

**BC FARM INDUSTRY REVIEW BOARD**

MPL BRITISH COLUMBIA DISTRIBUTORS INC. (MPL BC) AGENCY PRIOR  
APPROVAL PROCESS

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**SUPPLEMENTARY CLOSING STATEMENT OF WINDSET FARMS (CANADA) LTD.  
AND GREENHOUSE GROWN FOODS INC.**

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## **I. Overview**

1. On May 26, 2023, the BC Farm Industry Review Board (the “**Board**”) gave leave to participants in the above-noted Supervisory Review to provide supplementary written submissions with respect to the evidence of Michael Minerva, given on May 26, 2023. The following written submissions are filed on behalf of Windset Farms (Canada) Ltd. (“**Windset**”) and Greenhouse Grown Foods Inc. (“**GGFI**”) and are provided in supplement to their Closing Statement filed on May 26, 2023.

## **II. Part XIV of the General Orders and Evidence of Michael Minerva**

2. Windset and GGFI state that the evidence of Mr. Minerva provides further support for the position that MPL British Columbia Distributors Inc. (“**MPL BC**”) has not established that it has met the Part XIV, s. 2(6) factors of the BC Vegetable Marketing Commission’s General Orders required to be designated as an Agency. Mr. Minerva’s testimony provides this Board with additional evidence that not only has MPL BC not met the required factors, but its addition as an Agency risks causing unnecessary harm and disruption to the BC greenhouse vegetable industry.

3. Mr. Minerva provided testimony as the Senior Vice President, Grower Relations Supply Development of Village Farms International Inc., a company with several separate divisions, including a greenhouse vegetable division. Mr. Minerva’s evidence was that Village Farms is both an Agency and a producer under the BC regulated scheme, and was designated as an Agency in 2006.<sup>1</sup> In BC, Village Farms Operations Canada Inc. is the entity with designated Agency status (“**Village Farms**”).<sup>2</sup>

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<sup>1</sup> Draft Transcript, Day 3, Direct Evidence of M. Minerva, p. 3, line 32 to p. 4, line 26.

<sup>2</sup> Exhibit 8, Tab 14.

**A. Factor A – There is a market requirement for the proposed Agency and the designation of that Agency would benefit the industry as a whole having regard to the interests of all producers, including those marketing through other Agencies**

*i. There is a Market Requirement for the Proposed Agency*

4. Mr. Minerva confirmed his understanding that there eight agencies currently designated in BC, and they are all qualified and unique in their own way. In his view, there is currently not the need for another Agency in BC at this time.<sup>3</sup>

5. Mr. Minerva’s evidence was that Village Farms, GGFI and MPL all have similar offerings as marketers. Mr. Minerva’s view was that those eight Agency offerings provided producers with “ample choices” for exclusive varieties, retail national programs and pricing.<sup>4</sup> They all offer producers “nation-wide contracts with top retailers and big box stores,” marketing programs such as the exclusive right to grow and market proprietary products (including Campari tomatoes), and national fixed-price contracts with retailers. He concluded that MPL BC does not offer producers anything different than what Village Farms and other agencies currently offer.<sup>5</sup>

6. Consistent with the testimony of Mr. Solymosi and Mr. Newell, Mr. Minerva’s evidence was that returns for BC producers have been “healthy.” Mr. Minerva’s evidence was that the returns for Village Farms’ outside producers had been healthy, and the evidence of this was the fact they had chosen to remain with Village Farms, despite the option to move to another Agency as their contracts had expired. In addition, he provided evidence that Village Farms’ own returns as a producer had been healthy, and that Village Farms’ BC assets had been the best performing assets in the company.<sup>6</sup>

7. Based on this evidence, it cannot be said that there is a market requirement for MPL BC to act as an Agency in BC – producers are already generating healthy returns, and existing Agencies in BC are currently offering producers the same marketing options as MPL BC suggests it can provide.

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<sup>3</sup> Draft Transcript, Day 3, Direct Evidence of M. Minerva, p. 4, lines 27-32.

<sup>4</sup> Draft Transcript, Day 3, Direct Evidence of M. Minerva, p. 9, lines 1- 5.

