

# FAYETTE LEGAL JOURNAL

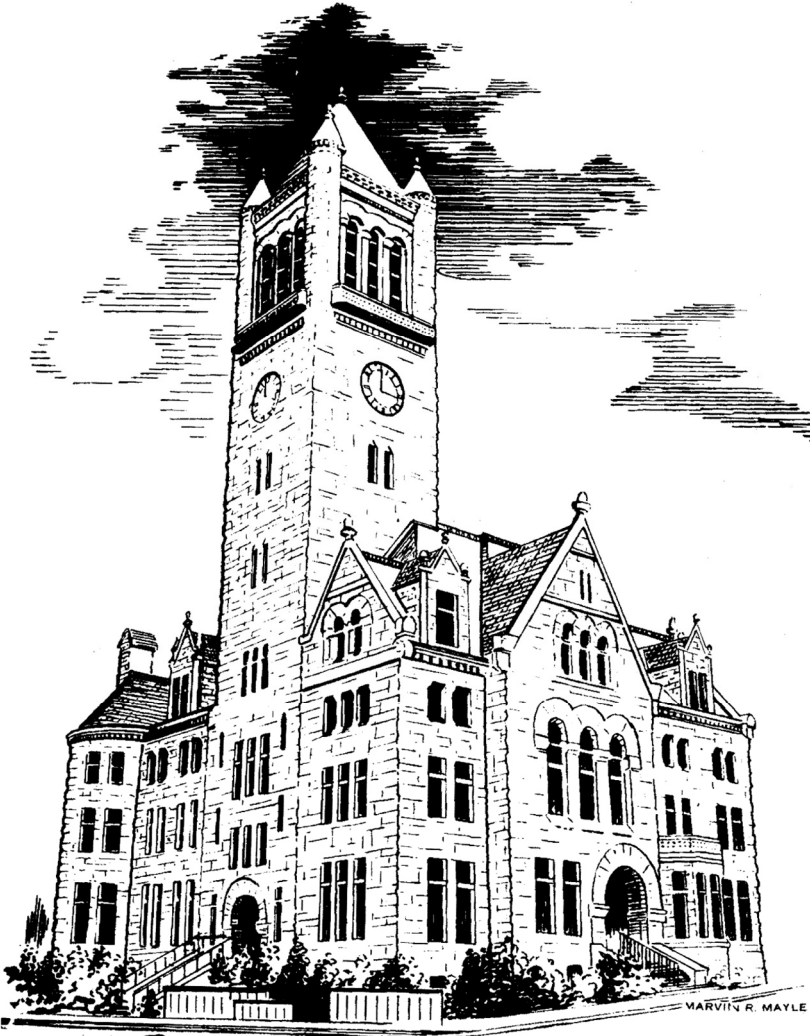
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## FAYETTE LEGAL JOURNAL

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### Third Publication

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 MARCUS SISLER**, late of Uniontown, Fayette  
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*Attorney:* Webster & Webster

**First Publication**

**EARL FRANKLIN BAILY, a/k/a EARL F.  
 BAILY**, late of Uniontown, Fayette County, PA  
*Executor:* Brandon Joe Bailey (1)  
 c/o Proden & O'Brien  
 99 East Main Street  
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*Attorney:* Sean M. Lementowski

**EVELYN MARLENE BROSKEY, a/k/a  
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*Attorney:* Wendy L. O'Brien

**LEGAL NOTICES**

IN THE COURT OF COMMON PLEAS OF  
 FAYETTE COUNTY, PENNSYLVANIA  
 No: 1598 of 2024, G.D.  
 CIVIL ACTION – LAW

GERALD L. LINCOLN  
 Plaintiff,  
 vs.  
 KATHY J. CRAMER,  
 Defendant.

COMPLAINT IN DIVORCE

TO: KATHY J. CRAMER, Defendant

A Complaint in Divorce styled as above has been filed against you in the above-referenced Court. copies of the Complaint may be obtained by contacting the Prothonotary of such Court at US (724) 430-1272, or Plaintiff's counsel noted below.

