

**UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK**

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Louis Diaz, Gregory Korniloff and Jack Toal,  
on behalf of themselves and as representatives  
of the Class,

Civil Action No.08-CV-

Plaintiffs,

**CLASS ACTION COMPLAINT**

v.

NBC Universal, Inc.,

**JURY TRIAL DEMANDED**

Defendant.

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**CLASS ACTION COMPLAINT**

Louis Diaz, Gregory Korniloff and Jack Toal, on their own behalf, and as representatives of the Class, Plaintiffs, by their attorneys, Dominic F. Amorosa and Carey & Associates LLC, bring this civil class action against Defendant NBC Universal, Inc. and respectfully allege the following upon information and belief:

**INTRODUCTION**

1. This class action involves a deliberate, callous and intentional defamation and libel *per se* against hundreds of honest, decent and courageous agents of the New York City Branch of the United States Drug Enforcement Administration, also known as the New York City Drug Enforcement Agency (“**DEA**”) by the

defendant, NBC Universal, Inc. (“**NBC Universal**”) through its wholly owned movie studio, Universal Studios. The defamation was motivated by greed and financial gain. The defendant, NBC Universal, has refused to retract the defamation, and has offered false denials for its conduct. The defamation and libel are of the most egregious kind, adversely affecting the reputations for integrity and honesty of hundreds of DEA agents, who are the class members, and thereby damaging them in current trades and professions.

2. The defamation involved the defendant NBC Universal, through its Universal Studios, falsely communicating, in writing, to millions of people in a motion picture called American Gangster that three quarters of New York City’s DEA, from approximately 1973 through approximately 1985, were convicted criminals. With this utterly false and defamatory statement the defendant has ruined and impugned the reputations of these honest and courageous public servants in the eyes of millions of people who have already been exposed to this defamation and damaged them in their current trades and professions, and, if not stopped by an injunction, will further ruin and impugn their reputations in the eyes of millions more who are about to be exposed to the defamation, and will further damage them in their current trades and professions.

3. Defendant NBC Universal, through its Universal Studios, produced, released and distributed American Gangster to the public. American Gangster purports to

represent the alleged narcotics' trafficking activities of Frank Lucas who in the early 1970's, up until his arrest on January 28, 1975 by New York City's DEA, was a major narcotics' trafficker in the New York City area. As a result of his narcotics' trafficking, Lucas became a target of New York City's DEA and the United States Attorney's Office for the Southern District of New York ("USAO"). After an intensive investigation, New York City's DEA, assisted by officers of the New York City Police Department ("NYPD"), arrested Lucas on January 28, 1975 at this house in Teaneck, New Jersey. At the time of his arrest Lucas' house was lawfully searched pursuant to warrant and \$585,000 in currency was seized which had been derived from the sale of narcotics. Lucas was thereafter tried in September 1975 by the USAO, convicted and sentenced to 40 years' imprisonment. Subsequently, he cooperated with the USAO and with New York City's DEA and assisted in the apprehension and convictions of numerous other narcotics' traffickers. Lucas' cooperation, however, did not lead to the conviction of a single agent of New York City's DEA or member of the NYPD, or of any other law enforcement official in New York or elsewhere, ever.

4. American Gangster, which asserts it is based on "a true story", represents the above events falsely. It asserts that one Richard Roberts, a former law enforcement official in Newark, New Jersey, was the individual primarily responsible, together with others working in his squad, for investigating,

apprehending and prosecuting Lucas. American Gangster represents that it was with Roberts that Lucas cooperated after his arrest in the investigation of other criminality. American Gangster represents the search of Lucas' house on January 28, 1975, actually conducted lawfully by New York City's DEA and NYPD officers, referred to above, in the most awful and corrupt manner during which Lucas' wife was assaulted, his dog shot in a vicious manner, and hundreds of thousands of dollars stolen by corrupt law enforcement officials. American Gangster falsely represents that Lucas cooperated with Roberts in causing the convictions of the corrupt law enforcement officials who searched his house on January 28, 1975. American Gangster falsely represents that Lucas not only cooperated with Roberts in investigating corrupt law enforcement officers, but, in a legend that appears at the end of the film, falsely states as a fact that this **“collaboration led to the convictions of three quarters of New York City's Drug Enforcement Agency.”** This legend is false, defamatory and libelous *per se*. No such thing ever occurred. Not a single agent of New York City's DEA, or any other law enforcement officer, was convicted of anything based upon the so-called “collaboration” of Lucas and Roberts. Nor was a single agent of New York City's DEA or officer of the NYPD convicted in any case or investigation involving Frank Lucas whether based upon a collaboration of Lucas and Roberts or any other resource.

