CITATION: Kamrani-Ghadjar v. Anaergia Inc., 2026 ONSC 2014
COURT FILE NO.: CV-23-00000919-00CP
DATE: 2026 04 13

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: MOHAMMAD REZA KAMRANI-GHADJAR, Plaintiff

AND:

ANAERGIA INC., ANDREW BENEDEK, and HANI EL-KAISSI, Defendants

BEFORE: The Honourable Justice Ranjan K. Agarwal

COUNSEL: Soheil Karkhanechi, Paul Bates, and Mahdi Hussein, for the plaintiff

S. Daniel Murdoch, Mark Walli, and Eric Turner, for the defendants Anaergia Inc., Andrew Benedek, and Hani El-Kaissi

HEARD: January 30, 2026

ENDORSEMENT

I. OVERVIEW

[1] In November 2025, I granted leave to the plaintiff Mohammad Reza Kamrani-Ghadjar to proceed with a secondary market misrepresentation claim. I also certified this action, which also included claims by primary market investors, as a class proceeding. That said, my leave order was limited only to some of Kamrani-Ghadjar's claims. See *Kamrani-Ghadjar v Anaergia Inc.*, 2025 ONSC 2167.

[2] After my decision, the parties made submissions on several issues:

(a) whether the Primary Market Subclass's financial outlook misstatement claim was properly certified;

(b) how the order should be settled;

(c) whether the court should clarify its findings on the safe harbour defence; and

(d) whether there was divided success on these motions for costs purposes.

[3] For the reasons discussed below:

(a) the Primary Market Subclass's financial outlook misstatement claim was properly certified;

(b) Kamrani-Ghadjar's draft order reflects my reasons;

(c) it's improper for the court to clarify its findings at this stage; and

(d) Kamrani-Ghadjar was the successful party and, as a result, costs are fixed in the amount of $950,000.

II. BACKGROUND

[4] Kamrani-Ghadjar alleges that the defendants made misrepresentations to him and other investors in the defendant Anaergia Inc.'s public disclosure. He sued Anaergia on behalf of a class of both primary market and secondary market investors. As required, he moved for leave to proceed with the action for the secondary market claims under the *Securities Act*, RSO 1990, c S.5, s 138.8(1), and for an order certifying this action as a class proceeding under the *Class Proceedings Act, 1992*, SO 1992, c 6, s

5(1). These motions, along with the defendants' motion for summary judgment, were heard together in April 2025.

[5] In November 2025, I found that Kamrani-Ghadjar has proven that there's a reasonable chance this action will succeed with respect to his secondary market claims about Anaergia's financial misstatements, intersegment sales omissions, and certification misstatements. As a result, I granted leave to Kamrani-Ghadjar to sue the defendants for these claims. I don't believe he has the same chance of success for his financial outlook misstatement claim.

[6] I also certified this action as a class proceeding. I defined three subclasses, which I discuss below.

III. ANALYSIS AND DISPOSITION

A. Issue #1: whether the Primary Market Subclass's financial outlook misstatement claim was properly certified

[7] At the hearing of these motions, the parties agreed that my certification decision would align with my leave decision. As a result, the parties didn't make submissions on most of the certification criteria.

[8] The defendants now argue that a class proceeding is not the preferable procedure for resolving the financial outlook misrepresentation claim as it relates to the Primary Market Subclass considering my finding that the Secondary Market Subclass has no reasonable prospect of success on that claim.

[9] Kamrani-Ghadjar responds that certification is not the "proper setting to delve" into the "likely success" of his claims. See *AIC Limited v Fischer*, 2013 SCC 69, at para 61. As a result, he submits that I should not disturb the certification of the Primary Market Subclass's financial outlook misrepresentation claim.

[10] I agree with Kamrani-Ghadjar. As a result, the Primary Market Subclass's financial outlook misrepresentation claim remains certified.

1. Facts

[11] There are three subclasses in this action:

(a) the IPO Subclass—investors that bought Anaergia's shares during the IPO;

(b) the Second Distribution Subclass—investors that bought shares during the secondary offering; and

(c) the Secondary Market Subclass—investors that bought shares on the secondary market.

