

## NOTICE OF FILING

### Details of Filing

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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, reading "Sia Lagos". The signature is fluid and cursive, with the first letters of "Sia" and "Lagos" being capitalized and prominent.

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.



Form 17  
Rule 8.05(1)(a)

## **Fifth Further Amended Statement of Claim**

(Amended pursuant to orders of Justice Shariff dated 21 March 2024)

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

No. NSD 1983 of 2017

**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

### **I. Parties**

1. The First Applicant is and was at all material times:
  - (a) a corporation incorporated under, and within the meaning of, the *Corporations Act 2001* (Cth) (*Corporations Act*);
  - (b) a shareholder of Quintis Ltd (ACN 092 200 854) (**Quintis**); and
  - (c) the trustee of the Mandex Family Trust and sues in its capacity as trustee.

### **PARTICULARS**

Details of the relevant acquisition of shares in Quintis by the First Applicant:

<i>Date</i>	<i>Transaction Type</i>	<i>No of Shares</i>
<u>26/2/2016</u>	<u>Purchase on ASX</u>	<u>9,486</u>
6/5/2016	Purchase on ASX	5,618

1A. The Second Applicant is and was a shareholder of Quintis.

### PARTICULARS

Details of the relevant acquisition and disposal of shares in Quintis by the Second Applicant:

<i>Date</i>	<i>Transaction Type</i>	<i>No of Shares</i>
16/11/2016	Purchase on ASX	700
23/3/2017	Purchase on ASX	4,000
29/3/2017	Purchase on ASX	5,000
7/4/2017	Purchase on ASX	5,000
11/4/2017	Sale on ASX	5,000
21/4/2017	Purchase on ASX	5,000

2. The Applicants have commenced this proceeding 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 all other persons (**Group Members**) who:
  - (a) purchased ordinary shares in Quintis (**Quintis Securities**) between 1 July 2015 and 30 August 2015 inclusive only (and did not purchase any shares between 31 August 2015 and 15 May 2017), or are registered group members identified in Schedule A annexed to the Further Amended Consolidated Originating Application (**Registered Group Members**); and
  - (b) suffered loss or damage by, or which resulted from, the conduct of the Respondent (**Wilson**) as set out below.
3. The Group Members are not:
  - (a) directors or officers, or a close associate (as defined by section 9 of the *Corporations Act*) of Quintis;
  - (b) a related party (as defined by section 228 of the *Corporations Act*) of Quintis;
  - (c) a related body corporate (as defined by section 50 of the *Corporations Act*) of Quintis;

- (d) an associated entity (as defined by section 50AAA of the *Corporations Act*) of Quintis; and
  - (e) a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia.
4. At the date of the commencement of this proceeding, seven or more Group Members have claims against Wilson.
- 4A. For the purpose of this pleading, from 1 July 2015 to 10 May 2017 is referred to as the **Relevant Period**.
5. Quintis is and, at all material times; was:
- (a) a corporation incorporated under, and within the meaning of, the *Corporations Act*;
  - (b) a person within the meaning of:
    - (i) sections 1041E and 1041H of the *Corporations Act*;
    - (ii) section 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (*ASIC Act*);
  - (c) engaged in trade or commerce;
  - (d) a listed disclosing entity within the meaning of section 111AL(1) of the *Corporations Act*;
  - (e) a corporation listed on the Australian Stock Exchange (**ASX**) and bound by its Listing Rules (**ASX Listing Rules**);
  - (f) up to 21 March 2017 was called “*TFS Corporation Ltd*”;
  - (g) at all times since 22 March 2017 has been called “*Quintis Ltd*”;
  - (h) a company which has and had on issue Quintis Securities which:
    - (i) up to 23 March 2017, were traded on the ASX under the designation “*TFC*”;
    - (ii) between 23 March 2017 and 17 May 2017, were traded on the ASX under the designation “*QIN*”;
    - (iii) were and are ED securities within the meaning of section 111AE of the *Corporations Act*;

- (iv) were and are quoted ED securities within the meaning of section 111AM of the *Corporations Act*; and
  - (v) were and are financial products within the meaning of the *Corporations Act*;
  - (vi) were and are financial products within the meaning of the *ASIC Act*;
  - (i) a listed disclosing entity for the purposes of section 674 of the *Corporations Act*;
  - (j) obliged, pursuant to Listing Rule 3.1 of the ASX Listing Rules and section 674(2) of the *Corporations Act*, once it was or became aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of its shares, unless the exceptions in ASX Listing Rule 3.1A applied, immediately to tell the ASX that information;
  - (k) taken to become aware of information if, and as soon as, an officer of the entity has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity; and
  - (l) engaged in the business *inter alia* of cultivating and selling Indian sandalwood and products derived from Indian sandalwood.
- 5A. On 20 January 2018, Richard Scott Tucker, John Allan Bumbak and Scott David Harry Langdon were appointed as joint and several voluntary administrators of Quintis pursuant to section 436A of the *Corporations Act*.
- 5B. On or about 29 June 2018, Quintis became subject to a deed of company arrangement with Richard Scott Tucker, John Allan Bumbak and Scott David Harry Langdon appointed as deed administrators.
6. Wilson:
- (a) is a natural person;
  - (b) was between 27 March 2000 and 10 November 2011 and then again between 12 June 2012 and 27 March 2017 a director of Quintis;
  - (c) at all material times up to 27 March 2017:
    - (i) acted as CEO/managing director of Quintis;
    - (ii) was engaged in that capacity in trade or commerce;

- (d) by reason of the matters pleaded in sub-paragraphs (b) and (c) above:
- (i) was an officer of Quintis within the meaning of section 9 of the *Corporations Act* and ASX Listing Rule 19.12; and
  - (ii) any information of which Wilson became aware, or ought reasonably to have come into his possession in the course of the performance of his duties, was information of which Quintis was aware (as awareness is defined in ASX Listing Rule 19.12).

## II. Santalis and Galderma

6A. Santalis Pharmaceuticals Inc (**Santalis**) is and was at all material times:

- (a) a company incorporated in the United States of America (**USA**); and
- (b) carrying on the business of the manufacture, marketing and supply of botanical pharmaceuticals, including skincare products, using Indian sandalwood oil produced by Quintis.

6B. On or about 28 December 2011, Quintis acquired by way of joint venture a 50% interest in Santalis.

6C. On or about 20 February 2014, Santalis entered into a 99 year licence agreement (**Galderma Licence Agreement**) and a 20-year supply agreement with Galderma SA (**Galderma**) for, among other things, the supply of high value Indian Sandalwood oil, at a price of US\$4,500 per kg plus annual CPI (capped at 3%) (**Galderma Supply Agreement**).

6D. At all material times, Galderma was wholly owned by Nestle SA.

6E. Galderma used the Indian sandalwood oil supplied by Quintis in its manufacture of Benzac Acne Solutions product range, an anti-acne product distributed within the USA.

6F. On or about 31 July 2015, Quintis acquired 100% of the shares of Santalis.

6G. Dr Paul Castella (**Castella**) was at all material times:

- (a) the chief executive officer of Santalis;
- (b) one of the Key Management Personnel (**KMP**) of Quintis; and
- (c) reporting directly to the Managing Director of Quintis.

## PARTICULARS

The 2016 Annual Report of Quintis at page 36 states that Dr Castella became a KMP on 31 July 2015, “*being the date of the business combination.*”

The KMP of Quintis were, and continue to be, those persons having

authority and responsibility for planning, directing and controlling the major activities of Quintis, directly or indirectly.

The ASX Announcement titled “*Response to ASX Query*” dated 6 June 2017 set out on page 4 the reporting structure for Santalis.

- 6H. At all material times during the Relevant Period, Quintis and Santalis had a reporting structure (**Reporting Structure**) in place as follows:
- (a) Santalis’ CEO reported directly to the Managing Director (or CEO) of Quintis;
  - (b) the Santalis Board met quarterly, attended by senior management of Santalis and Quintis’ Managing Director (or CEO) and Chairman;
  - (c) reporting from the management team of Santalis to the Quintis Board of Directors comprising a monthly report from the Santalis CEO;
  - (d) reporting from the senior management team of Quintis to the Quintis Board of Directors including a report from the Managing Director or CEO of Quintis for each board meeting, which encompasses updates on material matters across the Group's operations, including Santalis;
  - (e) periodic attendance by the Santalis CEO at Quintis Board meetings to provide business updates. The Santalis CEO attended Quintis Board meetings in Perth, Australia, in June 2016 and February 2017;
  - (f) these reporting structures were supplemented by communication between the senior management teams of Santalis and Quintis. Santalis’ CEO reported to the Managing Director (or CEO) of Quintis and there was regular interaction between the two officers;
  - (g) there were regular meetings (via tele-conference) between the Santalis management team and members of the Quintis senior management team. These were held on a weekly basis throughout 2017; and
  - (h) separately, Executive Risk Committee meetings were held monthly, attended by Quintis’ senior management, to monitor, manage and review significant business risks. The minutes of this Executive Risk Committee were included in the papers for the monthly Quintis board meeting.

### PARTICULARS

The ASX Announcement titled “*Response to ASX Query*” dated 6 June 2017 set out on page 4 the reporting structure for Santalis.

### III. Pre-sold Misleading or Deceptive Conduct

7. On and from 26 February 2016, 27 September 2016 and/or ~~30~~ 10 October 2016, in material published and released to the ASX and/or the market of current or prospective investors in Quintis Securities (**Affected Market**), Wilson represented that:
- (a) (on and from 26 February 2016) Quintis had signed new multi-year agreements to supply its value-added wood to buyers in China and India, meaning that 100% of the 2016 and 2017 harvests already owned by Quintis had been forward sold;

- (b) (on and from 26 February 2016) Quintis had signed a supply agreement with a Chinese purchaser under which 150 metric tonnes of sandalwood heartwood was to be shipped from the 2016 harvest;
- (c) (on and from 27 September 2016) Quintis had signed a five-year supply agreement with a Chinese purchaser under which 150 metric tonnes of sandalwood heartwood was to be shipped from the 2016 harvest, with deliveries expected to occur monthly;
- (d) (on and from 26 February 2016) Quintis' 2016 harvested yield would be sold to diverse global customers generating attractive cash margins which would transform its financial performance;
- (e) (on and from 10 October 2016) Quintis had sold the majority of harvests through to 2021; and/or
- (f) (on and from 26 February 2016) the result of the agreements to supply its value-added wood to buyers in China and India, together with the existing contract with Lush Cosmetics and the supply and licensing agreements between Santalis and Galderma was that 100% of the 2016 and 2017 harvest owned by Quintis had been forward sold, (individually and collectively, **Express Pre-sold Representations**).

## PARTICULARS

### A. PUBLICATIONS

The Express Pre-sold Representations referred to in sub-paragraphs 7(a), 7(b), 7(d) and (f) were express and contained in:

- (i) 26 February 2016 - an announcement released and published to the ASX by Quintis titled “[*Quintis*] delivers strong first half result – secures new supply agreements to China and India” (**26 February 2016 ASX Release**) stated that:
  - (A) “... [*Quintis*] today announced it has signed new multi-year agreements to supply its value-added wood to buyers in China and India at prices broadly equivalent to US\$4,500 per kg of oil. Together with the existing supply contracts in place with Nestle-owned Galderma and Lush Cosmetics, the signing of these agreements means that 100% of the 2016 and 2017 harvests already owned by TFS, over 300 tonnes of heartwood, has been forward sold.”
  - (B) Wilson said that, “I am delighted we have signed new agreements with wood buyers in China and India at attractive prices for [*Quintis*]. With our existing contracts with Galderma and Lush Cosmetics, I am very pleased to announce that we have now forward sold all of the [*Quintis*] owned yield from the forthcoming two harvests.”
  - (C) Wilson also said that, “The 2016 harvest will commence in May 2016 and is expected to deliver more than 300 tonnes of heartwood – a tenfold increase on last year. Our harvested yield will be sold to our diverse global customers and generate



*attractive cash margins which will transform our financial performance.”*

(ii) 26 February 2016 - Quintis’ presentation “FY16 Half Year Results” (26 February 2016 Presentation) in which it was stated that:

(A) *“Multi-year agreements signed with Chinese and Indian wood buyers – 100% of [Quintis] owned wood from the 2016 and 2017 harvests is now forward sold, at prices broadly equivalent to US\$4,500 per kg of oil.”*

(B) *“[Quintis] owns 60% (c180 tonnes) of the 2016 harvest and this is now 100% committed to four different global buyers across four different markets, well ahead of harvest.*

1. *China: First Supply agreement signed with 150t of heartwood to be shipped from the 2016 harvest ...*

2. *India and Middle East: First supply agreement signed with 30t of heartwood to be shipped from the 2016 harvest ...”*

4. *US pharmaceutical – existing contract with Nestle owned Galderma to supply oil for the Benzac range.”*

The Express Pre-sold Representation referred to in sub-paragraph 7(c) was express and contained in an announcement to the ASX by Quintis on 27 September 2016 titled “*Commencement of trading to China*” (27 September 2016 ASX Release) in which it was stated that “[Quintis] today received US\$2.25 million as full payment-in-advance for the first shipment of Indian sandalwood which is scheduled to depart Freemantle on 30 September. Subsequent deliveries under the Company’s five-year agreement to supply 150 tonnes per annum of processed heartwood to China expected to occur monthly.”

