CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C.1985, c. C-36)

NO: 500-11-064357-243

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

TAIGA MOTORS CORPORATION/ CORPORATION MOTEURS TAIGA et al.

Debtors

and

DELOITTE RESTRUCTURING INC.

Monitor

and

MICHAEL FIZZELL

and

ANDREW LAPHAM

Applicants

and

ÉDOUARD LACERTE

Respondent

and

SAMUEL BRUNEAU et al.

Impleaded Parties

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Action Division)

NO: 500-06-001346-242

ÉDOUARD LACERTE

Plaintiff

v.

SAMUEL BRUNEAU et al.

Defendants

FIZZELL AND LAPHAM'S APPLICATION TO DISMISS THE *APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO BRING A STATUTORY MISREPRESENTATION CLAIM PURSUANT TO ARTICLES 574 FF., C.C.P. AND SECTION 225.4 OF THE QUÉBEC SECURITIES ACT*
(*Art.* 51, 53, 158 *C.C.P.*, and s. 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 "*CCAA*")

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE DEFENDANTS MICHAEL FIZZELL AND ANDREW LAPHAM RESPECTFULLY SUBMIT AS FOLLOWS:

I. INTRODUCTION

1. Defendants Michael Fizzell ("**Fizzell**") and Andrew Lapham ("**Lapham**") seek the immediate dismissal of the *Application for Authorization to Institute a Class Action and to Bring a Statutory Misrepresentation Claim Pursuant to Articles 574 ff., C.C.P. And Section 225.4 of the Québec Securities Act* in court file no. 500-06-001346-242 (the "**Authorization Application**").

2. The Authorization Application should be dismissed as against Fizzell and Lapham for the following reasons:

   a) The Authorization Application was filed in direct contravention of the Stay of Proceedings ordered by the Superior Court of Québec, Commercial

Division in the *CCAA* matter bearing Court file number 500-11-064357-243 (as explained below);

b) Fizzell and Lapham were added as directors of Taiga Motors Corporation after the Impugned Documents containing the misrepresentations alleged in the Authorization Application were approved by the Board. The claims alleged against them are thus without merit, abusive and have no reasonable possibility of success.

3. The Impugned Documents alleged in the Authorization Application are: the FY 2022 Annual Financial Statements, MD&A, and Taiga Motors' Press Release titled "Taiga Announces Fourth Quarter and Full Year 2022 Results (Exhibit P-2)). Fizzell and Lapham joined the Board of Directors of Taiga Motors Corporation (the "**Board**") after the approval by the Board of these documents. Fizzell and Lapham obviously did not participate in the review and approval of the Impugned Documents, which are the only documents which the Plaintiff alleges contained misrepresentations.

II. BACKGROUND AND THE PLAINTIFF'S CLAIM

4. Taiga Motors Corporation was a publicly traded corporation incorporated under the *Business Corporations Act* (British Columbia), SBC 2002, c. 57. The common shares and the warrants of Taiga Motors Corporation were listed and traded on the Toronto Stock Exchange.

5. Taiga Motors Corporation was the ultimate owner of the issued and outstanding shares of Taiga Motors Inc., Taiga Motors America Inc. and CGGZ Finance Corp.

6. Faced with pressing liquidity constraints, Taiga Motors Corporation, Taiga Motors Inc., Taiga Motors America Inc. and CGGZ Finance Corp (the "**Debtors**") sought creditor protection and relief under the *CCAA*.

7. On July 10, 2024, the Court granted the application of the Debtors and issued an initial order and ancillary relief under the *CCAA* (the "**Initial Order**") ordering that, *inter alia*, *no proceeding shall be commenced* or continued against the Debtors, except with leave of this Court, or against their *former,* present or future directors relating to any obligation of the Debtors where it is alleged that any of the directors are liable under any law in such capacity for the payment of such obligation, "until and including July 20, 2024, or such later date as the Court may order" (the "**Stay of Proceedings**"), as appears from paragraph 17 of the Initial Order communicated herewith as **Exhibit N-1**.

8. The Stay of Proceedings was later extended until and including October 8, 2024 and, on October 10, 2024, the Court issued a Second Amended and Restated Initial Order (the "**Second ARIO**") which, among other things, extended the Stay

of Proceedings until and including December 19, 2024, as appears from paragraph 20 of the Second ARIO communicated herewith as **Exhibit N-2**.

9. On December 18, 2024, the Stay of Proceedings was extended until March 14, 2025, as appears from the Stay Period Extension Order (*l'Ordonnance de prolongation*), communicated herewith as **Exhibit N-3**.

10. The Plaintiff filed the Authorization Application on November 22, 2024, despite the Stay of Proceedings and without leave of the Court.

11. The Plaintiff claims to be a retail investor who acquired the securities of Taiga Motors Corporation on the Toronto Stock Exchange between March 30, 2023 and April 2, 2024.

12. The Plaintiff is seeking to be authorized to institute a class action on behalf of a proposed class of "all persons who acquired securities of Taiga [Motors Corporation] at any time during the Class Period [the period from March 30, 2023 to April 2, 2024] and incurred a loss on their investment". The Authorization Application was filed against Fizzell and Lapham and four other present and/or former directors and/or officers of Taiga Motors Corporation (the "**Defendants**"), as appears from the Court records.

