

AMENDED THIS August 26, 2024 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT A

RULE/LA RÈGLE 26.02 (9)

THE ORDER OF _____
L'ORDONNANCE DU _____

DATED / FAIT LE _____

Court File No.: CV-23-00710373-00CP

Amari A. Handley
REGISTRAR
CLERK OF COURT

ONTARIO

CLERK OF COURT
CLERK OF COURT SUPERIOR COURT OF JUSTICE

BETWEEN:

EVAN WYSHYNSKI

Plaintiff

– and –

LI-CYCLE HOLDINGS CORP. and AJAY KOCHHAR

Defendants

Proceeding under the *Class Proceedings Act, 1992*

THIRD AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. 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 plaintiff's lawyers or, where the plaintiff does not have a lawyer, serve it on the plaintiff, 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 \$5,000.00 for 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 plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date Issued: November 27, 2023	Issued by: <u>"electronically"</u> Local Registrar
	<i>Address of Court Office:</i> Superior Court of Justice 330 University Avenue, 7th Floor Toronto, Ontario, M5G 1R8

TO:

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and Ajay Kochhar*

DEFINED TERMS

1. In addition to the terms defined in ss. 1(1) and 138.1 of the *Securities Act*, R.S.O. 1990, c. S. 5, and elsewhere herein, the following capitalized terms used throughout this Statement of Claim have the meanings indicated below:

- (a) “**CEO**” means Chief Executive Officer;
- (b) “**CFO**” means Chief Financial Officer;
- (c) ~~“**Class (OSA Statutory)**” means all persons, other than Excluded Persons, who acquired Li-Cycle’s common shares during the Class Period and who held some or all of those common shares until after the release of at least one of the Public Corrective Disclosures;~~
- (d) “**Class (OBCA Statutory)**” means all Canadian beneficial owners persons, other than Excluded Persons, who acquired Li-Cycle’s common shares during the Class Period and who continue to hold some or all of those common shares until October 23, 2023, at a minimum, for certain damages and relief until the resolution of this proceeding;
- (e) “**Class (Common Law)**” means all Canadian beneficial owner entities and persons, other than Excluded Persons, who acquired Li-Cycle’s common shares and who held some or all of those common shares until after the release of at least one of the Public Corrective Disclosures;
- (f) “**Class Period**” means February 27, 2023 through November 10, 2023, inclusive;
- (g) “**Company**” means Li-Cycle Holdings Corp;
- (h) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- (i) “**DOE**” means the U.S. Department of Energy;
- (j) “**DOE Loan**” means the conditional \$375 million loan announced on February 27, 2023, from the DOE to Li-Cycle to build-out the Rochester Hub production facility;
- (k) “**Excluded Persons**” means any of the Defendants, their executives, family members and business partners during the Class Period, and any business entities in which any family member of the Individual Defendant had a controlling interest during the Class Period;
- (l) “**Glencore**” means Glencore International AG, Glencore Ltd., Glencore plc and Glencore Canada;

- (m) “**Impugned Documents**” means the documents and statements released on February 27, March 17, March 30, May 15, and August 14, 2023;
- (n) “**Individual Defendant**” means the Defendant Kochhar, the CEO of Li-Cycle during the Class Period;
- (o) “**Kochhar**” means Ajay Kochhar, the co-founder of Li-Cycle and the CEO of Li-Cycle during the Class Period;
- (p) “**Li-Cycle**” means the Defendant Company, a Reporting and Responsible Issuer in Ontario, Canada;
- (q) “**MD&A**” means Management’s Discussion and Analysis;
- (r) “**OSA**” means the *Securities Act*, R.S.O. 1990 c. S.5, as amended;
- (s) “**OBCA**” means the Ontario Business Corporations Act, RSO 1990, c B.16, as amended;
- (t) “**Public Corrective Disclosures**” means the material facts released to the market on October 23 and November 13, 2023;
- (u) “**Rochester Hub**” means Li-Cycle’s proposed 325,000 sq. ft. facility in the Town of Greece, State of New York, allegedly able to refine up to 35,000 metric tons annually of feedstock material recovered from lithium-ion batteries or black mass concentrate using a hydrometallurgical process, which would have been refined to produce battery grade end-products, such as lithium, nickel and cobalt, for sale back into the battery manufacturing and related markets (a/k/a, “Project Forward”).

CAUSES OF ACTION

2. The causes of action asserted by the Plaintiff, on behalf of himself and the Classes in this proceeding, are:

- (a) Common law secondary market ~~negligent~~ misrepresentations;
~~If Part XXIII.1, s. 138.8 of the OSA is granted, statutory secondary market negligent misrepresentations, pursuant to Part XXIII.1, s. 138.3 of the OSA;~~
- (b) Pursuant to ss. 100, 140(2), 145, and 146 of the *OBCA* to produce a copy of adequate records and minutes of meetings of the directors relating to the DOE Loan and list of registered shareholders; and
- (c) Pursuant to s. 248 of the *OBCA*, an Order to:
 - (i) Remove the individuals that ~~were negligent in reporting the status of the DOE Loan, Rochester Hub, those that~~ had access to non-public material facts about the same status of the DOE Loan and Rochester Hub and sold Li-Cycle securities, and those that had access to non-public material facts about the same topics and negligently allowed corporate-waste;
 - (ii) Appoint an independent third-party monitor to investigate the conduct of the Individual Defendant, including the selling of securities during the Class Period and their relationship with Glencore, and the corresponding governmental investigations of Li-Cycle and the DOE that are being conducted within the United States (“an order directing an investigation”) and,
 - (iii) Requiring the Individual Defendants to compensate the Plaintiff and the members of the Class as aggrieved persons for the damages that they have done as alleged herein.

