

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action Division)
SUPERIOR COURT

No.: 500-06-001135-215

MAURICE LECLAIR

-and-

EVERT SCHURINGA

Applicants

vs.

**FORMERXBC INC. (FORMERLY XEBEC
ADSORPTION INC.), ET AL.**

Defendants

**APPLICATION TO APPROVE A CLASS ACTION SETTLEMENT AND FOR
APPROVAL OF CLASS COUNSEL FEES**

(Article 590 C.C.P. and Article 32 of an Act respecting the Fonds d'aide aux
actions collectives, CQLR c. F-3.2.0.1.1.)

**TO THE HONOURABLE JUSTICE CHRISTIAN IMMER OF THE SUPERIOR COURT
OF QUEBEC, DISTRICT OF MONTREAL, DESIGNATED TO PRESIDE OVER THE
PRESENT CLASS ACTION, APPLICANTS MAURICE LECLAIR AND EVERT
SCHURINGA (HEREINAFTER, THE "APPLICANTS" OR THE "PLAINTIFFS")
RESPECTFULLY SUBMIT THE FOLLOWING:**

PART ONE: OVERVIEW OF THIS APPLICATION

1. This securities class action arises out of the Defendants' alleged misrepresentations in relation to the business and financial affairs of Xebec Adsorption Inc. (currently known as FormerXBC Inc.; hereinafter, "**Xebec**"). Specifically, the Applicants allege that the Defendants misrepresented Xebec's financial results derived from its

legacy, production-type renewable natural gas (“**RNG**”) contracts. The Defendants strenuously deny the Applicants’ allegations.

2. This securities class action has been brought against the following Defendants:
 - a. Xebec;
 - b. Kurt Sorschak, Stéphane Archambault, Louis Dufour, William Beckett and Guy Saint-Jacques, in their capacity as directors or former directors of Xebec (hereinafter, the “**Individual Defendants**”); and
 - c. Desjardins Securities Inc., National Bank Financial Inc., Canaccord Genuity Group Inc., Raymond James Ltd., Beacon Securities Limited, TD Securities Inc. and Stifel Nicolaus Canada Inc., who were underwriters to Xebec (hereinafter, the “**Underwriter Defendants**”).
3. On or about April 3, 2023, the Applicants reached a settlement in principle with Xebec. The Settlement Agreement was executed by the parties as of May 26, 2023, a copy of which is communicated herewith as **Exhibit R-1**, together with its schedules and French translations (hereinafter, the “**Proposed Settlement**” or the “**Settlement Agreement**”).
4. Except to the extent they are modified by this application, the definitions set out in the Settlement Agreement apply and are incorporated herein.
5. The nature of this Application requires Class Counsel to disclose in broad terms its efforts in advancing this litigation, as well as certain discussions regarding the claims and defences. Nothing in this application and associated affidavit is intended to waive, nor should it be construed as a waiver of, attorney-client, litigation or other privilege or confidentiality that may attach to the information outlined herein.
6. The Proposed Settlement provides for the payment of \$5 million, inclusive of legal fees, expenses and applicable taxes, for the benefit of the Settlement Class, which is defined as follows:

Any person or entity, wherever they may reside or may be domiciled, who purchased or otherwise acquired securities of Xebec by any means (whether pursuant to a primary market offering, in the secondary market or otherwise) during the Class Period, and held some or all of such securities as of the close of trading on the TSX on March 11, 2021 or March 24, 2021;

Class Period means the period from November 10, 2019, to March 24, 2021, inclusively;

Excluded Persons means the following persons and entities:

- (i) Xebec;
- (ii) the Underwriter Defendants and their respective past or present subsidiaries, directors, officers, legal representatives, predecessors, successors and assigns;
- (iii) the Individual Defendants, members of their immediate families and any entity in which the Individual Defendants hold a controlling interest; and
- (iv) SDI, Oost NL and the Trust Foundation, as those entities are defined in the Share Purchase Agreement dated December 8, 2020 with Xebec Europe B.V.;

(hereinafter, the “**Settlement Class**” and the “**Settlement Class Members**”).

7. The Settlement Agreement provides for full and final releases for the benefit of the Defendants in relation to the claims asserted or which would or could have been asserted against the Defendants concerning, based on, arising out of, or in connection with both: (i) the purchase or other acquisition, holding, sale, disposition or other transactions in relation to Securities by Plaintiffs or any other Settlement Class Member during the Class Period; and (ii) the allegations, transactions, acts, facts, matters, occurrences, disclosures, statements, filings, representations, omissions, or events that were or could have been alleged or asserted in the Action.

8. On June 30, 2023, this Honourable Court authorized this class action for settlement purposes, and approved the notices of settlement, which have since been disseminated in accordance with this Court's Order.
9. In this Application, the Applicants respectfully seek:
 - a. on consent of the Defendants, this Honourable Court's approval of the Proposed Settlement;
 - b. the approval of the Plan of Allocation, Notices and Notice Plan, Claim Forms and to set the claims bar deadline;
 - c. appointment of Velvet Payments Inc. as the Claims Administrator; and
 - d. the approval of Class Counsel Fees and Litigation Disbursements, together with applicable taxes.

APPROVAL OF THE PROPOSED SETTLEMENT

10. The Applicants and Class Counsel are of the view that the Proposed Settlement is fair, reasonable and in the best interests of the Settlement Class. In particular:
 - a. the Proposed Settlement represents a significant monetary contribution of \$5 million for the benefit of the Settlement Class;
 - b. Xebec is insolvent;
 - c. the Proposed Settlement has been achieved within and in connection with the efforts of Xebec and its various stakeholders to restructure Xebec's assets, business and affairs;
 - d. there is significant uncertainty regarding the resources available to recover an ultimate judgment against Xebec and the Individual Defendants in favour of the Settlement Class Members outside of the scope of the available Directors and Officers' insurance policy ("**D&O Insurance**");

- e. the D&O Insurance would provide for \$10 million in coverage for the benefit of Xebec and the Individual Defendants. The Proposed Settlement, which represents a \$5 million cash payment for the benefit of the Settlement Class Members, represents 50% of the coverage available under the D&O Insurance;
- f. the Proposed Settlement was achieved following an unsuccessful mediation, which was conducted by Mr. Joel Wiesenfeld in August of 2022, followed by hard-fought, arm's-length negotiations amongst the parties over several months;
- g. the Proposed Settlement is generally consistent with the settlements achieved in comparable securities class actions;
- h. the Proposed Settlement provides for full and final releases for the benefit of the Underwriter Defendants. While the Underwriter Defendants are not directly contributing to the monetary consideration to be paid in connection with the Proposed Settlement, they make other indirect and tangible contributions to the Proposed Settlement consistent with the efforts to restructure the assets and business of Xebec. In Class Counsel's view, accordingly, it is in this case appropriate that the Underwriter Defendants receive the proposed full and final releases, because those releases:
 - i. are a term of the Proposed Settlement, which is itself the product of hard-fought and arm's-length negotiations amongst the parties;
 - ii. are consistent with the spirit and objectives of the Proposed Settlement, namely achieving certainty and finality in the resolution of this class proceeding;
 - iii. are consistent with Xebec's restructuring efforts, given the Underwriter Defendants have a contractual indemnification claim against Xebec, which would be eliminated upon the releases becoming effective; and

- iv. in all the circumstances, are consistent with, and promote, the principles of cooperation and settlement, and promote an effective and efficient use of this Honourable Court's and the parties' resources;
 - i. but for the Proposed Settlement, the Settlement Class's claims ought to continue to be litigated and ultimately adjudicated by the Court in a highly uncertain, costly and risky litigation environment;
 - j. the claims of the Settlement Class Members are subject to procedural obstacles, including most notably authorization in accordance with the C.C.P. and/or the *Securities Act*, CQLR c V-1.1 ("**Securities Act**");
 - k. assuming the Settlement Class Members are successful in establishing the authorization criteria and obtaining an Order of this Court authorizing the class action, their claims are subject to various defences (and possible appeals) at the merits stage; and
 - l. assuming the Settlement Class Members are successful in establishing the Defendants' liability, the determination of the damages would be complex and risky, and may limit the Proposed Class Members' recovery due to statutory damages limits or otherwise.
11. Class Counsel are highly experienced in prosecuting securities class actions. Furthermore, they have a significant amount of knowledge regarding the facts and circumstances of this specific case given they have been closely involved in this process for over two years, including in the complex proceedings that have been brought and pursued under the *Companies' Creditors Arrangement Act* ("**CCAA**"). Based on their expertise and experience with securities class actions generally, and their knowledge of the facts and circumstances of this specific case, Class Counsel have no hesitation to recommend the Proposed Settlement for approval by this Honourable Court.

APPROVAL OF THE PLAN OF ALLOCATION AND CLAIM FORM, AND APPOINTMENT OF CLAIMS ADMINISTRATOR

12. Class Counsel request that this Honourable Court approve the proposed Plan of Allocation. The Plan of Allocation provides for a fair, just and reasonable method to calculate the Settlement Class Members' compensable losses, and to distribute the available settlement fund amongst them. The proposed Plan of Allocation is consistent with similar plans approved by Courts in other securities class actions, including the Valeant Pharmaceuticals Securities Litigation.
13. Class Counsel further request that this Honourable Court approve the Claim Form substantially in the form communicated herewith as **Exhibit R-3**. The Claim Form is clear and easy to understand and should be easy for Class Members to fill out in order to make a claim for a portion of the net Settlement Amount. It has been designed to require the least amount of information as possible in order to simplify the process for the Class Members.
14. Class Counsel would also recommend that this Honourable Court appoint Velvet Payments Inc. as the Claims Administrator in this case. Class Counsel believe that Velvet Payments Inc. is appropriate to run the claims process in this case, and that the Administration Expenses are reasonable.

APPROVAL OF CLASS COUNSEL FEES AND EXPENSES

15. Pursuant to Clauses 3.1 of the Proposed Settlement, Class Counsels seek a total of \$1.5 million in Class Counsel Fees and \$44,380.07 in Litigation Disbursements, plus applicable GST and PST thereon¹.
16. In the Plaintiffs' and Class Counsel's view, the requested Class Counsel Fees are appropriate in light of the following factors:

¹ Between the two Class Counsel firms, KND Complex Litigation and Lex Group Inc. will split 86.5% and 13.5% of the approved Class Counsel Fees, respectively, plus their respective disbursements incurred.

