

**MINUTES**  
**FORT MYERS BEACH**  
**Special Magistrate Hearings**  
Town Hall  
2525 Estero Boulevard  
Fort Myers Beach, FL 33931

**Thursday, November 21, 2019**

**Hearing Examiner - Special Magistrate:** Myrnabelle Roche

Magistrate Roche swore in those providing testimony.  
Town Attorney Herin, Jr. represented the Town.  
Staff: Code Compliance Manager Daphne Burcher

**CASES TO BE HEARD:**

Violator: NEGIP, BRITTNEY  
SUBJECT: Overtime Meter  
CODE SECTION: Sec. 28-51 (A)  
LOCATION: Hercules Dr  
BASE OFFICER: Harry Lee  
REFERENCE NO: 70945560

*ns*

On September 16, 2019, Officer Lee observed an overtime meter and issued a citation. Photos and the file were entered into the record.

Brittney Negip, owner, stated that she parked her vehicle and attempted to pay via her phone. She stepped away for better phone reception. She received a code at 11:00 and her ticket was issued at 11:09. She provided two screen shots of the meter and she did not think she should get a ticket for 9 minutes since she was right there trying to pay. She was not able to use the app because it would not load. She agreed there was a sign but she did not see it. The Town requested \$35.00 plus an administrative fee up to \$175.00 due within 10 days.

Magistrate Roche ordered Ms. Negip to pay \$35.00 for the ticket due within 10 days.

Violator: MCCALLUM, CAROL  
SUBJECT: Overtime Meter  
CODE SECTION: Sec. 28-51 (A)  
LOCATION: Old San Carlos  
BASE OFFICER: Kevin Przybyszewski  
REFERENCE NO: 70322501

*ns*

Officer Todd Sears handled the case in Officer Przybyszewski's absence. The violation occurred on October 29, 2019 and photos and the file were entered into the record. Payment was made for a different space.

Carol McCallum, owner, stated that her friend paid for the wrong space but did not realize it. She stated that it was an honest mistake and they did pay for parking. The Town requested \$35.00 plus an administrative fee up to \$175.00 due within 10 days.

Magistrate Roche ordered Ms. McCallum to pay \$25.00 for the ticket due within 10 days.

Violator: CLOSE, RYAN  
SUBJECT: Obstruction of Roadway  
CODE SECTION: Sec. 28-20 (2)N  
LOCATION: Avenue A  
BASE OFFICER: Kevin Przybyszewski  
REFERENCE NO: 70322195

Officer Sears handled the case. On October 7, 2019 a truck obstructed the roadway and was issued a citation. Photos and the file were entered into the record. The Town requested the fine of \$50.00 and an administrative fee up to \$175.00 due within 10 days.

Ryan Close, owner, reported that the parking space was too short for his truck and he did not block the handicapped section. He noted the parking lot was old and the lines were difficult to see. He showed pictures of the area to the Magistrate.

Magistrate Roche found a violation did exist and she ordered Mr. Close to pay \$50.00 and \$175.00 in administrative costs to be paid within 10 days.

Property Owner: RODRIGUEZ ABELARDO, SUCCESSOR IN INTEREST  
HEWITT MARCK C TR FOR MARK C HEWITT 2014 TRUST  
SUBJECT: LDC Section: 6-1, Adopting IPMC; Sec 304.7, 304.13, 304.13.1 and  
308.1 Leaky Roof, Broken/Deteriorating Windows, Pile of Debris  
LOCATION: 5770/5774 Estero Blvd.  
STRAP NO: 33-46-24-W2-0030B.0070  
CODE OFFICER: Eli Lee  
REFERENCE NO: CE16-0025

Town Attorney Herin, Jr. stated the original notice of hearing was sent on October 14, 2019 but the original order was entered in 2016. The property was now in compliance. The property was sold in a foreclosure sale on November 7, 2018 and the fine continued to accrue with the new owners. The total lien was \$44,575.00 for 296 days that the property was not in compliance after the sale. A lien was recorded on October 12, 2016.

