

NOTICE OF FILING

Details of Filing

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File Number:	NSD1983/2017
File Title:	EXCEL TEXEL PTY LTD (AS TRUSTEE FOR THE MANDEX FAMILY TRUST) & ANOR v FRANK CULLITY WILSON
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.



Further Amended Defence of Respondent to Fourth Further Amended
Statement of Claim

No. NSD 1983 of 2017

Federal Court of Australia
District Registry: New South Wales
Division: General

EXCEL TEXEL PTY LTD (ACN 082 642 742) (as trustee for the Mandex Family Trust)

First Applicant

ANDREW JOHN WYMA

Second Applicant

FRANK CULLITY WILSON

Respondent

In accordance with orders made on ~~4 July 2022~~ 1 November 2023, the respondent pleads as follows to the allegations in the Applicants' ~~Third~~ Fourth Further Amended Statement of Claim filed ~~6 July 2022~~ 28 December 2023 (~~TF~~ FFASOC):

~~For each of the allegations pleaded in the TFASOC in respect of which the respondent has pleaded either a non-admission or denial below, the respondent claims the privileges against self-incrimination and exposure to penalties.~~

~~The respondent reserves his right to claim the privileges against self-incrimination and exposure to penalties in the proceeding.~~

Where appropriate the respondent adopts the defined terms used in the ~~TF~~ FFASOC.

Filed on behalf of (name & role of party)	The Respondent		
Prepared by (name of person/lawyer)	Alan Mizen		
Law firm (if applicable)	Mizen + Mizen		
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Parties

- 1 The respondent:
 - 1.1 admits paragraph 1(a) of the ~~TF~~FASOC;
 - 1.2 does not know and therefore cannot admit paragraph 1(b) of the ~~TF~~FASOC;
 - 1.3 does not know and therefore cannot admit paragraph 1(c) of the ~~TF~~FASOC.
- 1A The respondent does not know and therefore cannot admit paragraph 1A of the ~~TF~~FASOC.
- 2 The respondent:
 - 2.1 admits that the Applicants have purported to commence these proceedings as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on their own behalf and on behalf of Group Members;
 - 2.2 denies that the Applicants or any Group Members suffered loss or damage by, or which resulted from, the conduct of the respondent; and
 - 2.3 otherwise does not know and therefore cannot admit paragraph 2 of the ~~TF~~FASOC.
- 3 The respondent does not know and therefore cannot admit paragraph 3 of the ~~TF~~FASOC.
- 4 Save to deny that any of the Group Members are entitled to succeed in their claims against the respondent, the respondent does not know and therefore cannot admit paragraph 4 of the ~~TF~~FASOC.
- 5 As to paragraph 5 of the ~~TF~~FASOC, the respondent:
 - 5.1 admits paragraph 5(a);
 - 5.2 admits paragraph 5(b);
 - 5.3 in answer to paragraph 5(c):
 - 5.3.1 makes no admission as to whether any particular conduct of Quintis amounted to conduct in trade or commerce; and
 - 5.3.2 otherwise does not admit paragraph 5(c);
 - 5.4 save to say that Quintis was removed from the official list of the ASX on 28 August 2019, admits paragraph 5(d);
 - 5.5 save to say that Quintis was removed from the official list of the ASX on 28 August 2019, admits paragraph 5(e);

- 5.6 admits paragraph 5(f);
- 5.7 save to say that Quintis is now called "A.C.N. 092 200 854 Ltd", admits paragraph 5(g);
- 5.8 in answer to paragraph 5(h):
- 5.8.1 says that Quintis Securities were suspended from quotation by the ASX from 17 May 2017 onwards and Quintis was removed from the official list of the ASX on 28 August 2019; and
- 5.8.2 otherwise admits paragraph 5(h);
- 5.9 save to say that Quintis was removed from the official list of the ASX on 28 August 2019, admits paragraph 5(i);
- 5.10 in answer to paragraph 5(j):
- 5.10.1 will rely on the terms of the ASX Listing Rules and section 674 of the *Corporations Act 2001* (Cth) (**Corporations Act**) at trial for their full terms and effect;
- 5.10.1A says that Quintis was removed from the official list of the ASX on 28 August 2019; and
- 5.10.2 otherwise admits sub-paragraph 5(j);
- 5.11 in answer to paragraph 5(k):
- 5.11.1 will rely on the terms of the ASX Listing Rules, including Listing Rule 19.12, at trial for their full terms and effect;
- 5.11.1A says that Quintis was removed from the official list of the ASX on 28 August 2019;
- 5.11.2 otherwise admits paragraph 5(k) in so far as it relates to the ASX Listing Rules;
- 5.11.3 [not used]
- 5.11.4 otherwise denies the paragraph;
- 5.12 admits paragraph 5(l) in respect of the period up to and including 20 January 2018 (when administrators were appointed) and otherwise does not admit paragraph 5(l).
- 5A The respondent admits paragraph 5A of the ~~TF~~FASOC.
- 5B The respondent admits paragraph 5B of the ~~TF~~FASOC.

- 6 As to paragraph 6 of the ~~TF~~FASOC, the respondent:
- 6.1 admits paragraph 6(a);
 - 6.2 admits paragraph 6(b), save to say that '27 March 2000' should be '28 March 2000';
 - 6.3 admits he was Managing Director of Quintis as at 30 June 2016 until 27 March 2017 but otherwise does not admit paragraph 6(c)(i);
 - 6.4 makes no admission as to whether any particular conduct of the respondent was conduct in trade or commerce and otherwise does not admit paragraph 6(c)(ii);
 - 6.5 admits paragraph 6(d)(i) in respect to the period up to 27 March 2017 and otherwise denies sub-paragraph 6(d)(i); and
 - 6.6 does not admit paragraph 6(d)(ii).

