

AMENDED / MODIFIÉ

March 8, 2024

PURSUANT TO / CONFORMÉMENT À

Rule 26 - 02

A. Medjidov

**LOCAL REGISTRAR / GREFFIER LOCAL
SUPERIOR COURT OF JUSTICE (ONTARIO)**

Court File No.: CV-23-00000919-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :



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MOHAMMAD REZA KAMRANI-GHADJAR

Plaintiff

- and -

**ANAERGIA INC., ANDREW BENEDEK, HANI EL-KAISSI,
NEO INTERNATIONAL INVESTMENTS LTD. and CIDEL TRUST COMPANY,
TRUSTEE OF THE BENEDEK TRUST**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

SECOND AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: Mar 27, 2023

Issued by Online

Local registrar

Address of 491 Steeles Avenue East
court office Milton, ON
L9T 1Y7

TO: **Anaergia Inc.**
4210 South Service Road
Burlington, Ontario
L7L 4X5

AND TO: **Andrew Benedek**
4210 South Service Road
Burlington, Ontario
L7L 4X5

AND TO: **Hani El-Kaissi**
4210 South Service Road
Burlington, Ontario
L7L 4X5

AND TO: Neo International Investments Ltd.
4210 South Service Road
Burlington, Ontario
L7L 4X5

AND TO: Cidel Trust Company
60 Bloor St. West, 9th Floor
Toronto, Ontario
M4W 3B8

I. DEFINED TERMS

1. In this Statement of Claim, the capitalized terms below have the following meanings:

- (a) “**AIF**” means Annual Information Form;
- (b) “**Anaergia**” means the Defendant Anaergia Inc. along with its subsidiaries and affiliates, or any of them, as the context requires.
- (c) “**CEO**” means Chief Executive Officer;
- (d) “**CFO**” means Chief Financial Officer;
- (e) “**CJA**” means the Courts of Justice Act, RSO 1990, c C-43, as amended;
- (f) “**Class**” and “**Class Members**” mean, collectively, the **IPO Subclass** the **Secondary Market Subclass**, and the **Second Distribution Subclass**;
- (g) “**Class Period**” means the period from June 7, 2021 to and including November 89, 2022;
- (h) “**Company**” means Anaergia;
- (i) “**Continuous Disclosure Material**” means the **Core Documents**, the **Non-Core Documents**, and the **Oral Representations**
- (j) “**Core Documents**” means Anaergia’s:
 - a. MD&A (Amended) for the three and nine months ending September 30, 2021 and 2020 (filed August 31, 2022 on SEDAR) (“**Amended Q3/21 MD&A**”);
 - b. MD&A (Amended) for the three months and year ending December 31, 2021 (filed August 15, 2022 on SEDAR) (“**Amended YE 21 MD&A**”);
 - c. MD&A (Amended) for the three months ending on March 31, 2022 and 2021 (filed August 15, 2022 on SEDAR) (“**Amended Q1/22 MD&A**”);
 - d. Interim condensed consolidated financial statements for the three and six-month period ending June 30, 2022 (filed on August 15, 2022 on SEDAR) (“**Q2/22 Financial Statements**”);

- e. MD&A for the three and six months ending on June 30, 2022 and 2021 (filed August 15, 2022 on SEDAR) (“**Q2/22 MD&A**”);
- f. Management information circular (filed May 18, 2022 on SEDAR) (“**2022 MIC**”);
- g. Interim condensed consolidated financial statements for the three months ending on March 31, 2022 (filed May 12, 2022 on SEDAR) (“**Q1/22 Financial Statements**”);
- h. MD&A for the three months ending on March 31, 2022 and 2021 (filed May 12, 2022 on SEDAR) (“**Q1/22 MD&A**”);
- i. AIF for the year ended December 31, 2021 (filed on March 28, 2022 on SEDAR) (“**2021 AIF**”);
- j. Audited consolidated financial statements for the year ending on December 31, 2021 and 2020 (filed March 28, 2022 on SEDAR) (“**2021 Financial Statements**”);
- k. MD&A for the three months and year ending on December 31, 2021 (filed March 28, 2022 on SEDAR) (“**FY 2021 MD&A**”);
- l. Interim condensed consolidated financial statements for the three and nine months ending on September 30, 2021 (filed November 11, 2022 on SEDAR) (“**Q3/21 Financial Statements**”);
- m. MD&A for the three and nine months ending on September 30, 2021 (filed November 11, 2021 on SEDAR) (“**Q3/21 MD&A**”);
- n. Interim condensed consolidated financial statements for the three and six months ending on June 30, 2021 (filed August 12, 2021 on SEDAR) (“**Q2/21 Financial Statements**”);
- o. MD&A for the three and six months ending on June 30, 2021 (filed August 12, 2021 on SEDAR) (“**Q2/21 MD&A**”);
- p. **IPO Prospectus**; and
- q. **Second Prospectus**.

(k) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;

(l) “**Defendants**” means **Anaergia**, the **Individual Defendants**, and the **Influential Persons**;

- (m) “**EBITDA**” means earnings before interest, taxes, depreciation, and amortization;
- (n) “**Excluded Persons**” means the **Defendants**, **Anaergia’s** and **Influential Persons**’ past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any family member of **Individual Defendants**;
- (o) “**Financial Outlook**” means the financial outlook presented by the Company in the **IPO Prospectus**, and later incorporated into the **Continuous Disclosure Material**;
- (p) “**IFRS**” means the “International Financial Reporting Standards”;
- (q) “**Individual Defendants**” means the Defendants Andrew Benedek, and Hani El-Kaissi;
- (r) “**Influential Persons**” means the Defendants Neo International Investments Ltd., Cidel Trust Company, and The Benedek Trust;
- (s) “**IPO**” means an initial public offering of securities;
- (t) “**IPO Prospectus**” means **Anaergia’s**:
 - a. Preliminary long form prospectus filed with SEDAR on June 7, 2021;
 - b. Final long form prospectus filed with SEDAR on June 18, 2021;
 - c. Supplemented long form PREP prospectus filed with SEDAR on June 18, 2021; and
 - d. Marketing materials filed with SEDAR on June 8 and June 18 and incorporated into the prospectuses by reference.
- (u) “**IPO Subclass**” means all persons, other than **Excluded Persons**, wherever they may reside or be domiciled, who acquired **Anaergia’s** securities during the period of distribution relating to the IPO;
- (v) “**MD&A**” means Management’s Discussion and Analysis;
- (w) “**Non-Core Documents**” means:
 - a. the news release dated August 15, 2022, entitled “Anaergia Reports Second Quarter 2022 Financial Results and Files Restated Financial Statements and MD&A”;