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You have been sued in court. If you wish to defend against the claims set forth in the Complaint, you must take prompt action. You are warned that if you fail to do so, the case may proceed without you and a decree in divorce or annulment may be entered against you by the court. A judgment may also be entered against you for any other claim or relief requested in these papers by the plaintiff. You may lose money or property or other rights important to you, including custody of your children.

When the ground for divorce is indignities or irretrievable breakdown of the marriage, you may request marriage counseling. A list of marriage counselors is available in the Office of the Prothonotary at Fayette County Courthouse, 61 East Main Street, Uniontown, Pennsylvania 15401. (724)430-1272.

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CIVIL ACTION  
COURT OF COMMON PLEAS  
FAYETTE COUNTY, PA  
CIVIL ACTION-LAW  
NO. 2024-01877  
NOTICE OF ACTION IN MORTGAGE  
FORECLOSURE

TOWD POINT MORTGAGE TRUST 2016-2,  
U.S. BANK NATIONAL ASSOCIATION AS  
INDENTURE TRUSTEE, Plaintiff  
v.  
DAVID HAWK, IN HIS CAPACITY AS HIER  
OF RUSSELL H. HAWK ; UNKNOWN  
HEIRS, SUCCESSORS, ASSIGNS, AND ALL  
PERSONS, FIRMS, OR ASSOCIATIONS  
CLAIMING RIGHT, TITLE, OR INTEREST  
FROM OR UNDER RUSSELL H. HAWK ,  
Defendants

To: UNKNOWN HEIRS, SUCCESSORS,  
ASSIGNS, AND ALL PERSONS, FIRMS, OR  
ASSOCIATIONS CLAIMING RIGHT, TITLE,  
OR INTEREST FROM OR UNDER RUSSELL  
H. HAWK Defendant(s), 205 NORTH WATER  
STREET MASONTOWN, PA 15461

COMPLAINT IN MORTGAGE  
FORECLOSURE

You are hereby notified that Plaintiff, TOWD  
POINT MORTGAGE TRUST 2016-2, U.S.

BANK NATIONAL ASSOCIATION AS  
INDENTURE TRUSTEE, has filed a Mortgage  
Foreclosure Complaint endorsed with a Notice  
to Defend, against you in the Court of Common  
Pleas of FAYETTE County, PA docketed to No.  
2024-01877, seeking to foreclose the mortgage  
secured on your property located, 205 NORTH  
WATER STREET MASONTOWN, PA 15461.

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YOU HAVE BEEN SUED IN COURT. If  
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**JUDICIAL OPINION**

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HARRY DENNIS and JOHN DENNIS	:	
Plaintiffs	:	
vs.	:	
KEVIN MORRIS and JENNY DENNIS,	:	No. 1756 of 2022, G.D.
Defendants.	:	Honorable Linda R. Cordaro

**OPINION AND ORDER**

Cordaro, J.

December 11, 2024

Before this Court are Preliminary Objections to the Plaintiffs' Second Amended Complaint, filed by Defendants on July 15, 2024. After full consideration of the record, applicable law, and briefs of counsel, this Court finds that Defendants' Preliminary Objections to Plaintiffs Complaint are overruled in part and sustained in part.

**BACKGROUND**

The Plaintiffs initiated the instant action by way of a Praecipe for a Writ of Summons and Lis Pendens, which were filed on September 8, 2022. The Plaintiffs, by and through Counsel, filed an initial Complaint in Civil Action on April 9, 2024. The Defendants, by and through Counsel, filed Preliminary Objections to the Plaintiffs' Complaint on May 10, 2024. The Plaintiffs filed an Amended Complaint on May 16, 2024. The Defendants filed Preliminary Objections to the Plaintiffs' Amended Complaint on June 5, 2024. The Plaintiffs thereafter filed a Second Amended Complaint on June 24, 2024. The Defendants filed Preliminary Objections to the Plaintiffs' Second Amended Complaint on July 15, 2024. The Plaintiffs filed an Answer to the Defendants' Preliminary Objections to their Second Amended Complaint on August 9, 2024. An oral argument was held on the Defendants' Preliminary Objections to the Plaintiffs' Second Amended Complaint on November 14, 2024. The Defendants' Preliminary Objections to the Plaintiffs' Second Amended Complaint are now before this Court.

