

## NOTICE OF FILING

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### Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	NSD1983/2017
File Title:	EXCEL TEXEL PTY LTD (AS TRUSTEE FOR THE MANDEX FAMILY TRUST) v QUINTIS LTD
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 15/02/2019 4:18:33 PM AEDT

Registrar

### Important Information

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

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**Proposed Further Amended Statement of Claim**

(Amended pursuant to Rule 16.51(1))

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

**QUINTIS LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (ACN 092 200 854)**  
First Respondent

**FRANK CULLITY WILSON**  
Second Respondent

**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 the First Respondent (Quintis); and
  - (c) the trustee of the Mandex Family Trust and sues in its capacity as trustee.

Filed on behalf of (name & role of party)	Excel Texel Pty Ltd (as trustee for the Mandex Family Trust), the First Applicant and Andrew John Wyma, the Second Applicant		
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### PARTICULARS

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

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

2. The Applicants ~~has~~have commenced this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on ~~its~~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 10 May 2017 inclusive (Relevant Period); and
  - (b) suffered loss or damage by, or which resulted from, the conduct of Quintis and/or the Second 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 Quintis and Wilson.
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) section 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) ~~since~~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 managing director of Quintis;

- (ii) was engaged 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).

### **Pre-sold Misleading or Deceptive Conduct**

7. On and from 26 February 2016, in material published and released to the ASX and/or the market, Quintis and Wilson represented that:
  - (a) 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) 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;
  - (c) Quintis had signed a supply agreement with an Indian/Middle Eastern purchaser under which 30 metric tonnes of sandalwood heartwood was to be shipped from the 2016 harvest; and
  - (d) Quintis' 2016 harvested yield would be sold to diverse global customers generating attractive cash margins which would transform its financial performance;
  - (e) Quintis had sold the majority of harvests through to 2021; and
  - (f) 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 Pharmaceuticals Inc (Santalis) and Galderma SA (Galderma) was that 100% of the 2016 and 2017 harvest owned by Quintis had been forward sold.

(collectively, **Express Pre-sold Representations**).

## PARTICULARS

The Express Pre-sold Representations 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*” 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 ... 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*” 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 ...*”
- (iii) 4 April 2016 - an announcement to the ASX by Quintis titled “[Quintis] *successfully undertakes a \$60 million institutional share placement*”, 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.*”

- (iv) 31 May 2016 - an announcement to the ASX by Quintis titled “[Quintis] reports unaudited results for the nine months ended 31 March 2016”, 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.”*
- (v) 26 August 2016 – an announcement to the ASX by Quintis titled *“Strong FY16 establishes platform for transformational FY17”* 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.”*
- (vi) 26 August 2016 – the Full Year results 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.”*
- (vii) 27 September 2016 – an announcement to the ASX by Quintis titled *“Commencement of trading to China”* 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.”*
- (viii) 30 November 2016 – an announcement to the ASX by Quintis titled *“TFS Corporation Ltd OI FY17”* in which it was stated that, *“Multi-year sale contracts mean the vast majority of harvests to 2021 have been forward sold.”*



8. By the Express Pre-sold Representations, Quintis and 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) the purchaser for supply into India/Middle East had the financial capacity to purchase 30 metric tonnes of heartwood from the 2016 harvest;
- (d) the purchaser for supply into India/Middle East had committed to, and was obliged, under a contract of sale, to purchase 30 metric tonnes from the 2016 harvest;

(e) the purchaser under the supply and licensing agreements between Santalis and Galderma was continuing, and was expected to continue, to purchase significant quantities of oil in line with expectations;

(e)(f) Quintis and Wilson had undertaken all necessary and reasonable investigations before making any statement or representation and had satisfied themselves on reasonable grounds following those investigations that the public statements were substantially accurate and not misleading or deceptive in any respect;

(f)(g) no information had come to the attention of Quintis or Wilson that:

- (i) was likely to be material to the investment decisions of investors, and that investors would expect to be disclosed, but which had not been disclosed;
- (ii) meant that there was any material risk that Quintis would not proceed to sell the entirety of the 2016 and 2017 harvests owned by Quintis;
- (iii) meant that there was any material risk that the purchaser for supply into China would not purchase 150 metric tonnes of heartwood from the 2016 harvest;
- (iv) meant that there was any material risk that the purchaser for supply into India/Middle East would not purchase 30 metric tonnes of heartwood from the 2016 harvest,

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

### PARTICULARS

The Applicants refer to paragraph 1 of the Response to Request by Second Respondent for Further and Better Particulars, dated 1 February 2018.