5. This shockingly false legend was designed to give credence to the factual allegations of American Gangster, to validate American Gangster's claim that it was "based upon a true story", to induce critics to recommend it to the public, to induce the public to pay to view it, and to further induce the public to believe the events shockingly and falsely depicted (to the effect that corruption among law enforcement authorities investigating Lucas was rampant, and included the officers who searched his house, assaulted his wife, shot his dog and stole hundreds of thousands of dollars from him) were in fact true, when they were in fact untrue. Defendant's clever scheme, in essence a scheme to defraud the public at the expense of Special Agents of New York City's DEA, was in fact successful. Millions of people were induced to pay for viewing this film who would not have paid had they known the truth, that is, that the movie is riddled with falsity and that not a single Special Agent or employee of the New York City DEA, or officer of the NYPD, was convicted as a result of the so called "collaboration" of Lucas and Roberts. The whole premise of American Gangster would have been eviscerated if the truth were revealed, and the defendant would not have made the money it did make if the libel was not made.

6. As a result of viewing American Gangster, millions of people now believe an awful falsity: that these law enforcement officials, DEA and NYPD officers, who searched Lucas' house, in addition to their colleagues, were brutally corrupt

and were convicted for this corruption as a result of the so called “collaboration” of Lucas and Roberts. Hundreds of honest and courageous DEA Special Agents who risked their lives on a daily basis on the streets of New York City in the 1970’s and 1980’s have been deliberately defamed, libeled and slandered in the eyes of millions, and damaged in their current trades and professions, by defendants in a reckless, ruthless and malicious effort to make hundreds of millions of dollars. An injunction barring further distribution of this motion picture with this false legend must issue to prevent further irreparable harm to these courageous and honest former and present public servants by preventing millions of others from viewing the lie that three quarters of them are convicted felons. Defendant must also be ordered to compensate Plaintiffs and the Plaintiff Class for the harm caused.

### **CLASS ACTION ALLEGATIONS**

7. Plaintiffs sue on their own behalf and as representatives of the Class which is comprised of approximately 400 present and former Special Agents of the New York City DEA each of whom was employed at some time during the period from 1973 through 1985.
8. The class is so numerous that joinder of all members is impracticable.
9. There are questions of law and fact common to the class. The predominant questions of law and fact include, among others, whether:

- (a) Defendant has libeled and defamed all of the Special Agents of New York City's DEA from 1973 through 1985 by its written publication as a fact in American Gangster that Lucas' and Roberts' "collaboration led to the convictions of three quarters of New York City's Drug Enforcement Agency".
- (b) Defendant has intentionally or negligently inflicted severe emotional distress upon all members of the class by this false assertion.
- (c) Class members have been damaged, the extent to which members of the Class have sustained damages, and what is the proper measure of those damages in excess of \$5,000,000.
- (d) Class members have suffered and continue to suffer irreparable harm as a result of the false legend published to the world in American Gangster and its refusal to retract the defamatory and false statement in American Gangster that three quarters of the class were convicted of crimes based upon the "collaboration" of Lucas and Roberts.

10. Plaintiffs do not have any interests that are adverse or antagonistic to the class and are committed to the vigorous prosecution of this action and have retained competent counsel to proceed with the prosecution.

#### **JURISDICTION AND VENUE**

11. The Court has diversity jurisdiction of this class action pursuant to Title 28,

USC, Section 1332(d) since this is a class action and the matter in controversy exceeds the sum of \$5,000,000 exclusive of interest and costs, and is a class action in which a single member of the class is a citizen of a different state from that of the defendant.

12. The Court, alternatively, has jurisdiction of the Plaintiffs' Complaint, independent of the Class action, pursuant to Title 28, USC, Section 1332(a), under its diversity jurisdiction as Plaintiffs are citizens of different states from defendant and the amount in controversy for the three individual Plaintiffs is in excess of \$75,000 exclusive of interests and costs.

