

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 28/09/2022 4:06:49 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	NSD827/2022
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v NUIX LIMITED ACN 117 140 235 & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Dated: 28/09/2022 4:33:42 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 2

Federal Court of Australia

District Registry: New South Wales

Division: General

No. NSD of 2022

Australian Securities and Investments Commission

Plaintiff

Nuix Limited ACN 117 140 235 and the others listed in the schedule

Defendants

ORIGINATING PROCESS

A. DETAILS OF APPLICATION

This application is made under sections 206C(1), 206E(1), 1101B, 1317E and 1317G of the *Corporations Act 2001* (Cth) (**the Corporations Act**), sections 21 and 23 of the *Federal Court of Australia Act 1976* (Cth).

The Plaintiff seeks declarations of contraventions by the First Defendant (**Nuix**) of section 674(2) of the *Corporations Act* (as in force during the period from 18 January 2021 until 21 April 2021), declarations of contraventions by the Second Defendant to Sixth Defendant of section 180(1) of the *Corporations Act* and orders that the First Defendant to Sixth Defendant each pay to the Commonwealth a pecuniary penalty or penalties. The Plaintiff also seeks declarations in relation to contraventions by Nuix of section 1041H(1) of the *Corporations Act* and section 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**the ASIC Act**).

On the facts stated in the Plaintiff's concise statement, the Plaintiff seeks the following orders:

Declarations

Contraventions of s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act by Nuix

1. A declaration that:
 - (a) by releasing announcements to the Australian Securities Exchange (**the ASX**) on 26 February 2021 (**the 26 February ASX Announcements**), Nuix represented that (**the 26 February Representations**):
 - (i) it was forecasting statutory revenue (**Revenue**) for the financial year ending on 30 June 2021 (**FY21**) of \$193.5 million and had reasonable grounds for the forecast as at 26 February 2021;

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Caitlin Murray		
Law firm (if applicable)	MinterEllison		
Tel	+61 2 9921 4279	Fax	+61 2 9921 8123
Email	caitlin.murray@minterellison.com		
Address for service (include state and postcode)	40 Governor Macquarie Tower, 1 Farrer Pl, Sydney NSW 2000 Our reference: 1374983		



- (ii) it was forecasting annualised contract value (**ACV**) at the end of FY21 of \$199.6 million and had reasonable grounds for the forecast as at 26 February 2021;
 - (b) by releasing an announcement to the ASX on 8 March 2021 (**the 8 March ASX Announcement**), Nuix (**the 8 March Representations**):
 - (i) repeated the 26 February Representations as at 8 March 2021;
 - (ii) represented that Nuix's ACV at the end of the first half of FY21 (**1HFY21**) was "in line with management's expectations"; and
 - (iii) represented that underperformance in its results at the end of 1HFY21 was driven by the impact of a rise in the Australian dollar compared to the US dollar and the timing of certain deals which completed in January 2021;
 - (c) the 26 February Representations and the 8 March Representations (**the Representations**) were misleading or deceptive in that:
 - (i) Nuix was not forecasting Revenue for FY21 of \$193.5 million as at 26 February 2021 or 8 March 2021;
 - (ii) Nuix did not have reasonable grounds for the forecast that its Revenue for FY21 would be \$193.5 million as at 26 February 2021 or 8 March 2021;
 - (iii) Nuix's ACV at the end of 1HFY21 was approximately \$17.1 million or 9.6% less than the ACV at 31 December 2020 which Nuix expected in order to achieve the forecast for ACV at the end of FY21 of \$199.6 million (**the Prospectus ACV Forecast**) first published in the Prospectus for its Initial Public Offering issued on 18 November 2020 (**the Prospectus**);
 - (iv) Nuix's internal analysis recorded that the reason ACV at the end of 1HFY21 was below the number Nuix expected in order to achieve the Prospectus ACV Forecast was primarily because of subscription ACV underperformance; and
 - (v) Nuix did not have reasonable grounds for the forecast that its ACV at the end of FY21 would be \$199.6 million as at 26 February 2021 or 8 March 2021.
2. A declaration that Nuix contravened s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act by failing to disclose in the period from 18 January 2021 until 25 February 2021 each of the following (**the 1HFY21 ACV Result**):
 - (a) Nuix's ACV at the end of 1HFY21 was \$161.9 million;
 - (b) Nuix's ACV at the end of 1HFY21 was \$17.1 million, or approximately 9.6%, less than the ACV Nuix expected in order to achieve the Prospectus ACV Forecast; and
 - (c) the primary reason Nuix missed the forecast for ACV at the end of 1HFY21 was subscription ACV underperformance.
 3. A declaration that Nuix contravened s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act by releasing the 26 February ASX Announcements and the 8 March ASX Announcement (**the Announcements**) and:



- (a) failing to disclose in the Announcements, or contemporaneously, the matters referred to in 1(c)(i), (iii) and (iv) above; and
- (b) failing to correct the misleading or deceptive statements made in the Announcements at any time prior to 21 April 2021, or in the alternative, in the period 13 April 2021 to 21 April 2021.

