

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

FORMERXBC HOLDING USA INC.
(f/k/a XEBEC HOLDING USA INC.), *et al.*,

Debtor in a foreign proceeding.¹

Chapter 15

Case No. 22-10934 (KBO)

Jointly Administered

**DECLARATION OF DIMITRIOS “JIM” VOUNASSIS IN
SUPPORT OF FOREIGN REPRESENTATIVE’S MOTION FOR ORDER
(I) RECOGNIZING AND ENFORCING CCAA VESTING ORDER; (II) APPROVING
THE SALE OF CERTAIN OF THE DEBTORS’ ASSETS FREE AND CLEAR OF ALL
LIENS, CLAIMS, AND ENCUMBRANCES; AND (III) GRANTING RELATED RELIEF**

I, Dimitrios “Jim” Vounassis, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States, as follows:

1. I am the President and Chief Executive Officer of FormerXBC Inc. (f/k/a Xebec Adsorption Inc.), which is the duly-appointed foreign representative (“**Foreign Representative**”) of the above-captioned debtors (the “**Debtors**”), in Canadian proceedings (the “**Canadian Proceeding**”) commenced under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, pending before the Superior Court of Québec in the Commercial Division in the District of Montreal (the “**Canadian Court**”). I am authorized to provide this declaration on behalf of the Foreign Representative.

¹ 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), FormerXBC Holding USA Inc. (f/k/a Xebec Holding USA Inc.) (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), FormerXBC Adsorption USA Inc. (f/k/a Xebec Adsorption USA Inc.) (0821), FormerXBC Pennsylvania Company (f/k/a The Titus Company) (9757), FormerXBC NOR Corporation (f/k/a Nortekbelair Corporation) (1897), FormerXBC Flow Services – Wisconsin Inc. (f/k/a XBC Flow Services – Wisconsin Inc.) (7493), California Compression, LLC (4752), and FormerXBC Systems USA, LLC (f/k/a 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.

2. I joined the Foreign Representative in May 2021, in the role of Chief Operating Officer, and I became President and Chief Executive Officer in March 2022.

3. Before joining the Foreign Representative, I worked at Bombardier Transportation, now part of Alstom, one of the world's largest rail equipment manufacturing companies, as Chief Operating Officer. Prior to being appointed Chief Operating Officer at Bombardier Transportation, I held the position of Chief Transformation and Procurement Officer at Bombardier Corporation. Prior to that, I held positions as Vice President Global Operations at Pharmascience, Vice President Global Manufacturing and Strategic Sourcing at Baker Hughes, and Vice President Global Strategic Sourcing at Pratt and Whitney. I graduated from University of Waterloo with an Honours Bachelor of Science in Mechanical Engineering, and I completed an Executive MBA at the Smith School of Business at Queen's University.

4. I submit this declaration ("**Declaration**") in support of the *Motion for Order (I) Recognizing and Enforcing the CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, and Encumbrances; and (III) Granting Related Relief* (the "**Sale Motion**")², which seeks approval of the BioStream Transaction.

5. In preparing this Declaration, I reviewed the (a) Sale Motion; (b) the proposed order with respect to the Sale Motion; (c) the Canadian Vesting Order; (d) the Purchase Agreement, the Binding LOI, and other documents relating to the BioStream Transaction; (e) other relevant filings in these chapter 15 cases and in the Canadian Proceeding; and (f) the relevant provisions of the CCAA as they relate to the sale of assets and cross-border insolvencies or these chapter 15 cases.

² Capitalized but undefined terms herein shall have the meanings set forth in the Sale Motion.

A. The Sale Process

6. As a result of the sale process in accordance with the terms of the SISP, the Debtors, the Financial Advisor, and the Monitor, together with their respective advisors, conducted numerous meetings with the potentially interested parties and further negotiated the terms of proposed transactions. These arms'-length negotiations ultimately led to Debtors entering into a series of sale transactions, including four sales previously approved by the Court.

B. The BioStream Transaction

7. Prior to the Petition Date, FormerXBC was building and assembling the Purchased Assets at the Colorado Facility, pursuant to a contract between FormerXBC and Brightmark LLC. The work on the Purchased Assets remains uncompleted.

8. The Purchase Agreement is the product of an agreement between Seller and Buyer reached through arms'-length, good faith negotiations that included both parties to the transaction and the Monitor. Given the extensive SISP process undertaken in the Canadian Proceeding, and to avoid incurring unnecessary expenses of a longer process that is not likely to generate a higher and better offer for Seller's assets, I believe a private sale process is appropriate under the circumstances.

9. I believe the terms of the Purchase Agreement and the BioStream Vesting Order are reasonable and fair under the circumstances, and that the BioStream Transaction provides the highest and best return for Seller's assets. I also believe that consummating the BioStream Transaction in accordance with the deadlines set forth in the Purchase Agreement is critical to preserving the value of the Purchased Assets. Entry of the Sale and Recognition Order will facilitate the sale process. As such, it is my opinion that the BioStream Transaction is the best transaction for the Purchased Assets available to the Debtors under the circumstances.

10. I believe entering into the BioStream Transaction is a prudent exercise of the Debtors' business judgment as (a) the BioStream Transaction is the result of the Debtors' thorough, transparent, and fair marketing and sale process – the Canadian Court-approved SISP, which included extensive stakeholder negotiations and engagement, and subsequent sales efforts which ultimately resulted in executing Purchase Agreement and (b) the BioStream Transaction allows the Debtors to maximize the value of the Debtors' assets for the benefit of all stakeholders. Based on the foregoing, I believe the Debtors have a sound business reason justifying the sale of the Purchased Assets to Ivys pursuant to the Binding LOI and eventual Purchase Agreement.

11. The Purchase Agreement is the result of an extensive marketing process undertaken by the Debtors and their advisors and the product of arm's-length, good-faith negotiations between the Debtors and Ivys. In my opinion, Ivys is a "good faith" purchaser. Additionally, considering that the SISP and subsequent sale efforts were crafted to ensure that the Purchased Assets were sold for the maximum potential price, I believe that the BioStream Transaction has been proposed in good faith.

12. Prior to entering into the Purchase Agreement and filing the Canadian Application, the Debtors had exhausted all reasonable options for attracting bids for the assets subject to the sale that are higher and better than Ivys' offer. More specifically, the Debtors and the Financial Advisor were engaged in the SISP for six months, followed by additional sale efforts by the Debtors, and have been unable to attract any higher and better offers for the Purchased Assets, whether through the sale of the Debtors' entire business as a going concern, or through the sale of only FormerXBC's assets.

13. I believe that any additional marketing and sale process is unlikely to result in obtaining higher and better offers and likely would only result in additional expense and further deterioration to the Debtors' business.

14. I further believe that pursuing a sale other than one free and clear of all liens, claims, encumbrances, and other interests would yield substantially less value for the Debtors and their creditors.

15. The Debtors and Ivys have entered into the Purchase Agreement, sought and obtained entry of the BioStream Vesting Order, and seek entry of the Sale and Recognition Order, without collusion, in good faith, and after extensive arm's-length negotiations. I believe there is no evidence of fraud or collusion in the terms of the Purchase Agreement.

[Signature Page Follows]

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that, based upon my knowledge, information, and belief as set forth herein, the foregoing is true and correct.

Dated: September 8, 2023

/s/ Dimitrios “Jim” Vounassis
Dimitrios “Jim” Vounassis
President and CEO of FormerXBC Inc. (f/k/a Xebec
Adsorption Inc.)