- b. Form 52-109F2 Certification of Interim Filings (CEO) for the interim period ended June 30, 2022 (filed with SEDAR on August 15, 2022);
- c. Form 52-109F2 Certification of Interim Filings (CFO) for the interim period ended June 30, 2022 (filed with SEDAR on August 15, 2022);
- d. the news release dated May 12, 2022, entitled “Anaergia Reports First Quarter 2022 Financial Results”;
- e. Form 52-109F2 Certification of Interim Filings (CEO) for the interim period ended March 31, 2022 (filed with SEDAR on May 12, 2022);
- f. Form 52-109F2 Certification of Interim Filings (CFO) for the interim period ended March 31, 2022 (filed with SEDAR on May 12, 2022);
- g. the news release dated March 28, 2022, entitled “Anaergia Reports Fourth Quarter and Fiscal 2021 Financial Results”;
- h. Form 52-109F2 Certification of Annual Filings (CEO) for the period ended December 31, 2021 (filed with SEDAR on March 28, 2022);
- i. Form 52-109F2 Certification of Annual Filings (CFO) for the period ended December 31, 2021 (filed with SEDAR on March 28, 2022);
- j. the news release dated November 11, 2021, entitled “Anaergia Reports Q3 2021 Financial Results”;
- k. Form 52-109F2 Certification of Interim Filings (CEO) for the interim period ended September 30, 2021 (filed with SEDAR on November 11, 2021);
- l. Form 52-109F2 Certification of Annual Filing (CFO) for the interim period ended September 30, 2021 (filed with SEDAR on November 11, 2021);
- m. the news release dated August 12, 2021, entitled “Anaergia Reports Q2 2021 Financial Results”;
- n. Form 52-109F2 Certification of Interim Filings (CEO) for the interim period ended June 30, 2021 (filed with SEDAR on August 12, 2021); and
- o. Form 52-109F2 Certification of Interim Filings (CFO) for the interim period ended June 30, 2021 (filed with SEDAR on August 12, 2021).

(x) **“Oral Representations”** means:

- a. means the statements made on the earnings call with investors held on August 176, 2022;
- b. means the statements made on the earnings call with investors held on May 12, 2022;
- c. means the statements made on the earnings call with investors held on March 28, 2022; and
- d. means the statements made on the earnings call with investors held on November 11, 2021.
- e. means the statements made on the earnings call with investors held on August 13, 2021.

(y) **“OSA”** means the *Securities Act*, RSO 1990, c S.5, as amended;

(z) **“OSC”** means the Ontario Securities Commission;

(aa) **“Plaintiff”** means the plaintiff, Mohammad Reza Kamrani-Ghadjar;

(bb) **“Revised Financial Outlook”** means the financial outlook disclosed to investors on March 28, 2022;

(cc) **“Second Distribution”** means the distribution of securities completed by the Company on April 19, 2022 and qualified by the Second Prospectus;

(dd) **“Second Distribution Subclass”** means all persons, other than **Excluded Persons**, wherever they may reside or be domiciled, who acquired **Anaergia**’s securities during the period of distribution relating to the Second Distribution;

(ee) **“Second Prospectus”** means:

- a. Final short form prospectus filed with SEDAR on April 12, 2022;
- b. Preliminary short form prospectus filed with SEDAR on April 4, 2022;
- c. Marketing materials filed with SEDAR on April 4, 2022 and incorporated into the prospectus by reference.

(ff) **“Secondary Market Subclass”** means all persons, other than the **IPO Subclass**, the **Second Distribution Subclass**, and **Excluded Persons**,

wherever they may reside or be domiciled, who acquired **Anaergia's** securities during the **Class Period**;

- (gg) **“Securities Legislation”** means , collectively, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; *The Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S- 5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; *The Securities Act, 1988*, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
- (hh) **“SEDAR”** means the System for Electronic Document Analysis and Retrieval which is a filing system developed for the Canadian Securities Administration; and
- (ii) **“TSX”** means the Toronto Stock Exchange.

II. RELIEF SOUGHT

2. The Plaintiffs claim as against Defendants:

- (a) an order granting leave to pursue the causes of action under Part XXIII.1 of the *OSA* and the *Securities Legislation* (if necessary);
- (b) an order certifying this action as a class proceeding pursuant to s. 5 of the *CPA* and appointing the Plaintiffs as the representative plaintiffs for the Class or such other class or sub-classes as may be certified by the Court;
- (c) a declaration that the IPO Prospectus, the Continuous Disclosure Material, and the Second Prospectus contained one or more misrepresentations within the meaning of the *OSA* and the *Securities Legislation* (if necessary);
- (d) a declaration that the Defendants or one of them made the misrepresentations pleaded below;
- (e) a declaration that the Individual Defendants authorized, permitted or acquiesced in the making of the misrepresentations in the Continuous Disclosure Material;
- (f) a declaration that the Influential Persons knowingly influenced the Company or its officers and/or directors in the making of the

misrepresentations in the Continuous Disclosure Material;

- (g) a declaration that Anaergia is vicariously liable for the acts and/or omissions of the Individual Defendants and, as may be applicable, of its other officers, directors or employees;
- (h) on behalf of Secondary Market Subclass, damages in the amount of \$200 million or such other amount as determined by this Court pursuant to XXIII.1 of the *OSA* and, if necessary, the corresponding provisions of the Securities Legislation;
- (i) on behalf of the IPO Subclass, damages in the amount of \$200 million or such other amount as determined by this Court pursuant to XXIII of the *OSA* and, if necessary, the corresponding provisions of the Securities Legislation;
- (j) on behalf of the IPO Subclass, a declaration that the Company and Individual Defendants are jointly and severally liable for damages;
- (k) on behalf of the Second Distribution Subclass, damages in the amount of \$30 million or such other amount as determined by this Court pursuant to section 130 of the *OSA* and, if necessary, the corresponding provisions of the Securities Legislation;
- (l) on behalf of the Second Distribution Subclass, a declaration that the Company and Individual Defendants are jointly and severally liable for damages;
- (m) monetary relief in an amount to be determined by this Honourable Court;
- (n) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (o) pre-judgment and post-judgment interest pursuant to the *CJA*;
- (p) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity;
- (q) pursuant to section 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and
- (r) such further and other relief as this Honourable Court may deem just.