<sup>5</sup> Draft Transcript, Day 3, Direct Evidence of M. Minerva, p. 4, line 27 to p. 5, line 6.

<sup>6</sup> Draft Transcript, Day 3, Cross-Examination of M. Minerva, p. 34, lines 1-28.

*ii. The Designation would benefit the Industry as a Whole*

8. This is the second aspect of Part XIV, s. 2(6)(a) – whether industry as a whole would somehow benefit from the addition of another Agency. Mr. Minerva’s testimony was that he did not view the addition of MPL BC as an Agency to be in the interests of all producers, as it would cause more turmoil in the industry, that is, turmoil between the relationship of existing Agencies and their producers. In addition, Mr. Minerva provided important, uncontroverted evidence on the point that the Mastronardi group had in fact, caused disruption to the greenhouse vegetable industry in other jurisdictions.

9. Mr. Minerva’s evidence was that he had first-hand experience with that type of turmoil as MPL BC had tried to entice a grower with “false promises of higher pricing, better programs, more varieties, and that – that type of thing.”<sup>7</sup> He gave evidence that Village Farms had, itself experienced several instances in eastern Canada and in Mexico where MPL had enticed growers to leave Village Farms as a marketer by providing a picture of higher pricing, and a better marketing program. Mr. Minerva’s evidence was that while some of those producers had left Village Farms and marketed their product through MPL, those producers subsequently then returned to Village Farms, indicating that they had experienced higher overall costs in marketing their products with the Mastronardi group.<sup>8</sup> His experience was this kind of behaviour where MPL BC had sought to entice growers from existing Agencies had caused friction between growers and Agencies.

10. Mr. Minerva’s evidence on this point was not challenged by MPL BC and remains uncontroverted. Accordingly, this Board is left with the unchallenged view of Mr. Minerva, evidence that Mastronardi Produce Limited had caused difficulties within the greenhouse vegetable industry in other jurisdictions.

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<sup>7</sup> Draft Transcript, Day 3, Direct Evidence of M. Minerva, p. 6, lines 2-25.

<sup>8</sup> Draft Transcript, Day 3, Direct Evidence of M. Minerva, p. 5, line 46 to p. 6, line 47.

**B. Factor B – It would not be in the interests of the industry for the proposed regulated product to be marketed by an existing Agency**

11. Mr. Minerva’s testimony was consistent with that of Mr. Newell – existing BC Agencies are currently able to market on behalf of BC producers and what MPL BC offers as an Agency is no different than the offerings of existing BC Agencies.

12. Mr. Minerva stated that he felt it important that producers have choice in the Agencies available to them, and that a return to the single Agency model of the BC Hot House days was not appropriate. However, his evidence on cross-examination by the Commission was that with the current complement of eight Agencies, there was ample choice available to producers.<sup>9</sup>

13. Mr. Minerva gave evidence consistent with that of Mr. Newell that Village Farms, GGFI and Mastronardi Produce Limited all share exclusive rights to market the Campari tomato in North America. Importantly, at no time was did Mr. Mastronardi ever mention this fact in either his application to the Commission or in his testimony before the Board. Instead, he made repeated reference to the “proprietary” nature of products MPL BC would market suggesting they were all substantially different than those products currently marketed on behalf of BC producers. This was obviously not an accurate portrayal. The evidence of Mr. Minerva confirms that Mr. Mastronardi was not forthright with this Board about what is, in fact, a very real overlap in product marketing offerings between existing Agencies in BC and what MPL BC might provide for BC producers.

14. The evidence before the Board is that BC producers have ample choice with the current eight Agencies in BC, and that MPL BC is not able to offer anything new or different in marketing options to BC producers than what is currently available.

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<sup>9</sup> Draft Transcript, Day 3, Cross-Examination of M. Minerva, p. 26, lines 8-21.