Jeff Wright, attorney, represented Mr. Hewitt who attended via speaker phone. Attorney Wright entered an 18-page document into the record. He stated Mr. Hewitt became the owner of record on May of 2019. He understood that Town Attorney Herin, Jr. re-recorded the order and he questioned why he would do that without providing notice. He reviewed Chapter 162 in the Town's code. When Mr. Hewitt purchased the home there were no outstanding liens or enforcement orders on the property. After he purchased the property, Town staff informed him that he owed \$250,000.00 for both properties. He submitted and paid for two lien reduction requests and received a rejection note on May 30, 2019. Mr. Hewitt was told the properties had to come into compliance but were not told the problem. He demolished the structures on July 5, 2019, which brought both properties into compliance. Attorney Wright discovered that the liens

were foreclosed and Town Attorney Herin, Jr. agreed. He requested that the Town file two releases to correct the situation but the fines were adjusted to reflect the foreclosure of the lien and would start back up after the sale. Attorney Wright never received the recorded enforcement order despite repeated requests. He stated that Mr. Hewitt did not receive notice that there was a violation on the properties, the liens were foreclosed and there was no record of order of enforcement. He did not think it was appropriate to impose a lien because an order of enforcement was not recorded at the time of sale. He referred to Florida Statutes regarding unrecorded interests. Attorney Wright reviewed a timeline of activity. He stated that it took six years for foreclosure. He requested that no liens be imposed under current circumstances.

Town Attorney Herin, Jr. reviewed State Statutes concerning orders in public records. The lien amount was wiped out but the order was still valid when the owner took title. He stated that Mr. Hewitt was aware of the outstanding violation. Code Enforcement Coordinator Kristine Schumacher testified that she believed she did a lien search on the properties and found two liens listed.

Attorney Wright reiterated his request that liens not be imposed.

Magistrate Roche stated that the foreclosure did not wipe out the violations and Mr. Hewitt was aware the violations did exist. Attorney Wright noted that the violations were not a danger to the public, Mr. Hewitt abated the violations in less than 60 days and he requested that 55 days be removed from the calculation.

Town Attorney Herin, Jr. confirmed that the demolition permit was issued June 17, 2019 and demolition was complete on August 17, 2019. Attorney Wright argued that they were compliant on July 5, 2019.

Magistrate Roche found that the new owner was aware of the code violations; however, the property is not subject to any liens. The owner took possession on April 14, 2109, the permit was issued on June 17, 2019 and the demolition permit was July 5, 2019. She imposed a lien of \$4,500.00 with no additional fees.

Property Owner: RODRIGUEZ ABELARDO, SUCCESSOR IN INTEREST HEWITT  
MARCK C TR FOR MARK C HEWITT 2014 TRUST  
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1 Work Without Permit-Deck  
LOCATION: 5770/5774 Estero Blvd.  
STRAP NO: 33-46-24-W2-0030B.0070  
CODE OFFICER: Eli Lee  
REFERENCE NO: CE16-0026

Magistrate Roche found that the new owner was aware of the code violations; however, the property is not subject to any liens. The owner took possession on April 14, 2109, the permit was issued on June 17, 2019 and the demolition permit was July 5, 2019. She imposed a lien of \$3,000.00 with no additional fees.

Property Owner: BEACHFRONT ESCAPES LLC  
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1 Repeat Work Without Permit-Remodel  
LOCATION: 1710/1740 Estero Blvd.  
STRAP NO: 19-46-24-W4-0070A.0010

CODE OFFICER: Eli Lee  
REFERENCE NO: CE17-0870

Town Attorney Herin, Jr. stated that the original order of enforcement was on May 31, 2018. The permit was to be obtained by July 18, 2018 or fines would be imposed. A certificate of compliance was issued on August 19, 2019. The original notice of violation was issued on August 8, 2018. Beverly Grady, attorney for Beachfront Escapes, distributed exhibits. She noted that the case was withdrawn by the Town on June 20, 2019. She reviewed the history of the case. She stated that the building permit was applied for on October 10, 2017, predating violations. The permit was approved on July 31, 2018, 11 days after the date to abate. The permit was picked up on August 28, 2018. She requested that the lien imposition be the time between required compliance and when the permit was issued. All fees were paid. Attorney Grady noted the fine of \$250.00 per day fine was one of the highest imposed and excessive especially a month after hurricane Irma. She stated that all work after the permit was picked up was legal. The work was inspected and finalized on June 26, 2019. She requested a reduction to \$50.00 per day.