Within its Second Amended Complaint, the Plaintiffs raise causes of action for Breach of Contract, "Failure of Consideration," Breach of Contract, "Mistake and Reformation," Fraud and Unjust Enrichment. The Plaintiffs' causes of action are all factually based upon the transfer of a certain parcel of real property, situated in Georges Township, Fayette County Pennsylvania, designated as 142 Circle Street, Oliphant Furnace, Pennsylvania and assigned parcel identification number 14-17- 0109-01 (hereinafter, the "Property") to the Defendants.

The Defendants have raised Preliminary Objections to the Plaintiffs' Second Amended Complaint in the nature of demurrer, for legal insufficiency as to all counts, in the nature of demurrer for legal insufficiency as to Count I for Breach of Contract in particular, in the nature of demurrer for legal insufficiency as to Count II for Breach of Contract in particular, in the nature of demurrer for legal insufficiency as to Count III for Fraud in particular, in the nature of demurrer for legal insufficiency as to Count IV



for Unjust Enrichment in particular and in the nature of demurrer for legal insufficiency as to all Counts with regard to Defendant Jenny Dennis in particular.

## DISCUSSION

### **The Defendants' First Preliminary Objection in the Nature of Demurrer as to All Counts**

The Defendants' first Preliminary Objection to the Plaintiffs' Second Amended Complaint is based upon the Complaint's characterization of Plaintiff John Dennis as having owned an interest in the Property, and therefore having been joined as a Plaintiff, as "a matter of convenience only." The Defendants contend that a party cannot own an interest in real property in the Commonwealth of Pennsylvania as a matter of convenience only, and essentially submit that Plaintiff John Dennis is an essential party, as he was previously the owner of a one half (1/2) interest in the Property as a tenant in common. The Defendants contend within their first Preliminary Objection to the Plaintiffs' Second Amended Complaint that the failure of Plaintiff John Dennis to either join or verify the same constitutes grounds for demurrer.

While the Defendants are correct that a party cannot own real property or join a civil action in the Commonwealth of Pennsylvania "as a matter of convenience only," their assertion that the failure of the Plaintiff John Dennis to "verify or join any of the allegations" in the Plaintiffs Second Amended Complaint constitutes a demurrer and grounds for the dismissal of all Counts is unpersuasive. First, the Defendants' assertions that Plaintiff John Dennis has failed to "join" any of the allegations contained within the Plaintiffs' Second Amended Complaint, and that he has failed "to make any factual allegations against the Defendants is not supported by the record of the instant case. Plaintiff John Dennis is properly named, and therefore joined as a Plaintiff in the Plaintiffs' Second Amended Complaint. As such, Plaintiff John Dennis is a party, and thus has status as a Plaintiff in the instant action to the same extent as Plaintiff Harry Dennis.

Second, the Pennsylvania Rules of Civil Procedure explicitly state that the verification of a pleading "shall be made by one or more of the parties filing the pleading unless all the parties 1) lack sufficient knowledge or information, or 2) are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading." Pa.R.C.P. 1024, (emphasis added). Based upon the plain language of the applicable rule as aforesaid, the verification executed by Plaintiff Harry Dennis and attached to the Plaintiffs' Second Amended Complaint is legally sufficient to satisfy its requirements. There is no requirement within Pennsylvania law that Plaintiff John Dennis execute a separate and individual verification.

Based upon the foregoing, the Defendants' first Preliminary Objection to the Plaintiffs' Second Amended Complaint in the nature of demurrer as to all counts must be **OVERRULED**.

