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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GEORGE STICKLES and	)	CASE NO. 3:20-cv-09220-WHA
MICHELE RHODES, individuals	)	
on behalf of themselves and others	)	<u>FIRST AMENDED CLASS &</u>
similarly situated,	)	<u>REPRESENTATIVE ACTION</u>
	)	<u>COMPLAINT</u>
Plaintiffs,	)	
v.	)	1. Failure to Pay Overtime
	)	Wages (Lab. Code § 510)
ATRIA SENIOR LIVING, INC.;	)	2. Failure to Provide Meal
ATRIA MANAGEMENT	)	Periods (Lab. Code § 512)
COMPANY, LLC; and DOES 1 to	)	3. Failure to Authorize &
10 inclusive,	)	Permit Rest Breaks (Wage
	)	Order 5-2001)
Defendants.	)	4. Failure to Furnish Accurate
	)	Wage Statements (Labor
	)	Code § 226)
	)	5. Unfair Business Practices
	)	(Bus. & Prof. Code § 17200,
	)	<i>et seq.</i>)
	)	6. Waiting Time Penalties
	)	(Lab. Code § 203)
	)	7. Civil Penalties (Lab. Code §
	)	2698, <i>et seq.</i>)

DEMAND FOR JURY TRIAL
FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL

1 Plaintiffs GEORGE STICKLES (“Stickles”) and MICHELE
2 RHODES (“Rhodes”) (together “Plaintiffs”), on behalf of themselves and
3 all other similarly situated and/or aggrieved employees, allege as follows:

4 **NATURE OF THE ACTION**

5 1. This is a California-wide class action brought by Stickles and
6 a representative action brought by Rhodes against Defendants ATRIA
7 SENIOR LIVING, INC. and ATRIA MANAGEMENT COMPANY, LLC
8 (together “Atria”) for failing to pay overtime wages, and provide other
9 benefits and protections afford by the California Labor Code and Wage
10 Orders, to its “Sales Directors” and/or “Community Sales Directors.”

11 **JURISDICTION**

12 2. This Court has jurisdiction under 28 U.S.C. § 1332(a) because
13 the amount in controversy exceeds \$75,000, exclusive of interest and
14 costs, and Plaintiffs and Atria are citizens of different states.

15 3. This Court also has jurisdiction under 28 U.S.C. § 1332(d)
16 because this is a putative class action with more than 100 class members,
17 the aggregate amount in controversy exceeds \$5,000,000, exclusive of
18 interest and costs, and Plaintiffs and Atria are citizens of different states.

19 **VENUE**

20 4. This action may be brought in this judicial district pursuant
21 to 28 U.S.C. § 1391 because Atria transacts business in this district and
22 a substantial part of the acts and/or omissions giving rise to the claims
23 occurred in this district.

24 **PARTIES**

25 5. Plaintiff Stickles is a citizen of California who was employed
26 by Atria as a “Sales Director” in Daly City, California from approximately
27 April 2018 to August 2018.

28 FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND
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1 6. Plaintiff Rhodes is a citizen of California who was employed
2 by Atria as a “Sales Director” in La Jolla, California from approximately
3 October 2019 to July 2020.

4 7. Defendants ATRIA SENIOR LIVING, INC. and ATRIA
5 MANAGEMENT COMPANY, LLC are Delaware entities with their
6 principal place of business located in Louisville, Kentucky.

7 8. Plaintiffs are currently unaware of the true names and
8 capacities of the defendants sued by the fictitious names DOES 1 through
9 10, inclusive, and, therefore, sue those defendants by fictitious names.
10 Plaintiffs allege on information and belief that each of the DOE
11 defendants is responsible or liable in some manner for the conduct
12 alleged in the complaint and that Plaintiffs’ damages as herein alleged
13 were proximately caused by those DOE defendants. Plaintiffs will amend
14 this complaint to allege the true names and capacities of such fictitiously
15 named defendants when they are ascertained.

16 9. Plaintiffs allege on information and belief that, at all times
17 herein mentioned, each of the defendants was the agent, servant and
18 employee of each of the other defendants, and in connection with the
19 conduct hereinafter alleged, was acting within the scope of such agency
20 and employment, and each defendant ratified each and every act,
21 omission and thing done by each and every other defendant named
22 herein.