RELIEF CLAIMED

3. The Plaintiff claims on his own behalf and on behalf of the members of the Class, subject to further disclosures from Li-Cycle, 3d-parties and confidential witnesses, discovery and due diligence:

- (a) a declaration pursuant to s. 248 of the *OBCA* reflecting that the Individual Defendant's conduct alleged herein was oppressive ~~(i) because he they acted grossly negligent or intentionally in failing to disclose all the material facts relating to the DOE Loan; and (ii) status of the Rochester Hub's build-out and licensing status, within the Impugned Documents while they, directly or indirectly, sold shares of Li-Cycle into the secondary market during the Class Period while in possession of material non-public information and he with others put Li-Cycle into a financial situation whereby the DOE Loan was not received during or prior to September 2023, and put Li-Cycle into a financial position whereby it was forced to sell securities to Glencore and new investors at an advantage compared to members of the Classes that purchased shares during the Class Period;~~
- (b) a declaration pursuant to s. 248 of the *OBCA* appointing a s. 248(3)(a) third-party monitor to review and report upon all the material facts about the DOE Loan and status of the Rochester Hub that results in the publication of the Public Corrective Disclosures;
- (c) an order pursuant to s. 140(2) and/or s. 145 of the *OBCA* directing Li-Cycle to allow the Plaintiff and/or Plaintiff's counsel to examine records and minutes of meetings of the directors relating to the DOE Loan;

- (d) an order pursuant to s. 140(2) and/or s. 145 of the *OBCA* directing Li-Cycle to allow the Plaintiff and/or Plaintiff's counsel to examine records and minutes of meetings of the directors relating to the Individual Defendant selling shares during the Class Period;
- (e) an order pursuant to s. 146 of the *OBCA* directing Li-Cycle to produce a copy of the registered shareholder list to the Plaintiff;
- (f) an order pursuant to s. 5 of the *CPA* certifying this action as a class proceeding and appointing him as the representative plaintiff for the Class advancing the causes of action identified herein;
~~an order granting leave to pursue the statutory cause of action set out in Part XXIII.1 of the *OSA*;~~
- (g) a declaration that the Impugned Documents released by the Defendants contained misrepresentations related to the Company's business, operations and finances because the documents omitted material facts;
- (h) subject to common law ~~and Part XXIII.1 of the *OSA*~~, damages in a sum to be determined, or such other sum as this Court finds appropriate at the trial of the common issues or at a reference or references;
- (i) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;
- (j) prejudgment and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;

- (k) costs of this action on a full indemnity scale, or in an amount that provides substantial indemnity, plus, pursuant to s. 26(9) of the *CPA*, the costs of administering the plan of distribution of the recovery in this action; and
- (l) such further and other relief that this Honourable Court deems just.

NATURE OF THIS ACTION

4. Li-Cycle is a Canadian corporation and a responsible issuer under the *OSA* that is publicly traded. Li-Cycle reports itself as a leading global lithium-ion battery resource recovery company and North America's largest pure-play lithium-ion battery recycler, with a rapidly growing presence across Europe. Li-Cycle seeks to recover critical battery grade materials to create a domestic closed-loop battery supply chain for a clean energy future.
5. On February 27, 2023, Li-Cycle published a news release that it had received a conditional commitment for a \$375 million loan from the DOE, i.e., the DOE Loan, to build-out the Rochester Hub, which was represented to investors, including the Plaintiff which he relied upon, to produce lithium carbonate, MHP, nickel sulphate and cobalt sulphate. Li-Cycle negligently omitted what conditions the DOE required before Li-Cycle would receive the DOE Loan (i.e., misrepresentation number one).
6. Thereafter and until October 23, 2023, Li-Cycle reported additional bullish material facts about the DOE Loan and status of the build-out of the Rochester Hub. Li-Cycle did not report or publish any additional material facts about the conditions or the status of the DOE Loan, cost-overruns into the hundreds of millions (i.e., misrepresentation number two), or problems with engineering designs and property owners (i.e., misrepresentation number three).
7. On October 23, 2023, Li-Cycle published a news release reporting that it would halt construction of its Rochester Hub Project pending a comprehensive review. Li-Cycle expressly

blamed the decision on "escalating construction costs", which was followed by a Material Change Report. The market impact of this public corrective statement caused the price of Li-Cycle's shares to diminish from \$2.27 down to \$1.23, or a drop of 66%.

8. On November 13, 2023, Li-Cycle released its Q3 2023 financial statements and MD&A and disclosed further negative material facts about the halt of the Rochester Hub Project. The market impact of this corrective statement caused the price of Li-Cycle's shares to further diminish from \$1.56 down to \$0.89, or a drop of 42%.