Santalís and Galderma

- 6A The respondent admits paragraph 6A of the ~~TF~~FASOC.
- 6B The respondent admits paragraph 6B of the ~~TF~~FASOC.
- 6C As to paragraph 6C of the ~~TF~~FASOC, the respondent:
- 6C.1 will refer to the Galderma Licence Agreement and Galderma Supply Agreement at trial for their full terms and effect;
 - 6C.2 otherwise admits paragraph 6C;
 - 6C.3 says further that on or about 19 February 2014, Quintis entered into an Amended and Restated Definitive Supply Agreement with Santalis for the supply by Quintis of products to Santalis, including Indian sandalwood oil (**Santalís Supply Agreement**); and
 - 6C.4 will refer to the Santalis Supply Agreement at trial for its full terms and effect.
- 6D The respondent admits paragraph 6D of the ~~TF~~FASOC.
- 6E Save to say that the Indian sandalwood oil was supplied by Quintis to Santalis under the Santalis Supply Agreement and by Santalis to Galderma under the Galderma Supply Agreement, the ~~TF~~FASOC admits paragraph 6E of the ~~TF~~FASOC.
- 6F As to paragraph 6F of the ~~TF~~FASOC, the respondent:
- 6F.1 says that, on or about 1 August 2015, Quintis acquired 100% ownership of Santalis which acquisition was approved by the board of directors of Quintis (**Board**);

6F.2 otherwise does not admit paragraph 6F.

6G As to paragraph 6G of the ~~TF~~FASOC, the respondent:

6G.1 admits paragraph 6G(a);

6G.2 in answer to paragraph 6G(b):

6G.2.1 admits that Dr Castella was one of the KMP of Quintis from on or around 31 July 2015;

6G.2.2 otherwise does not admit paragraph 6G(b);

6G.3 denies paragraph 6G(c) and says that:

6G.3.1 Dr Castella reported to the board of directors of Santalis (**Santalis Board**);

6G.3.2 Dr Castella and the respondent communicated as required about Santalis' business while the respondent was the Managing Director of Quintis;

6G.3.3 Dr Castella and Mr Dalton Gooding, the Chairman of Quintis and a director of Santalis, communicated regularly about Santalis' business;

6G.3.4 Dr Castella and Mr Alistair Stevens, the Chief Financial Officer of Quintis, communicated regularly about Santalis' business and its financial position and performance;

6G.3.5 from around October 2015, Santalis provided monthly reports to the Board which were prepared by Dr Castella;

6G.3.6 from around September 2015, there were regular meetings between the Santalis and Quintis management teams;

6G.3.7 from around early November 2016, Mr Philip Coetzer, the Financial Controller of Quintis and who reported to Mr Stevens, was made the primary communication conduit between Santalis and Quintis.

6H As to paragraph 6H of the ~~TF~~FASOC, the respondent:

6H.1 denies paragraph 6H(a) and repeats paragraph 6G.3 above;

6H.2 denies paragraph 6H(b) and says that:

6H.2.1 the Santalis Board met twice annually;

6H.2.1 from on or around 31 July 2015 until 27 March 2017, the respondent was a director of Santalis and, throughout that period, Mr Dalton Gooding, the Chairman of Quintis, was the other director of Santalis;

- 6H.2.2 Santalis Board meetings were attended by Dr Castella as CEO and on occasion attended by other members of Santalis management;
- 6H.2.3 Santalis Board meetings were on occasion attended by members of Quintis management including Mr Stevens and Mr Mario di Lallo, the Head of Sales of Quintis;
- 6H.3 admits paragraph 6H(c);
- 6H.4 in answer to paragraph 6H(d):
 - 6H.4.1 admits that the respondent provided a report to the Board for most Board meetings;
 - 6H.4.2 admits that those reports usually provided updates on Santalis' business;
 - 6H.4.3 refers to paragraph 6H(c) of the ~~TF~~FASOC;
 - 6H.4.4 otherwise does not admit paragraph 6H(d);
 - 6H.4.5 says further that Mr Stevens provided a report to the Board for most Board meetings which usually provided updates on Santalis' financial position and performance;
- 6H.5 admits paragraph 6H(e);
- 6H.6 denies paragraph 6H(f) and repeats paragraph 6G.3 above;
- 6H.7 in answer to paragraph 6H(g):
 - 6H.7.1 repeats 6G.3.5 above;
 - 6H.7.2 otherwise does not admit paragraph 6H(g);
- 6H.8 admits paragraph 6H(h).

Pre-sold Misleading or Deceptive Conduct

- 7 In answer to paragraph 7 of the ~~TF~~FASOC, the respondent:
 - 7.1 denies paragraph 7(a);
 - 7.2 denies paragraphs 7(b) and 7(c), save to say that:
 - 7.2.1 by its 26 February 2016 ASX announcement and its FY16 Half Yearly Results published on 26 February 2016 (taken together), to which the respondent will refer at trial for their full terms and effect, Quintis announced that it had signed a supply agreement with a buyer in

China under which 150 metric tonnes of sandalwood heartwood was to be shipped from the 2016 harvest;

7.2.2 by its 27 September 2016 ASX announcement, to which the respondent will refer at trial for its full terms and effect, Quintis announced that the supply agreement with a buyer in China was a 5 year agreement under which deliveries were expected to occur monthly;

7.3 [not used]

7.4 denies paragraph 7(d);

7.5 denies paragraph 7(e); ~~and~~

7.6 denies paragraph 7(f); and

7.7 says further that the respondent did not, by the release by Quintis of the 26 February 2016 ASX announcement, its FY16 Half Yearly Results or any ASX announcement, make any representations.

