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CLASS ACTION COMPLAINT

1 **INTRODUCTION**

2 1. This is a class action lawsuit brought by Plaintiff for failure to pay overtime wages,
3 failure to pay minimum wages, meal period violation, rest period violation, wage statement violations,
4 waiting time penalties, and unfair competition. Plaintiff has also alleged a Private Attorneys General
5 Act claim.

6 **JURISDICTION AND VENUE**

7 2. The Santa Clara County Superior Court has jurisdiction in this matter pursuant to
8 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
9 Labor Code, California Business and Professions Code, and Wage Order No. 4.

10 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
11 Defendants reside in Santa Clara county. In addition, some of the wrongful acts and violations of law
12 asserted herein occurred within Santa Clara County, and Defendants' obligation to pay wages arose in
13 Santa Clara county pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
14 (1984).

15 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
16 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself
17 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
18 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
19 approximately September 14, 2020. Plaintiff provided facts and legal bases for his claims within the
20 notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.
21 Plaintiff submitted the \$75.00 filing fee. The September 14, 2020 notice was also sent via certified mail
22 to Defendants on the same day. Plaintiff is informed and believes, that to date, the LWDA has not
23 provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and
24 believes that he has exhausted all administrative remedies pursuant to the Private Attorneys General Act
25 and may bring this action on behalf of himself and all similarly situated employees. *See* Cal. Labor
26 Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385
27 n.19 (2005).

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PARTIES

5. JESUS FERREYRA is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, POINT DIGITAL FINANCE, INC., is now and/or at all times mentioned in this Complaint was a Delaware Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Plaintiff is informed and believes, and thereupon alleges, that EDWARD LIM is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that EDWARD LIM is an owner, director, officer, and/or managing agent of POINT DIGITAL FINANCE, INC. responsible for causing the violations outlined in the first through sixth and eighth causes of action. As such EDWARD LIM is individually liable pursuant to California Labor Code section 558.1.

8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

9. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

11. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

13. Plaintiff brings the First through Seventh Causes of Action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

All non-exempt employees who have worked, or continue to work, for Defendants in California from four (4) years prior to the filing of this Complaint to the present.

14. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants paid putative class members for all hours worked;
- (2) Whether Defendants paid all overtime wages owed;
- (3) Whether Defendants failed to correctly calculate putative class members' regular rate of pay;
- (4) Whether Defendants maintained accurate payroll records;
- (5) Whether Defendants failed to authorize and permit all meal and rest periods;

1 (6) Whether as a result of Defendants' policies and practices Plaintiff and putative
2 class members received all wages, due and owing, at the time of their termination
3 or separation; and

4 (7) Whether Defendants provided Plaintiff's and putative class members with wage
5 statements that complied with Labor Code section 226.

6 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
7 class. The putative class also sustained damages arising out of Defendants' common
8 course of conduct in violation of the law as complained of herein. Additionally,
9 Defendants issued Plaintiff and all members of the putative class wage statements that
10 did not comply with Labor Code section 226. As a result, Plaintiff and each member of
11 the putative class will have suffered the same type of harm and seek the same type of
12 recovery based on the same legal theories.

13 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
14 putative class. For all relevant times, Plaintiff resided in California and worked for
15 Defendants in California. Moreover, Plaintiff is an adequate representative of the
16 putative class as Plaintiff has no interests that are adverse to those of putative class
17 members. Additionally, Plaintiff has retained counsel who has substantial experience in
18 complex civil litigation and wage and hour matters.

19 (e) Superiority: A class action is superior to other available means for the fair and efficient
20 adjudication of the controversy since individual joinder of all members of the putative
21 class is impracticable. Class action treatment will permit a larger number of similarly
22 situated persons to prosecute their common claims in a single forum simultaneously,
23 efficiently, and without the unnecessary duplication of effort and expense that numerous
24 individual actions would engender. Further, as damages suffered by each individual
25 member of the class may be relatively small, the expenses and burden of the individual
26 litigation would make it difficult or impossible for individual members of the class to
27 redress the wrongs done to them, and an important public interest will be served by
28 addressing the matter as a class action. The cost to the court system of adjudication of

1 such individualized litigation would be substantial. Individualized litigation would also
2 present the potential for inconsistent or contradictory judgments.

3 15. Plaintiff is unaware of any difficulties that are likely to be encountered in the
4 management of this action that would preclude its maintenance as a class action.

5 **GENERAL ALLEGATIONS**

6 16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 15 as though fully
7 set forth herein.

8 17. Plaintiff worked for Defendants from approximately July 2019 to August 2020 as a non-
9 exempt employee. Similarly situated employees also worked for Defendants as non-exempt employees.
10 Plaintiff and Similarly situated employees regularly worked over eight (8) hours in a day and/or forty
11 (40) hours in a week, incurring overtime and were paid non-discretionary remuneration, such as
12 bonuses. Plaintiff and similarly situated employees were also not authorized and permitted to take all
13 meal and rest periods they were entitled to, being paid meal and rest period premiums on occasions.
14 Defendants did not correctly incorporate the value of the non-discretionary remuneration, such as
15 bonuses, into Plaintiff's and similarly situated employees' regular rate of pay when calculating overtime,
16 double time, meal and rest period premiums, or sick leave pay.

17 18. Defendants failed to pay Plaintiff and similarly situated employees for all hours worked.
18 Plaintiff and similarly situated employees would have to wait a few minutes for the computer to turn on
19 and for a program to load prior to being able to clock in. Plaintiff and similarly situated employees were
20 not paid for this time. As a result, Plaintiff and similarly situated employees were not paid at least the
21 minimum wage for each hour they worked, and Defendants failed to maintain accurate records of the
22 hours Plaintiff and similarly situated employees worked.

