

SUPERIOR COURT

(Class action chamber)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-06-001135-215

DATE: October 19, 2023

BY THE HONOURABLE CHRISTIAN IMMER, J.S.C.

**MAURICE LECLERC
EVERT SCHURINGA**

Applicants

v.

FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)

KURT SORSCHAK

STÉPHANE ARCHAMBAULT

LOUIS DUFOUR

WILLIAM BECKETT

GUY SAINT JACQUES

DESJARDINS SECURITIES INC.

NATIONAL BANK FINANCIAL INC.

CANACCORD GENUITY GROUP INC.

RAYMOND JAMES LTD.

BEACON SECURITIES LIMITED

STIFEL NICOLAUS CANADA INC

TD SECURITIES INC.

Defendants

JUDGMENT

Approval of Transaction and Fees (Art. 590 C.C.P.)

[1] A transaction agreement was entered into between FormerXBC Inc., formerly known as Xebec Adsorption Inc. and the applicants on May 26, 2023. This Transaction provides for a global \$5 million payment to be distributed among the members of four subclasses having filed claims, according to preestablished proportions, after deduction of the Class counsel fees and disbursements and the Claims administrator costs.

[2] On June 30, 2023, the Court authorized the institution of the class action for the sole purpose of approving the Transaction (the “**Authorization Judgment**”). It approved the notices to be addressed to members for this purpose and a distribution mode¹.

[3] The preparation and distribution of the notices was duly carried out.²

[4] Applicants now ask this Court to approve the Transaction, the plan of allocation, the notices, the distribution plan and the claims forms and to set the claims bar deadline. They also ask the Court to approve the fees of class action counsel in a proportion of 30% of the \$5 million payment, plus taxes and disbursements (the “**Approval Application**”).

[5] The Tribunal will approve the Transaction and the fees for the reasons set out below, which will be presented in the three following sections : (1) the claims and the chronology of proceedings, (2) the examination of whether the settlement is fair, reasonable and equitable for all class members and (3) the examination whether the Class Counsel Fees are fair and reasonable.

ANALYSIS

1. The claims and the Chronology of Proceedings

[6] Xebec Adsorption inc. was headquartered in Montréal, Québec, and operated across Canada, the USA, the Middle East and Asia in the areas of cleantech solutions, industrial service and support and renewable gas infrastructure, through various subsidiaries. It established this global position as a result of numerous acquisitions.

[7] Among other acquisitions, Xebec purchased all the issued and outstanding shares of Green Holding B.V., the parent company of HyGear Technology and Services B.V. The purchase was completed through a combination of cash and stock consideration. For purposes of this transaction, the value of Xebec’s shares was deemed to be \$6.03. Pursuant to this transaction, class representative Evert Schuringa held and still holds 18,416 Xebec shares.

¹ *Leclair c. FormerXBC inc. (Xebec Adsorption inc.)*, 2023 QCCS 2416.

² See affidavit of Taek Shoo Shin, summarized at par. 44 of the Approval Application.

[8] To finance, amongst others, the Green Holding B.V. acquisition, Xebec used the proceeds of an offering which had a public and a private component.

[9] For the purposes of the public component, Xebec issued a preliminary prospectus and a final prospectus (collectively the "Prospectus").

[10] Once public, Xebec shares were traded on the TSX. Xebec made the required regulatory filings, including quarterly financial statements. Maurice Leclair purchased 2000 shares in the secondary market at a price of \$6.98 per share.

[11] A bright future was envisaged.

[12] Things did not turn out as expected.

[13] Schuringa and Leclair claim that "as a result of Xebec's disclosures on March 12, 2021, the Xebec's securities share price plummeted by approximately 31% overnight on March 21, 2021" and that a further decline occurred on March 25, 2021.

[14] They filed an application under s. 574 C.C.P. and s. 224.5 of the Quebec *Securities Act*³ ("QSA") to obtain the authorization to act on behalf of a class which, in its most recent iteration, is comprised of the following members (the "**Autorization Application**"):

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, other than the Excluded Persons;

"**Class Period**" means the period from November 10, 2019 to March 24, 2021, both dates inclusive;

"**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

³ RLRQ, c. V-1.1.

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.

[15] Leclair and Schuringa are of the view that Xebec improperly accounted for its revenue and provided deficient disclosures relative to its legacy, production-type renewable natural gas (“RNG”) contracts and that it misrepresented the true state of its finances. They summarize their position as follows in the motion to authorize the transaction:

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.

[16] They advanced four causes of action giving rise to their claim for damages, namely: misrepresentations in the primary market (s. 218 and following of the QSA); misrepresentations in the secondary market (s. 225.8 QSA); extracontractual liability as a result of a fault (art. 1457 CCQ) and an oppression remedy (s. 241 and following of the *Canadian Business Corporations Act*).

[17] They are of the view that aside from Xebec, the two following groups are also responsible for their losses:

17.1. Underwriters: 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. who all acted as underwriters.

17.2. Directors and officers: Kurt Sorschack, Xebec's president and CEO and a director and the Chairman of the board of directors, Louis Dufour its CFO until his resignation on November 10, 2020 and his replacement Stéphane Archambault, as well as William Beckett and Guy Saint-Jacques who acted as directors and members of the Audit Committee.

[18] Mr. Justice Donald Bisson was named to carry out the case management of the Authorization Application. Certain preliminary measures were argued and decided and the Authorization Application was set to be heard by Justice Bisson on December 6, 2022.

[19] On September 29, 2022, the undersigned, relying on his powers under the *Companies' Creditors Arrangement Act* ("CCAA"),⁴ issued an Initial First Day Order ("IFO") among which conclusions, a stay or proceedings was ordered both against Xebec as well as against its directors and officers. As a result, the Authorization Application was stayed.

[20] Schuringa and Leclair then attempted to have this stay lifted. They were unsuccessful, the undersigned refusing to do so.⁵

[21] An agreement in principle then intervened in April 2023 amongst the parties.

[22] Case management of the class action was then transferred to the undersigned.

[23] A limited stay of the CCAA proceedings was ordered for the sole purpose of approving the transaction.⁶

[24] As already indicated, a judgment authorized the Authorization Application for the sole purpose of approving a transaction (the "Authorization Judgment"). The Authorization Judgment ordered that any person who wished to opt-out from the class action and the Settlement Agreement could do so by delivering a notice before August 31, 2023. Only one member properly did, even though three manifested their intention to do so⁷.

⁴ R.S.C. , 1985, c. C-36.

⁵ *Arrangement relatif à Xebec Adsorption Inc.*, 2022 QCCS 3888.

⁶ *Arrangement relatif a FormerXBC Inc. (Xebec Adsorption inc.)*, 2023 QCCS 1451.

⁷ It is an objection received by Class Counsel on July 17, 2023, filed by one person, holding 330 shares.

[25] The Authorization Judgment also ordered class members who wished to object to the Court approval of the Transaction to do so on or before September 8, 2023. One person filed a contestation, but only regarding the Counsel fees.⁸ This person was not present at the hearing to explain his point of view.

[26] The hearing to approve the Transaction was held on September 29, 2023. No one was present to contest. The Fonds d'aide aux actions collectives was present but had no issue with the Transaction.

2. Is the Transaction fair, reasonable and equitable to all class members?

2.1 The governing principles

[27] The Court must approve the Transaction if it is fair and equitable and if it is in the members' best interest who will be bound by it.

[28] As Justice Mark Schragger of the Québec Court of Appeal wrote, the Court must « garder à l'esprit les grands principes et objectifs sous-jacents aux actions collectives, soupeser les avantages et inconvénients du règlement, de même que les concessions réciproques, les risques d'un procès et les coûts à encourir »⁹. Justice Schragger explains that the « évaluation du caractère juste et raisonnable de la transaction s'articule souvent autour des critères suivants »¹⁰, namely :

- Les probabilités de succès du recours;
- L'importance et la nature de la preuve administrée;
- Les modalités, termes et conditions de la transaction;
- La recommandation des avocats et leur expérience;
- Le coût anticipé et la durée probable du litige;
- Le cas échéant, la recommandation d'une tierce personne neutre;
- La nature et le nombre d'objections à la transaction;
- La bonne foi des parties et l'absence de collusion

⁸ Exhibit R-10.

⁹ *A.B. v. Clercs de Saint-Viateur du Canada*, 2023 QCCA 527, par. 34 [« A.B. »], citing *Association québécoise de lutte contre la pollution atmosphérique c. Groupe Volkswagen du Canada inc.*, 2022 QCCS 2186.

¹⁰ *Id.*

[29] These criteria are not cumulative; they must be appreciated and weighed as parts of a whole. The Court shares Justice Lukasz Granosik's view that « la bonne foi des parties et l'absence de collusion » is a « condition *sine qua non* de la validité de la transaction envisagée ». ¹¹

[30] Several judgments relying on Justice Bisson's reasons in *Schneider* ¹² also take into consideration two further factors: the representatives' agreement and the number of exclusions.

[31] The principles of procedure warrant that settlements must be favoured. This entails that it must be accepted that compromises are to be made by all sides. ¹³

2.2 Applying the criteria to the facts at hand

[32] In the present matter, there is no recommendation of a neutral third party. Also, the representatives, Schuringa and Leclair agree with the settlement and have filed affidavits to confirm this ¹⁴. The Court will therefore examine the other criteria discussed above.

2.2.1 The probabilities of success

[33] Securities litigation is a complex matter.

[34] The claims which are being pursued by Plaintiff touch both on alleged misrepresentations in the primary (s. 217 and following QSA) and in secondary market claims (s. 225.2 QSA). If the statutory conditions are met, a plaintiff may rely on the presumptions set out at sections 225.0.2 and s. 225.12 QSA of the QSA. Specific defenses are set out to rebut primary market and secondary market liability. ON the other hand, if the claims are pursued under art. 1457 CCQ, then fault, damages and causality must be proven as the QSA presumptions do not apply.

