

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
C. A. No.:

THE 1850 CONDOMINIUM TRUST,  
PETER STORM, ALBERT CHO, PETER RUSSELL,  
MATTHEW LAU, NICOLE HOGARTY, RHONDA SKLOFF,  
DENNIS BEROUNSKY, BEATRICE SZETO, LILY HAYES,  
DENE TAKACSY, AMRIT B. KANWAL, ERIC HUANG,  
GEORGIOS DIMITRAKOPOULOS, VASILIKI MASELI,  
JEFFREY LASKER, KRISTINE LAPING, PETER MAGNUSON,  
YUMENG MU, ROBERT MANDELL, ROBERT SKLOFF,  
SABASTIAN HAMILTON, MATTHEW L. ROMO,  
DAVID WISHOLEK, AND CHRISTOPHER G. MCBRIDE,

Plaintiffs,

v.

ALLIED RESIDENCES, LLC,  
CRESSET DEVELOPMENT, LLC  
CRESSET ALBANY, LLC,  
5BY2 US, INC.  
LODIGE USA, INC.,  
THE VELOCITY COLLABORATIVE REAL ESTATE  
GROUP, LLC d/b/a THE COLLABORATIVE COMPANIES,

Defendants.

**COMPLAINT**

**Introduction**

This is an action brought by the 1850 Condominium Trust and 24 unit owners holding parking rights and easements in an underground automated parking garage against Allied Residences, LLC, Cresset Development LLC, Cresset Albany, LLC, 5BY2 US, Inc., Lodige USA, Inc. and the Velocity Collaborative Real Estate Coup, LLC d/b/a the Collaborative Companies for negligence, misrepresentation, breach of contract and fraud arising out of the

complete and total failure of the Condominium's automated parking system, which needs to be replaced at an estimated cost in excess of One Million Dollars.

### The Parties

1. Plaintiff is the 1850 Condominium Trust pursuant to a Declaration of Trust dated June 9, 2008, and recorded in the Suffolk County Registry of Deeds at Book 43651, Page 126. Said Declaration of Trust established the Condominium Trust as the organization of unit owners of the Condominium, which Condominium was further established by Master Deed dated June 9, 2008, and recorded in the Suffolk County Registry of Deeds at Book 43651, Page 89, as amended. The 1850 Condominium is a residential condominium consisting of 60 units.

2. Plaintiffs, Peter Storm, Albert Cho, Peter Russell, Matthew Lau, Nicole Hogarty, Rhonda Skloff, Dennis Berounsky, Beatrice Szeto, Lily Hayes, Dene Takacsy, Amrit B. Kanwal, Eric Huang, Georgios Dimitrakopoulos, Vasiliki Maseli, Jeffrey Lasker, Kristine Laping, Peter Magnuson, Yumeng Mu, Robert Mandell, Robert Skloff, Sabastian Hamilton, Matthew L. Romo, David Wisholek, and Christopher G. McBride are unit owners at the 1850 Condominium, 88-90 Wareham Street, Boston MA. Each of these individuals holds rights and easements to park in the underground automated parking garage at the 1850 Condominium, (*collectively* "Parking Easement Holders"). Peter Storm, Matthew Lau, Nicole Hogarty, Beatrice Szeto, Amrit B. Kanwal, Georgios Dimitrakopoulos, Vasiliki Maseli Kristine Laping, Peter Magnuson, and Yumeng Mu are unit owners at the 1850 Condominium who purchased new units in Phase II of the Condominium directly from the Condominium developer, which units came with an underground parking spot in the newly constructed automated parking garage (*collectively* "New Parking Easement Holders").

3. Defendant, Allied Residences, LLC (the "Declarant") is a Massachusetts limited liability company with a usual place of business at 120 Water Street, Suite 500, Boston, Massachusetts 02109. The Declarant serves as the successor developer/declarant to the Condominium. The Declarant's registered agent for service is Edward Nardi at 120 Water Street, 2<sup>nd</sup> Floor, Boston, Massachusetts 02109.

4. Defendant, Cresset Development, LLC is a Massachusetts limited liability company with a usual place of business at 120 Water Street, Suite 500, Boston, Massachusetts 02109. Cresset Development, LLC's registered agent for service is Edward Nardi at 120 Water Street, 2<sup>nd</sup> Floor, Boston, Massachusetts 02109.

