL:

- (a) refers to paragraph 43 above; and
- (b) denies the paragraph.

D. IPO CONTRAVENTIONS

D.1. Prospectus Growth Forecasts

45. As to paragraph 45, MCAL:

- (a) admits subparagraph (a);
- (b) admits subparagraph (b) insofar as it concerns Nuix's pro forma ACV for FY21;

Particulars

MCAL refers to pp 39 and 137 of the Prospectus.

- (c) as to subparagraph (c):
 - (i) refers to subparagraph (b) above; and
 - (ii) otherwise admits the subparagraph; and
- (d) otherwise denies the paragraph.

D.2. Prospectus Omissions

46. As to paragraph 46, MCAL:

- (a) refers to paragraphs 23 to 33, 38, 42 and 43 above; and
- (b) denies the paragraph.

47. As to paragraph 47, MCAL:

- (a) refers to paragraphs 23 to 33, 38, 42 and 43 above;
- (b) in the premises;
 - (i) does not admit that the Prospectus omitted the Management Information (save for as pleaded in paragraphs 31 and 33 of the ACSOC), the Structural Change Information, the Political Risk Information and the Prospectus Financial Forecasts Information; and
 - (ii) denies that the Prospectus omitted the Management Information as pleaded in paragraphs 31 and 33 of the ACSOC.

48. As to paragraph 48, MCAL:

- (a) refers to paragraphs 46 and 47 above; and
- (b) in the premises, denies the paragraph.

D.3. Misleading or deceptive conduct

49. As to paragraph 49, MCAL:

- (a) admits subparagraph (a);
- (b) refers to paragraphs 23 to 33, 38, 42 and 43 above;
- (c) in the premises, denies subparagraphs (b) and (c); and
- (d) says further that the Prospectus included various disclaimers, including a disclaimer that none of Nuix, SaleCo, any of their directors or the JLMs and Lead Manager Parties, or any other person, guaranteed that the results, performance or achievements expressed or implied by the forward-looking statements contained in the Prospectus would actually occur and investors were cautioned not to place undue reliance on the forward-looking statements; and

Particulars

MCAL refers to the “Important Notices” section of the Prospectus and to paragraph 6 of Annexure A.

- (e) says further that the Prospectus set out various key risks associated with an investment in Nuix, including risks that could affect whether financial forecasts were met.

Particulars

MCAL refers to Section 5 of the Prospectus and in particular to sections 5.1.23 and 5.1.35.

E. IPO CONTRAVENTIONS – LOSSES AND LIABILITIES

E.1. Causation and losses

50. As to paragraph 50, MCAL:

- (a) refers to paragraphs 48 and 49 above; and
- (b) denies the paragraph.

E.2. Nuix’s liability

51. As to paragraph 51, MCAL:

- (a) refers to paragraphs 48 and 49 above; and
- (b) denies the paragraph.

E.3. Liability of MCAL and Phillips

52. As to paragraph 52, MCAL:

- (a) as to subparagraph (a):
 - (i) ~~denies that it was the underwriter “of the Prospectus”;~~ admits that it was an underwriter of the Offer contained in the Prospectus;
 - (ii) ~~[Not used] says further that it was, on the basis pleaded in paragraph 19(b) above, an underwriter to the issue of securities named in a disclosure document with its consent within item 4 of the table in s 729(1) of the Corporations Act;~~
 - (iii) refers to paragraphs 45, 47 and 49(a) above; and

- (iv) otherwise denies subparagraph (a); and
- (b) as to subparagraph (b):
 - (i) admits (i), (ii) and (iv) of that subparagraph;
 - (ii) refers to paragraphs 24, 30 and 32 above; and
 - (iii) otherwise denies subparagraph (b).

53. As to paragraph 53, MCAL:

- (a) refers to paragraphs 48 and 49(c) above;
- (b) in the premises, denies the paragraph; and
- (c) in further answer to paragraph 53, insofar as Nuix contravened s 728(1) of the Corporations Act as alleged in paragraphs 48 and 49(c) of the ACSOC, which MCAL denies, MCAL will rely on the facts and matters pleaded in paragraphs 53A to 53F below.

