

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEPHEN DEL SESTO, AS RECEIVER AND :
ADMINISTRATOR OF THE ST. JOSEPH :
HEALTH SERVICES OF RHODE ISLAND :
RETIREMENT PLAN, ET AL. :

Plaintiffs :

v. :

C.A. No: 1:18-CV-00328-WES-LDA

PROSPECT CHARTERCARE, LLC, ET AL. :

Defendants. :

**JOINT MOTION BY PLAINTIFFS AND DEFENDANTS ST. JOSEPH
HEALTH SERVICES OF RHODE ISLAND, ROGER WILLIAMS
HOSPITAL, AND CHARTERCARE COMMUNITY BOARD TO STAY
THOSE DEFENDANTS’ DEADLINE TO ANSWER OR OTHERWISE
RESPOND TO COMPLAINT, PENDING JUDICIAL APPROVAL OF
PROPOSED SETTLEMENT**

Plaintiffs Stephen Del Sesto (as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan) (the “Receiver”), and Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carol Short, Donna Boutelle, and Eugenia Levesque, individually as named plaintiffs (“Named Plaintiffs”) and on behalf of all class members¹ as defined herein (collectively “Plaintiffs”), and Defendants CharterCARE Community Board (“CCCB”), St. Joseph Health Services of Rhode Island (“SJHSRI”), and Roger Williams Hospital (“RWH”) (collectively the “Settling Defendants”) (Plaintiffs and the Settling Defendants are referred to collectively as the

¹ Contingent upon the Court certifying the Settlement Class and appointing them Class Representatives.

“Settling Parties”) hereby submit their joint motion to stay the Settling Defendants’ deadline to answer or otherwise respond to the Complaint pending the resolution of their proposed settlement (the “Proposed Settlement”).

On September 4, 2018, the Receiver filed his Petition for Settlement Instructions² with the Rhode Island Superior Court in the case captioned *St. Joseph Health Services of Rhode Island, Inc. v. St. Josephs Health Services of Rhode Island Retirement Plan, as amended*, PC-2017-3856 (the “Receivership Proceedings”), seeking an order:

- (i) approving the Proposed Settlement as in the best interests of the Receivership Estate, the Plan, and the Plan participants; (ii) authorizing and directing the Receiver to proceed with the Proposed Settlement; and (iii) granting such further relief as this Court may determine to be reasonable and necessary under the circumstances.

Exhibit 1 (Petition for Settlement Instructions) at 13. The Superior Court has scheduled the hearing on the Petition for Settlement Instructions for September 13, 2018.

If the Superior Court grants the Petition for Settlement Instructions allowing the settlement, the Settling Parties will file their joint motion for settlement approval with this Court. If this Court grants that motion, Plaintiffs intend to dismiss their claims against the Settling Defendants. However, it is not expected that this Court will have the opportunity to rule on that motion, or that the motion will even be filed, by the time currently scheduled for the Defendants to answer or otherwise respond to Plaintiffs’ Complaint.³

² The Petition for Settlement Instructions is attached hereto as Exhibit 1, without exhibits to avoid unnecessarily burdening this record.

³ That date per the order of this Court is September 15, 2018. See text order entered on July 30, 2018.

The Settling Parties request that the Court amend its prior Order by providing that, in the event that either the Superior Court in the Receivership Proceedings or this Court rejects the Proposed Settlement, the Settling Defendants will have until thirty (30) days thereafter to answer or otherwise respond to Plaintiffs' Complaint.

Pursuant to LR Cv 7(c), no oral argument is requested unless the instant motion is opposed.