III. OVERVIEW

3. This is a proposed class proceeding against Defendants for misrepresentations made to investors in disclosure documents. Defendants misrepresented the Company's financial performance and its financial outlook. The Plaintiff brings this action on behalf of Anaergia securityholders who suffered losses as a result of these misrepresentations.

IV. THE PARTIES

A. The Plaintiff and Class

4. Mohammad Reza Kamrani-Ghadjar is an individual residing in Vancouver, British Columbia. Mr. Kamrani-Ghadjar acquired 4,000 shares in Anaergia identified by the ticker symbol ANRG on the TSX during the Class Period and continued to hold shares at the end of the Class Period.

5. The Class consist of three subclasses:

- (a) the Secondary Market Subclass: all persons, other than the IPO Subclass, the Second Distribution Subclass, and the Excluded Persons, wherever they may reside or be domiciled, who acquired Anaergia's securities during the Class Period;
- (b) the IPO Subclass: all persons, other than Excluded Persons, wherever they may reside or be domiciled, who acquired Anaergia's securities during the period of distribution relating to the IPO; and
- (c) the Second Distribution Subclass: all persons, other than Excluded Persons, wherever they may reside or be domiciled, who acquired

Anaergia's securities during the period of distribution relating to the Second Distribution.

B. The Defendants

(i) Anaergia Inc.

6. Anaergia is a company incorporated in British Columbia with its principal place of business in Burlington, Ontario.

7. Anaergia distributed securities to the public in all provinces of Canada through an IPO that was qualified by the IPO Prospectus.

8. As a result of the IPO, Anaergia became a reporting issuer in all Canadian provinces.

9. The Company's shares were publicly listed for trading on the TSX under the ticker symbol "ANRG" and over the counter in the United States of America under the ticker "ANRGF".

10. Anaergia published the documents identified below on, among other places, SEDAR.

11. Anaergia controlled the contents of the Core Documents and the Non-Core Documents, and the misrepresentations made therein were made by Anaergia.

(ii) Individual Defendants

(a) Andrew Benedek

12. Benedek is an individual residing in California, United States of America. He is the founder of Anaergia.

13. During the Class Period, he was the CEO of the Company as well as the executive

chairman of its board of directors. During this time, he was a “director”, “officer”, and “promoter” of Anaergia within the meaning of the *OSA* and the Securities Legislation.

14. As a director and officer, Benedek caused Anaergia to make the misrepresentations particularized below.

15. Benedek, in his capacity as CEO and director, certified the IPO Prospectus and each of the Core Documents that were quarterly and annual disclosures of Anaergia. In doing so, he adopted as his own the false statements made in those documents.

16. On March 17, 2022, Benedek, in a private transaction involving no cash consideration, acquired from Neo International Investments Ltd. over 50% of the issued and outstanding shares of Anaergia and, through multiple voting shares, over 80% of the voting power in the Company.

17. Benedek had significant control and influence over the Company.

18. Benedek was a “control person” of Anaergia within the meaning of the *OSA* and the Securities Legislation.

19. As a “promoter” and “control person” Benedek was an “influential person” of Anaergia within the meaning of the *OSA* and the Securities Legislation.

20. Benedek knowingly influenced Anaergia and Individual Defendants to release the Continuous Disclosure Material containing the misrepresentations particularized below.

(b) Hani El-Kaissi

21. El-Kaissi is an individual residing in Ontario, Canada. During the Class Period, he was the CFO of Anaergia until he was replaced on October 17, 2022. During this time, he was an “officer” of Anaergia within the meaning of the *OSA* and the Securities Legislation.

22. As an officer, El-Kaissi caused Anaergia to make the misrepresentations particularized below.

23. El-Kaissi, in his capacity as CFO, certified the IPO Prospectus and each of the Core Documents that were quarterly and annual disclosures of Anaergia. In doing so, he adopted as his own, the false statements made in those documents.

(iii) Influential Persons

(a) Neo International Investments Ltd.

24. Neo International Investments Ltd. was a British Virgin Islands company.

25. Neo International Investments Ltd. held over 50% of the issued and outstanding shares of Anaergia and, through multiple voting shares, over 80% of the voting power in the Company.

26. Neo International Investments Ltd. had significant control and influence over the Company.

27. Neo International Investments Ltd. was a “control person” and an “influential person” of Anaergia within the meaning of the *OSA* and the Securities Legislation.

28. Neo International Investments Ltd. knowingly influenced Anaergia and Individual Defendants to release the Continuous Disclosure Material containing the misrepresentations particularized below.

29. Neo International Investments Ltd. was controlled by The Benedek Trust.

(b) Cidel Trust Company and The Benedek Trust

30. Cidel Trust Company is a trust company based in Toronto, Ontario. Cidel Trust Company is owned by Cidel Bank Canada, a bank based in Toronto, Ontario. Cidel Bank Canada is in turn owned by Cidel Bank & Trust Inc, an entity based in Barbados.

31. In Core Documents, the Company named Cidel Trust Company as the trustee of The Benedek Trust.

32. The Benedek Trust is a trust established pursuant to the laws of the Cayman Islands, the beneficiaries of which are members of the family of Defendant Andrew Benedek.

33. The Benedek Trust held all of the shares of, and controlleds, Neo International Investments Ltd., which in turn owned a majority of the shares and voting rights of Anaergia. In its capacity as trustee of The Benedek Trust, Cidel Trust Company was a “control person” and an “influential person” of Anaergia within the meaning of the *OSA* and the Securities Legislation.

34. In its capacity as trustee of The Benedek Trust, Cidel Trust Company knowingly influenced Anaergia and Individual Defendants to release the Continuous Disclosure Material containing the misrepresentations particularized below.

V. THE DEFENDANTS' DISCLOSURE OBLIGATIONS

A. Prospectus Obligations

(i) Anaergia's Prospectus Obligations

35. In distributing its securities, Anaergia was subject to the prospectus obligations of Part XV of the *OSA*.

36. Prospectuses are required to contain full, true, and plain disclosure of all material facts relating to the securities proposed to be distributed.