[35] Secondary market claims are subject to the court's prior authorization which will be granted if the action is brought in good faith and if there is a reasonable possibility that it can be resolved in favour of plaintiff (S. 225.4 QSA). This reasonable possibility threshold is a "different and higher standard than the one applicable to proposed class actions, which requires that "the facts alleged appear to justify the conclusions sought".

¹¹ *MacDuff v. Vacances Sunwing inc.*, 2023 QCCS 343, par. 16; permission d'appeler accordée: *MacDuff c. Vacances Sunwing inc.*, 2023 QCCA 476.

¹² *Schneider (Succession de Schneider) v. Centre d'hébergement et de soins de longue durée Herron inc.*, 2021 QCCS 1808

¹³ *Abihsira c. Stubhub inc.*, 2019 QCCS 5659, par. 20.

¹⁴ They have both filed affidavits indicating their support.

The applicant must “offer both a plausible analysis of the applicable legislative provisions, and some credible evidence in support of the claim”¹⁵.

[36] In this case, things were complicated because after the Authorization Application was filed, Xebec sought CCAA protection.

[37] Applicants claims are directed at three defendant groups. The recovery potential for each defendant group must be canvassed.

- **Xebec**

[38] Proving the existence of financial misrepresentations is difficult and requires extensive expert evidence.

[39] Setting aside these difficulties, and focusing only on potential of recovery, the only potential source of recovery from Xebec is the insurance policy proceeds. Indeed, as a result of the CCAA proceedings, Xebec’s business and that of all its direct or indirect subsidiaries have been, or are in the final stages of being liquidated. Substantial proceeds have been collected and a distribution method is being finalized. A large part of the proceeds has or will be paid to the secured creditors. If plans of arrangement are prepared and approved for some but not all subsidiaries of Xebec, sums will be distributed to the ordinary creditors of these entities. They will not cover 100% of the value of the claims which were filed and accepted by the Monitor; far from it.

[40] As the undersigned has already explained in the context of his judgment on the lifting of the stay of proceedings,¹⁶ the claims which the Class members would have pursued are “equity claims” within the meaning of ss. 2(1) of the CCAA. If their claims are recognized and liquidated, ss. 6(8) of CCAA still provides that no compromise or arrangement “can be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid”. Hence, no funds will be paid to Xebec’s shareholders.

[41] Resort may be had to an insurance policy which has a maximum \$10 million pay-out. This is the maximum value that could be collected from Xebec. It cannot be excluded that the insurer would raise coverage issues. The \$5 million settlement is 50% of the policy’s maximum pay out value.

- **Officers and directors**

[42] Defences exist for the Directors and Officers if misrepresentations are proven.

¹⁵ *Nseir c. Barrick Gold Corporation*, 2022 QCCA 1718, par. 40.

¹⁶ *Arrangement relatif à Xebec Adsorption Inc.*, 2022 QCCS 3888

[43] Be that as it may, the officers and directors will undoubtedly seek releases in the CCAA proceedings or plans of arrangements. Without deciding whether it is appropriate to grant such releases and what should be the extent thereof, the prospects of continuing the claim against the officers and directors are uncertain.

[44] If these obstacles are overcome, then the question of financial recovery must be addressed. The directors and officers are individuals. They appear to be covered by the same insurance policy as Xebec and are therefore included in the same aggregate limit. Once again, coverage could be an issue.

- **The Underwriters**

[45] The claims against the Underwriters would be limited to the primary market claimants. The same challenges would be posed to establish the existence of misrepresentations.

[46] An added obstacle comes from the fact the Underwriters have a contractual indemnification claim which would allow them to be indemnified by Xebec and its directors and officers in the event of misleading representations. This in turn will lead to a debate as to the Underwriters responsibility if the directors and officers are released.

- **Conclusion**

[47] This summary analysis brings to the fore that there are significant challenges to obtain a favourable judgment against each of the three groups of defendants. There are even greater challenges to collect any award.

[48] The analysis of this first factor therefore weighs heavily in favour of the settlement.

2.2.2 The extent and nature of the proof to be adduced, the duration of any trial and the anticipated cost to litigate the claim

[49] The litigation, if it were to go ahead, would be a drawn-out affair. A long and hard-fought battle would be waged throughout at least three distinct steps. First, the CCAA stay would need to be lifted. Also, any releases which may be sought would have to be contested by the Applicants. Then, authorization would need to be obtained, which would entail meeting the QSA reasonable possibility threshold. Thirdly, once authorization was granted for some or all defendants, then it would need to be proven that the value of the long-term contracts was misrepresented. This would be arduous and would require significant expert evidence. A long trial would be necessary.

[50] This factor therefore also weighs heavily in favour of approving the settlement.

2.2.3 The conditions and modalities of the transaction and its exclusions

[51] In the period leading up to the Transaction, a mediation was first conducted by Mr. Joel Wiesenfeld, a mediator who during his practice was recognized as one of Canada's leading securities litigation lawyers. It was unsuccessful.

[52] Plaintiffs explain in their Approval Application that this was "followed by hard fought, arm's length negotiations amongst the parties over several months". Despite the positive outcome, the Transaction still calls for Class members to make substantial concessions.

[53] Firstly, Xebec and the directors and officers are not contributing to the settlement, other than through their insurer, for an amount of \$5 million which represents half of the full amount of potential available coverage. Xebec has no means to make a contribution. The directors and officers will, no doubt, seek releases in the course of the CCAA proceedings either through arrangements or orders. The Court reiterates that it is not taking any position on the validity or proper scope of any such eventual releases, but clearly this constitutes an important factor in assessing the reasonability of the concessions which are made.

[54] Secondly, the Underwriters are not contributing financially to the settlement even though they will benefit from a release. The Plaintiffs argue that this is appropriate because the release provides an essential level of certainty and finality. The Court agrees. Indeed, Xebec has by contract undertaken to indemnify the Underwriters and, absent release, a risk of a recursory claim by the Underwriters against Xebec's insurer or the directors and officers would persist, were Xebec shareholders to file claims against the Underwriters. Hence, the lack of release and the lingering perspective of a claim against the Underwriters would have constituted a potentially insurmountable obstacle to settle this matter. Accounting for the underlying risks canvassed above, and given that the release lifts an insurmountable obstacle to settlement, releasing the Underwriters appears to be a reasonable concession.

[55] Thirdly, in the Plan of Allocation referred to in the Transaction, Class members will be regrouped into one of four sub-classes which will be treated differently. The four groups are described as follows in the Approval Application:

- a. Secondary market group: Claimants who purchased or otherwise acquired Xebec's securities in the secondary market;
- b. Prospectus Offering Group: 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. Private Placement Group: 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. HyGear Transaction Group: 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.

[56] Each Class member will be assessed a Compensable Loss which will be calculated by using the following formula:

$$\text{Compensable Loss} = \text{Gross Loss} \times \text{Applicable Risk Adjustment}$$

[57] In their Approval Application, Plaintiffs describe as follows how Gross Loss will be calculated:

- 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

[58] A variable risk adjustment is made to the Gross Loss of the four distinct groups of claimants. This reflects a nuanced analysis which takes into account the relative strengths and weaknesses of the position of each of these groups.

Category	Applicable Risk Adjustment
Secondary Market	35%
Prospectus Offering	50%
Private Placement	10%
HyGear Transaction	35%

[59] The Plan of Allocation offers useful summary tables which summarize who will be entitled to a Compensable Loss.

[60] For the Secondary Market purchasers, the following table is provided:

DATE OF PURCHASE OF XEBEC COMMON SHARES	HOLD-THROUGH	GROSS LOSS	RISK ADJUSTMENT
Common shares purchased at any time between November 10, 2019 and March 11, 2021	Common shares sold on, or at any time before, March 11, 2021	NIL	N/A
Common shares purchased at any time between November 10, 2019 and March 11, 2021	Common shares sold at any time between March 12, 2021 and April 8, 2021	# of common shares X (Purchase Price - Selling Price)	0.35
Common shares purchased at any time between November 10, 2019 and March 11, 2021	Common shares sold on or at any time after April 9, 2021, or which continue to be held	# of common shares X (Purchase Price - \$4.58)	0.35
Common shares purchased at any time between March 12, 2021 and March 24, 2021	Common shares sold on, or at any time before, March 24, 2021	NIL	
Common shares purchased at any time between March 12, 2021 and March 24, 2021	Common shares sold at any time between March 25, 2021 and April 8, 2021	# of common shares X (Purchase Price - Selling Price)	0.35
Common shares purchased at any time between March 12, 2021 and March 24, 2021	Common shares sold on or at any time after April 9, 2021, or which continue to be held	# of common shares X (Purchase Price - \$4.58)	0.35

[61] For the Prospectus Purchasers category, the following table is provided:

HOLD-THROUGH	GROSS LOSS	RISK ADJUSTMENT
Common shares sold on, or at any time before, March 11, 2021	NIL	N/A
Common shares sold at any time between March 12, 2021 and April 8, 2021	# of common shares X (\$5.80 – Selling Price)	0.50
Common shares sold on or at any time after April 9,	# of common shares X (\$5.80 - \$4.58)	0.50

2021, or which continue to be held		
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[62] For the Private Placement, the following table is provided:

HOLD-THROUGH	GROSS LOSS	RISK ADJUSTMENT
Common shares sold on, or at any time before, March 11, 2021	NIL	N/A
Common shares sold at any time between March 12, 2021 and April 8, 2021	# of common shares X (\$5.80 – Selling Price)	0.10
Common shares sold on or at any time after April 9, 2021, or which continue to be held	# of common shares X (\$5.80 - \$4.58)	0.10

[63] For the HyGear purchasers, the following table is provided:

HOLD-THROUGH	GROSS LOSS	RISK ADJUSTMENT
Common shares sold on, or at any time before, March 11, 2021	NIL	N/A
Common shares sold at any time between March 12, 2021 and April 8, 2021	# of common shares X (\$6.03 – Selling Price)	0.35
Common shares sold on or at any time after April 9, 2021, or which continue to be held	# of common shares X (\$6.03 - \$4.58)	0.35

[64] A claims process will be put in place, run by the claims administrator Velvet Payment (the “Claims Administrator”). The process they will follow will include the following steps:

- 64.1. Class Counsel will pay Plaintiffs full compensable loss, namely \$1,680 for Leclerc and \$9,346.12 for Schuringa and will deduct the fees and Class Counsel disbursements authorized by this judgment.
- 64.2. Class Counsel will then transfer the remaining balance in an escrow account to be designated by the Claims Administrator.
- 64.3. The Claims Administrator will then, as per s. 35 of the Plan of Allocation, make payments once the claim is assessed to claimants, from the Escrow

Account, on a prorated basis¹⁷. The Claims Administrator will not make payments to Claimants whose allocation is less than \$25.00.