Respectfully submitted,
Plaintiffs,
By their Attorney,

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Defendants St. Joseph Health Services
of Rhode Island, Roger Williams
Hospital, and CharterCARE Community
Board, By their Attorney,

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Dated: September 5, 2018

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the within document was electronically filed on the 5th day of September, 2018 using the Electronic Case Filing system of the United States District Court and is available for viewing and downloading from the Electronic Case Filing system. The Electronic Case Filing system will automatically generate and send a Notice of Electronic Filing to the following Filing Users or registered users of record:

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/s/ Max Wistow_____

Exhibit 1

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND, INC. :

vs. :

C.A. No: PC-2017-3856

ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND RETIREMENT PLAN, :
as amended :

RECEIVER’S PETITION FOR SETTLEMENT INSTRUCTIONS

NOW COMES Stephen F. Del Sesto, Esq., solely in his capacity as the Permanent Receiver (the “Receiver”) of the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”), and hereby Petitions this Court to approve the proposed settlement (“Proposed Settlement”) of claims the Receiver has asserted against CharterCARE Community Board (“CCCB”), St. Joseph Health Services of Rhode Island (“SJHSRI”), and the corporation Roger Williams Hospital (“RWH”) (collectively the “Settling Defendants”), in a lawsuit filed in the United States District Court for the District of Rhode Island (C.A. No: 1:18-CV-00328-WES-LDA) (the “Federal Court Action”), and in a lawsuit filed in the Rhode Island Superior Court (C.A. NO.: PC-2018-4386) (the “State Court Action”), which lawsuits concern the alleged underfunded status of the St. Joseph Health Services of Rhode Island Retirement Plan (“the Plan”), and in which Plaintiffs seek relief from the Settling Defendants including money damages that greatly exceed the remaining assets of the Settling Defendants.

The Settling Defendants are the three entities that formerly owned and operated Our Lady of Fatima Hospital and Roger Williams Hospital. They no

longer own those hospitals. The Proposed Settlement does not resolve the Plaintiffs' claims against the non-settling Defendants, or the Plaintiffs' efforts to avoid the sale of Our Lady of Fatima Hospital and Roger Williams Hospital to the current owners and to secure those assets for the Plan. Those claims will continue to be asserted.

Attached hereto as Exhibit A is the settlement agreement ("Settlement Agreement") that the Receiver has entered into subject to obtaining the approval of this Court. The Receiver believes that the Proposed Settlement is in the best interests of the Receivership Estate, the Plan, and the Plan participants, and recommends that this Court approve the Proposed Settlement.

If this Court accepts the Receiver's recommendation, the next step will be that the Receiver's Special Counsel will file a motion in the Federal Court Action asking that the Proposed Settlement be approved by that court, both because it is required for settlement of class actions under Rule 23(e) of the Federal Rules of Civil Procedure, and because judicial approval of a good faith settlement is a condition for the applicability of the recently enacted Rhode Island statute specifically addressed to settlements involving the Plan, R.I. Gen. Laws § 23-17.14-35.

As grounds for this Petition, the Receiver hereby states as follows:

1. This case was commenced on August 17, 2017, upon the Petition of Settling Defendant St. Joseph Health Services of Rhode Island. A copy of the Petition for the Appointment of a Receiver (the "Petition") is annexed hereto as Exhibit B.
2. The Petition alleged that the Plan was insolvent and sought an immediate reduction in benefits of 40% for all Plan participants. Specifically, the Petition sought the following relief:

(1) the Court appoint a Temporary Receiver forthwith and also appoint a Permanent Receiver to take charge of the assets, affairs, estate, effects and property of the Plan, (2) that the Temporary Receiver and Permanent Receiver be authorized to continue to operate the Plan, (3) that the request for appointment of a permanent receiver and for an immediate 40% uniform reduction in benefits be set for hearing thirty (30) days.

Exhibit B at 7.

3. On October 11, 2017, the Receiver filed his Emergency Petition to Engage Legal Counsel, pursuant to which he sought leave to engage the firm of Wistow, Sheehan & Loveley, P.C. (“WSL”), as Special Counsel. The Emergency Petition with the WSL Retainer Agreement is attached hereto as Exhibit C. That Emergency Petition informed the Court that “following his appointment, the Receiver determined that his fiduciary obligations to the Plan and its beneficiaries include the need to conduct an investigation into the circumstances which resulted in the Plan’s significant, and likely irreversible, financial distress,” and that “the Receiver believes that assistance of special litigation counsel is warranted and necessary.” Exhibit C ¶¶ 4 & 5.