37. In connection to its IPO, the *OSA*, as informed by National Instrument 41-101, required that Anaergia prepare and deliver to investors and file on SEDAR, a prospectus containing, among other things, the following:

- (a) a detailed description of its business, including information on each operating segment and a description of the Company's development over the last three fully completed fiscal years;
- (b) historical annual financial statements as well as interim financial statements for the most recent interim period, which complied with IFRS, and provided information about the Company's current and historical financial performance;
- (c) MD&As which provide material information about Anaergia' business, management and operational and financial status during the period covered by the financial statements; and
- (d) certifications signed by the CEO, CFO and two directors, on behalf of the board of directors, stating that the prospectus contained full, true and plain disclosure of all material facts.

38. In fulfilling its prospectus obligations, Anaergia was prohibited from making an untrue statement of material fact. A material fact is a fact that would reasonably be expected to have a significant effect on the market price of Anaergia securities.

39. Pursuant to s. 132.1 of the *OSA*, SO 2004, c 31, Sch 34, s 9, and as informed by National Instrument 41-101, Anaergia was prohibited from including in a prospectus a financial outlook unless;

- (a) it had a reasonable basis for the information;
- (b) the information was based on assumptions that were reasonable in the circumstances;

- (c) the outlook was limited to a period for which the information could reasonably be estimated; and
- (d) the information was accompanied by appropriate cautionary language.

40. Pursuant to s. 132.1 of the *OSA*, a financial outlook released in a document in connection with an IPO is a misrepresentation when it is an untrue statement of material fact or an omission to disclose a material fact regardless of whether or not it has a reasonable basis or is accompanied by cautionary language.

(ii) Individual Defendants' Role in Prospectus Obligations

41. Each of the Individual Defendants knew that Anaergia was at the relevant times engaged in a distribution to the public in connection with an IPO and that in their role as a director and/or officer of Anaergia they would have direct responsibility for ensuring the accuracy and completeness of the IPO Prospectus.

42. The OSA, Securities Legislation, and National Instruments and Companion Policies promulgated thereunder imposed specific obligations on the Individual Defendants in the preparation of the IPO Prospectus.

43. Section 58 of the OSA, and the concordant provisions of Securities Legislation, informed by National Instrument 41-101, required the CEO and the CFO to certify that the prospectus constituted full, true, and plain disclosure of all material facts relating to the securities offered.

44. Each of the Individual Defendants was aware of and accepted these obligations in assuming his or her position as a director and/or officer of Anaergia and adopted as their own, the false statements particularized below.

B. Continuous Disclosure Obligations

(i) Anaergia's Continuous Disclosure Obligations

45. Once it became a reporting issuer, Anaergia was subject to the continuous disclosure obligations of Part XVII of the OSA and Securities Legislation.

46. The *OSA*, as informed by National Instrument 51-102, required that Anaergia prepare and file on SEDAR, certain disclosure documents prepared on a regular basis, including:

- (a) annual and interim MD&As (filed together with the relevant period's financial statements) which provide material information about Anaergia's business, management and operational and financial status during the period covered by the financial statements;
- (b) annual information forms, which provide material information about Anaergia and its business at a point in time, in the context of historical and possible future development;
- (c) annual and interim financial statements complying with IFRS which provide information about Anaergia's business and financial position; and
- (d) certifications signed by the CEO and CFO certifying their review of the required documents and certain other matters.

47. In fulfilling its disclosure obligations, Anaergia was prohibited from making an untrue statement of material fact. A material fact is a fact that would reasonably be expected to have a significant effect on the market price or value of Anaergia securities.

48. Pursuant to s. 138.4 of the OSA, as informed by National Instrument 51-102, Anaergia was prohibited from including a financial outlook in a Core or Non-Core Document unless;

- (a) it had a reasonable basis for the information;
- (b) the information was based on assumptions that were reasonable in the circumstances;
- (c) the outlook was limited to a period for which the information could reasonably be estimated; and
- (d) the information was accompanied by appropriate cautionary language.

49. Pursuant to section 138.4 (9) of the *OSA*, [2004, c. 31](#), Sched. 34, s. 13 (10), a financial outlook released in a Core Document in connection with an IPO is a misrepresentation when it is an untrue statement of material fact or an omission to disclose a material fact, regardless of whether or not it had a reasonable basis or was accompanied by cautionary language.

(ii) Individual Defendants' Role in Continuous Disclosure

50. Each of the Individual Defendants knew Anaergia was at the relevant times a reporting issuer and that, in their role as a director and/or officer of Anaergia, they would have direct responsibility for ensuring the accuracy and completeness of the Continuous Disclosure Material.

51. The OSA, Securities Legislation, and National Instruments and Companion Policies promulgated thereunder imposed specific obligations on the Individual Defendants in the preparation of the Continuous Disclosure Material.

52. Sections 77 and 78 of the *OSA*, and the concordant provisions of the Securities Legislation, informed by National Instrument 52-109, required Benedek as CEO and El-Kiassi as CFO to review, approve, and certify the accuracy of Anaergia's interim and annual financial statements and MD&As released during the Class Period.

53. National Instrument 51-102 requires the board of directors of a reporting issuer to approve each interim and annual financial statement and MD&A released by an issuer prior to the release of those documents.

54. Each of the Individual Defendants was aware of and accepted these obligations in assuming his or her position as a director and/or officer of Anaergia. The Individual Defendants authorized, permitted and/or acquiesced in the release or making of, and adopted as their own, the false statements particularized below.

(iii) Influential Persons' Role in Continuous Disclosure

55. Each of the Influential persons knew Anaergia was at the relevant times a reporting issuer.

56. The OSA, Securities Legislation, and National Instruments and Companion Policies promulgated thereunder imposed specific obligations on influential persons.

57. The Influential Persons exercised significant control over Anaergia.

58. The Influential Persons knowingly influenced the Company and Individual Defendants to release the Continuous Disclosure Material containing the misrepresentations particularized below.

VI. EVENTS GIVING RISE TO THIS ACTION

A. Background

59. Anaergia is a waste management company headquartered in Burlington, Ontario. It specialises in the treatment and conversion of organic waste.

60. The Company operates its business in three segments. It sells waste treatment and conversion technology solutions to customers (the “Capital Sales” segment), provides ongoing services to customers regarding waste treatment and conversion (the “Services” segment), and ‘builds, owns, and operates’ waste facilities (the “BOO” segment).

61. Historically, nearly all of the Company’s revenues have come from its Capital Sales and Services segments. In 2020, only 2% of revenues came from the BOO segment.