The Express Pre-sold Representation referred to in sub-paragraph 7(e) was express and contained in the ~~30~~ 10 October 2016 Annual Report (**30 10 October 2016 Annual Report**) which stated that, “*TFS achieved significant progress in developing end markets and finalising supply agreements for our Indian sandalwood oil. This included entering into long-term supply agreements with wood buyers in China and India at attractive prices, which were in addition to TFS’s existing supply contracts with oil buyers Galderma and Lush Cosmetics. Furthermore, in September 2016 TFS signed a five-year agreement, valued at approximately \$50 million, to supply Indian sandalwood oil to US-based Young Living, the largest essential oil company in the world. As a result, the vast majority of the harvests through to 2021 are forward sold.*”

## **B. WILSON**

Wilson made the Express Pre-Sold Representations within the scope of his actual authority as a director of Quintis by directing or procuring the publication and release of material to the ASX and/or the Affected Market as particularised under Section A above in the following manner:

(i) Wilson was the Managing Director of Quintis between 12 June 2012

and 27 March 2017;

- (ii) It was the practice of the Board of Quintis in the Relevant Period to allow the Board the opportunity to comment on draft announcements (Minutes of Directors' Meeting, 29 May 2015, pp 6-7).
- (iii) It was the practice of the Board of Quintis in the Relevant Period that "*Final editorial rights were the responsibility of Messrs Gooding and Wilson*" in relation to draft announcements (Minutes of Directors' Meeting, 29 May 2015, pp 6-7).
- (iv) The 26 February 2016 ASX Release and 26 February 2016 Presentation were approved by the Board on 25 February 2016 (Minutes of Directors' Meeting, 25 February 2016, pp 4-5).
- (v) Section C (ii), (iv), (v) and (viii) below are repeated, together with Section B of the particulars to paragraph 8 below, and Section B of the particulars to paragraph 9 below.
- (vi) Wilson's evidence in the proceeding *Australian Securities and Investments Commission v Wilson (WAD259/2018) (ASIC Proceeding)* was that he "*would have approved the ASX releases that went out*" and corrected any inaccuracies himself (T585.20-36).

### C. CONTINUING REPRESENTATIONS

Paragraph 10 is repeated.

Further to Section A, the Express Pre-sold Representations referred to in sub-paragraphs 7(a), 7(b), 7(d) and (f) (or parts thereof) were also expressly made or repeated in:

- (i) 4 April 2016 - an announcement to the ASX by Quintis titled "[Quintis] *successfully undertakes a \$60 million institutional share placement*" (**4 April 2016 ASX Release**), in which Wilson was quoted as saying, "*We have recently signed new supply agreements with customers in China and India which add to our existing contracts with US pharmaceutical and European cosmetic companies.*"

It may be reasonably inferred from the particulars in Section B, and sub-particulars (ii), (iv), (v) and (viii) below that the 4 April 2016 ASX Release was approved or authorised by Wilson before its release.

- (ii) 31 May 2016 – an announcement to the ASX by Quintis titled "[Quintis] *reports unaudited results for the nine months ended 31 March 2016*" (**31 May 2016 3Q Report**), in which Wilson was quoted as saying, "*The 2016 harvest is expected to deliver more than 300 tonnes of heartwood, a tenfold increase on last year. Soon thereafter, in what will be a major milestone for [Quintis], we will make the first delivery of our value-added wood to China, under our recently established long-term supply agreement.*"
- (iii) 20 July 2016 – an Offering Memorandum issued by Quintis in respect of senior secured notes (**20 July 2016 Offering**) stated that: "*With distribution in more than 80 countries, Galderma is expected to*

*consume a significant proportion of our future Indian Sandalwood oil production and provides a wide distribution platform for our products ...As of March 31, 2016, we had sold a total of 1,222kg of pharmaceutical-grade Indian Sandalwood oil to Galderma, representing A\$6.9 million in sales ... In February 2016, we signed new multi-year agreements to supply our Indian Sandalwood to one buyer in each of China and India ... Together with the existing supply contracts in place with Galderma and Lush, the signing of these agreements means that most of the product that we directly own from the 2016 and 2017 harvests has been forward sold. We expect the first large harvest this year will confirm the quality of our supply and lead to greater demand in coming years.”*

It may be reasonably inferred from the particulars in Section B, and sub-particular (ii) above, and sub-particulars, (iv), (v) and (viii) below that the 20 July 2016 Offering was approved or authorised by Wilson before its release.

- (iv) 26 August 2016 – an announcement to the ASX by Quintis titled *“Strong FY16 establishes platform for transformational FY17”* **(26 August 2016 ASX Release)** stated that:

- (A) *“Through FY16, [Quintis] has entered into long-term agreements with wood buyers in China and India. [Quintis] has now successfully established a broad range of global customers, including oil buyers Galderma and Lush Cosmetics, across its diverse end markets which means that the majority of harvests through to 2021 are now forward sold.”*
- (B) Wilson said that, *“The 2016 harvest is on track to deliver more than 300 tonnes of heartwood, a tenfold increase on the 2015 harvest. With multiple supply agreements for our Indian sandalwood locked in at attractive prices, this harvest will enable [Quintis] to deliver strong growth in cash earnings in FY17... Our ability to finalise long-term supply contracts at attractive prices in the year demonstrates significant global demand for legal, sustainable, and authentic Indian sandalwood.”*
- (C) *“TFS expects to increase Adjusted Cash EBITDA in FY17 by at least 25% on FY16 with strong growth in cash from operating activities, both driven by sandalwood product sales from the Company’s first major harvest. As with previous years, the Company’s earnings and cash flow will be weighted towards the second half of the financial year.”*

The 26 August 2016 ASX Release was approved by the Board on 25 August 2016 (Minutes of Directors’ Meeting, 25 August 2016, pp 2-3).

- (v) 26 August 2016 – the Full Year results presentation **(26 August 2016 Presentation)** in which it was stated that *“Strong development of end markets for sandalwood products, with multi-year contracts signed with wood buyers in China and India.”*

The 26 August 2016 Presentation were approved by the Board on 25 August 2016 (Minutes of Directors' Meeting, 25 August 2016, pp 2-3).

- (vi) The 27 September 2016 ASX Release in which it was stated that “[Quintis] *today received US\$2.25 million as full payment-in-advance for the first shipment of Indian sandalwood which is scheduled to depart Freemantle on 30 September. Subsequent deliveries under the Company’s five-year agreement to supply 150 tonnes per annum of processed heartwood to China expected to occur monthly.*”

It may be reasonably inferred from the particulars in Section B, and sub-particular (ii), (iv) and (v) above and sub-particular (viii) below that the 27 September 2016 ASX Release was approved or authorised by Wilson before its release.

- (vii) It may be reasonably inferred from the particulars in Section B, and sub-particular (ii), (iv) and (v) above and sub-particular (viii) below that the ~~30~~ 10 October 2016 Annual Report was approved or authorised by Wilson before its release.

- (viii) 30 November 2016 – an announcement to the ASX by Quintis titled “*TFS Corporation Ltd Q1 FY17*” **(30 November 2016 ASX Release)** in which it was stated that, “*Multi-year sale contracts mean the vast majority of harvests to 2021 have been forward sold.*”

The 30 November 2016 ASX Release was considered by the Board on 25 November 2016 and proposed to be finalised under circular (Minutes of Directors' Meeting, 25 November 2016, pp 3-5). It may be reasonably inferred that it was so approved.

8. On and from 26 February 2016, Wilson also impliedly represented that:

- (a) the purchaser for supply into China had the financial capacity to purchase 150 metric tonnes of heartwood from the 2016 harvest;
- (b) the purchaser for supply into China had committed to, and was obliged, under the five-year contract of sale, to purchase 150 metric tonnes from the 2016 harvest;
- (c) Galderma was a customer contributing to Quintis' forward sales for the 2016 and 2017 harvests;
- (d) [not used]
- (e) the purchaser under the Galderma Supply Agreement was continuing to purchase significant quantities of oil in line with expectations;
- (e1) the purchaser under the Galderma Supply Agreement would continue to purchase significant quantities of oil; and/or
- (f) [not used]
- (g) there was no material risk that:

- (i) [not used]
- (ii) Quintis would not proceed to sell the entirety of the 2016 and 2017 harvests owned by Quintis;
- (iii) the purchaser for supply into China would not purchase 150 metric tonnes of heartwood from the 2016 harvest;
- (iv) [not used]

(individually and collectively, **Implied Pre-sold Representations**).

## **PARTICULARS**

### **A. IMPLIED REPRESENTATIONS**

The Implied Pre-Sold Representations referred to in:

- (i) paragraphs 8(a) and (b) were implied by the Express Pre-Sold Representations set out in paragraphs 7(a), 7(b), 7(c) and 7(d) on the date each representation was made and/or the 26 February 2016 ASX Release and 26 February 2016 Presentation as particularised at Section A to paragraph 7.
- (ia) paragraph 8(c) was implied by the 26 February 2016 ASX Release and 26 February 2016 Presentation as particularised at Section A to paragraph 7.
- (ii) paragraphs 8(e) and 8(e1) were implied by the Express Pre-Sold Representation set out in paragraphs 7(d) and 7(f) on the date each representation was made and/or the 26 February 2016 ASX Release, 26 February 2016 Presentation and ~~30~~ 10 October 2016 Annual Report as particularised at Section A to paragraph 7.
- (iii) paragraph 8(g) was implied by the Express Pre-Sold Representations set out in paragraphs 7(a), 7(b), 7(c), 7(d), and 7(f) on the date each representation was made, together with the Implied Pre- Sold Representations referred to in paragraph 8(a) to (e1).

### **B. WILSON**

Wilson made the Implied Pre-Sold Representations by his making of the Express Pre-Sold Representations, and:

- (i) Section B of the particulars to paragraph 7 is repeated;
- (ii) Section B and Section C (ii), (iv), (v) and (viii) of the particulars to paragraph 7 above are repeated, together with Section B of the particulars to paragraph 9 below.

### **C. CONTINUING REPRESENTATIONS**

Paragraph 10 and Section C of the particulars to paragraph 7 is repeated.

- 8A. Further, or alternatively, on and from 26 February 2016, by the Express Pre-sold Representations, having regard to the context in which they were made, Wilson also impliedly represented that Quintis and Wilson had reasonable grounds for making each of the Express Pre-Sold Representations (**Further Implied Pre-sold Representation**).

## **PARTICULARS**

### **A. IMPLIED REPRESENTATION**

The Further Implied Pre-sold Representation was implied by the fact that Wilson was under an obligation on and from 26 February 2016:

- (i) not to engage in conduct that was misleading or deceptive in contravention of section 1041H of the *Corporations Act* and section 12DA of the *ASIC Act*;
- (ii) not to make statements, or disseminate information likely to induce persons to apply for financial products or to induce persons to dispose of or acquire financial products that was false in a material particular or materially misleading whilst not caring whether the statement or information is true or false or whilst he/it knew, or ought reasonably have known that the statement or information was false in a material particular or was materially misleading in contravention of section 1041E of the *Corporations Act* and section 12DB(1)(a) of the *ASIC Act*,

and would thus be expected to make a statement or representation to the ASX and/or the market first having undertaken all necessary and reasonable investigations and having satisfied himself on reasonable grounds following those investigations that the public statements out of which the Express Pre-Sold Representations arose were substantially accurate and not misleading or deceptive in any respect.

