

**IN THE DISTRICT COURT OF
LANCASTER COUNTY, NEBRASKA**

**STATE OF NEBRASKA, ex rel.
MICHAEL T. HILGERS,
ATTORNEY GENERAL,**

Plaintiff,

v.

**OMNI HOTELS
MANAGEMENT
CORPORATION,**

Defendant.

Case No: CI 23 - 3641

**ORDER APPROVING
ASSURANCE OF
VOLUNTARY COMPLIANCE**

NOW, this matter comes before the Court on the Application for Approval of Assurance of Voluntary Compliance (“Application”) and the underlying incorporated and attached Assurance of Voluntary Compliance (“Assurance”) executed by and between Plaintiff, the State of Nebraska and Defendant, Omni Hotels Management Corporation (“Omni”) (collectively, the “Parties”).

The Court, having considered the above-described Application and Assurance, executed pursuant to the Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. (“Consumer Protection Act”) and the Uniform Deceptive Trade Practices Act, § 87-301 et seq. (“Uniform Deceptive Trade Practices Act”), finds as follows:

1. Defendant has voluntarily consented to the jurisdiction of the Court.
2. The Parties agree that nothing herein shall alter or amend Plaintiff’s authority under Neb. Rev. Stat. §§ 59-1610 and 87-303.05 for any failure to comply with the Assurance.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Assurance of Voluntary Compliance, including all of its terms, executed as of September 20, 2023 by and between Plaintiff and Defendant, is hereby approved.

DATED this 27 day of October, 2023.

BY THE COURT:



Lancaster County District Court Judge
Kevin R. McManaman

Prepared and Submitted by:

/s/ Michaela J. Hohwieler
Michaela J. Hohwieler, #26826
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Counsel for the State of Nebraska

Approved as to Form and Content by:

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Local Counsel for Defendant

**IN THE DISTRICT COURT OF
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**STATE OF NEBRASKA, ex rel.
MICHAEL T. HILGERS,
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**OMNI HOTELS
MANAGEMENT
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Defendant.

Case No: CI 23 - _____

**ASSURANCE OF
VOLUNTARY COMPLIANCE**

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (“Assurance”) is made and entered into by and between the State of Nebraska, ex rel. Michael T. Hilgers, Attorney General, (the “State”), and Omni Hotels Management Corporation (“Omni”). (The term “Assurance” as used herein may refer to the Assurance of Voluntary Compliance or an Assurance of Discontinuance, as applicable.) The State alleges that Omni has violated the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. (“Consumer Protection Act”) and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq. (“Uniform Deceptive Trade Practices Act”). The State and Omni have agreed to execute this Assurance for the purposes of settlement only.

BACKGROUND

1. Omni is a hospitality corporation that—directly and/or through its affiliates and subsidiaries—advertises and offers lodging to consumers at Affiliated Hotels, and Omni operates Omni US Websites. Omni’s US Websites (a) advertise and offer reservations at Affiliated

Hotels in North America; and (b) allow consumers to search for and secure reservations at Affiliated Hotels directly on Omni's US Websites.

2. The State alleges that Omni misrepresented Room Rates, Mandatory Fees, or Total Price in its advertising to consumers by promoting room prices that did not include all Mandatory Fees that would be charged to consumers for a stay at Affiliated Hotels, and that such conduct constitutes unlawful, unfair, and/or deceptive trade practices prohibited by the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq., and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq. ("Covered Conduct").

3. Omni denies that it and/or its employees, subsidiaries, operators, licensees, franchisees, and/or owners of the Affiliated Hotels have violated any statute, regulation, decision, or other source of law in connection with the practices described in Paragraph 2. Omni maintains that it did not and does not misrepresent Room Rates, Mandatory Fees, or Total Price and clearly disclosed all Mandatory Fees. Nothing contained herein may be taken as or construed to be an admission or concession of any violation of law or regulation, or of any other matter of fact or law, or of any liability or wrongdoing except as expressly required by state law.