13. None of the allegations in the Authorization Application have been proven or admitted. They are expressly denied.

III. THE AUTHORIZATION APPLICATION MUST BE DISMISSED

A. THE CLAIMS AGAINST FIZZELL AND LAPHAM ARE STAYED PURSUANT TO THE *CCAA* PROCEEDINGS

14. Pursuant to the Second ARIO and the Stay Period Extension Order of December 18, 2024 (**Exhibits N-2** and **N-3**), the Court extended the Stay of Proceedings "until and including March 14, 2025 or such later date as the Court may order."

15. The Stay Period applies to any and all proceedings that may be commenced against Fizzell and Lapham as former directors of Taiga Motors Corporation.

16. Therefore, the Plaintiff was expressly barred from filing the Authorization Application "until and including March 14, 2025, or such later date as the Court may order."

17. For this reason alone, the Authorization Application must be immediately dismissed with respect to Fizzell and Lapham, as well as the other Defendants.

B. THE CLAIMS AGAINST FIZZELL AND LAPHAM ARE WITHOUT MERIT, ABUSIVE AND WITH NO REASONABLE POSSIBILITY OF SUCCESS

18. In the Authorization Application, the Plaintiff alleges misrepresentations in the Impugned Documents released on March 30, 2023, and seeks damages from the Defendants based on these alleged misrepresentations.

19. However, contrary to the Plaintiff's allegations at paragraphs 14, 15, 19 and 27(b) in the Authorization Application, Fizzell and Lapham were <u>not</u> directors of Taiga Motors Corporation at the time the Board approved the release of the Impugned Documents, but were added to the Board after their approval and release.

20. This appears from several documents. Page 2 of the Plaintiff's own Exhibit P-2, Taiga Motors Corporation' Press Release titled "Taiga Announced Fourth Quarter and Full Year 2022 Results" dated March 30, 2023 and filed on SEDAR on the same day, communicated herewith as **Exhibit N-4**, states in the future tense:

> "As part of the Private Placement, Taiga has agreed to reconstitute its Board of Directors. Taiga's Board of Directors *will* add the following four directors, Andrew Lapham and Michael Fizzell from Northern Private Capital, …" [emphasis added]

21. Taiga Motors Corporation had announced on March 17, 2023 that it had entered into definitive subscription agreements for a private placement of $40.15 million (the "**Private Placement**"), as appears from Taiga Motors Corporation's Press Release titled "Taiga Motors Announces Private Placement of $40.15 million of Secured Convertible Debentures and Provides Corporate and Financial Update", filed on SEDAR on March 17, 2023, communicated herewith as **Exhibit N-5**.

22. The Private Placement was subscribed for by two institutional investors: existing shareholder Northern Private Capital (together with its affiliates and funds managed by it, "**NPC**") and Investissement Québec, who were each granted the right to nominate board members.

23. As appears under the heading "Governance Update" on p. 3 of the March 17, 2023 Press Release:

> As part of the Private Placement, Taiga has agreed, *as soon as practicable after* the closing of the Private Placement and *the release and filing of the Company's 2022 financial results and statements*, to reconstitute its Board of Directors …
>
> […]
>
> As a result of the Board reconstitution, Kent Farrell, Nadia Martel, François R. Roy and Gabriel Bernatchez have confirmed that they will be resigning

> from the Board once the Private Placement is completed and *following the release and filing of the Company's 2022 financial results and statements, and Andrew Lapham, Michael Fizzell and Francis (Frank) Séguin will join the Board as nominees of NPC …* The Board will thus be reconstituted immediately following filing of the Company's 2022 financial results and statements…" [emphasis added]

24. On March 24, 2023, Taiga announced that it had completed the Private Placement, as appears from the Plaintiff's Exhibit P-2, at p. 2 (**Exhibit N-4**).

25. On March 29, 2023, Taiga Motors Corporation's Consolidated Financial Statements for the years ended December 31, 2022 and 2021 were approved and authorized for issuance by the Board, as appears from the top of page 14 of the said financial statements, filed on SEDAR on March 30, 2023, and communicated herewith as **Exhibit N-6**.

26. Fizzell and Lapham did not participate in this approval, as they were not yet members of the Board on March 29, 2023.

27. Following the release of Taiga's FY 2022 disclosure documents (including the Impugned Documents), Fizzell and Lapham joined the Board as the nominees of NPC.

28. Fizzell and Lapham therefore had no implication in the misrepresentations alleged in the Authorization Application and should not be compelled to undergo the whole pre-authorization process, including up to the authorization hearing, before the proceeding is dismissed. It is clear that the Plaintiff's claim against them is without merit, abusive and with no reasonable possibility of success.

29. This is in addition to the Plaintiff's violation of the Stay of Proceedings, pursuant to the Second ARIO and the Stay Period Extension Order of December 18, 2024 (**Exhibits N-2** and **N-3**).