5. Defendant, Cresset Albany, LLC is a Massachusetts limited liability company with a usual place of business at 120 Water Street, Suite 500, Boston, Massachusetts 02109. Cresset Development, LLC's registered agent for service is Edward Nardi at 120 Water Street, 2<sup>nd</sup> Floor, Boston, Massachusetts 02109.

6. 5BY2 US, INC. is a Delaware corporation having a principal place of business at 228 East 45<sup>th</sup> Street, Suite 9E, New York, N.Y. 5BY2 is registered to do business in Massachusetts and its registered agent for service is Northwest Registered Agent Service, Inc., 82 Wendall Ave. Suite 100, Pittsfield, MA 01201

7. Lodige USA, Inc. is a Delaware corporation having a principal place of business at 37 West 20<sup>th</sup> Street, Suite 910, New York, N.Y. 10001. Upon information and belief, Lodige is a parent corporation of 5BY2. While Lodige does business in Massachusetts, it has not registered to do so with the Secretary of the Commonwealth to do so.

8. The Velocity Collaborative Real Estate Group, LLC ("Velocity") is a Massachusetts limited liability company doing business as The Collaborative Companies, having

a principal place of business at 20 Park Plaza, Suite 833, Boston, MA 02116. Its registered agent for service of process is Suzanne Hawkes.

**Facts**

9. Phase II of the 1850 Condominium was constructed and added to the Condominium in or about 2019/2020, although it was the subject of litigation by and between the Condominium Trust and Allied.

10. Phase II of the Condominium consists of a stand-alone building containing 27 residential units and ground-floor commercial units.

11. Phase I of the Condominium consists of 60 residential units.

12. Phase II of the Condominium was constructed on what was the former above-ground parking lot serving parking for a number of the Phase I owners and owners of commercial units in the Primary Condominium.

13. The Phase II building as constructed contains an underground fully automated parking garage system for 44 parking spaces.

14. Twenty-two (22) of the 44 parking spaces were sold to purchasers of the 27 Phase II units.

15. Ten (10) of the parking spaces were given to Phase I unit owners who held deeded or easement rights to an above-ground space and who lost that space as a result of the construction and placement of the Phase II building on the parking lot. Some Phase I unit owners retained their above-ground parking spaces.

16. The automated parking system was designed and manufactured by 5by2 and/or its parent Lodige.

17. Allied's related entities, Cresset Development Group and Cresset Albany, LLC were responsible for the construction and installation of the automated parking system.

18. Allied and Cresset operated the automated parking system for a period of time following installation until most of the Phase II units were sold to third-party purchasers and until its operation was turned over to the Condominium Trust in 2021.

19. The automated parking system is a so-called puzzle system similar to a sliding block puzzle, where a vehicle is driven onto a pallet and lowered via the parking system's elevator into the underground garage system of moving pallets which are monitored and controlled by computer software and sensors. The vehicle is retrieved by interacting with a computer kiosk by use of a fob, which then causes the pallets in the garage to move in a fashion similar to a sliding puzzle until the vehicle's pallet is loaded onto the elevator mechanism and delivered to waiting user.

20. Allied entered into a 5-year maintenance contract with 5by2, with the option to renew for two additional 5-year terms and which contract was ultimately transferred and/or assigned to the Condominium Trust as the operator of the system following the transition.

21. The automated parking system experienced numerous system failures during its first year of operation. On at least two occasions these failures resulted in owners being unable to retrieve their vehicles for weeks.

22. The issue was exacerbated by the City of Boston Inspectional Services or Licensing Department considering the automated parking system to be "an elevator" as opposed to an automated parking system, meaning that 5BY2 and Lodige's standard practice of performing remote software resets to reduce operational costs and increase reliability and uptime was not allowed.

23. The City of Boston required all software resets to be performed by a licensed elevator technician “in person”, meaning that almost every time there was a system failure, 5BY2 needed to contact an elevator company to come to the property, evaluate the issue (even though it may have already been diagnosed remotely through the software) and then physically reset the system even though it could have been reset remotely through the software.