4. On October 17, 2017 this Court granted the Emergency Petition. The Order granting the Emergency Petition is attached hereto as Exhibit D. It states in pertinent part:

That for the reasons stated in the Receiver’s Petition and in accordance with the terms of the Engagement, attached to the Petition as Exhibit A and incorporated herein by reference, the Receiver is hereby authorized to retain the law firm of Wistow Sheehan & Lovely PC (“WSL”) to act as the Receivership Estate’s special litigation counsel for the purposes more specifically set forth in the Petition and the Engagement

Exhibit D at 1. The executed WSL Retainer Agreement is attached as Exhibit E.

5. In their role as Special Counsel to the Receiver, WSL issued *subpoenas duces tecum* to the following entities:

- Adler Pollock & Sheehan, P.C.

- Bank of America, N.A.
- Defendant CharterCARE Community Board
- Defendant CharterCARE Foundation
- Rhode Island Department of Health
- Ferrucci Russo, P.C.
- Office of the Rhode Island Attorney General
- Defendant Prospect CharterCare, LLC
- Defendant Prospect Medical Holdings, Inc.
- Defendant Rhode Island Community Foundation
- Defendant Roman Catholic Bishop of Providence
- Defendant SJHSRI (two subpoenas)

6. By agreement, or in acknowledgment of their legal obligation, several of the subpoenaed entities produced documents in the possession and control of other entities. For example, Prospect Medical Holdings also produced documents on behalf of Prospect East Holdings, Inc.; Prospect CharterCare, LLC also produced documents on behalf of Prospect CharterCare SJHSRI, LLC and Prospect CharterCare RWMC, LLC; and Roman Catholic Bishop of Providence also produced documents on behalf of Diocesan Administration Corporation and Diocesan Service Corporation. The Angell Pension Group, Inc. ("Angell") produced copies of their files in compliance with the order appointing the Receiver, for which no subpoena was required.

7. This investigation entailed the production and review of over 1,000,000 pages of documents over an eight-month period, and the commitment of at least 1,472 hours of time by Special Counsel.

8. With the approval of the Receiver, Special Counsel were also retained by seven individual Plan participants, Gail J. Major, Nancy Zompa, Ralph Bryden, Dorothy Willner, Carroll Short, Donna Boutelle, and Eugenia Levesque (“Named Plaintiffs”) to investigate and assert claims on their behalf. The Named Plaintiffs agreed to act on their own behalf and on behalf of the other Plan participants in a class action (the “Class Action”).

9. The Complaints in both the Federal Court Action and the State Court Action were filed on June 18, 2018. Copies of those Complaints are attached hereto as Exhibits F and G, respectively. These Complaints were filed by Special Counsel on behalf of the Receiver, the Named Plaintiffs, and the proposed class consisting of the Plan participants.

10. At the same time, the Receiver moved for leave to intervene in a civil action that SJHSRI, RWH, and another entity, CharterCARE Foundation, had commenced in the Rhode Island Superior Court in 2015 (the “2015 *Cy Pres* Proceeding”), pursuant to which certain assets of SJHSRI and RWH were transferred to CharterCARE Foundation, which Plaintiffs seek to recover for deposit into the Plan.

11. Over the last several weeks, Counsel for the Settling Defendants and Special Counsel in consultation with the Receiver have conducted settlement negotiations, which involved extensive disclosure of the Settling Defendants’ assets, including an initial disclosure and several additional or supplementary disclosures based upon the requests of Special Counsel for additional information and clarification.

12. The negotiations also involved communications by Counsel for the Settling Defendants and Special Counsel with the Rhode Island Department of Labor and Training (“DLT”) and a joint meeting with DLT concerning an escrow account (the “DLT

Escrow”), which was then in the amount of approximately \$2,500,000, that Settling Defendant RWH had funded, securing RWH’s self-insured workers’ compensation liabilities. As a result of these communications, DLT agreed to only \$750,000 being retained in the DLT Escrow account, and released the balance, which is included in the Initial Lump Sum being paid by the Settling Defendants in connection with the Proposed Settlement.