[12] The IPO Subclass and the Second Distribution Subclass (together, the **Primary Market Subclass**) allege two misrepresentations in Anaergia's prospectus: (a) it didn't disclose intersegment sales; and (b) its financial outlook contained misstatements. They also allege misrepresentations in Anaergia's officers' certifications. The Secondary Market Subclass claims damages from the same

misrepresentations, along with additional misstatements in Anaergia's continuous disclosure.

[13] As a result of my leave decision, the Secondary Market Subclass can proceed with its claims about Anaergia's financial misstatements, intersegment sales omissions, and certification misstatements. Further, I have certified a class proceeding for these claims. At the hearing, the defendants didn't dispute the cause of action, commonality, preferable procedure, or representative plaintiff criteria.

[14] I didn't grant leave for the Secondary Market Subclass's financial outlook misstatement claim. In 2021, Anaergia provided investors with its financial outlook or guidance about its estimated 2022 and 2023 revenues and AEBITDA. This guidance was based on several assumptions. Anaergia revised its financial outlook downwards several times between June 2021 and November 2022. Kamrani-Ghadjar argued that Anaergia's assumptions were unreasonable, which made its guidance an actionable misrepresentation. I held that Anaergia's assumptions were reasonable at the time they were made and, as a result, there was no reasonable prospect of success in proving a claim based on the financial outlook being misstatements.

[15] The Primary Market Subclass doesn't need leave. As a result of the parties' concessions, I certified a class proceeding for its intersegment sales omissions, certification misstatements, and financial outlook misstatement claims.

[16] It's my certification of this last claim that is now at issue. At the leave/certification hearing, neither party made submissions on whether that claim should be certified for the Primary Market Subclass if it wasn't certified for the Secondary Market Subclass. I invited the parties to schedule a case conference if they changed their position on certification. The parties did that, and then made oral and written submissions on this issue, the settlement of the order, and costs.

2. Law

[17] The focus of a certification motion is on the form of the proceeding and on whether the asserted claims are appropriate to be advanced as a class action. To succeed, the plaintiff need only demonstrate some basis in fact for each of the certification requirements under the *CPA*, except for the requirement in s 5(1)(a) that the pleadings disclose a cause of action. It therefore does not automatically follow from the denial of leave to pursue statutory claims that there is no basis in fact for other certification criteria. See *Bayens v Kinross Gold Corporation*, 2014 ONCA 901, at paras 98-99.

[18] A court shall certify a class proceeding where a class action is the preferable procedure for resolving the common issues. See *CPA*, s 5(1)(d). The preferability inquiry addresses two central questions: (a) whether a class proceeding would provide a fair, efficient, and manageable means of advancing the claims; and (b) whether it would be preferable to alternative procedures. These questions must be assessed considering the underlying objectives of class proceedings—judicial economy, access

to justice, and behaviour modification. See *Amyotrophic Lateral Sclerosis Society of Essex v Windsor (City)*, 2015 ONCA 572, at paras 60-61. But the court is not considering whether the claim is likely to succeed. See *Bayens*, at para 123. That said, the denial of leave with respect to statutory claims remains a relevant consideration in the preferability analysis. See *Bayens*, at para 99.

3. Analysis and Disposition

i. Overview

[19] The Primary Market Subclass didn't have to prove that it had a reasonable chance of success on its financial outlook misstatement claim. Further, neither party has fully briefed the certification test, either at the leave/certification hearing or now. Instead, both parties have made their submissions by leaning into or away from *Bayens*. In that case, the court refused to certify the class's common-law claim because it had denied leave for the plaintiff's statutory claims. But *Bayens* is clear that denial of leave is only one factor in the preferability analysis; it is not determinative.

[20] In my view, the defendants' position imports a merits-based analysis into the certification criteria. In short, it would mean that where primary and secondary market claims are joined in the same proceeding, the primary market claims are subject to a de facto leave test. The fairer way to proceed, in this case, is for the defendants to move either to decertify this claim or for summary judgment on the claim.

ii. Discussion

[21] In *Bayens*, the plaintiffs sued for alleged common law and statutory misrepresentations around two gold mines owned by the defendant corporation. The motion judge dismissed the leave and certification motion. The Court of Appeal confirmed the motion judge's leave ruling. That said, the court held that the motion judge erred in concluding that "if leave to proceed with the statutory claims is denied, the refusal of certification for the common law claims is effectively axiomatic" (at paras 96-97). As a result, the court re-ran the certification analysis for the common-law claim.

