E-MAILED 18Sept23

O'KEEFE & SULLIVAN

BY EMAIL AND COURIER
The Supreme Court of Newfoundland and Labrador
233 Duckworth Street,
St. John's, NL
PO Box 937
Attn: Justice Alexander MacDonald KC

And to the Service List attached hereto as Schedule "A"

18 September 2022

To the Registry:

Re: Big Erics Inc. and Terra Nova Old Port Foods Inc.
***Companies Creditors Arrangement Act*, RSC 1985 c.36 (the "CCAA")**
2023 01G 3233

Please find the following documents enclosed for our hearing on 22 September 2023:

1. Notice of Motion seeking relief pursuant to s.11 of the CCAA;
2. Memorandum of Fact and Law;
3. Affidavit of Darren D. O'Keefe; and
4. Affidavit of Nicole Myles Brook.

Trust the enclosed is satisfactory.

Regards,

DARREN D. O'KEEFE
dokeefe@okeefesullivan.com

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.

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.)

NOTICE OF MOTION
(Re: Extension of the Stay Period)

BIG ERICS INC. ("BEI") and **TERRA NOVA OLD PORT FOODS INC. ("TNOPFI")** (collectively, the "**Companies**") will make a motion to a presiding Judge on 22 September 2023, at 10:00 a.m., or as soon after that time as the motion can be heard at the Supreme Court, 223 Duckworth Street, St. John's, NL for the relief set out herein.

PROPOSED METHOD OF HEARING: The motion is to be heard orally either in person or by videoconference, in a manner that suits the Court.

THE MOTION IS FOR:

1. an Order, substantially in the form attached as **Schedule "A"** to this Motion (the "**Stay Extension Order**") that, among other things:

    a) extends the Stay Period (as defined in paragraph 16 of the Amended and Restated Initial Order dated 28 July 2023) pursuant to the CCAA up to and including December 31, 2023;

b) amends the approved key employee retention plan ("**KERP**") as described in the First Report of the Monitor dated July 17, 2023 (the "**First Report**") to include one additional employee;

c) for a declaration pursuant to section 5(5) of *Wage Earner Protection Program Act,* S.C. 2005 ("**WEPPA**"); and

d) such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE AS FOLLOWS:

A. BACKGROUND

2. BEI's business broadly relates to the purchase and sale of commercial and residential kitchen, food service (including restaurant), and sanitation and janitorial equipment and supplies.

3. Prior to ceasing operations in August 2023, TNOPFI manufactured and sold beef, pork and other protein food products that it processed in Newfoundland and also bought and sold finished food products from other producers.

4. On 03 July 2023, the Company made an application pursuant to s.11 of the CCAA and accordingly an order was issued by the Court on 18 July 2023, and subsequently amended and restated by the Court on 28 July 2023 (hereinafter, the "**ARIO**"). The ARIO, among other things:

   a) granted a stay of proceedings up to and including September 30, 2023 (the "**Stay Period**"); and

   b) appointed Grant Thornton Limited as Monitor (the "**Monitor**").

5. The Companies have worked with due diligence and in good faith throughout the CCAA proceeding. Since the ARIO was granted, the Companies have, among other things:

a) as required by the Bank of Montreal ("**BMO**"), a secured lender of the Companies, commenced a wind down of the operations of TNOPFI including disclaiming and vacating its leased premises, liquidating its assets, terminating substantially all of its employees while it continued to work on collecting outstanding accounts receivable, and continued to canvass the market to sell its remaining intangible assets and goodwill;

b) operated in accordance with the ARIO, including conducting the business of BEI in the normal course, stabilizing its operations, and stabilizing relationships with key customers and suppliers;

c) continued the investment solicitation process (the "**ISP**") that was being conducted by David Howe of Noseworthy Chapman prior to the granting of the ARIO;

d) developed a draft Sale and Investment Solicitation Process ("**SISP**") that builds upon the marketing efforts of the Companies in the ISP, and circulated same to BMO and the mezzanine lenders; and

e) worked cooperatively with the Monitor to facilitate the restructuring process.

B. EXTENSION OF THE STAY PERIOD

6. The Stay Period currently expires on September 30, 2023.

7. The Companies are requesting an extension of the Stay Period up to and including December 31, 2023.

8. The extension of the Stay Period is necessary and appropriate to provide continued stability and reassure employees, customers, suppliers and vendors that BEI will have sufficient breathing room to continue bidding for and performing contracts, and that TNOPFI will continue to pursue and collect its outstanding accounts receivable.

9. The Companies (in particular BEI) also require an extension of the Stay Period to finalize the SISP and maintain the going concern operations of BEI, which is the only way to maintain

jobs while preserving and maximizing the value of the Companies' estate for its secured creditors and other stakeholders.

10. If the Companies are not provided with an extension of the Stay Period, the Companies (in particular BEI) will be unable to make a viable plan of arrangement or proposal to their creditors and will be forced to liquidate. There is unlikely to be significant value in the enterprise in a liquidation. In contrast, a going-concern restructuring strategy for BEI will preserve the active revenue-generating potential of BEI, preserve jobs and the economic contribution of BEI to the local community, and allow BEI to present a viable plan to its creditors leveraging the highest possible value of BEI following the completion of the SISP.