62. The Company has been trying to grow the BOO segment for years but growth in that segment requires building or buying waste treatment facilities and therefore is only possible with access to large amounts of capital.

B. Prospectus Misrepresentations

63. In the second quarter of 2021, with stock markets trading at all-time highs, there was a window of opportunity for companies that would usually not be considered “IPO-ready” to become publicly-traded companies and raise capital from public investors.

64. Anaergia rushed to take advantage of the opportunity in an IPO of its shares to the public.

65. Despite the favourable market conditions, Anaergia still needed to demonstrate that it had sufficient size, strong historical performance, significant near-term growth opportunities, and positive cash flows.

66. In order to ensure access to the public markets for capital, the Defendants misrepresented the Company's financial performance and its future prospects.

67. On June 7, 2021, the Company filed a preliminary prospectus in preparation for distribution of its shares in an IPO. On June 18, 2021, it filed a long form prospectus. Later on June 18th, it filed a supplemented long form PREP prospectus.

68. The Company's shares began trading on the TSX on June 18th under the symbol "ANRG".

69. The IPO closed on June 23, 2021.

70. After the partial exercise of an overallotment option by the underwriters of the IPO, the Company raised a total of \$199,367,000 through the distribution of 14,240,500 shares to the public at a price of \$14 per share.

(i) Financial Performance Misrepresentations in the IPO Prospectus

71. In the IPO Prospectus, Defendants consistently misrepresented Anaergia's financial performance. These misrepresentations permeated many of the Company's financial metrics.

72. One important measure of the Company's financial condition was adjusted EBITDA, an industry-specific metric defined by the Company that was a measure of its ability to generate cash from operating activities.

73. The Company stated in the IPO Prospectus that it believed that "security analysts, investors and other interested parties frequently use [adjusted EBITDA] in the evaluation of issuers."

74. It was important to investors that Anaergia be able to show positive adjusted EBITDA. Negative adjusted EBITDA would mean that the Company would potentially

need to look for external financing through additional sales of its shares to the public which would dilute existing shareholders and potentially drive down the share price.

75. In the IPO Prospectus the Company itself emphasized the importance of positive cash flows from operations as follows:

If we do not achieve or maintain profitability or positive cash flow from operating activities, then there could be a material adverse effect on our business, financial condition and results of operation and we may need to deploy a portion of our working capital to fund such negative operating cash flows or seek additional sources of funding, of which there is no assurance that any required funding will be obtained.

76. Among other things, in the IPO Prospectus, the Company made the following misrepresentations about its financial performance.

- (a) For the year 2020, the most recent full year, the Company claimed revenues of \$128 million, a net loss of \$16.8 million, and adjusted EBITDA of \$3.1million. But in reality, it had generated revenues of only \$110 million, a net loss of \$21.4 million, and adjusted EBITDA of *negative* \$3.2 million.
- (b) For the quarter immediately proceeding the IPO, Q1/21, the Company claimed revenues of \$37.4 million, a net loss of \$4 million, and adjusted EBITDA of \$2.6~~7~~ million. But in reality, it had generated revenues of only \$28.6 million, a net loss of \$5.4~~3~~ million, and adjusted EBITDA of just \$0.7 million.

77. It would later emerge that the Company was misrepresenting its financial performance by, among other things, inappropriately booking revenues in its Capital Sales segment that related to goods and services used to build its own facilities for the BOO

segment. That is, the Company was claiming revenues based on work that it was doing for itself.

78. In the IPO Prospectus and the Continuous Disclosure Material, the Company falsely claimed revenues in the Capital Sales segment included sales only to third parties:

Capital sales comprise of the sales of technology packaged solutions and services to third party customers, predominantly municipalities and project developers.

79. In the IPO Prospectus, the Company discussed the activities of the Capital Sales segment at length but did not disclose that it was booking revenues based on sales to the BOO segment.

80. In the IPO Prospectus, the Company falsely claimed that its financial statements were prepared in accordance with IFRS.

81. With these and other misrepresentations, the Defendants falsely portrayed Anaergia as a fast-growing company generating positive operating cash flows.

(ii) Financial Outlook Misrepresentations in the IPO Prospectus

82. In the IPO Prospectus, the Defendants elected to provide investors with forward-looking information in the form of a financial outlook (the “Financial Outlook”) for the years 2022 and 2023.

83. The Financial Outlook was summarized in the page below from the IPO Prospectus.

Financial Outlook

	2022E	2023E	KEY GROWTH DRIVERS
Consolidated Revenue¹	\$360M to \$410M	\$490M to \$560M	<ul style="list-style-type: none"> ~\$600 to \$700 Million of Proportionate BOO Capex in '21E to '23E ~35% to 45% Annual Growth in Capital Sales & Services <ul style="list-style-type: none"> In-line with 2018A to 2020A historical CAGR ~60% to 70% from Revenue Backlog and Selected Development Pipeline
Adjusted EBITDA¹	\$50M to \$60M	\$85M to \$105M	<ul style="list-style-type: none"> Breakdown: ~50% to 60% BOO, ~40% to 45% Capital Sales and ~5% Services EBITDA Build Cost Multiples of 4x to 6x Consistent Gross Margins over time (Pre-SG&A)² <ul style="list-style-type: none"> ~60% to 70% BOO; ~20% to 30% Capital Sales & Services

Anaergia will be Fully Funded with IPO Proceeds, Project Level Debt Financings and Cash from Operations to Facilitate \$1B+ of Proportionate BOO CAPEX Over the Next 5 Years

Note: Revenue is reported on a consolidated basis. Adjusted EBITDA reflects Anaergia's proportionate ownership interest in Rialto (~51%) and other BOO Projects. Run-rate revenue and Run-rate EBITDA for the RBF constitute forward-looking information and are subject to significant risks and assumptions relating to waste throughput, operating costs, RNG output, RNG pricing and other factors. Run-rate EBITDA and Run-rate revenue are non-IFRS measures. See "Disclaimers" above and "Financial Outlook Assumptions" below.

1) 2022E / 2023E Consolidated Revenue and 2022E / 2023E Adjusted EBITDA constitute forward-looking information and are based on management's financial and operational outlook, which is subject to a number of assumptions and risks relating to the development and operation of BOO projects, including construction cost and timing, waste throughput, operating costs, RNG output, RNG pricing and other factors, as well as management's outlook for capital sales and services revenue.

Adjusted EBITDA is a non-IFRS measure see "Disclaimers" and "Financial Outlook Assumptions".