Joe Orlandini, represented the owner, explained that the unit was damaged due to Irma. A set of plans were submitted and revised after additional damage was identified. Their engineer met with the Town's staff a few times to discuss issuing the permit. He stated that he notified the Town before commencing any work on the property.

Town Attorney Herin, Jr. stated that work was done outside the scope of what was permitted and that was why the repeat violation was issued.

Magistrate Roche denied the request to reduce the \$250.00 per day fine. She concurred with the respondent regarding the calculation of days and ordered a lien in the amount of \$10,550.00, which included \$300.00 in fees. She stated the property was in compliance and fines would not continue to accrue.

Violator: ONSITE WATERSPORT RENTALS LLC  
SUBJECT: LDC Section: 27-49(19) Conducting Business Without Permit  
LOCATION: Fort Myers Beach  
CODE OFFICER: Eli Lee  
REFERENCE NO: 20191220

Officer Lee stated that they received complaints regarding the rental of jet skis without a PWVL license and he contacted the company to inform them of the violation and to cease operations. He displayed information on Facebook and noted that Lee County issued a warning to the company. Town Attorney Herin, Jr. entered the certified mail receipts for the Notice of Violation and Notice of Hearing along with a Facebook screen capture into evidence. The information was shared with the respondent's attorney.

Mike Chenopolis and Iris Padrill, attorneys, represented the respondents. Attorney Chenopolis confirmed that Officer Lee issued the warning on October 18, 2019. He questioned whether there was evidence of jet skis on the beach. Office Lee replied that the Facebook screen shot provided evidence. Cross examination by Attorney Chenopolis included jurisdictional limits, the code of federal regulations, offshore rides, complaints from beach vendors and an email from Joanne Shamp. Officer Lee read the violation. He did not observe the respondent renting jet skis. Attorney Chenopolis reviewed the Facebook screen capture describing an experience renting jet

skis from Onsite Watersport Rentals. He noted there was no date, time or the name of reviewer on the Facebook capture. He brought up the notion that a competitor posted information on Facebook. Officer Lee verified that the hearing had nothing to do with offshore allegations.

Paul Showdee, owner of Onsite Watersport Rentals, testified that his business was at his home within the city of Fort Myers and he had not conducted business in the Town of Fort Myers Beach. He launched his jet skis at Lover's Key with permission from code enforcement, the boat ramp at Oasis in Fort Myers and at Punta Rasa. He stated that he did not rent jet skis for commercial use at Fort Myers Beach. He confirmed that he did not have a PWVL license because the vendors controlled the number of grandfathered licenses and regulations. He indicated that all of his jet skis were GPS equipped and he obtained a free-range jet ski license from the state. Mr. Showdee felt that his activity was legal because he was not renting jet skis from the beach. He described addressing safety issues with renters before they operated the equipment.

Town Attorney Herin, Jr. showed Mr. Showdee the Facebook screen shots and confirmed that he was familiar with the information on the pages. Town Attorney Herin, Jr. continued to question him regarding the Facebook posts, references to Fort Myers Beach and his company's website. He entered the web pages into the record. Mr. Showdee noted that he did not conduct personal tours and did not advertise in Fort Myers Beach.

Magistrate Roche verified that Mr. Showdee did not deliver jet skis to Fort Myers Beach. He clarified that delivery was to a boat ramp. Magistrate Roche found that there was no evidence that the jet skis were rented in the jurisdiction of Fort Myers Beach.

Property Owner: JOHNSON KEVIN & NANCY  
SUBJECT: LDC Section: 26-71 Dock Setback Encroachment  
LOCATION: 126/128 Tropical Shores Way  
STRAP NO: 19-46-24-W3-00451.0440  
CODE OFFICER: Eli Lee  
REFERENCE NO: CE19-0077

Officer Lee described his involvement in the case. He stated that they measured the boat dock, took pictures from LEEPA and it encroached about five feet. He entered the file into the record.

Attorney Kayleigh Tuck represented the owners. She pointed out that the dock was the only issue to be discussed and it had not been altered. Town Attorney Herin, Jr. contended that the dock was not compliant with the code. Attorney Tuck replied that the dock was rebuilt with the same footprint. Magistrate Roche discussed grandfathered provisions. She questioned whether the dock could be shortened. Attorney Tuck submitted the survey and aerial photographs into evidence. Magistrate Roche found that a violation did exist and continued to exist. She did not impose fines but ordered that whenever the dock needed to be repaired, they would have to bring it into compliance.