Contraventions of s 674(2) of the Corporations Act by Nuix

4. A declaration pursuant to s 1317E(1) of the Corporations Act that during the period from 18 January 2021 until 25 February 2021, Nuix contravened s 674(2) of the Corporations Act by failing to comply with ASX Listing Rule 3.1 in not notifying the ASX of the 1HFY21 ACV Result.
5. A declaration pursuant to s 1317E(1) of the Corporations Act that during the period from 26 February 2021, or alternatively 8 March 2021, until 21 April 2021, Nuix contravened s 674(2) of the Corporations Act by failing to comply with ASX Listing Rule 3.1 in not notifying the ASX of each of the following:
 - (a) Nuix's ACV at the end of 1HFY21 was \$17.1 million, or approximately 9.6%, less than the ACV Nuix expected in order to achieve the Prospectus ACV Forecast;
 - (b) the primary reason Nuix missed the forecast for ACV at the end of 1HFY21 was subscription ACV underperformance;
 - (c) Nuix's ACV at the end of FY21 was likely to be materially below the Prospectus ACV Forecast (**the ACV Information**);
 - (d) as at 26 February 2021 and 8 March 2021, Nuix was forecasting Revenue of \$186.7 million for FY21; and
 - (e) the Revenue of Nuix for FY21 was likely to be materially below the forecast for Revenue for FY21 of \$193.5 million (**the Prospectus Revenue Forecast**) in the Prospectus (**the Revenue Information**).
6. A declaration pursuant to s 1317E(1) of the Corporations Act that during the period from 13 April 2021 until 21 April 2021, Nuix contravened s 674(2) of the Corporations Act by failing to comply with ASX Listing Rule 3.1 by not notifying the ASX of each of the following:
 - (a) that the Revenue of Nuix for FY21 was forecast to be approximately \$185 million, or alternatively, in a range of \$180 million to \$185 million (**the April Information**);
 - (b) of the Revenue Information; and
 - (c) of the ACV Information.

Contraventions of s 180(1) of the Corporations Act by the Directors

7. A declaration pursuant to s 1317E(1) of the Corporations Act that, during the period from 18 January 2021 to 25 February 2021, the Second Defendant contravened s 180(1) of the Corporations Act in that he failed to exercise the degree of care and diligence that a reasonable person in his position would have exercised in causing or otherwise permitting Nuix to contravene s 674(2) and s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act, and in failing to take steps to prevent trading in the shares of



Nuix (**Nuix Shares**) on an uninformed basis, by not causing Nuix to notify the ASX of the information referred to in Declaration 4.

8. Declarations pursuant to s 1317E(1) of the Corporations Act that each of the Second Defendant to Sixth Defendant contravened s 180(1) of the Corporations Act in that they failed to exercise the degree of care and diligence that a reasonable person in their position would have exercised in authorising the 26 February ASX Announcements, and in failing to take steps to cause Nuix to correct the misleading or deceptive statements made in the 26 February ASX Announcements at any time prior to 21 April 2021, and thereby caused or permitted Nuix's contraventions of s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act described in Declarations 1 and 3 above in relation to the 26 February ASX Announcements.
9. Declarations pursuant to s 1317E(1) of the Corporations Act that each of the Second Defendant to Sixth Defendant contravened s 180(1) of the Corporations Act in that they failed to exercise the degree of care and diligence that a reasonable person in their position would have exercised in authorising the 8 March ASX Announcement, and in failing to take steps to cause Nuix to correct the misleading or deceptive statements made in the 8 March ASX Announcement at any time prior to 21 April 2021, and thereby caused or permitted Nuix's contraventions of s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act described in Declarations 1 and 3 above in relation to the 8 March ASX Announcement.
10. Declarations pursuant to s 1317E(1) of the Corporations Act that, during the period from 26 February 2021 to 21 April 2021, each of the Second Defendant to Sixth Defendant contravened s 180(1) of the Corporations Act in that they failed to exercise the degree of care and diligence that a reasonable person in their position would have exercised in causing or otherwise permitting Nuix to contravene s 674(2) of the Corporations Act, and in failing to take steps to prevent trading in Nuix Shares on an uninformed basis, by not causing Nuix to notify the ASX of the information referred to in Declaration 5.
11. Declarations pursuant to s 1317E(1) of the Corporations Act that, during the period from 13 April 2021, or alternatively from 16 April 2021, until 21 April 2021, each of the Second Defendant to Sixth Defendant contravened s 180(1) of the Corporations Act in that they failed to exercise the degree of care and diligence that a reasonable person in their position would have exercised in causing or otherwise permitting Nuix to contravene s 674(2) of the Corporations Act, and in failing to take steps to prevent trading in Nuix Shares on an uninformed basis, by not causing Nuix to notify the ASX of the information referred to in Declaration 6 or else causing Nuix to request a trading halt in Nuix Shares.