DEFINITIONS

4. For the limited purposes of this Assurance, the following definitions shall apply:

- a. "Affiliated Hotels" shall mean any Lodging Establishment operating under Omni's brands that are owned, managed, leased, licensed, and/or franchised by Omni or its hotel lodging subsidiaries.
- b. "Clear and Conspicuous" or "Clearly and Conspicuously" shall mean a statement that—regardless of the medium in which it is made—is readily understandable and presented in such size, color, contrast, duration and

location compared to the other information with which it is presented that renders it readily apparent, readable, and understandable. An audio statement or disclosure shall be delivered in a volume and cadence sufficient for a consumer to hear and understand the entire statement or disclosure. A statement may not contradict or be inconsistent with any other information with which it is presented.

- c. The “Effective Date” of this Assurance shall be the date on which Omni receives a copy of this Assurance duly executed in full by Omni and by the State.
- d. “Implementation Date” shall be as soon as reasonable, but no later than September 1, 2023, taking into account the comprehensive efforts required by Omni to update multiple platforms and systems to ensure complete implementation.
- e. “Lodging Establishment” shall mean an inn, hotel, motel, or other similar establishment in the United States that offers accommodations for a fee to transient guests for lodging or sleeping purposes.
- f. “Mandatory Fees” shall mean any fee, by any name, which consumers must pay in addition to the Room Rate in order to stay at a Lodging Establishment. For avoidance of doubt, this includes—but is not limited to—resort fees, destination fees, facility fees, amenity fees, and service fees, so long as they are mandatory, but does not include amounts required to be collected and passed on to any governmental or quasi-governmental entity, such as taxes or other government-imposed fees. Mandatory Fees also do not include damage deposits, or optional fees for additional benefits or services including, but not limited to, parking fees.

- g. “Parties” shall mean the State and Omni, collectively, or individually, as “Party.”
- h. “Room Rate” shall mean the nightly price that consumers are required to pay for lodging at a Lodging Establishment, exclusive of Mandatory Fees and other amounts collected and passed on to any governmental or quasi-governmental entity, such as taxes or excise payments or other optional fees.
- i. “Total Price” shall mean the sum of at least (a) the Room Rate and (b) all Mandatory Fees.
- j. “Omni US Website(s)” shall mean the website(s) Omni operates to advertise or offer reservations directed to consumers in the United States and the corresponding mobile application that Omni uses to advertise and offer reservations directed to consumers in the United States.
- k. “Close Proximity” means on the same print page, web page, online service page, or other electronic page, and proximate to the triggering representation, and not accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.

APPLICATION

5. The provisions of this Assurance apply to Omni and its officers, directors, employees, agents, successors, assignees, merged or acquired entities, parent or controlling entities, and wholly-owned subsidiaries in connection with offers of lodging at Affiliated Hotels on Omni US Websites. This Assurance shall not apply to negotiated corporate or group Room Rates, provided that there is a written contract signed by all parties that Clearly and Conspicuously discloses all applicable Mandatory Fees to be paid by the contracting party.

ASSURANCE TERMS

6. **GENERAL:** Omni shall not engage in any unlawful, unfair, and/or deceptive trade practices in violation of the Consumer Protection Act or the Uniform Deceptive Trade Practices Act with respect to the advertising or offer of Room Rates, Mandatory Fees, or Total Price.

7. In connection with any advertisement or offer, whether written or oral, Omni shall:

- a. not make any misrepresentations in connection with the advertising of Room Rates, Mandatory Fees, or Total Price;
- b. inform consumers of all material facts, the omission of which would be likely to deceive or mislead consumers, in connection with the advertising of Room Rates, Mandatory Fees, or Total Price; and
- c. not mislead consumers regarding Room Rates, Mandatory Fees, or Total Price that they will need to pay to obtain lodging.

