

**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.<sup>1</sup>

Chapter 15

Case No. 22-10934 (KBO)

Jointly Administered

**DECLARATION OF JULIEN MORISSETTE IN SUPPORT OF FOREIGN  
REPRESENTATIVE'S FINAL REPORT AND MOTION FOR ORDER  
APPROVING ENTRY OF FINAL DECREE CLOSING CERTAIN 15 CASES**

I, Julien Morissette, 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 a Partner in the Montréal office of Osler, Hoskin & Harcourt LLP ("**Osler**"). My practice is dedicated to litigation, restructuring and insolvency matters. I regularly advise and represent debtors, court-appointed officers, secured lenders, unsecured creditors, and distressed asset purchasers, including in proceedings under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Osler has been retained as Canadian counsel to the above-captioned debtors (the "**Debtors**"), in Canadian proceedings (the "**Canadian Proceeding**") commenced under the CCAA and pending before the Superior Court of Québec

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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), 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.

(Commercial Division) in the District of Montréal (the “**Canadian Court**”). I am authorized to provide this declaration on behalf of the Foreign Representative.

2. I submit this declaration (“**Declaration**”) in support of the *Foreign Representative’s Final Report and Motion for Order Approving Entry of Final Decree Closing Certain Chapter 15 Cases* (the “**Motion**”),<sup>2</sup> which seeks entry of an order approving the entry of a final decree closing certain of the above-captioned chapter 15 cases.

3. In preparing this Declaration, I reviewed the (a) Motion; (b) the Proposed Order; and; (c) other relevant filings in these chapter 15 cases and in the Canadian Proceeding.

4. All facts set forth in this Declaration are based on: (a) my knowledge; (b) my review of relevant documents; (c) my opinion based upon my experience and knowledge of Canadian law, the Canadian Proceeding, and the Debtors’ operations; or (d) information provided to me by the Debtors or their advisors. If called upon to testify, I could and would testify to the facts set forth herein.

5. This Declaration contains statements of legal opinion or statements of fact. Where the matters stated in this Declaration are statements of legal opinion, such statements are based upon my experience as a practicing lawyer admitted and licensed to practice in the Province of Québec, Canada.

### **THE CANADIAN PROCEEDING**

6. On September 29, 2022, pursuant to an application made by the Debtors in the Canadian Proceeding, the Canadian Court issued that certain First Day Initial Order (the “**Initial CCAA Order**”). Pursuant to the Initial CCAA Order, the Canadian Court, among other things: (a) ordered a broad stay of proceedings in respect of the Debtors and their directors and officers

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<sup>2</sup> Capitalized but undefined terms herein shall have the meanings set forth in the Motion.

(the “**Canadian Stay**”); (b) appointed Deloitte Restructuring Inc. as monitor (the “**Monitor**”) in the Canadian Proceeding; (c) declared that Québec is the “centre of main interest” of the Debtors, and (d) authorized the Debtors to apply to any other court, tribunal, regulatory, administrative, or other body, wherever located, for orders to recognize and assist in carrying out the terms of the Initial CCAA Order and any subsequent orders rendered by the Canadian Court in the context of the Canadian Proceeding, including orders under chapter 15 of the Bankruptcy Code.

7. The Canadian Court has since extended the Canadian Stay, most recently solely in respect of FormerXBC Inc. (f/k/a Xebec Adsorption, Inc.) to November 30, 2024.

### **THE PLANS OF COMPROMISE AND SANCTION ORDER**

8. During the course of these chapter 15 cases, the Debtors, with the assistance of their directors, officers, management team, and advisors, and with the assistance of the Monitor and its advisors, have worked diligently to restructure the Debtors’ business while maximizing value for all constituents. More specifically, the Debtors’ efforts resulted in, among other things: (a) securing financing required to maintain the Debtors’ business during these proceedings; (b) preserving the continued employment of the majority of the Debtors’ employees during these proceedings, and the continuation of business relationships with the Debtors’ suppliers and customers; (c) completing sales of substantially all of the Debtors’ assets, including several sales of assets located in the United States approved by this Court; (d) liquidating and monetizing the Debtors’ remaining assets; and (e) resolving many complex business and legal issues, including cross-border issues.

