2023 01G 3233
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Bankruptcy and Insolvency Act* R.S.C., 1985 c. B-3 as Amended (the "**BIA**");

AND IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C-36 as Amended (the "**CCAA**");

AND IN THE MATTER OF an application of Big Erics Inc. and Terra Nova Old Port Foods Inc. (collectively, the "**Company**")

Estate Nos. 51-2962147 (Terra Nova Old Port Foods Inc.)
51-2962148 (Big Erics Inc.)

Court Nos. 24543 (Terra Nova Old Port Foods Inc.)
24544 (Big Erics Inc.)

INTERLOCUTORY APPLICATION
(Inter Partes)

SUMMARY OF CURRENT DOCUMENT	
Court File Number	2023 01G 3233
Date of Filing Document	27 January 2025
Application to which Document being filed relates:	Application seeking a final distribution to creditors and to terminate the CCAA proceeding pursuant to the *Companies' Creditors Arrangement Act,* RSC 1985, c C-36
Statement of Purpose in Filing:	To extend the releases provided for under s.11 CCAA and set out in the Asset Vesting Order dated 16 April, 2024, to the directors and officers of Terra Nova Old Port Foods Inc. ("**TNOPFI**")

The Applicant, TNOPFI, seeks the following:

(a) an order abridging the notice periods pursuant to Section 11 of the CCAA and the *Rules of the Supreme Court, 1986,* Rule 3.03(1), Rule 6.04(2) and Rule 6.06;

(b) an order pursuant to Section 11 of the CCAA, directing that the service on the service list set out in **Schedule A** hereto is sufficient for the purposes of this application;

(c) An order providing for, among other things:

(i) a release in favour of TNOPFI as well as each of its directors, officers, employees and advisors, the Monitor and its advisors all as described in detail below and set out in the draft Order;

(ii) such further and other relief as counsel may advise and this Court deems just.

MATERIAL FACTS:

1. The Applicants were granted an Initial CCAA Order on July 18, 2023. On July 28, 2023, the Court granted an Amended and Restated Initial Order **("ARIO").**

2. On October 25, 2023, the Court approved a SISP. The ultimate result of that SISP was an Asset Purchase Agreement, dated April 12, 2024, pursuant to which the assets of Big Eric's were sold to 94747 Newfoundland and Labrador Inc. (the **"Purchaser").** The transaction was approved by an Asset Vesting Order of this Court, dated April 16, 2024 (the **"AVO").**

3. The Asset Purchase Agreement closed on May 10, 2024, as confirmed by Monitor's Certificate No. 1.

4. Following the closing, a number of disputes arose with respect to the transaction, which were ultimately settled between the parties with the assistance of the Monitor.

5. The Purchaser paid the post-closing purchase price adjustments according to the Asset Purchase Agreement which was confirmed by the Monitor's Certificate No. 2 issued on November 1, 2024.

6. On October 25, 2024, the stay of proceedings was further extended to January 31, 2025.

7. On 17 January 2025 the Monitor applied for an order for, among other things:

   (a) for a final distribution to creditors;

   (b) Approving the fees and disbursements of the Monitor and its legal counsel from May 25, 2024 to December 31, 2024, as well as an estimate of fees and disbursements to complete the final administration of this proceeding, as set out in the Monitor's Eleventh Report, dated January 17, 2025;

   (c) Terminating the various court-ordered charges; and

   (d) Granting an order discharging the Monitor and terminating these CCAA proceedings.

8. The within proceeding has been advance since 28 July 2023 with two Applicants being Big Erics Inc. ("**BEI**") and TNOPFI. As noted above, substantially all of the assets of BEI were sold pursuant to the AVO, which upon closing, provided the following release to the directors and officers of BEI at paragraph 20:

> "**THIS COURT ORDERS** that effective upon the delivery of the Monitor's Certificate to the (i) the Vendor and its current and former directors, officers, employees, legal counsel, and advisors; (ii) the Monitor and its legal counsel, and their respective present and former directors, officers, partners, employees, and advisors, and (iii) the Purchaser, its current and former directors, officers, employees, legal counsel, and advisors (the Persons listed in (i), (ii) and (iii) being collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims whatsoever (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, offer, investment proposal, dealing, or other fact, matter, occurrence or thing existing or taking place prior to the delivery of the Monitor's Certificate or completed pursuant to the terms of this Order and/or in connection with the Transactions solely in respect of the Vendor and their indebtedness, including their assets, business or affairs, or prior dealings with the Vendor (wherever or however conducted or governed), or the administration and/or management of the Vendor or these proceedings or arising in connection with the Asset Purchase Agreement, the completion of the Transactions, the closing documents, any

> agreement, document, instrument, matter or transaction in each case solely involving the Vendor or arising in connection with or pursuant to any of the foregoing (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled, and barred as against the Released Parties, and are not vested nor transferred to the Purchaser or to any other entity and are extinguished, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim for fraud or wilful misconduct or any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA."

9. The Monitor has now moved to make a final distribution of funds and wind up of the proceeding, and in that connection, has requested that the directors' and officers' charges (the "**D&O Charges**") that were in place for the protection of the directors and offices of both BEI and TNOPFI be discharged.