13. Venue is proper in this District, pursuant to Title 28, USC Section 1391(a)(1) and (c), as defendant NBC Universal resides in New York, New York where its principal place of business is located, and pursuant to Section 1391(a)(2), as a substantial part of the events giving rise to the cause of action in this District, and as American Gangster was distributed to many thousands of people in this District.

### **THE PARTIES**

14. Defendant, NBC Universal, is a Delaware corporation with its principal place of business in New York, New York.

15. Plaintiff Jack Toal is a former Special Agent of the New York City DEA,

having been employed in that position from 1969 to 1982. He is a resident of the State of Florida

16. Plaintiff Gregory Korniloff is a former Special Agent of the New York City DEA, having been employed in that position from 1971 to 1978. He is a resident of the State of Nevada.

17. Plaintiff Louis Diaz is a former Special Agent of the New York City DEA, having been employed in that position from 1975 to 1985. He is a resident of the State of California.

#### **DETAILED ALLEGATIONS**

18. Defendant NBC Universal is in the business, among other things, of producing, releasing and distributing motion pictures to the public throughout the world.

19. On or about November 2, 2007, defendant NBC Universal released and distributed a motion picture to the public called American Gangster.

20. American Gangster has been distributed and shown in movie theaters in every state in the United States, as well as in this District.

21. American Gangster has been seen by millions of people and defendant is seeking to have it seen by millions more, including by means of DVD sales. It has grossed at least \$127,000,000 in profits for the defendant, excluding profits made

through secondary businesses.

22. American Gangster purports to represent the narcotics' trafficking activities of Frank Lucas. In the early 1970's, up until his arrest by New York City DEA agents and NYPD officers on January 28, 1975, Lucas was a major narcotics' trafficker in the New York City area.

23. On January 28, 1975, Lucas was arrested at his home in Teaneck, New Jersey by New York City DEA agents and officers of the NYPD. At the time of his arrest, Lucas' house was searched pursuant to a valid search warrant and \$585,000 in currency was seized. The search was carried out in an entirely legal manner. Gregory Korniloff, a Plaintiff herein and a representative of the Class, was the New York City DEA case agent on the Lucas investigation and was present during the search of Lucas' house, and participated in the arrest of Lucas.

24. Lucas was prosecuted by the USAO in the SDNY, was tried in September 1975, and was sentenced to 40 years' imprisonment.

25. At the time, there were media reports of the Lucas case, including the facts relating to the search of Lucas' house by New York City DEA and the NYPD.

26. Following his conviction, Lucas began to cooperate with New York City DEA and with the USAO in the SDNY in their efforts to apprehend and prosecute other narcotics' traffickers. In this respect his cooperation was substantial.

27. Lucas' cooperation did not lead to the conviction of a single agent of New York City's DEA, or of any other law enforcement officer, including officers employed with the New York City Special Investigations Unit.
28. Not a single DEA agent or employee in New York or elsewhere was ever convicted of anything in connection with Lucas' narcotics activities.
29. Defendant NBC Universal was aware of this, or recklessly ignored evidence of it, prior to releasing American Gangster to the public.
30. American Gangster represents the search of Lucas' house in the most awful manner during which Lucas' wife was assaulted, his dog shot in a vicious manner and all his currency stolen by corrupt law enforcement officers identified as members of the New York City Special Investigations Unit. All of these depictions are untrue.
31. The New York Special Investigations Unit had nothing to do with the arrest and prosecution of Lucas, and not a single Officer of the Special Investigations Unit was convicted of anything as a result of Lucas' cooperation with anyone.
32. American Gangster is riddled with other false representations with respect to corruption by law enforcement officials investigating Lucas.
33. American Gangster falsely represents the role of one Richard Roberts, a then law enforcement officer in New Jersey, in the investigation, apprehension and

prosecution of Lucas.

34. American Gangster falsely represents that Roberts and his squad were primarily responsible for Lucas' arrest and prosecution, whereas it was New York City's DEA and the USAO which were responsible for Lucas arrest and prosecution. Roberts was involved in a secondary prosecution of Lucas in New Jersey which followed Lucas' arrest and prosecution in the USAO.