- a. the issues in this case are complex. They engage a number of business and financial reporting issues in the renewable energy sector. To plead the case and support the Proposed Class Members' claims and allegations, Class Counsel:
 - i. conducted investigations into Xebec's business in its key European, American and Chinese markets;
 - ii. reviewed Xebec's disclosures and financial reporting practices from 2009 through to 2021;
 - iii. consulted with accounting and industry experts; and
 - iv. undertook further investigative efforts, including identification of potential witnesses;
- b. Class Counsel prepared the application for authorization of the class action, which was initially set to be heard in December of 2022. However, the hearing of the authorization application was adjourned *sine die* as Xebec sought and obtained protection under the CCAA (hereinafter, "**CCAA Proceedings**");
- c. Class Counsel actively participated in the CCAA Proceedings which, amongst other things, required Class Counsel to closely review the voluminous application materials filed in relation to the various applications brought in the CCAA Proceedings. Amongst other efforts, Class Counsel took substantive positions regarding the extent and scope of the stay of proceedings including with respect to third parties;
- d. Class Counsel participated in the claims process undertaken within the CCAA Proceedings and, out of an abundance of caution, filed two Proofs of Claims;
- e. Class Counsel have generally monitored the concurrent insolvency proceeding pursuant to Chapter 15 of the United States Bankruptcy Act, which has been brought in the United States Bankruptcy Court for the District of Delaware;

- f. in August 2022, Class Counsel participated in a one-day meditation, which required the filing of extensive argument briefs;
 - g. following the unsuccessful mediation, Class Counsel engaged in hard-fought, arm's-length negotiations with the other parties, which resulted in the Proposed Settlement;
 - h. Class Counsel brought the application for the authorization of the class action for settlement purposes and the approval of notice to the Settlement Class Members;
 - i. Class Counsel themselves disseminated and administered the notice to the Settlement Class Members, including responding to many Class Member inquiries in relation to the Proposed Settlement and the future steps in relation to the approval and administration of the Proposed Settlement; and
 - j. Class Counsel have brought this Application to obtain this Honourable Court's approval of the Proposed Settlement and ancillary relief.
17. The Class Counsel Fees request, namely \$1.5 million, represents 30% of the Settlement Amount of \$5 million, which Courts have consistently found as appropriate in class proceedings. It is also consistent with class counsel fees awarded by Courts in comparable circumstances.
18. Further, the quantum of the requested Class Counsel Fees is particularly appropriate given that the prospect for recovery of any compensation at all for the Settlement Class Members was very marginal at best, yet Class Counsel was successful in obtaining significant recovery in a highly uncertain and risky environment through the Proposed Settlement. Indeed, this Honourable Court noted the following itself in its decision in this matter dated October 24, 2022:

[45] At present it is highly speculative, if not unlikely, that there would be sufficient proceeds for a compromise or arrangement to

generate funds to satisfy all the secured and unsecured creditors.
Hence, no payment of equity claims can be envisaged.

APPLICANTS SUPPORT THE RELIEF SOUGHT HEREIN

19. The Applicants support this Honourable Court's approval of the Proposed Settlement and ancillary relief, including Class Counsel's request for the approval of their legal fees and expenses.

PART TWO: THE FACTS

I. NATURE OF THE ACTION

20. This is a securities class action on behalf of a group of investors in Xebec.
21. At the relevant time, Xebec was a publicly-traded company incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44, and headquartered in Blainville, Québec.
22. This action arises out of Xebec's allegedly improper revenue accounting and deficient disclosures relative to its "legacy, production-type RNG contracts." Through this line of business, which previously constituted Xebec's core business, Xebec manufactured and provided renewable natural gas systems (RNG) and equipment to convert biogas to RNG.
23. At the material times relevant to this action, Xebec purported to recognize and report revenue on the legacy RNG contracts on the "percentage of completion" accounting basis, thereby recognizing and reporting the revenue on an ongoing basis and before the RNG facilities were installed and commissioned. The percentage of completion revenue accounting measures the revenue earned during the reporting period based on the rate of the progress of the project. A project's rate of progress is, in turn, determined based on the cost incurred relative to the project's total cost.

24. On March 12, 2021, Xebec issued a press release, in which Xebec disclosed that it had encountered accounting and/or operational issues with respect to the RNG contracts, which negatively impacted Xebec's revenues in fiscal year 2020.
25. On March 25, 2021, Xebec issued its financial and operational disclosures for fiscal year 2021, which provided further details regarding the adverse impact of the RNG contracts on Xebec's financial and operational results.
26. In broad terms, the action arises out of one main allegation: during the relevant period, Xebec's core business involving the manufacturing and installation of RNG production facilities had been negatively impacted due to increased costs and extended delays. As a result, the plaintiffs allege that during the relevant period:
 - a. the Defendants mis-applied the percentage of completion accounting method. Consequently, the Defendants reported inflated revenue from the legacy, production-type RNG contracts; and
 - b. the Defendants' disclosures otherwise regarding Xebec's revenue from those contracts was incorrect and had no reasonable basis.
27. The action alleges that, as a result of the circumstances outlined above, Xebec's disclosure documents contained a misrepresentation. The *Securities Act* defines the term "misrepresentation" as follows:

"misrepresentation" means any misleading information on a material fact as well as any pure and simple omission of a material fact;
28. The action advances claims on behalf of four groups of investors:
 - a. **first**, the investors who purchased or otherwise acquired Xebec's securities in the secondary market;
 - b. **second**, the investors who purchased or otherwise acquired Xebec's securities pursuant to a Final Short Form Prospectus dated December 21, 2020. Pursuant to this transaction, Xebec's Subscription Receipts were distributed at

- a selling price of \$5.80 per Subscription Receipt. Each Subscription Receipt was subsequently converted to a common share of Xebec at no additional cost to their holders;
- c. **third**, the investors who purchased or otherwise acquired Xebec's securities in a private placement that was undertaken concurrently with, and on substantially the same terms as those of, the prospectus offering; and
 - d. **fourth**, the investors who acquired Xebec's securities in exchange for the shares of Green Vision Holding B.V., the parent company of HyGear Technology and Services B.V., which is located in the Netherlands ("**HyGear**"). In December 2020, Xebec completed the acquisition of HyGear for a combination of cash and stock consideration, wherein Xebec shares issued and distributed in the transaction were assigned the deemed value of \$6.03 per share.
29. The action advances the following four causes of action:
- a. **first**, the statutory claim for damages for misrepresentation in primary market pursuant to sections 218 and 221 of the *Securities Act* of Quebec and, if necessary, the concordant provisions of the securities legislation of the other Canadian jurisdictions;
 - b. **second**, the statutory claim for damages for misrepresentation in secondary market pursuant to section 225.8 of the *Securities Act* of Quebec and, if necessary, the concordant provisions of the securities legislation of the other Canadian jurisdictions;
 - c. **third**, Article 1457 C.C.Q.; and
 - d. **fourth**, the oppression remedy prescribed in section 241 of *CBCA*.

II. PROCEDURAL BACKGROUND

30. On or about **March 15, 2021**, this action was commenced via the filing of an *Application for Authorization to Institute a Class Action and to Bring a Statutory Misrepresentation Claim Pursuant to Articles 574 ff., C.C.P. and Section 225.4 of the Québec Securities Act*, in the Superior Court of Québec, District of Montreal.
31. On or about **July 28, 2021**, the Honourable Justice Donald Bisson assigned this action to himself for special case management.
32. On or about **October 29, 2021**, the Applicants brought an application for permission to file an amended Application for Authorization.
33. On or about **December 10, 2021**, the Defendants brought the *Application By Respondents For Leave To Examine Applicants (Article 574 of the Québec Code of Civil Procedure, CQLR c C-25.01)*.
34. On **May 18, 2022**, on consent of the parties, the Honourable Justice Bisson issued a judgment, indexed as 2022 QCCS 1785, resolving the Applicants' application to file the re-amended authorization application and the Defendants' application to adduce evidence. Amongst other things, the Court authorized the Applicants to file a re-amended authorization application.
35. On or about **May 18, 2022**, the Applicants filed their *Re-Amended Application for Authorization to Institute a Class Action* against the Defendants, as authorized by the Court. The hearing of the authorization application was scheduled for December 2022.
36. In **August of 2022**, the parties engaged in a mediation, which was conducted by Mr. Joel Wiesenfeld, who is an experienced mediator. The mediation was not successful.
37. On **September 29, 2022**, at Xebec's request, the Superior Court of Québec (Commercial Division) issued *inter alia* a First Day Initial Order pursuant to the

Companies' Creditors Arrangement Act, RSC 1985, c C-36, which *inter alia* granted a stay of proceedings against Xebec and its directors and officers (as extended thereafter, the “**Stay**”). As a result of the stay, the hearing of the authorization application was adjourned *sine die*.

38. At the hearing that took place during the entire day of **October 7, 2022**, Class Counsel requested that this Honorable Court lift the Stay for the purposes of permitting the present Class Action to proceed to the authorization hearing. Said request was denied and the Stay of the present class action continued to be in effect.
39. In the months that followed, the parties engaged in lengthy and complex negotiations. Those negotiations resulted in a settlement in principle, which was reached amongst the parties on or about April 3, 2023.
40. On **May 1, 2023**, the Honourable Justice Bisson designated the Honourable Justice Immer to judicially manage the within class action.
41. On **May 5, 2023**, this Honourable Court granted Xebec’s application to *inter alia* partially lift the Stay for the purpose of requesting the authorization of this class action for settlement purposes only and so that the Court’s authorization may be sought to approve the proposed Settlement.
42. On **May 26, 2023**, the parties executed a complete Settlement Agreement in relation to the Proposed Settlement (Exhibit R-1).
43. On **June 30, 2023**, this Honourable Court authorized the class action for settlement purposes and approved the notice of the Proposed Settlement. The hearing of the application for the Court’s approval of the Proposed Settlement was scheduled for September 29, 2023.