[65] If there remains a reliquat in the Escrow Account, it will be dealt with as follows:

36. If the Claims Process Escrow Account is in a positive balance (whether by reason of tax refunds, un-cashed cheques or otherwise) after one hundred and eighty (180) days from the date of distribution of the Settlement Distribution Fund, the Claims Administrator shall, if feasible, allocate such balance among Claimants with valid and approved claims with allocations exceeding \$25.00 in an equitable and economic fashion. Thereafter or if not feasible, any remaining funds will be distributed as follows:

(a) The Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives, c. F-3.2.0.1.1, r.2 will apply to the portion of any remaining balance.

(b) If the Claims Administrator determines, at its discretion, that funds that cannot be economically allocated among Claimants, the Claims Administrator shall, after payment is made to the Fonds d'aide aux actions collectives, hold the balance in the Escrow Account pending further directions of the Court, and if appropriate, seek cy-près payment of such excess fund to a recipient to be approved by the Court.

[66] Plaintiffs argue that the Transaction is generally consistent with settlements achieved and approved by courts in Ontario and British Columbia¹⁸. Such comparisons have a limited value, because each matter is uniquely fact driven. Nevertheless, the Court does recognize that the \$5 million Transaction value is on the high end of the spectrum.

[67] Taking all this into account, the Court deems that the modalities of the Transaction weigh in favour of its approval.

2.2.4 Class Counsel's recommendations and their experience

[68] Class Counsel is composed of a team which includes Me David Assor of Lex Group on the one hand and Mes Eli Karp and Sage Nematollahi on the other. The latter hold authorizations of the Barreau du Québec to act in the present matter. Me Assor has extensive experience in acting for plaintiffs in class actions in Québec. Mes Karp and Nematollahi also have extensive class action experience in the province of Ontario, and more specifically in the area of securities class actions.

¹⁷ See S. 35 of the Plan of Allocation.

¹⁸ *Bodnarchuk v. Guestlogix Inc.*, 2020 ONSC 3775; *Miller v. FSD Pharma, Inc.*, 2021 ONSC 911; *Pinizzotto v. TILT Holdings, Inc.*, 2021 ONSC 8001; *Haase v Reliq Health Technologies Inc.*, 2022 BCSC 1754.

[69] They all recommend that the Transaction be approved. This therefore speaks in favour of approving the Transaction.

2.2.5 Objections

[70] Only one objection has been filed. It does not deal with the merits of the Transaction. Rather, it objects to the amount of fees claimed by Class Counsel.

[71] It must be noted that Class Counsel were in contact with some 560 investors by email. The fact that only one objection was filed which does not deal with the modalities of the Transaction, also speaks in favour of the Transaction.

2.2.6 Conclusion

[72] The criteria set out in *A.B.* when applied to the case at hand all weigh in favour of the Transaction's approval even though concessions must be made, more by some group of claimants than by others. Given the limited insurance proceeds available for a settlement, the Court concludes that the Transaction is fair, reasonable and equitable for all the Class members and must be approved.

3. The Class Counsel Fees

[73] As per art. 593 C.p.c., the Court must approve the fees and disbursements of Class Counsel.

[74] Class Counsel are seeking approval of :

- 74.1. Fees equivalent to 30% of the \$5 million settlement, namely \$1,5 million plus GST and QST, totalling \$224,625.
- 74.2. Disbursements totalling \$44,380.07.

[75] An objection was filed by a member stating that the percentage should be limited to 20% stressing that this is “ une part appréciable du règlement négocié ” and that the “ objectif d'un recours collectif doit être l'intérêt de ceux qui ont été lésés et non pas de profiter démesurément aux avocats ”.¹⁹

[76] Representatives Schuringa and Leclair signed mandates with Class Counsel. Thereby, they agree that the fees shall be the higher of (1) 30% of the total amount received and (2) an amount equal to multiplying the total number hours worked in accordance with their hourly rate, which range between \$350 to \$750 per hour multiplied by four.

¹⁹ Exhibit R-10.

[77] The lawyers working for KND Complex Litigation logged time at the following rates:

- 77.1. Me Karp, a partner, who is a member in good standing of the Law Society of Ontario in 2007 and who is also a member of the Law Society of British Columbia, logged 55.9 hours at an hourly rate of \$750.
- 77.2. Me Nematollahi, a partner, who after having completed an LL.M at Harvard Law School in 2010, has been a member of the Law Society of Ontario since 2012 and of British Columbia since 2022, logged 652.27 hours, initially at an hourly rate \$625 which progressively increased to an hourly rate of \$750.
- 77.3. Mr. Davarinia, a partner, logged 64.8 hours, initially billed at \$500 per hour which then increased to \$600 per hour.
- 77.4. Mr. Tae Hook Shin, an associate, logged 905.43 hours initially at an hourly rate of \$150 which progressively increased to an hourly rate of \$335.

[78] Me Assor, a member of the Quebec Bar since 2021 and a member of the Ontario Law Society since 2021, logged 231.05 hours at a rate of \$750. Me Joannie Lévesque of his firm logged 63.15 hours.

[79] Class Counsel have agreed that KND Complex Litigation will be receiving 86,5% of the fees, while Lex Group will receive the other 13,5%.

[80] Justice Schragger writing for the Court of Appel in *A.B.* explains what must guide courts when they are called to approve plaintiff's counsel fees and disbursements²⁰:

- 80.1. Retainer agreements are presumed to be valid and can only be set aside if their execution would prove to be unfair and unreasonable for the members « dans les circonstances de la transaction examinée ». The agreement does not bind the Court²¹.
- 80.2. Art. 102 of the *Code of Professional Conduct of Lawyers* provides a list of factors to determine whether the fees are fair and reasonable.²² This list is not exhaustive.
- 80.3. To be reasonable, contingency rates must be between 15 % à 33 % of the settlement funds²³.
- 80.4. Each case « en est un d'espèce ». There is no « formule magique qui peut

²⁰ *A.B. c. Clercs de Saint-Viateur du Canada*, 2023 QCCA 527.

²¹ *Id.*, par. 51.

²² *Id.*, par. 52-53.

²³ *Id.*, par. 58.

en tout temps et en toute situation garantir que les honoraires seront raisonnables au final ».

[81] Mr. Justice Schragger then explains the multiplier factor model. It consists of multiplying the hours worked by the lawyers by a multiplier which takes into account the risk assumed by the lawyers. Multipliers of 2 to 3 are held to be acceptable by courts but this does not mean that a multiplier greater than that cannot be justified in specific circumstances.²⁴

[82] Having set out these factors, Justice Schragger summarizes as follows the appropriate evaluation method:

[64] (...)le processus d'analyse devrait débuter par l'évaluation de tous les autres critères prévus dans le Code de déontologie et la prise en compte du risque assumé par les avocats. Si on en arrive à la conclusion que le montant (pas le pourcentage) d'honoraires payable est raisonnable, l'analyse peut s'arrêter dans l'exercice de la discrétion du juge. Par contre, si le montant d'honoraires semble déraisonnable, il convient dès lors de prendre en compte les heures consacrées au dossier et d'appliquer un facteur multiplicateur pour ajuster le montant des honoraires pour que celui-ci devienne raisonnable.

[83] In the present case, the 30% contingency fee is within the acceptable range, even though it is close to the maximum.

[84] In order to determine whether the fees fair and reasonable, resort must be had to the factors set out at s. 102 of the *Code of Professional Conduct of Lawyers*²⁵, namely :

- (1) experience;
- (2) the time and effort required and devoted to the matter;
- (3) the difficulty of the matter;
- (4) the importance of the matter to the client;
- (5) the responsibility assumed;
- (6) the performance of unusual professional services or professional services requiring special skills or exceptional speed;
- (7) the result obtained;
- (8) the fees prescribed by statute or regulation; and

²⁴ *Id.*, par. 59 et 62.

²⁵ RLRQ, c. B-1, r. 3.1.

(9) the disbursements, fees, commissions, rebates, costs or other benefits that are or will be paid by a third party with respect to the mandate the client gave him. Le Tribunal estime que oui.

[85] Mes Assor, Karp and Nematollahi are very seasoned class action counsel. Securities litigation is complex, and, clearly, Mes Karp and Nematollahi bring a wealth of experience to the table. At the outset, Class Counsel assumed a significant risk and advanced significant disbursements. The file has progressed at a brisk pace.

[86] A wrench was thrown in the machinery with Xebec's filing for CCAA protection and the ensuing a stay of proceedings in favour of Xebec and its directors and officers in the fall of 2022. This made a complex matter even more complex.

[87] Class counsel continued forging ahead seeking a lifting of the stay and carrying out mediation and robust negotiations.

[88] The Court has reviewed the time sheets. The time logged is coherent with the tasks to be completed. However, the rates are excessive insofar as all tasks, however simple, are billed at rates which should be reserved for more complex tasks. In the case of Lex Group the average hourly rate, arrived at by dividing the total hours by the value is approximately \$650. For KND Complex Litigation, the average rate is close to \$610. It is true that it does not include all the time to be incurred to complete matters. This file called for professional services requiring special skills. Nevertheless, the Court would have expected an average rate closer to \$450.