13. Thereafter, Plaintiffs and the Settling Defendants agreed on the terms set forth in the Settlement Agreement. The proposed settlement would bind the Receiver, the named Plaintiffs, and the settlement class consisting of “[a]ll participants of the St. Joseph Health Services of Rhode Island Retirement Plan,” including:

- a) all surviving former employees of St. Joseph Health Services of Rhode Island (“SJHSRI”) who are entitled to benefits under the Plan; and
- b) all representatives and beneficiaries of deceased former employees of SJHSRI who are entitled to benefits under the Plan.

Exhibit A (Settlement Agreement) Exhibit 1 (Class Notice) at 1 & 10.

14. The Settlement Agreement establishes the terms of the Proposed Settlement. In summary, it provides for the following benefits to Plaintiffs:

- a) Immediate payment of the Initial Lump Sum of a minimum of \$11,150,000, which is 95% of the Settling Defendants’ combined liquid operating assets of \$11,525,000, up to a maximum of approximately \$11,900,000 if the Rhode Island Department of Labor and Training releases the entire DLT Escrow in the amount of approximately \$750,000 prior to the due date for payment of the Initial Lump Sum;
- b) Assignment of the Settling Defendants’ rights to whatever is left in the DLT Escrow;
- c) Transfer to the Receiver of the Settling Defendants’ rights in CharterCARE Foundation;
- d) The Proposed Settlement also obligates the Settling Defendants not to object to Plaintiffs intervening in the 2015 *Cy Pres* Proceeding, and

Plaintiffs' request for an order directing that Plaintiffs' rights in CharterCARE Foundation be adjudicated in the Federal Court Action;

- e) The Proposed Settlement gives the Receiver the beneficial interest in Defendant CCCB's interest in Defendant Prospect CharterCare, LLC;
- f) The Settling Defendants admit liability on some of the claims asserted against them in the Complaint, including breach of contract, and that Plaintiffs' damages are at least \$125,000,000; and
- g) The Settlement Agreement obligates the Settling Defendants upon the Receiver's request to petition the Rhode Island Superior Court for judicial liquidations, pursuant to R.I. Gen. Laws § 7-6-63, whereby all of their remaining assets will be liquidated and distributed to their creditors, including Plaintiffs, in accordance with the orders of the court in the Liquidation Proceedings.

15. Thus, the potential total gross recovery for the Plan from the Settling Defendants, or otherwise as a result of the Settlement Agreement, could be as low as the minimum Initial Lump Sum of \$11,150,000, or considerably more than that, but, except for the minimum Initial Lump Sum, the amount of the final recovery cannot be determined at this time. All that can be done at this time, and what Special Counsel in consultation with the Receiver has attempted to do, is to put the Receiver in the position to pursue and hopefully maximize the value of those assets.

16. The Settlement Agreement obligates the Plaintiffs to provide the Settling Defendants with releases in the form attached thereto, which preserve any claims concerning breach of the Settlement Agreement by the Settling Defendants, and the following "Excepted Claims":

- i. any claims to the extent that there may be assets of CCCB available to be distributed by the court in the Liquidation Proceedings,
- ii. any claims concerning the assets of CCCB that were transferred to CharterCARE Foundation in connection with the 2015 *Cy Pres* Proceeding, and

- iii. any claims to the assets of the Settling Defendants that were transferred in connection with the 2014 Asset Sale.

Exhibit A (Settlement Agreement) Exhibits 9-11 (Releases to the Settling Defendants).

The releases provide that, with respect to the Excepted Claims, the Plaintiffs agree to limit their recourse to the assets referred to in (i) through (iii).

17. The risks to the Plan if the settlement is not approved concern both the significant risk that the Plaintiffs may not prevail on their claims against the Settling Defendants, and the absolute certainty that, if the Proposed Settlement is not approved, the Settling Defendants' assets will be further dissipated by litigation expenses and claims of other creditors, such that it is indisputable that the sum that the Plaintiffs may collect from the Settling Defendants if they prevail will be substantially less than what is being offered in settlement.

18. The Federal Court Action is very complex, involves many Defendants, and the complications of proceeding as a class action, and, therefore, could take years to litigate, at the level of the U.S. District Court and possibly on appeal, during which time the assets of the Settling Defendants could be significantly diminished if not fully expended, if only by the attorneys' fees and expenses of defending this case, the companion State Court Action, and the 2015 *Cy Pres* Proceeding, to say nothing of the Settling Defendants' various ongoing operating expenses.