24. The requirement to have a licensed elevator technician come to the property repeatedly to address system resets, failures, and breakdowns resulted in increased operational costs for the Condominium. Individual failures and breakdowns often required multiple on-site visits by a licensed elevator technician to troubleshoot, diagnose, and implement a solution where each individual visit was billed a minimum of two (2) hours of labor regardless of the licensed elevator technician’s ability to properly troubleshoot, diagnose, and/or implement a said solution.

25. According to Allied, Cresset, and 5BY2 the City of Boston’s classification of the automated parking system as an “elevator” was lobbied for by the elevator operators’ union.

26. Allied, Cresset, 5BY2, and Lodige all knew of the City of Boston’s classification of the system as an elevator long before the automated parking system was installed as demonstrated by their attempts to obtain a variance from the Division of Licensure, Board of Elevator Regulations for the automated parking system in 2017.

27. The increased costs and continued operational failures were so exorbitant and frequent that Allied and Cresset agreed to cover the cost of the 5BY2 maintenance contract for a year following turnover of the garage to the Condominium Trust and Cresset assigned one of its key personnel (Andrew Castraberti) to act as an intermediary between 5BY2, Lodige, the Condominium and local elevator company and to oversee the operation and maintenance of the automated parking system.

28. During the course of administering its maintenance contract, 5BY2 engaged a third-party elevator company to perform in-person resets of the system when required in order to satisfy the requirements of the City of Boston.

29. 5BY2 charged the Condominium Trust for these extra services with a markup and did not discount its fee under the contract even though an extra vendor was required.

30. In late 2021, 5BY2 indicated that it was discontinuing its business operations in the United States and that as a result it would no longer honor its obligations under the maintenance contract with the Condominium Trust.

31. The Condominium Trust asked Lodige, as the parent company of 5BY2, to honor 5BY2's obligations under the maintenance contract.

32. Lodige refused to honor 5BY2's obligations under the maintenance contract but agreed to provide some additional oversight of the system for a nontrivial fee.

33. The automated parking system continued to experience numerous failures and shutdowns.

34. On May 16, 2022, the automated parking system experienced a complete failure with numerous pallets derailing and piling up like a car crash on the highway in a snowstorm.

35. The Condominium Trust hired a company following the May 16, 2022 incident to put the pallets back on track, replace damaged parts as feasible, and bring the system back online. The resulting damage required removing damaged pallets from service which subsequently reduced capacity of the system. The parking system has since experienced repeated and significant failures.

36. The system is in total operational and financial failure.

37. The Condominium Trust is informed and believes that the automated parking system was poorly designed in terms of location of the entrance for vehicles alongside the number, location, and sensitivity of sensors within the system which contributes to user error.

38. The Condominium Trust is informed and believes that the automated parking system was not constructed and/or installed properly which has led to its total failure.

39. The Condominium Trust is informed and believed that the automated parking system at the Condominium was poorly designed and implemented in terms of squeezing too many pallets into too tight of a space to maximize the number of spaces Allied and Cresset could sell to perspective buyers.

40. The Condominium Trust is informed and believed that the automated parking system was poorly designed and calibrated in that the pallets were designed and installed to run at speeds that were too fast for such a complex system.

41. The Condominium Trust is informed and believes that the software for this system was poorly designed and implemented while lacking the finesse and adaptability required to properly operate a system of this design.

42. The Condominium Trust is informed and believes that the pallets and in particular the wheels and rail system for the pallets are poorly designed for a system of this complexity.

43. The Condominium Trust is informed and believes that the system was defectively designed, constructed, and installed.

44. The Condominium Trust believes that the automated parking system was not properly calibrated and/or updated once it became operational.

45. Allied knew that the system was not operating properly and took no action to remedy the system or prompt SBY2 or Lodige to remedy the system.



46. Instead, Allied sold condominium units to the Phase II unit owners touting the “state of the art” and “revolutionary” parking system and used that “state of the art” representation to garner higher prices from unit owners to purchase parking easements in the automated system to go along with their condominium units.

47. Allied and its real estate broker, the Collaborative Companies, knew that the automated parking system was not operating or functioning properly and that there had been threatened litigation relative to the same and that 5BY2 was refusing to honor its contractual obligations and failed to disclose those facts to Phase II unit purchasers.

48. In fact, Allied and its real estate broker, the Collaborative Companies, continued to tout the automated parking system as a “state of the art” system as a luxury amenity for Phase II unit purchasers.