[89] That being said, the Court reiterates that the risk level already high for a securities litigation file on full contingency, was taken several notches higher, when Xebec filed for CCAA protection.

[90] The result which was obtained is very favourable to the class.

[91] This leads the Court to conclude that the fees are fair and reasonable within the meaning of s. 102 of the *Code of Professional Conduct of Lawyers*.

[92] Even if it had concluded otherwise and used an average hourly rate of \$450, a multiplier of 3 would have been appropriate, which would have led to an amount of fees greater than the \$1,5 million which are sought.

[93] The Court has also examined whether it should reduce the amount of the settlement for purposes of calculating the fees by deducting the Claims Administrators \$165,000 fees. In the present case, contrarily to what was the case in *Frères du Sacré-Coeur*,²⁶ the claims do not have to be arbitrated. Velvet Payment will collect the

²⁶ *F. c. Frères du Sacré-Coeur*, 2021 QCCS 3621.

information electronically for the Claimants, will calculate the Compensable Loss and will carry out payment. This simple process is an added benefit to the claimants.

4. NOTICES

[94] The Court has reviewed the annexed Claim Form (R-3), the Short (R-5) and Long Form notice (R-4) and the publication plan set out paragraph 7.2 of the Transaction – save for subparagraphs (d) and (g)) and finds them to be acceptable. The Court further holds that the Claims Bar Deadline should be set at April 30, 2024.

POUR CES MOTIFS, LE TRIBUNAL:	FOR THESE REASONS, THE COURT:
<p>[95] ORDONNE que les définitions trouvées dans l'Entente de Règlement (annexé au jugement <i>Leclair c. FormerXBC inc. (Xebec Adsorption inc.)</i>, 2023 QCCS 2416) trouvent application dans le présent Jugements;</p>	<p>ORDERS that capitalized terms used herein have the meaning ascribed in the Settlement Agreement (annexed to the judgment <i>Leclair v. FormerXBC inc. (Xebec Adsorption inc.)</i>, 2023 QCCS 2416);</p>
<p>[96] 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>[97] ORDONNE et DÉCLARE que l'Entente de règlement (y compris son préambule et ses Annexes se trouvant annexé au jugement <i>Leclair c. FormerXBC inc. (Xebec Adsorption inc.)</i>, 2023 QCCS 2416) est juste, raisonnable et dans l'intérêt des Membres du Groupe de Règlement, est approuvée en vertu de l'article 590 C.p.c., doit être mise en œuvre selon ses termes, 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 as it appears annexed to the judgment in <i>Leclair v. FormerXBC inc. (Xebec Adsorption inc.)</i>, 2023 QCCS 2416) 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>[98] 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>[99] 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>[100] 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 fidéicomis (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>[101] 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>[102] 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 Releasors 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>[103] 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, chaque 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>[104] 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>[105] APPROUVE la forme et le contenu du Plan de Répartition (annexé au jugement <i>Leclair c. FormerXBC inc. (Xebec Adsorption inc.)</i>, 2023 QCCS 2416) 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 (and annexed to the judgment in <i>Leclair c. FormerXBC inc. (Xebec Adsorption inc.)</i>, 2023 QCCS 2416) in their French and English versions and appoints Velvet Payments Inc. as the Claims Administrator;</p>
<p>[106] APPROUVE la forme, le contenu et le mode de diffusion de la version détaillée du deuxième avis (Pièce R-4 et Annexe A au présent jugement) et de la version abrégé du deuxième avis (Pièce R-5 et Annexe B 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 A to this judgment) and the Short Form Second Notice (Exhibit R-5 and Annex B to this judgment) in their French and English versions;</p>
<p>ORDONNE aux Demandeurs à diffuser la version détaillée du deuxième avis et la version abrégé du deuxième avis 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 30 novembre 2023;</p>	<p>ORDERS Petitioners to disseminate the Long Form Second Notice and the Short Form Second Notice 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 November 30, 2023;</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 30 avril 2024, 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 April 30, 2024, 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 pourra être 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 may 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>



CHRISTIAN IMMÉR, J.S.C.

Mtre David Assor
LEX GROUP INC.
Mtre Eli Karp
KND LAW LLP
Attorneys of applicants

Mtre Jessica Harding
OSLER, HOSKIN & HARCOURT, S.E.N.C.R.L./S.R.L.
Attorney of defendants

Mtre Nicolas Mancini
FASKEN MARTINEAU DUMOULIN SENCRL, S.R.L.
Attorney of underwriters

Mtre Nathalie Guilbert
FONDS D'AIDE AUX ACTIONS COLLECTIVES
Attorney of fonds d'aide aux actions collectives

Hearing date: September 29, 2023

ANNEXE A

SETTLEMENT OF XEBEC ADSORPTION INC. SECURITIES CLASS ACTION

DID YOU ACQUIRE SHARES OF XEBEC ADSORPTION INC. BETWEEN NOVEMBER 10, 2019 AND MARCH 24, 2021?

A settlement approved by the Court may affect you. Please read this notice carefully.

A proposed class action was authorized for settlement purposes only against FormerXBC Inc., formerly Xebec Adsorption Inc. ("Xebec"), Kurt Sorschak, Stéphane Archambault, Louis Dufour, William Beckett, Guy Saint Jacques, 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., on behalf of:

All persons and entities, 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 period from November 10, 2019, to March 24, 2021, inclusively, 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, other than the "Excluded Persons".

Excluded Persons means:

- (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.

This class action alleges that the Defendants made misrepresentations in certain Xebec disclosure documents.

On May 26, 2023, the Plaintiffs and Xebec executed an agreement to settle this class action (the "Settlement"). **The Defendants deny any wrongdoing or liability on their part and the Court has not made any findings of wrongdoing or liability in respect of the Defendants.**

Your legal rights are affected even if you do nothing. Please read this notice carefully.

SUMMARY OF THE SETTLEMENT:

Under the Settlement, CAD \$5,000,000 (the "Settlement Amount") will be paid in full and final settlement of all claims against the Defendants, including Class Counsel's fees, applicable taxes and expenses, and interest, in exchange for a full release and settlement of the class action.

The Superior Court of Québec ("Court") has approved the settlement of this class action. The Court also awarded Class Counsel legal fees in the amount of CAD \$1,500,000, which is 30% of the Settlement Amount, plus taxes, as well as their disbursements, to be paid from the Settlement Amount. Class Counsel has not been paid as the matter has proceeded and has funded all of the out-of-pocket expenses of conducting the litigation.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

You have two options:

1. SUBMIT A CLAIM FORM:

Fill out a Claim Form online and submit it with supporting documentation by the deadline to apply for compensation. The deadline for Claim Form submission is •, 2023.

2. DO NOTHING:

Give up any right to compensation.

HOW TO MAKE A CLAIM FOR COMPENSATION:

CLAIMS FOR COMPENSATION MUST BE RECEIVED ON OR BEFORE •, 2023

Each Class Member must submit a completed Claim Form with supporting documentation to Class Counsel using the below website on or before •, 2023 in order to participate in the Settlement.

The Claim Form is an online questionnaire. Class Members are required to complete the Claim Form online and submit it along with documentation confirming their acquisition of Xebec's Securities. The Claim Form as well as instructions on how to fill it out and submit it are available at: •.

If you do not submit a completed Claim Form and provide supporting documentation by •, 2023, you will not receive any part of the net Settlement Amount.

COPIES OF THE SETTLEMENT DOCUMENTS:

The Settlement Agreement and various other Court-approved documents set out the procedures applicable to the Settlement of the class action. The Settlement Amount, less administration costs, notice fees, lawyers' fees and disbursements, will be distributed to those who are eligible and submit a Claim form and supporting documentation on a *pro rata* basis up to the value of their calculated loss, in accordance with the Courtapproved and supervised Plan of Allocation. The Plan of Allocation, Settlement Agreement, and other pertinent documents can be found at: <https://knd.law/class-actions/xebec-adsorption-inc/> and <https://www.lexgroup.ca/classaction/xebec-adsorption-inc-securities-class-action/> or by contacting Class Counsel at the address below.

INTERPRETATION:

If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

QUESTIONS:

You may obtain further information at: <https://knd.law/class-actions/xebec-adsorption-inc/>, or by contacting Class Counsel by fax or email addressed to:

Xebec Class Action Counsel

KND Complex Litigation
c/o Taek Soo Shin
Email: xebec@knd.law
Fax: (416) 352-7638

**THE SUPERIOR COURT OF QUÉBEC HAS AUTHORIZED DISTRIBUTION OF THIS NOTICE.
QUESTIONS ABOUT THIS NOTICE SHOULD BE DIRECTED TO CLASS COUNSEL AND
SHOULD NOT BE DIRECTED TO THE COURT.**

RÈGLEMENT DE L'ACTION COLLECTIVE EN VALEURS MOBILIÈRES CONTRE XEBEC
ADSORPTION INC.

**AVEZ-VOUS ACQUIS DES ACTIONS DE XEBEC ADSORPTION INC.
ENTRE LE 10 NOVEMBRE 2019 ET LE 24 MARS 2021?**

**Un règlement approuvé par la Cour pourrait vous concerner. Veuillez lire attentivement
cet avis.**

Une action collective proposée a été autorisée pour fins de règlement seulement contre FormerXBC Inc., anciennement Xebec Adsorption Inc. (« Xebec »), Kurt Sorschak, Stéphane Archambault, Louis Dufour, William Beckett, Guy Saint Jacques, Desjardins Securities Inc., National Bank Financial Inc., Canaccord Genuity Group Inc., Raymond James Ltd., Beacon Securities Limited, TD Securities Inc., et Stifel Nicolaus Canada Inc., au nom de:

Toutes les personnes et entités, où qu'elles résident ou soient domiciliées, qui ont acheté ou autrement acquis des titres de Xebec par quelque moyen que ce soit (que ce soit dans le cadre d'une offre de marché primaire, sur le marché secondaire ou autrement) pendant la période du 10 novembre 2019 au 24 mars 2021 inclusivement, et qui détenaient une partie ou la totalité de ces titres à la clôture des marchés de la Bourse de Toronto (TSX) le 11 mars 2021 ou le 24 mars 2021, sauf les « Personnes Exclues ».

