Order F26-100

PROVINCIAL HEALTH SERVICES AUTHORITY

Erika Syrotuck
Adjudicator

November 13, 2026

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Summary: A third party requested that the Office of the Information and Privacy Commissioner review the Provincial Health Services Authority's (Health Authority) decision to release information in an agreement. The third party argued that s. 21(1) (harm to business interests of a third party) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) required the Health Authority to refuse to disclose that information. The adjudicator found that s. 21(1) did not apply and ordered the Health Authority to provide the information to the access applicant on that basis.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, s. 21(1).

INTRODUCTION

[1] This is an inquiry resulting from a third party's request for review under s. 52(2) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] In 2024, an access applicant made a request to the Provincial Health Services Authority (Health Authority) under FIPPA for agreements between the Health Authority and any third parties relating to the HPV screening program launched in British Columbia in January 2024.[1]

[3] The Health Authority notified Roche Diagnostics, a Division of Hoffmann-La Roche Limited (the Third Party) under s. 23 of FIPPA that it was considering releasing the Third Party's information in the responsive records. In response, the Third Party informed the Health Authority that s. 21 required the Health Authority to withhold specific pages. In other words, the Third Party argued that

[1] The Provincial Health Services Authority is listed in Schedule 2 of FIPPA. It is therefore a "public body" under the (b) of the definition in Schedule 1.

s. 21(1) of FIPPA required some, but not all of the information in the record at issue to be withheld.

[4] The Health Authority then notified the Third Party under s. 24 of FIPPA that it had decided to release all of the information in the responsive records.

[5] The Third Party requested that the Office of the Information and Privacy Commissioner (OIPC) review the Health Authority's decision under s. 52(2) of FIPPA. The Third Party and the Health Authority each provided submissions. The applicant was invited to this inquiry but declined to participate.

[6] During the inquiry, I determined that parts of the Third Party's reply (last) submission raised new arguments. A key element of fairness is that each party has an opportunity to know and respond to the other parties' arguments. To remedy this potential unfairness, I offered the Health Authority an opportunity to comment on the Third Party's new arguments. The Health Authority provided additional comment.

Preliminary issue – information not at issue not disclosed

[7] During the inquiry, I asked the Health Authority to clarify whether it had disclosed, to the applicant, the information that was not at issue in the inquiry.[2] The Health Authority said that it had not.

[8] In Order F22-33, the Director of Adjudication clarified that s. 7(6) of FIPPA requires that a public body provide the portions of the records not in dispute to the applicant.[3] In doing so, she relied on a judicial review where Justice Grauer of the BC Supreme Court found that such an interpretation of s. 7(6) was reasonable.[4]

[9] In line with the above, it is my view that the Health Authority should have provided the portions of the record not in dispute to the applicant. This would have allowed the applicant to access most of the record without having to wait for this review to be completed. In the future, public bodies should follow the

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[2] In this case, the information not at issue is the information not listed in paragraph 8 of the Investigator's Fact Report. During the inquiry, the Health Authority raised the possibility that the Investigator's Fact Report was mistaken about the specific information in dispute. The Third Party was given the opportunity to comment but chose not to respond. The materials before me, including the Third Party's submissions and its initial request for review to the OIPC, indicate that the Investigator's Fact Report was not mistaken. I find that the Investigator's Fact Report was correct and that the only information in dispute is what is listed in para 8 of the Investigator's Fact Report.

[3] Order F22-33, 2022 BCIPC 37 (CanLII) at para 17. See also paragraphs 7-21.

[4] *British Columbia (Labour and Cititzens' Services) v. British Columbia (Information and Privacy Commissioner)* 2009 BCSC 1700 at paras. 40 and 43-44.

interpretation of s. 7(6) set out above.

ISSUE

[10] The sole issue in this inquiry is whether the Health Authority is required to withhold the information in dispute under s. 21(1) of FIPPA.[5]

[11] Section 57 sets out the burden of proof in an inquiry. Section 57(3) applies where a third party is requesting the review. This provision says:

> 57(3) At an inquiry into a decision to give an applicant access to all or part of a record containing information that relates to a third party,
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> (a) in the case of personal information, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy, and
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> (b) in any other case, it is up to the third party to prove that the applicant has no right of access to the record or part.

[12] In this inquiry, s. 57(3)(b) applies and the burden is on the Third Party to show that the applicant has no right of access.

DISCUSSION

Background

[13] The Third Party is a corporation that provides diagnostic services and materials for health care providers. The Third Party supplied certain diagnostic equipment to the Health Authority under a contract (Contract).