9. Further and alternatively, on and from 26 August 2016, in material published and released to the ASX and/or the market, Quintis and 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 (**FY17 Guidance Representation**).

### PARTICULARS

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

- (i) referred to in sub-paragraph (v) of the particulars sub-joined to paragraph 7 above;
  - (ii) on 30 November 2016 titled, *"TFS Corporation Q1 FY17"* in which it was stated, *"Reaffirmation of FY17 guidance for Cash EBITDA to increase by >25% on FY16."*;
  - (iii) on 27 February 2017 titled, *"Exponential growth in Indian sandalwood sales driving transformational year"*, 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
  - (iv) on 22 March 2017 titled, *"T.F.S. Corporation Ltd ("TFC") Response to ASX Price Query"*, in which it was stated, *"The Company reaffirms its guidance that FY17 Cash EBITDA will increase by at least 25% on FY16."*
10. At no time prior to 27 ~~March~~ February 2017 or at all did Quintis or 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;
    - (c) the FY17 Guidance Representation,
 (collectively, **Pre-sold Representations**) which 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(l)(a) and 764A(l)(a) of the *Corporations Act*, namely Quintis Securities; and
  - (ii) a financial service within the meaning of:
    - (A) sub-sections 766A(l)(a) and 766B(l) of the *Corporations Act*; and
    - (B) sub-sections 12BAB(l)(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

In relation to the matters in (a)(ii), the Applicants refer to paragraph 1 of the Response to Request by First Respondent for Further and Better Particulars, dated 23 March 2018.

The matters in (c) are to be inferred from the matters in paragraph 15 below.

Further particulars may be provided following discovery and the receipt of expert reports.

12. The Pre-sold Representations were misleading in that:
  - (a) 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) the purchaser for supply into China did not have the financial capacity to purchase 150 metric tonnes of heartwood from the 2016 harvest;
  - (c) 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;
  - (d) the purchaser for supply into India/Middle East did not have the financial capacity to purchase 30 metric tonnes of heartwood from the 2016 harvest;

- (e) the purchaser for supply into India/Middle East had not committed, and was not obliged, under the contract of sale, to purchase 30 metric tonnes from the 2016 harvest;
- (f) the majority of harvests through to 2021 had not been presold, by reason of the matters in this paragraph and paragraphs 29, 30 and 31 below;
- (g) 100% of the 2016 and 2017 harvest owned by Quintis had not been forward sold, by reason of the matters in this paragraph and paragraphs 29, 30 and 31 below;
- (g)(h) Quintis and Wilson had not undertaken all necessary and reasonable investigations before making any statement or representation and had not satisfied themselves on reasonable grounds following those investigations that the public statements were substantially accurate and not misleading or deceptive in any respect; and
- (h)(i) information had come to the attention of Quintis and/or Wilson that:
  - (i) was likely to be material to the investment decisions of investors, and that investors would expect to be disclosed, but which had not been disclosed;
  - (ii) meant that there was a material risk that Quintis would not proceed to sell the 2016 and 2017 harvests owned by Quintis;
  - (iii) meant that there was a material risk that the purchaser for supply into China would not purchase 150 metric tonnes of heartwood from the 2016 harvest; and
  - (iv) meant that there was a material risk that the purchaser for supply into India/Middle East would not purchase 30 metric tonnes of heartwood from the 2016 harvest.