**C. Factor C – The presence of the proposed Agency will not be disruptive to orderly marketing and will not result in increased competition among Agencies on price, which may have a detrimental effect on producer returns**

*i. The Presence of the Proposed Agency will not be Disruptive to Orderly Marketing*

15. Mr. Minerva provided evidence of his first-hand experience with how Mastronardi Produce Limited had been disruptive to orderly marketing. His evidence on this point was two fold. First, his evidence was that Mastronardi Produce Limited had enticed some of Village Farms existing growers to switch agencies in the US and Mexico, and that those growers had subsequently returned to Village Farms. Second, Mr. Minerva indicated that Mastronardi Produce Limited had knowingly purchased produce from one of Village Farms' existing BC producers, Randhawa farms, despite knowing that Village Farms was the exclusive Agency for that producer. This action by Mastronardi Produce Limited was in direct violation of s. 21 the Commission's General Orders.

16. Mr. Minerva provided testimony in both his direct presentation as well as on cross-examination with respect to the Randhawa farms matter. He indicated that in 2010, Village Farms had an exclusive marketing agreement with a BC producer, and that that at one point, the amount of product received from that producer dropped to less than half of what it had previously been receiving. He indicated that Village Farms asked the Commission for advice, and that the Commission recommend it hire a private investigator. The private investigator found that the producer was shipping part of its production in violation of the grower marketing agreement it had with Village Farms. Village Farms then sued the producer as it had lost millions of dollars in revenues, and that this was the only time it had ever sued a producer. It was through the discovery process in that litigation that Village Farms had determined it was Mastronardi Produce Limited that had been purchasing the Randhawa farms product in direct contravention of its exclusive marketing agreement.<sup>10</sup>

17. This was Mr. Minerva's first-hand experience, and was direct evidence on this factor of the Commission's General Orders. It was not hearsay, despite the assertions of MPL BC's counsel. The fact that Mr. Mastronardi did not explain these events to the Board does not make Mr.

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<sup>10</sup> Draft Transcript, Day 3, Direct Evidence of M. Minerva, p. 8, lines 16 to 47 and p. 30, line 15 to p. 31, line 25.

Minerva's testimony hearsay. In fact, MPL BC's counsel had ample opportunity to cross-examine Mr. Minerva on that series of events, and in fact did put the Randhawa farms writ of summons before him. When Mr. Minerva asked to explain the series of events that caused Village Farms to sue its producer, counsel for MPL BC indicated that she did not want his testimony on that point stating, "I'm happy with just the fact of without needing to get into the details."<sup>11</sup>

18. MPL BC was unrestricted in its ability to challenge Mr. Minerva with respect to his testimony on why Village Farms had sued Randhawa farms, but made the conscious decision not to do so. It was only during his subsequent cross-examination by Windset and GGFI's counsel that he provided the explanation that the serious of events he had described as his first-hand experience with Mastronardi Produce Limited's disruptive activities was in reference to the events surrounding the Randhawa farms diversion of produce.<sup>12</sup>

19. Mr. Minerva's evidence was clear – Village Farms had sued Randhawa farms because it had been selling approximately half of its production to Mastronardi Produce Limited, despite knowing Village Farms was an Agency with an exclusive grower marketing agreement. MPL BC cannot now complain that Mr. Minerva's explanation of his first-hand experience is somehow hearsay evidence or suggest that this Board give little weight to this testimony because that evidence in not in their favour. There would be no basis for such a finding.

20. Based on this evidence, this Board should be left with little doubt that MPL BC will be disruptive to orderly marketing in BC if it is granted designated Agency status.

***ii. The Presence of the Proposed Agency will not Result in Increased Competition among Agencies on Price***

21. As noted, Mr. Minerva's testimony was that MPL BC does not offer producers anything outside of what existing BC Agencies offer. In addition, his evidence was that bringing another agency into the market place would be counterproductive for a number of reasons, including that

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<sup>11</sup> Draft Transcript, Day 3, Cross-Examination of M. Minerva, p. 18, lines 25-34.