[22] On preferability, which was the main "battleground", the court denied certification for several reasons. It found that individualized inquiries into reliance, causation, and damages made the common-law claim unsuitable for certification. It also observed that the plaintiffs advanced the same misrepresentation theory, based on the same factual matrix, for both the statutory and common-law claim, such that the denial of leave weighed against certification. And the court noted that common-law misrepresentation claims in securities cases are generally not suited to certification. Finally, it would be inefficient to permit a complex class proceeding to continue where the claims were destined to fail.

[23] The defendants also cite *Pineo v Sona Nanotech Inc.*, 2024 NSSC 230. The plaintiff sued for statutory misrepresentation and oppression. Keith J denied leave to proceed with the statutory claims (at para 124). He also refused to certify the oppression claim

because there was a "clear overlap" between the secondary market liability claims and the oppression claim (at para 136).

[24] I acknowledge that my denial of leave to proceed with the Secondary Market Subclass's financial outlook misstatement claim is a consideration in certification. But it's overwhelmed by several other factors.

[25] First, in *Bayens* and *Pineo*, the claimants were the same: secondary market investors suing the defendants over the same questions of fact, and arising from the same transactions and occurrences. Here, there are two distinct subclasses, which don't overlap completely. For example, Kamrani-Ghadjar only bought Anaergia's shares on the secondary market. There will be two separate classes of investors who only bought Anaergia's shares on the primary market.

[26] Second, in *Bayens*, a key consideration in the court's analysis was that the class's remaining claims were reliance-based, which courts have repeatedly found to be "unmanageable" and "unsuitable for certification." Here, by contrast, the remaining claims aren't reliance-based. See *Securities Act*, s 130(1); *Wright v Horizons ETFS Management (Canada) Inc.*, 2020 ONCA 337, at para 135, leave to appeal dismissed, 2020 CanLII 102982 (SCC). As a result, the preferability concerns discussed in *Bayens* don't arise in this case. Indeed, courts have repeatedly certified primary market misrepresentation claims, including in *Dobbie v Arctic Glacier Income Fund*, 2011 ONSC 25; and *Kerr v Danier Leather Inc.*, 2001 CanLII 28392 (Ont Sup Ct). See also *Coulson v*

Citigroup Global Markets Inc., 2010 ONSC 1596, aff'd 2012 ONCA 108, where Perell J would've certified the claim but for it being limitations-barred. As Strathy J (as he then was) observed, a "class action is unquestionably the preferable procedure for the claim under s. 130(1) of the *Securities Act*. The remedy is tailor-made for a class action". See *McKenna v Gammon Gold Inc.*, 2010 ONSC 1591, at para 174.

[27] Third, in *Bayens* and *Pineo*, the cases were otherwise at an end. Here, I have granted Kamrani-Ghadjar leave to pursue some of his primary market claims such that the class action is continuing for both subclasses.

[28] Fourth, I'd be applying a merits-based test to preferability. Kamrani-Ghadjar doesn't need leave to proceed with a primary market misrepresentation claim. He could've started a fresh proceeding and moved to certify the claim. In that case, he wouldn't have had to prove that there was a reasonable chance that his financial outlook claim could succeed. If I now decide that his primary market claim is uncertifiable only because leave wasn't granted for his secondary market claim, I would be applying a leave test where there is none in the *Securities Act*. It would encourage plaintiffs with both types of claims to assert them in different proceedings, which would cause unnecessary delay and costs.

[29] Finally, neither party has fully briefed the preferability argument. In *Bayens*, where the plaintiffs' statutory misrepresentation and common law misrepresentation claims were based on the same evidentiary foundation, the court still undertook a full

preferability analysis. Here, the parties didn't make any submissions on how the legal test for preferable procedure otherwise applies to these claims. Again, their submissions largely focused on *Bayens*.

[30] I acknowledge that I invited the parties to revisit this issue. But having received their submissions, it would be unfair to the Primary Market Subclass to walk back the certification of their claim in the context of the settling the order. The fairer way to proceed is for the defendants to move to decertify that claim or for summary judgment.

