

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-06-001135-215

(CLASS ACTION)

SUPERIOR COURT

(...)

MAURICE LECLAIR

-and-

(...)

EVERT SCHURINGA

Applicants

vs.

XEBEC ADSORPTION INC.

-and-

KURT SORSCHAK

-and-

STÉPHANE ARCHAMBAULT

-and-

LOUIS DUFOUR

-and-

WILLIAM BECKETT

-and-

GUY SAINT-JACQUES

-and-

DESJARDINS SECURITIES INC.

-and-

NATIONAL BANK FINANCIAL INC.

-and-

CANACCORD GENUITY GROUP INC.

-and-

RAYMOND JAMES LTD.

-and-

BEACON SECURITIES LIMITED

-and-

STIFEL NICOLAUS CANADA INC

Respondents

**RE-AMENDED 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 SUPPORT OF THIS RE-AMENDED APPLICATION FOR AUTHORIZATION, THE
APPLICANTS RESPECTFULLY SUBMIT AS FOLLOWS:**

I. DEFINITIONS

1. In this document, in addition to the terms that are defined elsewhere herein or in the *Québec Securities Act*, the following terms have the following meanings:
 - a. **“Applicants”** (each being an **“Applicant”**) means the Applicants (...), Maurice Leclair (...) and Evert Schuringa;
 - b. **“CBCA”** means *Canada Business Corporations Act*, RSC, 1985, c C-44, as amended;
 - c. **“C.C.P.”** means the *Code of Civil Procedure*, CQLR c C-25.01, as amended;
 - d. **“C.C.Q.”** means the *Civil Code of Québec*, as amended;
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- e. **“Class”** and **“Class Members”** refer to the following group, other than the **Excluded Persons**:

all persons and entities, wherever they may reside or may be domiciled, who purchased or otherwise acquired Xebec’s securities 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;

- f. **“Class Period”** means the period from November 10, 2020 to March 24, 2021, both dates inclusive;
- g. **“Equivalent Securities Acts”** means, collectively, the *Securities Act*, R.S.A. 2000, c. S-4, as amended; the *Securities Act*, R.S.B.C. 1996, c 418, as amended; *The Securities Act*, C.C.S.M. c. S50, as amended; the *Securities Act*, S.N.B. 2004, c. S-5.5, as amended; the *Securities Act*, R.S.N.L. 1990, c S-13, as amended; the *Securities Act*, S.N.W.T. 2008, c. 10, as amended; the *Securities Act*, R.S.N.S. 1989, c. 418, as amended; the *Securities Act*, S Nu 2008, c. 12, as amended; the *Securities Act*, R.S.P.E.I. 1988, c S-3.1, as amended; *Securities Act*, R.S.O. 1990, c. S.5, as amended; *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2, as amended; and the *Securities Act*, S.Y. 2007, c. 16, as amended;
- h. **“Excluded Persons”** means Xebec, each of the Underwriters, and their respective past or present subsidiaries, directors, officers, legal representatives, predecessors, successors and assigns, as well as the Individual Respondents, members of the immediate families of the Individual Respondents, and any entity in which the Individual Respondents hold a controlling interest;
- i. **“FY 2020”** means Xebec’s fiscal year ended December 31, 2020;
- j. **“ICFR”** means Internal Controls over Financial Reporting;
- j. **“Impugned Documents”** (each being an **“Impugned Document”**) means the following documents:
- i. Xebec’s Interim Financial Statements and MD&A for Q3 2020, filed on SEDAR on November 10, 2020, communicated herewith as **Exhibits P-1** and **P-2**, respectively; and
 - ii. Xebec’s Preliminary Short-Form Prospectus dated December 14, 2020 and Final Short-Form Prospectus dated December 21, 2020, communicated herewith as **Exhibit P-3** and **Exhibit P-4**, respectively (collectively, the **“Prospectus”**); and
 - iii. Xebec’s Material Change Report dated March 23, 2021, and Xebec’s associated March 12, 2021 New Release titled “Xebec Provides
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Updated 2020 Guidance,” communicated herewith as **Exhibits P-16** and **P-11**, respectively;

- k. **“Individual Respondents”** (each being an **“Individual Respondent”**) means Kurt Sorschak, Stéphane Archambault, Louis Dufour, William Beckett and Guy Saint-Jacques;
- l. **“MD&A”** means Management’s Discussion and Analysis;
- m. **“Offering”** means the issuance and distribution of the securities of Xebec in December 2020, as elaborated herein;
- n. **“Q1”**, **“Q2”**, **“Q3”** and **“Q4”** means the reporting periods ended March 31, June 30, September 30, and December 31, respectively;
- o. **“QSA”** means the *Québec Securities Act*, CQLR c V-1.1, as amended;
- p. **“RNG”** means renewable natural gas;
- q. **“SEDAR”** means the system for electronic document analysis and retrieval of the Canadian Securities Administrators;
- r. **“TSX”** means the Toronto Stock Exchange;
- s. **“Underwriters”** (each being an **“Underwriter”**) means 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.; and
- t. **“Xebec”** means the Respondent, Xebec Adsorption Inc.

II. NATURE OF THE ACTION

- 2. This is a securities class proceeding arising out of the misrepresentations in Xebec’s Impugned Documents, which were released during the Class Period.
 - 2.1. Xebec is a provider of gas purification solutions, namely biogas upgrading, natural gas, field gas, and hydrogen purification solutions for the clean energy/fossil fuels displacement markets. Xebec purports to report its financial statements, balance sheet and consolidated statements of income or loss in accordance with International Financial Reporting Standards.
 - 2.2. Xebec has a significant accounting policy under which it purports to recognize and report revenue on its “long-term production type contracts” based on the percentage of completion revenue accounting method. Under this accounting method, Xebec purports to recognize and report revenue based on the progress
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of the so-called long-term contracts. The progress of the contract is measured on the basis of the costs incurred as of the reporting period relative to the total estimated costs of the project.

- 2.3. The proper utilization of this revenue accounting method requires proper control systems and processes in order to measure the costs reliably and on a timely basis, and to ensure the project is fulfilled within the estimated costs and in time. At all material times relevant to this action, Xebec did not maintain the appropriate internal controls, processes and systems to ensure reliable financial reporting.
 - 2.4. At all material times relevant to this action, Xebec experienced execution and delivery issues as well as project cancellations on its production type, long-term contracts, which negatively impacted Xebec's revenue and its revenue recognition practices.
 - 2.5. As a direct result of Xebec's execution and delivery issues on its "long-term, production-type contracts", the costs of the projects grew larger than estimated. Therefore, Xebec's revenue accounting on the basis of the percentage of completion methodology was adversely affected. As a result, Xebec's Impugned Documents overstated the revenue, and contained misrepresentations.
 3. The Applicants claim that the impugned disclosure documents of Xebec:
 - a. overstated Xebec's revenue;
 - b. contained revenue forecast of \$70 to \$80 million for FY 2020, which constituted a misrepresentation; and
 - c. misrepresented the fact that Xebec failed to maintain proper internal controls necessary to ensure that its financial statements were reliable and free of material misstatements.
 4. Those misrepresentations were partially corrected on March 12, 2021, when Xebec announced that:
 - a. as a result of its improper revenue accounting practices and problems with long-term contracts, it had to take "extraordinary" charges and reverse \$12.9 million in previously-recognized revenue, representing 23% of its full FY 2020 revenue; and
 - b. as a result, Xebec would not meet the full year 2020 revenue forecast of \$70-\$80 million, rather FY 2020 revenue would be approximately \$57 million, or approximately 24% lower than previously represented.
 - 4.1. The misrepresentations were, furthermore, corrected on March 25, 2021, where Xebec's FY 2020 disclosures revealed that the revenue reversals and adjustments were not extraordinary charges. Rather, they would continue to negatively impact
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Xebec's financial results during Q1 and Q2 of 2021 as Xebec continued to work through the order backlog that had caused the problem.

- 4.2. On August 12, 2021, in conjunction with the release of its Q2 2021 results, Xebec provided further particulars regarding the problems with its long-term RNG contracts and their negative impact on Xebec's financial results, including disclosing that it had experienced project cancellations in Q4 2020 (namely, during the Class Period).
- 4.3. As a result of Xebec's disclosures on March 12, 2021, the price of Xebec's securities plummeted by approximately 31% overnight on March 12, 2021. Xebec's stock price declined again following its March 25 and August 12, 2021 disclosures. Consequently, the Applicants and the Class suffered damages and losses.
5. The Applicants bring this action to recover their own and the Class's losses and damages, asserting the following rights of action:
 - a. The statutory claim for damages for misrepresentation in primary market pursuant to sections 218 and 221 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts;
 - b. The statutory claim for damages for misrepresentation in secondary market pursuant to section 225.8 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts;
 - c. Article 1457 C.C.Q.; and
 - d. The oppression remedy prescribed in section 241 of *CBCA*.