### **B. WILSON**

Wilson made the Further Implied Pre-Sold Representation by:

- (i) the making of the Express Pre-Sold Representations, and Section B and Section C (ii), (iv), (v) and (viii) of the particulars to paragraph 7 are repeated; and
- (ii) the obligations particularised at Section A to this paragraph.

### **C. CONTINUING REPRESENTATIONS**

Paragraph 10 is repeated.

Section C of the particulars to paragraph 7 is repeated.

9. Further and alternatively, on and from 26 August 2016, in material published and released to the ASX and/or the Affected Market, Wilson represented that Quintis' adjusted cash EBITDA in FY17 would increase by at least 25% on FY16 with strong growth in cash from

operating activities, both by sandalwood product sales from the Company's first major harvest (August 2016 FY17 Guidance Representation).

## PARTICULARS

### A. PUBLICATIONS

The Applicants and each of the Group Members refer to the following ASX announcements:

- (i) referred to in sub-paragraph (v) of the particulars sub-joined to paragraph 7 above, namely that the 26 August 2016 ASX Release stated that:
  - (A) *"Through FY16, [Quintis] has entered into long-term agreements with wood buyers in China and India. [Quintis] has now successfully established a broad range of global customers, including oil buyers Galderma and Lush Cosmetics, across its diverse end markets which means that the majority of harvests through to 2021 are now forward sold."*
  - (B) Wilson said that, *"The 2016 harvest is on track to deliver more than 300 tonnes of heartwood, a tenfold increase on the 2015 harvest. With multiple supply agreements for our Indian sandalwood locked in at attractive prices, this harvest will enable [Quintis] to deliver strong growth in cash earnings in FY17... Our ability to finalise long-term supply contracts at attractive prices in the year demonstrates significant global demand for legal, sustainable, and authentic Indian sandalwood."*
  - (C) *"TFS expects to increase Adjusted Cash EBITDA in FY17 by at least 25% on FY16 with strong growth in cash from operating activities, both driven by sandalwood product sales from the Company's first major harvest. As with previous years, the Company's earnings and cash flow will be weighted towards the second half of the financial year." ;*

### B. WILSON

Wilson made the August 2016 FY17 Guidance Representation within the scope of his actual authority as a director of Quintis by directing or procuring the publication and release of material to the ASX and/or the market as particularised under Section A above in the following manner:

- (i) Wilson was the Managing Director of Quintis between 12 June 2012 and 27 March 2017;
- (ii) It was the practice of the Board of Quintis in the Relevant Period to allow the Board the opportunity to comment on draft announcements (Minutes of Directors' Meeting, 29 May 2015, pp 6-7).
- (iii) It was the practice of the Board of Quintis in the Relevant Period that

*“Final editorial rights were the responsibility of Messrs Gooding and Wilson” in relation to draft announcements (Minutes of Directors’ Meeting, 29 May 2015, pp 6-7).*

- (iv) The 26 August 2016 ASX Release and 26 August 2016 Presentation were approved by the Board on 25 August 2016 (Minutes of Directors’ Meeting, 25 August 2016, pp 2-3).
- (v) The particulars to Section B, and Section C (ii), (iv), (v) and (viii) to paragraph 7 above are repeated, together with the particulars to Section C (i) and (ii) below.

## C. CONTINUING REPRESENTATIONS

Paragraph 10 is repeated.

The Applicants and each of the Group Members refer to the following ASX announcements, in which the August 2016 FY17 Guidance Representation was repeated:

- (i) on ~~30~~ 10 October 2016, the ~~30~~ 10 October 2016 Annual Report, which stated that, *“FY17 is expected to be a transformational year for TFS, driven by an increase in sales of Indian sandalwood and oil products following completion of the Company’s first major harvest. This will support an anticipated increase to Adjusted Cash EBITDA in FY17 of at least 25 per cent on FY16 as well as deliver strong growth in cash from operating activities”*;

The statement in the ~~30~~ 10 October 2016 Annual Report made or repeated the FY17 Guidance Representation at that date.

- (ii) on 30 November 2016 in the 30 November 2016 ASX Release, in which it was stated, *“Reaffirmation of FY17 guidance for Cash EBITDA to increase by >25% on FY16.”*;

The 30 November 2016 ASX Release was considered by the Board on 25 November 2016 and proposed to be finalised under circular (Minutes of Directors’ Meeting, 25 November 2016, pp 3-5). It may be reasonably inferred that it was so approved.

- (iii) on 27 February 2017 titled, *“Exponential growth in Indian sandalwood sales driving transformational year”* (**27 February 2017 ASX Release**), in which it was stated, *“[Quintis] has also reaffirmed its guidance for FY17 Cash EBITDA to increase by at least 25% on FY16, as plantation and product (wood and oil) sales continue to gather pace in the second half of the year.”*; and

It may be reasonably inferred from the particulars in Section B, and sub-particulars (i) and (ii) above (together with the particulars to Section B, and Section C (ii), (iv), (v) and (viii) to paragraph 7 above) that the 27 February 2017 ASX Release was approved or authorised by Wilson before its release.

- (iv) on 22 March 2017 titled, *“T.F.S. Corporation Ltd (“TFC”) Response to ASX Price Query”* (**22 March 2017 ASX Release**), in which it was



stated, “*The Company reaffirms its guidance that FY17 Cash EBITDA will increase by at least 25% on FY16.*”

It may be reasonably inferred from the particulars in Section B, and sub-particulars (i) and (ii) above (together with the particulars to Section B, and Section C (ii), (iv), (v) and (viii) to paragraph 7 above) that the 22 March 2017 ASX Release was approved or authorised by Wilson before its release.

10. At no time prior to 27 March 2017 or at all did Wilson take any or any adequate steps to withdraw or qualify any of:

- (a) the Express Pre-sold Representations;
- (b) the Implied Pre-sold Representations or the Further Implied Pre-Sold Representation;
- (c) the August 2016 FY17 Guidance Representation,

(collectively, **Pre-sold Representations**) which continued to be disseminated in the Relevant Period between when first disseminated or made until corrected and were accordingly continuing representations.

11. The Pre-sold Representations were:

- (a) in relation to:
  - (i) a financial product within the meaning of sub-sections 763A(1)(a) and 764A(1)(a) of the *Corporations Act*, namely Quintis Securities; and
  - (ii) a financial service within the meaning of:
    - (A) sub-sections 766A(1)(a) and 766B(1) of the *Corporations Act*; and
    - (B) sub-sections 12BAB(1)(a) and 12BAB(5) of the *ASIC Act*;
- (b) made in relation to future matters within the meaning of:
  - (i) section 769C of the *Corporations Act*; and
  - (ii) section 12BB of the *ASIC Act*;
- (c) information that a reasonable person would expect to have a material effect on the price or value of Quintis Securities.

## PARTICULARS

- (i) The “financial service” referred to in paragraph 11(a)(ii) was the provision of financial product advice (within the meanings of section 766B(1) of the *Corporations Act* and section 12BAB(5) of the *ASIC Act*) in that each of:

- (A) the Express Pre-sold Representations;
- (B) the Implied Pre-sold Representations;
- (C) the Further Implied Pre-sold Representation; and
- (D) the August 2016 FY17 Guidance Representation,

being recommendations or statements of opinion and/or or a report of those things that was intended to influence a person or persons in making a decision in relation to a particular financial product, namely Quintis Securities, or an interest in same, or could reasonably be regarded as being intended to have such an influence.

- (ii) The relevant intention is to be inferred from the making of each such Pre-sold Representation in material published and released to the ASX and/or the Affected Market in the terms set out in the particulars to paragraphs 7 to 9.
- (iii) The matters in (c) are to be inferred from the matters in paragraph 15 below and the Applicants rely upon the expert report of Frank C Torchio dated 12 June 2020.

12. The Pre-sold Representations were misleading or deceptive, or likely to mislead or deceive, on and from the time they were each made, in that:

- (a) as at and from 26 February 2016, the signing of the new multi-year agreements to supply its value-added wood to buyers in China and India did not mean that 100% of the 2016 and 2017 harvests already owned by Quintis had been forward sold;
- (b) as at and from 26 February 2016, the purchaser for supply into China did not have the financial capacity to purchase 150 metric tonnes of heartwood from the 2016 harvest;
- (c) as at and from 26 February 2016, the purchaser for supply into China had not committed, and was not obliged, under the five-year contract of sale, to purchase 150 metric tonnes from the 2016 harvest;
- (c1) as at and from 26 February 2016, there was a material risk or likelihood that that the purchaser for supply into China would not purchase 150 metric tonnes of heartwood from the 2016 harvest (**China Risk Information**);
- (c2) on and from 25 December 2016, that its Chinese customer had been implicated in a Chinese customs investigation and that further deliveries by Quintis were suspended (**China Suspension Information**);
- (d) [not used]
- (e) [not used]
- (e1) in relation to the Galderma Supply Agreement and Galderma Licence Agreement, as at and from 26 February 2016:
  - (i) the sales performance of Benzac was below Galderma's expectations;
  - (ii) Galderma had requested, and Santalis had agreed to, an interim cost-of-goods sold reduction in the form of an instant discount in the amount of US\$2,477 per kg off

of the price of East Indian Sandalwood Oil (**EISO**), such discount to be in effect until the commercial launch of any reformulated licensed skincare products;

(iii) Galderma had cancelled or postponed indefinitely its outstanding orders for EISO from Santalis/Quintis for FY16; and

(iv) Galderma was assessing its strategy, including whether to terminate the Galderma Supply Agreement,

(together, **Galderma Assessment of Strategy Information**);

(e2) the purchaser under the Galderma Supply Agreement:

(i) as at and from 26 February 2016, had not made any orders for oil from Quintis for delivery in FY16 (**Galderma Purchase Cessation Information**);

(ii) as at and from 26 February 2016, or alternatively 24 March 2016, was not likely to, and there was no basis to expect it would, purchase any oil from Quintis in FY16 (**Galderma FY16 Information**);

(iii) as at and from 26 February 2016, 24 March 2016, or alternatively 26 August 2016, and all times thereafter, was not likely to, and Quintis had no basis to expect it would, purchase any oil from Quintis in FY17 (**Galderma FY17 Information**);

(iv) from on or about 30 November 2016, had the intention or desire to terminate the Galderma Supply Agreement (**Galderma Intention to Terminate Information**);

(v) as at 16 December 2016, terminated the Galderma Supply Agreement (**Galderma Termination Information**).

(f) as at and from 10 October 2016, the majority of harvests through to 2021 had not been presold, by reason of the matters in paragraphs 12(a) to 12(e2) above and paragraphs 29, 30 and 31 below;

(g) as at and from 26 February 2016, 100% of the 2016 and 2017 harvest owned by Quintis had not been forward sold, by reason of the matters in sub-paragraphs 12(a) to (f) above and paragraphs 29, 30 and 31 below;

(g1) in the case of the August 2016 FY17 Guidance Representation pleaded in paragraph 9, Quintis as at and from 26 August 2016:

(i) did not have a reasonable basis to provide guidance that its adjusted cash EBITDA in FY17 would increase by at least 25% on FY16; and

(ii) was unable to accurately predict the outcome of the FY17 sales season;

(h) [not used]

(i) [not used]

- (j) they were made without reasonable grounds, by reason of the matters pleaded in paragraph 13 below.