### **The Defendants' Second Preliminary Objection in the Nature of Demurrer as to Count I for Breach of Contract-"Failure of Consideration"**

The Defendants' second Preliminary Objection to the Plaintiffs' Second Amended Complaint is based upon the circumstance attainable from the pleadings and attached exhibits that the written Agreement of Sale for the Property was executed by Plaintiff

Harry Dennis and Defendant Kevin Morris on April 24, 2021, twenty-three (23) days after the Plaintiffs conveyed the Property to the Defendants by Deed dated April 1, 2021, and recorded on April 9, 2021. First, the Defendants assert that because the written Agreement of Sale was executed after the Deed conveying the Property was executed and recorded, the Plaintiffs are bound by the terms set forth within the Deed, and that any prior or "contemporaneous" agreements are barred from consideration. As such, the Defendants argue that the consideration in the amount of one (\$1.00) dollar recited in the Deed is inadequate, as it does not represent the fair market value of the Property. Second, the Defendants assert that since Plaintiff Harry Dennis had already conveyed, and thereby divested himself of his one half (1 / 2) interest in the Property at the time he executed the Agreement of Sale, the performance of his contractual duties was impossible, as he could not thereafter convey good and marketable title to Property in which he had no legal ownership interest. Finally, the Defendants assert once again that Plaintiff John Dennis was the owner of a one half (1/2) interest in the Property as a tenant in common, and did not execute the Agreement of Sale, making it further impossible for Plaintiff Harry Dennis to convey good and marketable title to the Property to the Defendants, as per the written Agreement of Sale.

The Defendants' first argument is misplaced. Although the Statute of Frauds does present a bar to oral agreements for the sale of real property, it is a well settled and longstanding principle of Pennsylvania contract law that such agreements may later be adopted and/ or ratified in writing, thereby rendering them enforceable. Ratification "may be made by affirmative action ... or by nonaction which in the circumstances amounts to an approval of the contract." *McGaffic v. City of New Castle*, 973 A.2d 1047, 1054 (Pa.Cmnwlth, 2009); (quoting) *Eckert v. Pierotti*, 553 A.2d 114, 118 (Pa.Cmnwlth 1989). See also, *City of Scranton v. Heffler, Radetich & Saitta, LLP*, 871 A.2d 875 (Pa.Cmnwlth, 2005). Moreover, the Pennsylvania appellate courts have long and consistently held that the subsequent written ratification or adoption of an oral agreement will satisfy the statute of frauds. See *Burg v. Betty Gay of Washington, Inc.*, 225 A.2d 85 (Pa.1966); *Allegheny Gas Co. v. Kemp*, 174 A.289 (Pa. 1934); *McDowell v. Henry German Baking Company*, 179 A. 66 (Pa. 1935); *Ripple v. Pittsburgh Outdoor Advertising Corp.*, 421 A.2d 435 (Pa.super. 1980).

In the instant case, the pleadings and attached exhibits present a meritorious case that the parties entered into a verbal agreement for the sale of the Property for the sum of eighty-nine thousand (\$89,000.00) dollars sometime before April 1, 2022, and that the agreement was later adopted and ratified by the parties in writing by way of the written Agreement of Sale on April 24, 2022. Further, the Plaintiffs have pleaded within their Second Amended Complaint that they in fact received hand money from the Defendants in the amount of one thousand (\$1,000.00) dollars in consideration of the agreement between the parties. (See Plaintiffs Second Amended Complaint, paragraphs 27 and 44). The exchange of hand money in that amount would constitute adequate consideration for the agreement between the parties.

Likewise, the Defendants' second and third arguments are unpersuasive. As set forth above, there is ample evidence contained within the pleadings and attachments in the instant case to support a finding that the parties reached a verbal agreement for the sale of the Property. In particular, the same is evidenced by the preparation and execution of the Deed, which was later adopted and ratified by the execution of the written

Agreement of Sale. Moreover, the Defendants' contentions are self-contradictory. In the event that the parties were in fact bound by the Deed, which recites inadequate consideration for the transfer of the Property as the Defendants contend, then the transfer of the Property to the Defendants would be void as a matter of law. However, as the parties are not bound only by the contents of the Deed as aforesaid, the Defendants' Preliminary Objection based on the impossibility of the Plaintiff, Harry Denny's performance of his contractual duties must be OVERRULED.