Property Owner: SUTTA DAVID + AMANDA  
SUBJECT: LDC Section: 34-2391 Weekly Rentals in Monthly Zone  
LOCATION: 126 Coconut Dr.  
STRAP NO: 29-46-24-W3-0070A.0070  
CODE OFFICER: Bill Stout  
REFERENCE NO: CE19-0002

Coordinator Schumacher testified that they were limited to one rental per month. She provided a rental calendar from the internet and code enforcement took pictures of different cars each week. She confirmed that a notice of hearing and notice of violation were posted to the property. Town Attorney Herin, Jr. entered all documents into the record.

Douglas Shaw represented the owners. He stated that Ms. Sutta had severe health issues and family and friends visited the rentals. Mr. Shaw noted that they stopped renting on a weekly basis. Town Attorney Herin, Jr. agreed. He suggested a \$2,000.00 fine plus \$150.00 in administrative fees.

Magistrate Roche found that a violation did exist; however, the property owner was in compliance. She ordered a fine of \$250.00 plus \$75.00 in administrative fees payable within 10 days. She stated that if the violation occurred again, it would be considered a repeat violation subject to higher fines.

Property Owner: ANDREWS DAVID + MARDINA  
SUBJECT: LDC Section: 34-2391 Weekly Rentals in Monthly Zone  
LOCATION: 144 Gulf Island Dr.  
STRAP NO: 29-46-24-W2-0050D.0070  
CODE OFFICER: Bill Stout  
REFERENCE NO: CE19-0072

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Town Attorney Herin, Jr. questioned whether the property owner would agree to the entry of a violation with a \$250.00 fine plus \$75.00 in administrative fees payable within 10 days.

Tracy Palin, with Turnkey Vacation Rentals, represented the owner. She agreed with the proposal presented by the Town Attorney.

Magistrate Roche found that a violation did exist; however, the property owner was in compliance. She ordered a fine of \$250.00 plus \$75.00 in administrative fees payable within 10 days. She stated that if the violation occurred again, it would be considered a repeat violation subject to higher fines.

Property Owner: RODRIGUEZ WILFREDO  
SUBJECT: LDC Section: 34-2391 Weekly Rentals in a Monthly Zone  
LOCATION: 5765 Lauder St.  
STRAP NO: 33-46-24-W2-005M0.0020  
CODE OFFICER: Bill Stout  
REFERENCE NO: CE19-0110

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Town Attorney Herin, Jr. questioned whether the property owner would agree to the entry of a violation with a \$250.00 fine plus \$75.00 in administrative fees payable within 10 days.

Wilfredo Rodriguez agreed with the proposal presented by the Town Attorney.

Magistrate Roche found that a violation did exist; however, she gave the property owner until December 31, 2019, to come into compliance. She ordered a fine of \$250.00 plus \$75.00 in administrative fees payable within 10 days. She stated that if the violation occurred again, it would be considered a repeat violation subject to higher fines.

Property Owner: RODRIGUEZ WILFREDO

W

SUBJECT: LDC Section: 34-2391 (2) Rentals for Less Than 1 Week  
LOCATION: 215 Nature View Ct.  
STRAP NO: 19-46-24-W3-01700.0170  
CODE OFFICER: Bill Stout  
REFERENCE NO: CE19-0520

Town Attorney Herin, Jr. questioned whether the property owner would agree to the entry of a violation with a \$250.00 fine plus \$75.00 in administrative fees payable within 10 days. Wilfredo Rodriguez agreed with the proposal presented by the Town Attorney. Magistrate Roche found that a violation did exist; however, she gave the property owner until December 31, 2019, to come into compliance. She ordered a fine of \$250.00 plus \$75.00 in administrative fees payable within 10 days. She stated that if the violation occurred again, it would be considered a repeat violation subject to higher fines.