## PARTICULARS

### A. CHINA AND PRE-SOLD

- (i) The Applicants rely upon the following particulars in support of the facts and circumstances alleged at paragraphs 12(a)-(c2), 12(f) and 12(g).
- (A) In Quintis' announcement to the ASX made on 27 March 2017, it was stated that *"The 2016 harvest produced 310 tonnes of heartwood and in 2017 the Company expects a yield of approximately 240 tonnes of heartwood. The majority of these harvests were pre-sold."*
- (B) In Quintis' announcement to the ASX made on 27 March 2017, it was stated that *"Shanghai Richer Link has not yet requested any shipments in 2017. As a result Quintis has advanced negotiations with selected alternative buyers which the Company has been in commercial discussions with since 2016."*
- (C) Furthermore:
- (1) On or about 25 February 2016, a non-binding Memorandum of Understanding was entered into between Shanghai Richer-Link Enterprise Co. Ltd (**Shanghai Richer-Link**) and Quintis (**MOU**). An Addendum dated 15 March 2016 between Shanghai Richer-Link and Quintis purported to confirm the legally binding nature of the MOU.
- (2) The purported provision of a minimum 150 metric tonne of Indian Sandalwood Heartwood was conditional and only took effect *"from the date of export of the first container from Darwin Australia"* as set out in clause 3 of the MOU and clause 4 of the Deed of Amendment and Reinstatement between Quintis and Shanghai Richer-Link, dated 9 June 2016.
- (3) By on or about 20 September 2016, no heartwood had been exported by Quintis to Shanghai Richer-Link as set out in clause 2(b) of the Further Deed of Amendment between Quintis and Shanghai Richer-Link, dated 20 September 2016 which provided that, *"By [30 September 2016], RL will pay to TFS the sum of US \$2,250,000. This amount will be a prepayment of the first container of 5 tonnes of heartwood and the second container of 10 tonnes of heartwood (being a total of 15 tonnes @ US \$150,000 per tonne = US \$2,250,000)."*
- (4) The terms of the agreement between Quintis and

Shanghai Richer-Link remained under negotiation from 3 December 2015 to at least 20 September 2016:

- (a) Wilson negotiated the MOU with Jerry Hou Yun and/or Shanghai Richer-Link between 3 December 2015 (QIN.100.001.0789) and 24 February 2016 (QIN0000000039);
  - (b) the MOU was entered into on 24 February 2016;
  - (c) Quintis and Shanghai Richer-Link executed an “Addendum” to the MOU on 15 March 2016;
  - (d) Quintis and Shanghai Richer-Link executed a Deed of Amendment and Reinstatement dated 9 June 2016, which varied the MOU;
  - (e) Quintis and Shanghai Richer-Link executed a Further Deed of Amendment dated 20 September 2016, which further varied the MOU;
- (5) The MOU (in its original form and ~~and~~ as varied) was insufficient to constitute a legally binding contract for supply and/or if binding did not require Shanghai Richer-Link to purchase 150mt of heartwood from the 2016 harvest (or at all):
- (a) The “minimum committed quantity” of 150mt of heartwood only took effect “*from the date of export of the first container from Darwin Australia*” as set out in cl 3 of the MOU which date was not specified;
  - (b) The Addendum dated 15 March 2016 purported “*for the avoidance of doubt*” to confirm the legally binding nature of the MOU;
  - (c) Clause 4 of the Agreement attached to the Deed of Amendment and Reinstatement dated 9 June 2016 was in identical terms to cl 3 of the MOU and did not specify a start date;
  - (d) On 29 June 2016, Wilson informed the Board of a variation in the terms of the MOU involving “some bolstering of the original terms to better ‘westernize’ the contract mainly for external optics” and that no wood had yet been shipped (QIN0000000047 and QIN0000000048); and
  - (e) Clause 2(b) of the Further Deed of Amendment dated 20 September 2016 provided that, “*By [30 September 2016], RL will pay to TFS the sum of US \$2,250,000. This amount will be a prepayment of the first container of 5 tonnes of heartwood and the second container of 10 tonnes of heartwood (being*

*a total of 15 tonnes @ US \$150,000 per tonne = US \$2,250,000).*”

- (D) Therefore it should be inferred that the purchaser under the agreement for supply into China, Shanghai Richer Link, was free, under those agreements, to not order shipments as it saw fit, as opposed to having been obliged and committed to purchasing a total of 150 metric tonnes from the 2016 harvest.
- (E) It should equally be inferred that Shanghai Richer Link lacked the financial capacity to purchase that total quantity, given that:
  - (1) The only publicly available information concerning its purchasing activities indicates that it purchased a single shipment for US\$2,250,000. In the 27 March 2017 announcement, Quintis indicated that the price to be obtained from Shanghai Richer Link was dependent on the grade of wood but with an average of US\$150,000 per tonne plus a 3% annual increase. On that basis, Shanghai Richer Link purchased only approximately 15 metric tonnes of heartwood from Quintis (US\$2.25m divided by US\$150,000 per metric tonne).
  - (2) The announcement to the ASX made on 27 March 2017 stated that “*Shanghai Richer Link has not yet requested any shipments in 2017*”;
  - (3) According to a “*China Check up*” report of Shanghai Richer Link dated 30 October 2017, it had paid-up capital of only RMB 1 million. Further, the said report disclosed no record of Shanghai Richer Link importing any goods whatsoever.
- (ii) In support of the true position alleged at paragraph 12(b) and 12(c1), the Applicants state that:
  - (A) it may be reasonably inferred from the matters in particulars A(i)(C)(4)-(5) that as at 26 February 2016 and throughout the Relevant Period there was a material risk or likelihood that the purchaser for supply into China would not purchase 150 metric tonnes of heartwood from the 2016 harvest;
  - (B) it may be reasonably inferred from the following that as at 26 February 2016, Shanghai Richer-Link’s lack of financial capacity created a material risk that it would be unable to service the MOU even if binding or enforceable:
    - (1) Shanghai Richer-Link had limited capital and no ongoing importation business (According to a “*China Check up*” report of Shanghai Richer Link dated 30 October 2017, it had paid-up capital of only RMB 1 million. Further, the said report disclosed no record of Shanghai Richer Link importing any goods whatsoever);

- (2) The financial position of Shanghai Richer-Link depended on the financial position of the private individual who stood behind it and was not a party to the MOU (On 3 December 2015, Wilson informed Gooding in an email that the prospective party in China to a sale agreement was a private individual who was “*but very wealthy and runs a large timber manufacturing business near Shanghai and has fingers in many pies and has strong connections with the Buddhist religion*” (QIN.100.001.0789)); and
  - (3) For at least the reasons in (1) and (2) above, Shanghai Richer-Link was not a desirable counterparty to the MOU because of its financial position (On 24 February 2017, Wilson reported to the Board that he was seeking to replace Shanghai Richer-Link with a “*a mid sized public company in China*” which “*From an optics point of view ... would be vastly superior to Jerry*” (QIN0000000060)).
- (iii) The Applicants rely upon the following further particulars in support of the facts and circumstances alleged at paragraphs 12(a)-(c2), 12(f) and 12(g) as at dates after 26 February 2016 but before the end of the Relevant Period.
- (A) On 24 February 2017, the Board of Quintis received a memorandum prepared by Wilson to the effect that:
    - (1) the principal of Shanghai Richer Link had “*conspired to understate the value of the wood that they have bought from TFS*”, was under investigation by Chinese customs officers and had “*gone to ground*”. As a result, Quintis’ third shipment of wood to Shanghai Richer Link was being held unpaid in Singapore; and
    - (2) “*We are behind in Album shipments to Dec 31 due to a combination of production issues (producing wood to contract spec and mouldy wood), the Chinese customs situation, and continuing delays with the Middle East/Indian contract over apparent “colour” issues with our wood*” (QIN0000000060).
  - (B) On 17 October 2017, Quintis announced to the ASX in the release titled, “*China wood contract termination*” that “... [Quintis] confirms that further to the Company’s announcement on 27 March 2017, it has today terminated its agreement for the supply of Indian sandalwood wood (sic) to China-based buyer Shanghai Richer Link ...”

## **B. GALDERMA**

- (i) The Applicants rely upon the following particulars in support of the facts and circumstances alleged at paragraphs 12(a), 12(e1), 12(e2) and 12(f) to 12(g) as at 26 February 2016:

- (A) Quintis, through Santalis, had ceased to supply Indian sandalwood oil to Galderma from June 2015 (as set out on page 2 of Quintis' ASX announcement, dated 6 June 2017 titled, "*Response to ASX Query*" (**6 June 2017 ASX Release**));
- ~~(B) on and from 25 January 2015, it was the case that:~~
- ~~(1) the sales performance of Benzac was below Galderma's expectations;~~
  - ~~(2) [not used]~~
  - ~~(3) Galderma had cancelled its outstanding orders for EISO from Santalis/Quintis for FY16;~~
  - ~~(4) Galderma was assessing its strategy, including whether to terminate the Galderma Supply Agreement,~~
- ~~as set out in *inter alia* the letter from Galderma to Quintis and Santalis dated 25 January 2015 (QIN.100.001.5077);~~
- (C) On 7 June 2015, Wilson informed Gooding that Galderma "*are not happy with level of sales to date and have indicated their first year target is up to \$40m pa not the \$22m which Santalis thought*" (QIN.100.001.4536);
- (CA) In August 2015, Wilson met with Galderma in Texas. Galderma's position was that the future of Benzac was uncertain unless the input price could be reduced by using less EISO, or by a reduction in the price of EISO;
- (D) On 11 August 2015, Wilson informed Gooding, "*Benzac sales are below their expectations and they are blaming cost as being the major issue (they are too expensive compared to their many competitors), together with eiso being unknown in USA*" (QIN.100.001.5382);
- (E) on 26 August 2015, Mr Castella informed the Board that "*oil demand from them was more than they initially indicated with all our supply to June 15 taken by Galderma - they will provide their forecast demand in November 2015*" (p 2);
- (F) the Quintis Monthly Finance Report July 2015 stated, "*Closing EISO Stock for July 2015 was 257kgs, with no stock shipped to Galderma for the month. EISO sales for the month of July were unfavourable to Budget by \$0.6m (Actuals 0kg vs Budget 100kg). Two further confirmed orders have been received from Galderma, 60kg for delivery in November 2015 and 60kg for January 2016*" (p3);
- (G) the Quintis Monthly Finance Report August 2015 stated, "*Closing EISO Stock for August 2015 was 338kgs, with no stock shipped to Galderma for the month. 87kgs of EISO was manufactured for the month from the deadwood harvest. YTD EISO sales were unfavourable to Budget by \$1.2m (Actuals 2kg*



*vs Budget 210kg). Two further confirmed orders have been received from Galderma, 60kg for delivery in November 2015 and 60kg for January 2016.” (p3);*

- (H) the Quintis Monthly Finance Report September 2015 stated, *“Closing EISO Stock for September 2015 was 431kgs, with no stock shipped to Galderma for the month. 107kgs of EISO was manufactured for the month from the deadwood harvest. YTD EISO sales were unfavourable to Budget by \$1.8m (Actuals 8kg vs Budget 310kg). There are two confirmed orders have been received from Galderma, 60kg for delivery in November 2015, 60kg for January 2016 and a further 15kgs has been confirmed for October 2015 shipment to Santalis for their R&D trials”* (p3);
- (HA) In September 2015, Wilson authorised Castella to put to Galderma a proposal involving an interim discount of \$2,477 per kg of EISO until new formulations of Benzac with less EISO were satisfactorily developed and launched (FCW9).
- (I) the Quintis Monthly Finance Report October 2015 stated, *“Closing EISO Stock for October 2015 was 458kgs, with 15kg of GNS stock shipped to Santalis for their R&D trials. 45kgs of EISO was manufactured for the month from the TFS2 wood delivered to MRA in October. A further 111kgs of EISO has been manufactured in November. YTD EISO sales continues to be unfavourable to Budget by \$2.3m (Actuals 23kg vs Budget 460kg). There are two confirmed orders received from Galderma, 60kg for delivery in November 2015 and 60kg for January 2016.”* (p3);
- (J) on 17 November 2015, Galderma provided to Wilson a letter outlining a proposed discount to the price of EISO (QIN.100.001.4692);
- (K) the Quintis Monthly Finance Report December 2015 contained a table which indicated that that only oil sold between July 2015 and December 2015 was the 15kg shipped to Santalis in October 2015 (p 13);
- (L) in a memorandum to the Board dated 18 February 2016, Wilson stated that *“if Galderma commence reordering before May”* from which it may be inferred that as at February 2016, Galderma had ordered no oil since June 2015 (p 2);
- (M) the Quintis Monthly Finance Report December 2015 contained a table which indicated that that only oil sold between July 2015 and March 2016 was the 15kg shipped to Santalis in October 2015 and no sales to Galderma were confirmed for the balance of FY16; (p 13); and
- (MA) in or around 5 February 2016 (by a letter dated “January 2015”), Galderma recorded an agreement between itself, Quintis and Santalis to *“an instant discount in the amount of \$2,477 per kg”* of EISO until the launch of any reformulated

versions of the product (QIN.100.001.5077).