49. In fact, Allied and the Collaborative Companies misrepresented the status of the automated parking system as well as the real and reasonably projected costs to maintain the same to the Condominium Trust and the Phase II unit purchasers.

**Count I – Negligence**  
**(Condominium Trust v. Allied and Cresset)**

50. The Plaintiffs hereby repeats and re-alleges the preceding paragraphs of this Complaint as if set forth fully herein.

51. Allied as developer/declarant and Cresset as a general contractor were responsible for the construction of the Condominium buildings including common areas and facilities including the automated parking system.

52. As the developer/declarant and general contractor, Allied and Cresset owed a duty to the Condominium Trust to exercise due care in the design, procurement (as required), construction of the common areas facilities, specifically the automated parking system so that

said structures and facilities would be adequate for their intended purposes, constructed in a good and workmanlike manner in compliance with any and all applicable laws, codes, and industry standards, and free from defects in workmanship and materials.

53. Allied and Cresset constructed and submitted to the condominium the automated parking system in a materially deficient condition and in violation of the state building code, in violation of the manufacturers guidelines code, and otherwise not in a good and workmanlike manner and in violation of industry standards.

54. The negligence of Allied and Cresset in connection with the construction of the automated parking system has directly and proximately caused and continues to cause significant physical damage to property including, but not limited to, degradation to various components of the Condominium common areas and a diminution in value of the Condominium units and common areas and facilities.

55. As a direct, proximate, and foreseeable result of the failure of Allied and Cresset to exercise due care in the design, procurement (as required), and construction of the common areas and facilities, specifically the automated parking system, the Condominium Trust has expended and will be required to continue to expend time and effort in addition to substantial monetary sums to maintain and/or replace the same.

**Count II – Negligence**  
**(Condominium Trust v. 5BY2 and Lodige)**

56. The Plaintiff hereby repeats and re-alleges Paragraphs 1 through 57 of this Complaint as if set forth fully herein.

57. 5BY2 and Lodige are in the business of the manufacture and design of automated parking systems.

58. Lodige is the parent company of 5BY2 and is liable for its actions and inactions.

59. 5BY2 AND Lodige were specifically involved in the design, operation and calibration of the automated parking system at the Condominium.

60. 5BY2 and Lodige provided materials and supplies, including but not limited to defective automated parking system and its components for installation and use at the Condominium pursuant to an Agreement with Allied and/or Cresset, which 5by2 and Lodige understood would be incorporated into Phase II of the Condominium project.

61. As a party responsible for supplying materials for the Condominium building and common areas and facilities associated therewith, 5BY2 and Lodige owed a duty to the Condominium Trust to exercise due care in the production, preparation and delivery of those materials so that said structures, areas and facilities would be adequate for their intended purposes, constructed in a good and workmanlike manner in accordance with any and all applicable laws, codes, and industry standards, and free of defects in workmanship and materials.

62. 5BY2 and Lodige failed to exercise due care in the production, preparation, and delivery of the materials used for the Condominium building, to wit the automated parking system by failing to construct said materials in a good and workmanlike manner, as the same has numerous defects and has experienced hundreds of breakdowns in the fifteen months it has been operational before experiencing a total failure in May, 2022.

63. 5BY2 and Lodige's production and delivery of a defective automated parking system to the Condominium has proximately caused and continues to cause, significant physical damage to the property, including, but not limited to, degradation of various components of the common areas and units and a diminution in value of the condominium and parking easements.

64. As a direct and proximate and foreseeable result of 5BY2 and Lodige's failure to exercise due care in the production, preparation and delivery of the automated parking system

for the Condominium building, the Condominium Trust has suffered damages and will be required to expend time and effort in addition to substantial monetary sums to completely replace the system and the resulting property damage.

**Count III –Breach of Implied Warranty-M.G.L. c. 106 § 2-314**  
**(Condominium Trust v. 5BY2 and Lodige and Allied)**

65. The Plaintiff hereby repeats and re-alleges the preceding paragraphs of this Complaint as if set forth fully herein.

66. Lodige is the parent company of 5BY2 and is liable for its actions and inactions.

67. 5BY2 and Lodige and Allied impliedly warranted that its automated parking system installed at the condominium would be merchantable.