18. In connection with the negotiations for the Proposed Settlement, the Settling Defendants provided Special Counsel with certain asset disclosure.

19. The Settling Defendants have listed their estimated assets and liabilities in schedules that are attached to the Settlement Agreement, and which the Settling Defendants have certified constitute their best estimates thereof.¹

20. After the 2014 Asset Sale, the Settling Defendants were left with essentially three forms of assets: a) retained cash maintained in operating accounts, b) accounts receivable and reserve accounts that may or may not become available for collection and deposit in operating accounts in the future, and c) membership interests in other entities, consisting of Settling Defendant CCCB's membership interest in Prospect CharterCare, LLC and Settling Defendant CCCB's alleged membership interest in CharterCARE Foundation.²

21. The precision by which their assets can be valued for purposes of evaluating the Proposed Settlement differs among these three asset classes.

Liquid Operating Assets

22. According to the schedule prepared by the Settling Defendants, the current value of the unrestricted cash and cash equivalents of the Settling Defendants is approximately \$11,525,000.³

Reserve Accounts and Accounts Receivable

23. According to the same schedule, their restricted cash and cash equivalents, and their accounts receivable, total approximately \$2,327,186, but those assets are tied up in various reserve accounts or may not be collectible in full or even in

¹ See Ex. A (Settlement Agreement ¶¶ 20-21, Exhibits 12-17).

² See Ex. A (Settlement Agreement ¶ 20, Exhibits 12-14).

³ See Ex. A (Settlement Agreement) ¶ 22, Exhibits 13-15).

part.⁴ Under the terms of the Proposed Settlement, the interests of the settling defendants in the DLT Escrow is assigned to the Receiver, and the value of the remaining assets will be determined and realized in judicial liquidations proceedings in the Rhode Island Superior Court.

Interests in Other Entities

The Settling Defendants' Interests in Prospect CharterCare, LLC

24. In connection with the 2014 Asset Sale, Settling Defendant CCCB received a 15% membership interest in Prospect CharterCare, LLC, which indirectly owns and operates Roger Williams Hospital and Our Lady of Fatima Hospital. The current value of those interests is unknown to Plaintiffs. Moreover, the Prospect CharterCare Limited Liability Agreement (“LLC Agreement”) provides that such interest may be diluted under certain circumstances, and purport to restrict and even prohibit CCCB from transferring that interest for five years, i.e. until on or about June 20, 2019. Finally, it cannot be assumed that Prospect East, and the other Prospect entities that are Defendants in the Federal Court Action and the State Court Action,⁵ will pay the fair value of this interest without compulsion. Accordingly, it is impossible to value CCCB’s interest in Prospect CharterCare, LLC at this time.

Settling Defendants' Rights in CharterCARE Foundation

25. The Proposed Settlement gives the Receiver the beneficial interest in Settling Defendant CCCB’s interest in CharterCARE Foundation. However, the nature

⁴ See Ex. A (Settlement Agreement) ¶¶ 20, Exhibits 13-15).

⁵ Prospect East Holdings, Inc., Prospect Medical Holdings, Inc., Prospect CharterCare, LLC, Prospect CharterCare SJHSRI, LLC, and Prospect CharterCare RWMC, LLC are the “Prospect Entities.”

and value of that interest is disputed. Accordingly, the settlement value of that interest cannot be estimated at this time.

Notice to Plan Participants

26. Concurrently with the filing of this Petition, the Receiver is posting the Petition on his website, at <https://www.pierceatwood.com/receivership-filings-st-joseph-health-services-rhode-island-retirement-plan>, for all Plan participants and the general public to view. The Receiver will also send each Plan participant a notice by first class mail informing them of the date of the hearing on the Receiver's Petition for Settlement Instructions, and directing them to the Receiver's web site to obtain the Petition.