- (N) On 18 February 2016, Wilson informed the Board in his CEO's Report, *"There has virtually been no advertising for Benzac since early/mid 2015."*
- (ii) The Applicants rely upon the following further particulars in support of the facts and circumstances alleged at paragraphs 12(a), 12(e2) and 12(f) to (g) as at dates after 26 February 2016 but before the end of the Relevant Period.
  - (A) In March 2016, Nestle (the parent company of Galderma) acquired ProActiv in March 2016 (ProActiv is an over-the-counter acne treatment product and a competitor to Benzac).
  - (AA) On or around 30 November 2016, Galderma informed Santalis of its intention to terminate the Galderma Supply Agreement (Page 2 of 6 June 2017 ASX Release).
  - (AB) On or around 1 December 2016, Castella informed Wilson of Galderma's intention to terminate the Galderma Supply Agreement (and particulars (v) to paragraph 13 are repeated).
  - (B) Quintis' response to ASX Query dated 6 June 2017 stated that Quintis made inquiries of Galderma as to the impact of its parent company Nestle's acquisition of ProActiv in March 2016 and that for a number of months after the acquisition, Santalis management and Quintis were aware that Galderma was assessing its strategy in light of the acquisition.
  - (C) Quintis did not factor in EISO sales to Galderma in its sales forecasts for FY2017 (page 1 of Quintis' ASX announcement, dated 10 May 2017 titled, *"Update on Galderma contracts"* (**10 May 2017 ASX Release**)). It may be reasonably inferred that that decision was made prior to the release by Quintis of its FY17 guidance.
  - (D) Further, on or around 16 December 2016, Santalis and Galderma entered into an agreement that terminated the Galderma Supply Agreement with the termination to take effect from 1 January 2017.

#### **C. FY17 GUIDANCE**

- (i) The Applicants rely upon the following particulars in support of the facts and circumstances alleged at paragraph 12(g1) as at 26 August 2016.
  - (A) The true position with respect to the August 2016 FY17 Guidance Representation was that Quintis was unable to accurately predict the outcome of the FY17 sales season because:
    - (1) the August 2016 FY17 Guidance Representation was closely linked to Quintis' first harvest yield in FY2017

and its reliance on selling that harvest in accordance with the tonnage of the announced contracts as set out in Quintis' FY16 Annual Report at page 5; and Budget FY17 Board Presentation dated 26 May 2016 at p 25.

- (2) the forward selling of all of the Quintis-owned yield from the 2016 harvest was represented to result from a combination of Quintis' new supply agreements with buyers in China and India and existing contracts with Galderma and Lush Cosmetics – see the 26 February 2016 Quintis ASX announcement titled “[*Quintis*] delivers strong first half result – secures new supply agreements to China and India” referred to in paragraph (i) of the particulars to paragraph 7 and the 26 February 2016 Quintis presentation “FY16 Half Year Results” and its reference to the Quintis-owned yield from the 2016 harvest being “100% committed to four different global buyers” being (1) China, (2) India and Middle East, (3) Lush Cosmetics, and (4) Galderma;
  - (3) the 2016 harvest had been completed by a date prior to 26 August 2016 (see “Presentation – FY16 Full Year Results” at page 6, released to the ASX on 26 August 2016), however:
    - (a) the purchaser for supply into China purchased only a single shipment of 15 metric tonnes of heartwood in or about September 2016 and did not make any further purchases under the supply agreement in 2017, much less “monthly” (as had been represented as Quintis' expectation), a fact which was or ought to have been known to Wilson from September 2016 onwards;
    - (b) the purchaser for supply into India/the Middle East did not make any purchases during the 2016 calendar year, a fact which was or ought to have been known to Wilson from September 2016 onwards – further, the FY17 Annual Report does not refer to any sales having occurred into India or the Middle East; and
  - (4) each of the matters in the preceding particulars in Section A subsisted.
- (B) It may further be reasonably inferred that this was the case as at 26 August 2016 because:
- (1) cash EBITDA for Quintis was recorded in the FY17 Half-Year Results (published on ASX on 27 February 2017) as being down 11.8% for the half year ended 31 December 2016 compared with the half year ended 31 December 2015;
  - (2) EBITDA for Quintis was recorded in Quintis' FY17

**D. NO REASONABLE GROUNDS**

In support of the facts and circumstances alleged at paragraph 12(j), the Applicants repeat the particulars to paragraph 13 below.

13. Further or alternatively to the preceding paragraph herein:

- (a) at the time Wilson made the Pre-sold Representations; or, alternatively,
- (b) during the times in which the Pre-sold Representations were continuing,

he did not have reasonable grounds for making or continuing them within the meaning of section 769C of the *Corporations Act* and/or section 12BB of the *ASIC Act* and thus each of the Pre-sold Representations is taken to be misleading at that time.

**PARTICULARS OF NO REASONABLE GROUNDS**

- (i) The Applicants and each of the Group Members refer to and repeat the particulars subjoined to paragraph 12 above.
- (ii) They say further that by reason of the matters set out in the particulars to paragraph 12, Wilson did not have reasonable grounds to expect that Quintis would secure sufficient sales of its 2016 harvest so as to make the Express Pre-sold Representations set out in paragraph 7(d) above and the FY17 Guidance Representations.
- (iii) Alternatively to particulars (i) and (ii), Wilson did not undertake necessary and reasonable investigations prior to 26 February 2016, or at all, to assure himself that the Pre-sold Representations were correct and not misleading, in that:
  - (A) he did not procure the services of appropriately qualified professionals in relation to the preparation of comprehensive due diligence reports in relation to Shanghai Richer-Link including in relation to its size, trading history and financial capacity; and
  - (B) he did not thoroughly review and familiarise themselves with the MOU and its variations before making any public announcement representing the existence, reliability and continuation of the MOU and sales of sandalwood products thereunder.
- (iv) Furthermore, they rely on the fact that on or about 27 March 2017, in response to a request for information from the ASX that Wilson represented:
  - (A) Shanghai Richer-Link had not yet requested any shipments in 2017; and
  - (B) as a result, Quintis had advanced negotiations with selected alternative buyers with which it had been in commercial

discussions since 2016.

- (v) With respect to the Pre-sold Representations concerning Galderma (paragraphs 8(c), (e1) and (e2)), the Applicants rely on the following additional circumstances as supporting an inference as to Wilson's lack of reasonable grounds:
- (A) Wilson was aware of Galderma's desire for a discount to the price of EISO from at least August 2015, the discount proposal put to Galderma in September 2015 and Galderma's response of 27 November 2015;
  - (B) On 5 February 2016, Castella emailed Wilson the new proposed packaging for Benzac (including Quintis' trademark) saying *"Please call to discuss"* (FCW13).
  - (C) On 5 February 2016, Wilson participated in a long and cordial telephone conference with Galderma concerning Benzac and clinical trials (ASIC Proceeding T572.4-575.2; QIN\_0000252).
  - (D) On 18 April 2016, Wilson told Alistair Stevens "the early harvest was a real possibility a year ago when Galderma looked like they were going to suck us dry but hasn't really been a possibility for some time" (WIL.001.007.2879).
  - (E) On 13 May 2016, Wilson said to Castella concerning Benzac royalty figures *"Got to be careful how we present this as it is too early to be going negative on Galderma as nothing yet in place to replace them"* (QIN\_0000295).
  - (F) On 18 July 2016, Wilson asked Castella *"Any more news from Galderma It's important you keep in very close contact so we get plenty of warning of any really bad news so we can plan our response"* (QIN.100.001.1162\_0001).
  - (G) On 19 July 2016, Wilson instructed Castella *"keep very close to them [i.e Galderma] as we cannot afford to get blindsided by a sudden departure"* (QIN.100.001.1162).
  - (H) On 10 August 2016, Wilson asked Castella *"What is latest with Galderma? Can you stay right on top of them as we can't afford any bad surprises in next few months until other contracts kick in"* (QIN.100.001.1018).
  - (I) On 22 August 2016, Wilson instructed Castella *"ride this one very closely as we are very close to being able to absorb bad news, or better still move onto the front foot with them. But we are not there yet and need at least until the end of this year to do this smoothly"* (QIN.100.001.1164).
  - (J) On 31 August 2016, Wilson said to Castella: *"One way to buy time is to progress / elongate discussions on a reversion of the brand to us. Contractual and commercial discussions with them"*

*would almost guarantee 6-12 months if we worked at their pace and with their bureaucracy unimpeded” (QIN.100.001.1024).*

- (K) On 28 September 2016, Castella emailed Wilson images of Benzac packing including the Quintis logo, to which Wilson replied inter alia *“Well best evidence we are still alive”* (QIN.100.001.1026).
- (L) In or about 1 December 2016, Wilson and Castella had a phone conversation in which Castella told Wilson, inter alia, that Galderma was *“piling on the pressure to discontinue Benzac”* and take it off the shelf.
- (M) In response to the forgoing conversations, Wilson instructed Castella to see if he could negotiate to *“kick any decision as to what they were going to do with Benzac and about pulling it off the shelves down the road for 6 months”*.
- (N) Between 2 December 2016 and 5 December 2016, Castella and Galderma negotiated the inclusion of the “option” clause into the proposed termination agreement (QIN\_0000395, QIN\_0000396, QIN\_0000408).
- (O) On 5 December 2016, Castella emailed Wilson asking for a call to discuss Galderma and stating *“I got the language approved and wanted to run it by you first”* (QIN\_0000400).
- (P) On 7 December 2016, Wilson (0437 602 177) and Castella ((210) 667 7920) had a number of telephone calls between them (QIN\_0000697).
- (Q) On 9 May 2017, Wilson told Mr Matthys, *“I was aware (because Paul advised me) that galderma had entered into an agreement with santalis that had the affect [sic] that Galderma would make a decision in July regarding the termination of the contract, or proceeding with it”* and *“I was aware that because galderma had purchased proactive it was unlikely we would be supplying them anymore oil regardless of whether we had a contract on foot, or not . Our contract wholly depended on them on selling Benzac so whether the contract was on foot or not it had no bearing on the likelihood of us supplying them”* (QIN.100.001.1013).
- (R) On 9 May 2017, Wilson sent a text message to Castella: *“Please call me asap, this Galderma thing is a beat up, how can it be material if a long non ordering customer terminates a non obligation contract? I thought the drop dead date on contract was July but regardless it has no material bearing on earnings or [future] prospects for Santalis”* (QIN.0061.0001.0101-.0102).
- (S) On 13 May 2017, Wilson sent a further text message to Castella: *“You should ask John bray what the prospects are of*

*su ing Galderma for breach of confidentiality, or offering them a chance to publicly support your view that the agreement was not intended to be final until a decision was made in July, or they reinstate it in July. I think this is a clear cut case of breach and they may feel exposed and may cooperate to avoid public scrutiny about their legal ethics” (QIN.0061.0001.0102-.0103).*

- (T) In the course of giving evidence in the ASIC Proceeding, Wilson stated concerning the 26 February 2016 ASC Release: *“we should not have inferred that Galderma was part of that forward sale because there was no forward sale”* (ASIC T586.3-33).

14. In the premises, by:

- (a) making the Pre-sold Representations; alternatively
- (b) not correcting the Pre-sold Representations,

Wilson engaged in conduct that was misleading or deceptive or that was likely to mislead and deceive in contravention of:

- (c) section 1041H(1) of the *Corporations Act*; and/or
- (d) section 12DA(1) of the *ASIC Act*,

(collectively and severally, **Pre-sold Misleading Conduct Contraventions**).

15. The Applicants and each Group Member have suffered damage resulting from the Pre-sold Misleading Conduct Contraventions by Wilson by reason of the fact that:

- (a) the Applicants and each Group Member purchased Quintis Securities, in the belief the price at which they were purchasing the Quintis Securities was not inflated by reason of any misleading conduct; and/or
- (b) in fact, the price of Quintis Securities was higher than it would have been had Wilson not engaged in the Pre-sold Misleading Conduct Contraventions and was thereby higher than its true market value in a fully informed market.

15A. Further and alternatively, the ~~Second~~ Applicants and some Group Members would not have acquired the Quintis Securities at the prices and the volumes they were acquired if the Pre-sold Representations had not been made.