Personnes Exclues signifie les personnes et entités suivantes:

- (i) Xebec;
- (ii) les Défendeurs souscripteurs et leurs filiales, administrateurs, dirigeants, représentants légaux, prédécesseurs, successeurs et ayants droit respectifs, passés ou présents;
- (iii) les Défendeurs individuels, les membres de leur famille immédiate et toute entité dans laquelle les Défendeurs individuels détiennent une participation majoritaire; et
- (iv) SDI, Oost NL et le Trust Foundation, telles que ces entités sont définies dans la Convention d'achat d'actions du 8 décembre 2020 conclue avec Xebec Europe B.V.

Cette action collective allègue que les Défendeurs ont fait des déclarations trompeuses dans certains documents d'information de Xebec. Le 26 mai 2023, les Demandeurs et les Xebec ont conclu une entente pour régler cette action collective (le « Règlement »). **Les Défendeurs nient toute faute ou responsabilité de leur part et le tribunal n'a rendu aucune décision sur la question de la faute ou de la responsabilité des Défendeurs.**

Vos droits juridiques sont affectés même si vous ne faites rien. Veuillez lire attentivement cet avis.

RÉSUMÉ DU RÈGLEMENT:

Aux termes du Règlement, un paiement de 5 000 000\$ CAD (le « Montant du règlement ») sera effectué pour régler entièrement et définitivement toutes les réclamations contre les Défendeurs, y compris les Honoraires des Avocats du groupe, les taxes et les dépenses applicables et les intérêts, en échange d'une quittance complète et d'un règlement complet de l'action collective.

La Cour supérieure du Québec (la « Cour ») a approuvé le Règlement de cette action collective. La Cour a également accordé aux Avocats du groupe des honoraires judiciaires d'un montant de 1 500 000\$ CAD, ce qui représente 30% du Montant du règlement, plus les taxes, ainsi que leurs déboursés, payable à même le Montant du règlement. Les Avocats groupe n'ont pas encore été payés alors que l'affaire a procédé et ils ont financé toutes les dépenses liées à la conduite du litige.

VOS DROITS JURIDIQUES ET OPTIONS DANS CE RÈGLEMENT:

Vous avez deux options:

1. SOUMETTRE UN FORMULAIRE DE RÉCLAMATION:

Remplissez un Formulaire de réclamation en ligne et soumettez-le avec la documentation justificative avant la date limite pour demander une indemnisation. La date limite pour la soumission du Formulaire de réclamation est le • 2023.

2. NE RIEN FAIRE:

Renoncez à tout droit à une indemnisation.

COMMENT SOUMETTRE UNE RÉCLAMATION D'INDEMNISATION:

LES RÉCLAMATIONS D'INDEMNISATION DOIVENT ÊTRE REÇUES AU PLUS TARD LE • 2023

Chaque Membre du Groupe doit soumettre un Formulaire de réclamation complété avec les documents justificatifs aux Avocats du groupe en utilisant le site web ci-dessous au plus tard le • 2023 afin de participer au Règlement.

Le Formulaire de réclamation est un questionnaire en ligne. Les Membres du Groupe doivent remplir le Formulaire de réclamation en ligne et le soumettre avec les documents confirmant leur acquisition de Titres de Xebec. Le Formulaire de réclamation ainsi que des instructions quant à la manière de le remplir et de le soumettre sont disponibles à: •.

Si vous ne soumettez pas un Formulaire de réclamation complet et ne fournissez pas les documents justificatifs avant le 30 septembre 2023, vous ne recevrez aucune partie du Montant du Règlement net.

COPIES DES DOCUMENTS DE RÈGLEMENT:

L'Entente de Règlement et divers autres documents approuvés par la Cour énoncent les procédures applicables au Règlement de l'action collective. Le Montant du règlement, moins les frais d'administration, frais d'avis, les frais d'avocats et les déboursés, sera réparti proportionnellement (pro rata) à ceux qui sont admissibles et qui soumettent un Formulaire de réclamation et des documents à l'appui, jusqu'à concurrence de la valeur de leur perte calculée, conformément au Plan de répartition approuvé et supervisé par la Cour. Le Plan de répartition, l'Entente de Règlement et d'autres documents pertinents peuvent être trouvés à l'adresse suivante: <https://knd.law/class-actions/xebec-adsorption-inc> et <https://www.lexgroup.ca/fr/classaction/xebec-adsorptioninc-valeurs-mobileres-action-collective/> ou en contactant les Avocats du groupe à l'adresse ci-dessous.

INTERPRÉTATION:

En cas de conflit entre les dispositions de cet avis et l'Entente de Règlement, les termes de l'Entente de Règlement prévaudront.

QUESTIONS:

Vous pouvez obtenir des informations supplémentaires à l'adresse suivante: <https://knd.law/class-actions/xebecadsorption-inc/>, ou contacter les Avocats du groupe par télécopieur ou par courriel à l'adresse suivante:

Avocats du groupe (dossier Xebec)
KND Complex Litigation
c/o Taek Soo Shin
Courriel: xebec@knd.law
Télécopieur: (416) 352-7638

**LA COUR SUPÉRIEURE DU QUÉBEC A APPROUVÉ LA DIFFUSION DE CET AVIS.
LES QUESTIONS CONCERNANT CET AVIS DOIVENT ÊTRE ADRESSÉES AUX AVOCATS DU GROUPE ET
NE DOIVENT PAS ÊTRE ADRESSÉES À LA COUR.**

ANNEXE B

SETTLEMENT OF XEBEC ADSORPTION INC. SECURITIES CLASS ACTION

[Date] – The Superior Court of Québec has approved a settlement of the class action proceedings against Xebec Adsorption Inc. (“Xebec”), Kurt Sorschak, Stéphane Archambault, Louis Dufour, William Beckett, Guy Saint Jacques, 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.

Your legal rights are affected even if you do nothing. Please read this notice carefully.

The class action was authorized on behalf of all persons and entities, 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 period from November 10, 2019, to March 24, 2021, inclusively, 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, other than the “Excluded Persons”.

Excluded Persons means:

- (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.

Under the settlement, Xebec will cause to be paid CAD \$5,000,000. The Defendants deny any wrongdoing or liability on their part and the Court has not made any findings of wrongdoing or liability in respect of the Defendants.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

You have two options:

1. SUBMIT A CLAIM FORM:

Fill out a Claim Form online and submit it with supporting documentation by the deadline to apply for compensation. The deadline for Claim Form submission is •, 2023.

2. DO NOTHING:

Give up any right to compensation.

To make a claim for compensation, you must complete a Claim Form online and submit it along with documentation confirming your acquisition of Xebec's securities. The Claim Form is available at: •. You must submit your Claim Form and documentation using this website by •, 2023 to be able to receive compensation.

Further information can be found in the Settlement Agreement, Court-approved Plan of Allocation, and other relevant documents, which are available at: <https://knd.law/class-actions/xebec-adsorption-inc/> and <https://www.lexgroup.ca/classaction/xebec-adsorption-inc-securities-class-action/>. You can send your questions by email to xebec@knd.law or by fax to (416) 352-7638.

The lawyers for the Plaintiff and the Class in this class action are KND Complex Litigation and Lex Group Inc.

RÈGLEMENT DE L'ACTION COLLECTIVE EN MATIÈRE DE VALEURS MOBILIÈRES DE XEBEC ADSORPTION INC.

[Date] – La Cour supérieure du Québec a approuvé un règlement de l'action collective contre FormerXBC Inc., anciennement Xebec Adsorption Inc. (« Xebec »), Kurt Sorschak, Stéphane Archambault, Louis Dufour, William Beckett, Guy Saint Jacques, Desjardins Securities Inc., National Bank Financial Inc., Canaccord Genuity Group Inc., Raymond James Ltd., Beacon Securities Limited, TD Securities Inc., et Stifel Nicolaus Canada Inc.

Vos droits légaux sont affectés même si vous ne faites rien. Veuillez lire attentivement cet avis.

L'action collective a été autorisée au nom de toutes les personnes et entités, où qu'elles résident ou soient domiciliées, qui ont acheté ou acquis autrement des titres de Xebec par tout moyen (qu'il s'agisse d'une offre de marché primaire, sur le marché secondaire ou autrement) pendant la période allant du 10 novembre 2019 au 24 mars 2021 inclusivement, et qui détenaient une partie ou la totalité de ces titres à la clôture de la séance de négociation à la Bourse de Toronto (TSX) le 11 mars 2021 ou le 24 mars 2021 sauf les « Personnes Exclues ».

Personnes Exclues signifie les personnes et entités suivantes:

- (i) Xebec;
- (ii) les Défendeurs souscripteurs et leurs filiales, administrateurs, dirigeants, représentants légaux, prédécesseurs, successeurs et ayants droit respectifs, passés ou présents;
- (iii) les Défendeurs individuels, les membres de leur famille immédiate et toute entité dans laquelle les Défendeurs individuels détiennent une participation majoritaire; et
- (iv) SDI, Oost NL et le Trust Foundation, telles que ces entités sont définies dans la Convention d'achat d'actions du 8 décembre 2020 conclue avec Xebec Europe B.V.

En vertu du Règlement, Xebec fera les démarches nécessaires en vue d'un paiement de 5 000 000\$ CAD. Les Défendeurs nient toute faute ou responsabilité de leur part et la Cour n'a rendu aucune décision sur la question de la faute ou de la responsabilité des Défendeurs.