30. The Authorization Application is a flagrant case of abusive conduct requiring judicial intervention to immediately dismiss the proceedings against Fizzell and Lapham.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Fizzell and Lapham's Application to dismiss the Application for Authorization to Institute a Class Action and to Bring a Statutory Misrepresentation Claim Pursuant to Articles 574 ff. C.C.P. and Section 225.4 of the Québec Securities Act*;

DISMISS the *Application for Authorization to Institute a Class Action and to Bring a Statutory Misrepresentation Claim Pursuant to Articles 574 ff. C.C.P. and Section*

225.4 of the Québec Securities Act as against Defendants Michael Fizzell and Andrew Lapham;

THE WHOLE with costs.

MONTRÉAL, February 14, 2025

(s) Torys Law Firm LLP

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PROVINCE OF QUÉBEC
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NO: 500-11-064357-243

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ÉDOUARD LACERTE

Plaintiff

v.

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Defendants

SWORN STATEMENT OF ANDREW LAPHAM
(February 14, 2025)

I, the undersigned, Andrew Lapham, Chief Executive Officer of Northern Private Capital Ltd. ("**NPC**"), 135 Yorkville Avenue, 9th Floor, Toronto, Ontario, M5R 0C7, solemnly affirm the following:

1. I am the co-founder and the Chief Executive Officer of NPC. I have held this position since 2018.

2. I make this sworn statement in support of *Fizzell and Lapham's Application to dismiss the Application for Authorization to Institute a Class Action and to Bring a Statutory Misrepresentation Claim Pursuant to Articles 574 ff., C.C.P. and Section 225.4 of the Québec Securities Act* (the "**Application to Dismiss**").

3. I have personal knowledge of the facts alleged herein.

PRIVATE PLACEMENT AND APPOINTMENT TO THE BOARD OF DIRECTORS OF TAIGA MOTORS CORPORATION

4. Taiga Motors Corporation announced on March 17, 2023 that it had entered into definitive subscription agreements for a private placement of $40.15 million (the "**Private Placement**"), as appears from Taiga Motors Corporation's Press Release titled "Taiga Motors Announces Private Placement of $40.15 million of Secured Convertible Debentures and Provides Corporate and Financial Update", filed on SEDAR on March 17, 2023, attached hereto as **Exhibit N-5**.

5. The Private Placement was subscribed for by NPC and Investissement Québec.

6. As part of the Private Placement, Taiga Motors Corporation agreed to reconstitute the Board and granted each of the investors the right to nominate board members after the closing of the Private Placement and the release and filing of Taiga Motors Corporation's 2022 financial results and statements. One seat was granted to Investissement Québec, two seats to NPC and one seat to an independent member designated by NPC, as appears from Taiga Motors Corporation's Press Release titled "Taiga Announced Fourth Quarter and Full Year 2022 Results" filed on SEDAR on March 30, 2023 attached hereto as **Exhibit N-4** at p. 2, and **Exhibit N-5** at p. 3.

7. On March 24, 2023, Taiga Motors Corporation announced it had completed the Private Placement, as appears from **Exhibit N-4**, at p. 2.

8. Taiga Motors Corporation's Consolidated Financial Statements for the years ended December 31, 2022 and 2021, attached hereto as **Exhibit N-6**, were approved and authorized for issuance by the Board on March 29, 2023, as appears from p. 14 thereof. They were announced to the public and filed on SEDAR on March 30, 2023 as part of the release of Taiga's disclosure documents for FY 2022, which included the following documents which Plaintiff refers to as the "Impugned Documents": the FY 2022 Annual Financial Statements, MD&A, and Taiga Motors' Press Release titled "Taiga Announces Fourth Quarter and Full Year 2022 Results (Exhibit P-2).

9. As agreed as part of the Private Placement, Michael Fizzell and I joined the Board of Directors of Taiga Motors Corporation (the "**Board**") after the approval and release of these documents.

10. Michael Fizzell and I did not participate and could not have participated in the review and approval of the Impugned Documents since we joined the Board after they were approved and released.

11. I have read the present sworn statement and all the facts alleged herein are true.

AND I HAVE SIGNED IN TORONTO, ON FEBRUARY 14, 2025

DocuSigned by:
Andrew Lapham
BC6E93C02F54410...

February 14, 2025

ANDREW LAPHAM

SOLEMNLY DECLARED BEFORE ME
by videoconference, in Montréal,

Province of Québec, on this 14th day of February 2025

____

Commissioner for Oaths for the Province of Québec and outside of Québec

COMMISSAIRE À L'ASSERMENTATION
JASON
DUBEAU
243 762
POUR LE QUÉBEC ET
POUR L'EXTÉRIEUR DU QUÉBEC

NOTICE OF PRESENTATION

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TAKE NOTICE that the attached *Fizzell And Lapham's Application to Dismiss the Application for Authorization to Institute a Class Action and to Bring a Statutory Misrepresentation Claim Pursuant to Articles 574 ff., C.C.P. and Section 225.4 of the Québec Securities Act* will be presented before one of the Honourable judges of the Superior Court of Québec, sitting in and for the District of Montréal, at a date and time to be determined by the Court, at the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, February 14, 2025

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