III. THE PARTIES

A. The Applicants

6. (...).
 7. (...).
 8. (...).
 - 8.1. The Applicant Maurice Leclair is a retail investor residing in Laval, Québec. On March 4, 2021, he purchased 2,000 shares of Xebec at a purchase price of \$6.98 per share, exclusive of commissions. He continued to hold those shares as of the end of the Class Period.
 - 8.2. (...).
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- 8.3. The Applicant Evert Schuringa is a retail investor residing in Amsterdam, the Netherlands. He 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. Schuringa continued to hold those Xebec shares as of the end of the Class Period.
9. The Applicants incurred damages and losses on their investments in the securities of Xebec.

B. Xebec

10. Xebec is a provider of gas purification solutions, namely biogas upgrading, natural gas, field gas, and hydrogen purification solutions for the clean energy/fossil fuels displacement markets.
11. Xebec is incorporated under the *CBCA*. Xebec's head office and registered office is located in Blainville, Québec. Xebec has two manufacturing facilities, one of which is located in Blainville, Québec, and the other is located in Shanghai, China.
12. Xebec is a reporting issuer in Québec and the other provinces of Canada.
13. Xebec's securities traded on the TSX Venture Exchange until January 6, 2021 under ticker "XBC." Thereafter, Xebec's securities transitioned and were listed for trading on the TSX under ticker symbol "XBC."
14. Xebec's principal securities regulator is the Autorité des marchés financiers, the whole as appears in Xebec's profile on SEDAR, which is communicated herewith as **Exhibit P-5**.
- 14.1. During the time relevant to this action, Xebec experienced significant managerial changes.
- 14.2. On November 10, 2020, the date of commencement of the Class Period, Xebec announced the departure of its former Chief Financial Officer, Respondent Louis Dufour, the whole as appears in **Exhibit P-44**.
- 14.3. On February 12, 2021, a month before Xebec disclosed that its operational issues had negatively impacted its FY 2020 revenue and its revenue accounting practices, Xebec announced the departure of its former Chief Operating Officer and Director, Prabhu Rao, the whole as appears in **Exhibit P-45**.

C. Individual Respondents

15. At all material times relevant to this action, Kurt Sorschak was President, Chief Executive Officer, a director, Chairman of the board of directors, and Chair of the Governance Committee of the board of directors of Xebec. Sorschak is a director and an officer of Xebec within the meaning of the QSA. He resides in Québec.
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16. At all material times relevant to this action, Louis Dufour was Chief Financial Officer and an officer of Xebec within the meaning of QSA, until November 10, 2020, where Xebec announced that Dufour had resigned effective immediately. Dufour resides in Québec.
17. Stéphane Archambault was appointed Chief Financial Officer of Xebec on November 10, 2020, replacing Louis Dufour. Archambault is an officer of Xebec within the meaning of the QSA. He resides in Québec.
18. At all material times relevant to this action, William Beckett was a director, the Lead Director, a member of the Audit Committee and a member of the Governance Committee of the board of directors of Xebec. Beckett is a director of Xebec within the meaning of the QSA. He resides in Québec.
19. At all material times relevant to this action, Guy Saint-Jacques was a director of Xebec, and Chair of the Audit Committee of the board of directors of Xebec. Saint-Jacques is a director of Xebec within the meaning of the QSA. He resides in Québec.

D. The Underwriters

20. The Underwriters are financial institutions who acted as underwriters in relation to the Offering pursuant to an Underwriting Agreement dated December 14, 2020, which is communicated herewith as **Exhibit P-6**.
21. In accordance with the terms of the Underwriting Agreement, it is governed by the laws of the Province of Québec.

IV. THE ACQUISITION OF HYGEAR AND RELATED OFFERING

22. On December 8, 2020, Xebec announced that it had entered into a definitive agreement to acquire all of the issued and outstanding shares of Green Vision Holding B.V., the parent company of HyGear Technology and Services B.V., which is located in the Netherlands ("**HyGear**"). Xebec paid cash consideration for this acquisition of € 82.0 million (approximately \$127.3 million) and assumed € 18.4 million (approximately \$28.6 million) of HyGear's debt. The acquisition of HyGear was extremely important to Xebec's business and its purported growth plans. Xebec described the transaction as a "transformative acquisition," which would enable it to accelerate its entry into the fast-growing hydrogen fuel market. Concurrently, Xebec announced the Offering in order to finance the acquisition of HyGear, the whole as appears in **Exhibit P-7**.
 23. The Offering was undertaken pursuant to the Prospectus, and it was completed on or about December 30, 2020. The acquisition of HyGear was completed on or about December 31, 2020 using the proceeds of the Offering, the whole as appears in **Exhibits P-8 and P-9**, respectively.
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24. Pursuant to the Offering, Xebec:
- a. issued and publicly distributed 24,784,800 Subscription Receipts, at a price of \$5.80 per subscription receipt, for gross proceeds of \$143,751,840, and
 - b. issued and distributed pursuant to a private placement further 10,905,174 Subscription Receipts at \$5.80 per Subscription Receipt, for gross proceeds of \$63,250,009;
- for the aggregate gross proceeds of \$207,001,849.
25. The value of the Subscription Receipts was on par with their underlying common shares of Xebec. Upon the completion of the acquisition of HyGear, each Subscription Receipt was converted to a common share of Xebec at no additional cost to their holders.
26. All of the Underwriters acted as underwriters in relation to the public distribution component of the Offering. In connection therewith, the Underwriters received a commission fee of \$0.29 per Subscription Receipt, or approximately \$7.2 million in the aggregate.
27. Additionally, Desjardins Capital Markets and TD Securities Inc. acted as joint bookrunning agents in relation to the private placement component of the Offering, and received further cash commissions in connection therewith.
28. The Respondents' misrepresentations alleged herein, which were contained in the Prospectus, were significant. They allowed Xebec to maintain an artificially inflated price of its securities, which securities were sold and distributed by Xebec and the Underwriters to the public pursuant to the Prospectus, thus allowing Xebec to raise the funds it needed to successfully complete its acquisition of HyGear.
29. But for the misrepresentations in the Prospectus, Xebec would have been unable to complete the Offering on the terms reflected in the Prospectus, or at all. Consequently, it would have been unable to complete the acquisition of HyGear on the terms reflected in the Prospectus, or at all.
- 29.1. In connection with the acquisition of HyGear, Xebec issued and distributed 10,014,364 shares to the holders of HyGear shares at a deemed price of \$6.03, corresponding to the weighted average trading price over the last 15 days prior to the date of announcement of the transaction. The holders of HyGear shares received 2.279 Xebec shares for each HyGear share, the whole as appears in **Exhibit P-17**.
- 29.2. The Applicant Schuringa received 18,416 Xebec shares for his HyGear shares in connection with Xebec's acquisition of HyGear.
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V. XEBEC'S SIGNIFICANT ACCOUNTING POLICIES RELEVANT TO REVENUE RECOGNITION AND ACCOUNTS RECEIVABLE

30. Xebec is a Canadian provider of gas purification solutions, namely biogas upgrading, natural gas, field gas, and hydrogen purification solutions for the clean energy/fossil fuels displacement markets. Xebec reports its financial statements, balance sheet and consolidated statements of income or loss in accordance with International Financial Reporting Standards.

31. Xebec's significant accounting policies, which are outlined in its Audited Financial Statements for fiscal year 2019, describe Xebec's general revenue recognition policy as follows:

The Company recognizes revenue on commercial equipment sales when it is probable that the economic benefits will flow to the Company and delivery has occurred. These criteria are generally met at the time the product is shipped and delivered to the customer and, depending on the delivery conditions, title and risk have passed to the customer. Provisions are established for estimated product returns and warranty costs at the time revenue is recognized. Cash received in advance of all of these revenue recognition criteria being met is recorded as contract liabilities,

the whole as appears in **Exhibit P-10**, at page 8.

32. Xebec's significant accounting policies elaborate that it uses the accounting method known as "percentage of completion" revenue accounting on its "long-term production type contracts", and further describe the conditions upon which the revenue recognition requirements are met, as follows:

Revenues from long-term production-type contracts such as biogas purification equipment and engineering service contracts are determined under the percentage-of-completion method whereby revenues are recognized based on the costs incurred to date in relation to the total expected costs of a contract (costs being composed mainly of materials and labour). Costs and estimated profit on contracts in progress in excess of amounts billed are reflected as work in progress. Cash received in advance of revenues being recognized on contracts is recorded as contract liabilities,

the whole as appears in **Exhibit P-10**, at page 8.

33. Xebec, furthermore, assures investors that it exercises due care in order to ensure that the revenues and losses are reported properly and in a timely fashion, stating, as follows:

The Company monitors its contracts with customers on a regular basis to determine if a loss is likely to occur. If a loss is anticipated on a contract, the entire estimated loss is recorded as a cost of goods sold in the year in which the loss becomes evident and reasonably estimable,

the whole as appears in **Exhibit P-10**, at page 8.