10. With respect to the officers and directors of BEI, they obtained a full and final releases in the AVO, such that the discharge of the D&O Charges will have limited effect on their liability. By contrast, given TNOPFI voluntarily wound down its operations in cooperation with its senior secured lender, BMO, it was not included in the releases under the AVO because it did not sell any assets in that transaction. Its assets were voluntarily liquidated as a condition precedent to BMO's agreement on the ARIO.

11. TNOPFI says it is fair and reasonable that in the given circumstances given its cooperation through the proceeding that the releases provided for in the AVO be extended to its directors and officers by the issuance of an order in the form attached hereto as **Schedule "B"**.

RELIEF:

12. The Companies repeat the foregoing and therefore apply pursuant to s.11 CCAA for an Order granting the following:

    (a) A release of its directors and officers in the form of order attached hereto as **Schedule "B"**;

    (b) Such further and other relief as this Honourable Court deems mete and just.

DATED at St. John's, Newfoundland and Labrador, this 27th day of January 2025.

DARREN D. O'KEEFE
O'KEEFE & SULLIVAN
Solicitors for the Applicant
Whose address for service is:
Suite 202, 80 Elizbeth Ave.
St. John's, NL A1A 1W7

ISSUED at St. John's, Newfoundland and Labrador, this day of January 2025.

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AND IN THE MATTER OF an application of Big Erics Inc. ("**BEI**") and Terra Nova Old Port Foods Inc. ("**TNOPFI**") (collectively, the "**Companies**")

AFFIDAVIT

I, Darren O'Keefe, Solicitor, in the Province of Newfoundland and Labrador, MAKE OATH AND SAY:

1. I am the solicitor for the Applicant, TNOPFI.

2. I file the within affidavit for the purpose of having the within application scheduled. To the best of my knowledge, information and belief, based on direct discussions with the Applicant and/or the Monitor, the facts contained herein are true.

3. The Applicants have sworn an affidavit through Wayne Myles dated 27 January 2025 which is included with this application in .pdf format. The original of this affidavit will be filed with the Court later today.

4. I make this affidavit for the purpose of supporting the relief requested therein and for no improper purpose.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 27 day of January 2025.

Barrister, NL

Darren D. O'Keefe

COPY

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AFFIDAVIT

I, **WAYNE MYLES** of Halifax, Nova Scotia, **MAKE OATH AND SAY AS FOLLOWS**:

1. I am former chairman of BEI and TNOPFI and have personal knowledge of the within CCAA proceedings, including the work conducted by TNOPFI to cooperate with Bank of Montreal, the Monitor, and other parties, concerning the wind up of TNOPFI's affairs at the onset of this CCAA proceeding.

2. That upon filing under the CCAA in early July 2023, the Directors of TNOPFI continued to serve and assist the restructuring process without compensation or expectation of personal benefit, including none of the directors were subject to any personal guarantees in favour of BMO or any other creditor of TNOPFI.

3. On July 18, 2023, the Directors approved of an Assurance Letter from TNOPFI to and for the benefit of BMO (via legal counsel) whereby TNOPFI undertook to terminate its operations, including its Lease for and to vacate its rented premises in St. John's by August 31, 2023. Throughout such very abbreviated period, the Board supported the management and employees in undertaking all commercially reasonable efforts to prepare and sell all inventory, and to ultimately liquidate all its sale-able equipment and other tangible assets by way of a public auction.

4. Effective as of August 31, 2023, substantially all the TNOPFI employees were terminated and only minimal number of employees continued to work for a few months to deal with only administrative requirements (such as completing employee records of employment, updating statutory filings and remittances, etc.) under the oversight of the Board.

5. Through out the balance of the joint CCAA process, TNOPFI Directors Joan Myles and I continued to support the orderly wind up of TNOPFI operations, including ongoing dealings with statutory requirements, such as GST tax and employee remittance audits, etc. This work ultimately culminated in January 2025 when a director received and delivered a GST refund (approximately $14,000) to the Monitor.

6. That I am informed that the Monitor now seeks to wind up the within proceeding including a discharge of the directors and officers charge that was in place for the protection of TNOPFI and its directors. That at the same time, it is anticipated that insurance coverage will be cancelled with respect to this company.

7. Given the cooperation of the directors and officers in this proceeding, and the fact that the proceeding has now wound up to the satisfaction of the parties, TNOPFI is seeking a release for its directors and officers in the same form as was provided to BEI in the AVO, referred to in the within application.

8. I swear this affidavit in support of the within application and for no other or improper purpose.

[signature page follows]

SWORN ELECTRONICALLY USING THE MICROSOFT TEAMS® PLATFORM, BEFORE ME at St. John's, Newfoundland and Labrador this ___ day of January 2027.)))))))

____________________________________) ____________________________________

A Commissioner for taking Affidavits.) **R. WAYNE MYLES**
Name:

SCHEDULE 'A'

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Court Nos.	24543 (Terra Nova Old Port Foods Inc.) 24544 (Big Erics Inc.)