Information in dispute

[14] The information in dispute is several schedules to the Contract, specifically:

- Schedule A: Prices, and amendments to Schedule A;
- Schedule B: Product Specifications;
- Schedule C: Services;
- Schedule G: Warranty; and
- Schedule H: Return Policy.

[15] The above schedules and amendments total 14 pages.

[5] As set out in paragraph 8 of the Investigator's Fact Report.

Section 21 – harm to business interests of a third party

[16] Section 21(1) requires the head of a public body to refuse to disclose to an applicant information that could reasonably be expected to harm the business interests of a third party.

[17] Section 21(1) reads as follows:

> 21 (1) The head of a public body must refuse to disclose to an applicant information
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> (a) that would reveal
>
> (i) trade secrets of a third party, or
>
> (ii) commercial, financial, labour relations, scientific or technical information of or about a third party,
>
> (b) that is supplied, implicitly or explicitly, in confidence, and
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> (c) the disclosure of which could reasonably be expected to
>
> (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
>
> (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
>
> (iii) result in undue financial loss or gain to any person or organization, or
>
> (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

[18] The burden is on the Third Party to show that all three of (a), (b) and (c) apply to the information in dispute.

21(1)(a) – commercial, financial, labour relations, scientific or technical information of or about a third party

[19] The first step in the s. 21(1) analysis is to determine whether the information would reveal a type of information listed in s. 21(1)(a), namely:

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of or about a third party,

[20] FIPPA does not define the terms "commercial" or "financial" information. However, past orders have defined these terms. For example, the adjudicator in Order F25-31 said the following:

- Information is "commercial" information if it relates to commerce such as the buying, selling or exchange of goods and services carried on by a particular entity, including the terms, conditions and methods for providing the services and products.

- Information is "financial" information under s. 21(1)(a) if it is about things such as prices charged for goods and services, assets, liabilities, expenses, cash flow, profit and loss data, operating costs, financial resources or arrangements.[6]

[21] The Third Party says the information in dispute covers pricing, product specifications, services, warranty and return policies for the product, each of which falls into the definitions of "commercial", "financial" or "technical" information.

[22] The Health Authority says that it accepts that the Contract and its appendices constitute "commercial" or "financial" information under s. 21(1)(a).

[23] There is no dispute between the parties that s. 21(1)(a) is satisfied. I am also satisfied that the information is commercial and/or financial information. The information is about the agreement between the parties that the Health Authority purchase the Third Party's product and the terms and prices related to that exchange. I find that s. 21(1)(a) applies to all of the information in dispute.

Section 21(1)(b) – supplied in confidence

[24] Section 21(1)(b) has two parts. First, the information must be "supplied" and second, the information must be supplied implicitly or explicitly, in confidence.

[25] I will begin with whether the information in dispute was "supplied."

[6] Order F25-31, 2025 BCIPC 38 (CanLII) at para 26.

i. Was the information "supplied"?

[26] It is well established that information that is negotiated between parties is not typically "supplied" within the meaning of s. 21(1)(b). This means that, in general, information contained in a contract or agreement between parties is information that has been negotiated rather than "supplied."

[27] However, information in an agreement may be "supplied" in the following two circumstances:

1. the information is relatively immutable or not susceptible to alteration during the negotiation, and it was incorporated into the agreement unchanged; or

2. the information would allow an accurate inference about underlying confidential information the third party "supplied" that is not expressly contained in the contract.[7]

[28] With respect to the interpretation of the test for "supplied," the Third Party says:

> Immutability is only one of two possible criteria for the first arm of the test for supply of information, although no published decision has yet to consider this part of the test. The second criterion, information which is "not susceptible to alteration during negotiation", is applicable in this instance.

[29] I reject the Third Party's argument that part one of the test is really two different criteria. In my view, the word "or" clearly means "in other words" when read in context. This is because immutable means "unable to be changed." Therefore, the purpose of the words following "or" is to explain the meaning of the word to a reader who may not be familiar with this term. In any case, the Third Party has not explained how the alleged second criterion is meaningfully different than "immutability."

[30] Turning to the meaning of the first part of the test, in Order F23-77, the adjudicator said the following:

> The fact that one of the parties may propose certain terms, conditions or costs of services does not render those terms immutable. As long as the other party had the discretion to accept, reject or negotiate modifications to the proposed terms, conditions or costs, the information does not qualify as supplied for the purposes of s. 21(1)(b). It is not an issue of whether the third party does or does not want to negotiate about the information. It must be that the third party could not change the information, even if it wanted

[7] Order F25-40, 2025 BCIPC 48 (CanLII) at para 235 citing Order 01-39, 2001 CanLII 21593 (BC IPC) at paras 43-50.