35. American Gangster represents that after Lucas' arrest, he cooperated with Roberts in the prosecution of corrupt law enforcement officers, including cooperation against the officers who were alleged to corruptly search Lucas' house. As noted, Lucas' house was lawfully searched.

36. American Gangster falsely suggests that Lucas was a victim of a corrupt law enforcement system and leaves the impression that Lucas should be commended for his "collaboration" with Roberts in clearing up the corruption within New York City's DEA.

37. At the very end of American Gangster, a written legend appears on the screen that was designed by defendant to emphasize the "truth" of the various allegations made in the film.

38. The legend states that Roberts and Lucas' **"collaboration led to the convictions of three quarters of New York City's Drug Enforcement Agency"**.

39. This representation is an utter and complete falsity. Roberts and Lucas' "collaboration" did not lead to the convictions of three quarters of the New York City's Drug Enforcement Agency.

40. Roberts and Lucas' "collaboration" did not lead to the conviction of a single DEA agent or employee or of any other New York law enforcement official, including representatives of the Special Investigations Unit.

41. The written legend at the end of American Gangster is false and defames Plaintiffs and the Plaintiff Class.

42. On November 23, 2007, counsel for plaintiff Gregory Korniloff, wrote to the Universal Studios, owned by Defendant, demanding that the false legend be removed from further distribution of American Gangster. A copy of this letter is attached to this Complaint as Exhibit 1 and incorporated by reference herein.

43. On December 7, 2007, David L. Burg, Senior Vice President of NBC Universal, wrote to Mr. Korniloff's counsel rejecting his demand. A copy of Mr. Burg's letter is attached here as Exhibit 2 and incorporated by reference herein.

44. One of Mr. Burg's assertions in his letter of December 7, 2007 is that the "corrupt law enforcement officers portrayed in the film are specifically identified as members of the New York City Police Department, and the film refers to their subsequent prosecution by the federal government".

45. This assertion, like the legend itself, is false. There was not a single member of the New York City Police Department so prosecuted by the federal government or any other government. Nor was there any Agency of the NYPD known as New York City's Drug Enforcement Agency, the agency alleged in the legend to have had three quarters of its members convicted. The only entity known as New York City's Drug Enforcement Agency is DEA.

46. Other than DEA, there has never been a New York City Drug Enforcement Agency, federal or state. Nor has there ever been a DEA agent convicted of anything relating to the narcotics' activities of Lucas.

47. Defendant has made millions of dollars in profits from distributing American Gangster after the retraction was demanded, further demonstrating its malice and willfulness in its original release.

48. Before it published it to the world, Defendant was well aware that the legend was false or recklessly ignored evidence that it was false.

49. A simple Google search of "New York City Drug Enforcement Agency" conducted on December 20, 2007 produced hundreds of thousands of hits. The first hit was the address of DEA Headquarters in Manhattan. Almost all of the first 100 hits identify this entity with the United States Drug Enforcement Administration, or DEA.

50. New York City's Drug Enforcement Agency is identical in the minds of the public with New York City's DEA, and defendant was aware, or recklessly disregarded evidence of this, before it published the false legend.

51. Millions of people who saw the film and read the legend came to believe that three quarters of New York City's DEA in this period were convicted for corruption.

52. This false legend was designed in part to induce the public to purchase tickets to view American Gangster by giving the false appearance to the public, and to critics reviewing the film for the public, that American Gangster's representations of corrupt law enforcement activities with respect to Lucas were factual when they were not factual.

53. The false legend was designed in part to validate the claim made in American Gangster that it was "based upon a true story".

54. The false legend was also designed to induce the public to believe the events shockingly and falsely depicted in American Gangster (that corruption among law enforcement authorities investigating Lucas was rampant, and included the agents and officers who searched his house, assaulted his wife, shot his dog and stole hundreds of thousands of dollars from him) were in fact true, when they were not.

55. People who have seen American Gangster have reported to others that it was

a good film and depicted the corruption of numerous members of New York City's DEA who were convicted as a result of the "collaboration" of Lucas with Richard Roberts.

56. Defendant's deliberate scheme to falsify the facts, and to make the public believe the falsity, in order to have them pay to view the film, has been very successful. The false legend made money for defendant that it would not have made if the false legend were not published.