The Parties agree that this paragraph, for the purposes of interpreting and enforcing this Assurance, shall be interpreted and applied in a manner consistent with the Consumer Protection Act and the Uniform Deceptive Trade Practices Act .

8. **MOST PROMINENT DISPLAY:** In any advertisement or offer for lodging at Affiliated Hotels that includes a Room Rate that is created by or disseminated by Omni shall Clearly and Conspicuously disclose all Mandatory Fees and the Total Price. Additionally, in any written or electronic advertisement or offer that includes a Room Rate that is created by or disseminated by Omni, the Total Price shall be the most prominently displayed price. Nothing contained in this paragraph shall prevent Omni from providing only the Total Price in any advertisement or offer, or separately stating or disclosing in such

advertisement or offer the Room Rate and any Mandatory Fees in addition to the Total Price.

9. Omni shall incorporate into appropriate training and guidance materials a requirement that, in any oral offer that includes a Room Rate, the Room Rate shall be accompanied by a Clear and Conspicuous disclosure of all Mandatory Fees and the Total Price.

10. SORT DISPLAY: Whenever Omni displays room reservation search results on Omni US Websites, and those results are sorted by price (*e.g.*, lowest to highest price), Omni shall sort the results by the Total Price. For avoidance of doubt, nothing herein shall require Omni to sort room reservation search results by price as the default sort order on Omni US Websites.

11. TAXES DISPLAY: In any advertisement, price display, or offer that is created by or disseminated by Omni that includes separate line items reflecting the elements of the price that a consumer will be asked to pay for lodging at an Affiliated Hotel, Omni shall list any Mandatory Fees separately from taxes or other governmental or quasi-governmental entity imposed fees.

12. AMENITY DISPLAY: Before a consumer completes the process of booking a room reservation at an Affiliated Hotel through Omni US Websites, Omni shall Clearly and Conspicuously disclose some or all of the goods and services covered by any Mandatory Fee. Such disclosure may be made on a tablet or mobile device via a hyperlink to such disclosure that is in Close Proximity to the Mandatory Fee. In Close Proximity to this disclosure, Omni shall also provide the means—via a telephone number, hyperlink, or other platform—through which consumers may obtain information regarding the goods and services covered by any Mandatory Fee.

13. If the State receives a consumer complaint related to the terms of this Assurance, the State shall bring such complaint(s) to Omni's attention by forwarding the complaint(s) to the person identified in Paragraph 33. Omni shall have 30 calendar days to respond to the complaint, or such other period of time exceeding 30

calendar days as specified by the State, and shall in good faith attempt to resolve any issue(s) identified in the complaint, which shall include providing notice to the State of how the complaint was explained or resolved.

14. Nothing contained herein shall prevent Omni or its Affiliated Hotels from charging Mandatory Fees or from providing only the Total Price in any offer.

Third Party Compliance

15. Omni shall require that offers of lodging made by operators, licensees, franchisees, and owners of the Affiliated Hotels be made in a manner that is consistent with Paragraphs 6 through 12 of this Assurance.

16. Omni shall require that franchisees and licensees provide Omni with accurate pricing information including Room Rates, all Mandatory Fees, and descriptions of all amenities and services covered by such Mandatory Fees.

17. When communicating Total Price, Mandatory Fees, or amenities and services covered by Mandatory Fees, Omni may rely on information provided by a franchisee or licensee, unless Omni knows the information provided is misleading or incorrect.

18. If Omni learns that any operator, licensee, franchisee, or owner of its Affiliated Hotels is violating a requirement in Paragraphs 6 through 12 of this Assurance, Omni shall take appropriate action in its sole discretion against such operator, licensee, franchisee, or owner. Appropriate action shall be determined by the nature and circumstances of the violation including, but not limited to, the pattern and/or severity of the conduct, and any corrective action taken by the operator, licensee, franchisee, or owner.

