

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

XEBEC HOLDING USA INC., *et al.*,

Debtors in a foreign proceeding.<sup>1</sup>

Chapter 15

Case No. 22-10934 (KBO)

Jointly Administered

**MOTION TO SHORTEN NOTICE WITH RESPECT TO  
FOREIGN REPRESENTATIVE’S MOTION FOR ENTRY OF ORDER  
(I) RECOGNIZING AND ENFORCING FIFTH AMENDED AND RESTATED CCAA  
ORDER; AND (II) AUTHORIZING THIRD DIP FINANCING**

FormerXBC Inc. (f/k/a Xebec Adsorption Inc.), in its capacity as the authorized foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”) in a proceeding (the “**Canadian Proceeding**”) commenced under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, and pending before the Superior Court of Québec, in the Province of Québec, District of Montréal, respectfully moves this Court (this “**Motion to Shorten Notice**”) for the entry of an order, pursuant to Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 9006-1(e) of the Delaware Bankruptcy Local Rules (the “**Local Rules**”), shortening the notice period for the *Foreign Representative’s Motion for Entry of Order (I) Recognizing and Enforcing Fifth Amended and Restated CCAA Order; and (II) Authorizing Third DIP Financing* (the “**Third DIP Financing Motion**”), which has been filed contemporaneously herewith. In support of this Motion to Shorten Notice, the Foreign Representative respectfully represents the following:

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<sup>1</sup> The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: FormerXBC Inc. (f/k/a Xebec Adsorption Inc.) (0228), 11941666 Canada Inc. (f/k/a Xebec RNG Holdings Inc.) (N/A), Applied Compression Systems Ltd. (N/A), 1224933 Ontario Inc. (f/k/a Compressed Air International Inc.) (N/A), Xebec Holding USA Inc. (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), Xebec Adsorption USA, Inc. (0821), The Titus Company (9757), Nortekbelair Corporation (1897), XBC Flow Services – Wisconsin Inc. (7493), California Compression, LLC (4752), and Xebec Systems USA LLC (4156). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 730 Industriel Boulevard, Blainville, Quebec, J7C 3V4, Canada.

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated as of February 29, 2012. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Foreign Representative confirms its consent pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) to the entry of a final order by the Court in connection with this Motion to Shorten Notice to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. The statutory predicates for the relief requested herein are sections 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”), Bankruptcy Rule 9006, and Local Rule 9006-1(e).

### **BACKGROUND**

2. On or about September 30, 2022 (the “**Petition Date**”), the Foreign Representative commenced voluntary petitions for relief under chapter 15 of the Bankruptcy Code seeking recognition by this Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

3. On the date hereof, the Foreign Representative filed the Third DIP Financing Motion, which seeks entry of an order: (a) recognizing and enforcing the terms of the Fifth Amended and Restated CCAA Order as it relates to the Third DIP Facility and the Third DIP Charge; (b) authorizing the Debtors to enter into the Third DIP Facility and granting the Lender the Third DIP Charge; (c) granting the Lender certain protections afforded by the Bankruptcy Code, including under sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, pursuant to

sections 1521(a)(7) of the Bankruptcy Code; and (d) granting such other and further relief as the Court deems just and proper.

4. The Foreign Representative respectfully requests that the Court schedule a hearing on the Third DIP Financing Motion for the previously scheduled omnibus hearing on April 5, 2023, at 1:00 p.m. (ET), for this Court to consider the relief requested in the Third DIP Financing Motion, and any objections to the relief requested in the Third DIP Financing Motion be filed no later than March 31, 2023, at 4:00 p.m. (ET).

**BASIS FOR RELIEF REQUESTED**

5. Bankruptcy Rule 9006(d) generally requires “[a] written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court.” Fed. R. Bankr. 9006(d). Pursuant to Local Rule 9006-1(e), however, such periods may be shortened by order of the Court upon written motion specifying the exigencies supporting shortened notice. As set forth herein and in the Third DIP Financing Motion, sufficient cause exists to justify shortening the notice period for and scheduling a hearing on, the relief requested in the Third DIP Financing Motion.

6. With limited exceptions not applicable here, “where necessary to effectuate the purpose of [chapter 15],” section 1521(a)(7) of the Bankruptcy Code provides that the Bankruptcy Court may upon recognition of a foreign proceeding, authorize “any additional relief that may be available to a trustee,” which includes relief under section 364 of the Bankruptcy Code. *See also* 11 U.S.C. § 1522(a) (court may grant relief under section 1521 only if the interests of “the creditors and the other interested entities, including the debtor, are sufficiently protected”).

7. Accordingly, on proper notice by the Debtors under the CCAA,<sup>2</sup> the Canadian Court has set a hearing on March 27, 2023, to consider the Canadian Application, including whether to authorize the Debtors to enter into the Third DIP Facility and grant the Third DIP Charge. Therefore, assuming the Canadian Court approves the Third DIP Loan, granting the relief requested herein will promote cooperation between jurisdictions in cross-border insolvencies, an express purpose of chapter 15 of the Bankruptcy Code. *See* 11 U.S.C. § 1501(a).

8. In addition, the Debtors will suffer immediate and irreparable harm if they cannot access the Third DIP Loan. Because the Debtors have no further availability under the Original DIP Facility or the Junior DIP Facility, they have no means by which to fund operations or the sale process without the Third DIP Loan. However, if approved by the Canadian Court and this Court, the Third DIP Facility will allow the Debtors to fund their operations and the sale process, thereby maximizing value for their constituents, which fulfills the requirements of section 1521(a)(7) of the Bankruptcy Code.

9. For the sake of administrative ease and judicial economy, scheduling a hearing for the Third DIP Financing Motion on April 5, 2023, with the other matters scheduled for hearing in this case is the best option. This schedule will also coincide with the proposed schedule for the Sale Motions, which are scheduled to also be heard on April 5, 2023.