23 19. Defendants failed to provide Plaintiff and similarly situated employees with legally
24 compliant paystubs. The paystubs Defendants issued did not itemize the total hours worked, accurate
25 regular and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate
26 gross and net wages earned. As a result, Plaintiff and similarly situated employees were not able to
27 determine the total wages owed to them from their paystubs alone.

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1 20. As of this date of this letter, Defendants have not paid Plaintiff and similarly situated
2 employees all minimum wages, overtime and double time wages, paid sick time, and meal and rest
3 period premiums owed to them.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**
6 **FAILURE TO PAY OVERTIME WAGES**
7 **(As to all Defendants)**

8 21. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 20 as though fully
9 set forth herein.

10 22. During the period Plaintiff was employed by Defendants, Defendants were required to
11 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
12 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
13 hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 4, section (3)(A);
14 Cal. Lab. Code §§ 510, 1194.

15 23. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
16 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
17 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
18 worked at the correct overtime rate of pay because Defendants did not incorporate the value of bonuses
19 it paid to into the regular rate for the purpose of calculating overtime.

20 24. Plaintiff and similarly situated employees were not exempt from overtime protections
21 employees under the California Wage Orders and Labor Code.

22 25. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
23 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
24 the extent pertinent as if set forth here in full.

25 **SECOND CAUSE OF ACTION**
26 **FAILURE TO PAY MINIMUM WAGES**
27 **(As to all Defendants)**

28 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
set forth herein.

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27. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code § 1194. Defendants failed to pay Plaintiff and similarly situated employees for all time they spent working for Defendants.

28. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

29. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully set forth herein.

31. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

32. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

33. California Labor Code section 512 and Wage Order No. 4 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

34. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more

1 than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated
2 employees to take their first meal period before the completion of their fifth hour of work and failed
3 to allow Plaintiff and similarly situated employees to take their second meal period before the
4 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
5 rights to all meal periods throughout their employment.

6 35. Defendants further failed to pay Plaintiff and similarly situated employees all
7 applicable meal period premiums at the correct rate for any such missed meal breaks.

8 36. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
9 employees have been damaged as stated in the section below entitled "DAMAGES," which is
10 incorporated here to the extent pertinent as if set forth here in full.

11 **FOURTH CAUSE OF ACTION**
12 **REST PERIOD VIOLATIONS**
(As to all Defendants)

13 37. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 36 as though fully
14 set forth herein.

15 38. An employer must provide an employee a rest period in accordance with the
16 applicable Wage Order and California Labor Code section 226.7.

17 39. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an
18 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
19 four (4) hours or a major fraction thereof.

20 40. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
21 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
22 they worked more than four (4) hours or a major fraction thereof.

23 41. Defendants further failed to pay Plaintiff and similarly situated employees all
24 applicable rest period premiums at the correct rate for any such missed rest periods.

25 42. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
26 employees have been damaged as stated in the section below entitled "DAMAGES," which is
27 incorporated here to the extent pertinent as if set forth here in full.

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FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully set forth herein.

44. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

45. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). The paystubs Defendants issued did not itemize the total hours worked, accurate regular and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate gross and net wages earned. Plaintiff and similarly situated employees were not able to promptly and easily determine all information required to be stated under Labor Code section 226(a) from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

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46. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully set forth herein.

48. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. *See* Cal. Lab. Code § 201.

49. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. *See* Cal. Lab. Code § 202.

50. Plaintiff and similarly situated employees did not receive all wages, including minimum and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the required time after their separation from employment.

51. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Cal. Lab. Code § 203.

52. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees were receiving additional non-discretionary remuneration, such as bonuses, in addition to their basic hourly rate that were not included in the regular rate of pay for premium pay purposes and were not receiving all meal and rest periods owed or premium payments in lieu thereof. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

53. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

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SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to Point Digital Finance, Inc and DOES 1 to 100)

54. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 53 as though fully set forth herein.

55. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions (“B&P”) Code § 17200.

56. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages and paid sick time.

57. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

58. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully set forth herein.

60. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with him and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)

- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.3, 1174, 1198; IWC Wage Order 4, § 7(A) (Failure to Maintain Accurate Records)

61. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

62. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;

1 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
2 Code section 1194;

3 d. Liquidated damages pursuant to California Labor Code section 1194.2;

4 4. As to the Third Cause of Action:

5 a. Wages in an amount to be proven at trial;

6 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
7 section 1021.5;

8 5. As to the Fourth Cause of Action:

9 a. Wages in an amount to be proven at trial;

10 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
11 section 1021.5;

12 6. As to the Ninth Cause of Action:

13 a. For civil penalties as provided for in the Labor Code for each enumerated
14 violation;

15 b. For those Labor Code sections, the violation of which there is no civil penalty
16 provided, the default penalty provided in Labor Code section 2699(f): for any
17 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
18 period; For any subsequent violation, two hundred dollars (\$200) for each
19 aggrieved employee per pay period;

20 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

21 d. For any other remedies as allowed by law and/or deemed appropriate by the
22 Court;

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- 1 7. For such other and further relief as this Court may deem just and proper,
2 including, but not limited to:
3 a. Wages as proved at trial;
4 b. Injunctive and Declaratory relief;
5 c. Attorney's fees and costs as provided for by law; and
6 d. Interest.

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8
9 Dated: November 18, 2020

Shimoda Law Corp.

10
11 By: _____


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