2) Gross margins shown on the basis of proportionate Adjusted EBITDA over proportionate revenue; ratio of gross margin to Adjusted EBITDA shown on the basis of proportionate Adjusted EBITDA over proportionate gross margin.



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84. In particular, the Financial Outlook showed the Company's revenues growing from \$128 million (an already materially falsely inflated figure) in 2020 to approximately \$385 million in 2022 and \$525 million in 2023.

85. Similarly, the Financial Outlook showed adjusted EBITDA growing from \$3.1 million (an already materially falsely inflated figure) in 2020 to approximately \$55 million in 2022 and \$95 million in 2023.

86. The Company was making these claims about its future financial performance in 2022 and 2023 in July of 2021. In the IPO Prospectus, Defendants claimed that the Company's future prospects were highly predictable:

Our business is characterized by significant revenue visibility through our healthy and actively managed backlog and pipeline of BOO, Services and Capital Sales opportunities.

87. The Financial Outlook was a misrepresentation. Among other things, it was based on the following incorrect assumptions.

- (a) The Financial Outlook took as its starting point the historical financial information which materially misrepresented the Company's performance.
- (b) The Financial Outlook assumed annual future growth of 35% to 45% in the Capital Sales and Services segments. That growth projection was based on the purported historical annual growth rate of 41% from 2018 to 2020. In fact, the Company's growth rate during that period in those segments was approximately 20%.
- (c) The Financial Outlook assumed that revenue from its BOO business, which had been at \$2 million in 2020 would grow to \$154 million by 2022 and \$289 million by 2023.
- (d) The Financial Outlook assumed that a significant amount of the hyperbolic growth in the BOO segment would come from its flagship BOO facility in California called the Rialto Bioenergy Facility ("RBF"). The Company's claims about RBF included many incorrect assumptions. Among other things, the Company made the following claims about RBF.
 - i. "In Fiscal 2022, we expect RBF will operate at full capacity..."
RBF will not operate at full capacity until 2025.
 - ii. "...spot gas pricing conservatively set based on a -50 gCO2e/MJ
carbon intensity assumption..." (italics added). Carbon intensity is
a measure that determines the value of the Company's key output

at RBF. A higher negative number means higher revenues for RBF.

RBF's actual carbon intensity is set at only -28.

- iii. The company claimed that at full capacity, RBF would generate \$76 million in revenues. In fact, at full capacity RBF is expected to generate revenues of approximately \$25 million.
- iv. On May 25, 2023, the Company announced that RBF was placed into bankruptcy. It has now emerged that the Company was already aware of financial difficulties at RBF in 2020 (the year of the IPO) and engaged in discussions with debtors about restructuring its obligations.

88. With these and other misrepresentations, Defendants falsely portrayed Anaergia as having large near-term growth prospects as well a clear path to consistent profitability.

89. The Company's revenues in 2022 turned out to be \$163 million (as opposed to the projected \$383 million). The Company's adjusted EBITDA in 2022 turned out to be *negative* \$22 million (as compared to the projected positive \$55 million).

(iii) Certifications

90. In the IPO Prospectus, Individual Defendants falsely represented that the IPO Prospectus contained full, true, and plain disclosure of all material facts by signing a certification stating as follows:

This prospectus constitutes, full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under the securities legislation of each of the provinces and territories of Canada.

C. Continuous Disclosure Material Misrepresentations

91. In the Continuous Disclosure Material, the Defendants continued to misrepresent the Company's financial situation and its future prospects causing its shares to trade at artificially inflated prices in the secondary markets.

(i) Financial Performance Misrepresentations in the Continuous Disclosure Material

92. In the Continuous Disclosure Material, Defendants repeated the misrepresentations made in the IPO Prospectus and made certain additional misrepresentations.

93. In the Continuous Disclosure Material relating to Q2/21, the Company claimed revenues of \$32.1 million, net income of \$2.2 million, and adjusted EBITDA of \$1.3 million. But in reality it had generated revenues of only \$26.8 million, net income of \$1.2 million and adjusted EBITDA of ~~negative~~ \$0.2 million.

94. In the Continuous Disclosure Material for Q3/2021 the Company claimed revenues of \$33.8 million, a net gain of \$0.2 million, and adjusted EBITDA of \$1.2 million. But in reality it had only generated \$26.7 million in revenues, a net loss of \$2.3 million and adjusted EBITDA of ~~negative~~ \$2.1 million.

95. In the Continuous Disclosure Material for FY/2021 the Company claimed revenues of \$154 million, a net loss of \$9.48 million, and adjusted EBITDA of \$5 million. But it had only generated revenues of \$127 million, a net loss of \$15.6 million and adjusted EBITDA of ~~negative~~ \$3 million.

96. In the Continuous Disclosure Material for Q1/2022 the Company claimed revenues of \$40 million, a net loss of \$13.34 million, and adjusted EBITDA of \$1.1 million. But it had only generated revenues of \$35.6 million, a net loss of \$16.4 million and adjusted EBITDA of *negative* \$2.3 million.

97. Throughout the Class Period, in its Continuous Disclosure Material, the Company falsely claimed that it was complying with IFRS.

(ii) Financial Outlook Misrepresentations in the Continuous Disclosure Material

98. On August 12, 2021, soon after the IPO was completed, the Company reconfirmed to investors that the Financial Outlook, as represented in the IPO Prospectus, was its then-current outlook for the years 2022 and 2023.

99. On December 24, 2022, the customary “lock-up” of shares expired allowing insiders of the Company to sell millions of shares at artificially inflated prices.

100. The Financial Outlook was a misrepresentation based on incorrect assumptions.

(iii) Revised Financial Outlook Misrepresentations in the Continuous Disclosure Material

101. By March 28, 2022, the misrepresentations in the Financial Outlook for 2022 and 2023 were no longer sustainable. But the Company still wanted to access capital by distributing additional shares to investors.

102. Anaergia withdrew the Financial Outlook and presented a new and revised, but still unreasonable, financial outlook for 2022 and 2023 (the “Revised Financial Outlook”).

103. In the Revised Financial Outlook, the Company had lowered its guidance for the years 2022 and 2023. For 2022, it projected revenues of approximately \$230 million, and

adjusted EBITDA of \$23 million. For 2023, it projected revenues of approximately \$465 million and adjusted EBITDA of \$95 million.