34. Furthermore, Xebec's significant accounting policies assure investors that, although contracts' conditions may change due to unforeseeable circumstances, Xebec's management properly exercises judgment at the time of the reporting of the financial statements in light of all available information in order to ensure proper application of the "percentage of completion" revenue accounting method. In that regard, Xebec's significant accounting policies state as follows:

Percentage of completion and revenues from long-term production-type contracts

Revenues recognized on long-term production-type contracts reflect management's best assessment by taking into consideration all information available at the reporting date and the result on each ongoing contract and its estimated costs. The management assesses the profitability of the contract by applying important judgments regarding milestones marked, actual work performed and estimate costs to complete. Actual results could differ because of these unforeseen changes in the ongoing contracts' models,

the whole as appears in **Exhibit P-10**, at page 14.

35. Additionally, Xebec's significant accounting policies provide that it must record proper allowances for expected credit losses, stating as follows:

Allowance for expected credit loss

The Company recognizes the impairment of financial assets in the amount of expected credit losses by means of the simplified approach, measuring impairment losses as lifetime expected credit losses the trade receivables have been assessed on a collective basis as they possess shared credit risk characteristics and have been grouped based on the days past due,

the whole as appears in **Exhibit P-10**, at page 14.

VI. THE EVENTS OUT OF WHICH THIS ACTION ARISES

A. Xebec's Long-Standing Internal Control Deficiencies

- 35.1. Xebec came into being in its current form in June of 2009, as a result of a "reverse take-over" and a "back-door listing" between a formerly privately-owned entity called Xebec Adsorption Inc. and QuestAir Technologies Inc., a public company
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whose securities were listed on the Toronto Stock Exchange (“**QuestAir**”), all of which as appears in the Management Information Circular dated April 20, 2009, in relation to a special meeting of QuestAir’s shareholders to be held on May 22, 2009, the whole as appears from **Exhibit P-18**, at pages 1-3.

- 35.2. At the relevant time prior to the amalgamation, QuestAir was a company incorporated under the CBCA, with its head office and principal place of business located in Burnaby, British Columbia.
 - 35.3. QuestAir carried on business as a developer and supplier of advanced gas purification systems, with a primary focus on the biogas upgrading market. Amongst other products, QuestAir’s offerings included compact, modular gas purification products which incorporated QuestAir’s proprietary pressure swing adsorption technology. The pressure swing adsorption systems (also known as PSA systems) would constitute the core of Xebec’s business following its acquisition of QuestAir.
 - 35.4. Prior to the reverse take-over, the formerly privately-owned Xebec Adsorption Inc. was a company that purported to specialize in the design and manufacture of filtration, purification, separation and dehydration equipment for gases and compressed air.
 - 35.5. Following the reverse take-over of QuestAir by Xebec Adsorption Inc., the Respondent Sorschak (who, at the time, was Xebec Adsorption Inc.’s principal shareholder) became President and Chief Executive Officer of the resulting entity.
 - 35.6. In June 2009, Xebec’s shares were listed on the Toronto Stock Exchange under ticker symbol “XBC”, the whole as appears from **Exhibit P-19**, at pages 3, 8.
 - 35.7. Since Xebec’s reverse-takeover of QuestAir, Xebec never maintained effective internal controls. The new Xebec’s first set of annual disclosures, issued and filed on SEDAR on March 29, 2010, state that the company’s management “performed a high-level, minimally documented” evaluation of the effectiveness of Xebec’s internal controls and identified “certain weaknesses.” Specifically, “the company did not have sufficient accounting documentation, policy, procedures or segregation of duties for certain transaction cycles,” according to Xebec, the whole as appears in **Exhibit P-19**, at pp 16-17.
 - 35.8. In the years that followed, Xebec continued to report material weaknesses in its internal controls. Xebec’s MD&A for fiscal year ended December 31, 2013, reported that Xebec’s management had identified material weaknesses in its disclosure controls and procedures as well as ICFR, as follows:
 - a. Xebec failed to maintain proper “entity level controls,” as it failed to maintain “A completely effective control environment.” Specifically, Xebec failed to maintain “comprehensive procedure manuals to clearly communicate
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management's and employee's roles and responsibilities in [its] internal control over financial reporting";

- b. Xebec failed to "adequately maintain effective control over access to [its] accounting system within [its] accounting department," and it failed to test backup tapes to ensure their accuracy, amongst other deficiencies;
- c. Xebec had "deficient controls within [its] accounting department over segregation of duties inherent to its size. Specifically, "certain financial personnel had incompatible duties that allowed for the creation, review and processing of certain financial data without independent review authorization"; and
- d. Xebec identified "unusual transactions in [its] subsidiary Xebec Shanghai, which "resulted in adjustments to the Company's annual consolidated financial statements as at December 31, 2013." According to Xebec, it "dismissed" a management employee at Xebec Shanghai who was involved in those "unusual transactions";

the whole as appears in **Exhibit P-20**, at pages 21-22.

- 35.9. On or about December 23, 2013, Xebec's common shares were delisted from the Toronto Stock Exchange, and they were relegated to the Toronto Stock Exchange Venture (TSX-V), the whole as appears in **Exhibit P-20**, at page 9.
 - 35.10. Following Xebec's relegation to TSX-V, Xebec became a "venture issuer" within the meaning of National Instrument 52-109. Venture issuers are not required to certify the design or effectiveness of their internal controls in their continuous disclosure certifications. Accordingly, Xebec's management ceased reporting on internal controls' design or effectiveness beginning in 2014.
 - 35.11. Although as a venture issuer Xebec's management were not required under National Instrument 52-109 to certify the design or effectiveness of internal controls, Xebec was at all material times required to maintain proper internal controls to enable it to prepare and report reliable financial statements.
 - 35.12. In 2020, Xebec sought relisting on the Toronto Stock Exchange, which required it to improve its internal controls to the requisite level such that their design and effectiveness would be certifiable.
 - 35.13. Accordingly, Xebec embarked on a process to improve its internal controls. Xebec's management's statements during this process indicate that Xebec's internal controls had not improved, rather they had likely deteriorated over the years. During Xebec's Q3 2020 earnings call held on November 11, 2020, Respondent Sorschak acknowledged that Xebec was updating its controls systems and processes with "an upgraded ERP (Enterprise Resource Planning)
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system,” which Xebec expected to establish not before January 2021, the whole as appears in **Exhibit P-21**, at pages 6, 16.

35.14. At all material times, Xebec represented that it had proper internal controls. For example, in the Xebec’s Audited Financial Statements for FY 2019, filed on SEDAR on April 15, 2020, the auditors’ report to the shareholders states:

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with International Financial Reporting Standards (IFRS), and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error,

the whole as appears in **Exhibit P-10**, at page 3 (of PDF).

35.15. The design, maintenance and implementation of proper and effective internal control systems and processes was imperative to ensure the accuracy and reliability of Xebec’s disclosures and financial reporting.

35.16. To the extent that Xebec did not maintain proper internal controls necessary to enable the preparation of reliable financial statements that were free from material misstatements (which it did not maintain), that fact constituted a material fact that the Defendants ought to have disclosed.

35.17. Xebec’s Impugned Documents however failed to disclose the material fact that Xebec did not maintain proper internal controls necessary to enable the preparation of reliable financial statements that were free from material misstatements.

35.18. The failure to disclose that Xebec failed to maintain appropriate internal controls constituted a misrepresentation.

B. Xebec Experienced Execution and Delivery Issues with “Long-Term, Production-Type Contracts”

35.19. At all material times relevant to this action, Xebec’s core business involved the manufacturing of RNG facilities. In this line of business, which Xebec carries on through its Cleantech systems business segment, Xebec manufactures and provides systems and equipment to convert biogas to RNG from agricultural digesters, source separated facilities, landfill and Wastewater Treatment Plants. This process involves removing undesired gases and substances from biogas, and the production of purified biomethane, which is primarily done through Xebec’s proprietary PSA systems.

35.20. A Xebec biogas upgrading facility is comprised of various system components, the whole as appears on Xebec’s website, **Exhibit P-22**.

35.21. The manufacturing, delivery and installation of Xebec's RNG facilities are capital intensive and time-consuming. Proper management, processes and controls are essential in order to ensure that these contracts are executed and delivered in time and within budget.

35.22. At all material times, Xebec experienced execution and delivery issues with respect to its legacy, production-type RNG contracts, at both manufacturing and supply chain as Xebec's management acknowledged during the earnings call for Q2 2021, held on August 12, 2021, **Exhibit P-23**, at pages 4, 7, 9, 11, 19.

35.23. While Xebec has provided little information regarding the execution and delivery issues with its legacy RNG contracts, the following contracts are noteworthy.

B.1. Three-year, C\$51 million minimum-commitment order in Italy

35.24. On May 16, 2018, Xebec announced that it was entering into "a minimum purchase order commitment for multiple Xebec biogas upgrading plants for a total value of Euro 33 million (CDN\$51 million) to be delivered over three years." According to Xebec, this contract was being entered into with Sapio Group, an Italian entity located in Monza, Italy, the whole as appears in **Exhibit P-24**.