68. The Condominium Trust is a party which 5BY2 and Lodige Allied might have reasonably expected to use, consume, or be affected by the automated parking system, under G.L. c. 106, § 2-314.

69. 5BY2 and Lodige and Allied breached its implied warranty by producing, preparing, or delivering the automated parking system in a defective condition, which has completed failed less than 18 months after delivery to the Condominium.

70. As a result of 5BY2 and Lodige and Allied's breach of its implied warranty, the Condominium Trust has been damaged.

**Count IV –Breach of Express Warranty-M.G.L. c. 106 § 2-313**  
**(Condominium Trust v. 5BY2 and Lodige)**

71. The Plaintiff hereby repeats and re-alleges the preceding Paragraphs of this Complaint as if set forth fully herein.

72. Lodige is the parent company of 5BY2 and is liable for its actions and inactions.

73. Upon information and belief, 5BY2 issued a material warranty for the automated parking system that that was installed at the Condominium.

74. The Condominium Trust is a party which 5BY2 might have reasonably expected to use, consume or be affected by the automated parking system installed at the Condominium under G.L. c. 106, § 2-313.

75. 5BY2 and Lodige breached its express warranty by producing, preparing or delivering a defective automated parking system.

76. As a result of 5BY2 and Lodige's breach of its express warranty, the Condominium Trust has been damaged.

**Count V – Breach of Contract**  
**(Condominium Trust v. 5BY2 and Lodige)**

77. The Plaintiff hereby repeats and re-alleges the preceding Paragraphs of this Complaint as if set forth fully herein.

78. Lodige is the parent company of 5BY2 and is liable for its actions and inactions. The Plaintiff hereby repeats and re-alleges Paragraphs 1 through 39 of this Complaint as if set forth fully herein.

79. The Condominium Trust and 5BY2 had a 5-year maintenance contract for the automated parking system with two five-year options exercisable by the Condominium Trust.

80. During 2021 5BY2 advised the Condominium Trust that it did not intend to honor the contract as it no longer desired to do business in Boston, Massachusetts.

81. The Condominium Trust requested that Lodige, as 5BY2's parent company, honor the existing maintenance contract.

82. Lodige refused to honor the existing maintenance contract.

83. 5BY2 and Lodige's actions constitute a breach of contract by which the Condominium Trust has been damaged.

84. As a result of 5BY2 and Lodige's breach of contract, the Condominium Trust has had to expend additional sums to maintain the system with vendors who are not as familiar with the system (flawed as it is).

**Count VI – Breach of Deed/Easement Covenants**  
**(All Underground Parking Easement Holders v. Allied)**

85. The Plaintiffs hereby repeat and re-allege the preceding paragraphs of this Complaint as if set forth fully herein.

86. Allied as developer/declarant of the Condominium conveyed a parking space easement to each of the underground parking easement holders.

87. In each instance, the parking easement holders paid extra or additional consideration for the parking easement in the underground garage, in some instances as much as \$100,000.

88. As a result of the total failure of the parking system, the underground parking easement holders are without a reliable parking space at the Condominium.

89. This constitutes a breach of the deed and/or easement covenants.

90. The underground parking easement holders have been damaged by said breach. Not only have they lost their ability to park at the Condominium, which they paid for, some have also had to expend significant sums to park their vehicles or their tenant's elsewhere since the total failure of the system. Other owners have lost the ability to lease their parking easement in good faith which, in one specific instance, has required the owner to cancel a \$350/mo. lease with allow-risk long-term tenant and reimburse the entirety of the first month's rent and \$89 parking garage training fee.

**Count VII – Breach of Purchase and Sale Agreement**  
**(All New Parking Easement Holders v. Allied)**

91. The Plaintiffs hereby repeat and re-allege the preceding paragraphs of this Complaint as if set forth fully herein.

92. Allied as developer/declarant of the Condominium conveyed a parking space easement to each of the new underground parking easement holders.

93. In each instance, the new parking easement holders paid extra or additional consideration for the parking easement in the underground garage, in some instances as much as \$100,000.

94. As a result of the total failure of the parking system, the underground parking easement holders are without a parking space at the Condominium.