23 10. Defendants Atria and DOES 1 through 10 will be referred to
24 hereafter, collectively, as “Defendants.”

25 **COMMON FACTUAL ALLEGATIONS**

26 11. Defendants own and operate living facilities for older people
27 who need assistance with daily living.
28 FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND
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1 12. In California, Defendants own and operate 46 assisted living
2 facilities.

3 13. At each facility in California, Defendants employ at least one
4 “Sales Director” and/or “Community Sales Director.”

5 14. The realistic expectations of the “Sales Director” and/or
6 “Community Sales Director” position require directors to spend the
7 majority of their time performing non-exempt tasks, such as giving tours
8 of the facility to prospective residents and their families.

9 15. In disregard of the realities of the job, Defendants deem the
10 “Sales Director” and/or “Community Sales Director” position to be
11 categorically exempt from California’s overtime, meal and rest break,
12 and wage statement requirements.

13 16. Accordingly, notwithstanding the fact that “Sales Directors”
14 and/or “Community Sales Directors” regularly work more than 8 hours
15 per day and/or 40 hours per week, they are (1) paid a flat salary with no
16 overtime regardless of the number of hours they work, (2) not provided
17 with an off duty meal period when working more than 5 hours per day
18 and a second off duty meal period when working more than 10 hours per
19 day, (3) not authorized and permitted to take 10 minute rest periods for
20 each 4 hours worked or major fraction thereof, and (4) not furnished with
21 wage statements showing the total hours worked each pay period.

22 17. Since Governor Newsom first issued a stay at home order on
23 March 19, 2020, all “Sales Directors” and/or “Community Sales Directors”
24 have performed all of their work from either their homes and/or at their
25 assigned facilities.

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28 FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND
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CLASS ACTION ALLEGATIONS

18. Plaintiff Stickles brings claims on behalf of himself and all others similarly situated pursuant to Federal Rule of Civil Procedure 23. Stickles seek to represent a California class composed of the following:

All persons employed by Defendants in the position of “Sales Director” and/or “Community Sales Director” in California and classified as exempt from December 15, 2016 through the date of class certification.

20. Stickles reserves the right to amend or modify the class descriptions or establish additional subclasses as appropriate.

21. This action has been brought and may properly be maintained as a class action under Rule 23 because there is a well-defined community of interest in the litigation.

A. Numerosity

22. The potential members of the class as defined are so numerous that joinder of all the members of the class is impracticable. While the precise number of members of the class has not been determined at this time, Stickles is informed and believes that the class contains in excess of 100 individuals.

B. Commonality

23. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. These common questions include, without limitation, whether “Sales Directors” and/or “Community Sales Directors” were misclassified as exempt from California’s overtime and other requirements.

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FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

C. Typicality

24. The class claims of the proposed class representative are typical of the claims of each class member.

25. As with other members of the class, Stickles worked in the “Sales Director” position, was classified as exempt, and was not provided with overtime, meal and rest breaks, and accurate wage statements.

D. Adequacy of Representation

26. Stickles will fairly and adequately represent and protect the interests of the members of the class. Counsel who represent Plaintiffs are competent and experienced in litigating employment class actions.

E. Superiority of Class Action

27. A class action is superior to other available means for the fair and efficient adjudication of the class claims. Individual joinder of all class members is not practicable, and questions of law and fact common to the class predominate over any questions affecting only individual members of the class. Each member of the class has been damaged and is entitled to recover by reason of Defendants’ illegal common policies.

28. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Stickles is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

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FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

FIRST CAUSE OF ACTION
CLASS CLAIM FOR FAILURE TO PAY OVERTIME
(LABOR CODE § 510)

(Brought by Stickles against all Defendants)

29. Stickles realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

30. Labor Code section 510 requires an employer to provide premium overtime and/or double time pay for work in excess of 8 hours per day and 40 hours per week.