Due diligence defence – Corporations Act, s 731

All inquiries (if any) that were reasonable in the circumstances

53A. By making any of the following inquiries (alternatively, by making any combination of the following inquiries):

- (a) seeking and obtaining from Nuix, on 18 August 2020, contractual promises that there were no misleading statements in the Prospectus, and that there had been no omissions from the Prospectus of information required by the Corporations Act to be included in it, which promises were framed so as to bind Nuix at the point in time at which the Prospectus was lodged, as pleaded in paragraph 15(d) to 15(e) above;
- (b) participating in the due diligence process over approximately four months, including considering and interrogating the material presented to it or otherwise received by it as part of that due diligence process, as pleaded in paragraph 15(g) to (s) above;
- (c) seeking and obtaining from Nuix, 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 15(s) above (these assurances being additional to the assurances MCAL had sought and procured on 18 August 2020); and

MCAL made all inquiries that were reasonable in the circumstances as to whether the Prospectus Growth Forecasts were misleading or deceptive and as to whether there was any omission from the Prospectus of material required to be disclosed by s 710 of the Corporations Act.

Reasonable belief that there were no misleading statements and no omissions

53B. By reason of the matters pleaded in paragraph 53A above and the very fact and nature of the due diligence process itself, MCAL:

- (a) believed that the Prospectus Growth Forecasts were 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 subparagraphs (a) and (b) on reasonable grounds.

No liability possible

53C. By reason of the matters pleaded in paragraphs 53A and 53B above, pursuant to s 731 of the Corporations Act, MCAL 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 – Corporations Act, s 733

Reliance

53D. MCAL relied on the following information (each being information for the purposes of s 733 of the Corporations Act):

- (a) the contractual promises, express representations and undertakings given to it by Nuix pleaded in paragraph 15(d), 15(e) and 15(s) above; and

Particulars

That MCAL relied on the contractual promises, express representations and undertakings follows from the fact that it took the step of seeking those promises, representations and undertakings, but MCAL refers without limitation to cl 9.7 of the Underwriting Agreement, which expressly records MCAL's reliance on the representations and warranties given by that agreement.

- (b) the information given to it as part of the due diligence process including that referred to in paragraph 15(t).

Particulars

MCAL refers without limitation to cl 3 of the Due Diligence Committee Report. Further particulars of the information given to MCAL as part of the due diligence process and relied upon by MCAL will be provided following the service of evidence.

Reasonableness of the reliance

53E. By reason of:

- (a) the contractual nature of the information referred to in paragraph 53D(a) above;
- (b) further, or in the alternative, that contractual information having been sought and obtained not once but twice (on 18 August 2020 and on 18 November 2020, immediately prior to the lodgement of the Prospectus); and
- (c) further, or in the alternative, the context in which the information in paragraph 53D(b) above was provided to MCAL, as pleaded in paragraph 15(g) to 15(p) above, including the confirmations in the Due Diligence Committee Report there pleaded;

MCAL's reliance as pleaded in paragraph 53D above was reasonable.

No liability possible

53F. By reason of the matters pleaded in paragraphs 53D and 53E above, pursuant to s 733 of the Corporations Act, MCAL cannot be liable under s 729 of the Corporations Act for any contraventions of s 728 of the Corporations Act by Nuix.

54. As to paragraph 54, MCAL:

- (a) refers to paragraphs 48, 49(c) and 52(b)(iii) above; and

(b) denies the paragraph.

PARTS F. TO J. OF THE ACSOC (PARAGRAPHS 55 TO 113)

55. As to paragraphs 55 to 113 of the ACSOC, MCAL:

(a) with the consent of the First and Second Plaintiff, does not plead to those paragraphs, on the basis that they are irrelevant to the claim against MCAL based on s 729 of the Corporations Act (that being the only claim against MCAL made in the proceeding); and

(b) should not thereby be taken to have admitted the matters alleged in those paragraphs.