B. Issue #2: how the order should be settled

[31] The parties have several disputes about the form of the order.

[32] A formal order reflects the ultimate disposition of a proceeding. It doesn't reflect the reasons for that disposition. See *Schnarr v Blue Mountain Resorts Limited*, 2018 ONCA 668, at para 4.

[33] If the parties don't approve a draft order, the order may be settled by the person who made the order. See *Rules of Civil Procedure*, r 59.04(7). The process of settling an order is "not the time to request new or additional relief, re-argue points already decided by the court, or to vary relief granted by the reasons." See *1000425140 Ontario Inc. v 1000176653 Ontario Inc.*, 2024 ONSC 319, at para 4.

[34] First, the Class Action Bench-Bar Liaison Committee Model Order proposes that the order declaring an action to be certified state: "THIS COURT ORDERS that the within action be and is hereby certified as a class proceeding as against *[the Defendant or the Defendants (names of those still in the action)]* pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6." The defendants propose two additions to the model language:

(a) specific references to the *Securities Act*, the alleged misrepresentations, and the specific paragraphs of the statement of claim; and

(b) a subparagraph that describes the misrepresentations that aren't certified, with reference to the specific paragraphs of the statement of claim.

[35] The defendants propose similar changes to the order granting leave to proceed with the secondary market claims.

[36] The *CPA*, s 5(1), states that the court shall certify a "class proceeding"—it doesn't say anything about certifying causes of actions, or specific claims or paragraphs. The delineation of the causes of action and the common issues that arise from those causes and the pleading are stated in paragraphs 5 to 8 of the Model Order, and paragraphs 5 and 6 of the draft order here. There's no need for further specification in paragraph 1—doing so would be, in effect, importing my reasons into the order. As a result, I find that the order as drafted by Kamrani-Ghadjar is consistent with the Model Order and para 173 of my reasons.

[37] Second, the defendants propose that the order defining the class be limited to August 2, 2022, not November 9, 2022. On August 2, 2022, Anaergia announced that it was "revisiting" its interpretation of certain accounting standards, which ultimately led to it restating several financial statements. On November 10, 2022, Anaergia released its interim financial statements, revising its financial outlook for 2022 and 2023.

[38] The November 10 date is relevant to the financial outlook misstatement claim. Given my conclusion that this claim is certified for the Primary Market Subclass, the class period should include November 9. I find that the order as drafted by Kamrani-Ghadjar is consistent with paras 158 and 173 of my reasons.

[39] Third, the defendants propose that the Secondary Market Subclass definition be limited to trading on August 2, 2022. Kamrani-Ghadjar proposes that the definition include March 25, 2022, and November 9, 2022.

[40] At the leave/certification hearing, the defendants didn't oppose the proposed class definition for the Secondary Market Subclass. The defendants now seek to re-argue the date by reference to the alleged public correction on March 28, 2022. I find that the order as drafted by Kamrani-Ghadjar is consistent with paras 158 and 173 of my reasons.

[41] Fourth, the defendants propose different wording for one of the certified common issues:

Plaintiff	**Defendants**
Did the IPO prospectus, the second prospectus, or the continuous disclosure- material contain misrepresentations under the *OSA*, and if necessary, the Securities Legislation?	Are the Certified Misrepresentations misrepresentations under the *OSA*, and if necessary, the Securities Legislation?

[42] Like with the class definition, the parties didn't dispute the common issues, including the plaintiff's proposed issue, at the hearing. The defendants now argue that my rejection of the financial outlook misrepresentation claim means that the common issue should be tailored to make clear that this claim isn't proceeding to trial. Again, given my disposition above, the defendants' argument is muted. Moreover, this kind of tailoring is unnecessary. It's hard to see how Kamrani-Ghadjar could litigate claims that he doesn't have leave to proceed with. I find that the order as drafted by Kamrani-Ghadjar is consistent with paras 169 and 173 of my reasons.