8 As to paragraph 8 of the ~~TF~~FASOC, the respondent:

8.1 denies paragraph 8(a);

8.2 denies paragraph 8(b);

8.3 ~~denies paragraph 8(c); [not used]~~

8.4 [not used]

8.5 denies paragraph 8(e);

8.5A denies paragraph 8(e1); and

8.6 [not used]

8.7 denies paragraph 8(g).

8A The respondent denies paragraph 8A of the ~~TF~~FASOC.

9 The respondent denies paragraph 9 of the ~~TF~~FASOC.

10 In answer to paragraph 10 of the ~~TF~~FASOC, the respondent:

10.1 save to the extent of any admission pleaded at paragraph 7 above, denies paragraph 10(a);

10.2 otherwise denies each and every allegation in paragraph 10.

11 In answer to paragraph 11 of the ~~TF~~FASOC, the respondent:

11.1 denies paragraph 11(a)(i);

11.2 denies paragraph 11(a)(ii);

11.3 as to paragraph 11(b):

11.2.1 denies that he made the Express Pre-Sold Representation pleaded in paragraph 7(a) of the ~~FF~~FASOC, and if (which is denied) he made that representation, denies that it was a representation with respect to a future matter;

11.2.2 denies that he made the Express Pre-Sold Representation pleaded in paragraph 7(b) of the ~~FF~~FASOC, and if (which is denied) he made that representation, denies that it was a representation with respect to a future matter;

11.2.2A denies that he made the Express Pre-Sold Representation pleaded in paragraph 7(c) of the FFASOC, and if (which is denied) he made that representation, denies that it was a representation with respect to a future matter;

11.2.3 denies that he made the Express Pre-Sold Representation pleaded in paragraph 7(d) of the ~~FF~~FASOC, but if (which is denied) he made that representation, admits that it was a representation with respect to a future matter;

11.2.4 denies that he made the Express Pre-Sold Representation pleaded in paragraph 7(e) of the ~~FF~~FASOC, and if (which is denied) he made that representation, denies that it was a representation with respect to a future matter;

11.2.5 denies that he made the Express Pre-Sold Representation pleaded in paragraph 7(f) of the ~~FF~~FASOC, and if (which is denied) he made that representation, denies that it was a representation with respect to a future matter;

11.2.6 denies that he made any of the Implied Pre-Sold Representation pleaded in paragraph 8 of the ~~FF~~FASOC, and, in each case, if (which is denied) he made the representation, denies that it was a representation with respect to a future matter;

11.2.6A denies that he made the Further Implied Pre-Sold Representation pleaded in paragraph 8A of the FFASOC, and if (which is denied) he

made the representation, denies that it was a representation with respect to a future matter;

11.2.7 denies that he made the FY17 Guidance Representation, but if (which is denied) he made that representation, admits that it was a representation with respect to a future matter;

11.2.8 otherwise denies paragraph 11(b);

11.3 does not admit paragraph 11(c).

12 In answer to paragraph 12 of the ~~FF~~FASOC, the respondent:

12.A1 repeats paragraphs 7 to 11 above;

12.1 if (which is denied) he made the Pre-Sold Representations, denies that they or any of them were misleading or deceptive or likely to mislead or deceive;

Particulars

12.1.1 On or about 24 February 2016, Quintis entered into a memorandum of understanding with Shanghai Richer-Link Enterprise Co. Limited, a company incorporated in the Peoples Republic of China (**SRL**) for the supply and purchase of Indian sandalwood (**SRL Supply Agreement**) to which the respondent will refer at trial for its full terms and effect;

12.1.2 [not used]

12.1.3 [not used]

12.1.4 On or about 15 March 2016, Quintis and SRL executed an addendum to the SRL Supply Agreement (**SRL Supply Agreement Addendum**), to which the respondent will refer to at trial for its full terms and effect, by which Quintis and SRL acknowledged and agreed that their respective legal obligations under the SRL Supply Agreement were legally binding;

12.1.5 By executing the SRL Supply Agreement, alternatively, by executing the SRL Supply Agreement and the SRL Supply Agreement Addendum, SRL had committed, and was obliged under the SRL Supply Agreement, to purchase 150 metric tonnes of heartwood from the 2016 harvest;

12.1.6 On or about 6 September 2016, Quintis and SRL executed a deed entitled 'Deed of Amendment and Restatement' (**SRL Supply**

Agreement Deed of Amendment and Restatement) to which the respondent will refer at trial for its full terms and effect;

12.1.7 By the SRL Supply Agreement Deed of Amendment and Restatement, SRL and Quintis recited that:

- (a) they had entered into the SRL Supply Agreement upon the terms and conditions contained in the SRL Supply Agreement;
- (b) they had entered into the SRL Supply Agreement Addendum;
- (c) with effect from the date of the Deed of Amendment, the parties wished to amend and restate the SRL Supply Agreement;