31. Labor Code section 1194 entitles an employee receiving less than the legal overtime and/or double time pay to recover, in a civil action, the unpaid balance of overtime and/or double time wages owing, plus interest, reasonable attorneys' fees, and costs of suit.

32. As a result of Defendants' misclassification of the "Sales Director" and/or "Community Sales Director" position as exempt, Stickles and other members of the class were not paid premium overtime and/or double time rates for hours worked in excess of 8 hours per day and/or 40 hours per week.

33. Stickles seeks to recover, on behalf of himself and other class members, payment of the overtime and/or double time owing to them, plus penalties and interest, attorneys' fees and costs, in an amount to be proven at trial.

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FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND
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SECOND CAUSE OF ACTION
CLASS CLAIM FOR FAILURE TO PROVIDE MEAL PERIODS
(LABOR CODE § 512)

(Brought by Stickles against all Defendants)

34. Stickles realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

35. Labor Code section 512 prohibits an employer from (1) employing an employee for a work period of more than 5 hours per day without providing the employee with an off-duty meal period of not less than 30 minutes and (2) employing an employee for a work period of more than 10 hours per day without providing the employee with a second off duty meal period of not less than 30 minutes.

36. As a result of Defendants' misclassification of the "Sales Director" and/or "Community Sales Director" position as exempt, Stickles and other members of the class were not provided with off-duty meal periods.

37. Pursuant to Labor Code section 226.7, Stickles seeks to recover, on behalf of himself and other class members, one additional hour of pay at the employee's regular rate of compensation for each workday that a required meal period was not provided.

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FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND
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THIRD CAUSE OF ACTION

**CLASS CLAIM FOR FAILURE TO AUTHORIZE REST BREAKS
(WAGE ORDER 5-2001)**

(Brought by Stickles against all Defendants)

38. Stickles realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

39. California Wage Order 5-2001 requires an employer to authorize and permit all non-exempt employees to take rest periods based on total hours worked daily at the rate of 10 minutes net rest time per 4 hours or major fraction thereof.

40. As a result of Defendants' misclassification of the "Sales Director" and/or "Community Sales Director" position as exempt, Stickles and other members of the class were not authorized and permitted to take rest breaks for each 4 hours worked or major fraction thereof.

41. Pursuant to Labor Code section 226.7, Stickles seeks to recover, on behalf of himself and other class members, one additional hour of pay at the employee's regular rate of compensation for each workday that a required rest break was not provided.

FOURTH CAUSE OF ACTION

**CLASS CLAIM FOR NON-COMPLAINT WAGE STATEMENTS
(LABOR CODE § 226)**

(Brought by Stickles against all Defendants)

42. Stickles realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND
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43. Labor Code section 226 requires an employer, semimonthly or at the time of each payment of wages, to furnish employees an accurate itemized statement in writing showing the hours worked by the employee.

44. As a result of Defendants' misclassification of the "Sales Director" and/or "Community Sales Director" position as exempt, Defendants did not keep track of the hours worked by these employees and did not furnish them with wage statements accurately showing their hours worked each pay period.

45. Defendants' failure to comply with Labor Code section 226 was knowing and intentional.

46. Defendants have injured Stickles and other class members by making it difficult to determine the number of hours worked, and corresponding amount of overtime owing, each pay period.

47. Stickles seeks to recover, on behalf of himself and other class members, the penalty provided by Labor Code section 226(e).

FIFTH CAUSE OF ACTION

CLASS CLAIM FOR UNFAIR BUSINESS PRACTICES

(BUSINESS & PROFESSIONS CODE § 17200, *et seq.*)

(Brought by Stickles against all Defendants)

48. Stickles realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

49. A violation of California Business & Professions Code section 17200, *et seq.* may be predicated on the violation of any state or federal law.

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

1 50. Defendants' failure to pay Stickles and other class members
2 premium overtime and/or double time rates for hours worked in excess of
3 8 hours per day and/or 40 hours per week, failure to provide Stickles and
4 other class members with meal periods, failure to authorize and permit
5 Stickles and other class members to take rest breaks, and failure to
6 furnish Stickles and other class members accurate itemized wage
7 statements violates Business & Professions Code section 17200, *et seq.* by
8 virtue of violating Labor Code sections 226, 510 and 512 and Wage Order
9 5-2001.