#### **A. The Claims Filing and Reconciliation Process**

9. On May 24, 2023, the Canadian Court entered an order establishing procedures for filing claims, objecting to claims, and resolving disputed claims. All known creditors and potential creditors were given notice of the Canadian Proceeding and their ability to submit claims in the

Canadian Proceeding, including claims against the Debtors' directors and officers, with a claims bar date of July 24, 2023. Creditors having filed claims were given notice of the creditors' meeting and the hearing to approve the Plans and had opportunities to be heard and present objections to Plan approval at both.

**B. The Plans**

10. On November 1, 2023, Debtors 11941666 Canada Inc. (f/k/a Xebec RNG Holdings Inc.), Applied Compression Systems Ltd., 1224933 Ontario Inc. (f/k/a Compressed Air International Inc.), FormerXBC Holding USA Inc. (f/k/a Xebec Holding USA Inc.), Enerphase Industrial Solutions Inc., CDA Systems, LLC, FormerXBC Adsorption USA Inc. (f/k/a Xebec Adsorption USA Inc.), FormerXBC Pennsylvania Company (f/k/a The Titus Company), FormerXBC NOR Corporation (f/k/a Nortekbelair Corporation), FormerXBC Flow Services – Wisconsin Inc. (f/k/a XBC Flow Services – Wisconsin Inc.), California Compression, LLC, and FormerXBC Systems USA, LLC (f/k/a Xebec Systems USA LLC) (collectively, the “**Plan Debtors**”) submitted their Plans of Compromise in the Canadian Proceeding (the “**Plans**”).

11. The Plans provide, among other things: (a) protocols for the distribution of the Plan Debtors' assets to their respective secured and unsecured creditors; and (b) broad releases of, among others, the Plan Debtors, including the Foreign Representative, the Debtors' Directors, Officers, and Employees (each as defined in the Plans), the Debtor's legal and financial advisors, the Monitor and the Monitor's advisors, and each of the foregoing's present and former shareholders, affiliates, subsidiaries, directors, officers, partners, Employees, consultants, and agents.

12. On November 30, 2023, the Plan Debtors held a Creditors' Meeting, as required under the CCAA (the “**Creditors' Meeting**”). At the Creditors' Meeting, each Plan received the

support of the vast majority of the Affected Creditors that attended the meeting, thereby ensuring that each Plan was approved by majorities far surpassing the Required Majority.

13. On December 19, 2023, the Canadian Court entered an order “sanctioning” (i.e., confirming) the Plans (the “**Sanction Order**”).

14. On February 14, 2024, the Monitor issued those certain Monitor’s Certificates (the “**Monitor’s Certificates**”) confirming that the conditions precedent to the effectiveness of the respective Plans had been satisfied or waived. Copies of the Monitor’s Certificates are attached to the Motion as Exhibits B-1 through B-11. Accordingly, the Plans have been successfully implemented pursuant to their terms and the Monitor has made the distributions contemplated by the Plans.

15. Debtor FormerXBC did not file a plan under the CCAA in the Canadian Proceeding because it does not have any assets to distribute to unsecured creditors. However, FormerXBC is still an active entity, and will be working alongside the Monitor on final wind down issues in the Canadian Proceeding, including dissolving and/or putting certain entities, potentially including itself, into insolvency proceedings under applicable law. Therefore, out of an abundance of caution, the Foreign Representative does not seek to close FormerXBC’s chapter 15 case at this time, as FormerXBC may request the Bankruptcy Court’s recognition and enforcement of future orders issued by the Canadian Court relating to FormerXBC.

*[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: May 8, 2024

/s/ Julien Morissette  
Julien Morissette  
Canadian Counsel to the Debtors