III. OPT OUTS AND OBJECTIONS

44. Notice of the Proposed Settlement was disseminated in accordance with this Court's Order dated June 30, 2023, by way of the following means (as more fully detailed in the affidavit signed by Taek Soo Shin):
- a. On or about July 5, 2023, Class Counsel updated their respective Xebec Class Action webpages with the notice of authorization, including links to the Court's judgment, the Settlement Agreement, the Plan of Allocation, and relevant information regarding the opt-out and objections procedures;
 - b. On July 5, 2023, Class Counsel posted the notice of authorization on the online forum of CEO.ca;
 - c. On July 5, 2023, Class Counsel disseminated press release of the notice of authorization via Canada NewsWire in English and French;
 - d. On July 5, 2023, Class Counsel published the notice of authorization on the Quebec Class Action Registry, in both English and French;
 - e. On or about July 6, 2023, Class Counsel published a link to the notice of authorization in their respective LinkedIn and Twitter accounts;
 - f. On July 7, 2023, Class Counsel sent the bilingual notice of authorization via email to approximately 560 recipients who have contacted Class Counsel about the within Class Action and requested updates by email; and
 - g. On July 10, 2023, Class Counsel posted the notice of authorization on the online forum of Stockhouse.com.
45. By the opt-out deadline of August 31, 2023, only one (1) opt-out was filed in the Court record, although three (3) opt-outs were received by Class Counsel in total, as follows:

Date Received by Class Counsel	Individuals' Initials / Corporate Name	Country of Residence	Number of Shares Represented	Delivered to Counsel by	Date Filed with Court (if any)
July 17, 2023	I. P.	Canada	330	Email	July 24, 2023
August 24, 2023	Falls Brook Capital Corp	Canada	16,500	Email	September 1, 2023 (after the opt out deadline)
August 29, 2023	J. C.	Canada	700	Email	Not Filed

46. By the objection deadline of September 8, 2023, one (1) objection was received.

IV. TERMS OF THE SETTLEMENT AGREEMENT

47. The Settlement Agreement was executed on May 26, 2023, subject to and contingent upon the approval of this Honourable Court.
48. The Settlement Agreement does not constitute, nor is it to be deemed, construed or interpreted as constituting, an admission or concession by the Defendants or the Applicants regarding the truth of the allegations or liability.
49. The Settlement Agreement has been reached within the ambit of the parties' efforts to restructure the assets, business and affairs of Xebec within its ongoing CCAA Proceedings.
50. If approved by this Honourable Court, the Settlement Agreement resolves this class action finally and in its entirety on the following terms:

51. Xebec's insurers pay \$5 million to Class Counsel in trust in full and final resolution of the claims and for the full and final releases specified in the Settlement Agreement (the "**Settlement Amount**"). The Settlement Amount is inclusive of Class Counsel fees, costs, expenses and applicable taxes. The Settlement Amount has already been paid into an Escrow Account held by Class Counsel KND Complex Litigation in or around mid-June 2023.
52. The Settlement Agreement is for the benefit of the Settlement Class, which is defined as follows:

Any person or entity, wherever they may reside or may be domiciled, who purchased or otherwise acquired securities of Xebec by any means (whether pursuant to a primary market offering, in the secondary market or otherwise) during the Class Period, and held some or all of such securities as of the close of trading on the TSX on March 11, 2021 or March 24, 2021;

Class Period means the period from November 10, 2019, to March 24, 2021, inclusively;

Excluded Persons means the following persons and entities:

- (i) Xebec;
- (ii) the Underwriter Defendants and their respective past or present subsidiaries, directors, officers, legal representatives, predecessors, successors and assigns;
- (iii) the Individual Defendants, members of their immediate families and any entity in which the Individual Defendants hold a controlling interest; and
- (iv) SDI, Oost NL and the Trust Foundation, as those entities are defined in the Share Purchase Agreement dated December 8, 2020 with Xebec Europe B.V.

53. The Settlement Agreement provides for full and final releases for the benefit of the "**Releasees**," which is defined as follows:

Releasees means, jointly and severally, individually and collectively, Xebec, the Individual Defendants and the Underwriter Defendants, and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, principals, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

54. For the purposes of the releases to be provided to the Releasees, the **“Releasers”** are as follows:

Releasers mean, jointly and severally, individually and collectively, the Plaintiffs and Settlement Class Members on behalf of themselves and any person claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee or representative of any kind.

55. For the purposes of the releases to be provided to the Releasees, the **“Released Claims”** are as follows:

Released Claims mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, representative or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers’ fees, known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof relating to any conduct alleged (or which could have been alleged) in the Action including, without limitation, any such claims which have been asserted,

would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, concerning, based on, arising out of, or in connection with both: (i) the purchase or other acquisition, holding, sale, disposition or other transactions in relation to Securities by Plaintiffs or any other Settlement Class Member during the Class Period; and (ii) the allegations, transactions, acts, facts, matters, occurrences, disclosures, statements, filings, representations, omissions, or events that were or could have been alleged or asserted in the Action.

56. The Settlement Agreement provides for a manner of distribution of notices to the Settlement Class Members.
57. The Settlement Agreement contains the further customary terms of settlement agreements of this nature.
58. The Settlement Agreement is generally consistent with the settlements achieved, and approved by Courts, in the following securities class actions (the list is intended to be illustrative, but not all-inclusive or otherwise exhaustive, of generally-comparable settlements):
 - a. *LBP Holdings Ltd. v. Hycroft Mining Corporation* (unreported), a securities class action commenced in 2014 and resulted in USD \$4.375 million (approx. CAD \$5.5 million) settlement in 2021;
 - b. *Bodnarchuk v. Guestlogix Inc.*, [2020 ONSC 3775](#), a securities class action commenced in 2016 against a defendant that subsequently went under CCAA protection, and resulted in \$1.275 million settlement in 2021.
 - c. *Miller v. FSD Pharma, Inc.*, [2021 ONSC 911](#), a securities class action commenced in 2019 and resulted in \$5.5 million settlement in 2021;
 - d. *Haase v Reliq Health Technologies Inc.*, [2022 BCSC 1754](#), a securities class action commenced in 2019 and resulted in \$2.5 million settlement in 2022; and

- e. *Pinizzotto v. TILT Holdings, Inc.*, [2021 ONSC 8001](#), a securities class action commenced in 2020 and resulted in USD \$3.65 million (approx. CAD \$4.67 million) settlement in 2021.

V. THE PLAN OF ALLOCATION

59. Subject to the approval of this Honourable Court, the Plan of Allocation provides for the manner of allocation and distribution of the “**Settlement Distribution Fund**,” which is the net settlement fund available for distribution to eligible Claimants after deducting Class Counsel fees, Litigation Disbursements, expenses and taxes from the gross \$5 million Settlement Amount.
60. The goal of the Plan of Allocation is to facilitate an efficient, just and fair allocation and distribution of the Settlement Distribution Fund.
61. The Plan of Allocation establishes a Claims Process, which requires each eligible Settlement Class Member who wishes to make a claim for compensation to submit a Claim Form. To be valid, the Claim Form must be submitted by the Claims Bar Date to be set by the Court.
62. The Plan of Allocation provides for a method for the calculation of each eligible Claimant’s “**Compensable Loss**,” which is the sum of a Claimant’s recoverable investment loss after risk adjustments applied for each type of purchase.
63. The Plan of Allocation creates four categories of Claimants, as follows:
 - a. **first**, the Claimants who purchased or otherwise acquired Xebec’s securities in the secondary market;
 - b. **second**, the Claimants who purchased or otherwise acquired Xebec’s securities pursuant to a Final Short Form Prospectus dated December 21, 2020, at \$5.80 per Xebec shares;

- c. **third**, the Claimants who purchased or otherwise acquired Xebec's securities in a private placement that was undertaken concurrently with, and on substantially the same terms as those of, the prospectus offering; and
 - d. **fourth**, the Claimants who acquired Xebec's securities in connection with the transaction whereby Xebec acquired HyGear in December 2020, for a deemed value of \$6.03 per Xebec share.
64. In each case, a Claimant's Compensable Loss is calculated based on the following formula:

COMPENSABLE LOSS = Gross Loss X Applicable Risk Adjustment

65. For the purposes of the above calculation, a Claimant's Gross Loss is calculated based on the statutory formula for the calculation of the damages, which in this case may be summarized as follows:
- a. if the Claimant sold the securities within 10 trading days after the corrective disclosure, the Claimant's Gross Loss would be the difference between the price paid for the purchase of the securities and the price received upon the sale of those securities. In this case, there are two alleged corrective disclosures, being March 12, 2021 and March 25, 2021. Accordingly, any securities sold within the period from March 12, 2021 to April 8, 2021 would be deemed to have been sold within the 10 trading day following a corrective disclosure; and
 - b. if the Claimant sold the securities after the 10 trading days following the corrective disclosures, or the securities were never sold, the Claimant's Gross Loss would be the difference between the price paid for the purchase of the securities and the volume weighted average price of the securities during the 10 trading days following the corrective disclosure. In this case, Class Counsel have calculated the volume weighted average price of the securities during the 10 trading days following the alleged corrective disclosure to be \$4.58.

66. The Plan of Allocation allocates the following Risk Adjustments to the four categories of Claimants:

Secondary Market	35%
Prospectus Offering	50%
Private Placement	10%
HyGear Transaction	35%

67. The Applicable Risk Adjustments are determined by Class Counsel, and they are intended to discount each Claimant's Gross Loss to determine the Claimant's Compensable Loss, taking into account the risks of litigation towards an ultimate judgment. The Applicable Risks Adjustments are determined by Class Counsel based on their experience and expertise in this practice area (including past settlements), their knowledge of the facts of the present case, and upon exercise of Class Counsel's judgment regarding the relative strengths and challenges in prosecuting each Claimant's claim.
68. Once the Claims Administrator has determined the value of the aggregate Compensable Losses of the Claimants who have submitted valid Claim Forms, the Claims Administrator would prorate the available Settlement Distribution Fund amongst them.
69. The Plan of Allocation (at its Part IX) provides that if any amounts remain in the Escrow Account that cannot be distributed efficiently and in an economic fashion, the Claims Administrator shall make the required payment to the Fonds d'aide aux actions collectives, as per the Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives, c. F-3.2.0.1.1, r.2.
70. If after the payment to the Fonds d'aide aux actions collectives there is any outstanding balance in the Escrow Account that cannot be economically distributed,

the Claims Administrator would hold the balance pending this Honourable Court's directions which may include a *cy-près* payment of such excess fund to a recipient to be approved by the Court.

71. The Plan of Allocation provides that the Compensable Losses of the Plaintiffs, Messrs. Leclair and Schuringa, respectively, \$1,680 and \$9,346.12, be paid outside of the Claims Process, as those claims are known to Class Counsel. Messrs. Leclair and Schuringa's Compensable Losses have been calculated based on the same formula that applies to the Claimants who submit valid Claim Forms in the course of the Claims Process.
72. The framework of the Plan of Allocation is similar to those previously approved by Courts in other securities class actions, including notably the settlement in *Catucci c. Valeant Pharmaceuticals International Inc.*, Quebec Superior Court File No. 500-06-000783-163.²

VI. THE CLAIMS ADMINISTRATOR

73. The Claims Administrator will be tasked to implement the Notice Plan and the Plan of Allocation.
74. In this case, Class Counsel recommend that this Honourable Court appoint Velvet Payments Inc. as the Claims Administrator.
75. Velvet Payments Inc. is a Montreal, Quebec-based company that provides various administration services in relation to class actions, including claims administration, mass notice, and settlement funds disbursement. It has successfully administered numerous settled class actions, including 20 matters in Quebec in which the claims process is currently underway or has just concluded.

² The plan of allocation and other settlement-related documents in the Valeant class action are available at: valeantsecuritiessettlement.ca/en/documents.