## PARTICULARS

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."*

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."*

Furthermore:

- (i) 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.
- (ii) 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 6 September 2016.
- (iii) 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).”

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.

It should equally be inferred that Shanghai Richer Link lacked the financial capacity to purchase that total quantity, given that:

- (i) 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).
- (ii) The announcement to the ASX made on 27 March 2017 stated that “*Shanghai Richer Link has not yet requested any shipments in 2017*”.
- (iii) 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.

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 ...”

Further, the financial report for the Half Year to 31 December 2016 states, *“Product sales of \$17,073m (31 Dec 2015: \$13,132m) included sales of Indian sandalwood products to customers in China, the US and Europe of \$9.101m, up significantly from the prior period (\$0.053m), and lower sales of Australian sandalwood of \$5.736m (31 Dec 2015: \$9.342m).”* No mention is made of sales to India/Middle East.

The ASX Announcement titled *“Exponential growth in Indian sandalwood sales driving transformational year”*, dated 27 February 2017 stated, *“The Company recently commenced its first sales to the Middle East, and later this financial year will complete first sales to India ...”*

Furthermore, the Agreements between Quintis and Medinext General Trading LLC dated 22 February 2016 and June 2016 respectively were both wholly conditional by reason of clause 10 which provided that, *“This Agreement is subject to the specification and colour of the wood being satisfactory to the end market demand.”*

Therefore it should be inferred that the purchaser under the agreement for supply into India/Middle East 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 30 metric tonnes from the 2016 harvest.

It should equally be inferred that the purchaser under the agreement for supply into India/Middle East lacked the financial capacity to purchase that total quantity, given no purchase was made in the 2016 calendar year.

The Applicants also refer to paragraph 2 of the Response to Request by First Respondent for Further and Better Particulars, dated 23 March 2018.

Furthermore, 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) and thereafter Galderma was assessing its strategy, including whether to terminate the supply agreement in light of this acquisition (**Assessment of Strategy Information**).

At all material times from March 2016, Quintis and Wilson were aware of the Assessment of Strategy Information.

Quintis' response to ASX Query dated 6 June 2017 stated that Quintis made several 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.

Wilson was the Managing Director of Quintis at all material times until 27 March 2017 and had been directly involved in discussions with Galderma concerning the Galderma Supply Agreement (as defined in paragraph 24 below), throughout 2014, 2015 and 2016, including in a number of meetings in the USA such that it may be reasonably inferred from the above disclosure that he was aware of the Assessment of Strategy Information.

Further, from March 2016, one or more of the directors or officers of Quintis knew, or ought reasonably to have known of, the Assessment of Strategy Information by reason of:

- (a) the Reporting Structure (as defined in paragraph 28A below) that was in place from July 2015; and
- (b) the fact that such information concerned the future demand from a major and strategically important customer and was likely to have a material effect on the long term performance of Quintis' business.

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 (**Galderma Termination Information**).

At all material times from 16 December 2016 Quintis and Wilson were aware of the Galderma Termination Information by reason of the following:

- (a) Wilson was the Managing Director of Quintis at the time and had been directly involved in discussions with Galderma concerning the Galderma Supply Agreement, throughout 2014, 2015 and 2016, including in a number of meetings in the USA such that it may be reasonably inferred that he was aware of the Galderma Termination Information; and
- (b) the knowledge of Wilson can be further inferred from Wilson's resignation in March 2017 and the reference in the ASX release of 10 May 2017 to the lack of knowledge of "current" board members.

Further, from December 2016, one or more of the directors or officers of Quintis knew, or ought reasonably to have known of, the Galderma Termination Information by reason of:

- (a) the Reporting Structure that was in place from July 2015; and
- (b) the fact that such information concerned the future demand from a major and strategically important customer and was likely to have a material effect on the long term performance of Quintis' business.

Further:

- (a) on 6 June 2017, Quintis disclosed to the ASX that Galderma informed Santalis of its intention to terminate the Galderma Supply Agreement (**Galderma Intention to Terminate Information**), including that Santalis' management had been aware of the Galderma Intention to Terminate Information since on or around 30 November 2016;
- (b) 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;
- (c) 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.