12.1.8 By the SRL Supply Agreement Deed of Amendment and Restatement, SRL and Quintis acknowledged and agreed that with effect from 6 September 2016:

- (a) the SRL Supply Agreement is amended and restated in the form set out to the schedule to the Deed of Amendment (**6 September 2016 SRL Supply Agreement**);
- (b) the 6 September 2016 SRL Supply Agreement as amended and restated is confirmed and remains in full force and effect;
- (c) Quintis and China SRL will comply with and are bound by the agreement as amended and restated;
- (d) attached the 9 June 2016 SRL Supply Agreement, executed by each of them, as a schedule;

12.1.9 On or about 22 February 2016, Quintis entered into an agreement in writing with Medinext General Trading LLC, a company incorporated in the United Arab Emirates (**Medinext**) for the supply and purchase of Indian Sandalwood (**Medinext Supply Agreement**) to which the respondent will refer at trial for its full terms and effect;

12.1.10 The Medinext Supply Agreement contained the following express written terms:

- (a) Quintis agreed to sell and Medinext agreed to purchase a minimum quantity of 30 tonnes of Indian Sandalwood

(*Santalum Album*) billets (**Billets**) per annum for a 2 year term (**Initial Term**), subject to Quintis being able to meet the physical specifications for Billets required by Medinext as set out in the annexure to the Medinext Supply Agreement;

- (b) the price payable by Medinext for Billets supplied by Quintis would be calculated based on the rate of US\$155 per kilogram;
- (c) the price to be paid Medinext would increase by 3% per annum per year for each successive harvest year;
- (d) for the duration of the agreement, Quintis would not supply Billets to any party other than Medinext for Sudan, any middle eastern country and India;
- (e) by 1 April in each year of the agreement, Medinext was required to pay to Quintis, in US Dollars to an account nominated by Quintis, a deposit of AUD \$50,000 to be set off against the first tonne of supply;
- (f) Medinext would give notice in writing to Quintis by 30 June each year advising of the delivery address for the Billets;
- (g) the Billets would be supplied by Quintis to match physical samples provided to Quintis by Medinext;
- (h) Medinext would pay for Billets supplied under the agreement 30 days after delivery, less any returned waste shavings;
- (i) Medinext would be credited for any shavings waste out of processing the Billets into Medinext's end product and returned to Quintis, the approximately range of wastage being estimated to be 20% to 28%;
- (j) the Medinext Supply Agreement was subject to the specification and colour of the Indian Sandalwood being satisfactory to the end market demand;
- (k) beyond the Initial Term, the Medinext Supply Agreement would be extended if Medinext commits to increasing the quantity of Billets with 20% compound growth from the third year onwards (meaning 36 tonnes in the third year, 43.2 tonnes in the fourth year and 51.8 tonnes in the fifth year).

- 12.1.11 The Medinext Supply Agreement was executed on behalf of Medinext by Mr Bharat Shetty as Medinext's authorised representative, in the presence of Mario Di Lallo, Head of Sales for Quintis;
- 12.1.12 The negotiations leading to the execution of the Medinext Supply Agreement had been conducted with Mr Shetty by Mr Di Lallo, Head of Sales for Quintis;
- 12.1.13 Mr Shetty was well known to Quintis and its Head of Sales, Mario Di Lallo, Quintis having supplied to Mr Barratt Shetty or entities associated with him since 2010, Spicatum Oil extracted from Australian sandalwood trees grown by Quintis for which Mr Shetty or his associated entities had paid a total of AU\$27.5 million;
- 12.1.14 The 2016 harvest of Quintis' Indian Sandalwood plantations produced a yield of 310 tonnes of Indian Sandalwood heartwood;
- 12.1.15 As at 26 February 2016, and at all times up to and including 27 September 2016, it was the reasonable expectation of the respondent that Quintis' 2017 harvest would yield approximately 240 tonnes of heartwood;
- 12.1.16 From 25 December 2016 until 27 March 2017, when the respondent resigned as Managing Director, Quintis was monitoring a Chinese customs investigation but did not know whether SRL had been charged by Chinese customs authorities or whether it had engaged in customs evasion;
- 12.1.17 The respondent had been in discussions with a potential customer in China from October 2016 during which the party expressed interest in entering into a supply arrangement with Quintis on terms similar to the SRL Supply Agreement;
- 12.1.18 Galderma and Santalis held discussions from August 2015 about ways to improve Benzac sales which continued during 2016;
- 12.1.19 Benzac sales increased in the second quarter of FY2016;
- 12.1.20 Galderma undertook a revised marketing campaign for Benzac in early 2016 to which it committed significant resources;
- 12.1.21 In around March 2016, Nestle, the parent company of Galderma, acquired the ProActiv acne brand, and Santalis approached Nestle

about the possibility of incorporating Indian sandalwood oil in ProActiv; and

12.1.22 In 2016, Galderma expressed interest in licensing prescription (Rx) drugs using Indian sandalwood oil being developed by Santalis and purchasing significant quantities of oil for that purpose.

12.2 otherwise denies paragraph 12.