<sup>12</sup> Draft Transcript, Day 3, Cross-Examination of M. Minerva, p. 30, line 15 to p. 31, line 25.



it would increase competition on pricing and that under the current structure of Agencies, BC industry participants had enjoyed orderly marketing.<sup>13</sup>

22. Mr. Minerva's testimony on this point was consistent on cross-examination by the Commission. It was put to him that where there are multiple agencies providing the same product, that would result in detrimental producer returns, which he agreed with. His testimony was that eight Agencies in BC was sufficient choice.<sup>14</sup>

23. Mr. Minerva also provided important testimony with respect to his views on whether switching Agencies might result in a better return for producers. Mr. Minerva's evidence was that it was important not to get too caught up in the suggestion that an Agency might be able to obtain a higher price for a product, as price was only one factor influencing the net return for a producer.

24. He explained that aside from price, there are typically other costs a producer pays an Agency. Such costs can include the cost of packaging product or the cost of seeds that must be used. Further, some agencies may have a grower network available to help a producer increase their production. Mr. Minerva's view was that all of these factors should be considered in looking at net returns to growers, and not just a promise of obtaining higher pricing for products.<sup>15</sup>

25. In light of this evidence, Windset and GGFI ask that the Board carefully consider the promises of Mr. Mastronardi that he is able to generate a higher price for MPL BC's proprietary Sunset-branded products. As explained by Mr. Minerva, the price paid for a product by a retailer (which price is negotiated by an Agency), is only one aspect that factors into the net returns to producers. In fact, Agencies have the ability to affect net grower returns in other ways. Other costs borne by producers include things such as packaging (such as the colours of the cost of a box), or the cost of specific seeds that are used.<sup>16</sup> These costs are also controlled by Agencies and are part of the equation of how much a grower may receive for licenced greenhouse product. There was no evidence provided by MPL BC in either its application before the Commission or in the

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<sup>13</sup> Draft Transcript, Day 3, Direct Evidence of M. Minerva, p. 5, lines 7-15.

<sup>14</sup> Draft Transcript, Day 3, Cross-Examination of M. Minerva, p. 25, line 45 to p. 26, line 21.

<sup>15</sup> Draft Transcript, Day 3, Cross-Examination of M. Minerva, p. 27, lines 5-38.

<sup>16</sup> Draft Transcript, Day 3, Cross-Examination of M. Minerva, p. 27, lines 17-38.

testimony of Mr. Mastronardi that the sum total of all of these costs for MPL BC growers is lower and results in the highest net grower returns. The Board should carefully consider this aspect of the evidentiary record as there was no evidence tendered that MPL BC is able to provide the highest net return to producers.

**D. Factor D – The proposed Agency has demonstrated an understanding of the regulatory system and has adequately expressed its intention to follow Commission Orders and the enabling legislation and regulations**

26. Mr. Minerva clearly expressed his view that Mastronardi Produce Limited had a litigious way of doing business, and that it had already interfered with an exclusive grower marketing arrangement with Randhawa farms, as described above.

27. Mr. Minerva's evidence was that MPL BC had a history of being litigious, and their first choice was to bring on litigation to resolve any differences rather than to try to work out their issues in a cooperative manner. While asked extensively on cross-examination as to Village Farms' litigation track record, Mr. Minerva's evidence was clear – their business strategy was to avoid litigation unless it was unavoidable, and it would not have chosen to challenge the decisions of the Commission or the Board.<sup>17</sup>

28. While Village Farms may have been involved in litigation proceedings from time to time, MPL BC was not able to muster any evidence that it had engaged in litigation involving repeated challenges to decisions made by industry regulators, like those proceedings brought by MPL BC here in this jurisdiction.

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<sup>17</sup> Draft Transcript, Day 3, Cross-Examination of M. Minerva, p. 33, lines 24-47.

**E. Factor E – There is evidence-based demand for the specific product(s), grouped by end use customer, that are to be marketed by the proposed Agency, which demand is not already satisfied by existing Agencies**

29. As previously noted, while MPL BC’s application and Mr. Mastronardi’s testimony was that there was some special demand for Sunset branded products, there was simply no evidentiary foundation that this is the case.