VII. CLASS COUNSEL'S FEES AND DISBURSEMENTS

76. Class Counsel are highly experienced lawyers who have significant expertise and experience with class actions generally, including securities class actions. Class Counsel also have significant experience and expertise in litigating class action claims in conjunction with proceedings brought under the CCAA.
77. **Me David Assor** is member in good standing of the Quebec Bar since 2001 and the Law Society of Ontario (since 2021). He has practiced general commercial and civil litigation since 2001 and specialized in plaintiff-side class action litigation since 2005. In 2011, Me Assor created the law firm of Lex Group Inc. which is also specialized in litigation in general and class actions in particular. As such, a vast majority of class counsel's work is in class actions which are all done on a contingency basis, meaning that for cases that are not successful, the firm receives no payment for work performed, which in some cases is quite significant.
78. Me Assor is also a repeat contributor / writer on class action issues and case law on the legal research website *La référence* and is a repeat guest lecturer on the topics of class actions and privacy law at the McGill University Faculty of Law.
79. Me Assor has been a sitting member of the Quebec Bar's Disciplinary Committee since 2016, is a sitting member of the Bar of Montreal's Liaison Committee with the Superior Court in Civil Matters since 2023, has been a member of the board of directors of the Lord Reading Law Society since 2016 (former Bar Liaison), has sat as a member of the Bar of Montreal's Access to Justice in the English Language Committee from 2016 to 2019, was a member of the Advocates' Society, and was named a Governor of the Quebec Bar Foundation in 2020.
80. **Me. Eli Karp** is a member in good standing with the Law Society of Ontario (since 2007) and the Law Society of British Columbia (since 2023). He is authorized to act as an attorney in the within matter pursuant to a special authorization from the Barreau du Québec.

81. Me. Karp's representative work in relation to securities class actions include the following notable matters:
- a. *Catucci c. Valeant Pharmaceuticals International Inc.*, [2017 QCCS 3870](#), a national securities class action that resulted in a settlement in the aggregate amount of \$127 million;
 - b. *Derome c. Stars Group Inc.*, [2020 QCCS 2316](#), a Quebec securities class action that resulted in \$30 million settlement;
 - c. *LBP Holdings Ltd. v. Hycroft Gold Corporation*, [2020 ONSC 59](#), an Ontario securities class action resulting in \$4.375 million settlement;
 - d. *Liu v. Champignon Brands Inc.*, a British Columbia securities class action, which resulted in a settlement in the aggregate amount of \$1.9 million; and
 - e. *Caliban Investment LP #3 v. Victoria Gold Corporation*, a British Columbia securities class action, which resulted in a settlement in the aggregate amount of \$925,000.
82. **Me. Sage Nematollahi** is a member in good standing with the Law Society of Ontario (since 2012), the Law Society of British Columbia (since 2021) and the Bar of the State of New York (since 2011). Mr. Nematollahi holds an LL.M. from Harvard Law School (2010) and an LL.M. from McGill University Faculty of Law (2009). He is authorized to act as an attorney in the within matter pursuant to a special authorization from the Barreau du Québec.
83. Me. Nematollahi's representative work in relation to securities class actions include the following notable matters:
- a. *Catucci c. Valeant Pharmaceuticals International Inc.*, [2017 QCCS 3870](#), a national securities class action, which resulted in a settlement in the aggregate amount of \$127 million;

- b. *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, [2013 ONSC 1078](#), a national securities class action, which resulted in a settlement in the aggregate amount of approximately \$160 million;
- c. *Re Poseidon Concepts Corp*, a national securities class action, which resulted in a settlement in the aggregate amount in excess of \$34.5 million;
- d. *Abdula v. Canadian Solar*, a national securities class action, which resulted in a settlement in the aggregate amount of US\$13 million; and
- e. *Caliban Investment LP #3 v. Victoria Gold Corporation*, a British Columbia securities class action, which resulted in a settlement in the aggregate amount of \$925,000.
84. Class Counsel are requesting that this Honourable Court approve the following payments:

Class Counsel Fees	\$1,500,000.00
GST and PST Applicable to Class Counsel Fees	\$224,625.00
TOTAL:	\$1,724,625.00

Litigation Disbursements	Amount
Copies	\$465.19
Research/Investigation/Resource Material	\$4,627.75
Agent's Fees and Disbursements	\$2,856.07
Expert Fees	\$19,775.00
Travel Expenses	\$2,856.64
Mediation/Arbitration Costs	\$5,381.62
Court Filing Fees	\$1,796.00

Press Releases	\$6,621.80
TOTAL:	\$44,380.07

85. As at the date of the present Application, Class Counsel have invested over 1,210.18 hours, representing \$746,732.00 in lawyers' time, as follows:

LAW FIRM	HOURS	VALUE
LEX GROUP INC.		
David Assor (\$750/hour)	231.05 hrs	\$173,287.50
Joanie Lévesque (\$450/hour)	63.15 hrs	\$28,417.50
Sarah Rasemont (\$350/hour)	8.20 hrs	\$2,870.00
Thu-Dieu Pham-Luu (\$250/hour)	1.85 hrs	\$462.50
Laurine Gibeaux (\$250/hour)	1.50 hrs	\$375.00
TOTAL:	304.75 hrs	\$196,975.00
KND COMPLEX LITIGATION		
Eli Karp	55.9 hrs	\$40,439.50
Sage Nematollahi	652.27 hrs	\$435,505.50
Hadi Davarinia	64.8 hrs	\$38,465.00
Taek Soo Shin	132.46 hrs	\$35,347.00
TOTAL:	905.43 hrs	\$549,757.00
GRAND TOTAL:	1,210.18 hrs	\$746,732.00

86. As of the present date, Class Counsel have taken the following steps in relation to this class action.

87. **Detailed review of Xebec's business and operations:** Class Counsel conducted a close review of Xebec's operations in its key European, American and Chinese operating markets.
88. **Detailed review of Xebec's disclosures and historical financial reporting practices:** Class Counsel reviewed Xebec's disclosure documents from 2009 through to 2021, as well as key earnings call events.
89. **Continued review of Xebec's disclosures and financial statements:** Following the commencement of this proceeding, Class Counsel continued to closely review Xebec's disclosures and financial statements, and continually assessed the impact of the further disclosures on the allegations and claims advanced in the case.
90. **Further investigative efforts:** Class Counsel conducted reviewed and identified certain of Xebec's former employees, who would possess relevant information and could have been summoned as potential witnesses.
91. **Consultation with experts:** Class Counsel's investigations and case development included consultations with accounting and industry experts.
92. **Communication with investors:** Over the course of this class action since its inception, Class Counsel has actively communicated with Xebec's investors in relation to the subject matter of this class action, including releasing a press release in both English and French to increase public awareness of the action. Notably, Class Counsel have received contact from over 550 investors, and they responded to numerous inquiries in relation to this proceeding.
93. **Briefing of the authorization application:** Class Counsel briefed the authorization application, which was previously scheduled to be heard by the Honourable Justice Bisson in December 2022. This included the filing of two applications to amend the authorization application, and dealing with an application to adduce evidence which was brought by the Defendants.

94. **Mediation:** In August 2022, Class Counsel participated in a mediation that was conducted over one full day by Mr. Joel Wiesenfeld. In connection with the mediation, the parties exchanged extensive briefs of arguments and authorities. The mediation was not successful at that time.
95. **Participation in the CCAA Proceedings:** Class Counsel have actively participated in the CCAA Proceedings since its inception. This required Class Counsel to review the voluminous application materials filed by various parties and stakeholders. Amongst other things, Class Counsel took positions on the substance of the matters before the Court in two notable situations:
- a. **first**, in October 2022, in relation to the scope of the stay of proceeding. Specifically, Class Counsel sought a declaration that the authorization application may proceed, at a minimum, against the third-party Underwriter Defendants - this Honourable Court was not prepared to grant that relief at that time; and,
 - b. **second**, in relation to the scope of the releases sought by the Petitioners in the context of the transaction to sell Xebec's core assets, where Class Counsel objected to the overly broad releases being sought by the Petitioners. As a result, the Petitioners abandoned that aspect of the application and adjourned it *sine die*.
96. **Monitoring of Insolvency Proceedings under Chapter 15 of the U.S. Bankruptcy Act:** Class Counsel have generally monitored the concurrent insolvency proceedings brought in the United States Bankruptcy Court for the District of Delaware under Chapter 15 of the U.S. Bankruptcy Act.
97. **Participation in the CCAA Claims Process:** Out of an abundance of caution, Class Counsel have filed two Proofs of Claim in relation to the Court-approved Claims Process which was undertaken in the CCAA Proceedings.
98. **Extensive, arm's-length and hard-fought negotiations leading to the Proposed Settlement:** Although in August 2022 the mediation was unsuccessful, the parties

engaged in extensive and hard-fought negotiations over the span of several months. Those negotiations resulted in the Proposed Settlement.

99. **Preparation and completion of the settlement documents:** Class Counsel prepared the complex settlement documentation, including the design and preparation of the proposed Plan of Allocation.
100. **Application for authorization of the class action for settlement purposes and approval of notice of the Proposed Settlement and ancillary matters:** Class Counsel prepared and brought an application to authorize the class action for settlement purposes and to approve the form, content and manner of dissemination of a notice regarding the Proposed Settlement. The notice and notice plan were approved by this Honourable Court on June 30, 2023, and the notices were disseminated by Class Counsel themselves in the first half of July 2023.
101. **Identification of Claims Administrator:** Class Counsel have identified a Claims Administrator to implement and administer the remaining Notice Plan, the Plan of Allocation including the Claims Process, and to distribute the available settlement funds to eligible Settlement Class Members.
102. **Application for approval of the Proposed Settlement:** Class Counsel have prepared the present Application and supporting affidavits and documentation for this Honourable Court's approval of the Proposed Settlement and ancillary relief.

VIII. THE PLAINTIFFS SUPPORT THE PROPOSED SETTLEMENT AND CLASS COUNSEL'S FEE REQUEST

103. **Mr. Leclair** is one of the plaintiffs in this proceeding. He resides in Laval, Québec.
104. On March 4, 2021, he purchased 2,000 shares of Xebec at a purchase price of \$6.98 per share, exclusive of commissions. He continues to hold those shares.

105. **Mr. Schuringa** is the second plaintiff in this proceeding. He resides in Amsterdam, the Netherlands.
106. Mr. Schuringa acquired the securities of Xebec pursuant to Xebec's acquisition of HyGear, whereby his HyGear shares were converted to approximately 18,416 Xebec shares at a deemed value of \$6.03 per Xebec share. He continues to hold those Xebec shares.
107. Messrs. Leclair and Schuringa retained Class Counsel by way of written mandates that are substantially identical to one another.
108. The mandates provide, *inter alia*:
2. The Representative hereby consents to have his attorneys withhold, retain and keep as payment on any amount of money received on behalf of himself and on behalf of all other members of the group:
 - a. all disbursements incurred; and
 - b. attorneys' fees with regard to the present class action of the higher of the following two calculations:
 - (i) an amount equal to thirty percent (30%) of the total amount received, including interest, from any source whatsoever; or
 - (ii) an amount equal to multiplying the total number of hours worked on by the attorneys or other professionals in accordance with their hourly rates, which range between \$350 and \$750 per hour. This amount will then be multiplied by a multiplier 4 to arrive at the total fee. (The hourly rates are reviewed from time to time); and
 - c. all applicable taxes on said amounts in paragraphs (a) and (b).