19. Omni shall provide accurate pricing information, including Room Rates, all Mandatory Fees, and the description of some or all of the services and amenities covered by such Mandatory Fees to online travel agencies and other third parties that have entered into an

agreement with Omni to provide consumers the ability to make reservations for Affiliated Hotels. When communicating Total Price, Room Rates, Mandatory Fees, or amenities and services covered by Mandatory Fees to third parties, Omni may rely on information provided by a franchisee or licensee, unless Omni knows that the information is misleading or incorrect.

20. Nothing contained herein shall impose liability on Omni if an advertisement price display or offer created by Omni is modified or otherwise displayed, communicated, or conveyed by a third party in a manner inconsistent with the terms of the Assurance, without Omni's knowledge, direction, or control.

RELEASE

21. Upon the filing of a duly executed version of this Assurance in the District Court of Lancaster County, Nebraska, the State shall release and discharge Omni and each of its respective officers, directors, employees, agents, merged or acquired entities, parent or controlling entities, affiliates and subsidiaries, and their predecessors, successors, and assignees, from any and all claims, civil causes of action, demands, damages, restitution, penalties, fines, actions, and other causes of action that the State could have brought under the Consumer Protection Act and the Uniform Deceptive Trade Practices Act relating to the Covered Conduct prior to the Effective Date of this Assurance. Nothing contained in this paragraph shall be construed to limit the ability of the State to enforce the obligations that Omni has under this Assurance. Notwithstanding any term of this Assurance, any and all of the following forms of liability are specifically reserved and excluded from the release contained herein as to any entity or person:

- a. Any criminal liability that any person or entity, including Omni, has or may have to the State of Texas.
- b. Any civil or administrative liability that any person or entity, including Omni, has or may have to the State of

Nebraska under any statute, regulation or rule not expressly covered by the release contained herein, including but not limited to, any and all of the following claims:

- i. State or federal antitrust violations;
- ii. State or federal securities violations; or
- iii. State or federal tax claims.

MEET AND CONFER

22. Within twenty (20) days of the Effective Date, Omni shall designate a person or persons whom the State may contact regarding any concerns about disclosures or representations regarding Total Price, Room Rates, or Mandatory Fees. Consistent with Omni's legal obligations to safeguard the confidential or proprietary information of consumers and third parties, Omni shall respond to any information or requests provided by the State within a reasonable period of time and shall cooperate in good faith with the State, including investigating any reports of alleged misleading representations regarding Total Price or Mandatory Fees that it receives from the State.

23. If the State determines that Omni has failed to comply with any of the terms of this Assurance, and if in the State's sole discretion the failure to comply does not threaten the health or safety of the citizens of the State of Nebraska and/or does not create an emergency requiring immediate action, the State exercising such discretion shall notify Omni in writing of such failure to comply and Omni shall then have thirty (30) days from receipt of such written notice to provide a good faith written response to the State. The response shall include, at a minimum, either:

- a. a statement explaining why Omni believes that it is in full compliance with this Assurance; or
- b. a detailed explanation of how the alleged violation(s) occurred, and either

- i. a statement that the alleged violation has been addressed and how, or
- ii. a statement that the alleged violation cannot be reasonably addressed within thirty (30) days from receipt of the notice; however, it:
 1. has begun to take corrective action to address the alleged violation,
 2. is pursuing such corrective action with reasonable diligence, and
 3. has provided the State with a detailed and reasonable timetable for addressing the alleged violation.

Nothing herein shall prevent the State from agreeing in writing to provide Omni with additional time beyond the thirty (30) day period to respond to the notice provided pursuant to this paragraph.

24. Nothing herein shall be construed to exonerate any failure to comply with any provision of this Assurance after the Effective Date, or to compromise the authority of the State to initiate a proceeding for any failure to comply with this Assurance.