95. This constitutes a breach of the purchase and sale agreement.

96. The new underground parking easement holders have been damaged by said breach. Not only have they lost their ability to park at the Condominium, which they paid for, they have also had to expend significant sums to park their vehicles elsewhere since the total failure of the system. Other owners have lost the ability to lease their parking easement in good faith which, in one specific instance, has required the owner to cancel a \$350/mo. lease with allow-risk long-term tenant and reimburse the entirety of the first month's rent and \$89 parking garage training fee.

**Count VIII – Misrepresentation**  
**(Condominium Trust and All Underground Parking Easement Holders v. Allied and Cresset and Velocity)**

97. The Plaintiffs hereby repeat and re-allege the preceding paragraphs of this Complaint as if set forth fully herein.

98. Allied as developer/declarant and Cresset as its related entity and general

contractor for the construction of the condominium and its broker, Velocity, consistently misrepresented the operational status, efficiency and ability of the system to the Condominium Trust and the Easement Holders, including the new easement holders.

99. In fact, Allied, Cresset and Velocity consistently touted the system as a modern amenity and a selling point for the Condominium when communicating with the new easement holders. They all did so knowing that their representations relative to the system were false.

100. The Condominium Trust and the easement holders relied upon Allied and Cresset's misrepresentations and were damaged thereby.

101. The Condominium Trust relied upon Allied and Cresset's false budget allocations for the operational maintenance of the system.

102. The parking easement holders relied upon Allied and Cresset's misrepresentations in certain instances in choosing an underground parking spot and in other instances purchasing a unit and/or an underground parking spot.

103. But for Allied and Cresset's misrepresentations, the parking easement holders and new parking easement holders would not have purchased an underground parking spot or a unit at the Condominium.

104. In each instance, the new parking easement holders paid extra or additional consideration for the parking easement in the underground garage, in some instances as much as \$100,000.

105. As a result of the total failure of the parking system, the underground parking easement holders are without a parking space at the Condominium.

106. All of the Plaintiffs have been damaged as a result of the misrepresentations of



Allied, Cresset, and Velocity and have furthermore Allied, Cresset and Velocity benefited from their misrepresentations.

**Count IX- Fraud**  
**(Condominium Trust and All Underground Parking  
Easement Holders v. All Defendants)**

107. The Plaintiffs hereby repeat and re-allege the preceding paragraphs of this Complaint as if set forth fully herein.

108. Defendants owed a duty to the Plaintiffs to disclose all facts within their knowledge relating to the issues with the parking garage.

109. Defendants represented to the Plaintiffs that they had diligently vetted the parking system prior to accepting its proposal for construction and installation of the underground, fully automated parking system and its track record of performance.

110. Defendants continued to tout the system as “revolutionary”, “state of the art”, despite some of the Defendants (5By2 and Lodige) knowing that the system was not and could not function as promised and that its software was outdated and that the system could not be serviced as promised, while other of the Defendants (Allied, Cresset and Velocity) knew the system was not operating properly and could not operate as promised, yet continued to represent it as a “revolutionary” and “state of the art system” for the purpose of selling units and parking easements.

111. Defendants, Allied and Cresset knowingly and fraudulently understated condominium expenses and operating costs for the underground parking system.

112. Plaintiffs reasonably relied upon Defendants’ false representations in certain instances in choosing an underground parking spot and in other instances purchasing a unit and/or an underground parking spot.

113. Defendants, Allied and Cresset knowingly submitted to the condominium the automated parking system in a materially deficient condition and intentionally and concealed pertinent information regarding the same. The defendants' representations were false and misleading, and fraudulent.

114. The harm suffered by the Plaintiffs are a direct result of Defendants' fraudulent conduct as alleged herein.

### **JURY CLAIM**

Plaintiffs claim a jury on all issues so triable.

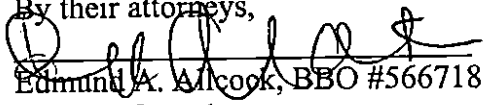
### **PRAYERS FOR RELIEF**

WHEREFORE, the Plaintiffs respectfully request that the Court enter Judgments in its favor in an amount to be determined on all counts of the Complaint and where appropriate provide double or treble damages and attorney fees and for such additional relief as this Court may deem just.

Respectfully submitted,

Plaintiffs,

By their attorneys,

  
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MARCUS, ERRICO, EMMER  
& BROOKS, P.C.

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Dated: July 25, 2022