16. The Applicants and each Group Member is entitled to recover from Wilson the loss or damage that resulted from the Pre-sold Misleading Conduct Contraventions pursuant to:

- (a) section 1041I of the *Corporations Act*; and/or
- (b) section 12GF of the *ASIC Act*.

## PARTICULARS

The loss suffered by the Applicants and Group Members is:

- (i) the difference between the true market value of Quintis Securities in a fully informed market at the time of purchase, and the price actually paid, giving credit for the proceeds of any resale before 27 March 2017 to the extent that the resale price was affected by the same misleading or deceptive conduct;
- (ii) *alternatively*, the difference between the price at which they acquired their interest in the Quintis Securities and the market price that would have prevailed but for the same misleading or deceptive conduct;
- (iii) *alternatively*, the difference between the prices of the Quintis Securities and whatever is “left in hand” or has been realised upon a sale modified to take into account any part of movement in the market price of the Quintis Securities which did not result from the same misleading or deceptive conduct;
- (iv) *alternatively*, where the price of the Quintis Securities fell resulting from the disclosure of information to the market which had not previously been revealed, the quantum of that fall; and
- (v) *alternatively*, the loss of the opportunity to achieve a reasonable rate of return on the moneys used to purchase the interest in the Quintis Securities.

Particulars of the Applicants’ loss and damage are contained in the expert report of Frank C Torchio dated 12 June 2020 on measures (i) and (ii). On measure (iii), the First Applicant claims \$24,093.24, and the Second Applicant claims \$23,477.03.

Particulars of the Group Members’ loss and damage will be provided after the trial of the Applicants’ claims.

## IV. Pre-Sold Section 1041E Contraventions

- 16A. Each of the Pre-sold Representations were false in a material particular or materially misleading.

## PARTICULARS

The Applicants repeat the particulars to paragraphs 12 and 13 above.

- 16B. The Pre-sold Representations were likely:
- (a) to induce persons in Australia to apply for Quintis Securities;
  - (b) to induce persons in Australia to dispose of or acquire Quintis Securities; and/or
  - (c) to have the effect of increasing, maintaining or stabilising the price for trading in Quintis Securities.



16C. When Wilson made or disseminated the information in the:

- (a) the Express Pre-Sold Representations at paragraphs 7(a) and 7(b) and the Implied Pre-Sold Representations at paragraph 8(a) and 8(b) in relation to the contract for supply into China;
- (b) the Implied Pre-Sold Representations at paragraphs 8(e) and 8(e1) in relation to the Galderma Licensing Agreement and Galderma Supply Agreement;
- (c) the Express Pre-Sold Representations at paragraphs 7(f) and 7(g) in relation to forward sales;
- (d) the Further Implied Pre-Sold Representation at paragraph 8A; and/or
- (e) the August 2016 FY17 Guidance Representation,

Wilson ought reasonably to have known the facts that meant each was false in a material particular or were materially misleading.

## **PARTICULARS OF AWARENESS**

### **A. GENERAL**

- (i) Wilson was the Managing Director of Quintis between 12 June 2012 and 27 March 2017;
- (ii) It was the practice of the Board of Quintis in the Relevant Period to allow the Board the opportunity to comment on draft announcements (Minutes of Directors' Meeting, 29 May 2015, pp 6-7).
- (iii) It was the practice of the Board of Quintis in the Relevant Period that *"Final editorial rights were the responsibility of Messrs Gooding and Wilson"* in relation to draft announcements (Minutes of Directors' Meeting, 29 May 2015, pp 6-7).
- (iv) In the premises of particulars (i)-(iii), Wilson ought in the performance of his office to have satisfied himself reasonably that each of the representations pleaded in paragraph 16C(a) to 16C(d) was not misleading or deceptive.

### **B. CHINA**

- (i) The Express Pre-Sold Representations at paragraphs 7(a) and 7(b) and the Implied Pre-Sold Representations at paragraphs 8(a) and 8(b) were misleading because of the facts pleaded in paragraphs 12(a) to 12(c2).
- (ii) Wilson ought reasonably to have been aware of the facts pleaded in paragraphs 12(a) to 12(c2) because, in the premises of particulars in Section A (i)-(iv), he ought reasonably have been aware of the following matters:
  - (A) the matters at particulars in Section A (i)(C)(4)-(5) to paragraph

12 relating to the terms of the MOU and its variations;

- (B) particular Section A (ii)(A) to paragraph 12 relating to the Shanghai-Richer Link customs investigation and stoppage of shipments;
- (C) the fact that no due diligence had been performed on the financial capacity of Shanghai-Richer Link or its principal in relation to the quantities of sandalwood referred to in the Express Pre-Sold Representations;

#### **C. GALDERMA**

- (i) The Implied Pre-Sold Representations at paragraphs 8(e) and 8(e1) were misleading because of the facts pleaded in paragraphs 12(e1) and 12(e2) and particular Section C (iii) below.
- (ii) Galderma's letter of 17 November 2015 containing and repeating the Galderma Assessment of Strategy Information and Galderma Purchase Cessation Information were directed to Wilson and it may reasonably be inferred that he was aware of its contents.
- (iii) Wilson's knowledge of the Galderma Intention to Terminate Information and the Galderma Termination Information can be inferred from his resignation in March 2017, the reference in the ASX release of 10 May 2017 to the lack of knowledge of "current" board members, and the matters particularised at (v) to paragraph 13.
- (iv) Further, Wilson ought reasonably to have been aware of the facts pleaded in paragraphs 12(e1) and 12(e2) because, in the premises of the particulars at Section A (i)-(iv) and the Reporting Structure, he ought reasonably have been aware of the following matters:
  - (A) from 1 July 2015, the Galderma Assessment of Strategy Information and Galderma Purchase Cessation Information;
  - (B) from 26 February 2016, the Galderma FY16 Information;
  - (C) at a time prior to the release of Quintis' FY17 forecast on 26 August 2016, the Galderma FY17 Information;
  - (D) from about 30 November 2016, the Galderma Intention to Terminate Information; and
  - (E) from 16 December 2016, the Galderma Termination Information.

#### **D. FORWARD SALES**

- (i) The Express Pre-Sold Representations at paragraphs 7(f) and 7(g) were misleading because of the facts pleaded in paragraphs 12(a) to 12(c) and 12(e1) to 12(e2).
- (ii) The particulars to Section B and C above are repeated.

## E. REASONABLE BASIS

- (i) The Further Implied Pre-Sold Representation at paragraph 8A was misleading because of the facts pleaded in paragraphs 12(a) to 12(c) and 12(e1) to 12(e2).
- (ii) The particulars Section B and C above are repeated.

## F. GUIDANCE

- (i) The August 2016 FY17 Guidance Representation was misleading because of the fact pleaded in paragraph 12(g1).
- (ii) Wilson ought reasonably to have been aware of the facts pleaded in paragraph 12(g1) because, in the premises of the particulars to Section A (i)-(iv), he ought reasonably have been aware of particulars Section C (1)(A) to paragraph 12 in relation to Quintis' FY17 guidance.

- 16D. In the premises, Wilson, by reason of the matters pleaded in paragraph 16C, engaged in the making of a statement or the dissemination of information in contravention of s 1041E of *Corporations Act* (**Pre-Sold 1041E Contraventions**).
- 16E. The Applicants and each Group Member who purchased Quintis Securities on or after 26 February 2016 have suffered damage resulting from the Pre-Sold 1041E Contraventions by Wilson by reason of the fact that:
- (a) the Applicants and each Group Member purchased Quintis Securities, in the belief the price at which they were purchasing the Quintis Securities was not falsely inflated by reason of any conduct by Wilson in contravention of s 1041E of the *Corporations Act*; and/or
  - (b) in fact, the price of Quintis Securities was higher than it would have been had Wilson not engaged in the Pre-Sold 1041E Contraventions and was thereby higher than its true market value in a fully informed market.
- 16F. Further and alternatively, the ~~Second~~ Applicants and some Group Members would not have acquired the Quintis Securities at the prices and the volumes they were acquired had the Pre-Sold 1041E Contraventions had not occurred.
- 16G. The Applicants and each Group Member is entitled to recover from Wilson the loss or damage that resulted from these contraventions pursuant to section 1041I of the *Corporations Act*.

## PARTICULARS

The loss suffered by the Applicants and Group Members is:

- (i) the difference between the true market value of Quintis Securities in a fully informed market at the time of purchase, and the price actually paid, giving credit for the proceeds of any resale before 27 March 2017 to the extent that the resale price was affected by the same misleading or deceptive conduct;
- (ii) *alternatively*, the difference between the price at which they acquired

their interest in the Quintis Securities and the market price that would have prevailed but for the same misleading or deceptive conduct;

- (iii) *alternatively*, the difference between the prices of the Quintis Securities and whatever is “left in hand” or has been realised upon a sale modified to take into account any part of movement in the market price of the Quintis Securities which did not result from the same misleading or deceptive conduct;
- (iv) *alternatively*, where the price of the Quintis Securities fell resulting from the disclosure of information to the market which had not previously revealed, the quantum of that fall; and
- (v) *alternatively*, the loss of the opportunity to achieve a reasonable rate of return on the moneys used to purchase the interest in the Quintis Securities.

Particulars of the Applicants’ loss and damage are contained in the expert report of Frank C Torchio dated 12 June 2020 on measures (i) and (ii). On measure (iii), the First Applicant claims \$24,093.24, and the Second Applicant claims \$23,477.03.

Particulars of the Group Members’ loss and damage will be provided after the trial of the Applicants’ claims.

## **V. Pre-sold Continuous Disclosure Breach**

17. Each of the China Risk Information and China Suspension Information (**Pre-Sold China Information**) was information:
- (a) which Quintis “*had*” within the meaning of section 674(2)(b) of the *Corporations Act*, or of which it was “*aware*”, within the meaning of ASX Listing Rule 3.1 (as “*aware*” is defined in ASX Listing Rule 19.12);

## **PARTICULARS**

### **A. CHINA RISK INFORMATION**

The China Risk Information was information of which Wilson ought reasonably to have come into possession in the course of the performance of his duties as an officer of Quintis no later than 26 February 2016 because:

- (i) the matters particularised at Section A(i)(C)(1)-(5) to paragraph 12 above were matters of which Wilson ought reasonably to have become aware prior to 26 February 2016 and at all times thereafter, in the course of the performance his duties as an officer of Quintis; and
- (ii) the inference particularised at Section A(ii)(A) to paragraph 12 above was an inference that Wilson ought to have drawn prior to 26 February 2016 and at all times thereafter, in the course of the performance of his duties as an officer of Quintis.

## **B. CHINA SUSPENSION INFORMATION**

The China Suspension Information was information of which Wilson was aware of from on or about 24 December 2016 and the matters particularised at Section A(iii) to paragraph 12 are repeated.

- (b) which was not generally available within the meaning of section 674(2)(c)(i) of the *Corporations Act*; and
- (c) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Quintis securities within the meaning of section 674(2)(c)(ii) of the *Corporations Act*,

and in the premises in (a) to (c), by the operation of Listing Rule 3.1, Quintis was obliged to tell the ASX:

- (a) the China Risk Information immediately on 26 February 2016, and at all times thereafter; and
- (b) the China Suspension Information immediately on 24 December 2016, and at all times thereafter.

18. Quintis:

- (a) did not tell the ASX the Pre-Sold China Information at any time prior to 27 March 2017;
- (b) in the premises in (a), contravened ASX Listing Rule 3.1; and
- (c) in the premises in (a) and (b), contravened section 674(2) of the *Corporations Act*,

**(Pre-sold China Continuous Disclosure Contraventions).**

## **PARTICULARS**

Quintis contravened ASX Listing Rule 3.1 and section 674(2) of the *Corporations Act* in relation to the:

- (i) the China Risk Information on and from 26 February 2016; and
- (ii) the China Suspension Information on and from 24 December 2016.

19. The Applicants and each Group Member has suffered damage resulting from the Pre-sold China Continuous Disclosure Contraventions by Quintis by reason of the fact that:

- (a) the Applicants and each Group Member purchased Quintis Securities, in the belief the price at which they were purchasing the Quintis Securities was not falsely inflated by reason of any non-disclosure by Quintis and/or Wilson to the market; and/or
- (b) in fact, the price of Quintis Securities was higher than it would have been had Quintis and/or Wilson not engaged in the contravention and was thereby higher than its true market value in a fully informed market.