Further particulars will be provided after discovery.

13. Further or alternatively to the preceding paragraph herein, at the time Quintis and Wilson made the Pre-sold Representations, each of them did not have reasonable grounds for making 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.

### PARTICULARS

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

They say further that by reason of the matters set out in the particulars to paragraph 12, Quintis and/or 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 Representation set out in paragraph 7(d) above and the FY17 Guidance Representations.

Furthermore, they rely on the fact that on or about 27 March 2017, in response to a request for information from the ASX that Quintis and/or 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.

14. In the premises, by:

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

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

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

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

15. The Applicants and each Group Member has suffered damage resulting from the Pre-sold Misleading Conduct Contraventions by Quintis and/or 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 misleading conduct by Quintis and/or Wilson to the market; and
- (b) in fact, the price of Quintis Securities was higher than it would have been had Quintis and/or Wilson not engaged in the contraventions and was thereby higher than its true market value in a fully informed market.

### PARTICULARS

The Applicants refers to paragraph 3 of the Response to Request by First Respondent for Further and Better Particulars, dated 23 March 2018.

- 15A. Further and alternatively, the Second Applicant 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 Quintis and/or Wilson the loss or damage that resulted from these 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.

The Applicants also refer to paragraph 4 of the Response to Request by First Respondent for Further and Better Particulars, dated 23 March 2018.

Particulars of the Applicant's loss and damage will be provided in evidence.

Particulars of the Group Members' loss and damage will be determined after the trial of the Applicant's claims.

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

17. Each of the matters set out in paragraph 12 above 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**

The Applicants and each Group Member refer to and repeat the particulars sub-joined to paragraph 12 above.

Further particulars will be provided after discovery.

- (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 at a time during 2016, but by no later than 31 December 2016.

18. Quintis:

- (a) did not tell the ASX the 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 Continuous Disclosure Contraventions).**

### PARTICULARS

The Applicants refers to paragraph 5 of the Response to Request by First Respondent for Further and Better Particulars, dated 23 March 2018.

19. The Applicants and each Group Member has suffered damage resulting from the Pre-sold 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
  - (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.

### PARTICULARS

The Applicants refers to paragraph 6 of the Response to Request by First Respondent for Further and Better Particulars, dated 23 March 2018.

- 19A. Further and alternatively, the Second Applicant and some Group Members would not have acquired the Quintis Securities at the prices and the volumes they were acquired if the Pre-sold 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) knew the matters set out in paragraph 12 above; and
  - (b) in the premises, was involved in the Pre-sold Continuous Disclosure Contraventions within the meaning of section 674(2A) of the *Corporations Act*.

### PARTICULARS

The Applicants and each Group Member refer to and repeat the particulars sub-joined to paragraph 12 above.

Furthermore, Quintis had been, according to its ASX release dated 27 March 2017, advancing negotiations with “*selected alternative buyers*” since 2016. As managing director of Quintis during 2016, Wilson would have been aware of those negotiations and thereby it must be inferred that he was involved in the Pre-sold Continuous Disclosure Contraventions.

Further particulars will be provided after discovery.

21. Quintis and/or 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.

The Applicants also refers to paragraph 7 of the Response to Request by First Respondent for Further and Better Particulars, dated 23 March 2018.

Particulars of the Applicant’s loss and damage will be provided in evidence.

Particulars of the Group Members’ loss and damage will be determined after the trial of the Applicant’s claims.

### Galderma Continuous Disclosure Breach

22. ~~Santalís Pharmaceuticals Inc (Santalís)~~ Santalís 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.