> to. Examples of immutable information could include reference to fixed costs that the service provider must pay to its own suppliers, or factual information, such as details of the service provider's audited accounts. It could also include the educational and employment history of one of its employees.[8]

[31] The Third Party submits that each schedule and the amendments to Schedule A were "supplied" within the meaning of s. 21(1)(b). In each case, it says that the information was not negotiated between the two parties, but rather, was supplied by the Third Party to the Health Authority. I will address its arguments with respect to each Schedule below.

[32] The Health Authority says that the contract is a negotiated agreement that does not, apart from Schedule B, contain information "supplied" by the Third Party. It provided evidence from its Category Manager, Diagnostics with the Health Authority's supply chain (Manager). The Manager says, among other things:

- he has reviewed the responsive records in this inquiry;
- in each procurement, the Health Authority's supply chain team attempts to secure the best possible terms;
- depending on the nature of the contract, the Health Authority will negotiate terms involving pricing, warranties, product service standards and delivery expectations;
- the Health Authority does not consider a supplier's standard terms to be non-negotiable, as it has specific needs or requirements that suppliers must meet in order for an agreement to be reached between the parties;
- even if a supplier has standard, publicly available prices, service policies or standards, warranties or return policies, the Health Authority will negotiate those terms with the supplier to ensure the best possible terms are secured for the public;
- except for Schedule B, the Health Authority considered all the terms, schedules, amendments and appendices in the Contract to have been open for negotiation between the parties during the procurement and amendment process; and
- the Health Authority does not usually negotiate product specifications, as it considers those aspects to be the supplier's information provided to the Health Authority.

[33] The Third Party says that the Manager's evidence should be given little to no weight because it only addresses the Health Authority's general practice and does not address the specific information at issue.

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[8] Order F23-77, 2023 BCIPC 92 (CanLII) at para 26.

[34] I can see that the Manager's evidence focuses on the Health Authority's general practices and only briefly addresses the specific negotiations surrounding the Contract. However, just because there are some limits to the Manager's evidence does not mean it is appropriate to discount it. Nothing indicates to me that what the Manager says is not credible or reliable. I have considered it and will weigh it along with the other materials in this inquiry.

I turn to the schedules at issue.

[35] **Schedule B (product specifications)**: The Third Party says that the product specifications were not subject to any negotiations. The Health Authority agrees that Schedule B was "supplied". I accept the Manager's evidence that the Health Authority does not typically negotiate product specifications.

[36] I agree that, in the context of the Contract, the product specifications are immutable. The information in dispute is factual information about the diagnostic equipment that is the subject of the Contract. I do not see how this type of information could be subject to change through negotiation.

[37] I find that the information in Schedule B is immutable and therefore is "supplied" within the meaning of s. 21(1)(b).

[38] **Schedule A (prices) and its amendments:** The Third Party says that Schedule A and its amendments were not negotiated between the parties but rather supplied by the Third Party to the Health Authority.

[39] In addition, the Third Party says that this information qualifies "as supplied by virtue of the fact that the information therein would allow an accurate inference about the underlying confidential information supplied."[9] I gather it asserts that disclosure would allow accurate inferences to be made about the information in Schedule B, which the Health Authority has conceded is supplied.

[40] The Health Authority indicates that section 6 of the Contract specifically deals with pricing. I understand that the Health Authority submits that price was open to negotiation during the procurement and amendment process.

[41] In addition, the Health Authority says it does not agree with the Third Party that the information in Schedule A overlaps with the product information in Schedule B. It also says that some of the information is available online.

[42] In my view, the prices in Schedule A and its amendments are clearly not immutable. The prices are not included in the Contract as some kind of artefact of the Third Party's pricing scheme. Rather, they are the actual prices that the Health Authority agreed to pay for the Third Party's equipment. The terms of the

[9] Third Party's reply submissions, page 2

Contract demonstrate this.[10] To be considered "immutable" within the meaning of the s. 21(1)(b) test, it must be information that no party to the Contract could change even if it wanted to. The Third Party is clearly in control of its own pricing.

[43] However, I am persuaded that some of the information in Schedule A is "supplied." For example, some of the information is product numbers and descriptions and I find that these are immutable. In my view, this is the type of factual information that is not susceptible to negotiation.

[44] **Schedules C (support agreement), G (warranty) and H (return policy):** The Third Party says Schedules C, H and G are standard policies and procedures that are not deviated from. It says that these are terms, conditions or costs that are "simply not subject to negotiation."[11] It says that, if a supplier negotiated its return policy with every client, there would be no reason to have a policy at all, rather it would be a term of the contract. It notes that Schedules C and H were wholesale copied and inserted into the Contract.