30. In fact, like Mr. Newell, Mr. Minerva confirmed that Mastronardi Produce Limited, Village Farms and GGFI all have exclusive rights to market the Campari type of tomato, and that “we all have our unique and exclusive proprietary varieties that are unique to our organization and our marketing plan.”<sup>18</sup> There was nothing inconsistent with the evidence of Mr. Newell that, in fact, there is no special demand for Sunset-branded products and that the retailers consider them to be interchangeable.

31. At no point did MPL BC challenge Mr. Minerva’s evidence on this point. This Board should carefully take into account the fact that Mr. Mastronardi was not forthright regarding MPL BC’s “proprietary varieties” which are, in some instances, exactly the same as those marketed by existing BC Agencies (Campari), and that other varieties are substantially similar in nature to those currently offered by BC Agencies. It is the position of Windset and GGFI that in the face of such lack of candour, the Board should not give much weight to Mr. Mastronardi’s testimony.

**F. Factor F – There is evidence-based support from multiple licensed Commercial Producers, who are at arms-length from each other, and who intend to market regulated product through the proposed Agency**

32. Mr. Minerva did not specifically testify with respect to this aspect of the General Order factors. However, he did express that in 2006, when Village Farms applied to become a designated Agency in BC, it had the support of other Agencies and producers.<sup>19</sup>

33. Windset and GGFI therefore state that it is important for this Board to recognize that support and cooperation within the BC greenhouse vegetable industry amongst producers and

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<sup>18</sup> Draft Transcript, Day 3, Direct Evidence of M. Minerva, p. 4, lines 27 to 39.

<sup>19</sup> Draft Transcript, Day 3, Direct Evidence of M. Minerva, p. 4, lines 14 to 25.

Agencies has historically been an important consideration in determining whether to designate a new Agency. This factor should be placed on equal footing with the others. Put another way, the distinct lack of current evidence tendered by MPL BC regarding support from other licensed producers and Agencies should be taken into account, and should be fatal to MPL BC's application.

**G. Factor G – The primary responsibility for marketing regulated product will rest with the proposed Agency, rather than wholesalers who may market regulated product on behalf of the proposed Agency**

34. Mr. Minerva did not address this factor of the Commission's General Orders in his evidence.

**H. Factor H – The proposed Agency will comply with the Commission's orders, including all applicable minimum pricing orders in relation to sales occurring both within and outside the Province**

35. The evidence Mr. Minerva provided on this point is similar to Factor D, outlined above. Windset and GGFI state that Mr. Minerva's evidence demonstrates that MPL BC will only comply with Commission orders when it is in its own best interests.

**I. Factor I – The proposed Agency will not have a detrimental effect on the delivery allocation and production allocation of existing producers not represented by the proposed Agency**

36. The evidence was that MPL BC intends to participate as an Agency in BC by stripping growers from existing Agencies.<sup>20</sup> Consistent with the evidence of MPL BC, Mr. Minerva's view was that MPL BC was going to look to build their supply base with the existing growers in BC by enticing them with promise of higher prices and different marketing programs.<sup>21</sup>

37. The issue is whether that movement of producers from existing Agencies to MPL, and then potentially a movement back to those Agencies if such promises did not materialize, would contribute to orderly marketing. Clearly it would not. While the Commission put to Mr. Minerva

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<sup>20</sup> Draft Transcript, Day 1, Cross-Examination of P. Mastronardi, p. 94, lines 8-21.

<sup>21</sup> Draft Transcript, Day 3, Direct Evidence of M. Minerva, p. 5, lines 16-23.

the question of whether it was disruptive to the Agency to have such movement, but potentially beneficial to the producer to have a better return, Mr. Minerva's evidence was clear – that there was more to being an Agency than just being able to negotiate high prices with retailers. His experience was that higher pricing did not materialize into higher net grower returns for producers who switched to Mastronardi Produce Limited as their marketer because “their cost in everything else was higher.”<sup>22</sup>

38. This Board will therefore be required to carefully consider whether the promises of MPL BC that it will be able to obtain higher prices for producers will, in fact, materialize into higher net grower returns, and if not, the effect this movement between Agencies will have for other producers. It is the position of Windset and GGFI that the evidence is clear that such movement will have a disruptive and detrimental effect on those producers who do not move Agencies. Clearly, the suite of products Agencies market to retailers will continue to be unbalanced so long as producers are switching (or switching back) between Agencies. This Board must ask itself whether risking the existing stability in the industry and good returns currently received by producers for their product is worth it. Windset and GGFI say that it is not.