10. Along with scheduling a hearing on April 5, 2023, for the Court to hear the Third DIP Financing Motion, the Foreign Representative requests that any objections to the relief requested in the Third DIP Financing Motion be filed no later than March 31, 2023, at 4:00 p.m. (ET) so as to allow the Foreign Representative sufficient time to evaluate and respond to any objections prior to the hearing.

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Third DIP Financing Motion.

11. Prior to the filing of the Motion to Shorten Notice, counsel for the Foreign Representative reached out to the Office of the United States Trustee to determine if they had any objection to the Motion to Shorten Notice. The U.S. Trustee indicated that they have no objection to the Motion to Shorten Notice.

**NOTICE**

12. Notice of this Motion to Shorten Notice will be provided to the following parties or their counsel: (a) the Office of the United States Trustee for the District of Delaware; (b) all parties to litigation in which any Debtor is a party and that is pending in the United States as of the date that the Chapter 15 Petitions were filed; (c) NBC and EDC; (d) the Monitor; (e) the 20 largest unsecured creditors of the Debtors in these cases; (f) the Debtors' counsel in the Canadian Proceeding; (g) all other parties that have requested notice in these cases. In light of the relief requested herein, the Foreign Representative respectfully submits that no other or further notice of this Motion to Shorten Notice is necessary under the circumstances.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, the Foreign Representative respectfully requests that the Court enter the order, substantially in the form attached hereto, granting the relief requested in this Motion to Shorten Notice, and for such other and further relief that this Court deems appropriate.

Dated: March 23, 2023  
Wilmington, Delaware

**BIELLI & KLAUDER, LLC**

/s/ David M. Klauder

David M. Klauder, Esquire (No. 5769)

1204 N. King Street

Wilmington, Delaware 19801

Phone: (302) 803-4600

Facsimile: (302) 397-2557

Email: dklauder@bk-legal.com

- and -

**MCDONALD HOPKINS LLC**

David A. Agay (pro hac vice admission pending)

Joshua A. Gadharf (pro hac vice admission pending)

Ashley J. Jericho (pro hac vice admission pending)

300 North LaSalle Street

Suite 1400

Chicago, Illinois 60654

Telephone: (312) 280-0111

Facsimile: (312) 280-8232

Email: dagay@mcdonaldhopkins.com

jgadharf@mcdonaldhopkins.com

ajericho@mcdonaldhopkins.com

*Counsel for the Foreign Representative*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

XEBEC HOLDING USA INC., *et al.*,

Debtors in a foreign proceeding.<sup>1</sup>

Chapter 15

Case No. 22- 10934 (KBO)

Jointly Administered

Re: Docket No.

**ORDER APPROVING MOTION TO SHORTEN NOTICE WITH RESPECT TO  
FOREIGN REPRESENTATIVE’S MOTION FOR ENTRY OF ORDER  
(I) RECOGNIZING AND ENFORCING FIFTH AMENDED AND RESTATED CCAA  
ORDER; AND (II) AUTHORIZING THIRD DIP FINANCING**

Upon consideration of the *Motion to Shorten Notice with Respect to Foreign Representative’s Motion for Entry of Order (I) Recognizing and Enforcing Fifth Amended and Restated CCAA Order; and (II) Authorizing Third DIP Financing* (the “Motion to Shorten Notice”); and it appears that good and sufficient notice of the Motion to Shorten Notice has been given, and after due deliberation thereon, and cause having been demonstrated to grant the relief requested in the Motion to Shorten Notice;

IT IS HEREBY ORDERED as follows:

1. The Motion to Shorten Notice is GRANTED as set forth herein.
2. The *Foreign Representative’s Motion for Entry of Order (I) Recognizing and Enforcing Fifth Amended and Restated CCAA Order; and (II) Authorizing Third DIP Financing* (the “Third DIP Financing Motion”)<sup>2</sup> will be heard on **April 5, 2023**, at **1:00 p.m. (ET)** before the

<sup>1</sup> The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: FormerXBC Inc. (f/k/a Xebec Adsorption Inc.) (0228), 11941666 Canada Inc. (f/k/a Xebec RNG Holdings Inc.) (N/A), Applied Compression Systems Ltd. (N/A), 1224933 Ontario Inc. (f/k/a Compressed Air International Inc.) (N/A), Xebec Holding USA Inc. (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), Xebec Adsorption USA, Inc. (0821), The Titus Company (9757), Nortekbelair Corporation (1897), XBC Flow Services – Wisconsin Inc. (7493), California Compression, LLC (4752), and Xebec Systems USA LLC (4156). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 730 Industriel Boulevard, Blainville, Quebec, J7C 3V4, Canada.

<sup>2</sup> Capitalized Terms not defined herein will have meaning ascribed to them in the Motion to Shorten Notice.

Honorable Karen B. Owens at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Wilmington, DE 19801, in Courtroom Number 3.

3. Any objections to the Motion to Shorten Notice shall be filed, by **March 31, 2023**, at **4:00 p.m. (ET)**.

4. The Foreign Representative shall serve a copy of this Order, along with a copy of the Motion to Shorten Notice, upon the following parties or their counsel: (a) the Office of the United States Trustee for the District of Delaware; (b) all parties to litigation in which any Debtor is a party and that is pending in the United States as of the date that the Chapter 15 Petitions were filed; (c) NBC and EDC; (d) the Monitor; (e) the 20 largest unsecured creditors of the Debtors in these cases; (f) the Debtors' counsel in the Canadian Proceeding; (g) all other parties that have requested notice in these cases.

5. The Court shall retain jurisdiction to enforce and implement this Order.