104. The Company did not have a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the Revised Financial Outlook. The Revised Financial Outlook was based on, among other things, the following unreasonable assumptions:

- (a) The Revised Financial Outlook took as its starting point the 2020 financial statements which had grossly overstated the Company's financial condition.
- (b) The Revised Financial Outlook assumed annual growth of 35% to 45% in the Capital Sales and Services segment. That growth projection was based on the historical compound annual growth rate of 41% from 2018 to 2020. In fact, during that period, the Company's growth rate in those segments was approximately 20%.

(iv) The Revised Financial Outlook's assumed near-term growth projections for the BOO Segment, including at RBF, that were not reasonably achievable.Certification

105. During the Class Period, Individual Defendants falsely represented that the Company's internal controls, including ICFR and DC&P were effective. Such representations were made in each of the MD&As issued during the Class Period as well as certifications filed by the CEO and CFO.

D. Second Prospectus Misrepresentations

106. Despite claiming in the IPO Prospectus that it believed the capital raised in that distribution was sufficient to meet its needs, during the Class Period, the Company continued to seek to aggressively raise capital in the public markets through additional distributions.

107. On March 30, 2022, the Company announced plans to distribute additional shares to the public by way of a short form prospectus.

108. On April 4, 2022, the Company filed a final short form preliminary prospectus in preparation for distribution its securities. On April 12, 2021, it filed a short form prospectus pursuant to which it distributed shares to the public (the “Second Distribution”).

109. The Second Distribution closed on April 19, 2022, at which point the Company had raised an additional \$60 million dollars by distributing shares to the public at \$12.50 per share.

110. In the Second Prospectus, the Company misrepresented its financial prospects by incorporating by reference the Revised Financial Outlook.

111. In the Second Prospectus, the Company misrepresented its financial performance by incorporating by reference certain sections of the IPO Prospectus and certain of the Continuous Disclosure Material.

112. In the Second Prospectus, Individual Defendants falsely represented that the prospectus contained true disclosure of all material facts by signing a certification stating as follows:

This short form prospectus, together with the documents incorporated by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus as required by the

securities legislation of the provinces and territories of Canada.

VII. THE MISREPRESENTATIONS AND OMISSIONS

113. The misrepresentations included, but were not limited, to the following:

- (a) In the IPO Prospectus, Defendants:
 - i. misrepresented the Company's financial condition,
 - ii. misrepresented the Company's future prospects,
 - iii. misrepresented that the Company's financial statements were prepared in accordance with IFRS,
 - iv. misrepresented the Company's revenue recognition policies,
 - v. falsely claimed and certified that the IPO Prospectus constituted full, true and plain disclosure of all material facts, and
 - vi. failed to disclose that the Sales Segment was generating revenues from work for the BOO segment.
- (b) In the Continuous Disclosure Material, Defendants;
 - i. misrepresented the Company's financial condition,
 - ii. misrepresented the Company's future prospects,
 - iii. misrepresented that the Company's financial statements were prepared in accordance with IFRS,
 - iv. misrepresented the Company's revenue recognition policies,
 - v. misrepresented the effectiveness of the Company's DC&P and ICFR, and

- vi. failed to disclose that the Sales segment was generating revenues from work for the BOO Segment.
- (c) In the Second Prospectus, Defendants;
 - i. misrepresented the Company's financial condition,
 - ii. misrepresented the Company's future prospects,
 - iii. misrepresented that the Company's financial statements were prepared in accordance with IFRS,
 - iv. misrepresented the Company's revenue recognition policies,
 - v. misrepresented the effectiveness of the Company's DC&P and ICFR,
 - vi. falsely claimed and certified that the Second Prospectus constituted full, true and plain disclosure of all material facts, and
 - vii. failed to disclose that the Sales Segment was generating revenues from work for the BOO segment.

114. These statements and omissions were all misrepresentations within the meaning of the OSA and the Securities Legislation, if necessary.

VIII. THE PUBLIC CORRECTIONS

A. Public Correction of Financial Outlook

115. On March 28, 2022, the Company announced that it was withdrawing the Financial Outlook.

116. The stock price dropped 19% that day to close at \$11.90.

B. Public Correction of Historical Financial Performance

117. On August 3, 2022, the Company disclosed that its auditor, KPMG, was reviewing its accounting practices and that it was expected that the review would lead to a restatement of the previously released financial statements.

118. The review related to various matters, including the fact that the Company had inappropriately recognized revenues in its Capital Sales segment for sales to the BOO segment.

119. In particular, the Company estimated a reduction of 2021 revenue of between \$25 to \$31 million and an increase in 2021 net loss of between \$2 to \$7 million dollars. It also stated that it expected the review to impact certain quarters in 2020 and 2022.

120. The stock price dropped 13% that day to close at \$8.77.

121. Over the next several weeks, the Company filed amended financial statements, and amended MD&As for the periods from and including Q3 2020 to and including Q1 2022.

122. In its revised filings, the Company conceded that it had material weaknesses in its ICFR and DC&P and that it had failed to comply with IFRS.

123. On October 17, 2022, the Company announced that it had replaced El-Kaissi as CFO.

C. Public Correction of Revised Financial Outlook

124. On November 10, 2022, the Company announced that it was further revising its guidance to the market and withdrew the Revised Financial Outlook.

125. The stock dropped 44% over the next two days to close at \$5.32.

D. Other Developments

126. On April 10, the Company announced a strategic review at RBF that would consider restructuring its debt. The stock price closed at \$1.94.

127. On April 18, 2023, El-Kaissi's replacement as CFO resigned after only 6 months on the job. The stock price closed at \$1.50.

128. On April 26, 2023, the Company announced that its external auditor, KPMG LLP, had resigned. The stock closed at \$1.20.

129. On May 11, 2023, with the Anaergia announced that as part of its "business reset", it would no longer use significant amount of the Company's equity capital to fund BOO projects.

130. Also, on May 11, 2023, the Company announced again drastically revised down its guidance for 2023. The stock closed at 0.76.

131. On May 25, 2023, the Company announced that RBF had been placed into bankruptcy in California.

IX. THE MISREPRESENTATIONS AND THE PRICE OF ANAERGIA SECURITIES

132. The misrepresentations enabled Anaergia to distribute shares to the public in an IPO that would not otherwise have been possible.

133. Anaergia's shares were distributed to the public in the IPO at an inflated price as a result of the misrepresentations.

134. During the Class Period, Anaergia securities traded at an artificially inflated price in the secondary market because of the misrepresentations.