- 19A. Further and alternatively, the ~~Second~~ Applicants and some Group Members would not have acquired the Quintis Securities at the prices and the volumes they were acquired if the Pre-sold China Continuous Disclosure Contraventions by Quintis had not occurred.
20. On and from a time in 2016, but by no later than 31 December 2016, Wilson:
- (a) was aware of the Pre-Sold China Information;

### **PARTICULARS OF AWARENESS**

- (i) The Applicants refer to and repeat the particulars sub-joined to paragraph 17 above; and
- (ii) say further that it may be reasonably inferred that Wilson was aware of the China Risk Information because the negotiation of the terms of the MOU and its variations were matters for which Wilson was primarily and personally responsible.
- (aa) was aware that the Pre-Sold China Information was not generally available within the meaning of section 674(2)(c)(i) of the *Corporations Act*;
- (ab) was aware of the facts which meant that the Pre-Sold China Information was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Quintis Securities within the meaning of section 674(2)(c)(ii) of the *Corporations Act*; and

### **PARTICULARS OF AWARENESS OF MATERIALITY**

#### **A. GENERAL**

- (i) Wilson was the Managing Director of Quintis between 12 June 2012 and 27 March 2017;
- (ii) It was the practice of the Board of Quintis in the Relevant Period to allow the Board the opportunity to comment on draft announcements (Minutes of Directors' Meeting, 29 May 2015, pp 6-7).
- (iii) It was the practice of the Board of Quintis in the Relevant Period that "*Final editorial rights were the responsibility of Messrs Gooding and Wilson*" in relation to draft announcements (Minutes of Directors' Meeting, 29 May 2015, pp 6-7).
- (iv) It may be reasonably inferred from particulars (i)-(iii) above that Wilson was aware of each of the matters in the particulars to Section B below.
- (v) In the premises Wilson was aware of facts which meant the Pre-Sold Material Information was, together and individually, information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Quintis Securities.

## B. CHINA CONTRACT MATERIALITY

- (i) Quintis had repeatedly referred to and relied upon, in announcements to the ASX and other published documents, the economic importance and economic benefits to Quintis of the existence, reliability and continuation, of the MOU on and from the date it was executed, including in the publications particularised to paragraph 12 above.
  - (ii) the existence, reliability and continuation of the MOU was of economic significance to Quintis because:
    - (A) the execution of supply agreements with customers was important for Quintis' profitability and cash flows;
    - (B) the execution of the supply agreements, including with Galderma, meant that a significant proportion of upcoming harvests had been forward sold;
    - (C) Quintis only had two long-term supply agreements in place for the supply of Indian Sandalwood, of which the MOU was the largest.
  - (b) in the premises, was involved in the Pre-sold China Continuous Disclosure Contraventions within the meaning of sections 79(c) and 674(2A) of the *Corporations Act*, and thereby contravened section 674(2A) of the *Corporations Act*.
21. Wilson is liable to compensate the Applicants and each Group Member for the damage that resulted from these contraventions of section 674(2) and/or section 674(2A) pursuant to section 1317HA of the *Corporations Act*.

## PARTICULARS

The loss suffered by the Applicants and Group Members is:

- (a) the difference between the true market value of Quintis Securities in a fully informed market at the time of purchase, and the price actually paid, giving credit for the proceeds of any resale before 27 March 2017 to the extent that the resale price was affected by the same non-disclosure;
- (b) *alternatively*, the difference between the price at which they acquired their interest in the Quintis Securities and the market price that would have prevailed but for the same non-disclosure;
- (c) *alternatively*, the difference between the prices of the Quintis Securities and whatever is “*left in hand*” or has been realised upon a sale modified to take into account any part of movement in the market price of the Quintis Securities which did not result from the same non-disclosure;
- (d) *alternatively*, where the price of the Quintis Securities fell resulting from the disclosure of information to the market which had not previously been revealed, the quantum of that fall; and
- (e) *alternatively*, the loss of the opportunity to achieve a reasonable rate of return on the moneys used to purchase the interest in the Quintis

Securities.

Particulars of the Applicants' loss and damage are contained in the expert report of Frank C Torchio dated 12 June 2020 on measures (i) and (ii). On measure (iii), the First Applicant claims \$24,093.24, and the Second Applicant claims \$23,477.03.

Particulars of the Group Members' loss and damage will be provided after the trial of the Applicants' claims.

## **VI. 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. By no later than 26 February 2016 As at 1 July 2015:

(a) the sales performance of Benzac was below Galderma's expectations;

(b) [not used]

(c) the purchaser under the supply and licensing agreements between Galderma and Santalis had cancelled or postponed indefinitely its outstanding orders for EISO for FY16;

(d) Galderma was assessing its strategy, including whether to terminate the Galderma Supply Agreement (paragraphs 29(a) to (d) being, together and individually, the Galderma Assessment of Strategy Information); and/or

(e) Quintis, through Santalis, had ceased to supply Indian sandalwood oil to Galderma from June 2015 (being the Galderma Purchase Cessation Information).

## **PARTICULARS**

The Applicants and each of the Group Members refer to and repeat the particulars to Section C subjoined to paragraph 12.

29A. As at 26 5 February 2016, Galderma had requested, and Santalis had agreed to, an interim cost-of-goods sold reduction in the form of an instant discount in the amount of US\$2,477



per kg off of the price of EISO, such discount to be in effect until the commercial launch of any reformulated licensed skincare products (also being part of the Galderma Assessment of Strategy Information).

30. From on or around 30 November 2016, Galderma intended or desired to terminate the Galderma Supply Agreement (being the Galderma Intention to Terminate Information).

#### **PARTICULARS**

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Particulars B. GALDERMA to paragraph 12 and to particulars (v) to paragraph 13 are repeated.

31. On or around 16 December 2016, Santalis and Galderma entered into an agreement that terminated the Galderma Supply Agreement and Galderma Licence Agreement with the termination to take effect from 1 January 2017 (being the Galderma Termination Information).

#### **PARTICULARS**

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32. Each of the Galderma Assessment of Strategy Information, Galderma Purchase Cessation Information, Galderma FY16 Information, Galderma FY17 Information, Galderma Intention to Terminate Information and Galderma Termination Information (**Galderma Information**) above was information on the dates alleged in paragraphs 29 to 31:

- (a) which Quintis “*had*” within the meaning of section 674(2)(b) of the *Corporations Act*, or of which it was “*aware*”, within the meaning of ASX Listing Rule 3.1 (as “*aware*” is defined in ASX Listing Rule 19.12);

#### **PARTICULARS**

##### **A. ASSESSMENT OF STRATEGY & PURCHASE CESSATION**

- (i) Wilson had been directly involved in discussions with Galderma concerning the Galderma Supply Agreement and Galderma Licence Agreement, throughout 2014, 2015 and 2016, including in a number of meetings in the USA and was aware of those facts.
- (ii) Galderma’s letter of 17 November 2015 containing and repeating the Galderma Assessment of Strategy Information and Galderma Purchase Cessation Information were directed to Wilson and it may reasonably be inferred that he was aware of its contents.
- (iii) It may be reasonably inferred that Wilson was aware of the fact or general terms of Galderma’s letter of 5 February 2016 containing and repeating the Galderma Assessment of Strategy Information pleaded at paragraph 29A above by reason of particulars (v) to paragraph 13.

## **B GALDERMA FY16 INFORMATION**

- (i) It may be reasonably inferred from the terms of the 6 June 2017 ASX Release that Quintis and Wilson were aware of the Galderma FY16 Information on and from 26 February 2016, alternatively 24 March 2016.
- (ii) Further, it may be reasonably inferred that Wilson was aware of the Galderma FY16 Information because it was contained in the Board reports and Quintis Monthly Finance Reports particularised at Section B(i)(E) – (N).
- (iii) In the alternative, the Galderma FY16 Information was information of which Wilson ought reasonably to have come into possession in the course of the performance of his duties as an officer of Quintis no later than 26 February 2016, alternatively 24 March 2016, because the matters particularised at Section B(i) to paragraph 12 above were matters of which Wilson ought reasonably to have become aware prior to 26 February 2016, alternatively 24 March 2016, and at all times thereafter, in the course of performance of his duties as an officer of Quintis.

## **C. GALDERMA FY17 INFORMATION**

- (ia) It may be reasonably inferred from their awareness of the Galderma Assessment of Strategy Information, the Galderma Purchase Cessation Information, and the Galderma FY16 Information, that Wilson and Quintis were aware of the Galderma FY17 Information on and from 26 February 2016.
- (i) In the alternative, it may be reasonably inferred from the terms of the 6 June 2017 ASX Release and the 10 May 2017 ASX Release that Quintis and Wilson were aware of the Galderma FY17 Information on and from 24 March 2016, or alternatively 26 August 2016.
- (ii) In the alternative, the Galderma FY17 Information was information of which Wilson ought reasonably to have come into possession in the course of the performance of his duties as an officer of Quintis by no later than 26 August 2016 because the matters particularised at Section B(ii) to paragraph 12 above were matters of which Wilson ought reasonably to have become aware prior to 24 March 2016, or alternatively 26 August 2016 and at all times thereafter, in the course of his performance of his duties as an officer of Quintis.

## **D. GALDERMA TERMINATION**

- (i) Wilson's knowledge of the Galderma Intention to Terminate Information can be inferred from his resignation in March 2017, the reference in the ASX release of 10 May 2017 to the lack of knowledge of "current" board members, and particulars (v) to paragraph 13.

- (ia) As to the Galderma Termination Information, the Applicants repeat particulars (v) to paragraph 13 and allege that it may be inferred from those matters that Wilson was aware:
    - (A) of the general terms of the agreement terminating the Galderma Supply Agreement and Galderma Licence Agreement;
    - (B) that such agreement would be entered into between Galderma and Santalis; and/or
    - (B) that such agreement had been entered into between Galderma and Santalis on or around 16 December 2016.
  - (ii) As at 30 November 2016, Wilson was the Managing Director of Quintis and was aware of Galderma's intention to terminate the Galderma Supply Agreement, by reason of Particulars (v)(A) to (F) to paragraph 13.
  - (iii) As at 30 November 2016, Mr Castella, the CEO of Santalis, was aware of Galderma's intention to terminate the Galderma Supply Agreement. Mr Castella was at that date a KMP of Quintis and thus an officer of Quintis.
  - (iv) Further, from July 2015, one or more of the directors or officers of Quintis ought reasonably to have known of, the matters set out above by reason of the matters set out in the particulars to paragraph 29(b) above and/or the Reporting Structure.
  - (v) Further, by Quintis' 6 June 2017 disclosure to the ASX, Quintis said that Santalis' management had been aware of Galderma's intention to terminate the Galderma Supply Agreement since on or around 30 November 2016.
  - (vi) Further, for the purposes of Listing Rule 3.1, Listing Rule 19.12 deems Quintis to have been aware of information if and as soon as an officer of the entity has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.
- (b) which was not generally available within the meaning of within the meaning of section 674(2)(c)(i) of the *Corporations Act*; and
- (c) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Quintis Securities within the meaning of section 674(2)(c)(ii) of the *Corporations Act*,
- and in the premises in (a) to (c), by the operation of Listing Rule 3.1, Quintis was obliged to tell the ASX by no later than:
- (d) ~~1 July 2015~~ 26 February 2016 and at all times thereafter, of the Galderma Assessment of Strategy Information;
  - (e) ~~1 July 2015~~ 26 February 2016 and at all times thereafter, of the Galderma

Purchase Cessation Information;

- (f) 26 February 2016 or alternatively 24 March 2016, and at all times thereafter, of the Galderma FY16 Information;
- (g) 26 February 2016, alternatively 24 March 2016 or alternatively, 26 August 2016, and at all times thereafter, of the Galderma FY17 Information;
- (h) about 30 November 2016, and at all times thereafter, of the Galderma Intention to Terminate Information; further and alternatively
- (i) 16 December 2016, and at all times thereafter, of the Galderma Termination Information.