9. The Plaintiff and putative Class suffered a foreseeable economic loss from the market impact of the Public Corrective Disclosures contradicting the material fact statements released within the Impugned Documents as well as being impacted by the dilution of their equity investment by Li-Cycle having to sell additional securities to fund its operations; further damaged because Li-Cycle had to adopt radical operation changes by mass lay-offs and slowing down and shutting down plants around the globe, and limit the scope of the build-out of the Rochester Hub to producing lithium carbonate and MHP, as described below.

10. The market impact of the post October 23, 2023 material fact and change disclosures have resulted in hundreds of millions of shareholder value being from \$1.23 to pennies.

THE MATERIAL FACT CONTRADICTIONS

11. The contradictions of material facts within the Impugned Documents and the Public Corrective Disclosures released by the Defendants were profound:

- (a) On **February 27, 2023**, Li-Cycle published a News Release about the DOE Loan but omitted the material fact requirements;
- (b) On **May 15, 2023**, Li-Cycle reported the following during an investor conference call:

“So, no, in short nothing major in terms of hurdles remaining to close [the DOE Loan]. We, as articulated, we’re on track. Look, I mean, a lot of this is just documentation. It’s really a core loan agreement, a range of ancillary agreements, closing certificates, legal opinions, as you can imagine. So that’s the sort of work that’s ongoing, which is really a lift on the legal side primarily;”

- (c) On **November 13, 2023**, Li-Cycle reported the following material facts:
- (i) The Company has performed an initial analysis of options for completion of the Rochester Hub and is continuing to develop a more detailed analysis. Based on the initial analysis, the Company has determined that the revised project costs could be in the range of approximately \$850 million to approximately \$1.0 billion depending on the option selected;
 - (ii) In addition to the conditions precedent to financial close [of the DOE Loan], *the Company will need to meet additional conditions precedent prior to the first advance*, including obtaining additional financing to fund a required base equity commitment; and
 - (iii) Construction was halted because of "escalating construction costs."
- (e) The Defendants’ negligent statements about when the DOE Loan would close and negligent omissions of material fact as to why the DOE Loan closure date was being continuously pushed off:
- (i) On March 30, 2023, Li-Cycle reported during an investor conference call that the DOE Loan was a result of “extensive technical market, financial and legal diligence... favourable with a term of up to 12 years and interest based on a 10-year US treasury rate... We expect to close this transaction in Q2 2023 subject to customary closing conditions... “we expect the \$375 million financing commitment by the DOE to close in the second quarter [2023];”

- (ii) On May 15, 2023, Li-Cycle reported during an investor conference call that it was on track to close the DOE Loan by mid-2023, it was just a “legal side primary” and “work around the legal documentation”;
- (iii) On August 14, 2023, Li-Cycle reported during an investor conference call that it was on track to close the DOE Loan in September 2023, e.g., “in the final stages of completing our process... we are working closely with the DOE LPO team for a targeted close of \$375 million loan this September;”
- (iv) On August 18, 2023, Li-Cycle released a core document on EDGAR reporting that it expected the DOE Loan to close in September 2023;
- (v) On November 13, 2023, Li-Cycle reported during an investor conference call that:

We were delayed from our initial target close from the end of June to September 2023. Also at September 30, 2023, the company had contributed approximately \$92 million for the construction of process buildings and a warehouse for the Rochester Hub (and omitted to disclose that the owner the buildings was unable to obtain financing to make the necessary improvements);

We anticipate needing additional funding in addition to the DOE loan before restarting the Rochester Hub project... work closely with the DOE to satisfy conditions precedent to financial close for growth proceeds of \$375 million, as it undertakes its comprehensive review of the go-forward strategy of the Rochester Hub... the company will need to meet additional conditions precedent prior to the first advance, including obtaining additional financing to fund the required space equity commitment before restarting the Rochester Hub project;

... we can't comment specifically on individual contractors or just say that we're working closely with all stakeholders as part of this review process; and

... The DOE has always had a based equity commitment, and it's actually, I believe, a programmatic feature for them... you have to put in a certain amount of equity first, then followed by the debt coming in... As you can imagine if the capital cost is different, then the project size is bigger. And with an existing commitment remaining at \$375 million, there's additional funding needed.

- (vi) On December 14, 2023, it was reported that the DOE was still working with Li-Cycle to close the DOE Loan but there were “conditions precedent ahead of a loan closing, which can include legal, technical, commercial, contractual, and financial requirements”; and
- (vii) During December 2023, the U.S. Congress/Senate opened an investigation on the DOE Loan as being improper.

THE PLAINTIFF

12. Evan Wyshynski is an investor who resides in Saskatoon, SK, Canada. On August 22, and September 28, 2023, he purchased 3,682 shares of Li-Cycle and suffered a loss by holding those securities until after both Public Corrective Disclosures on October 23 and November 13, 2023. ~~As of the filing of this amendment he still owns these shares.~~

13. Upon further reliance upon the Defendants’ October 23, 2023 disclosures as containing all the material facts, Mr. Wyshynski purchased an additional 4,000 shares to lower his average cost of his investment, but suffered another financial loss by holding all 7,682 shares of Li-Cycle after the second Public Corrective Disclosure released on November 13, 2023.

