

LECLAIR et al v XEBEC ADSORPTION INC. et al
500-06-001135-215
SETTLEMENT PLAN OF ALLOCATION

PART I – RECITALS:

- A. **WHEREAS** by way of an agreement dated May 26, 2023 (“**Settlement Agreement**”), the action styled *Leclair et al v Xebec Adsorption Inc. et al.*, brought in the Superior Court of Québec, Court File No.: 500-06-001135-215 (“**Action**”) has been settled amongst the parties on behalf of a Class of investors as defined in **Schedule “A”** to this Plan of Allocation (“**Settlement**”);
- B. **AND WHEREAS** subject to the approval of the Superior Court of Québec, which will be sought in due course, the net proceeds of the Settlement, after the deduction of the Court-approved legal fees, expenses and taxes (“**Settlement Distribution Fund**”) would be available for distribution to the members of the Class who submit valid claims in accordance with the Court-approved Claim Process (“**Claimants**”);
- C. **AND WHEREAS** the goal of this Plan of Allocation is to facilitate an efficient, just and fair allocation and distribution of the Settlement Distribution Fund;
- D. **NOW THEREFORE**, subject to the approval of the Superior Court of Québec, which will be sought in due course, it is hereby determined that the Settlement Distribution Fund shall be allocated and distributed in accordance with the terms of this Plan of Allocation, as follows.

PART II – DEFINITIONS:

1. For the purposes of this Plan of Allocation, the definitions set out in the Settlement Agreement apply to and are incorporated into this Plan of Allocation and, in addition, the following definitions apply:
- (a) “**Allocation System**” means the method of determining the Compensable Loss assigned to a claim in order to determine the amount of compensation to be awarded for that claim, taking into account risk adjustments to account for the litigation and liability risks for the 4 (four) different categories of Claimants.
 - (b) “**Claim Form**” means a written claim in the prescribed form seeking compensation from the Settlement Distribution Fund.
 - (c) “**Claim Process**” means the Court-approved process to submit a Claim Form seeking compensation from the Settlement Distribution Fund.
 - (x) “**Claimants**” means each Class Member who submits a valid Claim Form, or on whose behalf a valid Claim Form is submitted by a person who is authorized to submit the Claim Form, in accordance with the Court-approved Claim Process. The Claimants would encompass the following four groups, in each case specifically excluding the Excluded Persons:

- (i) **Secondary Market Purchasers:** any person or entity, wherever they may reside or may be domiciled, who purchased Xebec’s common shares in the secondary market at any time during the Class Period, and held those shares as of the close of trading on the TSX on March 11, 2021 or March 24, 2021.
 - (ii) **Prospectus Purchasers:** any person or entity, wherever they may reside or may be domiciled, who purchased Xebec’s Subscription Receipts pursuant to the Final Short-Form Prospectus dated December 21, 2020, at a purchase price of \$5.80 per Subscription Receipt.
 - (iii) **Private Placement Purchasers:** any person or entity, wherever they may reside or may be domiciled, who purchased Xebec’s Subscription Receipts in the Private Placement carried out in December of 2020, at a purchase price of \$5.80 per Subscription Receipt.
 - (iv) **HyGear Investors:** any person or entity, wherever they may reside or may be 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.
- (d) **“Claims Administrator”** means the firm to be appointed by the Court to administer the Claim Process and may include KND Complex Litigation acting as Claims Administrator.
 - (e) **“Claims Bar Date”** means the date to be determined by Court by which Claim Forms must be submitted in order for it to be considered a valid Claim Form.
 - (f) **“Class”** and **“Class Members”** have the meanings attributed to these terms in **Schedule “A”**, and specifically exclude an Excluded Person.
 - (g) **“Class Counsel”** means KND Complex Litigation and Lex Group.
 - (h) **“Claims Process Escrow Account”** has the meaning attributed to it in paragraph 34 below.
 - (i) **“Compensable Loss”** is the sum of a Claimant’s recoverable investment loss after risk adjustments applied for each type of purchase.
 - (j) **“Court”** means the Superior Court of the Province of Québec.
 - (k) **“Escrow Account”** has the meaning ascribed in the Settlement Agreement.
 - (l) **“Excluded Persons”** are the persons and entities identified in **Schedule “A”**.
 - (m) **“Offering”** means the issuance and distribution of Subscription Receipts of Xebec, at a price of \$5.80 per Subscription Receipt, in December 2020.
 - (n) **“Plaintiff’s Compensable Loss”** means for Maurice Leclair \$1,680 and for Evert Schuringa \$9,346.12

- (o) “**Settlement Distribution Fund**” means the net settlement fund available for allocation and distribution after payment of legal fees, expenses and taxes to be approved by the Court.
- (x) “**Xebec**” means Xebec Adsorption Inc.