135. Anaergia's shares were distributed to the public in the Second Distribution at an inflated price as a result of the misrepresentations.

X. RIGHTS OF ACTION

A. IPO Prospectus Misrepresentation

136. On behalf of the IPO Investor Subclass, the Plaintiff pleads the right of action found in section 130(1) of Part XXIII of the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation) against Defendants for misrepresentations in the IPO Prospectus.

137. The IPO Prospectus qualified the distribution, as that term is defined in the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation), of Anaergia's shares in relation to an initial public offering.

138. Anaergia was the issuer on whose behalf the distribution of securities was made in the IPO.

139. The Individual Defendants were either officers or directors of Anergia at the time the IPO Prospectus was filed and/or signed the IPO Prospectus.

140. The IPO Prospectus contained misrepresentations as described herein. Any one of such misrepresentations is a misrepresentation for the purposes of the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation).

141. The IPO Subclass members who purchased securities of Anaergia in the distribution are entitled to damages assessed in accordance with section 130 (1) of the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation).

B. Continuous Disclosure Misrepresentation

142. On behalf of himself and the Secondary Market Subclass, the Plaintiffs plead the right of action found in section 138.3(1) of Part XXIII.1 of the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation) against the Defendants, for misrepresentations in the Continuous Disclosure Material, subject to leave being granted under section 138.8(1) of the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation).

143. The Core Documents and Non-Core Documents are documents within the meaning of Part XXIII.1 of the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation).

144. The Oral Representations are public oral statements within the meaning of Part XXIII.1 of the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation).

145. At all material times, Anaergia was a “responsible issuer” within the meaning of Part XXIII.1 of the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation).

146. The Individual Defendants were officers and/or directors of Anaergia during the Class Period. The Individual Defendants authorized, permitted or acquiesced in the release of the Continuous Disclosure Material.

147. The Influential Persons exercised significant control over Anaergia and were “control persons” and “influential persons”, as those terms are defined in the *OSA* and the Securities Legislation, during the Class Period.,

148. The Influential Persons knowingly influenced the Company and its officers and directors in releasing the Continuous Disclosure Material.

149. The Continuous Disclosure Material contained misrepresentations as described herein. Any one of such misrepresentations is a misrepresentation for the purposes of the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation).

150. The Defendants knew, or ought to have known, at the time the Misleading Non-Core Documents were released and at the time the Misleading Oral Representations were made, that they contained a misrepresentation; or alternatively, at or before the time that those Documents were released or the misrepresentations were made the Defendants deliberately avoided acquiring knowledge that they contained a misrepresentation; or alternatively, the Defendants were, through action or failure to act, guilty of gross misconduct in connection with the release of the Misleading Non-Core Documents or the making of the Misleading Oral Representations.

151. The Plaintiffs and the other Class Members who purchased securities of Anaergia in the secondary market during the Class Period are entitled to damages assessed in accordance with section 138.5 of the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation).

C. Second Prospectus Misrepresentation

152. On behalf of the Second Distribution Subclass, the Plaintiff pleads the right of action found in section 130(1) of Part XXIII of the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation) against Defendants for misrepresentations in the IPO Prospectus.

153. The Second Prospectus qualified the distribution of Anaergia's shares in the Second Distribution.

154. Anaergia was the issuer on whose behalf the distribution of securities was made in the Second Distribution.

155. The Individual Defendants were either officers or directors of Anergia at the time the Second Prospectus was filed and/or signed the Second Prospectus.

156. The Second Prospectus contained misrepresentations as described herein. Any one of such misrepresentations is a misrepresentation for the purposes of the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation).

157. The Second Distribution Subclass members who purchased securities of Anaergia in the Second Distribution are entitled to damages assessed in accordance with section 130 (1) of the *OSA* (and, if necessary, the equivalent sections of the Securities Legislation).

XI. VICARIOUS LIABILITY

158. Anaergia is vicariously liable for the acts and omissions of the Individual Defendants.

159. The acts or omissions particularized and alleged herein to have been done by Anaergia were authorized, ordered and done by the Individual Defendants and other agents, employees and representatives of Anaergia, while engaged in the management, direction, control and transaction of the business and affairs of Anaergia.

160. By virtue of the relationship between the Individual Defendants and Anaergia, such acts and omissions are, therefore, not only the acts and omissions of the Individual Defendants, but are also the acts and omissions of Anaergia.

161. At all material times, the Individual Defendants were directors and/or officers of Anaergia.

XII. REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

162. The Plaintiffs plead that this action has a real and substantial connection with Ontario because, among other things:

- (a) Anaergia distributed shares to the public in an initial public offering in Ontario;
- (b) Anaergia is a reporting issuer in Ontario;
- (c) Anaergia is incorporated in Ontario;
- (d) Anaergia is headquartered in Ontario;
- (e) Anaergia has substantial operations in Ontario;
- (f) Anaergia trades on the TSX, which is based in Toronto, Ontario;
- (g) the misrepresentations alleged herein were disseminated to Class Members resident in Ontario;
- (h) a substantial proportion of the Class Members reside in Ontario;
- (i) damage was sustained by Class Members in Ontario;
- (j) Individual Defendants either reside in Ontario or have submitted to jurisdiction in Ontario;

- (k) Influential Persons exercised significant control over Anaergia, a reporting issuer in Ontario;
- (l) Influential Persons own substantial property in Ontario;
- (m) Influential Persons have substantial operations in Ontario;
- (n) the *OSA* authorizes action against Influential Persons; and
- (o) the Cidel Trust Company is controlled by an entity headquartered in Toronto, Ontario.

XIII. SERVICE OUTSIDE OF ONTARIO

163. The Plaintiff pleads and relies on Rules 17.02(a), (d), (g), (n), and (p) of the Rules of Civil Procedure to serve this statement of claim outside Ontario without leave.

XIV. RELEVANT LEGISLATION AND PLACE OF TRIAL

164. The Plaintiff pleads and relies on the *CJA*, the *CPA*, the *OSA*, the Securities Legislation, securities regulatory instruments and the TSX Company Manual.

165. The Plaintiff proposes that this action be tried in the City of Milton, in the Province of Ontario, as a proceeding under the *CPA*.

August 10, 2023

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GHADJAR
Plaintiffs

v.

ANAERGIA INC., et al
Defendants

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced in Milton

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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