GENERAL PROVISIONS

25. The requirements of Paragraphs 6 through 20 shall come into effect on the Implementation Date, except that following a merger or acquisition by Omni of another lodging company or operation, Omni shall have until the later of the Implementation Date or six (6) months, subject to extension upon agreement of the State, which agreement shall not be unreasonably withheld, following the date of closing of the merger or acquisition in which to bring the newly acquired properties into compliance with the requirements of the aforementioned paragraphs.

26. **NO ADMISSION:** This Assurance is a compromised settlement of disputed issues and shall not be deemed or construed as:

(a) an admission of the truth or falsity of any claims or allegations made herein or any potential claims; (b) an admission by Omni that it has violated or breached any law, statute, regulation, term, provision, covenant or obligation of any agreement, decision, or other source of law; or (c) an acknowledgment or admission by the Parties of any duty, obligation, fault, or liability whatsoever to any other party or to any third party. This Assurance does not constitute a finding of law or fact, or any evidence supporting any such finding, by any court or agency that Omni has engaged in any act or practice declared unlawful by any laws, rules, or regulations of any state. Omni denies any liability or violation of law and enters into this Assurance without any admission of liability. To the extent that Omni makes changes to its advertising or business acts, practices, policies, procedures, or materials to achieve or to facilitate conformance with this Assurance, the changes shall not be taken as or construed to be an admission by Omni or its owners, franchisees, licensees, or any entity affiliated with its Lodging Establishments and/or Affiliated Hotels, of any kind, and shall not constitute or be used as evidence of the State's allegations of facts, Omni's violation of any law, rule or regulation, or liability or wrongdoing, including an admission by Omni that any of its advertising or business acts, practices, policies, procedures, or materials are or have been in violation of state law or regulation. It is the intent of the Parties that this Assurance shall not be used as evidence or precedent in any action or proceeding, except an action to enforce this Assurance. This Assurance may only be enforced by the Parties hereto.

27. This Assurance does not supplant or in any way restrict Omni's legal rights and ability to demand formal legal process to protect its consumers' privacy rights and/or to protect Omni from potential liability for disclosing or sharing such information without legal process. In all other respects, Omni hereby accepts and expressly waives any defect in connection with such service of process issued to Omni by the State related to this Assurance.

28. This Assurance is entered into voluntarily by Omni as its own free and voluntary act, without trial or adjudication of any issue of fact or law or finding of liability of any kind, and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon it by this Assurance, and Omni consents to its entry without further notice. Further, this Assurance is the result of good faith negotiations, and the terms are fair and reasonable.

29. Omni shall not cause or encourage third parties, or knowingly permit third parties acting on its behalf, to engage in acts or practices from which Omni is prohibited by this Assurance. For the avoidance of doubt, Omni would not violate this provision if it provides information in the ordinary course of business to third parties, and such third parties, on their own accord, display the information on their respective sites in a manner inconsistent with this Assurance without Omni's knowledge, direction, or control.

30. This Assurance represents the full and complete terms of the settlement entered by the Parties. In any action undertaken by the Parties, neither prior versions of this Assurance nor prior versions of any of its terms that were not entered by a Court or agreed to by any Party may be introduced for any purpose whatsoever.

31. To seek modification of this Assurance to account for changes in technology or in the marketplace, or for any other reason, Omni may send a written request for modification with a detailed explanation to the State. The State shall give such written request reasonable consideration and shall agree to meet and confer in good faith with Omni within thirty (30) days of receiving such request. A resolution of such meet and confer efforts may include, but not be limited to, equitable modifications or suspension of certain terms in this Assurance. At the conclusion of this thirty (30) day period, Omni reserves all rights to pursue any legal or equitable remedies that may be available to it. The State acknowledges that it is not its intent to cause Omni to be at a material economic disadvantage as compared

with other industry members whose business practices do not conform to the State's expectations under the terms of this Assurance.