10 51. Defendants' conduct, as alleged herein, has been, and
11 continues to be, unfair, unlawful, and harmful to Stickles, the other class
12 members, and the general public. Stickles seeks to enforce important
13 rights affecting the public interest within the meaning of Code of Civil
14 Procedure section 1021.5.

15 52. Defendants' activities, as alleged herein, are violations of
16 California law, and constitute unlawful business acts and practices in
17 violation of California Business & Professions Code section 17200, *et seq.*

18 53. Pursuant to California Business & Professions Code section
19 17200, *et seq.*, Stickles and other class members are entitled to an
20 accounting for and restitution of the wages unlawfully withheld and
21 retained by Defendants during the class period, an award of attorneys'
22 fees pursuant to California Code of Civil Procedure section 1021.5 and
23 other applicable laws, and an award of costs.

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28 FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND
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SIXTH CAUSE OF ACTION
CLASS CLAIM FOR WAITING TIME PENALTIES
(LABOR CODE §§ 201, 203)

(Brought by Stickles against all Defendants)

54. Stickles realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

55. Labor Code sections 201 and 202 require an employer to promptly pay all wages owing to an employee upon the termination of their employment relationship.

56. In violation of Labor Code sections 201 and 202, Stickles and other members of the class who are no longer employed by Defendants were never paid the overtime and/or double time wages owing to them.

57. Defendants' failure to promptly pay Stickles and other class members the overtime and/or double time wages owing them upon the termination of their employment relationship, as alleged above, was willful, as Defendants intentionally classified the "Sales Director" and/or "Community Sales Director" position as overtime-exempt.

58. Pursuant to Labor Code section 203, Stickles and other class members are entitled to waiting time penalties in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
REPRESENTATIVE PAGA CLAIM FOR CIVIL PENALTIES
(LABOR CODE § 2698 ET SEQ.)

(Brought by Rhodes against all Defendants)

59. Plaintiff Michele Rhodes ("Rhodes") realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

1 Complaint as though fully set forth herein.

2 60. As a result of Defendants' misclassification of the "Sales Directors"
3 and/or "Community Sales Directors" as exempt from California's overtime, meal
4 and rest break, and wage statement requirements, Defendants have (1) violated
5 Labor Code § 510 by failing to pay overtime rates for work in excess of 8 hours per
6 day and/or 40 hours per week, (2) violated Labor Code §§ 226.7 and 512 by failing
7 to provide a 30 minute off duty meal period when working more than 5 hours per
8 day and a second 30 minute off duty meal period when working more than 10 hours
9 per day, (3) violated Labor Code § 226.7 by failing to authorize and permit 10 minute
10 rest periods for each 4 hours worked or major fraction thereof, and (4) violated Labor
11 Code section 226(a) by failing to furnish wage statements accurately showing the
12 total hours worked each pay period.

13 61. Pursuant to California Labor Code section 2698, et seq., Rhodes, on
14 behalf of herself and all other aggrieved employees, seeks to assess and collect the
15 civil penalties owing for the above-referenced Labor Code violations for all
16 aggrieved employees.

17 62. On January 27, 2021, Rhodes gave written notice by online filing with
18 the LWDA and by certified mail to Defendants of the specific provisions of the
19 Labor Code alleged to have been violated, including the facts and theories to support
20 the alleged violations, and paid the \$75 filing fee.

21 63. The LWDA did not provide any notification of its intent to investigate
22 the alleged violations within 65 days of Rhodes' service of written notice of the
23 alleged Labor Code violations. Rhodes is therefore entitled to commence a civil
24 action pursuant to Labor Code section 2699.3.

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28 FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

Class Certification

1. That this case be certified as a class action;
2. That Stickles be appointed as the representative of the class;
and
3. That counsel for Plaintiffs be appointed as counsel for the class.