### **The Defendants' Third Preliminary Objection in the Nature of Demurrer as to Count II for Breach of Contract-"Mistake and Reformation**

The Defendants' third Preliminary Objection to the Plaintiffs' Second Amended Complaint is based upon their contentions that the parties had not entered into a written agreement of sale at the time that the Deed was executed and recorded, and that the Plaintiffs' Second Amended Complaint fails to point to any mistake made by the Defendants, but only to the "Plaintiffs' negligence" in allowing the Deed to be recorded prior to the entry of any written agreement of sale. In so asserting, the Defendants are referring to the alleged mistake committed by the Plaintiffs' Counsel, Patrick McDaniel, Esquire, by virtue of recording the Deed prematurely on April 9, 2022.

"The doctrine of mutual mistake of fact serves as a defense to the formation of a contract and occurs when the parties to the contract have an erroneous belief as to a basic assumption of the contract at the time of formation which will have a material effect on the agreed exchange as to the other party." *Voracek v. Crown Castle, USA Inc.*, 907 A.2d 1105, 1107-08 (Pa.super. 2006). "A mutual mistake occurs when the written instrument fails to set forth the agreement of the parties." *Id.* "Mutual mistake regarding an essential term of a contract may provide a basis for the contract's rescission if 1) the mistake relates to an essential fact which formed the inducement to the contract; and 2) the parties can be placed in their former position with reference to the subject-matter of the contract." *Murray v. Willistown Township*, 169 A.3d 84, 90 (Pa.super. 2017). "Alternatively, if the same conditions are met, courts can reform a contract entered under mutual mistake." *Id.*; *Allen- Myland, Inc. v. Garmin Int'l, Inc.*, 140 A.3d 677, 693 (Pa.super. 2006). "If a mistake is demonstrated, the contract may be reformed, or the injured party may avoid his or her contractual obligations." *Murray*, 169 A.3d, at 90.

The Pennsylvania appellate courts have held that "to obtain reformation of a contract because of mutual mistake, the party is required to show the existence of the mutual mistake by evidence that is clear, precise and convincing." *Id.*, at 91. The Pennsylvania Courts have "most commonly allowed reformation of mistaken contract provisions in cases of scriveners' errors, where the parties' writing mistakenly failed to record their agreed upon intentions." *Id.*; *Dadonna v. Thorpe*, 749 A.2d 475,487 (Pa.super. 2000).

In the instant case, considering all of the pleadings and attached exhibits in the light most favorable to the Plaintiffs, they have failed to articulate that a mutual mistake has occurred within the meaning of the applicable doctrine. The mistake upon which Count II of the Plaintiffs' Second Amended Complaint is based is the alleged error committed by the Plaintiffs' Counsel in prematurely recording the Deed. The said alleged error does not relate to any written provision contained within the written agreement between the

parties. As such, it has no bearing on any essential fact which formed the inducement for the contract, and does not represent an erroneous belief as to a basic assumption of the contract at the time of formation which could have a material effect on the agreed exchange as to the other party. Consequently, the Defendants' Preliminary Objection to Count II of the Plaintiffs' Second Amended Complaint for Breach of Contract-Mistake and Reformation, must be SUSTAINED.

### **The Defendants' Fourth Preliminary Objection in the Nature of Demurrer as to Count III for Fraud**

The Defendants' fourth Preliminary Objection to the Plaintiffs' Second Amended Complaint is based on the Defendants' assertion that the Plaintiffs' Second Amended Complaint fails to set forth any material facts upon which a cause of action for fraud may be based.

Under Pennsylvania law, the specific elements of a cause of action for fraud are "1) a representation; 2) which is material to the transaction at hand; 3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; 4) with the intent of misleading another into relying on it; 5) justifiable reliance on the misrepresentation; and 6) the resulting injury was proximately caused by the reliance." *Youndt v. First Nat. Bank of Port Allegany*, 868 A.2d 539, 545 (Pa.super. 2005).