- a. No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing, signed by all Parties, and then only to the extent set forth in such written waiver, modification, or amendment. To the extent that state law requires a waiver, modification, or amendment of this Assurance to be approved and entered by a Court, the State and Omni agree to use their best efforts to obtain Court approval.
- b. The State shall not take any action to enforce the terms of the particular provision for which a modification is being requested, other than for prior violations of said terms, with respect to such waiver, modification, or amendment while the Parties are seeking Court approval of the same, if required. In the event that Court approval and entry of a waiver, modification or amendment of this Assurance is required under state law and the Court does not approve such waiver, modification or amendment, said waiver, modification, or amendment shall be null and void as to the State; provided, however, that nothing herein shall be construed to prohibit or otherwise restrict any Party's right to seek reconsideration or review of, or to appeal a decision not to approve, such waiver, modification, or amendment.
- c. Nothing in this paragraph shall limit the State from pursuing any action against Omni for failure to comply with this Assurance, nor shall it release liability for any violations prior to or during the waiver, modification, or amendment period.

32. This Assurance may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.

33. All notices sent pursuant to this Assurance should be sent via first class and electronic mail as follows unless a different address is specified in writing by the Party changing such address:

a. For Omni:

Paul Jorge
Senior VP & General Counsel
4001 Maple Ave., Suite 600
Dallas, TX 75219
Telephone: (214) 283-8586
Email: pjorge@trtholdings.com

b. For the State:

Michaela J. Hohwieler
Assistant Attorney General
Consumer Protection Division
Nebraska Attorney General's Office
2115 State Capitol Building
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34. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions of this Assurance, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance.

35. If any clause, provision, or section of this Assurance other than paragraph 21 shall—for any reason—be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein. If any clause, provision, or section of this Assurance shall, for any reason, be held illegal, invalid, or unenforceable against

any Party, such clause, provision, or section of this Assurance shall be illegal, invalid, or unenforceable against any other Party that enters a substantively identical Assurance with the State.

36. Nothing in this Assurance shall be construed as relieving Omni of the obligation to comply with all local, state, and federal laws, regulations, or rules, nor shall any of the provisions of this Assurance be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

37. Nothing in this Assurance shall be construed to confer or limit any private right of action that a consumer, person, or entity, or any cause of action that a local, state, federal, or other governmental entity, may hold against Omni and/or its franchisees or licensees. Nothing in this provision shall be interpreted to permit multiple recoveries for the same harm or conduct.

38. Omni shall not participate, directly or indirectly, in any activity or practice, or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part, that are prohibited in this Assurance or for any other purpose that would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

39. The State acknowledges that it is not its intent to cause Omni to be at a material economic disadvantage as compared with other industry members whose business practices do not conform to the State's expectations under the terms of this Assurance.

40. If any clause, provision, or section of this Assurance shall, for any reason, be held illegal, invalid, or unenforceable against any Party, such clause, provision, or section of this Assurance shall be illegal, invalid, or unenforceable against any other Party that enters a substantively identical Assurance with the State.

WHEREFORE, each undersigned representative of Omni and the State certifies that he or she is fully authorized to enter into this settlement agreement and legally bind such Party to its terms. The

following signatures are affixed hereto as of the dates written below in agreement hereof. intending to be legally bound, the Parties have hereto set their hands and seals.

[SIGNATURES ON FOLLOWING PAGES]

Jointly Approved for Entry and Submitted by.

OMNI HOTELS MANAGEMENT CORPORATION

Defendant.

BY:



Date:

9/20/23

Paul Jorge
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Counsel for Defendant, Omni Hotels Management Corporation

BY:

/s/ Brock J. Pohlmeier

Date:

10/18/2023

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Local Counsel for Defendant, Choice

Jointly Approved for Entry and Submitted by:

THE STATE OF NEBRASKA, ex rel.
MICHAEL T. HILGERS,
Nebraska Attorney General

Plaintiff.

BY: Michael T. Hilgers, #24483
Nebraska Attorney General

BY: /s/ Michaela J. Hohwieler Date: Sept. 20, 2023
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