13 In answer to paragraph 13 of the ~~FF~~FASOC, the respondent:

13.1 repeats paragraphs 7 to 11 above;

13.2 says that if (which is denied) he made the Pre-sold Representations and if (which is denied save to the extent admitted in paragraph 11 above) the Pre-Sold Representations were representations with respect to a future matter, he had reasonable grounds for making them or any of them within the meaning of section 769C of the Corporations Act and/or section 12BB of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);

Particulars of reasonable grounds

- (a) Quintis, as at 26 February 2016, owned 60% of the 2016 harvest, which, based on the number and age of the sandalwood trees which Quintis anticipated harvesting, Quintis expected to yield at least 300 metric tonnes of heartwood (and so Quintis' share was expected to be approximately 180 metric tonnes).
- (b) Quintis, as at 26 February 2016, owned 60% of the 2017 harvest which, based on the number and age of the sandalwood trees from which Quintis anticipated harvesting, Quintis expected to yield at least 228 metric tonnes of heartwood (and so Quintis' share was expected to be approximately 136 metric tonnes).
- (c) Quintis and SRL had entered into an agreement on or about 24 February 2016, whereby, inter alia, Quintis agreed to sell and SRL agreed to purchase a minimum of 150 metric tonnes of Indian sandalwood per annum for a 5 year term.
- (d) Quintis and Medinext had entered into an agreement on or about 22 February 2016, whereby, inter alia, Quintis agreed to sell, and Medinext agreed to purchase, a minimum quantity of 30 tonnes of Indian sandalwood billets per annum for a 2 year term.

- (e) Quintis and Lush Ltd (**Lush**) had entered into an agreement on or about 21 February 2008 (**Lush Agreement**) whereby, inter alia Quintis agreed to sell, and Lush agreed to purchase, a minimum of 1 tonne of Indian sandalwood oil and up to a maximum of 15% of Quintis' oil produced in each year, for a 5 year term.
- (f) Lush notified Quintis on or about 10 February 2016 that Lush required Quintis to supply 1 tonne of Indian sandalwood oil for 2016 pursuant to the Lush Agreement and requested that the oil be supplied in 80kg monthly instalments commencing in March 2016.
- (g) Quintis' subsidiary, Mt Romance Australia Pty Ltd (**MRA**) and Young Living Essential Oils, LC (**Young Living**) entered into a 5 year agreement on or about 2 September 2016 whereby Quintis agreed to sell, and Young Living agreed to purchase Indian Sandalwood oil at US\$4,500 per kilo plus fixed annual increases of 2.5% per annum. The total contract value was approximately AU\$50 million and the first shipment of oil was expected to be made in October 2016 with monthly supplies thereafter.
- (h) The 2016 harvest was reasonably expected by Quintis to yield more than 10 times the quantity of heartwood than the 2015 harvest given the maturity and age of trees likely to be harvested.
- (i) Mr Ben Wilson (a contractor appointed by Quintis) and the respondent had been engaged in ongoing discussions and negotiations since December 2015 with SRL's President (**Mr Hou Yun**).
- (ia) Mr Hou Yun was introduced to Quintis as a potential investor in plantations as a client of ThirdRock ISSEA Advisors Pte Ltd (**ThirdRock Group**), ThirdRock Group having been introduced to Quintis by Mr Anthony Murphy, Head of Wealth at Canaccord Genuity (and later of Lucerne Partners).
- (j) Quintis had received advice from ThirdRock Group on or about 16 June 2015 that:
 - (i) Mr Hou Yun's personal wealth was between US\$50-100 million; and
 - (ii) Mr Hou Yun had especially strong contacts in the timber industry.

- (k) At his own expense, Mr Hou Yun visited Quintis' plantations and its Mr Romance processing facilities in early October 2015 accompanied by ThirdRock Group representatives and Quintis' senior management, including Mr Malcolm Baker, Mario Di Lallo and Mr Johan Nortier.
- (l) The respondent met with Mr Hou Yun in December 2015.
- (m) The owner of Medinext was well known to Quintis and its head of sales of Mario Di Lallo as at 26 February 2016 and had purchased large amounts of Australian sandalwood oil from Quintis over the previous 8 years.
- (n) The FY17 Budget as set out in the presentation dated 20 May 2016 (**the FY17 Budget**) had been prepared by appropriately qualified people involved in the management of Quintis.
- (o) The Board, based on the assumptions and level of operations assumed in the FY17 Budget, had resolved on 26 May 2016 to approve the FY17 Budget.
- (p) The FY17 Budget included Cash EBITDA for FY17 of \$88.3m (excluding costs of the refinance of the senior secured notes).
- (q) Quintis had generated \$17.1m in product sales in the first half of FY17 (including sales of \$6.3m of Australian sandalwood and \$9.2m of Indian sandalwood).
- (r) The expected sales of sandalwood products to the Chinese market were approximately \$20m in the second half of FY17.
- (ra) From 25 December 2016 until 27 March 2017, when the respondent resigned as Managing Director, Quintis was monitoring a Chinese customs investigation but did not know whether SRL had been charged by Chinese customs authorities or whether it had engaged in customs evasion.
- (s) The respondent had been in discussions with a potential customer in China from October 2016 during which the party expressed interest in entering into a supply arrangement with Quintis on terms similar to the SRL Supply Agreement.
- (t) Galderma and Santalis held discussions from August 2015 about ways to improve Benzac sales which continued during 2016.

- (u) Benzac sales increased in the second quarter of FY2016.
- (v) Galderma undertook a revised marketing campaign for Benzac in early 2016 to which it committed significant resources.
- (w) In around March 2016, Nestle, the parent company of Galderma, acquired the ProActiv acne brand, and Santalis approached Nestle about the possibility of incorporating Indian sandalwood oil in ProActiv.
- (x) In 2016, Galderma expressed interest in licensing prescription (Rx) drugs using Indian sandalwood oil being developed by Santalis and purchasing significant quantities of oil for that purpose.