Attorneys' Fees

27. Pursuant to the WSL Retainer Agreement, the attorneys' fees to which Special Counsel is entitled in connection with the proposed settlement is 23 1/3% of the gross settlement amount.⁶

30. Notwithstanding that the WSL Retainer Agreement does not require or provide for any reduction of Special Counsels' contingent fee for hourly fees received in connection with Special Counsel's investigation prior to the assertion of a claim, Special Counsel on their own volition have agreed to such a reduction, to be applied to the first recoveries on the Proposed Settlement. The hourly fees for Special Counsel's investigation total \$552,281.25, for 1,472 hours of attorney time. That credit would reduce Plaintiffs' Counsel's fee on the minimum Initial Lump Sum of \$11,150,000 from 23 1/3% to approximately 18.38%.⁷

⁶ See Exhibit D (WSL Retainer Agreement at 2).

⁷ 23.5% of \$11,150,000 = \$2,601,630, minus \$552,281.25 = \$2,049,349, which is 18.38% of \$11,150,000.

31. Special Counsel in the Federal Court Action intends to ask that court to award fees for Special Counsel's representation of the Settlement Class based upon the fee this Court approved for Special Counsel's representation of the Receiver, less the aforementioned credit.

32. Accordingly, Plaintiffs' Counsel will be seeking an award of attorneys' fees in the Federal Court Action in the amount of 23 1/3% of the Gross Settlement Amount, less \$552,281.25.

Conclusion

33. The First Circuit has held that "[a] settlement agreement should be approved as long as it does not 'fall below the lowest point in the range of reasonableness.'" In re Heathco Int'l, Inc., 136 F.3d 45, 51 (1st Cir. 1998) (quoting In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983)). See also In re Mailman Steam Carpet Cleaning Corp., 212 F.3d 632 (1st Cir. 2000) (stating that the test is whether the trustee's actions fall within the universe of reasonable actions, as opposed to whether pressing forward might yield more funds). According to the First Circuit, in determining whether to approve a settlement, the Court should consider the following factors:

- a) The probability of success in the litigation being compromised;
- b) The difficulties to be encountered in the matter of collection;
- c) The complexity of the litigation involved and the expense, inconvenience and delay in pursuing the litigation; and
- d) The paramount interest of the creditors and a proper deference to their reasonable views.

Cf. Jeffrey v. Desmond, 70 F.2d 183, 185 (1st Cir. 1995) (bankruptcy context).

34. The federal standards enumerated in Paragraph 21 herein have been applied by the Rhode Island Superior Court in receivership proceedings. See, e.g.,

Brook v. The Education Partnership, Inc., No. PB 08-4185, 2010 WL 1456787, at *3

(R.I. Super. Ct. Apr. 8, 2010) (Silverstein, J.). In Brook v. The Education Partnership,

Inc., the Superior Court held:

As discussed supra, in determining whether to approve the Receiver's proposed settlement the Court must consider certain factors and "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal."

Among the factors to be considered are: (1) the probability of success in the litigation; (2) the likelihood of difficulties in collection of any judgment; (3) the complexity, expense, inconvenience, and delay of the litigation involved; and (4) the paramount interests of the creditors. The Court will also give deference to the Receiver's business judgment.

Id. at *5 (internal citations omitted).

35. The Receiver believes that the Proposed Settlement advances the interests of the Receivership Estate, the Plan, and the Plan participants, and that the terms of the Proposed Settlement are fair and reasonable given the ordinary risks of litigation and the complexity of the matter, as well as other considerations.

36. Accordingly, the Receiver recommends that the Court approve the Proposed Settlement as in the best interests of the Receivership Estate, the Plan, and the Plan participants, and authorize and direct the Receiver to proceed therewith.

WHEREFORE the Receiver prays for an Order (i) approving the Proposed Settlement as in the best interests of the Receivership Estate, the Plan, and the Plan participants; (ii) authorizing and directing the Receiver to proceed with the Proposed Settlement; and (iii) granting such further relief as this Court may determine to be reasonable and necessary under the circumstances.

Dated: September 4, 2018

Respondent,
Stephen F. Del Sesto, Esq., Solely in
His Capacity as Permanent Receiver of
the Receivership Estate,
By his Attorneys,

/s/ Max Wistow

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