57. Millions of people who have seen the film were induced to see it based in part upon the libel that Lucas and Roberts' "collaboration" led to the convictions of three quarters of New York City's DEA.

58. Millions of viewers of this film now believe that the law enforcement authorities who in fact searched Lucas' house, who were honest and courageous New York City DEA Agents and officers of the NYPD, were brutally corrupt and were convicted for this corruption as a result of the so called "collaboration" of Lucas with Roberts.

59. Hundreds of honest and courageous New York City DEA Agents who risked their lives on a daily basis on the streets of New York City in the 1970's have been deliberately defamed, libeled and slandered in the eyes of millions, and damaged in their current trades and professions, by the defendant in a reckless and ruthless and

malicious effort to make millions of dollars.

60. Approximately 20 soldiers stationed in Iraq who saw the American Gangster recently questioned a former Special Agent of New York City's DEA about the legend after they saw the film. The former New York City DEA agent is now also stationed in Iraq and is a member of the Class. This former New York City DEA agent is on a leave of absence from his employment with the Suffolk County Prosecutor's Office. The soldiers all understood the legend to refer to convictions of Special Agents of DEA, and asked the former agent of DEA how it came about that three quarters of the New York City DEA were convicted criminals. Although the former New York City DEA agent told these soldiers the truth, that no such thing had happened, he felt deeply hurt and embarrassed by the questions even though he knew the legend was false. Although he explained the truth to the soldiers, his affidavit states that he could not "explain it to the millions of others who have seen this lie and also believed it to be true."

61. Some members of the Plaintiff Class are currently employed as private investigators and defendant's false statement, asserted as fact, damages them in their trade and profession.

62. Many members of the Plaintiff Class have current employment and defendant's false and defamatory legend in American Gangster not only harms

their reputations, but it also damages them in that employment.

### **FIRST CAUSE OF ACTION**

#### **LIBEL PER SE**

63. Paragraphs 1 through 62 of this Complaint are hereby incorporated by reference herein.

64. The legend appearing at the end of American Gangster that Lucas and Roberts' "collaboration led to the convictions of three quarters of New York City's Drug Enforcement Agency" is false, untrue, defamatory and libelous per se and on its face.

65. There can be no more harmful lie than to say that a law enforcement officer has been convicted of corruption.

66. The false statement exposes Plaintiffs and the Plaintiff Class to hatred, contempt and ridicule because it falsely depicts them as convicted criminals when in actual fact they are honest and courageous former and current law enforcement officers.

67. Many of the class members have active employment, including employment with the DEA and in other law enforcement agencies and security companies. Defendant's publication of this false, defamatory and libelous statement to the world has damaged them in this employment.

68. Defendant caused the libelous statement to be published to the world knowingly and willfully as a fact either with knowledge of its falsity or with reckless disregard for its truth.

69. Defendant refused Plaintiffs' demand that it retract the false statement from further release to the public.

70. The defamatory statement was not privileged in any manner.

71. The statement was intended to injure Plaintiffs and the Plaintiff Class in their reputations, character and businesses and in fact did so.

72. As a direct and proximate cause of defendant's libel, Plaintiffs and the Plaintiff Class have been damaged in an amount to be determined at trial but in excess of \$5,000,000 exclusive of interests and costs.

**SECOND CAUSE OF ACTION**  
**INTENTIONAL INFLICTION OF EMOTIONAL**  
**DISTRESS**

73. All of the allegations of paragraphs 1 to 72 of this Complaint are hereby incorporated by reference herein.

74. Defendant intentionally caused Plaintiffs and the Plaintiff Class humiliation, ridicule, and mental anguish, and its refusal to retract the false legend has aggravated the harm caused, as millions of many people have seen the film after a retraction was demanded and denied by defendant.

75. The false statement in the legend and the entire film was meant to expose, and did in fact expose, Plaintiffs and the Plaintiff Class to humiliation, hatred, contempt and ridicule.

76. As a direct and proximate cause of the false statement and publication, Plaintiffs and the Plaintiff Class have suffered damages in the form of severe emotional distress in an amount not less than \$5,000,000.