109. Messrs. Leclair and Schuringa have been actively involved in this proceeding and have received briefings from, and provided instructions to, Class Counsel on a regular basis.
110. Messrs. Leclair and Schuringa received information and advice regarding the settlement, and instructed Class Counsel to enter into the settlement, before the settlement was reached in principle in April 2023.
111. Messrs. Leclair and Schuringa supports the Proposed Settlement, the Class Counsel Fees request, and the ancillary relief being sought herein.

PART THREE: APPROVAL OF THE SETTLEMENT

I. APPLICABLE CRITERIA

112. Article 590 *CCP* requires that a court approve a transaction settling a class action if the Court is satisfied that the terms of the settlement are fair, reasonable and in the best interests of the class.
113. In that regard, when determining whether a transaction should be approved, Courts should bear in mind the following:

[20] Le tribunal doit encourager le règlement à l'amiable en donnant effet à la volonté des parties, à moins qu'il y ait atteinte à l'ordre public.

[21] Le tribunal doit prendre garde de ne pas modifier significativement le contrat de transaction conclu par les parties. Le tribunal doit l'approuver tel quel ou refuser de l'entériner, quitte à renvoyer les parties négocier des modifications.

*[22] Le tribunal ne doit pas exiger la perfection mais décider si en fin de compte, les avantages pour les membres l'emportent sur les inconvénients.*³

³ *Markus c. Reebok Canada inc.*, 2012 QCCS 3562, Plaintiffs Book of Authorities ("**BoA**"), tab 1, at [paras. 20 to 22](#); see also *Halfon c. Mosse International Inc.*, 2017 QCCS 4300, **BoA**, tab 2, at [para. 23](#); and *Options Consommateurs c. Fédération des caisses Desjardins du Québec*, 2011 QCCS 4841, **BoA**, tab 3, at [paras. 26-27](#).

[our emphasis.]

114. The reasonability and fairness of proposed settlements are determined further to a review of the following criteria:

- a) the terms and conditions of the settlement;
- b) the benefit to the class;
- c) the chances of success;
- d) the importance and nature of the administered proof;
- e) the requirement to obtain authorization pursuant to s. 225.4 QSA
- f) counsel's recommendation and experience;
- g) the anticipated cost and time to obtain recovery
- h) the number and nature of objections to the settlement;
- i) the parties' good faith and absence of collusion; and
- j) the support of the Plaintiffs;⁴

II. ANALYSIS

115. A consideration of the applicable criteria, which are outlined above, would heavily weigh in favour of an order approving the Proposed Settlement.

116. The Proposed Settlement provides for a total recovery of \$5 million (all-inclusive of taxes, fees, interest and costs) in settlement with no right of reversion. This is an outstanding outcome for the Settlement Class whose prospect for any recovery of its losses was unlikely, as this Honourable Court noted in its decision in this matter dated October 24, 2022:

[45] At present it is highly speculative, if not unlikely, that there would

⁴ *Markus c. Reebok Canada inc.*, **BoA**, tab 1, at [para. 23](#); *Options consommateurs*, 2013 QCCS 1191, **BoA**, tab 4, at [para. 41](#); *Option consommateurs*, 2014 QCCS 4949, **BoA**, tab 5, at [para. 49](#), and *Pellemans c. Lacroix*, 2011 QCCS 1345, **BoA**, tab 6, at [para. 20](#).

be sufficient proceeds for a compromise or arrangement to generate funds to satisfy all the secured and unsecured creditors. Hence, no payment of equity claims can be envisaged.

117. The Proposed Settlement provides for full and final releases for the benefit of the Defendants.

118. The Proposed Settlement contains the further customary terms of the settlements in similar class actions.

119. The following considerations are appropriate:

- a. the Proposed Settlement represents a significant monetary contribution of \$5 million to be paid for the benefit of the Proposed Class Members;
- b. the Proposed Settlement is generally consistent with the settlements achieved in comparable securities class actions;
- c. the Proposed Settlement was achieved following an unsuccessful mediation, which was conducted in August of 2022, followed by lengthy, arm's-length negotiations amongst the parties which was conducted over several months;
- d. the Proposed Settlement has been achieved within and in connection with the efforts of Xebec and its various stakeholders to restructure Xebec's assets, business and affairs;
- e. Xebec is insolvent. Accordingly, there is significant uncertainty regarding whether there are any resources to recover an ultimate judgment against Xebec and the Individual Defendants in favour of the Settlement Class Members outside of the scope of the available D&O Insurance;
- f. the D&O Insurance would provide for \$10 million in coverage for the benefit of Xebec and the Individual Defendants. The Proposed Settlement, which represents a \$5 million cash payment for the benefit of the Settlement Class Members, represents 50% of the coverage that would be available under the

- D&O Insurance, without the delays, costs and uncertainty of proceeding to full trial and possible appeals on the merits of the case;
- g. while the Underwriter Defendants are not directly contributing to the monetary consideration to be paid in connection with the Proposed Settlement, they made other indirect and tangible contributions to this settlement. Specifically, the Underwriter Defendants have a contractual indemnification right against Xebec. Should this litigation continue against the Underwriter Defendants, in Class Counsel's view, it is possible that those contractual indemnification rights impose a significant hurdle to, or otherwise delay, the execution and implementation of a settlement with Xebec;
 - h. in Class Counsel's view, accordingly, it is in this case appropriate that the Underwriter Defendants receive the proposed releases, because those releases:
 - i. are a term of the Proposed Settlement, which is itself the product of lengthy and arm's-length negotiations amongst the parties that spanned several months;
 - ii. are consistent with the spirit and objectives of the Proposed Settlement, namely achieving certainty and finality in the resolution of this class proceeding;
 - iii. are consistent with Xebec's restructuring efforts, given the Underwriter Defendants have a contractual indemnification claim against Xebec; and
 - iv. in all the circumstances, are consistent with, and promote, the principles of cooperation and settlement, and promote an effective and efficient use of this Honourable Court's and the parties' resources;
 - i. but for the Proposed Settlement, the Settlement Class's claims ought to continue be litigated and, ultimate adjudicated by the Court, in the normal

course of litigation, which is expected to be lengthy and costly and subject to significant risks and appeals;

- j. the claims of the Settlement Class Members are subject to procedural obstacles, including most notably authorization in accordance with the C.C.P. and/or the *Securities Act* of Québec;
 - k. assuming the Settlement Class Members are successful in establishing the authorization criteria and obtaining an Order of this Court authorizing the claim, their claims are subject to defences; and
 - l. assuming the Settlement Class Members are successful in establishing the Defendants' liability, the determination of the damages would be complex and risky, and may limit the Proposed Class Members' recovery due to statutory damages limits or otherwise.
120. As such, but for the Proposed Settlement, the parties would have to continue this complex class action for several more years in a highly risky environment, where there is significant uncertainty regarding the prospects of recovery for the benefit of the Settlement Class members. Such an undertaking would be costly and heavily demanding on the Court's and the parties' resources.
121. On a consideration of the entirety of the circumstances, the Proposed Settlement is fair and reasonable, and it provides a real and meaningful recovery for the benefit of the Settlement Class Members. It, as such, helps achieve the three goals of class proceedings, namely access to justice, judicial economy and behaviour modification.
122. Class Counsel and the Plaintiffs accordingly recommend that this Honourable Court approve the Proposed Settlement.

PART FOUR: APPROVAL OF THE PLAN OF ALLOCATION AND CLAIM FORM, AND APPOINTMENT OF THE CLAIMS ADMINISTRATOR

123. The goal of the Plan of Allocation is to facilitate an efficient, just and fair allocation and distribution of the Settlement Distribution Fund.
124. The Plan of Allocation creates a claims-based process for eligible Claimants to seek compensation from the Settlement Distribution Fund.
125. The Plan of Allocation categorizes Claimants into four (4) categories, and adjusts the value of their claims in accordance with Class Counsel's assessment of risks associated with the litigation of the claims of each such category through to an ultimate award of damages or compensation.
126. The Plan of Allocation provides for a workable methodology to calculate each eligible Claimant's Compensable Loss, and to distribute the Settlement Distribution Fund amongst such Claimants.
127. The Plan of Allocation also provides for directions and instructions as to the manner in which any excess funds (the balance, if any) would be dealt with, including through the payments of the applicable levy to the Fond Fonds d'aide aux actions collectives.
128. The framework of the Plan of Allocation is consistent with similar plans approved by Courts in other securities class actions.
129. The goal of a claim form is to enable Class Members to submit a claim through a simple and easy process, thereby facilitating efficient administration of the claims process.
130. The Claim Form being proposed by Class Counsel is clear and easy to understand and should be easy for Class Members to fill out in order to make a claim for a portion of the net Settlement Amount. It has been designed to require the least

amount of information as possible in order to simplify the process for the Class Members.

131. Velvet Payments Inc., with its previous experience as the claims administrator in other class actions, is appropriate to run the claims process in this case.

PART FIVE: CLASS COUNSEL'S FEES AND EXPENSES

I. INTRODUCTION

132. Class Counsel's fee request is consistent with the nature, complexity and the extensive scope of work performed by Class Counsel in this case, and consistent with the counsel fee requests approved by Courts in the context of similar settlements.

II. APPLICABLE CRITERIA

133. Fair and reasonable class counsel fees should be approved by the Court.
134. As stated by the Honorable Justice Chaput, S.C.J. in *Guilbert c. Sony BMG Musique (Canada) inc.*:

[34] The measure of what is fair and reasonable is stated in the Code [of Professional Conduct of Lawyers, CQLR c B-1, r 3.1]:

8. Determination and payment of fees [now s. 102]

3.08.01. The advocate must charge and accept fair and reasonable fees.

3.08.02. The fees are fair and reasonable if they are warranted by the circumstances and correspond to the professional services rendered. In determining his fees, the advocate must in particular take the following factors into account:

(a) experience;

- (b) *the time devoted to the matter;*
- (c) *the difficulty of the question involved;*
- (d) *the importance of the matter;*
- (e) *the responsibility assumed;*
- (f) *the performance of unusual professional services or professional services requiring exceptional competence or celerity;*
- (g) *the result obtained;*
- (h) *the judicial and extrajudicial fees fixed in the tariffs.*

3.08.03. *The advocate must avoid all methods and attitudes likely to give to his profession a profit-seeking or commercial character.*⁵

135. The criteria governing the setting of fees can be summarized as such:

"[TRANSLATION]

Finally, an exceptional power among all others, at the end of the trial, the judge determines extrajudicial fees for the attorney for the representative, including in the case of an out-of-court settlement, para. 2, [Act respecting the class action](#)):

32. ... The court must hear the Fonds before deciding the payment of costs, determining the fees of the representative's attorney, or approving a transaction on costs or fees.