SERVICE LIST

O'KEEFE & SULLIVAN 80 Elizabeth Ave., 2nd Floor, St. John's, NL A1A 1W7 **Darren O'Keefe** dokeefe@okeefesullivan.com Tel: 709 700 0911 **RECONSTRUCT LLP** 200 Bay Street – South Tower Suit 2305 P.O. Box 120 Toronto, ON M5J 2J3 **Sharon Kour** skour@reconllp.com Tel: 416.613.8283 **Counsel for the Applicants**	**GRANT THORNTON LTD** Nova Centre, North Tower Suite 1000 - 1675 Grafton Street, Halifax, NS B3J 0E9 **Phil Clarke** Phil.Clarke@ca.gt.com Tel: 1 902 420 7191 **The Monitor**
STEWART McKELVEY Suite 1100, Cabot Place 100 New Gower St, St. John's, N.L. A1C 6K3 **Joe Thorne** joethorne@stewartmckelvey.com	**MCINNES COOPER** 1969 Upper Water St., Suite 1300 McInnes Cooper Tower - Purdy's Wharf Halifax, NS B3J 3R7 **Tony Tam**

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DEPARTMENT OF JUSTICE CANADA National Litigation Sector Atlantic Regional Office Suite 1400, Duke Tower 5251 Duke Street Halifax, NS B3J 1P3 **Maeve Baird** maeve.baird@justice.gc.ca Tel: (709) 772-7609 **Sophie Dupre** Sophie.Dupre@justice.gc.ca Tel: (902) 407-7674 **Deanna Frappier** Deanna.Frappier@justice.gc.ca Tel: 1.902.426.7570 **Lawyers for the CRA**	**MYLES AND COMPANY** Suite 1100 Scotia Centre 235 Water St. St. John's NL A1C 1B6 **WAYNE AND JOAN MYLES** Purdy's Wharf Tower 1 1100-1959 Upper Water Street Halifax NS B3J 3N2 **Wayne Myles** wayne@mylesandcompany.com Tel: 709-685-0889 **Joan Myles** joan@mylesandcompany.com Tel: 1. 902.483.8408 **Mezzanine Debt Collateral Agents**
BLUE CHIP LEASING CORPORATION o/a Vault Credit 41 Scarsdale Road, Suite 5 Toronto, ON M3B 2R2 info@bluechipleasing.com	**MEZZANINE LENDERS** **Christopher D. J. Isnor** **Counsel for the Mezzanine Lenders** Lawson Creamer Address: 133 Prince William Street, Suite 801 Saint John New Brunswick E2L 2B5 CIsnor@lawsoncreamer.com

SCHEDULE "B"

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ORDER

Before the Honourable Justice Alexander MacDonald:

UPON HEARING counsel for the TNOPFI, and other counsel appearing for the other parties, each party as set out in the attached **Schedule A** having been duly and properly served with notice of the within application as set out in the affidavit of Melissa De Caria dated 27 January 2025.

AND UPON READING the materials filed by the Applicant, including the affidavits Wayne Myles (the **"Myles Affidavit"**), and materials filed by the Monitor, including the Monitor's 11th Report, dated 17 January 2025, and on being advised that the senior secured creditors who are likely to be affected by this Order were given notice as evidenced by the affidavit of service of Melissa De Caria referred to in the preamble above.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Applicant's motion is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

RELEASES OF TNOPFI:

1. **THIS COURT ORDERS** that effective upon execution of this Order, (i) TNOPFI and its current and former directors, officers, employees, legal counsel, and advisors; (ii) the Monitor and its legal counsel, and their respective present and former directors, officers, partners, employees, and advisors (iii) being collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims whatsoever (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, offer, investment proposal, dealing, or other fact, matter, occurrence or thing existing or taking place prior to the delivery of this Order or completed pursuant to the terms of this Order and/or solely in respect of TNOPFI and its indebtedness, including its assets, business or affairs, or prior dealings with the TNOPFI (wherever or however conducted or governed), or the administration and/or management of TNOPFI or these proceedings (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled, and barred as against the Released Parties, and are not vested in any other entity and are extinguished, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim for fraud or wilful misconduct or any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

2. **THIS COURT ORDERS** that nothing in this Order waives, discharges or in any way releases any person, including the Released Parties, from any responsibility or obligation, including any Encumbrance, that was, is or may be owed to or enforceable by the Province of Newfoundland and Labrador or any Ministry or agency thereof (collectively, "**Newfoundland and Labrador Governmental Authorities**"), that is not a "claim" as defined in section 2(1) of the CCAA, including from any environmental Liability that was, is or may be owed to or enforceable by any Newfoundland and Labrador Governmental Authority that is not a "claim" as defined in section 2(1) of the CCAA, and

nothing in this order in any way bars, estops, stays or enjoins any and all steps or proceedings by any Newfoundland and Labrador Governmental Authorities or any servant, agent or employee thereof in respect thereof; it being understood that nothing in this paragraph shall impact the protections in favour of the Monitor otherwise provided for herein.

3. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Newfoundland and Labrador Time on the date hereof.