K. COMMON QUESTIONS

56. MCAL does not plead to paragraph 114 of the ACSOC as it contains no allegations of fact or law.

Particulars

Paragraph 114 of the ACSOC merely sets out what, in the view of the plaintiffs, are the questions of fact or law common to the claims of group members, as required by s 33H(2)(c) of the *Supreme Court Act 1986* (Vic). For the avoidance of doubt, MCAL reserves its right to be heard on the proper formulation of the common questions following the close of pleadings and evidence.

Date: ~~22 October 2022~~ 23 December 2024

R. G. CRAIG

J. A. FINDLAY

H. C. WHITWELL

Herbert Smith Freehills
Solicitors for the Second Defendant

ANNEXURE A – PARTICULARS IN RESPECT OF THE DUE DILIGENCE PROCESS

Paragraph 15(l)

1. Presentations and associated reports to the DDC included:
 - (a) Nuix's representatives, Vawdrey (Chief Executive Officer) and Doyle (Chief Financial Officer), presenting a general overview of the Nuix business at the second DDC meeting on 26 August 2020;
 - (b) Stephen Stewart (**Stewart**) (Chief Technology Officer) and David Sitsky (Engineering Founder and Chief Scientist) presenting on Nuix's products, including their development and use, at the third DDC meeting on 11 September 2020;
 - (c) Stewart, Paul Keen (Vice President of Engineering), Rolf Krolke (Vice President of Technology Services), Jeff Wardell (Head of IT and Security) and Vawdrey presenting on Nuix's products, IT and engineering and risks, at the fourth DDC meeting on 18 September 2020;
 - (d) an independent expert report by Stephen Allen assessing the risks in the Nuix business as well as the Prospectus disclosure risks, prepared following interviews with Nuix personnel and with access to Nuix management and documents, which report was circulated and discussed at the fifth DDC meeting on 25 September 2020;
 - (e) Vawdrey, Melissa Pascoe (**Pascoe**) and Brian Krupczak (**Krupczak**) (General Counsel) presenting on risks, HR, insurance and leases at the fifth DDC meeting on 25 September 2020;
 - (f) Clayton Utz and Sidley Austin presenting on legal due diligence at the fifth DDC meeting on 25 September 2020;
 - (g) Doyle presenting on Nuix's historical financials at the sixth DDC meeting on 30 September 2020;
 - (h) PwCS presenting on its findings to date on historical financials at the sixth DDC meeting on 30 September 2020 (together with Nuix Management);
 - (i) Vawdrey, Danny Pidutti (Chief Product Officer) and Doyle, as well as Ari Kaplan (an external industry expert consultant), presenting on industry and forecast financials and customer engagement at the seventh DDC meeting on 9 October 2020;

- (j) PricewaterhouseCoopers (**PwC**) presenting a tax information report at the seventh DDC meeting on 9 October 2020;
- (k) PwCS presenting on forecast financials at the eighth DDC meeting on 19 October 2020 (PwCS's draft Financial Information Report having been circulated on 18 October 2020);
- (l) Krupczak presenting an insurance update at the ninth DDC meeting on 26 October 2020;
- (m) PwCS and PwC presenting their draft Financial Information Report and Tax Steps Paper at the ninth DDC meeting on 26 October 2020;
- (n) David Standen (as a Nuix director at that time), Pascoe, Phillips (as Chair of the Nuix Audit and Risk Committee) and Krupczak presenting on various matters, including litigation risks, HR reports, issues raised in relation to the company's revenue recognition policy, R&D expense capitalisation policy, R&D claims for tax rebate purposes, governance, insurance, change of control provisions, privacy, financial restatements, cloud progression, and COVID-19, at the tenth DDC meeting on 10 November 2020;
- (o) PwCS and PwC presenting on the proposed ASX Listing and a summary of changes to financial information at the tenth DDC meeting on 10 November 2020;
- (p) Doyle reporting on management accounts, and Cassandra Bell (**Bell**) (Strategic Program Manager) on verification steps, at the eleventh DDC meeting on 11 November 2020;
- (q) Doyle, Krupczak and Bell providing updates, including on business and trading, insurance, change of control and verification, and presenting the "Nuix Limited and controlled entities Annual Report for the first quarter ended 30 September 2020", at the twelfth DDC meeting on 18 November 2020; and
- (r) PwCS and PwC providing updates on the Financial Information Report and Tax Report at the twelfth DDC meeting on 18 November 2020, and Clayton Utz circulating an updated draft legal due diligence report shortly before that meeting.