Thus, this type of judicial review is carried out with the opinion of the Fonds when it has provided financial aid, and its presence is justified by the objective of recovering the amounts of money to which it is entitled. Of course the management of the individual proceeding does not provide for such a fee fixing mechanism. As conceived, the court's power of exception is discretionary and is not limited to approving a settlement between the parties regarding the fees. Any question as to the determination of extrajudicial fees falls under its jurisdiction, including a request to amend or contest from one of the members. The judge seized of the application for the setting of fees takes into account the criteria in the [Code of ethics of advocates](#), such as the importance and nature of the matter, including the time and effort devoted thereto, preferably by simply applying a formula using a predetermined percentage of the amount awarded. (pp. 37-38)

Barring error or omission as in Clavel v. Productions musicales Donald K. Donald inc., the Court generally shows deference and simply approves the fees as claimed. Agreements fixing fees at a percentage of the amount awarded (15% to 33%) are common and have been found in the case law to be fair and reasonable. The dominant tendency, however, has been to base the assessment of fees on the general factors set out in the [Code of ethics of advocates](#), as in any

⁵Guilbert c. Sony BMG Musique (Canada) inc., 2007 QCCS 432, **BoA**, tab 7, at [para. 34](#); see also Pellemans c. Lacroix, **BoA**, tab 6, at [para. 51](#).

other case, sometimes using a multiplier to take into account the scope and difficulty of the case, ultimately to justify and approve an agreement based on a percentage (pp. 174-175)."⁶

[our emphasis]

136. As particularized below, Class Counsel respectfully submits that its legal fees are fair and reasonable and should be approved by this Honorable Court.

III. CLASS COUNSEL'S MANDATE

137. The starting point for the reasonableness in Class Counsel's fee request is to examine the reasonableness of the retainer agreement entered into between Class Counsel and the Representative Plaintiffs.

138. Retainer agreements benefit from a presumption of validity and should be set aside if they are not in the interests of class members, are against the law, or contravene public order:

[50] La convention d'honoraires bénéficie donc en quelque sorte, d'une présomption de validité. Elle ne sera écartée que dans la mesure où il est démontré qu'elle n'est pas juste et raisonnable pour les membres dans les circonstances de l'affaire, ou pour l'un des motifs de nullité du contrat prévu au Code civil du Québec. Dans le cas contraire, elle sera appliquée intégralement:

[64] Lorsque le tribunal est d'avis que l'entente proposée est juste et raisonnable et qu'elle sert, à la fois, les intérêts des représentants et ceux des membres du groupe visé, il doit l'approuver. Il ne lui appartient pas de la modifier. Il ne doit pas substituer son jugement à l'accord des parties. Il peut refuser de l'approuver s'il juge qu'elle n'est pas dans le meilleur intérêt des membres du groupe ou s'il est d'avis qu'elle contrevient à la loi ou à l'ordre public [citation omitted].⁷

⁶ Pierre Claude Lafond, *Le recours collectif, le rôle du juge et sa conception de la justice*, (Cowansville, Qc.: Yvon Blais, 2006) at 37-38, 174-175 in *Guilbert c. Sony BMG (Canada) inc.*, **BoA**, tab 7, at [para. 45](#).

⁷ *Pellemans c. Lacroix*, **BoA**, tab 6, at [para. 50](#).

139. As stated above, contingency fee agreements providing for a percentage of the recovery obtained, ranging from 15% to 33%, are considered fair and reasonable by the case law.⁸
140. The mandate agreements (“Mandates”) entered into with the Applicants state that in the event that the Class Action is successfully resolved, Counsel will be compensated in the amount of 30% of the benefit recovered, plus disbursements and all applicable taxes.
141. Percentage fee agreements have long been recognized by Quebec law, particularly in the context of class actions:

[52] Les conventions d’honoraires à pourcentage sont reconnues depuis longtemps en droit québécois et particulièrement dans le domaine des recours collectifs. La jurisprudence, de façon unanime, a reconnu la légalité de telles conventions afin de récompenser adéquatement les procureurs qui acceptent des mandats complexes et coûteux en assumant les risques. Ces conventions dites « contingency fees » permettent aux procureurs d’être rémunérés en cas de succès seulement.

[53] Le montant dû aux procureurs des représentants du groupe et des sinistrés sur la base de cette convention doit être approuvé par le Tribunal à moins qu’il ne soit pas juste et raisonnable dans les circonstances.⁹

142. When determining whether to approve a fee request from Class Counsel, Courts should take the Class Members' interests into account, but this should not be at counsel's expense. As stated by this Honorable Court:

[66] Pour le tribunal, veiller sur l’intérêt des membres ne consiste pas à prendre leur part au détriment indu des avocats qui travaillent pour le groupe, et encore moins à donner raison inconsidérément à tous les mouvements d’humeur. [...]

[67] Dans certains cas, l’intérêt des membres peut consister à garder les avocats motivés à persévérer même quand les procédures sont longues, ardues et risquées, au point où leur rémunération est nulle durant des mois et des années. Le paiement d’honoraires à un stade interlocutoire fait partie

⁸ *Denluck v The Board of Trustees for the Boilermakers’ Lodge 359 Pension Plan*, 2021 BCSC 242, **BoA**, tab 8, at [para 42](#); see also *Pro-Sys Consultants Ltd. v. Infineon Technologies AG*, 2014 BCSC 1936, **BoA**, tab 9, at [para 56](#).

⁹ *Bouchard c. Abitibi Consolidated*, 2004 CanLII 26353 (QC CS), **BoA**, tab 10, at [paras. 52-53](#).

du coffre à outils à cet effet.¹⁰

143. In *Options consommateurs c. Infineon Technologie, a.g.*, the plaintiff, an association devoted to promoting and defending consumers' interests, discussed the importance of motivating class counsel to advance such lawsuit, which the Court accepted:

9. It is important that contingency fee agreements are respected, and that the percentage contingency fees agreed to between class counsel and representative plaintiffs be honoured in order to ensure predictability and thereby promote access to justice, especially for consumers who almost invariably do not have sufficient resources to mount an individual lawsuit in circumstances such as exist in the Proceedings. I am concerned that, if the courts set an arbitrary dollar amount as the highest fee achievable by class counsel for public policy reasons, this might create a disincentive which could amount to conflict of interest between class counsel and class members, and jeopardize the relationship between class counsel and their representative plaintiff clients.

10. Since such an arbitrary fee will be reported as a precedent in jurisprudence, it will be public knowledge. In particular, defence counsel will become aware of such an arbitrary fee... In cases, such as the Proceedings, where Class Counsel seek interim fees and file contingency fee agreements as exhibits, some defendants may be motivated to decrease the amount of money that they are willing to offer to settle a class action because class counsel are at or near the maximum arbitrary fee that they are likely to be awarded.

11. Percentage contingency fee agreements create valuable incentives for class counsel, as they encourage class counsel to, among other things, achieve the highest settlements possible in order to generate the largest percentage fee. If class counsel are faced with an arbitrary maximum fee, then once they achieve sufficient settlements to get them at or near that maximum arbitrary fee, class members may think that class counsel will settle cheaply with any remaining defendants to close down the case. This conflicts with the class members' interest in maximizing recovery.

12. In summary, to impose a maximum arbitrary fee may create a disincentive that could be harmful for future class actions.¹¹

[our emphasis.]

144. As stated by Strathy J. in *Abdulrahim v. Air France*:¹²

[9] In class action litigation, the court must also consider the goals of class proceedings, particularly in terms of access to justice. The fee of class counsel must be both fair and reasonable. It should not only reward counsel

¹⁰ *Option Consommateurs c. Infineon Technologies, a.g.*, (2013), **BoA**, tab 4, at [paras. 66-67](#).

¹¹ *Option Consommateurs c. Infineon Technologies, a.g.*, (2014), **BoA**, tab 5, at [para. 137](#).

¹² *Abdulrahim v. Air France*, 2011 ONSC 512, **BoA**, tab 11, at [paras. 9-10](#).

for meritorious efforts, but it should also encourage counsel to take on difficult and risky class action litigation. The risk undertaken by the lawyer, and the success achieved, are important considerations in determining the fee: *Maxwell v. MLG Ventures Ltd.* (1996), 30 O.R. (3d) 304, [1996] O.J. No. 2644 (Gen. Div.); *Windisman v. Toronto College Park Ltd.*, above; *Serwaczek v. Medical Engineering Corp.*, above; *Parsons v. Canadian Red Cross Society* (2000), 49 O.R. (3d) 281, [2000] O.J. No. 2374 (S.C.J.).

[10] *The courts have recognized that the objectives of the C.P.A. – judicial economy, access to justice and behaviour modification – are dependent, in part, upon counsel’s willingness to take on class proceedings. This, in turn, depends on the incentives available to counsel to assume the risks and accept the financial burden of carrying class proceedings. A premium on fees is the reward to class counsel for accepting this risk and taking on meritorious but difficult matters:* *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.*, [2005] O.J. No. 1117 at paras. 59-61 (S.C.J.); *Parsons v. Canadian Red Cross Society*, above, at 287.

[our emphasis.]

145. Justice Strathy's comments were adopted by this Honorable Court in *Option Consommateurs c. Infineon Technologies, a.g.*¹³
146. The Representative Plaintiffs agree with the legal fees sought by Class Counsel.
147. As stated by Mr. Justice Belobaba “(...) it is only through a robust contingency fee system that class counsel will be appropriately rewarded for the wins and losses over many files and many years of litigation and that the class action will continue to remain viable as a meaningful vehicle for access to justice.”¹⁴
148. Incentivizing counsel is particularly apposite in this case, where there remains work to do to implement and give effect to the Settlement, if approved.

¹³ *Option Consommateurs c. Infineon Technologies, a.g.*, 2012 QCCS 3506, **BoA**, tab 12, at [para. 10](#), *Option Consommateurs c. Infineon Technologies, a.g.*, (2013), **BoA**, tab 4, at [para. 59](#) and *Option Consommateurs c. Infineon Technologies, a.g.*, (2014), **BoA**, tab 5, at [para. 134](#).

¹⁴ *Middlemiss v. Penn West Petroleum*, 2016 ONSC 3537, **BoA**, tab 13, at [para. 19](#).

IV. CLASS COUNSEL'S EXPERIENCE AND EXPERTISE

149. As set out in paragraphs 76 through to 83, *supra*, Class Counsel are highly experienced lawyers who have significant expertise and experience with class actions generally, including securities class actions. Class Counsel also have significant experience and expertise in litigating class action claims in conjunction with proceedings brought under the CCAA.

V. THE RISK ASSUMED BY CLASS COUNSEL

150. Although the element of risk is not specifically identified at s. 102 of the *Code of Professional Conduct*, courts have held that they cannot disregard the fact that attorneys work on a case for a number of years without any guarantee of success.¹⁵

151. The risk assumed by Counsel is directly related to the level of complexity of a claim.

152. All of the risks of this Action as a whole are relevant to an assessment of risk for the purpose of determining the application for fees and disbursements.

153. The Court of Appeal has recently confirmed in *A.B. c. Clercs de Saint-Viateur du Canada*, 2023 QCCA 527 (CanLII):

[54] Il est ainsi généralement admis que pour apprécier le caractère juste et raisonnable des honoraires, le juge doit aussi considérer le risque couru par les avocats. Dans le contexte d'une convention d'honoraires à pourcentage, la Cour supérieure a reconnu que ce facteur pourrait même primer sur le temps consacré au dossier par les avocats. Dans tous les cas, le risque doit s'apprécier au moment où les avocats ont reçu le mandat du représentant, et non au moment de la demande d'approbation.