VOS DROITS LÉGAUX ET OPTIONS DANS CE RÈGLEMENT:

Vous avez deux options:

1. SOUMETTRE UN FORMULAIRE DE RÉCLAMATION:

Remplissez un Formulaire de réclamation en ligne et soumettez-le avec les documents justificatifs avant la date limite pour demander une compensation. La date limite pour la soumission du Formulaire de réclamation est le • 2023.

2. NE RIEN FAIRE:

Renoncez à tout droit à une compensation.

Pour faire une demande de compensation, vous devez remplir en ligne un Formulaire de réclamation et le soumettre avec la documentation confirmant votre acquisition des Titres de Xebec. Le Formulaire de réclamation est disponible à l'adresse suivante: • Vous devez soumettre votre Formulaire de réclamation et votre documentation en utilisant ce site web avant le • 2023 pour pouvoir recevoir une compensation.

Des informations supplémentaires peuvent être trouvées dans l'Entente de Règlement, le Plan de répartition approuvé par le tribunal et d'autres documents pertinents, qui sont disponibles à l'adresse suivante: <https://knd.law/class-actions/xebec-adsorption-inc/> et <https://www.lexgroup.ca/fr/classaction/xebec-adsorption-inc-valeurs-mobileres-action-collective/>. Vous pouvez envoyer vos questions par courriel à xebec@knd.law ou par télécopieur au (416) 352-7638.

Les avocats des Demandeurs et du Groupe dans cette action collective sont KND Complex Litigation et Lex Group Inc.

ANNEXE C

Claim Form must be postmarked, emailed, faxed or submitted electronically (on-line portal) by 11:59 pm ET on [DATE]

CLAIM FORM PACKAGE

Xebec Adsorption Inc. Securities Litigation Class Action Settlement

Leclair, et al.

v.

FormerXBC Inc. (formerly known as Xebec Adsorption Inc.), et al.

Quebec Superior Court of Justice ~ Court File Number 500-06-001135-215

Velvet Payments Inc.

Settlement Administrator
5900 Andover Ave. Suite 1

Montreal, Quebec H4T 1H5

Phone: 1-888-770-6892
Email: xebec@velvetpayments.com
Fax: 1-800-934-3320

Website: www.xebecsecuritiessettlement.com

Xebec Adsorption Inc. Securities Class Action Claims Administration

CLAIM FORM

This Claim Form must be postmarked, emailed, faxed or submitted electronically (on-line portal) by 11:59 pm Eastern Standard Time on [DATE]

IDENTIFICATION OF CLAIMANT (OR AUTHORIZED REPRESENTATIVE ACTING ON CLAIMANT'S BEHALF)

The Claims Administrator will use this information for all communications regarding your Claim Form. Please input the information of the person you wish the Administrator to contact with regards to your Claim Form. If this information changes, you MUST notify the claims administrator by email to xebec@velvetpayments.com.

Name of Person Submitting Claim Form (Claimant or their Authorized Representative) *

Account Number(s) (of the account where the eligible Xebec shares were/are held) *

Claimant Name(s) (as you would like the name to appear on the cheque, if eligible for payment) *

Street Address: *

City: *

Province or State: *

Postal or Zip Code: *

Country: *

Telephone Number (work/cell)

() -

Telephone Number (home/cell) *

() -

* Individual Corporation/Other

Email Address: *

Name of Person you would like the Claims Administrator to contact regarding this claim (if different from the Claimant Name(s) listed above)

IMPORTANT INFORMATION AND INSTRUCTIONS

1. Only shares of Xebec Adsorption Inc. that were purchased or acquired during the period from November 10, 2019 through to March 24, 2021 (“**Class Period**”), and which were held as of the close of trading on the Toronto Stock Exchange on March 11, 2021 or March 24, 2021, may be eligible to participate in this claims process (“**Eligible Securities**”). The location of the transaction or the location of the securities exchange on which the shares were acquired or purchased would not be relevant for the purposes of this claims process. Investors who represent Eligible Securities may participate in this claims process regardless of the country in which they reside or are domiciled (“**Eligible Claimants**”).²⁷
2. Eligible Claimants may participate in the claims process regardless of whether they subsequently sold the Eligible Securities, or that they continue to hold the Eligible Securities.
3. If an Eligible Claimant purchased or acquired shares of Xebec Adsorption Inc. in multiple transactions, to determine which ones were held through or sold and, if sold, to determine the price at which they were sold, apply the First-In, First-Out method (“**FIFO**”). In attendance with the FIFO method, shares will be deemed to have been sold in the order they were purchased. For example, if an Eligible Claimant’s list of transactions of shares of Xebec Adsorption Inc. in the secondary market was as follows:

No.	Transaction Date(s) (DD/MM/YY)	Purchase or Sale	Number of Shares Purchased/Sold
A	11/05/2019	Purchase	1,000
B	30/11/2020	Purchase	2,000
C	10/03/2020	Sale	1,500
D	01/04/2021	Sale	500

Transaction A was carried out outside of the Class Period, therefore does not represent Eligible Securities;

Transaction B was carried out within the Class Period, and it would represent Eligible Securities if those shares are held as of the close of trading on the Toronto Stock Exchange on March 11, 2021 or March 24, 2021;

Transaction C is applied against the 1,000 shares purchased on May 11, 2019 as well as 500 of the shares purchased on November 30, 2020. Therefore, 1,500 of the shares that were purchased on November 30, 2020 continued to be held as of the close of trading on the Toronto Stock Exchange on March 11, 2021 or March 24, 2021, and they are Eligible Securities.

²⁷ Per the terms of the Settlement Agreement and the Orders of the Court, a limited group of persons and entities are excluded from this definition, and they may not participate in the claims process. Visit www.xebecsecuritiessettlement.com for more information.

Transaction D is applied against 500 of the 1,500 Eligible Securities that were purchased on November 30, 2020. Therefore, this Eligible Claimant:

a) purchased 1,500 Eligible Securities on November 30, 2020;

b) sold 500 of those 1,500 Eligible Securities on April 1, 2021; and

c) continues to hold 1,000 of those Eligible Securities.

4. If the purchases and/or sales were carried out in other than Canadian currency, please use this tool available on the website of Bank of Canada to convert the purchase or sale price to Canadian currency as of the applicable date of the transaction(s). <https://www.bankofcanada.ca/rates/exchange/currency-converter/>
5. If there are multiple eligible purchases and/or sales, please provide the average purchase price and/or average selling price with respect to those Eligible Securities.
6. Please upload supporting documents (namely, account statements) demonstrating your purchase(s)/sale(s) of shares of Xebec Adsorption Inc. Note that supporting documentation is required in order for the Claims Administrator to process your claim.
7. Where possible, the Claim Administrator will issue payments by e-transfer to the email address provided in this Claim Form. By completing and submitting this Claim Form you consent to receiving payment through e-transfer. If the Claim Administrator determines that e-transfer is not available or that it is not feasible, the Claim Administrator will issue a cheque deliverable to the mailing address provided in this Claim Form.
8. All payments will be issued in Canadian currency.

NOTE: If the Claims Administrator determines that your distribution amount is LESS THAN \$25, the Claims Administrator will NOT issue a payment to you.

IF YOU ARE A SECONDARY MARKET PURCHASER (meaning an Eligible Claimant, wherever residing or domiciled, who purchased Xebec’s common shares in the secondary market, on a securities exchange, but specifically excluding the Excluded Persons);

Please provide:

	Eligible Securities purchased at any time between November 10, 2019 through to March 11, 2021, both dates inclusive	No. of Shares	Purchase or Sale Price (as applicable) in CAD
A.	Shares purchased at any time between November 10, 2019 through to March 11, 2021, both dates inclusive		
B.	Shares sold on, or at any time before, March 11, 2021		N/A
C.	Shares sold at any time between March 12, 2021 and April 8, 2021		
D.	Shares sold on or at any time after April 9, 2021, or which continue to be held		\$4.58 [deemed selling price]

	Eligible Securities purchased at any time between March 12, 2021 and March 24, 2021, both dates inclusive	No. of Shares	Purchase or Sale Price (as applicable) in CAD
A.	Shares purchased at any time between March 12, 2021 and March 24, 2021, both dates inclusive		
B.	Shares sold on, or at any time before, March 24, 2021		N/A
C.	Shares sold at any time between March 25, 2021 and April 8, 2021		
D.	Shares sold on or at any time after April 9, 2021, or which continue to be held		\$4.58 [deemed selling price]

IF YOU ARE A PROSPECTUS PURCHASER (meaning an Eligible Claimant, wherever residing or domiciled, who purchased Xebec’s Subscription Receipts in the primary market pursuant to the Final Short Form Prospectus dated December 21, 2020, at a purchase price of \$5.80 per Subscription Receipt, but specifically excluding the Excluded Persons);

Please provide:

	Eligible Securities Purchased Pursuant to the Final Short Form Prospectus Dated December 21, 2020	No. of Shares	Purchase or Sale Price (as applicable) in CAD
A.	Shares purchased pursuant to the Final Short Form Prospectus dated December 21, 2020		\$5.80
B.	Shares sold on, or at any time before, March 11, 2021		N/A
C.	Shares sold at any time between March 12, 2021 and April 8, 2021		
D.	Shares sold on or at any time after April 9, 2021, or which continue to be held		\$4.58 [deemed selling price]

* Each Xebec Subscription Receipt was subsequently converted to 1 Xebec common shares. Therefore, for the purposes of the Plan of Allocation, the applicable hold-through applies to the equivalent common shares.