2. Further particulars may be provided following the service of evidence.

Paragraph 15(m)

3. The JLMs legal advisors performed some of the following tasks:
 - (a) As to the Australian-based legal advisors, reviewing and commenting on the due diligence process conducted by Nuix, including reviewing and commenting on the due diligence process documents.
 - (b) As to the Australian-based legal advisors, reviewing and commenting on any expert reports from a JLM use and reliance perspective only.
 - (c) As to the US-based legal advisors, providing legal advice on the legal requirements in relation to the making of the US Offer, advice on liability and publicity restrictions in the United States, drafting the US Offer documents and drafting parts of the financial section of the Prospectus.
 - (d) As to the US-based legal advisors, conducting a due diligence process in relation to the US Offer documents, including the Prospectus.
 - (e) As to the US-based legal advisors, preparing a 10b-5 opinion which confirmed that, after reasonable investigation, nothing had come to their attention which led them to believe that the US Offer documents provided to investors in the United States contained a materially misleading statement or an omission which would make the offering materials materially misleading.
 - (f) As to the US-based legal advisors, attending meetings of the DDC as an 'Observer' (as defined in the Due Diligence Planning Memorandum).

Paragraph 15(n)

4. The materiality thresholds were set out in the Due Diligence Planning Memorandum.
5. Examples of matters that the DDC considered and discussed included:
 - (a) Nuix's licence models, the trend towards consumption contracts and sensitivities concerning multi-year deals. Risks relating to changes to Nuix's business model and strategy were disclosed in Section 5.1.13 of the Prospectus, including, for example, that Nuix might expect to experience longer periods over which it collected cash from customers if it moved to a consumption-based pricing model.

- (b) Nuix’s accounting policies (including revenue recognition policies) through a detailed investigation undertaken by PwCS, KPMG and Nuix. Risks relating to Nuix’s revenue recognition policies were disclosed in Section 5.1.13 of the Prospectus, including, for example, that changes to Nuix’s business model, particularly its licensing and pricing models, might affect Nuix’s accounting policies and financial metrics (how such metrics were measured and reported was also discussed).
 - (c) Ongoing disputes and claims, including proceedings commenced by a former CEO of Nuix and an individual who had previously performed work for Nuix. Risks relating to ongoing disputes were disclosed in Section 6.9 of the Prospectus.
 - (d) Employee attraction, retention and succession. Risks relating to retaining personnel were disclosed in Section 5.1.3 of the Prospectus.
 - (e) The impact of COVID-19, as disclosed in Section 5.1.11 of the Prospectus, including in particular the risk of reduced demand from U.S. federal government customers.
 - (f) Sales to government customers, as disclosed in Section 5.1.14 of the Prospectus, including the risk that Nuix would be unable to maintain or increase revenue derived from government contracts as a result of factors including a change in the political environment, including before or after an election.
 - (g) Foreign currency exchange fluctuations, as disclosed in Section 5.1.32 of the Prospectus, including the risk that changes in the exchange rates in the jurisdictions in which Nuix operated might adversely impact Nuix’s business, operations and financial performance.
6. The Prospectus included a number of disclaimers in relation to the forecast financial information and assumptions, including:
- (a) The “Important Notices” section which provided *inter alia* that the forecast financial information and forward-looking statements, which included the “Prospectus Growth Forecasts” as defined in the [ACSO](#)C, were subject to various risks that could cause Nuix’s results to differ materially from the results expressed or anticipated in the statements and that they should be read in conjunction with, and were qualified by reference to, risks as set out in Section 5, general assumptions, specific assumptions and the sensitivity analysis as set out in Section 4, and other information in the Prospectus.