First Cause of Action

4. That the Court declare, adjudge and decree that Defendants violated Labor Code section 510 by failing to pay Stickles and other class members premium overtime and/or double time rates for hours worked in excess of 8 hours per day and/or 40 hours per week;

5. For unpaid overtime and/or double time wages and such general and special damages as may be appropriate;

6. For pre-judgment interest on any unpaid wages owing commencing from the date such amounts were due;

7. For attorneys' fees and costs of suit incurred herein pursuant to Labor Code section 1194(a); and

8. For such other and further relief as the Court may deem equitable and appropriate.

Second Cause of Action

9. That the Court declare, adjudge and decree that Defendants violated Labor Code section 512 by failing to provide Stickles and other class members with 30 minute off-duty meal periods;

10. For one additional hour of pay at the employee's regular rate of compensation, pursuant to Labor Code section 226.7, for each workday that a meal period was not provided to Stickles and other class members

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL

1 in accordance with Labor Code section 512;

2 11. For pre-judgment interest on any wages owing commencing
3 from the date such amounts were due; and

4 12. For such other and further relief as the Court may deem
5 equitable and appropriate.

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7 **Third Cause of Action**

8 13. That the Court declare, adjudge and decree that Defendants
9 violated Wage Order 5-2001 by failing to authorize and permit Stickles
10 and other class members to take 10-minute rest break for each 4 hours
11 worked or major fraction thereof;

12 14. For one additional hour of pay at the employee's regular rate
13 of compensation, pursuant to Labor Code section 226.7, for each workday
14 that a rest break was not provided to Stickles and other class members
15 in accordance with Wage Order 5-2001;

16 15. For pre-judgment interest on any wages owing commencing
17 from the date such amounts were due; and

18 16. For such other and further relief as the Court may deem
19 equitable and appropriate.

20 **Fourth Cause of Action**

21 17. That the Court declare, adjudge and decree that Defendants
22 violated Labor Code section 226 by failing to furnish Stickles and other
23 class members with itemized wage statements that accurately show the
24 hours worked;

25 18. For an injunction requiring Defendants to provided itemized
26 wage statements in accordance with Labor Code section 226;

27 19. For penalties, reasonable attorneys' fees, and costs of suit
28 FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND
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pursuant to Labor Code section 226(e); and

20. For such other and further relief as the Court may deem equitable and appropriate.

Fifth Cause of Action

21. That the Court declare, adjudge and decree that Defendants violated Business & Professions Code section 17200, et. seq. by failing to pay Stickles and other class members premium overtime and/or double time rates in violation of Labor Code section 510, by failing to provide Stickles and other class members meal periods in violation of Labor Code section 512, by failing to authorize and permit Stickles and other class members to take rest breaks in violation of Wage Order 5-2001, and by failing to furnish accurate itemized wage statement in violation of Labor Code section 226;

22. For an accounting for and restitution of the wages unlawfully withheld and retained by Defendants during the class period;

23. For attorneys' fees and costs of suit incurred herein pursuant to Code of Civil Procedure section 1021.5; and

24. For such other and further relief as the Court may deem equitable and appropriate.

Sixth Cause of Action

25. That the Court declare, adjudge and decree that Defendants violated Labor Code sections 201 and/or 202 by willfully failing to promptly pay Stickles and other class members all wages owing upon the termination of their employment relationship;

26. For statutory waiting time penalties pursuant to Labor Code section 203 for Plaintiff and other class members; and

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

1 27. For such other and further relief as the Court may deem
2 equitable and appropriate.

3 **Seventh Cause of Action**

4 28. That the Court declare, adjudge and decree that Defendants
5 violated Labor Code sections 226, 226.7, 510, and 512 as to Rhodes and
6 all other aggrieved employees by failing to pay overtime, provide meal
7 and rest periods, and furnish accurate wage statements;

8 29. For civil penalties arising from these Labor Code violations;

9 30. For reasonable attorneys' fees and for costs of suit incurred herein
10 pursuant to Labor Code section 2699; and

11 31. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs hereby demand trial of these claims by jury to the extent
15 authorized by law.

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17 DATED: April 22, 2021

HAYES PAWLENKO LLP

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19 By: /s/Matthew B. Hayes
20 Attorneys for Plaintiffs
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28 FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND
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