14. The Plaintiff:

(a) Has disclosed a cause of action for common law negligent misrepresentations seeking damages for (i) purchasing shares at artificially high prices during Class Period A; and (ii) purchasing shares at any time and holding them after the date that the Defendants’ released statements that artificially inflated the price of Li-Cycle’s shares;

(b) In good-faith believes that there are more than several similarly situated investors like him, i.e., that purchased Li-Cycle’s shares at artificially high prices and/or held said shares during a period prior to the release of the Public Corrective Disclosures but were not informed by Li-Cycle of all the material facts relating to the DOE Loan and suffered an economic injury;

(c) In good-faith believes that he shares the same common issues as other similarly situated investors;

(d) In good-faith believes that a class proceeding would be the preferable procedure for the resolution of the common issues, and specifically, for the Canadian, causes of action advanced herein especially when Li-Cycle was formed under the Ontario

Business Corporations Act and located in Ontario and markets itself to investors as being an Ontario responsible issuer; and

(e) In good-faith retained Class Counsel who are experienced in Canadian and U.S. shareholder class action litigation that can adequately represent him and the putative members of the Classes, can produce the same type of Litigation Plan in other similar shareholder class actions; and does not believe that there are any conflicts of interest with the putative members of the Classes.

THE DEFENDANTS

Li-Cycle Holdings Corp.

15. Li-Cycle is a company incorporated pursuant to Canada's *Business Corporations Act*, which maintained its headquarters in Toronto, Ontario. Li-Cycle conducts business across North America and Europe. Li-Cycle is a reporting issuer for purposes of Ontario securities laws and subject to the continuous disclosure requirements of the *OSA* and ~~Part XXIII.1~~.

16. Li-Cycle's common shares, which have a CUSIP identifier number of 50202P, were listed under the ticker symbol "LICY" on the NYSE. In its 2022 Annual Report, Li-Cycle reported that it had 176,254,266 shares issued and outstanding as of January 31, 2023.

Ajay Kochhar

17. Kochhar was the co-founder of Li-Cycle and served as the CEO of Li-Cycle at all relevant times. In this position he did or should have had access to all material fact information about the status of the DOE Loan and Rochester Hub Project. He signed certifications accompanying each of the Company's quarterly filings throughout the Class Period which stated that the financial statements and MD&A were fairly stated and did not contain any untrue statements of material fact when in fact they did.

18. During the Class Period, Kochhar, direct and indirectly through a Delaware limited liability company, sold millions of shares of Li-Cycle for proceeds greater than \$5 million.

THE TOTAL MIX OF INFORMATION

19. On **December 14, 2021**, Li-Cycle announced that it was going to proceed with the construction of the Rochester Hub and that it would cost approximately \$485 million (+/- 15%).

20. On **January 31, 2022**, Li-Cycle updated the total mix of information to the market about the cost of the Rochester Hub project and *announced that it was fully funded for the \$485 million (+/- 15%) project but would seek lines of credit from government related institutions.* Li-Cycle further reported that it engaged Hatch Ltd. as its engineering, procurement and construction management contractor for the project and was in the process of selecting its general contractor. Li-Cycle announced that procurement had commenced on long-lead items and that it had obtained firm-price competitive quotes for 80% of the required equipment for the Rochester Hub.

21. On **February 27, 2023**, the DOE announced that it provided a "conditional commitment" for a \$375 million loan to Li-Cycle for its to-be-built Rochester Hub electric vehicle battery recovery facility. Importantly, the DOE Loan required Li-Cycle to satisfy certain conditions, *but those material-fact conditions were negligently omitted from this Impugned Document as well as every other Impugned Document.*

22. On **February 27, 2023**, Li-Cycle published a News Release about this conditional \$375 million loan *but negligently omitted* (a) what those DOE Loan conditions were; and (b) that the Rochester Hub project was no longer fully funded.

23. On **March 17, 2023**, Li-Cycle published its 2022 Annual Report and therein reported, in relevant part, that:

- (a) The Rochester Hub was being built-out and Li-Cycle would commence commissioning in late 2023; and
- (b) The Rochester Hub has made significant progress to date on key engineering, procurement and construction milestones and was expected to initiate commissioning in stages in late calendar 2023; but
negligently omitted
 - (i) what those DOE Loan conditions were; and
 - (ii) that the Rochester Hub project was no longer fully funded.

24. On **March 30, 2023**, Li-Cycle published its 2022 Annual MD&A and Annual Information Form and therein reported, in relevant part, that:

- (a) The Rochester Hub was being built-out and Li-Cycle would commence commissioning in late 2023;
- (b) Li-Cycle had made significant progress on the construction and development of the Rochester Hub to date, with a life to date spending \$123.1 million as at December 31, 2022, which included the achievement of key engineering, permitting, procurement and construction milestones, and was on track to initiate commissioning in stages in late 2023;
- (c) Li-Cycle estimated that the Rochester Hub would require a total capital investment of approximately \$486 million (+/-15%) based on a definitive feasibility study. Costs for the Rochester Hub were trending towards the higher end of the budgeted range, with spend to date of \$123.1 million at December 31, 2022;

- (d) After the Rochester Hub becomes operational and Li-Cycle starts processing black mass internally, Li-Cycle expected to recognize revenue from the sale of end products, including nickel sulphate, cobalt sulphate and lithium carbonate;
- (e) Li-Cycle expected that it would invest \$35 to \$45 million towards its Spoke expansion plans in 2023 and that it would invest \$250 million to \$300 million towards the Rochester Hub project in 2023; and
- (f) The Company expected to close the DOE Loan transaction in Q2 2023, subject to the completion of long form agreements and certain conditions being satisfied prior to closing. The DOE Loan would build further balance sheet strength and liquidity in support of future growth for the Company; but *negligently omitted*
 - (i) what those DOE Loan conditions were; and
 - (ii) that the Rochester Hub project was not fully funded with the DOE Loan.