[45] The Third Party submits that the information in these schedules is analogous to technical information as they are policies which are not susceptible to negotiation and which the Health Authority would not have any authority to approve or control. It references Order F23-77, where the adjudicator found that the third party's descriptions of electronic systems, technology and processes were relatively immutable.[12]

[46] I understand the Health Authority's position to be that these Schedules contain terms that were open to negotiation during the procurement process.

[47] I am not persuaded by the Third Party's arguments. I do not think that the information at issue is comparable to technical information that was not susceptible to negotiation between the parties. I also do not think the fact that they may have been "wholesale copied" and inserted into the agreement changes this. Rather, I find that these schedules formed material parts of the agreement between the two parties.[13] In addition, the contents of the support agreement, warranty and return policy are all clearly within the Third Party's control, as these are the Third Party's policies.

[48] For these reasons, I find that these schedules contain information that was negotiated rather than supplied.

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[10] Section 6.1 is the provision regarding the Contract prices, and it refers directly to Schedule A.
[11] Third Party's reply submissions, page 1.
[12] 2023 BCIPC 92, paras 18 and 33.
[13] As evidenced by sections 4.4, 5.6, and 12.1 of the Contract.

Conclusion – supplied

[49] I have found that all of the information in Schedule B and some of the information in Schedule A was "supplied" within the meaning of s. 21(1)(b). I will refer to this information together as the "Product Information" for the remainder of this order.

ii. Was the supplied information supplied "in confidence"?

[50] As I found that only the Product Information was supplied, it is not necessary to determine whether any of the other information was supplied "in confidence".

[51] However, given my findings on harm below, it is also unnecessary for me to consider whether the Product Information was supplied "in confidence."

Section 21(1)(c) - harm

[52] The final part of the s. 21(1) test is about whether there is a reasonable expectation of harm caused by disclosure of the information in dispute:

> (c) the disclosure of which could reasonably be expected to
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> (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
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> (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
>
> (iii) result in undue financial loss or gain to any person or organization, or
>
> (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

[53] It is well-established that, when the language "could reasonably be expected to" appears in access to information statutes, the standard of proof is a "reasonable expectation of probable harm". This means that the party asserting the harm must establish that the likelihood of the harm occurring is "well beyond" or "considerably above" a mere possibility.[14] The amount and quality of the evidence required to meet this standard depends on the nature of the issue and

[14] *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)* 2014 SCC 31 at para 54 citing *Merck Frosst v Canada (Health)* 2012 SCC 3 at paras 197 and 199.

the "inherent probabilities or improbabilities or the seriousness of the allegations or consequences."[15]

[54] In addition, there must be a clear and direct connection between disclosure of the information at issue and the harms alleged.[16]

Parties' submissions - harm

[55] The Third Party says the following about whether disclosure would cause harm:

> Unlike the circumstances in Order F21-12, the subject matter of the goods being supplied under the Contract are patented medical devices, not simply 'unique methods and documents'. Disclosing the amounts and kinds of consumables and additional materials required to support the products does give competitors a significant commercial advantage not only for the initial supply of products but ongoing services as well. Order F21-12 concentrated on information from a specific instance and a particular individual. In the case at bar, the Contract contemplates broad and ongoing supplies of materials over multiple years.
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> A competitor can use the terms and pricing information to undercut ongoing supply contracts. As previously stated, the medical device industry is $10 billion USD industry in Canada with low market concentration. Development costs are high with one study showing a mean development cost of $54 million USD, which means any information that can be gleaned from a competitor can save substantial amounts. Disclosure would result in an undue gain for a competitor that is excessive and disproportionate to the value of the disclosure itself. The information being requested is of the kind that is routinely litigated to be disclosed for its value.
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> …..
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> Further, a recent Supreme Court of Canada decision confirms that methods of medical treatment remain unpatentable subject matter – meaning that the only protection that the Third Party has remains the maintenance of the information as trade secrets. The particular configurations of the equipment being bought, which can in part be discerned from the information and products set out in Schedule A, can only be protected by remaining confidential. It is, then, a reasonable expectation of the Third Party that the disclosure requested could, and likely would, result in harm to the Third Party.[17]

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[15] *Ibid* citing *FH v McDougall,* 2008 SCC 53 at para 40.
[16] Order F07-15, 2007 CanLII 35476 (BCIPC) at para 17.
[17] Third Party's reply submissions, page 3, citations omitted. I have also omitted a portion on the harms anticipated by disclosure of the pricing information because I found that this information was not "supplied."