PART III – GENERAL:

- 2. The Claims Administrator shall distribute the Settlement Distribution Fund in accordance with the terms of this Plan of Allocation.
- 3. The goal of this Plan of Allocation is to distribute the Settlement Distribution Fund among Claimants who submit valid and timely Claim Forms.
- 4. In the event of circumstances that may not be specifically addressed herein, the Claims Administrator shall address the situation bearing in mind the spirit and goal of this Plan of Allocation.
- 5. Class Counsel and the Claims Administrator may apply to the Court for guidance and directions as needed to give effect to this Plan of Allocation.
- 6. All dollar figures indicated herein are in Canadian dollars.

PART III – COMPLETION AND SUBMISSION OF CLAIM FORMS:

- 7. Other than as specified herein, any person who wishes to claim compensation from the Settlement Distribution Fund must complete and submit a Claim Form by the Claims Bar Date, following which the claim shall be disallowed and it shall be extinguished and forever barred. Notwithstanding this clause, the Claims Administrator may in its discretion allow an otherwise-valid late claim without further order of the Court.
- 8. A Claim Form may be completed and submitted by the Claimant, or a person who is authorized to complete and submit the Claim Form on behalf of the Claimant.
- 9. If the Claim Form is completed and submitted by a representative, the person completing and submitting the Claim Form shall certify that he, she or it is authorized to do so on behalf of the Claimant.

PART IV – PROCESSING CLAIM FORMS:

- 10. The Claims Administrator shall develop and make available an electronic and automated process to facilitate the completion, submission and processing of the Claim Forms. That process will be designed and structured to receive each Claimant’s information from them, including the particulars of their transactions in Xebec’s securities, and determine their eligibility and, if so, their Compensable Loss, in accordance with the terms of this Plan of Allocation.

11. Each person submitting a Claim Form shall certify that:
 - (a) He, she or it, or the person on whose behalf the Claim Form is being submitted, is an eligible Claimant;
 - (b) He, she or it, or the person on whose behalf the Claim Form is being submitted, is not an Excluded Person; and
 - (c) He, she or it is providing information that is true and correct.
12. The Claim Process is intended to be expeditious, cost effective and “user friendly” and to minimize the burden on Claimants. The Claims Administrator shall, in the absence of reasonable grounds to the contrary, assume the Claimants to be acting honestly and in good faith.
13. The Claim Process is also intended to prevent fraud and abuse. If, after reviewing any Claim Form, the Claims Administrator believes that the claim contains unintentional errors which would materially exaggerate the Compensable Loss to be awarded to the Claimant, then the Claims Administrator may disallow the claim in its entirety or make such adjustments so that an appropriate Compensable Loss is awarded to the Claimant. If the Claims Administrator believes that the claim is fraudulent or contains intentional errors which would materially exaggerate the Compensable Loss to be awarded to the Claimant, then the Claims Administrator shall disallow the claim in its entirety and the Claimant shall be barred from subsequent claims arising from any settlement or judgment in this class proceeding. The Claims Administrator shall conduct test audits of the Claim Forms, meaning that it shall test random samples of the Claim Forms, to be received from Claimants, in order to verify the accuracy of the Claim Forms.

PART V – IRREGULAR CLAIMS OR CLAIM FORMS:

14. Where a Claim Form contains minor omissions or errors, the Claims Administrator may in its discretion correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Claims Administrator.
15. If the Claims Administrator identifies a Claim Form that is materially untrue or inaccurate, the Claims Administrator may in its discretion disallow the claim in its entirety.
16. Where the Claims Administrator disallows a claim in its entirety, the Claims Administrator shall send to the Claimant at the address provided by the Claimant or the Claimant’s last known email or postal address, a notice advising the Claimant that he, she or it may request the Claims Administrator to reconsider its decision. For greater certainty, a Claimant is not entitled to a notice or a review where a claim is allowed but the Claimant disputes the determination of Compensable Loss or his, her or its individual compensation.
17. Any request for reconsideration must be received by the Claims Administrator within 21 days of the date of the notice advising of the disallowance. If no request is received within this time period, the Claimant shall be deemed to have accepted the Claims Administrator’s determination and the determination shall be final and not subject to further review by any court or other tribunal.