Property Owner: DOCBONE PROPERTIES 260 LLC  
SUBJECT: LDC Section: 34-2391 Rentals for Less Than 1 Week  
LOCATION: 260 Nature View Ct.  
STRAP NO: 20-46-24-W4-01700.0040  
CODE OFFICER: Bill Stout  
REFERENCE NO: CE19-0518

Town Attorney Herin, Jr. questioned whether the property owner would agree to the entry of a violation with a \$250.00 fine plus \$75.00 in administrative fees payable within 10 days. David Helegman, owner, agreed with the proposal presented by the Town Attorney. Magistrate Roche found that a violation did exist; however, she gave the property owner until December 31, 2019, to come into compliance. She ordered a fine of \$250.00 plus \$75.00 in administrative fees payable within 10 days.

Property Owner: BESSEY JAMES D  
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1 Repeat Work Without Permit-Tiki Structure  
LOCATION: 125 Mango St.  
STRAP NO: 19-46-24-W3-0120E.0040  
CODE OFFICER: Eli Lee  
REFERENCE NO: CE18-0902

Officer Lee stated no permit was on file and he included pictures of the tiki hut. He verified that a notice of hearing was sent to the property owner and posted to the property. All documents were entered into the record.

Laura Bessie, owner, stated the Seminole Indians built the tiki hut. She noted that a survey showed one post six inches into the setback. The tiki hut was now in compliance and she electronically submitted a new permit application yesterday.

Town Attorney Herin, Jr. requested that the Magistrate give the property owner 30 days to obtain the permit, impose an appropriate fine and a \$75.00 administrative fee.

Magistrate Roche found that a violation did exist and continued to exist. She imposed a fine of \$50.00 and ordered the owner to come into compliance within 30 days; otherwise a fine of \$150.00 fine per day will be imposed. She assessed \$75.00 in administrative fees.

Property Owner: PORTER MICHAEL K + JACKI L  
SUBJECT: LDC Section: 10-198 Unregistered Short-Term Rental  
LOCATION: 2924 Estero Blvd 301  
STRAP NO: 30-46-24-W2-02500.3010  
CODE OFFICER: Bill Stout  
REFERENCE NO: 20190636

Officer Lee stated that the property was not registered. He confirmed that the notice of violation and notice of hearing were sent to the owner and posted on the property.

Town Attorney Herin, Jr. entered the documents into the record. The Town requested that the owner come into compliance within 15 days or pay an appropriate fine each day thereafter. The property owner was not in attendance.

Magistrate Roche found that a violation existed and continued to exist. She imposed a fine of \$250.00 and ordered the owner to come into compliance within 10 days; otherwise, a fine of \$250.00 per day will be assessed. She imposed \$75.00 in administrative fees.

Property Owner: PORTER MICHAEL K + JACKI L  
SUBJECT: LDC Section: 10-198 STR Registration Not on All Advertising  
LOCATION: 2924 Estero Blvd 301  
STRAP NO: 30-46-24-W2-02500.3010  
CODE OFFICER: Bill Stout  
REFERENCE NO: 20190637

Town Attorney Herin, Jr. noted that since the property was not registered, they did not have a registration number on advertising. Officer Lee stated that they were not in compliance today and he submitted documentation. He confirmed that a notice of violation and notice of hearing were sent to the property owner and posted to the property. The documents were entered into the record. The Town requested that the owner come into compliance within 10 days and be fined \$250.00 plus \$75.00 in administrative fees. The property owner was not in attendance.

Magistrate Roche found that a violation existed and continued to exist. She imposed a fine of \$250.00 and ordered the owner to come into compliance within 11 days; otherwise, a fine of \$250.00 per day will be assessed. She imposed \$75.00 in administrative fees.

Property Owner: GALES MARILYN A TR FOR MARILYN A GALES TRUST  
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1 Work Without Permit-Expired FNC14-0020  
LOCATION: 3180/3210 Estero Blvd.  
STRAP NO: 29-46-24-W1-00100.0150  
CODE OFFICER: Eli Lee  
REFERENCE NO: CE19-0548

Officer Lee stated the property was not in compliance and he submitted photos. He confirmed that a notice of violation and notice of hearing were sent to the owner and posted to the property. The Town requested a finding of fact, 30 days to obtain a permit or a \$175.00 fine be imposed plus \$75.00 in administrative fees. The property owner was not in attendance. Magistrate Roche found that a violation existed and continued to exist. She ordered the property owner to come into compliance within 30 days; otherwise, a fine of \$150.00 per day will be imposed. She assessed \$75.00 in administrative fees.