11. As set out in the cash flow projection, the Companies will have sufficient cash flow to fund its projected costs during the proposed stay extension period.

12. The Companies have been acting in good faith and with due diligence in this proceeding.

13. The Monitor supports the relief sought.

C. AMENDMENT OF KERP

14. The Companies seek to amend the approved KERP to include an additional party who was inadvertently omitted and their retention payment of $1,500.

15. The employee is an arm's length individual who has been employed at TNOPFI for over 17 years and whose role is critical to the financial administration of TNOPFI. The employee remains employed by TNOPFI and is assisting with post-wind down administration.

D. DECLARATION AS TO WEPPA

16. The Monitor will require the Supreme Court in Bankruptcy and Insolvency, pursuant to s.5(5) of WEPPA to determine, on a review of the facts, whether the circumstances surrounding the termination of employees following the appointment the Monitor under the CCAA qualifies these employees as "eligible employees" under WEPPA.

17. Based on the affidavit of Nicole Myles Brook dated 17 September 2023 (the **"Myles Brook Affidavit"**), between 01 August 2023 and 31 August 2023 the Company terminated substantially all of its employees, with the only employees remaining being those who were crucially necessary to wind down the affairs of the Company.

18. Also, as set out in the Myles Brook Affidavit, the terminations effected by the Company were final. There is no present intention for the Monitor or the Company to hire back any of the employees who were terminated.

E. FURTHER GROUNDS

19. The provisions of the CCAA, including section 11, thereof;

20. The provisions of WEPPA, including section 5(5);

21. The statutory, inherent, and equitable jurisdiction of this Honourable Court; and

22. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

23. The Affidavit of Nicole Myles Brook sworn September 17, 2023, with the exhibits attached thereto;

24. The Second Report of the Monitor, to be filed; and

25. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Dated at St. John's, in the Province of Newfoundland and Labrador, this 18 day of September, 2023.

O'KEEFE & SULLIVAN

DARREN D. O'KEEFE
Counsel for the Company
80 Elizabeth Avenue, Suite 202
St. John's, NL, A1A 1W7
dokeefe@okeefesullivan.com

TO: The Honourable Supreme Court
233 Duckworth Street
St. Joh's NL, A1C 1B6

AND TO: The Service List attached hereto as **Schedule "B"**

SCHEDULE 'A'

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. ("**BEI**") and Terra Nova Old Port Foods Inc. ("**TNOPFI**")

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.)

AMENDED AND RESTATED INITIAL ORDER

***(Companies' Creditors Arrangement Act,* RSC 1985 C-36)**

THIS MOTION, made by Big Erics Inc. and Terra Nova Old Port Foods Inc. (collectively, the "**Companies**"), pursuant to the CCAA for an order, in part, extending the Stay Period (as defined herein) up to and including December 31, 2023 was heard this 22nd day of September, 2023.

ON READING the affidavit of Nicole Myles Brook sworn September 17, 2023, and the Exhibits thereto, the second report of Grant Thornton Ltd. ("**GTL**") in its capacity as court-appointed monitor (the "**Monitor**") dated September ___, 2023 (the "**Second Report**"), and on hearing the submissions of counsel for the Companies, the Monitor, and such other counsel that were present, no one else appearing for any party although duly served as outlined in the affidavit of service of Melissa DeCaria filed with this motion (the "**Affidavit of Service**").

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the materials filed, as set out in the Affidavit of Service, is hereby abridged, and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that the Stay Period, as defined in paragraph 16 of the Amended and Restated Initial Order dated August 25, 2023 (the "**ARIO**"), is hereby further extended up to and including December 31, 2023.

AMENDED KERP

3. **THIS COURT ORDERS** that the key employee retention plan ("**KERP**"), as defined in paragraph 9(c) of the ARIO, is amended to reflect the amended KERP as described in the Second Report.

WEPPA DECLARATION

4. **THIS COURT ORDERS** that the employees of TNOPFI are to be considered "eligible employees" within the meaning of s. 5 of the *Wage Earners Protection Plan Act*.

GENERAL

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

ISSUED at St. John's, Newfoundland and Labrador this 22nd day of September 2023.

SCHEDULE 'B'

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**");

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Estate Nos. 51-2962147 (Terra Nova Old Port Foods Inc.)
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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	**MCINNES COOPER** 1969 Upper Water St., Suite 1300 McInnes Cooper Tower - Purdy's Wharf Halifax, NS B3J 3R7

Joe Thorne joethorne@stewartmckelvey.com Tel: 1.709.570.8850 **Sara Scott** sscott@stewartmckelvey.com Tel: 1.902.420.3363 **Counsel to the Monitor**	**Tony Tam** tony.tam@mcinnescooper.com Tel: 902.444.8439 **Geoffrey Spencer** geoffrey.spencer@mcinnescooper.com Tel : 709.724.5675 **Lawyers for Bank of Montreal**
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	