23. On or about 28 December 2011, Quintis acquired by way of joint venture a 50% interest in Santalis.
24. On or about ~~205~~ February 2014, Santalis entered into a 99 year licence agreement (Galderma Licence Agreement) and a 20-year supply ~~and licensing agreement~~ with Galderma SA ~~or its US subsidiary Galderma Laboratories LLP~~, 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)**.
25. At all material times, Galderma SA ~~and its US subsidiary Galderma Laboratories LLP~~ (collectively, ~~Galderma~~), was wholly owned by Nestle SA.
26. 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.
27. On or about 31 July 2015, Quintis acquired 100% of the shares of Santalis.
28. Dr Paul Castella was at all material times:
  - (a) the chief executive officer (CEO) of Santalis; ~~and~~
  - (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.

- 28A. 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.

#### 29. Between June 2015 and November 2016:

- (a) Quintis, through Santalis, had ceased to supply Indian sandalwood oil to Galderma from June 2015; and
- (b) Galderma was assessing its strategy, including whether to terminate the Galderma Supply Agreement.

### PARTICULARS

As set out on page 2 of Quintis' ASX announcement, dated 6 June 2017 titled, "*Response to ASX Query*":

- (i) Between June 2015 and November 2016:
  - (A) Quintis, through Santalis, had ceased to supply Indian sandalwood oil to Galderma from June 2015;
  - (B) there were ongoing discussions between Quintis' management, Santalis' management and Galderma regarding the sales performance of Galderma's Benzac products and the marketing and distribution strategy of Galderma;
  - (C) the sales of Benzac units were below Galderma's own sales projection;
  - (D) Nestle SA (the parent company of Galderma) acquired ProActiv in March 2016 (ProActiv is an over-the-counter acne treatment product and a competitor to Benzac); and
  - (E) Galderma was assessing its strategy, including whether to terminate the supply agreement, in light of this acquisition.
- (ii) On or about 30 November 2016, Galderma informed Santalis of its intention to terminate the Galderma Supply Agreement.
- (iii) 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.

Further particulars will be provided after discovery.

- 30. On or around 30 November 2016, Galderma informed Santalis of its intention to terminate the Galderma Supply Agreement.

### PARTICULARS

The Applicants and each of the Group Members refer to and repeat the particulars subjoined to sub-paragraph 29(b) above.

- 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.

### PARTICULARS

The Applicants and each of the Group Members refer to and repeat the particulars subjoined to sub-paragraph 29(b) above.

32. Each of the matters set out in paragraphs 29 to 31 above 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

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.

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.

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.

Further, from July 2015, one or more of the directors or officers of Quintis knew, or 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.

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.

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.

Further particulars will be provided after discovery.

- (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*,



### PARTICULARS

The Applicants refers to paragraphs 2 – 35 of the Response to Request by Second Respondent for Further and Better Particulars, dated 1 February 2018.

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 June 2015, 30 November 2016 further and alternatively 16 December 2016.

33. Quintis:

- (a) did not tell the ASX the 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

The Applicants refers to paragraph 8 of the Response to Request by First Respondent for Further and Better Particulars, dated 23 March 2018.

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
- (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 Applicant 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. On and from June 2015, Wilson:

- (a) knew the matters set out in paragraphs 29 to 31 above; and

- (b) in the premises, was involved in the Galderma Continuous Disclosure Contraventions within the meaning of section 674(2A) of the *Corporations Act*.

### PARTICULARS

The Applicants and each of the Group Members refer to and repeats the particulars subjoined to paragraphs 29 and ~~32~~ above.

Further particulars will be provided after discovery.

36. Quintis and/or 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 Applicant-s’ loss and damage will be provided in evidence.

Particulars of the Group Members’ loss and damage will be determined after the trial of the Applicant-s’ claims.

### Relief

37. The Applicants claims the relief set out in the Application.

This pleading was prepared by HNG Austin QC and Andrew Cameron of counsel.

Date: ~~8 December 2017~~ ~~9 November 2017~~ 11 February 2019

## Certificate of Lawyer

I, Simon Anthony Theodore, certify to the Court that, in relation to this 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: ~~8 December 2017~~ ~~9 November 2017~~ 11 February 2019



| \_\_\_\_\_  
Signed by Simon Theodore  
Lawyer for the Applicants