18. Where a Claimant files a request for reconsideration with the Claims Administrator, the Claims Administrator shall advise Class Counsel of the request and conduct an administrative review of the Claimant's complaint.
19. Following its determination in an administrative review, the Claims Administrator shall advise the Claimant of its determination. In the event the Claims Administrator reverses a disallowance, the Claims Administrator shall send the Claimant at the Claimant's last known email or postal address, a notice specifying the revision to the Claims Administrator's disallowance.
20. The determination of the Claims Administrator in an administrative review is final and is not subject to further review by any court or other tribunal.

PART VI – ALLOCATION SYSTEM:

A. GENERAL

21. Each Claimant's Compensable Loss shall be determined in accordance with this section of the Plan of Allocation unless otherwise specified herein.
22. The Plaintiff's Compensable Loss(es) have been calculated by Class Counsel in accordance with this section.
23. Each Claimant's Compensable Loss shall be, or in the case of the Plaintiff's Compensable Loss has been determined through the following two-step process:
 - (a) First, the Claimant's gross loss shall be determined; and
 - (b) Second, the Claimant's gross loss shall be multiplied by the applicable risk adjustments prescribed herein to calculate each Claimant's Compensable Loss.

COMPENSABLE LOSS = Gross Loss X Applicable Risk Adjustment

B. SECONDARY MARKET PURCHASERS:

24. For the purposes of this Plan of Allocation, a secondary market purchaser is a 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.

25. The Compensable Loss of each such Claimant shall be determined as follows:

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	N/A
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

C. PROSPECTUS PURCHASERS:

26. For the purposes of this Plan of Allocation, a prospectus purchaser is a 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.
27. Each Xebec Subscription Receipt was subsequently converted to 1 Xebec common shares. Therefore, for the purposes of this Plan of Allocation, the applicable hold-through applies to the equivalent common shares.
28. The Compensable Loss of each such Claimant shall be determined as follows:

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, 2021, or which continue to be held	# of common shares X (\$5.80 - \$4.58)	0.50

D. PRIVATE PLACEMENT PURCHASERS:

29. For the purposes of this Plan of Allocation, a prospectus purchaser is a 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.
30. Each Xebec Subscription Receipt was subsequently converted to 1 Xebec common shares. Therefore, for the purposes of this Plan of Allocation, the applicable hold-through applies to the equivalent common shares.

31. The Compensable Loss of each such Claimant shall be determined as follows:

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

E. HYGear INVESTORS:

32. For the purposes of this Plan of Allocation, a HyGear Investor is a 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.
33. The Compensable Loss of each such Claimant shall be determined as follows:

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

PART VIII – DISTRIBUTION OF THE SETTLEMENT DISTRIBUTION FUND:

34. Class Counsel shall distribute the Plaintiff's Compensable Losses to the Plaintiffs as applicable from the Escrow Account directly. After deducting such fees and disbursements as may be authorized by the Court from the Escrow Account, Class Counsel shall transfer the remaining balance in the Escrow Account to an account designated by the Claims Administrator to be the Claims Process Escrow Account.
35. After the Claimants' Compensable Losses are determined, the Claims Administrator shall make payments to such Claimants from the Claims Process Escrow Account on a prorated basis, subject to the following terms:
 - (a) Payments will be made in Canadian currency.
 - (b) The Claims Administrator shall not make payments to Claimants whose allocation is less than \$25.00. Such amount shall instead be added to the Claims Process Escrow Account and distributed in accordance with paragraph 36, and these Claimants will not be eligible for payment.
 - (c) The Claims Administrator shall make payment to a Claimant by either bank transfer or by cheque to the Claimant at the address provided by the Claimant or the last known postal address for the Claimant. If, for any reason, a Claimant does not cash a cheque within 6 (six) months after the date of the cheque, the cheque shall be cancelled and the Claimant shall forfeit the right to compensation.

PART IX – REMAINING AMOUNTS IN THE ESCROW ACCOUNT:

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.

SCHEDULE “A”

DEFINITION OF “CLASS” AND “CLASS MEMBERS”

Class or Class Member means, other than the Excluded Persons, any person or entity, 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 Class Period, and held some or all of such securities as of the close of trading on the TSX on March 11, 2021 or March 24, 2021.

Class Period means the period from November 10, 2019, to March 24, 2021, inclusively.

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
- (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.;

as defined in the Settlement Agreement.