33. Quintis:

- (a) did not tell the ASX any of the Galderma Information at any time prior to 10 May 2017;
- (b) in the premises in (a), contravened ASX Listing Rule 3.1; and
- (c) in the premises in (a) and (b), contravened section 674(2) of the *Corporations Act*,  
**(Galderma Continuous Disclosure Contraventions).**

#### **PARTICULARS**

Quintis contravened ASX Listing Rule 3.1 and section 674(2) of the *Corporations Act* in relation to the:

- (i) the Assessment of Strategy Information and Galderma Cessation of Purchase Information on and from ~~1 July 2015~~ 26 February 2016;
- (ii) the Galderma FY16 Information on and from 26 February 2016, or alternatively 24 March 2016;
- (iii) the Galderma FY17 Information on and from 26 February 2016, 24 March 2016 or alternatively 26 August 2016;
- (iv) the Galderma Intention to Terminate Information on and from about 30 November 2016; and
- (v) the Galderma Termination Information on and from 16 December 2016.

34. The Applicants and each Group Member has suffered damage resulting from the Galderma Continuous Disclosure Contraventions by Quintis by reason of the fact that:

- (a) the Applicants and each Group Member purchased Quintis Securities, in the belief the price at which they were purchasing Quintis Securities was not falsely inflated by reason of any non-disclosure by Quintis and/or Wilson to the market; and/or
- (b) in fact, the price of Quintis Securities was higher than it would have been had not Quintis and/or Wilson engaged in the contravention and was thereby higher than its

true market value in a fully informed market.

34A. Further and alternatively, the ~~Second~~ Applicants and some Group Members would not have acquired the Quintis Securities at the prices and the volumes they were acquired if the Galderma Continuous Disclosure Contraventions by Quintis had not occurred.

35. Wilson:

- (a) was aware of:
  - (i) the Galderma Assessment of Strategy Information, from no later than 26 February 2016 ~~25 January 2015~~ (and at all times thereafter throughout the Relevant Period);
  - (ii) the Galderma Purchase Cessation Information, from no later than 26 February 2016 ~~25 January 2015~~ (and at all times thereafter throughout the Relevant Period);
  - (iii) the Galderma FY16 Information, from 26 February 2016 or alternatively 24 March 2016 (and at all times thereafter throughout the Relevant Period);
  - (iv) the Galderma FY17~~6~~ Information, from 26 February 2016, 24 March 2016 or alternatively 26 August 2016 (and at all times thereafter throughout the Relevant Period);
  - (v) the Galderma Intention to Terminate Information, from about 30 November 2016 (and at all times thereafter in the Relevant Period);
  - (vi) the Galderma Termination Information, from 16 December 2016 (and at all times thereafter in the Relevant Period);

## **PARTICULARS OF AWARENESS**

The Applicants refer to and repeat the particulars sub-joined to paragraph 32(a) above.

- (aa) was aware from the dates set out in sub-paragraphs (a)(i) to (vi) above that the Galderma Information referred to in those sub-paragraphs was not generally available within the meaning of section 674(2)(c)(i) of the *Corporations Act*;
- (ab) was aware of the facts which meant that the Galderma Information referred to in sub-paragraphs (a)(i) to (vi) above was information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Quintis Securities within the meaning of section 674(2)(c)(ii) of the *Corporations Act*; and

## **PARTICULARS OF AWARENESS OF MATERIALITY**

### **A. GENERAL**

- (i) Wilson was the Managing Director of Quintis between 12 June 2012 and 27 March 2017;
- (ii) It was the practice of the Board of Quintis in the Relevant Period to

allow the Board the opportunity to comment on draft announcements (Minutes of Directors' Meeting, 29 May 2015, pp 6-7).

- (iii) It was the practice of the Board of Quintis in the Relevant Period that *"Final editorial rights were the responsibility of Messrs Gooding and Wilson"* in relation to draft announcements (Minutes of Directors' Meeting, 29 May 2015, pp 6-7).
- (iv) It may be reasonably inferred from particulars (i)-(iii) above that Wilson was aware of each of the matters in the particulars to Section B below.
- (v) In the premises Wilson was aware of facts which meant the Galderma Information was, together and individually, information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Quintis Securities.

## **B. GALDERMA MATERIALITY**

- (vi) On 28 October 2015, the minutes of a meeting of the Board (as provided to the Board on 25 November 2015) record that:
  - (A) *"The Board discussed the ASX continuous disclosure obligations in relation to market statements including materiality threshold and potential price sensitivity of statements in relation to Galderma"* (p4); and
  - (B) the Board resolved to include monthly reporting to the Board on the performance of the products developed and marketed by Galderma (pp 4-5).
- (vii) Quintis had repeatedly referred to and relied upon, in announcements to the ASX and other published documents, the economic importance and economic benefits to Quintis of the existence, reliability and continuation, of the Galderma Supply Agreement, including in:
  - (C) an ASX release on 26 February 2014 titled "New licence and supply agreements with global pharmaceutical company"
  - (D) an ASX release on 26 February 2014 titled "Interim results to 1 December 2013 - six months of significant progress"
  - (E) an ASX release on 5 March 2014 titled "First order for oil under new supply agreement"
  - (F) an ASX release on 2 June 2014 titled "Trading update and reaffirmation of guidance"
  - (G) a presentation to UBS Food and Agribusiness Conference published to the market by Quintis on 2 June 2014;
  - (H) an ASX release on 29 August 2014 titled "[Quintis] achieves record full year profit of \$82.5m";
  - (I) its FY2014 Full Year Results Investor Presentation on 29 August 2014;

- (J) its 2014 Annual Report on or about 27 October 2014;
  - (K) an ASX release on ~~2 June 2014~~ 3 November 2014 titled “Launch of Galderma's new acne products”;
  - (L) in its Chairman’s Address to Shareholders and CEO 2014 AGM Presentation on 28 November 2014;
  - (M) an ASX release on ~~2 June 2014~~ 8 January 2015 titled “[Quintis] sandalwood oil acne product debuts on US shelves”;
  - (N) its Appendix 4D & Half Year Accounts on 26 February 2015;
  - (O) an ASX release on 26 February 2015 titled “[Quintis] delivers record half year profit and upgrades guidance”;
  - (P) in its FY15 Half Year Results Presentation on 26 February 2015
  - (Q) a presentation to UBS Food and Agribusiness Conference published to the market by Quintis on 28 May 2015 ;
  - (R) an ASX release on 18 June 2015 titled “[Quintis] to acquire US pharmaceutical partners to capture downstream revenues from product sales”;
  - (S) its Annual Financial Report for FY15 on 31 August 2015;
  - (T) an ASX release on 31 August 2015 titled “Full year Profit and Cash EBITDA ahead of guidance”;
  - (U) its FY15 Full Year Results Presentation on 31 August 2015;
  - (V) its 2015 Annual Report on 12 October 2015;
  - (W) its 26 February 2016 ASX Release;
  - (X) its 20 July 2016 Offering;
  - (Y) its 26 August 2016 ASX Release; and
  - (Z) its 2016 Annual Report on 10 October 2016;
- (viii) the existence, reliability and continuation of the Galderma Supply Agreement was of economic significance to Quintis because:
- (AA) the execution of supply agreements with customers was important for Quintis’ profitability and cash flows;
  - (BB) the execution of the supply agreements, including with Galderma, meant that a significant proportion of upcoming harvests had been forward sold;
  - (CC) the execution of the Galderma Supply Agreement was described by Quintis as “a significant milestone” and important for the future success of the company because:

- (i) Galderma is a leading global dermatology company, with distribution in more than 80 countries, thus providing a “wide distribution platform” for Quintis’ products;
  - (ii) the deal included long-term supply of pharmaceutical grade oil at a price of US\$4,500 per kg;
  - (iii) the deal exposed Quintis’ Indian Sandalwood oil to the largest teen acne market in the USA;
  - (iv) the supply agreement with Galderma was expected to consume a significant proportion of Quintis’ future Sandalwood production;
  - (v) the supply agreement was exclusive; and
  - (vi) the exclusive supply agreement with Galderma gave Quintis “great confidence” in the company's future profitability and cash flows.
- (DD) from about July 2014, Quintis only had three long-term supply agreements in place for the supply of Indian Sandalwood oil, of which the agreement with Galderma was the longest. The Applicants refer to the announcement made by Quintis to the ASX on 27 March 2017; and
- (EE) at the date that the Galderma Supply Agreement was terminated by Galderma, the agreement still had approximately 17 years remaining.

### **C. OTHER MATTERS**

- (ix) On 6 June 2017, Quintis disclosed to the ASX that Galderma informed Santalis of its intention to terminate the Galderma Supply Agreement.
  - (x) On 10 May 2017, Quintis disclosed to the ASX, in response to queries, the Galderma Termination Information, but stated that current members of the Board and its senior management had not been aware of the Galderma Termination Information prior to 9 May 2017.
  - (xi) On 6 June 2017, Quintis disclosed to the ASX that, had it been aware of the Galderma Termination Information on 16 December 2016, it is likely that it would have made an announcement to the ASX about the status of the agreement because the agreement had previously been the subject of direct announcement by, and media commentary on, Quintis.
- (b) in the premises, was involved in the Galderma Continuous Disclosure Contraventions (to the extent they involved non-disclosure of the Galderma Information referred to in sub-paragraphs (a)(i) to (iv) above) within the meaning of sections 79 and 674(2A) of the *Corporations Act*, and thereby contravened s 674(2A) of the *Corporations Act*.

36. Wilson is liable to compensate the Applicants and each Group Member for the damage that



resulted from these contraventions of section 674(2) and/or section 674(2A) pursuant to section 1317HA of the *Corporations Act*.

## PARTICULARS

The loss suffered by the Applicants and Group Members is:

- (i) the difference between the true market value of Quintis Securities in a fully informed market at the time of purchase, and the price actually paid, giving credit for the proceeds of any resale before 10 May 2017 to the extent that the resale price was affected by the same non-disclosure;
- (ii) *alternatively*, the difference between the price at which they acquired their interest in the Quintis Securities and the market price that would have prevailed but for the same non-disclosure;
- (iii) *alternatively*, the difference between the prices of the Quintis Securities and whatever is “*left in hand*” or has been realised upon a sale modified to take into account any part of movement in the market price of the Quintis Securities which did not result from the same non-disclosure;
- (iv) *alternatively*, where the price of the Quintis Securities fell resulting from the disclosure of information to the market which had not previously been revealed, the quantum of that fall; and
- (v) *alternatively*, the loss of the opportunity to achieve a reasonable rate of return on the moneys used to purchase the interest in the Quintis Securities.

Particulars of the Applicants’ loss and damage are contained in the expert report of Frank C Torchio dated 12 June 2020 on measures (i) and (ii). On measure (iii), the First Applicant claims \$24,093.24, and the Second Applicant claims \$23,477.03.

Particulars of the Group Members’ loss and damage will be provided after the trial of the Applicants’ claims.

### VIA. Davis Proceeding Claims

36A. The Applicants and Registered Group Members adopt and repeat the claims made concerning and against Wilson only appearing at 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 the ~~Second~~ Third Further Amended Statement of Claim filed on ~~5 August 2021~~ 7 July 2022 in the proceeding *Davis & Anor v Quintis Limited & Ors* (NSD862 of 2018) (**Davis 23FASOC**).

36B. The Applicants and Registered Group Members further adopt and repeat the allegations made concerning:

- (a) market-based causation appearing at paragraphs 395, 396, 398 and 399; and
- (b) loss and damage at paragraphs 405, 407 and 408,

of the Davis 23FASOC in relation to the pleadings adopted in paragraph 36A above as against Wilson only, save that for the purposes of the claim made in this proceeding:

- (c) any reference to the “Applicants” is a reference to the Applicants in this proceeding;
- (d) any reference to the “2015 New Shareholder Group Members” is a reference to the Registered Group Members in this proceeding; and
- (e) any reference to the “Group Members” is a reference to the Registered Group Members in this proceeding.

## **VII. Relief**

37. The Applicants claim the relief set out in the Further Amended Consolidated Originating Application.

This pleading was prepared by AH Edwards of counsel and settled by WAD Edwards of King’s Counsel.

Date: 22 March 2024

### Certificate of Lawyer

I, Simon Anthony Theodore, certify to the Court that, in relation to this Fifth Further Amended Statement of Claim, 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: 22 March 2024

Signed by Simon Theodore  
Lawyer for the Applicants

A handwritten signature in dark ink, appearing to read 'Gordon', is written over a horizontal dotted line.