35.25. Xebec's disclosures indicate that the purported agreement with Sapio Group was a major business development for Xebec. On May 23, 2018, Xebec announced that it had appointed Francesco Massari as the General Manager of its European operations, reporting that it "anticipate[d] its Italian business to grow rapidly, requiring operational scale-up as order volume grows," the whole as appears in **Exhibit P-46**.

35.26. Xebec added the purportedly minimum commitment order of \$51 million with Sapio Group to its order backlog, thereby increasing its order backlog from \$13.9 million to \$66.1 million (or by approximately 475%). The order backlog is a dollar figure and part of Xebec's historical disclosures, which indicates the dollar value of purchase orders where "contracts [have been] received and are considered as firm orders," according to Xebec, the whole as appears in Xebec's Q1 2018 MD&A, communicated herewith as **Exhibit P-25**, at page 14.

35.27. Since the announcement of this contract, Xebec has provided little information regarding how that order has been executed and how much of the \$51 million, purportedly "minimum commitment" revenue has been earned and realized.

35.28. Nonetheless, Xebec's disclosures indicate that for the three years of 2018, 2019 and 2020, Xebec only realized approximately \$10.6 million from its sales in Italy. The breakdown of Xebec's revenues from Italian sales is as follows:

	Reported Revenues from Italy
2018	\$2,469,183
2019	\$7,512,614
2020	\$599,999
Total	\$10,581,796

the whole as appears in Xebec's audited financial statements for FY 2018, **Exhibit P-26**, at page 42; Xebec's audited financial statements for FY 2019, **Exhibit P-10**, at page 37; and Xebec's audited financial statements for FY 2020, **Exhibit P-27**, at page 54.

- 35.29. Without providing any meaningful disclosure regarding the status of this contract, Xebec's Annual Information Form for FY 2020 states in passing that "Sapio and Xebec have extended their partnership to an additional year to provide adequate time to execute the projects. Projects based on this partnership are in the deployment and commissioning stage pending the end of the COVID-19 restrictions," the whole as appears in **Exhibit P-28**, at page 14.
- 35.30. Nonetheless, Xebec's Q2 2021 financial statements ceased reporting on Italy as a reportable business segment, the whole as appears in **Exhibit P-29**, at page 48. Of note, it appears that Xebec's General Manager for Europe, Francesco Massari, departed Xebec in or around December 2020, the whole as appears in **Exhibit P-47**.
- 35.31. While Xebec has not provided meaningful disclosure regarding its operations in Italy under the \$51 million contract with Sapio or otherwise, a landfill biogas upgrading plant in Genova, Italy, is illustrative of the execution and delivery issues Xebec has experienced in Italy.
- 35.32. On March 12, 2019, Xebec announced that it had received an order for a landfill biogas upgrading plant in Italy valued at over \$6 million. According to Xebec, the order was "to be delivered in late 2019," the whole as appears in **Exhibit P-30**.
- 35.33. On November 6, 2019, Xebec provided an update on this project, reporting that it was "in the final construction phase" of the project.... Scheduled completion date is end of 2019," the whole the whole as appears in **Exhibit P-31**.
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- 35.34. However, Xebec's disclosures during 2020 revealed that the Genova, Italy, landfill biogas project had not been finished by the end of 2019, as scheduled and represented.
- 35.35. On March 16, 2020, Xebec provided an update that the Genova project, and a further project located in Sicily, Italy, continued to be under construction, the whole as appears in **Exhibit P-32**.
- 35.36. According to Respondent Sorschak, it seems that the two Italian projects were commissioned in or about August 2020, the whole as appears in **Exhibit P-33**, at page 3. A local Italian source seems to suggest that the Genova landfill biogas project was commissioned in January 2021, the whole as appears in **Exhibit P-34**.
- 35.37. As Xebec's management acknowledged at the end of the Class Period, the delays in the execution and delivery of the contracts had a direct, adverse impact on Xebec's revenue accounting under the percentage of completion methodology. It is as such indicative of revenue reversals, costs accruals or other adjustments that Xebec reported only \$599,000 in revenue from Italy in 2020 (2019: \$7,512,614), although it continued to work on two projects in Genova and Sicily, Italy, and commissioned those projects in second half of 2020.

B.2. \$5.9 million purchase order in France for delivery in 2019

- 35.38. On November 29, 2018, Xebec announced that its French partner had won contracts for "multiple biogas upgrading Pressure Swing Adsorption (PSA) units to be delivered in 2019." Xebec stated that the value of the order was \$5.9 million, the whole as appears in **Exhibit P-35**.
- 35.39. There is no follow-on disclosure regarding the fate of this order. Specifically, it is unclear whether Xebec delivered on this order in 2019 or ever at all.
- 35.40. However, for fiscal year 2020, Xebec reported *negative* \$2,001,298 in revenue from France (2019: \$4,375,266), which is indicative of revenue reversals, costs accruals or other adjustments following the initial recognition of revenue from France, as reflected in Xebec's Audited Financial Statements for FY 2020, the whole as appears in **Exhibit P-27**, at page 54.
- 35.41. Of note, Xebec's interim financial statements for Q2 2021 ceased reporting on France as a reportable business segment, the whole as appears in **Exhibit P-29**, at page 48.

B.3. \$27 million order for United States dairy projects for delivery in 2020 and early-2021

- 35.42. On February 12, 2020, Xebec announced that it had received \$24 million in orders from United States dairy farmers "for a total of six turnkey biogas upgrading plants
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and small-scale containerized Biostream™ systems.” According to Xebec, the projects were expected to be delivered “throughout 2020 and early 2021,” the whole as appears in **Exhibit P-36**.

35.43. Xebec, in fact, failed to deliver any of the six projects in 2020. In its FY 2020 Annual Information Form, which was issued on March 31, 2021, Xebec reported that the first project under this order was delivered and installed in Q1 2021, the whole as appears in **Exhibit P-28**, at page 12.

35.44. While Xebec failed to provide any meaningful insight into the specifics of this order and the revenues recognized thereunder, Xebec’s segmented revenue from the United States on a quarterly basis is as follows:

	Reported Revenues from United States
Q1 2020	\$5,280,448
Q2 2020	\$11,840,400
Q3 2020	\$11,681,719
Q4 2020	(\$2,155,938) *

* Xebec reported total revenue of \$26,646,629 from United States in FY 2020. The revenue indicated for Q4 2020 represents the total FY 2020 revenue deducted by the aggregate of the revenues reported for Q1 through Q3 2020.

the whole as appears in Xebec’s interim financial statements for Q1 2020, **Exhibit P-37**, at page 25; Xebec’s interim financial statements for Q2 2020, **Exhibit P-38**, at page 31; Xebec’s interim financial statements for Q3 2020, **Exhibit P-1**, at page 38; and Xebec’s audited annual financial statements for FY 2020, **Exhibit P-27**, at page 54.

35.45. It is indicative of revenue reversals, cost accruals or other adjustments that for Q4 2020, Xebec reported *negative* \$2,155,938 in revenue from the United States.

C. Xebec’s Execution and Delivery Issues Increased Projects’ Costs, Reduced Margins and Negatively Impacted Revenue

35.46. As a direct result of Xebec’s execution and delivery issues on its “long-term, production-type contracts”, the costs of the projects grew larger than estimated, therefore Xebec’s revenue accounting on the basis of the percentage of completion method was adversely effected. As a result, Xebec’s financial disclosures during

the Class Period misstated the company's revenue and contained misrepresentations.

- 35.47. At the Q3 2020 earnings call held on November 11, 2020, Xebec's former Chief Operating Officer Prabhu Rao acknowledged the negative impact of the "higher installation costs and associated delays, the whole as appears in **Exhibit P-21**, at page 11.
- 35.48. During the same November 11, 2020 earnings call, Rao provided further insight into these circumstances in an exchange with David Quezada, an equity analyst with Raymond James, reporting that Xebec had experienced increased project costs at both manufacturing and delivery, the whole as appears in **Exhibit P-21**, at pages 20-21.
- 35.49. At the announcement of Xebec's Q3 2020 results on November 10, 2020, Xebec revised the 2020 revenue forecast from \$80-\$90 million to \$70-\$80 million, a further indication that Xebec had recognized the negative impact of the operational shortcomings on its revenue practices and financial reporting, the whole as appears in **Exhibit P-39**.
- 35.50. At all material times relevant to this action, Xebec elected to recognize revenue on the "long-term, production-type contracts" on the basis of the percentage of completion revenue accounting. This revenue recognition method is beneficial to Xebec, as it allows that Xebec recognize and report revenues over time, before the product has been delivered to customers.
- 35.51. The percentage of completion revenue accounting calculates the revenue based on the cost incurred relative to the total expected cost of the contract. The proper utilization of this revenue accounting method requires proper, effective and reliable processes and control systems, such that the projects' costs and progress can be properly and reliably measured.
- 35.52. In breach of the Respondents' duties to provide reliable and timely disclosures, Xebec's Impugned Documents continued to include overstated revenue and provided FY 2020 revenue forecast of \$70 to \$80 million, which was a misrepresentation.