25. Li-Cycle's CEO (Defendant Kochhar) and CFO provided certifications that the 2022 Annual MD&A and Annual Information Form, a core document, together with all of its incorporated documents, constituted full, true, and plain disclosure of all the material facts relating to the DOE Loan and the status and costs of the Rochester Hub; which said certifications became an integral part of the total mix of information about the Company's business, capital, finances, and the Rochester Hub build-out project.

26. On **March 30, 2023**, Li-Cycle also published a PowerPoint presentation and therein reported that the cost of the Rochester Hub project increased from \$485 million to \$560 million but still "remains on track to initiate commissioning in late 2023." Li-Cycle also affirmed that it expected the DOE Loan to close during Q2 2023 (i.e., prior to July 2023).

27. On **May 15, 2023**, Li-Cycle released its 1Q 2023 financial statements and MD&A, supplementing the total mix of information about the DOE Loan and Rochester Hub:

- (a) Li-Cycle intended to meet its currently anticipated capital requirements through cash on hand, cash flow from operations, the DOE Loan (expected to close in Q2 2023), and additional ongoing fund-raising activities. Li-Cycle had no material debt maturities until September 29, 2026. As at March 31, 2023, the Company had \$409.2 million of cash and cash equivalents on hand and convertible debt of \$282.3 million;
- (b) Li-Cycle's CEO (Defendant Kochhar) and CFO provided certifications that these core documents, together with all of their incorporated documents, constituted full, true, and plain disclosure of all the material facts relating to the DOE Loan and the status and costs of the Rochester Hub; said certifications became an integral part of the total mix of information about the Company's business, capital, finances, and the Rochester Hub build-out project; and
- (c) Li-Cycle would invest \$250 million to \$300 million towards the build-out of the Rochester Hub project during 2023; but
- (d) *Negligently omitted:*
 - (i) what those DOE Loan conditions were; and
 - (ii) that the Rochester Hub project was not fully funded with the DOE Loan.

28. These core documents were released halfway during Q2 2023; and, as such, Li-Cycle created the total mix of information in the market concerning the DOE Loan, indicating that it was on schedule and that it would close within 6-weeks.

29. Li-Cycle's CEO and CFO provided certifications that these core documents, together with all of their incorporated documents, constituted full, true, and plain disclosure of all the material facts relating to the DOE Loan and the status and costs of the Rochester Hub; said certifications became an integral part of the total mix of information about the Company's business, capital, finances, and Rochester Hub build-out project.

30. On May 15, 2023, the Defendant also hosted an investor conference call and its officers reported to the market (a non-core document):

"We invested \$86 million to fund our network growth focused on the Rochester Hub, ending the period with \$409 million of cash on hand. With a conditional loan of \$375 million from the Department of Energy, our current pro-forma cash balance would be in excess of \$780 million."

"In terms of additional approvals, we have no additional approvals that are required, it's simply a matter of now completing the project and starting it up. As we get closer to the timing for startup, we will come back to you with a more detailed plan around commissioning and ramp-up. We just want to make sure that we are at the right level of definition when we do that. So, more to come on that one, Brian. I know it's important to you, but everything is looking good at this point."

Question from Cowen & Co:

"On the DOE side, I was wondering what the remaining milestones and conditions are to hit. I think you originally were targeting 2Q for that loan and now I think the verbiage now says mid 2023. Not a big change, but I'm just curious if you could walk us through if there is any delay there and then what the remaining milestones are would be helpful."

Li-Cycle's answer,

"So, no, in short nothing major in terms of hurdles remaining to close [the DOE Loan]. We, as articulated, we're on track. Look, I mean, a lot of this is just documentation. It's really a core loan agreement, a range of ancillary agreements, closing certificates, legal opinions, as you can imagine. So that's the sort of work that's ongoing, which is really a lift on the legal side primarily.

One nuance there is around conditions and just broadly speaking about the DOE Loan Programs Office, sometimes for some companies, they do have, for example, conditions on permits to close. In Li-Cycle's case, we have our key operational permits for the Rochester Hub. So that is not a condition for us, but

sometimes there's externalities that affect closing timing, it's really just doing the work around the legal documentation.” (Emphasis added)

31. For the remainder of the second quarter 2023 and to August 14, 2023, Li-Cycle negligently omitted to inform the market about why the DOE Loan had not closed.