IF YOU ARE A PRIVATE PLACEMENT PURCHASER (meaning an Eligible Claimant, wherever residing or domiciled, who purchased Xebec’s Subscription Receipts in the private placement that was carried out in December 2020, at a purchase price of \$5.80 per Subscription Receipt, but specifically excluding the Excluded Persons);

Please provide:

	Eligible Securities Purchased Pursuant to the Private Placement Transaction in December 2020	No. of Shares	Purchase or Sale Price (as applicable) in CAD
A.	Shares purchased pursuant to the private placement transaction in December 2020		\$5.80
B.	Shares sold on, or at any time before, March 11, 2021		N/A
C.	Shares sold at any time between March 12, 2021 and April 8, 2021		
D.	Shares sold on or at any time after April 9, 2021, or which continue to be held		\$4.58 [deemed selling price]

* Each Xebec Subscription Receipt was subsequently converted to 1 Xebec common shares. Therefore, for the purposes of the Plan of Allocation, the applicable hold-through applies to the equivalent common shares.

IF YOU ARE A HYGEAR INVESTOR (meaning an Eligible Claimant, wherever residing or domiciled, who acquired Xebec’s common shares in exchange for shares of HyGear Technology and Services B.V at a deemed price of \$6.03 per Xebec common share, but specifically excluding the Excluded Persons);

Please provide:

	Eligible Securities Acquired Pursuant to the HyGear Acquisition Transaction	No. of Shares	Purchase or Sale Price (as applicable) in CAD
A.	Shares acquired pursuant to the HyGear acquisition transaction in December 2020		\$6.03 [deemed purchase price]
B.	Shares sold on, or at any time before, March 11, 2021		N/A
C.	Shares sold at any time between March 12, 2021 and April 8, 2021		
D.	Shares sold on or at any time after April 9, 2021, or which continue to be held		\$4.58 [deemed selling price]

DECLARATION

YOU MUST READ AND SIGN THE DECLARATION. FAILURE TO SIGN THIS FORM MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.

I acknowledge that I am a Class Member (or the duly authorized representative of a Class Member) bound by and subject to the terms of the Settlement Agreement, Plan of Allocation and any Court order that may form any part of the litigation and settlement. I hereby agree to provide additional information to the Administrator to support this claim, if requested to do so. I have not submitted any other claim covering the same purchases or sales of Xebec's securities during the Class Period and know of no other person having done so on my behalf.

On behalf of myself and each of my heirs, agents, executors, trustees, administrators, predecessors, successors, and assigns, I submit this Claim Form under the terms of the Settlement Agreement, Plan of Allocation and any Court order that may form any part of the litigation and settlement and enforcing the release and declaration set forth herein.

I hereby warrant and represent that I have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

I hereby warrant and represent that I have included the information requested about all of my transactions in Xebec's securities which are the subject of this claim, which occurred during the Class Period, as well as the opening and closing positions in such securities held by me on the dates required in this Claim Form.

Release of Releasees

Pursuant to the Settlement Agreement, Plan of Allocation and Court documents;

Upon the Effective Date, in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release, waive and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, or in any other capacity, ever had, now have, or hereafter can, shall or may have.

I declare under penalty of perjury and disqualification to receive payment from the Compensation Fund, under the laws of the Province of Québec, that all of the foregoing information, documentation, calculations and identity supplied in my Claim Form Package by the undersigned is true, accurate and correct.

Executed this _____ day of _____, in _____, _____.
(Month/Year) (City) (Province/State)

[_____ Electronic Signature _____] (Sign your name here)

Capacity of person(s) signing:

USE OF REPRESENTATIVE:

If the person completing and submitting this Claim Form is a representative for the Eligible Claimant, he, she, they or it must certify that he, she, they or it is authorized to do so on behalf of the Eligible Claimant.

I, _____, certify that I am authorized to complete and submit this Claim Form on behalf of _____, who is an Eligible Claimant.

[_____ Electronic Signature _____] (Sign your name here)

NOTES TO THE ADMINISTRATOR:

Le formulaire de réclamation doit être envoyé par la poste, par courriel, par télécopieur ou par voie électronique (au moyen du portail en ligne) au plus tard à 23 h 59 HE le [DATE]

TROUSSE DE FORMULAIRE DE RÉCLAMATION

Xebec Adsorption Inc. Règlement d'une action collective en matière de litige en valeurs mobilières

Leclair et al.

c.

**FormerXBC Inc. (anciennement connu sous le nom de Xebec
Adsorption Inc.) et al.**

Cour supérieure du Québec ~ Numéro de dossier de la cour 500-06-001135-215

Velvet Payments Inc.

**Administrateur du règlement
5900, avenue Andover, bureau 1**

Montréal (Québec) H4T 1H5

Téléphone : 1 888 770-6892

Courriel : xebec@velvetpayments.com

Télécopieur : 1-800-934-3320

Site Web : www.xebecsecuritiessettlement.com

**Administration des règlements dans le cadre de l'action collective en matière de
valeurs mobilières Xebec Adsorption Inc.**

FORMULAIRE DE RÉCLAMATION

Le Formulaire de réclamation doit être envoyé par la poste, par courriel, par télécopieur
ou par voie électronique (au moyen du portail en ligne) au plus tard à 23 h 59 HE le

IDENTIFICATION DU RÉCLAMANT (OU DU REPRÉSENTANT AUTORISÉ À AGIR AU NOM DU RÉCLAMANT)

[DATE]

L'Administrateur des réclamations utilisera tous ces renseignements dans le cadre de ses communications au sujet de votre Formulaire de réclamation. Veuillez inscrire les renseignements de la personne avec laquelle l'Administrateur doit communiquer. Si ces renseignements changent, vous DEVEZ en aviser l'Administrateur des réclamations par courriel à xebec@velvetpayments.com.

Nom de la personne qui soumet le Formulaire de réclamation (Réclamant ou son représentant autorisé)*	
Numéro de compte (compte où les Actions admissibles de Xebec étaient/sont détenues)*	
Nom(s) du Réclamant (tel qu'il doit apparaître sur le chèque, s'il est admissible à un règlement)*	
Adresse*	
Ville*	
Province ou état*	Code postal ou ZIP*
Pays*	
Numéro de téléphone (travail/cellulaire)	Numéro de téléphone (domicile/cellulaire)*
<input type="text"/>	<input type="text"/>
* <input type="checkbox"/> Particulier <input type="checkbox"/> Entreprise/Autre	
Courriel*	
Nom de la personne avec laquelle l'Administrateur des réclamations doit communiquer au sujet de la présente réclamation (s'il s'agit d'une autre personne que le Réclamant dont le nom est indiqué ci-dessus)	

* Champs obligatoires

RENSEIGNEMENTS IMPORTANTS ET DIRECTIVES

- Seules les actions de Xebec Adsorption Inc. achetées ou acquises entre le 10 novembre 2019 et le 24 mars 2021 (la « **Période visée par le recours** ») et qui étaient détenues à la clôture des échanges à la Bourse de Toronto le 11 mars 2021 ou le 24 mars 2021 peuvent être admissibles dans le cadre de ce Processus de réclamation (« **Titres admissibles** »). L'emplacement de l'opération ou de la bourse des valeurs où les actions ont été acquises ou achetées est sans intérêt dans le cadre du présent Processus

de réclamation. Les investisseurs qui représentent les Titres admissibles peuvent participer au présent Processus de réclamation quel que soit leur pays de résidence ou de domicile (« **Réclamants admissibles** »).²⁸

10. Les Réclamants admissibles peuvent participer au Processus de réclamation, qu'ils aient ou non revendu les Titres admissibles subséquemment.
11. Si un Réclamant admissible a acheté ou acquis des Actions de Xebec Adsorption Inc. en plusieurs opérations, il faut appliquer la méthode *premier entré, premier sorti* (« **PEPS** ») pour déterminer les actions qu'il détient toujours et celles qu'il a revendues, et, le cas échéant, pour déterminer le prix de revente. Conformément à la méthode PEPS, les actions seront réputées vendues suivant l'ordre selon lequel elles ont été achetées. Par exemple, si la liste des opérations concernant les actions de Xebec Adsorption Inc. sur le marché secondaire d'un Réclamant admissible était comme suit :

N°	Date de l'opération (JJ/MM/AA)	Achat ou vente	Nombre d'actions achetées ou vendues
A	11/05/2019	Achat	1 000
B	30/11/2020	Achat	2 000
C	10/03/2020	Vente	1 500
D	01/04/2021	Vente	500

L'**opération A** a été réalisée à l'extérieur de la Période visée par le recours; elle ne représente donc pas des Titres admissibles.

L'**opération B** a été réalisée pendant la Période visée par le recours et elle représenterait des Titres admissibles si celles-ci étaient toujours détenues à la clôture des échanges à la Bourse de Toronto le 11 mars 2021 ou le 24 mars 2021.

L'**opération C** est portée en diminution des 1 000 actions achetées le 11 mai 2019 et de 500 des actions achetées le 30 novembre 2020. Donc, 1 500 des actions achetées le 30 novembre 2020 étaient toujours détenues à la clôture des échanges à la Bourse de Toronto le 11 mars 2021 ou le 24 mars 2021 et sont des Titres admissibles.

²⁸Conformément aux modalités de l'Entente de règlement et des ordonnances de la cour, un nombre limité de personnes et d'entités sont exclues de cette définition et ne peuvent pas participer au Processus de réclamation. Consultez la page www.xebecsecuritiessettlement.com pour obtenir plus de renseignements.

L'opération D est portée en diminution de 500 des 1 500 Titres admissibles qui ont été achetées le 30 novembre 2020. Ainsi, ce Réclamant admissible :

d) a acheté 1 500 Titres admissibles le 30 novembre 2020;

e) a vendu 500 de ces 1 500 Titres admissibles le 1^{er} avril 2021;

f) détient toujours 1 000 de ces Titres admissibles.

12. Si les achats et/ou les ventes ont été réalisés en devises autre que canadiennes, veuillez utiliser l'outil prévu sur le site Web de la Banque du Canada pour convertir le prix de l'achat ou de la vente en devises canadiennes à la date de l'opération ou des opérations.
<https://www.banqueducanada.ca/taux/taux-de-change/convertisseur-de-devises/>

13. S'il y a plusieurs ventes et/ou achats admissibles, veuillez fournir le prix d'achat moyen et/ou le prix de vente moyen de ces Titres admissibles.