154. There were also significant risks in the claims as against Xebec, including:

- a. First and foremost, the risks arising out of Xebec's insolvency, including the highly uncertain environment with respect to recovering compensation for any equity claimant;

¹⁵ *Guilbert c. Sony BMG Musique (Canada) inc.*, **BoA**, tab 7, at [para. 41](#).

- b. the risks particular to establishing liability on claims against as Xebec, including the statutory defences available to Xebec;
 - c. the risks concerning, *inter alia*, the proportionate responsibility for damages, which could substantially reduce the recoverable damages;
 - d. the risks particular to establishing liability on claims as against the other remaining Defendants, including the statutory defences available thereto; and
 - e. the risks arising from uncertain questions regarding the substantive law to be applied to the claims of the Class Members;
155. Further, in the midst of this class proceeding, Xebec sought and obtained protection under the CCAA, which added significant amount of complexity and uncertainty, which in turn increased the risk to be assumed by Class Counsel.
156. Finally, as stated by the Court in *Pellemans c. Lacroix*, 2011 QCCS 1345:¹⁶

[101] Lorsque, comme en l'instance, l'avocat accepte dès le départ d'assumer la responsabilité des coûts et des risques liés à l'exercice du recours collectif et à son rejet éventuel, à l'exclusion du représentant, il apparaît justifié que l'ampleur de ces risques soit reflétée dans l'honoraire à pourcentage négocié avec son client. Il faut s'attendre à une certaine adéquation entre l'importance des risques assumés par l'avocat, d'une part, et le pourcentage qui sera éventuellement payé par les membres, le cas échéant, d'autre part.

[102] En l'absence d'une telle entente, il est raisonnable de présumer que dans de nombreux dossiers, un membre refuserait de se porter représentant aux fins de l'exercice du recours collectif. Ainsi, c'est l'accès même à la procédure du recours collectif, recours unique, qui se verrait compromis à une époque où de plus en plus d'intervenants de notre société se questionnent sur l'accessibilité à la justice.

[our emphasis]

¹⁶ *Pellemans c. Lacroix*, **BoA**, tab 6, at [paras. 101-102](#).

VI. CLASS COUNSEL'S TIME AND EXPENSES

157. Class Counsel instituted the action in March of 2021. As detailed herein, Class Counsel have been closely engaged in the class action proceeding, as well as the CCAA proceedings.
158. As of the date of this application, Class Counsel has invested over 1,210.18 hours, having a value of over \$746,732.00.
159. As of September 20, 2023, Class Counsel has incurred total disbursements of \$44,380.07.

VII. THE COMPLEXITY OF THE FILE AND THE SPECIALIZATION OF COUNSEL

160. The within Class Action remains extremely complex and constitutes a high-risk case which Class Counsel has advanced since 2021 without any guarantee of remuneration.
161. Both the procedural path giving rise to this action, with the substantive merits requiring to obtain authorization under the QSA, and the nature of the substantive issues themselves add complexity to this case.
162. As elaborated herein, in respect of the claims against Xebec, the substantive issues are particularly complex.
163. The complexity of the within Class Action is further evident from the related CCAA proceeding, which has caused significant delays and added much complexity to this Class Action.
164. Class Counsel is comprised of highly experienced attorneys who have together, individually or in some combination thereof, been involved in significant Canadian securities class actions prosecuted over the last decade.

165. Class Counsel exercised and fulfilled these specific requirements with diligence, professionalism, and skill throughout the entirety of the within Class Action.

VIII. THE IMPORTANCE OF THE MATTER TO CLASS MEMBERS

166. For the vast majority of Class Members, an individual action is not feasible, and the within Class Action would be the predominant vehicle for them to access justice and pursue their claims.

167. The above is particularly true in light of the fact that Xebec is insolvent, and this Honourable Court noted in October of last year that the Class Members' chances of recovering their losses was small (see paragraph 116, *supra*).

IX. THE RESULT ACHIEVED

168. As a result of the Representative Plaintiffs' and Class Counsel's experience, diligence and hard work, an unlikely yet substantial recovery has been achieved whereby the Settlement Class will be partially compensated for their losses from an insolvent company. Class Counsel have tirelessly laboured for over two years to achieve this outstanding result and should be rewarded for those efforts.

PART FIVE: ORDERS SOUGHT

169. The Defendants have reviewed the present Application before its filing and support it and consent to it being granted according to its conclusions below.

POUR CES MOTIFS, PLAISE AU TRIBUNAL DE: **FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

<p>ORDONNE que les définitions trouvées dans l'Entente de Règlement (Pièce R-1 et Annexe A au présent jugement) trouvent application dans le présent Jugements;</p>	<p>ORDERS that capitalized terms used herein have the meaning ascribed in the Settlement Agreement (Exhibit R-1 and Annex A to this judgment);</p>
<p>ACCUEILLIE la <i>Demande d'approbation d'un règlement d'une action collective et des Honoraires des Avocats du Groupe</i>;</p>	<p>GRANTS the <i>Application to Approve a Class Action Settlement and for Approval of Class Counsel Fees</i>;</p>
<p>ORDONNE et DÉCLARE que l'Entente de règlement (y compris son préambule et ses Annexes) est juste, raisonnable et dans l'intérêt des Membres du Groupe de Règlement, est approuvé en vertu de l'article 590 C.p.c., doit être mise en œuvre selon ses dispositions, et constitue une transaction au sens de l'article 2631 du <i>Code civil du Québec</i>;</p>	<p>ORDERS AND DECLARES that the Settlement Agreement (including its Recitals and its Schedules) is fair, reasonable and in the best interest of the Settlement Class Members, is hereby approved pursuant to Article 590 CCP, shall be implemented in accordance with all of its terms, and constitutes a transaction pursuant to article 2631 of the <i>Civil Code of Quebec</i>;</p>
<p>DÉCLARE que la présente Ordonnance et l'Entente de règlement ne sont fondées sur aucune admission ou déclaration de responsabilité par aucun des Défendeurs, et que toute responsabilité ou faute est expressément niée, et qu'il n'y a eu aucune telle admission ou conclusion;</p>	<p>DECLARES that this Order and the Settlement Agreement are not based on any admission or finding of liability or wrongdoing by any of the Defendants or other Releasees, that such liability or wrongdoing is expressly denied, and there has been no such admission or finding;</p>

<p>ORDONNE que l'Entente de règlement règle entièrement les Réclamations quittancées à l'égard des Personnes quittancées, et inclus, sans s'y limiter, tous les intérêts, les taxes, les frais, les coûts, les Honoraires des avocats du groupe, les Frais d'administration et les Débours de Litige;</p>	<p>ORDERS that the Settlement Amount is in full satisfaction of the Released Claims against the Releasees, and is all-inclusive of, without limitation, interest, taxes, fees, costs, Class Counsel Fees, Administration Expenses and Litigation Disbursements;</p>
<p>DÉCLARE que les Défendeurs n'ont aucune responsabilité pour ni en lien avec : (a) l'administration de l'Entente de règlement; (b) le Montant en fidéicommiss (à l'exception de ce qui est expressément prévu à l'Entente de règlement); ou (c) le Plan d'allocation;</p>	<p>ORDERS that the Defendants shall have no responsibility for and no liability whatsoever related to: (a) the administration of the Settlement Agreement; (b) the Escrow Amount (other than as expressly set out in the Settlement Agreement); or (c) the Plan of Allocation;</p>
<p>ORDONNE ET DÉCLARE que toutes les clauses de l'Entente de règlement (incluant le Préambule, les Définitions et les Annexes) sont exécutoires à l'égard des Demandeurs, des Membres du groupe de règlement, des Défendeurs, des Personnes quittancées, des Personnes donnant quittance, ou l'un d'eux, ainsi que de leurs ayant-droits, exécuteurs, prédécesseurs, et successeurs respectifs. Sans limiter la généralité de ce qui précède, chacune des représentations et ententes contenues à l'Entente de règlement par les Demandeurs sera opposable aux Personnes donnant quittance;</p>	<p>ORDERS AND DECLARES that all provisions of the Settlement Agreement (including its Recitals, its Definitions and its Schedules) are binding upon, and enure to the benefit of, the Applicants, the Settlement Class Members, the Defendants, the Releasees and the Releasers or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made in the Settlement Agreement by the Applicants shall be binding upon all Releasers.</p>
<p>ORDONNE ET DÉCLARE que toutes les Personnes donnant quittance et les Membres du groupe de règlement seront liés par ce Jugement, sans égard au fait qu'elles aient complété un Formulaire de réclamation ou aient reçu un paiement provenant du Montant de règlement, ou non;</p>	<p>ORDERS AND DECLARES that all Releasers and Settlement Class Members shall be bound by the Settlement Agreement and this Judgment, regardless of whether they submit a completed Claim Form or receive payment from the Settlement Amount;</p>

<p>ORDONNE ET DÉCLARE que:</p> <p>(a) à compter de la Date effective, les Personnes donnant quittance donnent quittance aux Personnes quittancées à l'égard de toutes les Réclamations quittancées, qu'elles ont, ont eues ou pourraient avoir, directement, indirectement ou autrement ;</p> <p>(b) à compter de la Date effective, l'Action sera déclarée réglée hors Cour et sans frais; et</p> <p>(c) à compter de la Date effective, chance Membre du groupe de règlement sera réputé avoir irrévocablement consenti au rejet sans frais, sans admission et sans réserve à l'Action et de toute autre procédure relative aux Réclamations quittancées qui auraient été introduites par les Membres du groupe de règlement;</p>	<p>ORDERS AND DECLARES that:</p> <p>(a) as of the Effective Date, the Releasors forever and absolutely release, relinquish and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any capacity, ever had, now have, or hereafter can, shall or may have;</p> <p>(b) upon the Effective Date, the Action shall be declared settled out of Court, and without costs; and</p> <p>(c) upon the Effective Date, each Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of the Action and any other proceeding relating in any way to the Released Claims commenced by any Settlement Class Member;</p>
<p>ORDONNE que les honoraires des avocats du groupe et les débours du litige soient payés conformément à l'article 3 de l'entente de règlement, et plus particulièrement dans les montants suivants;</p> <ul style="list-style-type: none"> • \$1,500,000 en honoraires des avocats du groupe; • \$224,625 en TPS et TVQ applicables aux honoraires des avocats du groupe; et • \$44,380.07 en débours de litige ; 	<p>ORDERS that the Class Counsel Fees and Litigation Disbursements be paid in accordance with Section 3 of the Settlement Agreement, and specifically in the following amounts;</p> <ul style="list-style-type: none"> • \$1,500,000 in Class Counsel Fees; • \$224,625 in GST and PST applicable to Class Counsel Fees; and • \$44,380.07 in Litigation Disbursements;
<p>APPROUVE la forme et le contenu du Plan de Répartition (Pièce R-2 et Annexe B au présent jugement) dans leurs versions française et anglaise et nomme Velvet Payments Inc. en qualité d'Administrateur des Réclamations;</p>	<p>APPROVES the form and content of the Plan of Allocation (Exhibit R-2 and Annex B to this judgment) in their French and English versions and appoints Velvet Payments Inc. as the Claims Administrator;</p>