13.3 otherwise denies paragraph 13.

14 The respondent denies paragraph 14 of the ~~TF~~FASOC.

15 In answer to paragraph 15 of the ~~TF~~FASOC, the respondent:

15.1 denies the Applicants and each of the Group Members suffered damage resulting from the Pre-sold Misleading Conduct Contraventions as alleged or at all; and

15.2 otherwise denies paragraph 15.

15A The respondent does not admit paragraph 15A of the ~~TF~~FASOC.

16 The respondent denies paragraph 16 of the ~~TF~~FASOC.

16A The respondent denies paragraph 16A of the ~~TF~~FASOC.

16B The respondent denies paragraph 16B of the ~~TF~~FASOC.

16C As to paragraph 16C of the ~~TF~~FASOC, the respondent:

16C.1 save to the extent of any admission pleaded at paragraph 7 above, denies paragraph 16C(a);

16C.2 otherwise denies each and every allegation in paragraph 16C.

16D The respondent denies paragraph 16D of the ~~TF~~FASOC.

16E The respondent denies paragraph 16E of the ~~TF~~FASOC.

16F The respondent does not admit paragraph 16F of the ~~TF~~FASOC.

16G The respondent denies paragraph 16G of the ~~TF~~FASOC.

Pre-sold Continuous Disclosure Breach

17 The respondent denies paragraph 17 of the ~~TF~~FASOC.

18 In answer to paragraph 18 of the ~~FF~~FASOC, the respondent:

18.1 does not admit paragraph 18(a);

18.2 denies paragraph 18(b);

18.3 denies paragraph 18(c); and

18.4 otherwise denies paragraph 18.

19 The respondent denies paragraph 19 of the ~~FF~~FASOC.

19A The respondent does not admit paragraph 19A of the ~~FF~~FASOC.

20 In answer to paragraph 20 of the ~~FF~~FASOC, the respondent:

20.1 denies paragraph 20(a);

Particulars

The respondent refers to and repeats particulars (c), (i) to (l), (ra) and (s) to paragraph 13 above.

20.2 denies paragraph 20(aa);

Particulars

The respondent relies on the report of Mr John Holzwarth filed 12 July 2022.

20.3 denies paragraph 20(ab);

Particulars

The respondent refers to and repeats particulars (c), (i) to (l), (ra) and (s) to paragraph 13 above.

The respondent relies on the report of Mr John Holzwarth filed 12 July 2022.

20.4 denies paragraph 20(b);

20.5 otherwise denies paragraph 20.

21 The respondent denies paragraph 21 of the ~~FF~~FASOC and says further that if (which is denied) Quintis contravened section 674(2) of the Corporations Act, the respondent denies that the Applicants and any of the Group Members suffered damage as a result of any contravention by the respondent as alleged or at all.

Galderma Continuous Disclosure Breach

22 [not used]

23 [not used]

24 [not used]

25 [not used]

26 [not used]

27 [not used]

28 [not used]

29 In answer to paragraph 29 of the ~~FF~~FASOC, the respondent:

29.1 as to paragraph 29(a):

29.1.1 says that he and Quintis were aware, from August 2015, that the sales performance of Benzac was below Galderma's expectations;

29.1.2 otherwise denies paragraph 29(a);

~~29.2 as to paragraph 29(b):[not used]~~

~~29.2.1 denies that either Santalis or Quintis ever made an agreement in the terms pleaded in paragraph 29(b);~~

~~29.2.2 otherwise denies paragraph 29(b);~~

29.3 denies paragraph 29(c);

29.4 denies paragraph 29(d);

29.4.1 says that, by around July 2016, he and Quintis were aware that there was a possibility that Galderma would seek to end the distribution of Benzac;

29.4.2 otherwise denies paragraph 29(d);

29.5 as to paragraph 29(e):

29.5.1 says that Galderma did not order any Indian sandalwood oil from Santalis from around June 2015;

29.5.2 otherwise denies paragraph 29(e);

29.6 otherwise denies paragraph 29.

29A As to paragraph 29A of the FFASOC, the respondent:

29A.1 denies that either Santalis or Quintis ever made an agreement in the terms pleaded in paragraph 29A;

29A.2 otherwise denies paragraph 29A.

30 The respondent does not admit paragraph 30 of the ~~TF~~FASOC and says that neither he nor Quintis were advised ~~of this~~that Galderma intended or desired to terminate the Galderma Supply Agreement by Santalis on or around 30 November 2016 or at any other time and, as the respondent knew, no officer of Santalis was authorised to agree to termination of the Galderma Supply Agreement.

31 The respondent denies paragraph 31 of the ~~TF~~FASOC and says that neither he nor Quintis were advised of this by Santalis on or around 16 December 2016 or at any other time prior to 9 May 2017 and, as the respondent knew, no officer of Santalis was authorised to agree to termination of the Galderma Supply Agreement.

32 In answer to paragraph 32 of the ~~TF~~FASOC, the respondent:

32.1 as to paragraph 32(a):

32.1.1 repeats paragraphs 29 to 31 above;

32.1.2 except to the extent pleaded in paragraphs 29 to 31 above, denies that Quintis had or was aware of any of the information pleaded at paragraphs 29 to 31;

32.1.3 otherwise denies paragraph 32(a);

32.2 as to paragraph 32(b):

32.2.1 repeats paragraphs 30 and 31 above;

32.2.2 otherwise denies paragraph 32(b); and

Particulars

The respondent relies on the report of Mr John Holzwarth filed 12 July 2022.