32. On **August 14, 2023**, Li-Cycle released its 2Q 2023 financial statements and MD&A; therein it supplemented the total mix of information about the DOE Loan:

- (a) The Rochester Hub is on track to commence commissioning in stages in late 2023. The Rochester Hub will produce battery grade lithium carbonate, among other battery grade materials, from the Company’s BM&E feedstock and the sale of these finished products is expected to unlock the additional metal value contained within the Company’s BM&E;
- (b) The DOE Loan, which is to be used for the development of the Rochester Hub, would have a term of up to 12 years from financial close, and interest on the loan would be the 10-year U.S. Treasury rates from the date of each advance under the loan. The Company expects to close the DOE loan in September 2023. The DOE Loan would build further balance sheet strength and liquidity in support of future growth for the Company; and
- (c) It had made significant progress on the construction and development of the Rochester Hub to date, with life to date spending at \$227.0 million as at June 30, 2023, which includes the achievement of key engineering, permitting, procurement and construction milestones and is on track to initiate commissioning in stages in late 2023; but
negligently omitted
 - (i) what those DOE Loan conditions were;

- (ii) that the Rochester Hub project was not fully funded with the DOE Loan;
- (iii) the engineering and procurement of vendors was not complete (as it reported to the State of New York in September but in contradiction to what it reported to the market in May); and,
- (iv) it was recognizing cost overruns greater than 15% and that unless the DOE Loan amount was increased it would halt the Rochester Hub project.

33. Li-Cycle's CEO and CFO provided certifications that this core document, together with all the incorporated documents, constituted full, true, and plain disclosure of all the material facts relating to the DOE Loan and the status and costs of the Rochester Hub; said certifications became an integral part of the total mix of information about the Company's business, capital, finances, and Rochester Hub build-out project.

34. On August 14, 2023, the Defendant also hosted an investor conference call and its officers reported to the market (non-core documents):

"The aerial view of the Rochester Hub that you see here was taken at the end of April and reflects the significant progress that our team has made in just two months' time. All aspects of construction are moving in parallel and in line with our expectations which demonstrates the strength and expertise of our team.

Turning to slide 8 for further details on construction progress. First, as we've consistently shared, the Hub is on track to commence commissioning in late 2023 and is currently tracking at the high end of the previously disclosed construction cost range. Early on, a key aspect of our construction strategy was to accelerate the procurement of long lead equipment and construction materials, such that they would arrive on-site well ahead of when they were anticipated to be needed.

Strategically, this has proven to be a significant advantage, both in terms of our ability to maintain our project schedule and our ability to remain within budget, particularly in light of the challenging inflationary and supply chain environment.

At our Rochester Hub in North America, we significantly advanced construction with continued expectation of the start of commissioning in late 2023.

Importantly, and to put it into context, once the Rochester and Portovesme Hubs are in full operation, these facilities will have a total lithium carbonate production capacity of up to 25,000 tonnes per year. With this first-mover advantage, Li-Cycle is uniquely positioned to become a leading global and sustainable producer of lithium carbonate and other key battery-grade materials.

We are thrilled to share an updated aerial view of the Rochester Hub. This image illustrates a significant construction progress that has been made since our first quarter call in May. Our continued execution on the Rochester Hub project is a testament to the talent, expertise and commitment of the Li-Cycle team.

With detailed engineering and procurement activities near complete, our main near-term priority is the continued ramping up of the construction labor to support the remaining inflation activities. As we stated on prior calls, we are focused on actively managing the construction labor in order to continue to execute relative to the construction budget of \$560 million. With expected annual production of 7,500 to 8,500 tonnes of lithium carbonate, 42,000 to 48,000 tonnes of nickel sulphate, and 6,500 to 7,500 tonnes of cobalt sulphate, the Rochester Hub will be a leading source of battery-grade materials in North America.

An update on our cash flow and a review of the strength of our balance sheet. During this second quarter, we invested \$78 million in our network growth focused on the Rochester Hub, ending the period with nearly \$290 million of cash on hand. Adding the loan commitment of \$375 million from the Department of Energy will take our current pro forma cash balance to more than \$650 million. To reiterate, we are looking to optimize their future black mass production to meet feedstock needs for the start-up of our Rochester Hub, unlocking future value of lithium carbonate and other battery-grade materials. As a result, we intend to start building black mass inventory in the second half of 2023. Regarding capital investment, we expect to allocate a total of \$285 million to \$345 million for the development of the Spoke & Hub network. Due to the timing on construction of the Rochester Hub, this will be more heavily weighted to the second half of 2023. And finally, we are working closely with the DOE LPO team for a targeted close of \$375 million loan this September.

We remain focused on continued optimization of our Spoke & Hub strategy, prudently aligning with commercial demand. We remain focused on continued execution, completing the Rochester Hub with commissioning commencing late 2023, growing our global Spoke & Hub network, specifically exploring a new spoke site in Hungary and progressing the Portovesme Hub, setting us up to be a leading global and sustainable lithium carbonate producer with a capacity of up to 25,000 tonnes per year; expanding and diversifying commercial relationships with key global battery supply chain participants, such as with EVE Energy; and increasing financial flexibility for our network growth plans with the DOE loan expected to close this September.”

(Emphasis added; and noting that Li-Cycle omitted the material facts as to why the DOE Loan had not closed during 2Q 2023 as previously reported to the market).