**J. Factor J – The proposed Agency has the knowledge, capacity and ability to operate effectively as an Agency**

39. It is the submission of Windset and GGFI that an Agency acting within the BC Vegetable Marketing Commission's scheme is acting as more than just a marketer. Most importantly, it requires cooperation between industry participants. There is no objective evidence that MPL BC understands and has the ability to comply with this requirement. In fact, the opposite is true.

40. Mr. Minerva's evidence in his direct presentation was that Mastronardi Produce Limited was litigious in nature, and that they don't try to work out their differences with others. This evidence was given based on Mr. Minerva's first-hand experience that Mastronardi Produce Limited had enticed Village Farms producers in Mexico and eastern Canada with false promises of higher pricing, better programs and more varieties. His evidence was that those growers had

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<sup>22</sup> Draft Transcript, Day 3, Cross-Examination of M. Minerva, p. 17, lines 5-38.

come back to Village Farms indicating that the promises received from Mastronardi were not what they had been cracked up to be.<sup>23</sup>

41. In particular, Mr. Minerva gave evidence that Mastronardi Produce Limited had brought a lawsuit against Village Farms to try to recoup a cash advance provided to one of Village Farms' Mexican growers. Mr. Minerva summed up his evidence by saying on cross-examination: "Strongly feel through a lot of what I mentioned that MPL is not the type of company that is going to work within the guidelines of the general order and the [interagency] collaboration that the marketing Commission wants to see as we currently do with the rest of our growers."<sup>24</sup> The evidence of the Randhawa farms matter is just a further example of MPL BC's aggressive and uncooperative approach to doing business.

42. Mr. Minerva's evidence is consistent with that of the majority of industry participants, represented by square meters of production, who do not view MPL BC as a cooperative entity. In fact, the evidence of Mr. Minerva is the reverse – that Mastronardi Produce Limited is not only not collaborative, but that it directly interferes with exclusive marketing arrangements in Mexico and in BC (Randhawa farms).

43. This Board should carefully examine the tenor of the MPL BC application and Mr. Mastronardi's testimony, which was focussed almost exclusively on competition rather than collaboration and how it is able to out-compete other products, without clearly articulating how such competition would not harm existing BC product in the marketplace.<sup>25</sup>

44. In the face of such evidence, this Board should be left with distinct concerns with respect to MPL BC's ability to function effectively in a cooperative, regulated system for marketing such as that which exists here in BC.

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<sup>23</sup> Draft Transcript, Day 3, Direct Evidence of M. Minerva, p. 6, lines 2-47.

<sup>24</sup> Draft Transcript, Day 3, Direct Evidence of M. Minerva, p. 9, lines 5-11.

<sup>25</sup> See, for instance, Exh. 1, Tab 4, p. BCVMC-5.12.3.

### **III. Conclusion**

45. Mr. Minerva's testimony was that the BC industry had experienced healthy producer returns for as long as Village Farms had been an Agency – for approximately 17 years. More than that, his testimony was that Village Farms' BC assets were the best performing assets in the company.

46. The evidence given by Mr. Minerva provides further support that MPL BC has not established, on an evidentiary basis, that it has met the required factors of Part XIV s. 2(6) of the Commission's General Orders such that it may be designated an Agency. In fact, the evidence is that there is a risk of harm and disruption to the healthy existing BC regulated vegetable industry if this Board designates MPL BC as Agency.

47. Windset and GGFI respectfully reiterate their position that MPL BC has failed to provide sufficient evidence on each of the factors required to be designated as an Agency, and that designating MPL BC in fact puts at risk the currently healthy BC greenhouse vegetable industry.

48. For all of the above reasons, Windset and GGFI say that this Board can determine that it is inappropriate to designate MPL BC Agency.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 1<sup>st</sup> day of June, 2023



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