32.3 denies paragraph 32(c);

Particulars

The respondent refers to and repeats particulars (t) to (x) to paragraph 13 above.

The respondent relies on the report of Mr John Holzwarth filed 12 July 2022.

32.4 otherwise denies paragraph 32.

33 In answer to paragraph 33 of the ~~TF~~FASOC, the respondent:

33.1 does not admit paragraph 33(a);

- 33.2 denies paragraph 33(b)
- 33.3 denies paragraph 33(c);
- 33.4 otherwise denies paragraph 33.
- 34 As to paragraph 34 of the ~~TF~~FASOC, the respondent:
 - 34.1 denies the Applicants and each Group Member has suffered any damage as alleged or at all; and
 - 34.2 otherwise does not admit paragraph 34.
- 34A The respondent does not admit paragraph 34A of the ~~TF~~FASOC.
- 35 As to paragraph 35 of the ~~TF~~FASOC, the respondent:
 - 35.A1 in answer to paragraph 35(a)(i):
 - 35.A1.1 says that he was aware, from August 2015, that the sales performance of Benzac was below Galderma's expectations;
 - 35.A1.2 says that, by that time, all other directors of Quintis and Mr Stevens were aware that the sales performance of Benzac was below Galderma's expectations;
 - 35.A1.3 says that, by around July 2016, he was aware that there was a possibility that Galderma would seek to end the distribution of Benzac;
 - 35.A1.4 says that, by that time, all other directors of Quintis and Mr Stevens were aware that there was a possibility that Galderma would seek to end the distribution of Benzac;
 - 35.A1.5 otherwise denies paragraph 35(a)(i);
 - 35.B1 in answer to paragraph 35(a)(ii):
 - 35.B1.1 repeats paragraph 29.5 above;
 - 35.B1.2 otherwise denies paragraph 35(a)(ii);
 - 35.C1 in answer to paragraph 35(a)(iii):
 - 35.C1.1 repeats paragraph 29.5 above;
 - 35.C1.2 otherwise denies paragraph 35(a)(iii);
 - 35.D1 in answer to paragraph 35(a)(iv):
 - 35.D1.1 repeats paragraph 29.5 above;

35.D1.2 otherwise denies paragraph 35(a)(iv);

35.E1 in answer to paragraph 35(a)(v):

35.E1.1 repeats paragraph 30 above;

35.E2.2 otherwise denies paragraph 35(a)(v);

35.F1 in answer to paragraph 35(a)(vi):

35.F1.1 repeats paragraph 31 above;

35.F1.1 otherwise denies paragraph 35(a)(vi);

35.G1 in answer to paragraph 35(aa):

35.G1.1 repeats paragraphs ~~30 and~~29 to 31 above;

35.G1.2 otherwise denies paragraph 35(aa);

Particulars

The respondent relies on the report of Mr John Holzwarth filed 12 July 2022.

35.H1 denies paragraph 35(ab);

Particulars

The respondent refers to and repeats particulars (t) to (x) to paragraph 13 above.

The respondent relies on the report of Mr John Holzwarth filed 12 July 2022.

35.1 denies he engaged in conduct that contravened section 674(2A) of the Corporations Act; and

35.2 otherwise denies paragraph 35.

36 As to paragraph 36 of the ~~TF~~FASOC, the respondent:

36.1 denies that by his conduct, he contravened section 674(2) and/or section 674(2A) of the Corporations Act;

36.2 denies he is liable to compensate the Applicants and each of the Group Members for loss and damage as alleged or at all; and

36.3 otherwise does not admit paragraph 36.

Davis Proceeding Claims

- 36A In answer to paragraph 36A of the ~~TF~~FASOC, the respondent adopts and repeats the pleas in paragraphs 11 to 29G, 66 to 107, 113 to 118, 121, 122, 124 to 135, 141 to 146, 159 to 201, 223 to 290A of his Amended Defence to the ~~Second~~Third Further Amended Statement of Claim filed on or about ~~9 August 2022~~29 November 2023 in the proceeding *Davis & Anor v Quintis Limited & Ors* (NSD 862 of 2018) (**Davis Defence**).
- 36B In answer to paragraph 36B of the ~~TF~~FASOC, the respondent adopts and repeats the pleas in paragraphs 395, 396, 398, 399, 405, 407 and 408 of the Davis Defence with the same modifications set out in paragraphs 36B(d), 36B(e) and 36B(f) of the ~~TF~~FASOC.

Relief

- 37 The respondent denies paragraph 37 of the ~~TF~~FASOC and denies that the Applicants and the Group Members are entitled to the relief claimed or any relief at all.
- 38 In further answer to the whole of the ~~TF~~FASOC and the allegations against the respondent contained therein, ~~and without prejudice to the respondent's claims for privilege~~, to the extent that any such allegations are proven, the respondent acted honestly in respect of the said allegations and ought fairly be excused for the alleged contraventions pursuant to section 1317S of the Corporations Act and/or section 1318 of the Corporations Act. The respondent will rely on his reports and other papers provided to, and the minutes of the meetings of, the Board during the Relevant Period ~~but declines to further state the material facts upon which he intends to rely in support of those defences on the basis of privilege against self-incrimination and further, or in the alternative, privilege against exposure to penalties. Further particulars may be provided after the close of evidence.~~
- 38A In further answer to the allegations against the respondent contained in paragraphs 17 to 36 of the ~~TF~~FASOC, ~~and without prejudice to the respondent's claims for privilege~~, to the extent that any such allegations are proven, and for the purposes of section 674(2B) of the Corporations Act, the respondent:
- 38A.1 took all steps that were reasonable in the circumstances to ensure Quintis complied with its obligations under section 674(2) of the Corporations Act; and
- 38A.2 after doing so, believed on reasonable grounds that Quintis was complying with its obligations under section 674(2) of the Corporations Act.