**THIRD CAUSE OF ACTION  
NEGLIGENT INFLICTION OF EMOTIONAL  
DISTRESS**

77. All of the allegations of Paragraphs 1 to 76 of this Complaint are hereby incorporated by reference herein.

78. Plaintiffs and the Plaintiff Class were owed a duty by Defendant to use reasonable care in writing and publishing to the world the motion picture, American Gangster, and the factual assertions made in it.

79. It was foreseeable to Defendant that a false statement alleging that three quarters of Plaintiff Class were convicted felons would damage their reputations, defame them, and injure them in their employment.

80. Defendant breached this duty of care by publishing as a fact the false statement that Lucas and Roberts' "collaboration led to the convictions of three quarters of New York City's Drug Enforcement Agency".

81. Defendant knew or should have known that the legend was false in its entirety and knew that the failure to exercise due care in publishing American Gangster to the world would cause Plaintiffs and the Plaintiff Class severe emotional distress and other injuries.

82. As a direct and proximate cause of this breach, Plaintiffs and the Plaintiff Class have suffered damages in the form of severe emotional distress and mental suffering in an amount not less than \$5,000,000.

**FOURTH CAUSE OF ACTION  
INJUNCTION**

83. All of the allegations of Paragraphs 1 to 82 of this Complaint are hereby incorporated by reference herein.

84. Plaintiffs and the Plaintiff Class, and the public in general, have suffered and will continue to suffer irreparable harm from the publication of the false legend.

85. Plaintiffs and the Plaintiff Class have and will continue to suffer damage to their reputations for honesty and good character and will suffer a diminution of, or lose entirely, their ability to hold and find employment as present and former law enforcement agents of the federal government.

86. The defamation in American Gangster has undermined and will continue to undermine the trust that the public has a right to repose in the government agents whose job it is to protect them from the illicit narcotics trade and other criminal

activity.

87. Plaintiffs and the Plaintiff Class will succeed on the merits of this action.

88. The false legend contains a libel *per se* that is incontrovertibly false.

89. NBC Universal was aware of the falsity of the false legend before it was first published or recklessly disregarded whether or not it was true.

90. NBC Universal, having been advised of the falsity of the legend, nevertheless continued to publish it for profit.

91. NBC Universal acted negligently.

92. NBC Universal acted with malice.

93. There is no adequate remedy at law.

94. For the libel that has already occurred, the only effective remedy will be an order directing NBC Universal to advertise to the same extent and by the same means it advertised the movie and the false legend a retraction of the false legend and a statement to the effect that no member of the Plaintiff Class was ever found guilty of any criminal offense related to Frank Lucas or to the events depicted in *American Gangster*.

95. To prevent NBC Universal from continuing to harm the Plaintiff Class in the future, the only effective remedy will be an order directing NBC Universal to

strike the false legend from every copy of American Gangster that is shown, or may be shown, in the future, by every means, worldwide, and to replace it with the legend described in the preceding paragraph.

### **DEMAND FOR JUDGMENT**

Therefore, Plaintiffs and the Plaintiff Class demand judgment against defendant for the following relief, plus costs:

- a. Ordering a preliminary and permanent injunction enjoining and restraining defendant, and all its officers and agents, servants, and employees, and all those persons in active concert or participation with them from directly or indirectly using, distributing or showing American Gangster to anyone else with the false legend;
- b. Ordering the defendant to recall each copy of American Gangster that contains the false legend;
- c. Ordering that defendant immediately deliver up all signs, prints, packages, and advertisements in its possession or under its control bearing the false legend;
- d. Ordering restitution of all moneys obtained directly or indirectly by defendant by means of this improper conduct;

- e. Ordering defendant to disgorge all its profits from American Gangster;
- f. Ordering defendant to publish in the same media outlets in which it defamed Plaintiffs and the Plaintiff Class the truth about the New York City DEA's role in the investigation, arrest and prosecution of Frank Lucas;
- g. With respect to each cause of action awarding compensatory damages in an amount to be determined at trial, but at least in an amount of \$5,000,000 exclusive of interests and costs;
- h. With respect to the first and second cause of action awarding punitive damages of \$50,000.000;
- i. Awarding prejudgment interest pursuant to Title 28, USC Section 1961(a);
- j. Awarding costs and attorneys' fees in an amount to be determined at trial;

- k. Awarding such other relief, legal or equitable, that the Court deems proper and just.

Dated: January 15, 2008

Respectfully submitted,

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