<p>APPROUVE la forme, le contenu et le mode de diffusion de la version détaillée du deuxième avis (Pièce R-4 et Annexe D au présent jugement) et de la version abrégé du deuxième avis (Pièce R-5 et Annexe E au présent jugement) dans leurs versions française et anglaise;</p>	<p>APPROVES the form, content, and mode of dissemination of the Long Form Second Notice (Exhibit R-4 and Annex D to this judgment) and the Short Form Second Notice (Exhibit R-5 and Annex E to this judgment) in their French and English versions;</p>
<p>ORDONNE les Demandeurs à diffuser la version détaillée du deuxième avis (Pièce R-4 et Annexe D au présent jugement) et la version abrégé du deuxième avis (Pièce R-5 et Annexe E au présent jugement) conformément au plan de publication prévu au paragraphe 7.2 de l'accord de règlement (mais à l'exclusion de ses alinéas (d) et (g)), au plus tard le DATE XYZ;</p>	<p>ORDERS the Petitioners to disseminate the Long Form Second Notice (Exhibit R-4 and Annex D to this judgment) and the Short Form Second Notice (Exhibit R-5 and Annex E to this judgment) pursuant to the publication plan provided for at paragraph 7.2 of the Settlement Agreement (but excluding its subparagraphs (d) and (g)), on or before XYZ DATE;</p>
<p>APPROUVE substantiellement la forme et le contenu du Formulaire de Réclamation (Pièce R-3 et Annexe C au présent jugement) dans leurs versions française et anglaise;</p>	<p>APPROVES substantially the form and content of the Claim Form (Exhibit R-3 and Annex C to this judgment) in the French and English versions;</p>
<p>DÉCLARE que la date limite de réclamation sera fixée à XYZ DATE, après quoi les membres du groupe ne pourront plus être autorisés à soumettre d'autres réclamations, à la discrétion de l'administrateur des réclamations ;</p>	<p>DECLARES that the Claims Bar Deadline be set to XYZ DATE, after which Settlement Class Members may not be allowed to submit any further claims subject to discretion of the Claims Administrator;</p>
<p>DÉCLARE qu'aucune action ne peut être entreprise contre Xebec, les Défendeurs individuels, les Défendeurs souscripteurs, les Défendeurs souscripteurs, les Avocats du groupe ou l'Administrateur des réclamations sans l'autorisation de la Cour de l'action collective relativement à toute question émanant du Règlement ;</p>	<p>ORDERS AND DECLARES that no action may be taken against Xebec, the Individual Defendants, the Underwriter Defendants, the Plaintiffs, Class Counsel or the Claims Administrator without leave of the Class Action Court with respect to any issues arising from or in respect of the Settlement;</p>

<p>ORDONNE que ce Jugement sera déclaré nul et sans effet, <i>nunc pro tunc</i>, sur présentation d'une demande à cet égard dans l'éventualité où l'Entente de règlement était résiliée selon ses termes;</p>	<p>ORDERS that this Judgment shall be declared null and void and of no force and effect, <i>nunc pro tunc</i>, on subsequent application made on notice in the event that the Settlement Agreement is terminated in accordance with its terms;</p>
<p><u>LOIS SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS ET COMMUNICATION DE CES RENSEIGNEMENTS</u></p>	<p><u>PRIVACY LAWS AND DISCLOSURE OF PERSONAL INFORMATION</u></p>
<p>ORDONNE à l'Administrateur des Réclamations d'utiliser les renseignements identifiable concernant une personne qui lui sont fournis tout au long de la procédure de réclamation dans le seul but de faciliter la procédure d'administration des réclamations conformément à la Convention de transaction et à aucune autre fin;</p>	<p>ORDERS that the Claims Administrator shall use the personally identifiable information provided to it throughout the claims process for the sole purpose of facilitating the claims administration process in accordance with the Settlement Agreement and for no other purpose;</p>
<p>ORDONNE ET DÉCLARE que le présent Jugement constitue un Jugement obligeant la communication de renseignements personnels au sens des lois sur la protection des renseignements personnels applicables, et que le présent Jugement respecte les exigences de toutes les lois sur la protection des renseignements personnels applicables;</p>	<p>ORDERS AND DECLARES that this Judgment constitutes a Judgment compelling the communication of personal information within the meaning of applicable privacy laws, and that this Judgment satisfies the requirements of all applicable privacy laws.</p>
<p>DÉGAGE les Défenderesses de toute obligation prévue par les lois et règlements applicables en matière de protection des renseignements personnels en ce qui concerne la communication de renseignements personnels et/ou privés aux Avocats du Groupe;</p>	<p>RELEASES the Defendants from any and all obligations pursuant to applicable privacy laws and regulations in relation to the communication of any personal and/or private information to Class Counsel;</p>
<p>LE TOUT sans frais de justice.</p>	<p>THE WHOLE without legal costs.</p>

MONTREAL, September 20, 2023

(s) Lex Group Inc.

Lex Group Inc.

Per: David Assor

Attorneys for the Applicants

TORONTO, September 20, 2023

(s) KND Complex Litigation

KND Complex Litigation

Per: Eli Karp & Sage Nematollahi

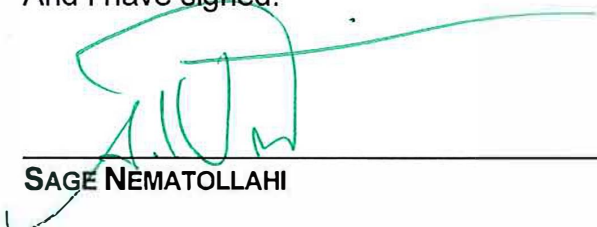
Attorneys for the Applicants

SOLEMN DECLARATION

I, the undersigned, **Sage Nematollahi**, attorney, practicing law at the offices of KND Complex Litigation, Toronto, Ontario, do hereby solemnly declare:

1. THAT I am one of the attorneys for the Applicants in the present case;
2. THAT all the facts alleged in the present *Application to Authorize a Class action for Settlement Purposes Only, for Approval of Notice to Class Members of a Settlement Approval Hearing and to Appoint a Claims administrator* therein are true and accurate to my knowledge;

And I have signed:



SAGE NEMATOLLAHI

Solemnly affirmed before,
this 20th day of September, 2023



Commissioner for oaths
Taek Soo Shin LSO #: 85691

NOTICE OF PRESENTATION

TO : Me Jessica Harding
Me Robert A. Carson
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***Attorneys for Desjardins
Securities Inc., TD Securities Inc.,
National Bank Financial Inc.,
Canaccord Genuity Group Inc.,
Raymond James Ltd., Beacon
Securities
Limited and Stifel Nicolaus
Canada Inc.***

TAKE NOTICE that the *APPLICATION TO APPROVE A CLASS ACTION SETTLEMENT AND FOR APPROVAL OF CLASS COUNSEL FEES* and ancillary relief will be presented for adjudication by the Honourable Christian Immer, J.S.C., on September 29, 2023, at 9:30 AM ET, in room 16.04 of the Montreal Courthouse (located at 1 Notre-Dame Street East, Montreal, Quebec, Canada, H2Y 1B5), or as soon thereafter as counsel can be heard.

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, September 20, 2023

(s) Lex Group Inc.

Lex Group Inc.

Per: David Assor

Attorneys for the Applicants

TORONTO, September 20, 2023

(s) KND Complex Litigation

KND Complex Litigation

Per: Eli Karp & Sage Nematollahi

Attorneys for the Applicants

David Assor

From: Sage Nematollahi <sn@knd.law>
Sent: September 20, 2023 6:05 PM
To: Jessica Harding; Robert Carson; Brandon Farber; frikia.belogbi@justice.gouv.qc.ca
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Subject: NOTIFICATION : Leclair, et al. c. Xebec Adsorption Inc., et al. (500-06-001135-215)
Attachments: 2023.09.20 - XBC - Application for Settlement Approval and Class Counsel Fees.pdf; XBC - Ex R-1 (Entente de reglement).pdf; XBC - Ex R-1 (Settlement Agreement).pdf; XBC - Ex R-2 (Plan de repartition).pdf; XBC - Ex R-2 (Plan of Allocation).pdf; XBC - Ex R-3 (Claim Form_English).pdf; XBC - Ex R-4 (Long Form Settlement Approval_English).pdf; XBC - Ex R-4 (Long Form Settlement Approval_French).pdf; XBC - Ex R-5 (Short Form Settlement Approval_English).pdf; XBC - Ex R-5 (Short Form Settlement Approval_French).pdf; 2023.09.19 - Declaration sou s serment_Maurice Leclair.pdf; 2023.09.19 - Affidavit of Evert Schuringa.pdf; 2023.09.20 - Affidavit of Taek Soo Shin.pdf; 2023.09.20 - XBC - Draft Order (Settlement Approval).docx; 2023.09.20 - XBC - Draft Order (Settlement Approval).pdf; XEBEC Service List.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

NOTIFICATION PAR COURRIEL / NOTIFICATION BY EMAIL
(Art. 110, 133 et 134 C.P.C. / C.C.P.)

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Date	September 20, 2023	Heure/Time	Voir l'entête du courriel / See email header	
EXPÉDITEUR / SENDER				
Nom/Name	Me Sage Nematollahi	Cabinet / Firm	KND Complex Litigation	
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cc: SERVICE LIST				
NATURE DU DOCUMENT NOTIFIÉ / NATURE OF DOCUMENT NOTIFIED				
Numéro de Cour / Court Number	500-06-001135-215			
Noms des parties / Name of the parties	Leclair and Schuringa vs FORMERXBC INC. (formerly, Xebec Adsorption Inc)., et al			
Nature du document notifié / Nature of Document notified	<ul style="list-style-type: none"> • Application to Approve a Class Action Settlement and for Approval of Class Counsel Fees • Exhibit R-1: Settlement Agreement • Exhibit R-2: Plan of Allocation • Exhibit R-3: Claim Form • Exhibit R-4: Long Form Second Notice • Exhibit R-5: Short Form Second Notice • Déclaration sous serment de Maurice Leclair • Affidavit of Evert Schuringa • Affidavit of Taek Soo Shin • Proposed Order • XEBEC Service List 			

N^o.: 500-06-001135-215

(CLASS ACTION DIVISION)
SUPERIOR COURT

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

Leclair et al.

Plaintiffs

vs.

Xebec Adsorption Inc. et al.

Defendants

**APPLICATION TO APPROVE A CLASS ACTION
SETTLEMENT AND FOR APPROVAL OF CLASS
COUNSEL FEES**

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