Pecuniary Penalties

12. An order pursuant to s 1317G(1) of the Corporations Act that the First Defendant pay to the Commonwealth a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of each contravention of s 674(2) of the Corporations Act.
13. An order pursuant to s 1317G(1) of the Corporations Act that the Second Defendant pay to the Commonwealth a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of each contravention of s 180(1) of the Corporations Act.
14. An order pursuant to s 1317G(1) of the Corporations Act that the Third Defendant pay to the Commonwealth a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of each contravention of s 180(1) of the Corporations Act.



15. An order pursuant to s 1317G(1) of the Corporations Act that the Fourth Defendant pay to the Commonwealth a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of each contravention of s 180(1) of the Corporations Act.
16. An order pursuant to s 1317G(1) of the Corporations Act that the Fifth Defendant pay to the Commonwealth a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of each contravention of s 180(1) of the Corporations Act.
17. An order pursuant to s 1317G(1) of the Corporations Act that the Sixth Defendant pay to the Commonwealth a pecuniary penalty or pecuniary penalties in an amount or amounts to be fixed by the Court in respect of each contravention of s 180(1) of the Corporations Act.

Disqualification orders

18. An order pursuant to s 206C(1) and/or s 206E(1) of the Corporations Act disqualifying the Second Defendant from managing corporations for a period to be determined by the Court.
19. An order pursuant to s 206C(1) and/or s 206E(1) of the Corporations Act disqualifying the Third Defendant from managing corporations for a period to be determined by the Court.
20. An order pursuant to s 206C(1) and/or s 206E(1) of the Corporations Act disqualifying the Fourth Defendant from managing corporations for a period to be determined by the Court.
21. An order pursuant to s 206C(1) and/or s 206E(1) of the Corporations Act disqualifying the Fifth Defendant from managing corporations for a period to be determined by the Court.
22. An order pursuant to s 206C(1) and/or s 206E(1) of the Corporations Act disqualifying the Sixth Defendant from managing corporations for a period to be determined by the Court.

Other orders

23. Costs.
24. Such further or other orders as the Court thinks fit.

Dated: 28 September 2022

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

Signed by
Lawyer for the Plaintiff



C. NOTICE TO DEFENDANTS

TO:

Nuix Ltd ACN 117 140 235 of Level 27, 1 Market Street, Sydney NSW 2000

Rodney Graham Vawdrey of 35 Riverview Road, Avalon Beach NSW 2107

Jeffrey Laurence Bleich of Level 27, 1 Market Street, Sydney NSW 2000

Sir Iain Robert Lobban of Level 27, 1 Market Street, Sydney NSW 2000

Daniel Phillips of 202 The Esplanade, Umina Beach NSW 2257

Susan Patricia Thomas of Level 27, 1 Market Street, Sydney NSW 2000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court, you must if you have already done so file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the Plaintiff in the originating process.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

D. FILING

Date of filing: 28 September 2022

Registrar

This originating process is filed by Australian Securities and Investments Commission.



E. SERVICE

The Plaintiff's address for service is:

Place: 40 Governor Macquarie Tower, 1 Farrer Pl, Sydney NSW 2000 (Attention: Caitlin Murray)

Email: caitlin.murray@minterellison.com

The Plaintiff's address is Level 5, 100 Market Street, Sydney, NSW, 2000.

It is intended to serve a copy of this originating process on each defendant.

**Schedule**

No. NSD of 2022

Federal Court of Australia

District Registry: New South Wales

Division: General

Plaintiff	Australian Securities and Investments Commission
First Defendant	Nuix Ltd ACN 117 140 235
Second Defendant	Rodney Graham Vawdrey
Third Defendant	Jeffrey Laurence Bleich
Fourth Defendant	Sir Iain Robert Lobban
Fifth Defendant	Daniel Phillips
Sixth Defendant	Susan Patricia Thomas