D. The Corrective Disclosures

D.1. March 12, 2021

36. Before the market opened on March 12, 2021, Xebec issued a press release titled "Xebec Provides Updated 2020 Guidance," which is communicated herewith as **Exhibit P-11**.
37. In this press release, Xebec reported that its revenue for FY 2020, which are scheduled for release on March 25, 2021, would be approximately \$57 million.
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This would be materially lower than Xebec's FY 2020 revenue guidance of \$70 million to \$80 million, which Xebec had provided on November 10, 2020.

38. Xebec attributed the significant revenue shortfall to three specific items, each of which impacted Xebec's previously-recognized revenue. Namely, revenue improperly recognized and reported by Xebec in prior reporting periods, including in Q3 2020, which were released, and reported on November 10, 2020. Those three specific items are as follows.
39. *First*, Xebec admitted to the improper application of the "percentage of completion" revenue accounting method, which resulted in a negative impact of \$5.6 million. According to Xebec:

Xebec underwent a detailed review of its fixed price contracts for renewable natural gas (RNG) projects, where revenues are recognized based on the percentage of completion method. As a result of its review, Xebec determined that:

- i. Previously incurred expenses represented a lower percentage of total costs than previously estimated, and previously recognized revenue is required to be adjusted to reflect the revised percentage of completion for contracts that remain profitable under Xebec's updated estimates.
- ii. Some of the contracts previously estimated to be profitable are now projected to result in losses. The percentage of completion method requires that the losses on such contracts be recognized immediately,

the whole as appears in **Exhibit P-11**.

40. *Second*, reversal of revenues on two sales that were cancelled, representing a further negative impact of \$5.4 million. According to Xebec:

[The further negative revenue impact was due to the] [c]ancellation of the sale of two systems for which approximately 50% of the revenue was already recognized based on the percentage of completion method,

the whole as appears in **Exhibit P-11**.

41. *Third*, reversal of revenue as a result of a credit loss, representing a further negative impact of \$1.9 million. According to Xebec:

[The further negative revenue impact was due to the] [r]eversal of revenue previously recognized based on the percentage of completion method due to the deteriorating financial position of a client where collection for payment became uncertain,

the whole as appears in **Exhibit P-11**.

42. The foregoing disclosures revealed that Xebec had improperly applied the “percentage of completion” revenue accounting method and, consequently, it had improperly recognized revenues before it was probable that the economic value of the contract would flow to Xebec.
43. As a result, Xebec had to reverse previously recognized revenues, representing in the aggregate a negative impact on the full FY 2020 revenue of \$12.9 million, or approximately 24% of its full FY 2020 revenue of \$57 million.
44. Upon this disclosure, the price of Xebec’s common shares on the TSX plummeted from \$7.94 as of the close of trading on March 11, 2021 to \$5.46 on March 12, 2021 (or, by 31%) on extraordinarily heavy trading volume, the whole as appears in **Exhibit P-50**.

D.2. March 25, 2021

- 44.1. Before the market’s open on March 25, 2021, Xebec issued and filed on SEDAR its Q4 and FY 2020 disclosures and financial statements, reporting negative revenue from its reportable Cleantech Systems Segment and negative gross margins, as seen below:

	Q4 2020	FY 2020
Revenue from Cleantech Systems Segment	(\$4.1)	\$28.1
Revenue from Industrial Services and Support	\$10.4	\$28.4
Revenue Total	\$6.4	\$56.5
Costs of Goods Sold	\$17.8	\$56.3
Gross Margin	(\$11.4)	\$0.3
Gross Margin as a Percentage	180%	0.5%
Net Income (Loss)	(\$28.3)	(\$32.0)
Earnings (Loss) Per Share	(0.26)	(\$0.33)

(in millions of Canadian dollars, except percentages and per share data), the whole as appears in Xebec’s FY 2020 MD&A, **Exhibit P-40**, at page 17.

- 44.2. Xebec's FY 2020 MD&A provided further details regarding the revenue reversals during Q4 2020 as Xebec determined that it had not correctly calculated the revenue based on the percentage of completion method:

Revenues decreased by \$7.2 million to \$6.4 million for the three-month period ended December 31, 2020, compared to \$13.6 million for the same period the prior year. The decrease is mainly due to revenue adjustments in the last quarter due to extraordinary items in the Cleantech Systems business segment resulting from the impact of the COVID-19 pandemic and other operational issues, which substantially increased product, operational and installation costs. With the impact of COVID-19 lasting longer than expected and additional restrictions being re-imposed by local authorities in Q4/20, Xebec undertook a detailed accounting review of its long-term, production-type contracts for its renewable natural gas projects where revenues are recognized based on the percentage of completion method. As a result of the projected total cost of fulfilling these contracts having increased substantially, Xebec determined that previously incurred expenses represent a lower percentage of total costs than previously estimated. As such, revenues recognized to date had to be adjusted (\$5.2 million) to reflect the revised percentage of completion for contracts under Xebec's updated estimates. Furthermore, Xebec reversed revenues (\$1.9 million) previously recognized based on the percentage of completion method due to the deteriorating financial position of a client where the likelihood of payment became uncertain in early 2021. Finally, two contracts that had become unprofitable were cancelled by a customer in early 2021 as a result of the delivery delays, due to COVID-19 and other related disruptions. This impact led to a \$5.4 million revenue adjustment. The parts and materials used for these contracts have since been inventoried and are expected to be used for future contracts,

the whole as appears in **Exhibit P-40**, at pages 17-18.

- 44.3. During the earnings call for FY 2020 held on March 25, 2021, Respondent Sorschak noted that but for the revenue reversals incurred during Q4, Xebec's "revenue for the quarter would have been approximately \$20.7 million," the whole as appears in **Exhibit P-41**, at page 6. This revealed that the revenue reversals incurred during the quarter were in fact not \$12.9 million (as Xebec had stated in the March 12, 2021 press release), but approximately \$14.3 million (\$20.7 million - \$6.4 million) or approximately 11% greater than Xebec had initially represented.
- 44.4. Furthermore, during the March 25, 2021 earnings call, Respondent Sorschak stated that the revenue issues would continue to have a negative impact on Xebec's financial statements in Q1 and Q2 of 2021, as Xebec continued to "work[] through the order backlog that caused the problem," the whole as appears in **Exhibit P-41**, at page 3.
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- 44.5. Upon Xebec's March 25, 2021 disclosures, the price of its common shares fell to \$4.0 during intraday trading, representing \$0.62 (or 13%) decline compared to the close of trading on March 24, 2021. Xebec's common shares closed at \$4.38 on March 25, 2021, and continued to decline over the following trading days, the whole as appears in **Exhibit P-50**.

D.3. Recent Updates

- 44.6. In conjunction with the release of its Q2 2021 financial results, Xebec further acknowledged the problems with its "legacy production type RNG contracts," the whole as appears in **Exhibit P-42**.
- 44.7. Furthermore, Xebec's Q2 2021 MD&A acknowledged that the revenue issues were due to cancellation of certain projects in Q4 2020, the whole as appears in **Exhibit P-43**, at page 21. During an earnings call held on August 12, 2021, Respondent Sorschak similarly acknowledged that the contract issues had arisen in Q4 2020, the whole as appears in **Exhibit P-23**, at page 4.
- 44.8. Xebec's Q2 2021 MD&A, furthermore, confirmed that its long-term, production type contracts were "less predictable" and "experienced cost overruns," the whole as appears in **Exhibit P-43**, at page 32.
- 44.9. Xebec's Q2 2021 disclosures also confirmed that the contract issues were negatively impacting the company's margins and revenue, and accordingly revised its adjusted EBITDA margin forecast from 3% to 4% to negative 3% to negative 4%, the whole as appears in **Exhibit P-43**, at page 34.
- 44.10. Upon Xebec's August 12, 2021 announcements, its stock price plummeted from \$3.75 at the close of trading on August 11, 2021 to \$3.43 at the close of trading on August 12, 2021, and continued to decline to reach a low of \$2.85 on August 17, 2021, the whole as appears in **Exhibit P-50**.
- 44.11. In its Q2 2021 MD&A, Xebec reported on the status of its internal controls and for the first time since its up-listing to the TSX in January 2021. In the MD&A's report on the internal controls, Xebec excluded certain entities (representing 64% of Xebec's combined revenue for the six months ended June 30, 2021) from the scope of its design of the internal controls. The report states that management evaluated the internal controls on the basis of this limited scope and concluded that the internal controls were designed properly. However, the report fails to state that management concluded that the internal controls were also effective, the whole as appears in **Exhibit P-43**, at pages 40-42.
- 44.12. The substantial limitation of the scope of the design of the internal controls, and the fact that nonetheless Xebec's management did not conclude that the internal controls were effective, constitute a further indication that Xebec failed to maintain internal controls necessary to enable the preparation of reliable financial statements that were free from material misstatements.
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VII. THE MISREPRESENTATIONS