- (b) The “Key Risks” section which provided *inter alia* that Nuix’s revenues, operating margins, cash flows and other operating results could vary significantly from period to period as a result of various factors, and Nuix may not be able to accurately predict its future revenues or results of operations.
- (c) The Financial Information (as defined in the Prospectus) should be read in conjunction with Independent Limited Assurance Reports prepared by PwCS.
- (d) The Forecast Financial Information (as defined in the Prospectus) was prepared by Nuix based on an assessment of current economic and operating conditions and on general and specific assumptions regarding future events and actions and that investors should be aware that the assumptions may not eventuate in full or in part and investors were cautioned not to place undue reliance on the Forecast Financial Information.
- (e) The assumptions upon which the Forecast Financial Information were based were by their very nature subject to significant uncertainties and contingencies, many of which were outside the control of Nuix and SaleCo, and their respective directors, and were not reliably predictable.
- (f) The preparation of financial statements in accordance with AAS required Nuix to make judgments, estimates and assumptions about the application of accounting policies that affected the reported revenues and expenses, carrying values of assets and liabilities and that actual results might differ from these estimates.

7. Further particulars may be provided following the service of evidence.

Paragraph 15(o)

8. As to paragraph 15(o)(iii), Clayton Utz reviewed verification allocations to check that each statement was signed off by the relevant verifying party, performed other verification functions required under the Verification Guidelines and reported to the DDC on the outcome of their reviews. Clayton Utz also independently audited a sample of verified statements in order to ensure the process was occurring correctly.
9. As to paragraph 15(o)(iv), such opinions and “sign-offs” included:
- (a) Clayton Utz’s Legal Opinion, on the Prospectus content and due diligence process, including in relation to the adequacy of the due diligence process.

- (b) Verification Guidelines and Certificates provided by Clayton Utz (confirming that statements for which Clayton Utz was responsible had been verified in accordance with the Verification Guidelines).
- (c) The Legal Vendor Due Diligence Report from the Due Diligence Legal Advisors setting out the results of Clayton Utz’s legal due diligence work program and inquiries made by Clayton Utz in relation to Nuix and the Offer.
- (d) PwCS’s Materiality Guidance, confirming that PwCS had applied a level of materiality in accordance with the applicable “APES 350” standards and consistent with the Materiality Thresholds adopted by the DDC.
- (e) PwC’s Tax Information Report, verifying certain statements in the Prospectus in respect of the Australian taxation implication for Australian tax residents.
- (f) PwC’s Prospectus Taxation Considerations excerpt for Section 9 of the Prospectus, being wording drafted by PwC for inclusion in Section 9 of the Prospectus.
- (g) PwCS’s Agreed Upon Procedures Report, confirming PwCS’s verification of statements by performing procedures in accordance with the Standard on Related Services ASRS 4400 and setting out PwCS’s factual findings in respect of the same.
- (h) PwCS’s Financial Information Report, prepared to assist Nuix, Nuix SaleCo Ltd and the DDC members with their due diligence inquiries in connection with the preparation of the financial information contained in the Prospectus, including information provided to PwCS, the procedures followed by PwCS in its analyses, and PwCS’s findings.
- (i) PwCS’s Historical Financial Information Independent Limited Assurance Report, a limited assurance report included in the Prospectus regarding the presentation of the Historical Financial Information.
- (j) PwCS’s Forecast Financial Information Independent Limited Assurance Report, a limited assurance report included in the Prospectus regarding the presentation of Forecast Financial Information.
- (k) PwCS’s APES 350 Due Diligence Sign Off on Financial Information, confirming compliance with PwCS’s obligation pursuant to APES 350 in relation to the final version of the Prospectus, for the benefit of Nuix, Nuix SaleCo Ltd and their respective