35. Li-Cycle also published an investor presentation affirming that:
- (a) the DOE Loan was anticipated to close in September 2023 with commissioning to commence during late 2023;
 - (b) Li-Cycle was actively managing the construction labor within the budget of \$560 million;
 - (c) the long-lead equipment and bulk materials were largely procured; and
 - (d) the DOE Loan would fund the cost of the Rochester Hub project, but now disclosed that the DOE Loan would be subject to additional conditions precedent to loan distributions but negligently omitted these additional conditions, and that it was having material problems with its contactors and landlord (e.g., which evolved into litigation after the Class Period).
36. On September 27, 2023, Li-Cycle's President and Chief Executive Officer, Ajay Kochar, spoke at the largely followed Deploy23 event affirming that Rochester Hub project was track, also in part because the location already had access to capital efficiency and return on capital; enjoying a close relationship with Unions and local colleges; but while discussing the Rochester Hub project and the DOE Loan, Mr. Kochar negligently omitted that Li-Cycle was weeks away from shutting down the Rochester ~~rst~~ Hub project and that the DOE Loan was not even close to being closed as reported only a month earlier.

THE PUBLIC CORRECTIVE DISCLOSURES

37. On October 23, 2023, Li-Cycle released a statement that it would halt construction of its Rochester Hub Project pending a comprehensive review. Li-Cycle blamed the decision to halt construction simply on "escalating construction costs." However, Li-Cycle negligently

omitted to disclose all the material facts about the conditions to receive the DOE Loan, ongoing engineering issues, the dispute-problems with the real estate, or how the anticipated costs to complete the Rochester Hub project were 50% to 90% greater than disclosed in August 2023.

38. The market impact of this negative material fact news was harsh and immediate, sending Li-Cycle's share price from \$2.27 to \$1.23 with over 271 million shares trading.

39. On November 13, 2023, Li-Cycle released its 3Q 2023 financial results and MD&A stating the following:

“At September 30, 2023, the Company had contributed \$92.2 million for the construction of process buildings and warehouse for the Rochester Hub. The Company was previously anticipating a refund of a substantial portion of this contribution upon completion of a landlord funding agreement and was expecting to enter into leasing arrangements for the buildings. The contribution of \$92.2 million was incremental to the Hub Project budget of \$560 million. The Company experienced challenges in closing these anticipated arrangements due to complexities in bringing them together with the planned DOE Loan. The Company has subsequently decided not to pursue the building leasing arrangements and no longer anticipates the contributed amounts to be refunded.

The Company has performed initial analysis of options for completion of the Rochester Hub and is continuing to develop more detailed analysis. Based on the initial analysis, the Company has determined that the revised project costs could be in the range of approximately \$850.0 million to approximately \$1.0 billion depending on the option selected. This range includes the cost of the process buildings and warehouse for the Rochester Hub of approximately \$140 million. This total project range is based solely upon that initial analysis, is subject to a number of assumptions and is likely to change as the Company continues to complete its comprehensive review work and determine which options to pursue accordingly. The Company will require additional funding to the DOE Loan before restarting the Rochester Hub project.

The Company is actively engaged and continues to work closely with the DOE to satisfy conditions precedent for financial close for the loan for gross proceeds of \$375 million as it undertakes its comprehensive review of the go-forward strategy for the Rochester Hub. In addition to the conditions precedent to financial close [of the DOE Loan], the Company will need to meet additional conditions precedent prior to the first advance, including obtaining additional financing to fund a required base equity commitment. Net proceeds from the loan will reflect customary deductions such as capitalized interest and other items. There can be no assurances that this review process will not affect the expected timing, terms and closing of the DOE Loan. (Emphasis added).

40. The market impact of this negative material fact news was harsh and immediate, sending Li-Cycle's share price from \$1.56 to \$0.89 per share; numerous down-grades from investment bank analysts followed shortly thereafter.

41. The direct and foreseeable impact of this negative material fact news had the reasonable foreseeable results of: (a) reduced value of the equity securities; (b) requiring Li-Cycle to raise additional capital resulting in further dilution of historical investors' investment; and (c) having to materially adjust capital allocations resulting (i) in mass lay-offs, (ii) not paying vendors resulting additional litigation, (iii) diluting equity and further exposing investors re-capitalization; (iv) shutting down various operations, and (most recently) (v) limit the scope of the Rochester Hub's productions (assuming that it ever gets fully operational).

POST OCTOBER 23, 2023 MISREPRESENTATIONS

42. As reflected by Li-Cycle's communications as reflected in records released in court-filings, on SEDAR, EDGAR, and exchanged with DOE and Glencore, the Defendants downplayed the seriousness of the October 23, 2023 news release; and a few examples include:

(a) Omitting to disclose the what the pre-October 23, 2023 requirements-conditions to obtain the DOE Loan;

(b) Omitting to disclose the new requirements-conditions to obtain the DOE Loan;

(c) The projected costs associated with the Rochester Hub were not independent but, rather, "internal technical review," where as independent sources believe the costs are materially greater which would explain why Glencore continued to invest at favourable terms; and

(d) The material facts as to why KPMG refused to continue as the Company's auditor.

COMMON LAW

43. The Individual Defendant owed a duty of care to the Class Members based upon a special relationship by certifying certain of the Impugned Documents that said documents did not contain misrepresentations to the members of the Class and be seeking members of the Classes' vote as a director of Li-Cycle; as we all as inviting members of the Classes to cast their votes in 2023 and 2024 proxies.