A. Q3 2020 Interim Financial Statements and MD&A

45. The Q3 2020 Interim Financial Statements and MD&As included representations regarding Xebec's application of the "percentage of completion" revenue accounting method substantially as those outlined above, the whole as appears in **Exhibit P-1**, at pages 4-5.
 46. However, contrary to those representations:
 - a. Xebec failed to properly apply the "percentage of completion" revenue accounting method;
 - b. Xebec failed to properly recognize revenue based on appropriate costs incurred as of the date of the reporting of the financial statements in relation to the total costs of the contract meaning that, it overestimated the percentage of completion of the project and, thereby, it overstated and inflated the associated revenue from those projects;
 - c. Xebec improperly recognized inflated revenue on the basis of the "percentage of completion" revenue accounting method before delivery had occurred or title or risk had passed to the customer, requiring Xebec to reverse the revenue that was previously recognized when the contract was cancelled; and
 - d. in the circumstances, Xebec recognized revenues before it was probable that the economic value of the contract would flow to it, contrary to its stated significant accounting policies.
 47. Accordingly, the representations regarding Xebec's application of the "percentage of completion" revenue accounting method, and the assurances provided to investors that Xebec's management diligently apply it, were misrepresentations.
 48. Furthermore, Xebec's financial statements contained misrepresentations in that they improperly recorded revenue that ought not to have been recognized under Xebec's relevant accounting policies. Xebec's Q3 2020 Interim Financial Statements and MD&A reported revenues of approximately \$18.39 million for Q3 2020 and \$50.17 for Q1 through Q3 of 2020.
 49. These figures included revenues that Xebec subsequently was required to reverse as a result of its misapplication of the "percentage of completion" revenue accounting, as Xebec reported on March 12, 2021. Accordingly, the revenue was overstated, constituting a misrepresentation.
 - 49.1. Xebec's Q3 2020 disclosures contained the FY 2020 revenue forecast of \$70 to \$80 million, which constituted a misrepresentation within the meaning of the QSA.
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- 49.2. The revenue forecast of \$70 to \$80 million was provided to the market on November 10, 2020, and it was included in the Prospectus dated December 21, 2020, days before the conclusion of the fiscal year. The revenue forecast of \$70 to \$80 million purported to derive from Xebec's revenues up to and including December 2020, and it accordingly did not constitute forward-looking information.
- 49.3. Alternatively, to the extent that the revenue forecast of \$70 to \$80 million was forward-looking information, it constituted "forward-looking information in a financial statement required to be filed under [the QSA] or the regulations or in a document released in connection with an initial public offering", therefore the provisions of section 225.0.1 of the QSA do not apply.
- 49.4. In the further alternative, the revenue forecast of \$70 to \$80 million lacked a reasonable basis when made, therefore it constituted a misrepresentation.
50. (...).
51. (...).
52. (...).
53. In relation to Xebec's Interim Financial Statements and MD&A for Q3 2020, which are Impugned Documents, Sorschak and Dufour issued Certifications of Interim Filings on Form 52-109FV2 dated November 10, 2020, attesting to the veracity of those disclosure documents, as follows:

No misrepresentations: Based on my knowledge, having exercised reasonable diligence, the interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings.

Fair presentation: Based on my knowledge, having exercised reasonable diligence, the interim financial report together with the other financial information included in the interim filings fairly present in all material respects the financial condition, financial performance and cash flows of the issuer, as of the date of and for the periods presented in the interim filings;

the whole as appears in **Exhibits P-48 and P-49**.

54. As elaborated herein, Xebec's Q3 2020 interim filings contained misrepresentations and its Interim Financial Statements failed to fairly present the financial condition and financial performance of Xebec. Sorschak's and Dufour's certifications of Xebec's Q3 2020 Interim Financial Statements and MD&A were false, and they constituted misrepresentations.
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B. The Prospectus

55. The Prospectus incorporated by reference the Interim Financial Statements and MD&A for Q3 2020. It accordingly contained all the misrepresentations alleged herein to have been contained in those documents.
 56. Furthermore, the Prospectus incorporated by reference the audited annual financial statements of Xebec for fiscal year 2019, which is communicated herewith as **Exhibit P-10**.
 57. The audited financial statements for fiscal year 2019 represented that management of Xebec had established such ICFR as “management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error,” the whole as appears in **Exhibit P-10**, in the report of the Independent Auditors of Xebec, Raymond Chabot Grant Thornton LLP to the shareholders.
 58. That representation was a misrepresentation, as Xebec did not have effective ICFR regarding the proper application of the “percentage of completion” revenue accounting and/or proper accounting for expected credit losses.
 - 58.1. Furthermore, the fact that Xebec failed to maintain proper internal controls necessary to enable its preparation and presentation of reliable financial disclosures constituted a material fact that the Prospectus ought to have disclosed.
 59. Furthermore, the Prospectus contained a Certificate of the Corporation executed by Sorschak, Archambault, Beckett and Saint-Jacques, dated December 21, 2020, which stated as follows:

This short form prospectus, together with the documents incorporated by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus as required by the securities legislation of each of the provinces of Canada.
 60. The Prospectus also contained a Certificate of Underwriters executed by each of the Underwriters, dated December 21, 2020, which stated as follows:

To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus as required by the securities legislation of each of the provinces of Canada.
 61. As a result of the misrepresentations contained in the Prospectus, the Certificate of the Corporation dated December 21, 2020 as well as the Certificate of the
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Underwriters dated December 21, 2020, were false, and they constituted misrepresentations.

C. The March 12, 2021 News Release and Its Corresponding March 23, 2021 Material Change Report

- 61.1. Even though Xebec's March 12, 2021 news release and its corresponding material change report filed on March 23, 2021, partially corrected the misrepresentations alleged herein, they continued to contain two misrepresentations.
- 61.2. First, these disclosure documents of Xebec understated the amount of revenue reversals by at least approximately \$1.4 million (or approximately 11%). Xebec continued to address the revenue issues arising out the problems with its "legacy, production type RNG contracts," which continued to negatively impact its financial disclosures as of Q1 and Q2 2021.
- 61.3. Second, these disclosure documents of Xebec stated that the revenue reversals constituted "extraordinary items," which was reasonably understood to mean that they were one-time, non-recurring charges. This was a misrepresentation. As Xebec's management revealed at the end of the Class Period, the problems with its "legacy, production type RNG contracts" continued to negatively impact Xebec's financial results in Q1 and Q2 2021.

VIII. THE RESPONDENTS' DUTIES, WHICH THEY VIOLATED

A. Duties Applicable to Xebec and the Individual Respondents, Which They Violated

62. At all material times, the Individual Respondents were directors and officers of Xebec. As such, pursuant to section 122 of the *CBCA*, the Individual Respondents each had duties to:
 - a. act honestly and in good faith with a view to the best interests of the corporation; and
 - b. exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
 63. Furthermore, as members of Xebec's board of directors' Audit Committee, William Beckett and Guy Saint-Jacques had duties pursuant to Xebec's Audit Committee Charter to:
 - a. monitor Xebec's accounting and financial reporting practices and procedures;
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- b. ensure the adequacy of Xebec's internal accounting controls and procedures; and
- c. ensure the quality and integrity of Xebec's financial statements and other financial information provided by Xebec to shareholders;

the whole as appears in **Exhibit P-12**

- 64. Furthermore, as members of Xebec's board of directors' Governance Committee, Kurt Sorschak and William Beckett had duties pursuant to Xebec's Governance Committee Charter to enhance Xebec's implementation of sound governance practices and compliance with applicable laws, including securities laws, the whole as appears in **Exhibit P-13**.
- 65. Furthermore, as directors and officers of Xebec, the Individual Respondents had duties pursuant to Xebec's Statement of General Principles and Code of Ethics to conduct business in accordance with the highest level of ethical conduct and standards, which the Code of Ethics recognized as being "extremely important to the success of our Company," the whole as appears in **Exhibit P-14**.
- 66. Furthermore, Xebec and the Individual Respondents had responsibilities to properly communicate the material information regarding Xebec's business, its financial position and its financial performance, pursuant to the QSA and its subsidiary instruments, including National Instrument 51-102 (*Continues Disclosure Obligations*), National Instrument 52-109 (*Certification of Disclosure in Issuers' Annual and Interim Filings*), National Instrument 41-101 (*General Prospectus Requirements*) and National Instrument 45-106 (*Prospectus Exemptions*).
- 67. By failing to ensure that Xebec took proper care to ensure that its financial statements were free of misrepresentations, as set out above, Xebec and the Individual Respondents violated the duties applicable to them.