directors and DDC Members. Relevantly, the Due Diligence Sign-Off from PwCS pursuant to APES 350 contained a negative assurance sign-off based on PwCS's review of the financial information (being, all financial information contained in the Prospectus, whether forecast, pro forma historical or historical financial information, including the "Prospectus Growth Forecasts" as defined in the [ACSOC](#)) that nothing had come to PwCS's attention that caused it to believe that the financial information was misleading or deceptive (including by omission) in the form and context in which it appeared, or that the due diligence inquiries as they related to financial information did not constitute all inquiries which were reasonable in the circumstances in so far as the financial information was concerned.

- (l) PwCS's Non-US Comfort Letter regarding certain financial information in the non-US Offer documents.
- (m) PwCS's US Comfort Letter regarding certain financial information in the US Offer documents.
- (n) Clayton Utz's Key Issues List which was finalised to confirm that no issues requiring resolution before lodgement of the Prospectus remained outstanding.
- (o) Sidley Austin's 10b-5 opinion, which confirmed that, after reasonable investigation, nothing had come to Sidley Austin's attention which led them to believe that the US Offer documents provided to investors in the United States contained a materially misleading statement or an omission which would make the offering materials materially misleading.

10. Further particulars may be provided following the service of evidence.

Paragraph 15(p)

- 11. On or around May 2020, members of Nuix's management team prepared projections of future financial outcomes for Nuix for the proposed sale of shares in Nuix (the **proposed trade sale**).
- 12. On or around 28 May 2020, Nuix engaged PwCS as an accounting adviser to assist with the proposed trade sale and to undertake a vendor due diligence process in relation to Nuix's financial information for the review of the potential trade sale buyers. Pursuant to an engagement on or around 17 August 2020, PwCS prepared the PwCS Vendor Due Diligence Report.

13. In August 2020, Nuix prepared the Information Memorandum (**IM**), informed by the PwCS Vendor Due Diligence Report with the assistance of PwCS. The IM further developed and consolidated the prospective financial information.
14. Following the publication of the IM, Nuix's management team commenced the process of preparing the draft Prospectus including forecast financial information for Nuix. This was done with the assistance of various professional advisers, including PwCS as Investigating Accountant.
15. As Investigating Accountant, PwCS reviewed the forecast financial information disclosed in the Prospectus. PwCS prepared the Historical Financial Information Independent Limited Assurance Report and Forecast Financial Information Independent Limited Assurance Report and concluded, among other things, that, based on PwCS's review, nothing had come to PwCS's attention which caused it to believe that:
 - (a) the directors' best estimate assumptions used in the preparation of the forecast financial information did not provide reasonable grounds for the Statutory Financial Information;
 - (b) the forecast financial information was not properly prepared on the basis of the directors' best estimate assumptions; and
 - (c) the forecast financial information itself was unreasonable.
16. PwCS prepared the Due Diligence Sign Off which concluded that, based on PwCS's review, nothing had come to PwCS's attention which caused it to believe that:
 - (a) the financial information (which included the Prospectus Growth Forecasts) was misleading or deceptive (including by omission) in the form and context in which it appeared; or
 - (b) the due diligence inquiries set out in the Due Diligence Planning Memorandum adopted by the DDC as they related to the financial information (which included the forecast financial information) did not constitute all inquiries which were reasonable in the circumstances.
17. Further particulars may be provided following the service of evidence.

Paragraph 15(q)

18. In its role as DDC member, MCAL made a number of specific inquiries, in addition to those discussed generally during the DDC meetings. By way of example, MCAL requested:
 - (a) a detailed review by PwCS and Nuix into financial forecasting and the Nuix sales pipeline including discussions with Nuix's individual regional sales teams; and
 - (b) a review of human resources records and consideration of staff turnover, which resulted in an investigation by Nuix into Nuix's human resources records and ultimately a review undertaken by a consulting company and Nuix's legal advisers.
19. Further particulars may be provided following the service of evidence.