C. Issue #3: whether the court should clarify its findings on the safe harbour defence

[43] In paragraph 112 of my reasons, I stated: "Based on the safe harbour defence, I also conclude that Kamrani-Ghadjar doesn't have a realistic chance of success in proving the financial outlooks adopted in later disclosure contained misstatements." Kamrani-

Ghadjar asks for confirmation that the court made no findings on whether Anaergia's assumptions "were reasonable for any post-IPO financial outlook". The process of settling the order is not for confirming whether the court made findings of fact.

D. Issue #4: whether the plaintiff was the successful party, or whether there was divided success

[44] In July 2025, while my decision was on reserve, the parties made an agreement on costs:

> …$900k for leave and cert and $50k for summary judgment, both premised on full success. If there is mixed success the parties will seek to negotiate a number within these outer ranges or, in the absence of an agreement, put it to the judge to make a decision within these outer ranges.

[45] Kamrani-Ghadjar argues that he was fully successful in that he was granted leave to proceed with his claim, the claim was certified, and the defendants' summary judgment motion was dismissed. The defendants concede that Kamrani-Ghadjar was successful on the summary judgment motion. But the defendants argue that there was "mixed success" on the other motions and, as a result, there should be no costs of the motions.

[46] Generally, costs aren't determined by considering success on an issue-by-issue basis. Instead, they should be based on the overall success achieved by a party. See *1711811 Ontario Ltd. v Buckley Insurance Brokers Ltd.*, 2025 ONCA 56, at paras 72-73; *Le Treport Wedding & Convention Centre Ltd. v Co-operators General Insurance Company*, 2020 ONCA

556, at paras 8-9; *Chippewas of Nawash Unceded First Nation v Canada (AG)*, 2023 ONCA 787, at para 6. "Mixed" or divided success is where, for example, there are claims and counterclaims, and the parties win some and lose some. See *Le Treport*, at paras 8-9.

[47] Despite this general rule, the defendants point to two securities misrepresentation cases in which the court made distributive costs awards. In *DALI Local 675 Pension Fund (Trustees) v Barrick Gold*, 2019 ONSC 4160, leave to appeal ref'd, 2020 ONSC 6304 (Div Ct), Belobaba J awarded no costs where he granted leave to the plaintiff to proceed with claims for only some of the pleaded misrepresentations. In *Rahimi v SouthGobi Resources*, 2015 ONSC 5948, he again awarded no costs. In that case, he granted leave to proceed against the corporate defendant company but dismissed the proceeding as against the individual defendants.

[48] Kamrani-Ghadjar points to class action decisions going the other way. In *Bernstein v Peoples Trust Company*, 2017 ONSC 2189, the defendant argued for reduced costs awards because it successfully narrowed the class definition by several years. Perell J disagreed that there was divided success—the case was certified, meaning it was a "total success" for the plaintiff. That said, he ordered that a small proportion of the costs be paid in the cause because the plaintiff "overpleaded" the case. In *Sondhi v. Deloitte Management Services LP*, 2018 ONSC 1504, the defendants argued that costs should be reduced because the certified action was narrower than proposed, and the court initially rejected the proposed representative plaintiff. Perell J nonetheless

found that the plaintiff was successful and awarded costs. He did award less than the plaintiff requested but not for divided success.

[49] I see no reason to depart from the general rule. I don't see Belobaba J's decisions as creating a different rule for securities class actions. In *DALI* and *Rahimi*, the court only decided leave, not certification—here, both questions were before the court, and certification was granted largely unopposed. Also, *Rahimi* is a mixed success case—the individual defendants and the plaintiff were both successful.

[50] Here, the plaintiff was the successful party. He moved for leave to proceed. He won. He moved for certification. He won. The defendants moved for summary judgment. They lost. Kamrani-Ghadjar didn't get everything he was asking for—the Secondary Market Subclass's financial outlook misstatement claim can't proceed. But that doesn't take away from the fact that this case is proceeding to the next step over the defendants' objection.

[51] As a result, in accordance with the parties' agreement, I endorse an order that the defendants shall pay Kamrani-Ghadjar's costs, fixed in the amount of $950,000. The parties' agreement doesn't discuss timing. The usual rule is 30 days. See *Rules of Civil Procedure*, r 57.03(1)(a).

IV. CONCLUSION

[52] The parties should contact my judicial assistant within 30 days to schedule a case conference to timetable the remaining steps in the proceeding.

April 13, 2026

Agarwal J