B. Duties Applicable to the Underwriters, Which They Violated

- 68. As the Underwriters and bookrunners acting under contract in relation to the Offering, the Underwriters had duties to act diligently and exercise such care and diligence as reasonably required to ensure that the Prospectus contained full, true and plain disclosure of the material information concerning Xebec and its financial position and its financial performance.
 - 69. The Underwriters were on notice of the heightened risk of misrepresentation, and they were required to exercise proper diligence in light of Xebec's rapid growth, the significant increase in its year-over-year revenue and accounts receivable, and the abrupt resignation of its Chief Financial Officer Louis Dufour on November 10, 2020.
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70. Of note, the abrupt resignation of Chief Financial Officer Louis Dufour occurred shortly before the highly critical audit season, in the course of Xebec's negotiation of the transformative acquisition of HyGear and shortly before the company's significant equity raise of over \$150 million in December 2020. These circumstances taken together would have or should have raised red flags and concern about the timing of the sudden resignation of Chief Financial Officer of Xebec, a nearly-billion-dollar market cap public issuer.
71. These circumstances constituted "red flags" suggesting a heightened risk of error or fraud, and they should have prompted the Underwriters to exercise a heightened professional skepticism and properly scrutinize Xebec's governance environment and its financial reporting practices.
72. Had the Underwriters exercised the due diligence required from them in all of these specific circumstances, they would have discovered that Xebec's ICFR were not effective in ensuring proper application of the "percentage of completion" revenue accounting, and/or that Xebec's revenue was accordingly not properly recognized or reported.
73. The duty of care of the Underwriters is informed by the QSA and its subsidiary instruments, including National Instrument 51-102 (*Continues Disclosure Obligations*), National Instrument 41-101 (*General Prospectus Requirements*) and National Instrument 45-106 (*Prospectus Exemptions*) and the policies and forms promulgated thereunder, the professional rules and standards applicable to underwriters in public offerings including the rules and guidelines established by the Investment Industry Regulatory Organization of Canada, the underwriting agreement between the Underwriters' and Xebec, and the Underwriters' internal policies.
74. By failing to exercise reasonable care and diligence to ensure that the Prospectus constituted full, plain and true disclosure of material facts, and that it did not contain misrepresentations, the Underwriters violated the duties applicable to them.

IX. THE CLASS'S DAMAGES

75. At all material times, common shares of Xebec traded in efficient markets that incorporated the publicly available information about Xebec, including the information regarding its financial position and its financial performance, into the price of its securities.
 76. The Respondents knew and intended that the market price or value of common shares of Xebec would reflect the information that they communicated to the market, including the misrepresentations alleged herein.
 77. The Applicants and the Class suffered damages and losses a result of the Respondents' misrepresentations and their improper conduct alleged herein, as
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they purchased or acquired the securities of Xebec at artificially inflated prices that as a result of the Respondents' misrepresentations and improper conduct alleged herein.

X. THE RIGHTS OF ACTION

A. Statutory Claim for Misrepresentation in the Primary Market

78. On behalf of all Class Members who purchased or acquired the securities of Xebec in the Offering, the Applicants plead and assert the statutory right of action prescribed in sections 218 and 221 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts.
79. This claim is being asserted in relation to the misrepresentations contained in the Prospectus, as particularized herein.
80. This claim is asserted against:
 - a. Xebec, which is the issuer;
 - b. Kurt Sorschak, Stéphane Archambault, William Beckett and Guy Saint-Jacques, who were the directors and officers of Xebec who signed the Prospectus; and
 - c. each of the Underwriters, who were the dealers under contract to Xebec in relation to the issuance and distribution of Xebec's securities in the Offering.

B. Statutory Claim for Misrepresentation in the Secondary Market

81. On their own behalf and on behalf of the other Class Members who purchased or acquired the securities of Xebec in the secondary market or pursuant to the acquisition of HyGear, the Applicants plead and assert the statutory right of action prescribed in section 225.8 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts.
 82. This claim is being asserted in relation to the misrepresentations contained in each of the Impugned Documents.
 83. This claim is being asserted against:
 - a. Xebec, which is the issuer;
 - b. Kurt Sorschak, William Beckett and Guy Saint-Jacques, who were directors of Xebec at the time of the release of each of the Impugned Documents;
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- c. Louis Dufour, who was an officer of Xebec at the time of the release of the Q3 2020 Interim Financial Statements and MD&A, as he authorized the release of those documents; and
- d. Stéphane Archambault, who was an officer of Xebec at the time of the release of the Prospectus, as well as Xebec's March 12, 2021 news release and its corresponding material change report issued on March 23, 2021, as he authorized the release of those Impugned Documents.

83.1. As for the March 12, 2021 news release, which is an Impugned Document, these Respondents:

- a. knew, at the time that the document was released, that the document contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time; or
- b. were guilty of a gross fault in connection with the release of the document.

84. The Applicants hereby seek the authorization of the Court to bring this claim.

85. The projected statement of claim is communicated herewith as **Exhibit P-15A**.

C. Article 1457 of the C.C.Q.

86. On behalf of themselves and all Class Members, the Applicants assert a civil right of action under art. 1457 C.C.Q. for breaches of their general duty of diligence owed to all Class Members.

87. The Respondents owed duties to the Applicant and the Class, which they violated, as a result of which the Impugned Documents were released while they contained misrepresentations. The Applicants and the other Class Members suffered damages and losses when those misrepresentations were corrected.

88. The Respondents' violations of their duty of diligence are particularized herein.

89. By authorizing, permitting and acquiescing to the publication and dissemination of false and misleading information by way of press releases and public statements, the Respondents did not fulfill the legal obligations.

90. The accuracy of the information set out in Xebec's financial statements in the Class Period underpinned the Class's dealing with Xebec's securities in the Class Period.

91. The Respondents committed a fault which caused significant monetary damages to the Class Members. The Respondents are solidarily liable to the Class Members.

92. The Respondents' faults, wilful acts and breaches of the Respondents' duties and applicable laws and regulations were committed in Québec.

93. Furthermore, pursuant to art. 1463 C.C.Q., Xebec is vicariously liable for the faults committed by the Individual Respondents or any other officer, director, agent or employee of Xebec.
94. As alleged herein, each of the Respondents committed a fault by allowing the publication of documents and dissemination of public statements which they knew or ought to have known contained misrepresentations of material facts. In doing so, the Individual Respondents breached the duty of diligence applicable to them under art. 1457 C.C.Q., as particularized herein.
95. In exchange for their work as the Company's management, the Individual Respondents received compensation by way of salaries and other consideration from Xebec.
96. While performing their duties, the Individual Respondents were legally under the direction and control of Xebec.
97. Xebec benefited directly from their misrepresentations and failure to make timely disclosure of material changes as it artificially inflated Xebec's stock price.
98. In view of the foregoing, Xebec is solidarily liable towards the Class Members for the faults committed by the Individual Respondents in the performance of their duties.

D. Oppression Remedy

99. On behalf of themselves and the other Class Members, the Applicants plead the oppression remedy pursuant to section 241 of the *CBCA*. This claim is being asserted against Xebec and the Individual Respondents.
 100. The Applicants and the other Class Members are complainants for the purposes of section 241 of the *CBCA*.
 101. The Applicant and the other Class Members had reasonable expectations that Xebec and the Individual Respondents comply with the duties applicable to them at law and by way of Xebec's constituting instruments and board charters.
 102. These Respondents violated the Applicants' and the Class Members' reasonable expectations. As a result:
 - a. the act or omissions of Xebec and the Individual Respondents effected a result;
 - b. the business or affairs of Xebec or were carried on or conducted in a manner; or
 - c. the powers of the directors of Xebec were exercised in a manner,
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that was oppressive or unfairly prejudicial to, or that unfairly disregards the interests of the Applicant and the other Class Members.

103. The Applicants and the Class plead that they are entitled to relief under section 241(3) of the *CBCA* to offset the effect of the oppressive conduct, including compensation for the damages and losses on their investments in the company's common shares pursuant to subsection 241(3)(j).

XI. THE CRITERIA OF ARTICLE 575 C.C.P.

A. The facts alleged appear to justify the conclusions sought

104. The Applicants allege that the Impugned Documents contained misrepresentations within the meaning of the *QSA*, and that the Respondents engaged in improper and oppressive conduct in violation of their duties at law and under Xebec's constituting corporate documents.
105. Specifically, as Xebec disclosed by way of its press release dated March 12, 2021, it had improperly applied the "percentage of completion" revenue accounting method and, as a result, it recognized revenues that had to be reversed when this error was discovered.
106. Xebec's March 12, 2021 disclosure furthermore revealed that, at the relevant time, Xebec did not have proper ICFR to ensure that the "percentage of completion" method was properly applied, Xebec's financial results were properly reported, and that they were free of errors and misstatements.
- 106.1. Subsequently, on March 25, 2021, Xebec disclosed that the revenue reversals were greater than \$12.9 million, and that the negative impact would continue through Q1 and Q2 2021 as Xebec continued to work through the order backlog that had caused the problem.
- 106.2. On August 12, 2021, Xebec furthermore acknowledged the negative impact of its "legacy, production-type RNG contracts", also disclosing that it had experienced project cancellations in Q4 2020.
- 106.3. On these disclosures, the market price of Xebec's shares declined to as low as \$2.85 per share, compared to a high of \$11.20 on January 18, 2021.
107. The Applicants and the other Class Members suffered damages and losses on their investments in Xebec's securities as a result of the Respondents' misrepresentations and their improper conduct.
108. These circumstances give rise to the following rights of action:
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- a. Statutory right of action for damages for misrepresentation in primary market pursuant to sections 218 and 221 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts;
- b. Statutory right of action for damages for misrepresentation in secondary market pursuant to section 225.8 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts;
- c. Article 1457 of the C.C.Q.; and
- d. Section 241 of the *CBCA*.