[56] With respect to Product Information in particular, it says:

> The Third Party's product specifications are not public knowledge, as is to be expected for equipment and goods in the pharmaceutical industry. Whether such information rises to the level of a trade secret, the specifications which the Third Party is working to produce their equipment and goods is important information that is not readily shared to inhibit competitors from trying to replicate or undercut the Third Party's products.
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> For these reasons, disclosing the product specifications in Schedule B would result in harm to the Third Party's competitive position.

[57] The Health Authority says that the Third Party has not met the evidentiary burden required to demonstrate that disclosure of any of the information in dispute could reasonably be expected to cause it significant or undue harm within the meaning of s. 21(1)(c). It says that the Third Party's arguments are similar to those rejected by the adjudicator in Order F13-30.[18]

Analysis – harm

[58] I understand the Third Party to be arguing that either or both of the harms set out in s. 21(1)(c)(i) or (iii) apply in respect of the Product Information.

[59] In my view, the Third Party did not sufficiently explain how disclosure of the Product Information could reasonably be expected to result in these harms. In my view, the Third Party's submissions amount to little more than vague assertions of harm. For example, it asserted that disclosure of the particular product configurations would likely cause it harm but did not sufficiently describe how this is the case. Similarly, it asserted that disclosure of the amounts and kinds of consumables needed to support the product would give its competitors a significant commercial advantage but did not adequately explain why this could be probable.

[60] After reviewing the Product Information, it is not clear to me how its disclosure could reasonably be expected to cause the harms that the Third Party anticipates. For example, I do not see how the information at issue could be used by a competitor to undercut the Third Party's products. Also, I can see that the information describes some attributes about the product, but it is not evident to me that disclosure of the Product Information could reasonably allow a competitor to replicate the Third Party's product. Without further explanation, I do not see how disclosure of the Product Information would result in enough information to enable a competitor to replicate or undercut the Third Party's product.

[18] Order F13-30, 2013 BCIPC 39 (CanLII).

[61] The Third Party provided evidence about the competitiveness of the medical device industry. However, it did not explain, and it is not clear to me, how this shows that the specific information in dispute, if disclosed, could reasonably be expected to cause the harms it contemplates. I am not persuaded that evidence of a competitive industry is enough to satisfy the standard of proof in this case.

[62] The Third Party has also argued that the information being requested is the kind of information litigated for its value. It cited a Federal Court case in support of this.[19] However, the case appears to be about claims made with respect to a pharmaceutical drug. It is not clear to me, and the Third Party has failed to sufficiently explain, how this case supports its argument that the Product Information, if disclosed, would result in any of the harms above. The Third Party referenced other case law generally for the same proposition, but it did not elaborate.[20]

[63] Further, I also note that the Third Party's submissions are contradictory with respect to whether the product as issue is subject to a patent. It says that "the subject matter of the goods being supplied under the Contract are patented medical devices" but later in its submissions says:

> [A] recent Supreme Court of Canada decision confirms that methods of medical treatment remain unpatentable subject matter – meaning that the only protection that the Third Party has remains the maintenance of the information as trade secrets.[21]

[64] Therefore, it is unclear to me whether the product that is the subject of the Contract is subject to a patent. In any case, the Third Party's submissions on this point do not sufficiently explain how disclosure of the specific information in dispute could reasonably be expected to result in the harms at issue.

[65] Overall, the Third Party has not adequately explained, and it is not evident to me, how the specific information at issue, if disclosed, could reasonably be expected to result in the harms contemplated by s. 21(1)(c).

CONCLUSION

[66] For the reasons above, I make the following order under s. 58 of FIPPA:

1. As I have found that s. 21(1) does not apply, I require the Health Authority to give the applicant access to Schedules A, B, C, G and H and the amendments to Schedule A to the Contract.

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[19] The Third Party references *Eli Lilly Canada Inc. v. Apotex Inc*., 2008 FC 142 (CanLII).
[20] In footnote 8 of its reply submission, the Third Party referred to "the 1,000+ cases involving Apotex Inc. retrievable on CanLII".
[21] Page 3 of its reply submissions. It cited *Pharmascience v Janssen Inc, 2026 SCC 26*.

2. The Health Authority must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records described at item 1 above.

[67] Pursuant to s. 59(1) of FIPPA, the Health Authority is required to comply with this order by December 29, 2026. However, as a term of the order under s. 58(4), the Health Authority must not comply with items 1 and 2 until at least 10 days from the date of this order, which is November 27, 2026.

November 13, 2026

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

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