Property Owner: GALES MARILYN A TR FOR MARILYN A GALES TRUST  
SUBJECT: LDC Section: 6-111, Adopting FBC 105.1 Work Without Permit-Expired DRV14-0016  
LOCATION: 3180/3210 Estero Blvd. *W*  
STRAP NO: 29-46-24-W1-00100.0150  
CODE OFFICER: Eli Lee  
REFERENCE NO: CE19-0549

Officer Lee stated that the property was not in compliance. He confirmed that a notice of violation and notice of hearing were sent to the owner and posted to the property. The Town requested a finding of fact, 30 days to obtain a permit or a \$175.00 fine be imposed plus \$75.00 in administrative fees. The property owner was not in attendance. Magistrate Roche found that a violation existed and continued to exist. She ordered the property owner to come into compliance within 30 days; otherwise, a fine of \$250.00 per day will be imposed. She assessed \$75.00 in administrative fees.

Property Owner: NICKERSON NATALIE RENAE + MAMMONE LAUREN RAE  
SUBJECT: LDC Section: 34-1176 Pool Barrier is Required  
LOCATION: 16 Sunview Blvd. *W*  
STRAP NO: 34-46-24-W4-00500.0190  
CODE OFFICER: Eli Lee  
REFERENCE NO: CE19-0550

Officer Lee provided pictures from 2019 on LEEPA that showed no pool barrier and they were still in violation. He confirmed that a notice of violation and notice of hearing were sent to the owner and posted to the property. The Town requested a finding of fact, an appropriate time to come into compliance and an appropriate fine due to the safety issue plus an administrative fee. The owner was not in attendance. Magistrate Roche found that a violation existed and continued to exist. She ordered the property owner to come into compliance within 48 hours; otherwise, a fine of \$250.00 per day until the violation was corrected. She imposed administrative fees of \$75.00.

Property Owner: MAALIKI IBRAHIM EST + PATTON D DAWN M T/C  
SUBJECT: LDC Section: 6-1, Adopting IPMC; Sec. 301.2 Building Maintenance, Blight  
LOCATION: 190 Tarpon Rd. *W*  
STRAP NO: 03-47-24-W3-00232.0000

CODE OFFICER: Bill Stout  
REFERENCE NO: 20190778

Officer Lee stated that the property was not in compliance. He confirmed that the notice of violation and notice of hearing were sent to the property owner and posted on the property. He provided pictures. The property owner was not in attendance and could not be located. The property was vacant and electrical work was exposed.

The Town requested a finding of fact and an appropriate fine.

Magistrate Roche found that a violation existed and continued to exist. She ordered the property owner to come into compliance within 48 hours; otherwise a fine of \$250.00 per day until the property was in compliance. She assessed \$75.00 in administrative fees. She granted the Town the ability to entry the property to secure it with costs incurred to be paid by the property owner. All costs will be included in any lien request.

Property Owner: MAALIKI IBRAHIM EST + PATTON D DAWN M T/C  
SUBJECT: LDC Section: 302.4 Weeds, Town of FMB PMC Overgrown Lawn  
LOCATION: 190 Tarpon Rd.  
STRAP NO: 03-47-24-W3-00232.0000  
CODE OFFICER: Bill Stout  
REFERENCE NO: Citation 1428, CE19-0558

Officer Lee stated that the property was now in compliance because construction vehicles smashed down the weeds. The Town requested a finding of fact, impose a fine of \$250.00 per day plus administrative costs.

Magistrate Roche found that a violation existed and continued to exist. She ordered the property owner to pay \$250.00 and come into compliance within 7 days; otherwise a fine of \$50.00 per day until the property came into compliance. She ordered \$75.00 in administrative costs. She authorized Town staff to enter the property to remedy the situation after 7 days with costs to be paid by the property owner. All costs will be included in any lien request.

The following cases were not addressed, closed or continued: CE19-0652, CE19-0654, 20190625, 20190626, CE19-0517, CE18-0700, CE18-0724, CE19-0606, CE19-0101, CE19-0535, CE19-0532, CE19-0551, 20190778, CE19-0042 and CE19-0055.

Signature:  \_\_\_\_\_

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