109. The foregoing claims and rights of action are well-founded in fact and in law.

110. In light of the above, and as detailed herein, the faults committed by the Respondents support the Applicant's and Class Members' claims.

B. The claims of the Class Members raise identical, similar or related issues of fact or law

111. In the context of the facts and the law pleaded herein, the principal issues of fact and law to be dealt with collectively are as follows:

- a. Did the Impugned Documents, or any of them, contain one or more misrepresentations? If so, what Impugned Documents contained what misrepresentations?
 - b. If the answer to (a) is yes, are any of the Respondents liable pursuant to sections 218 and/or 221 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts? If so, which Respondent is liable and to whom?
 - c. If the answer to (a) is yes, are any of the Respondents liable pursuant to section 225.8 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts? If so, which Respondent is liable and to whom?
 - d. Are any of the Respondents liable under article 1457 of the C.C.Q.? If so, which Respondent is liable and to whom?
 - e. Are any of the Respondents liable to pay compensation pursuant to the oppression remedy prescribed in section 241 of the *CBCA*? If so, which Respondent should pay compensation, and to whom?
 - f. If the answer to any of (b), (c), (d) and/or (e) is yes, what is the appropriate measure of the damages?
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- g. Are any directions of the Court necessary in order to determine individual issues, if any, or to administer the notice or a judgment to the Class? If so, what are those directions?
112. The majority of the issues to be dealt with are issues common to every Class member.
113. The interests of justice favor that this Application be granted in accordance with its conclusions.
114. Consequently, the Applicants respectfully request that this Honourable Court authorize the conclusions sought by the class action as being the following:

GRANT this class action on behalf of the Applicants and the Class;

GRANT the Applicants' and the Class' statutory claim for damages under sections 218 and/or 221 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts;

GRANT the Applicants' and the Class' statutory claim for damages under section 225.8 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts;

GRANT the Applicants' and the Class' claim for damages under article 1457 of the C.C.Q.;

GRANT the Applicants' and the Class' claim for compensation pursuant to section 241 of the CBCA;

CONDEMN the Respondents to solidarily pay to the Applicants and the Class compensatory damages for all monetary losses;

ORDER collective recovery in accordance with articles 595 to 598 of the C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the C.C.Q. and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action.

C. The composition of the group makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings

115. Xebec is a publicly-traded company and it has numerous investors. Accordingly, there are many Class Members. In this context, it would be impracticable for each Class Member to bring a separate action.
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116. There are thousands of investors that could be members of the putative Class and that are likely located throughout the world.
117. In this context, it would be impracticable for each member of the Class to bring a separate action.

D. The Applicants are in a position to properly represent the Class Members

118. The Applicant (...) Leclair (...) purchased the securities of Xebec during the Class Period, and held (...) those shares as of March 24, 2021. He (...) incurred losses and damages on his (...) investments in Xebec securities as a result of the Respondents' misrepresentations and misconduct alleged herein.
 - 118.1. (...).
 - 118.2. Mr. Maurice Leclair is a retail investor residing in Québec. He purchased 2,000 shares of Xebec on March 4, 2021, shortly before Xebec disclosed the operational and revenue issues on its long-term contracts. Mr. Leclair paid \$6.98 per share, exclusive of commissions, and he has incurred damages on his investment in Xebec's securities. It is respectfully submitted that Mr. Leclair is cognizant of his duties as a proposed class representative, is willing and able to fulfill those duties, and does not have a conflict of interests with the other Class Members.
 - 118.3. (...).
 - 118.4. Mr. Evert Schuringa is a retail investor residing in the Netherlands. Mr. Schuringa is a former shareholder of HyGear, which was acquired by Xebec in December 2020. Mr. Schuringa acquired approximately 18,416 shares of Xebec at a deemed price of \$6.03 per share in exchange for his HyGear shares. Mr. Schuringa has incurred damages on his investment in Xebec's securities, and he is in a position to represent the class members who acquired Xebec shares in connection with the acquisition of HyGear. It is respectfully submitted that Mr. Schuringa is cognizant of his duties as a proposed class representative, is willing and able to fulfill those duties, and does not have a conflict of interests with the other Class Members.
 119. The Applicants understand the requirements of time and dedication required of his role and is prepared to devote the required resources to carry forward this proposed class action on behalf of the Class.
 120. The Applicants have the resources, knowledge, time and dedication required to act as the Class Representative and to advance the case on behalf of the Class.
 121. The Applicants purchased or acquired Xebec's securities during the Class Period, held them until after the Corrective Disclosures, and suffered a financial loss.
 122. The Applicants have no conflict of interest with other Class Members.
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123. The Applicants have given the mandate to the undersigned attorneys to post the present matter on their firm website in order to keep the Class members informed of the progress of these proceedings and in order to more easily be contacted or consulted by said Class Members.
124. The Applicants have brought this action in good faith, in order to recover the losses and damages he and the other Class Members have suffered as a result of the Respondents' misrepresentations and their improper conduct alleged herein.
125. The Applicants have also brought this action in order to hold the Respondents accountable for their conduct, and to deter others from engaging in violations of securities laws.
126. The Applicants are able and willing to properly represent the Class.
127. The present Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

AUTHORIZE the institution of this class action in the form of an originating application on behalf of the Class defined as follows:

all persons and entities, wherever they may reside or may be domiciled, who purchased or otherwise acquired Xebec's securities 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, 2020 to March 24, 2021, both dates inclusive;

APPOINT the Applicants (...) Maurice Leclair (...) and Evert Schuringa as the Class Representatives representing the Class as described herein;

IDENTIFY the principal issues of law and fact to be treated collectively and **DECLARE** that the following questions of fact and law shall be dealt with collectively in this class action:

- a. Did the Impugned Documents, or any of them, contain one or more misrepresentations? If so, what Impugned Documents contained what misrepresentations?
 - b. If the answer to (a) is yes, are any of the Respondents liable pursuant to sections 218 and/or 221 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts? If so, which Respondent is liable and to whom?
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- c. If the answer to (a) is yes, are any of the Respondents liable pursuant to section 225.8 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts? If so, which Respondent is liable and to whom?
- d. Are any of the Respondents liable under article 1457 of the C.C.Q.? If so, which Respondent is liable and to whom?
- e. Are any of the Respondents liable to pay compensation pursuant to the oppression remedy prescribed in section 241 of the CBCA? If so, which Respondent should pay compensation, and to whom?
- f. If the answer to any of (b), (c), (d) and/or (e) is yes, what is the appropriate measure of the damages?
- g. Are any directions of the Court necessary in order to determine individual issues, if any, or to administer the notice or a judgment to the Class? If so, what are those directions?

IDENTIFY the conclusions sought by the action to be instituted as being the following:

GRANT this class action on behalf of the Applicants and the Class;

GRANT the Applicants' and the Class' statutory claim for damages under sections 218 and/or 221 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts;

GRANT the Applicants' and the Class' statutory claim for damages under section 225.8 of the QSA and, if necessary, the concordant provisions of the Equivalent Securities Acts;

GRANT the Applicants' and the Class' claim for damages under article 1457 C.C.Q.;

GRANT the Applicants' and the Class' claim for compensation pursuant to section 241 of the CBCA;

CONDEMN the Respondents to solidarily pay to the Applicants and the Class compensatory damages for all monetary losses;

ORDER collective recovery in accordance with articles 595 to 598 of the C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the C.C.Q. and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action;

APPROVE the notice to the Class in the form to be submitted to the Court;

ORDER the publication of the notice to the members of the Class no later than sixty (60) days after the date of the Judgment authorizing the class proceedings in accordance with Article 579 *CCP*;

ORDER that the deadline for a member of the Class to exclude themselves from the Class action proceedings shall be sixty (60) days from the publication of the notice to the Class members;

DECLARE that all Class members who have not requested their exclusion from the Class in the prescribed delay to be bound by any Judgment to be rendered on the class action to be instituted;

THE WHOLE WITH COSTS including experts' fees and all costs related to the publication of the notices to Class Members and the *timbre judiciaire*.

MONTREAL, (...) May 13, 2022

-and- **TORONTO, (...) May 13, 2022**

(s) Lex Group Inc.

(s) KND Complex Litigation

Lex Group Inc.

Per: David Assor

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