14. Veuillez téléverser les documents justificatifs (relevés de compte) indiquant les ventes et/ou les achats d'actions de Xebec Adsorption Inc. Prenez note que l'Administrateur des réclamations doit obtenir les documents justificatifs pour traiter votre réclamation.

15. Le cas échéant, l'Administrateur des réclamations enverra un paiement sous forme de virement électronique à l'adresse courriel indiquée dans le présent Formulaire de réclamation. En soumettant le présent Formulaire de réclamation, vous consentez à recevoir un paiement par virement électronique. Si l'Administrateur de réclamation détermine qu'un virement électronique n'est pas possible, un chèque sera délivré à l'adresse indiquée dans le présent Formulaire de réclamation.

16. Tous les paiements seront délivrés en devises canadiennes.

REMARQUE : Si l'Administrateur des réclamations détermine que le montant de répartition s'élève à MOINS DE 25 \$, vous NE recevrez AUCUN paiement.

SI VOUS ÊTES UN ACHETEUR SUR LE MARCHÉ SECONDAIRE (c'est-à-dire un Réclamant admissible, où qu'il réside ou soit domicilié, ayant acheté des actions ordinaires de Xebec sur le marché secondaire, d'une bourse des valeurs; mais qui exclut expressément les Personnes exclues);

Veillez indiquer les renseignements demandés :

	Titres admissibles achetées à tout moment du 10 novembre 2019 au 11 mars 2021 inclusivement.	N^{bre} d'actions	Prix d'achat ou de vente (selon le cas) en CAD
A.	Actions achetées à tout moment du 10 novembre 2019 au 11 mars 2021 inclusivement.		
B.	Actions vendues le 11 mars 2021 ou à tout moment avant		S. O.
C.	Actions vendues à tout moment du 12 mars 2021 au 8 avril 2021		
D.	Actions vendues le 9 avril 2021 ou à tout moment après, ou qui sont toujours détenues		4,58 \$ [prix d'achat réputé]

	Titres admissibles achetées à tout moment du 12 mars 2021 au 24 mars 2021 inclusivement	N^{bre} d'actions	Prix d'achat ou de vente (selon le cas) en CAD
A.	Actions achetées à tout moment du 12 mars 2021 au 24 mars 2021 inclusivement		
B.	Actions vendues le 24 mars 2021 ou à tout moment avant		S. O.
C.	Actions vendues à tout moment du 25 mars 2021 au		

	8 avril 2021		
D.	Actions vendues le 9 avril 2021 ou à tout moment après, ou qui sont toujours détenues		4,58 \$ [prix d'achat réputé]

SI VOUS ÊTES UN ACHETEUR DU PROSPECTUS (c'est-à-dire un Réclamant admissible, où qu'il réside ou soit domicilié, qui a acheté des reçus de souscription sur le marché primaire conformément au prospectus simplifié final en date du 21 décembre 2020, au prix d'achat de 5,80 \$ par reçu de souscription; mais qui exclut expressément les Personnes exclues);

Veillez indiquer les renseignements demandés :

	Titres admissibles achetées conformément au prospectus simplifié final en date du 21 décembre 2020	N^{bre} d'actions	Prix d'achat ou de vente (selon le cas) en CAD
A.	Actions achetées conformément au prospectus simplifié final en date du 21 décembre 2020		5,80 \$
B.	Actions vendues le 11 mars 2021 ou à tout moment avant		S. O.
C.	Actions vendues à tout moment du 12 mars 2021 au 8 avril 2021		
D.	Actions vendues le 9 avril 2021 ou à tout moment après, ou qui sont toujours détenues		4,58 \$ [prix d'achat réputé]

** Chaque reçu de souscription de Xebec a ensuite été converti en une (1) action ordinaire de Xebec. Par conséquent, aux fins du Plan de répartition, la durée de maintien applicable s'applique aux actions ordinaires équivalentes.*

SI VOUS ÊTES UN ACHETEUR DE PLACEMENT PRIVÉ (c'est-à-dire un Réclamant admissible, où qu'il réside ou soit domicilié, qui a acheté des reçus de souscription de Xebec, dans le cadre du placement privé réalisé en décembre 2020, au prix d'achat de 5,80 \$ par reçu de souscription; mais qui exclut expressément les Personnes exclues);

Veillez indiquer les renseignements demandés :

	Titres admissibles achetées conformément à l'opération du placement privé réalisé en décembre 2020	N^{bre} d'actions	Prix d'achat ou de vente (selon le cas) en CAD
A.	Actions achetées conformément à l'opération du placement privé réalisé en décembre 2020		5,80 \$
B.	Actions vendues le 11 mars 2021 ou à tout moment avant		S. O.
C.	Actions vendues à tout moment du 12 mars 2021 au 8 avril 2021		
D.	Actions vendues le 9 avril 2021 ou à tout moment après, ou qui sont toujours détenues		4,58 \$ [prix d'achat réputé]

** Chaque reçu de souscription de Xebec a ensuite été converti en une (1) action ordinaire de Xebec. Par conséquent, aux fins du Plan de répartition, la durée de maintien applicable s'applique aux actions ordinaires équivalentes.*

SI VOUS ÊTES UN INVESTISSEUR HYGEAR (c'est-à-dire un Réclamant admissible, où qu'il réside ou soit domicilié, qui a acquis des actions ordinaires de Xebec en échange d'actions de HyGear Technology and Services B.V au prix réputé de 6,03 \$ par action ordinaire de Xebec; mais qui exclut expressément les Personnes exclues);

Veillez indiquer les renseignements demandés :

	Titres admissibles acquises conformément à l'opération d'acquisition de HyGear	N^{bre} d'actions	Prix d'achat ou de vente (selon le cas) en CAD
A.	Actions acquises conformément à l'opération d'acquisition de HyGear		6,03 \$ [prix d'achat réputé]
B.	Actions vendues le 11 mars 2021 ou à tout moment avant		S. O.
C.	Actions vendues à tout moment du 12 mars 2021 au 8 avril 2021		
D.	Actions vendues le 9 avril 2021 ou à tout moment après, ou qui sont toujours détenues		4,58 \$ [prix de vente réputé]

DÉCLARATION

VOUS DEVEZ LIRE ET SIGNER LA PRÉSENTE DÉCLARATION. SI VOUS OMETTEZ DE SIGNER CE FORMULAIRE, LE TRAITEMENT DE VOTRE RÉCLAMATION PEUT ÊTRE RETARDÉ OU VOTRE RÉCLAMATION PEUT ÊTRE REJETÉE.

Je reconnais être un Membre du groupe (ou le représentant dûment autorisé d'un Membre du groupe) lié et assujéti aux modalités de l'Entente de règlement, du Plan de répartition et de toute autre ordonnance de la cour qui pourrait faire partie du litige et du règlement. Par la présente, j'accepte de fournir des renseignements supplémentaires à l'Administrateur pour appuyer cette réclamation, s'il m'en fait la demande. Je n'ai soumis aucune autre réclamation visant les mêmes achats ou ventes de titres de Xebec pendant la Période visée par le recours et, à ma connaissance, personne n'en a soumise en mon nom.

En mon nom et en celui de tous mes héritiers, mandataires, exécuteurs testamentaires, fiduciaires, administrateurs/liquidateurs de succession, prédécesseurs, successeurs et ayants cause, je sou mets le présent Formulaire de réclamation en vertu des modalités de l'Entente de règlement, du Plan de répartition et de toute autre ordonnance de la Cour qui pourrait faire partie du litige et du règlement et qui exécuterait la renonciation et la déclaration énoncées aux présentes.

Par la présente, je représente et garantis que je n'ai pas cédé ou transféré, ni voulu céder ou transférer, volontairement ou involontairement, des questions déchargées en vertu de la présente décharge ou de toute partie de celle-ci.

Par la présente, je représente et garantis que j'ai inclus tous les renseignements demandés au sujet de mes opérations de titres de Xebec faisant l'objet de la présente réclamation et ayant eu lieu pendant la Période visée par le recours, et de l'ouverture et de la clôture de ces titres que je détenais aux dates citées dans le présent formulaire de réclamation.

Décharge des renonciateurs

Conformément à l'Entente de règlement, au Plan de répartition et aux documents de la Cour;

À compter de la Date d'entrée en vigueur, compte tenu du versement du Montant du règlement, et pour toute autre contrepartie importante prévue dans l'Entente de règlement, les Renonciateurs accordent une quittance complète, finale, absolue et inconditionnelle aux Renoncitaires pour toute Réclamation libérée que l'un ou l'autre d'entre eux ont eue, ont

maintenant ou pourraient avoir après les dates des présentes, directement, indirectement ou à tout autre titre.

Sous peine de sanctions de parjure et de la disqualification à recevoir tout paiement du Fonds d'indemnisation, en vertu des lois de la Province de Québec, je déclare que toute documentation, tout renseignement sur l'identité ou autre et tout calcul fournis par le(la) soussigné(e) dans les documents relatifs au présent Formulaire de réclamation sont véridiques, exacts et corrects.

Exécuté ce _____ jour de _____, à _____,
_____.

(Mois/Année) (Ville)
(Province/État)

[_____ Signature électronique _____] (Veuillez signer ici)

Titre en vertu duquel agissent les signataires :

RECOURS AUX SERVICES D'UN REPRÉSENTANT :

Si la personne qui remplit et soumet le présent Formulaire de réclamation est un représentant du Réclamant admissible, elle doit certifier avoir l'autorisation de le faire au nom du Réclamant admissible.

Je, _____, certifie que j'ai l'autorisation de remplir et de soumettre le présent Formulaire de réclamation au nom de _____, qui est un Réclamant admissible.

[_____ Signature électronique _____] (Veuillez signer ici)

REMARQUES À L'ADMINISTRATEUR :