The respondent will rely on his reports and other papers provided to, and the minutes of the meetings of, the Board during the Relevant Period ~~but declines to further state~~

~~the material facts upon which he intends to rely in support of this defence on the basis of privilege against self-incrimination and further, or in the alternative, privilege against exposure to penalties. Further particulars may be provided after the close of evidence.~~

Proportionate Liability

39 In the alternative, and for the purpose only of pleading the proportionate liability defence set out in the following paragraphs, and without making any further admissions, the respondent:

39.1 says that each of the claims pleaded against him at paragraphs 7 to 16 of the ~~TF~~FASOC is an "apportionable claim" for the purposes of:

39.1.1 section 1041L of the Corporations Act; and

39.1.2 section 12GP of the ASIC Act;

39.2 says that if (which is denied), the ~~TF~~FASOC respondent is liable to the Applicants or any of the Group Members as alleged in paragraphs 7 to 16 of the ~~TF~~FASOC, then:

39.2.1 the respondent repeats paragraphs 7 to 16 above;

39.2.2 by reason of the matters pleaded in paragraphs 7 to 16 of the Second Further Amended Statement of Claim filed on 1 July 2021 and paragraphs 7 to 16 above, Quintis is a concurrent wrongdoer (with the respondent) in relation to the Applicants' claim or that Group Members claim;

39.2.3 each of the following persons, being directors of Quintis at the material times, is a concurrent wrongdoer (with Quintis and the respondent):

(a) Dalton Gooding (Chairman);

(b) Julius Matthys;

(c) John Groppoli;

(d) Gillian Franklyn; and

(e) Michael Kay; and

(Other Directors)

39.2.4 Alistair Stevens (**CFO**), being the chief financial officer of Quintis at the material times, is a concurrent wrongdoer (with Quintis, the respondent and the Other Directors).

40 The respondent says that the Other Directors are concurrent wrongdoers because:

- (a) each of the Other Directors was at all material times in the Relevant Period a director of Quintis, and an officer of Quintis within the meaning of section 9 of the Corporations Act and as such engaged in trade or commerce and the respondent repeats paragraphs 6G.3 and, 35.A1 ~~and 35.2~~ above;
- (aa) the Other Directors had access to and knew all material information that the Applicants allege was known to the respondent;
- (b) in the premises, if and to the extent that the respondent made the Pre-Sold Representations and did not withdraw, correct or qualify the Pre-Sold Representations, as pleaded against the respondent in paragraphs 7 to 11 of the ~~TF~~FASOC, the Other Directors engaged in the same conduct pleaded against the respondent and thereby made and failed to withdraw, correct or qualify the Pre-Sold Representations as well;
- (c) in the premises the Other Directors engaged in the Pre-Sold Misleading Conduct Contraventions in the manner pleaded against the respondent in paragraphs 11 to 14 of the ~~TF~~FASOC (excepting the allegations in those paragraphs based on the respondent being the managing director of Quintis, and having been directly involved in discussions with Galderma concerning the Galderma Supply Agreement).

41 The respondent says that the CFO is a concurrent wrongdoer because:

- (a) the CFO was at all material times in the Relevant Period an officer of Quintis within the meaning of section 9 of the Corporations Act and as such engaged in trade or commerce and the respondent repeats paragraphs 6G.32 and, 35.A1 ~~and 35.2~~ above;
- (b) the CFO had access to and knew all material information that the Applicants allege was known to the respondent;
- (c) the CFO had substantial involvement in the preparation of, and the review and approval for release of, the relevant ASX announcements by Quintis;
- (d) in the premises, if and to the extent that the respondent made the Pre-Sold Representations and did not withdraw, correct or qualify the


Pre-Sold Representations, as pleaded against the respondent in paragraphs 7 to 11 of the ~~TF~~FASOC, the CFO engaged in the same conduct pleaded against the respondent and thereby made and failed to withdraw, correct or qualify the Pre-Sold Representations as well;

- (e) in the premises the CFO engaged in the Pre-Sold Misleading Conduct Contraventions in the manner pleaded against the respondent in paragraphs 11 to 14 of the ~~TF~~FASOC (excepting the allegations in those paragraphs based on the respondent being the managing director of Quintis, and having been directly involved in discussions with Galderma concerning the Galderma Supply Agreement).

42 Pursuant to section 1041N of the Corporations Act or section 12GR of the ASIC Act, any liability of the respondent is limited to an amount reflecting that proportion of the Applicants' and Group Members' loss that the Court considers just having regard to the extent of the respondent's responsibility for that loss.

Date: ~~9 August 2022~~22 December 2023

This pleading was settled by ~~G R Donaldson and~~ J R C Sippe, Counsel for the respondent.



Signed by A Mizen
Lawyer for the respondent

Certificate of lawyer

I Alan Mizen certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~9 August 2022~~ 22 December 2023



Signed by Alan Mizen
Lawyer for the respondent