44. The Plaintiff relied upon the material fact statements within the Impugned Documents and and in other related non-core documents/statements found at BNN Bloomberg in making a decision to purchase Li-Cycle's securities and to hold all of those securities until the release of the Public Corrective Disclosures.

45. The Plaintiff's reliance is reflected by the act of purchasing the Defendant's securities in an open-market opposed to an off-exchange transaction or dark-pool.

46. It was also reasonable for members of the Class to rely upon the Defendant's core documents in make a decision to invest in Li-Cycle; as reflected by the act of purchasing Li-Cycle's securities for an investment that the price or value of Li-Cycle's securities would go up in price or value.

47. The Impugned Documents contain misrepresentations of material fact; which has evolved into subsequently released material change reports published on SEDAR, e.g., slow down all operations and close the Ontario, Canada operation as well as delusion of equity.

48. The Defendants, i.e., Li-Cycle through its directors and officers, breached the applicable standard of care as set out above by either negligently monitoring the DOE Loan and status of the Rochester Hub; or having the accurate material facts but negligently reported the material facts within the Impugned Documents and statements:

(a) Commencing February 27, 2023, and continuing to the date of this Pleading, omitted to disclose the terms and conditions of the DOE Loan commencing; and

(b) Commencing some point during the Class Period and publicly corrected on October 23, 2023, to be determined during discovery, negligently reported the status and the “escalating construction costs” of the build-out of the Rochester Hub was within budget.

49. The Plaintiff and members of the Class suffered a direct and foreseeable economic injury by purchasing Li-Cycle’s securities at a time when the investment price and value was artificially inflated and holding all or some of the artificially priced securities until after Li-Cycle released the Public Corrective Disclosures; as well as holding Li-Cycle’s securities during a period when there was materially greater investment risks not disclosed to him and members of the Class.

ONTARIO BUSINESS CORPORATIONS ACT

50. Under the OBCA, Li-Cycle is a corporation with share capital incorporated by or under the Province of Ontario.

51. Under the OBCA, the Individual Defendant was Influential Persons and Directors or Officers of Li-Cycle.

52. Under the OBCA, the Individual Defendant owed a duty of care to Li-Cycle, to ensure Li-Cycle’s continuous disclosure documents contained ~~all the material facts about the DOE Loan, status of the Rochester Hub Project, and~~ transparency about insider sales.

53. The Individual Defendant’s conduct and omissions breached the reasonable expectations of the Plaintiff and members of the Class for the reasons alleged herein.

54. The Individual Defendant's conduct resulted in the direct and foreseeable result of corporate waste, destruction of goodwill as reflected by: third-party research reports and the corresponding drop in share price, their selling shares to members of the Class during the Class Period, and requiring Li-Cycle to sell further securities to Glencore (along with all the corresponding dilution and capital structure risks).

55. Li-Cycle should be required to produce a copy of the Shareholder List, as defined by s. 100 of the OBA, to the Plaintiff to review the circumstances and seek the members of the Class, which own greater than 5% of Li-Cycle's equity, to remove any and all Directors of Li-Cycle that were responsible for the alleged wrongful conduct.

ONTARIO SECURITIES ACT

56. Under the guidelines of the OSA, Li-Cycle is a responsible issuer and subject to the continuous disclosure requirements.

57. Under the guidelines of the OSA, the Individual Defendant, and Glencore, were was ~~an~~ Influential Persons and Directors and an Officer of Li-Cycle.

Subject to disclosures or discovery, the Plaintiff may invoke s. 138.7(2) of the OSA.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

58. The Plaintiff pleads that this action has a real and substantial connection with Ontario and for the application of Ontario substantive and procedural laws on behalf of all Class Members for the following non-exhaustive reasons:

- (a) Li-Cycle is a reporting issuer in Ontario, created pursuant to the Ontario *Business Corporations Act*, and is headquartered at 207 Queens Quay, in the city of Toronto, Ontario;
- (b) The Plaintiff and members of the putative Classes are located in Ontario;
- (c) Li-Cycle warns global investors that they may need to litigate claims in Ontario, Ontario;

- (d) Li-Cycle's auditor is located in Toronto, Ontario;
- (e) Li-Cycle's counsel is located in Ontario and reported to the U.S. Securities and Exchange Commission that Li-Cycle is a corporation amalgamated under the Ontario *Business Corporations Act*;
- (f) Li-Cycle reported in a 2023 preliminary prospectus that investors may need to go to Ontario enforce judgments and, excluding causes of action under the U.S. Securities and Exchange Act, the only permissible jurisdiction is Ontario, Canada;
- (g) Likely, the relevant directors and officers' insurance policy to finance the defense of this litigation is based in Ontario;
- (h) The causes of action advanced herein could not be advanced in any known jurisdiction, globally; and
- (i) At a minimum, approximately 20% of Li-Cycle's equity during the Class Period was beneficially owned by residents of Canada.

RELEVANT LEGISLATION, PLACE OF TRIAL AND JURY TRIAL

- 59. The Plaintiff pleads and relies upon the *CJA*, the *CPA*, *OBCA*, the *OSA*.
- 60. The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.
- 61. The Plaintiff may serve a jury notice.

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ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO

THIRD AMENDED STATEMENT OF CLAIM

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