Based upon the foregoing, this Court agrees with the Defendants' assertion. When viewed in the light most favorable to the Plaintiffs, their Second Amended Complaint contains no factual averments that the Defendants made any materially false representation with the intention of misleading the Plaintiffs into relying on it, or that the Plaintiffs in fact justifiably relied upon any materially false representation made to them by the Defendants. The Plaintiffs' cause of action for fraud is based upon their averments that the Defendants knew that the Property was mistakenly conveyed to them prematurely, and that upon attaining such knowledge they "fraudulently" retained the Property with no intention of paying the Plaintiffs the agreed upon price. As such, the Defendants' Preliminary Objection to Count III of the Plaintiffs' Second Amended Complaint must be SUSTAINED.

### **The Defendants' Fifth Preliminary Objection in the Nature of Demurrer as to Count IV for Unjust Enrichment**

The Defendants' fifth Preliminary Objection to the Plaintiffs' Second Amended Complaint is based upon the Defendants' assertion that a cause of action for unjust enrichment cannot be sustained in cases where an express, written contract exists between the parties, which the Defendants contend is the Deed conveying them the Property. In support of their contention, the Defendants cite the principles of Pennsylvania law which recognize unjust enrichment as a quasi-contract theory of recovery which is inapplicable in cases where an express, written contract exists between the parties.

The Defendants' reliance on this principle in the instant case is misplaced at the current stage of the proceedings. The Pennsylvania Rules of Civil Procedure explicitly allow parties to plead causes of action in the alternative. Specifically, Rule 1020 (c) states that "Causes of action and defenses may be pleaded in the alternative." Pa.R.C.P.

1020(c). In the instant case, the Defendants have acquired the titled ownership of, and have exclusively used and enjoyed a valuable parcel of real property without paying a fair market value therefor. Significantly, the Defendants assert that no valid agreement of sale exists between the parties. Given the Defendants' position, the Pennsylvania Rules of Civil Procedure allow the Plaintiff to plead alternative causes of action. As such, the Defendants' Preliminary Objection to the Plaintiffs' cause of action for unjust enrichment is premature. Therefore, the Defendants' Preliminary Objection to Count IV of the Plaintiffs' Second Amended Complaint must be OVERRULED.

### **The Defendants' Sixth Preliminary Objection in the Nature of Demurrer as to All Counts Pertaining to Defendant Jenny Dennis**

The Defendants' sixth and final Preliminary Objection to all Counts of the Plaintiffs' Second Amended Complaint as they apply to Defendant Jenny Dennis is based upon the Defendants' contention that Defendant Jenny Dennis did not execute the written Agreement of Sale between the parties, and therefore, any evidence of an agreement for the sale of the Property prior to the execution and recording of the Deed against her in particular is barred by the Statute of Frauds.

As Defendant Jenny Dennis did not execute the Agreement of Sale entered between the parties on April 24, 2022, she did not adopt or ratify any agreement made by the parties prior to the execution and recording of the Deed. As such, the Defendants' sixth and final Preliminary Objection to the Plaintiffs' Second Amended Complaint must be SUSTAINED as to Counts I, II and III. However, it is clear and undisputed from the pleadings and attachments in the instant case that Defendant Jenny Dennis has retained the titled ownership, use and benefit of the Property without paying the fair market value therefor. As such, the Plaintiffs have established a cause of action for unjust enrichment against Defendant Jenny Dennis. Consequently, the Defendants' sixth Preliminary Objection to the Plaintiffs' Second Amended Complaint must be OVERRULED as to Count IV.

In consideration of the foregoing, this Court hereby enters the following Order:

#### **ORDER**

AND NOW, this day of December, 2024, upon consideration of the Preliminary Objections filed by the Defendants, it is hereby ORDERED and DIRECTED that the Preliminary Objections are SUSTAINED as to Counts II and II with regard Defendants Kevin Morris and Jenny Dennis; and as to Counts I, II and III with regard to Defendant Jenny Dennis. It is further ORDERED and DIRECTED that the Preliminary Objections are hereby OVERRULED as to Counts I and IV with regard to Defendants Kevin Morris and Jenny Dennis; and as to Count IV with regard to Defendant Jenny Dennis. The objecting party has the right to plead over within twenty (20) days pursuant to Pa.R.C.P. 1028.

BY THE COURT:  
LINDA R. CORDARO, J.

ATTEST:  
Prothonotary



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