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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13
14 JULIAN VARGAS and AMERICAN
COUNCIL OF THE BLIND,
15 individually on behalf of themselves and
16 all others similarly situated,

17 Plaintiffs,

18 v.
19

20 QUEST DIAGNOSTICS CLINICAL
LABORATORIES, INC., QUEST
21 DIAGNOSTICS HOLDINGS, INC.,
22 QUEST DIAGNOSTICS
INCORPORATED; and DOES 1-10,
23 inclusive,

24 Defendants.
25
26
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28

CASE NO. 2:19-cv-08108-DMG-MRW

Hon. Dolly M. Gee

**STATEMENT OF INTEREST OF
THE UNITED STATES OF AMERICA**

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FRANKMAYER, *Healthcare Kiosks*,

<https://www.frankmayer.com/industries/healthcare/>2

Glenda Wrenn et al., *Using a self-service kiosk to identify behavioural health*

needs in a primary care clinic serving an urban, underserved population, 22 J.

INNOVATION IN HEALTH INFORMATICS 3, 323 (2015),

<https://informatics.bmj.com/content/bmjhci/22/3/323.full.pdf>2

Merriam-Webster Dictionary, <https://www.merriam->

[webster.com/dictionary/service](https://www.merriam-webster.com/dictionary/service)11

Webster's Third New Int'l Dictionary 2075 (2002)11

INTRODUCTION

The United States respectfully submits this statement of interest because this litigation implicates the proper interpretation and application of Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. pt. 36, to the use of self-service kiosks in health care settings.¹ As the agency charged by Congress with administering the ADA, the United States Department of Justice has a vital interest in ensuring that public accommodations' use of such kiosks does not result in discrimination against individuals with disabilities.

Quest Diagnostics Incorporated and its subsidiaries (collectively, Quest) own and operate over 2,100 patient service centers where they provide diagnostic testing and health care services to patients across the country. First Am. Class Action Compl. ¶¶ 21, 42, ECF No. 41 (FAC). Plaintiffs, individuals with visual impairments and an advocacy organization serving the interests of people who are blind or visually impaired, allege that Quest's self-service kiosks at these patient service centers are inaccessible and that Quest violates the ADA by failing to

¹ Under 28 U.S.C. § 517, the Attorney General is authorized to send an officer of the Department of Justice to any district in the United States "to attend to the interests of the United States in a suit pending in a court of the United States."

1 provide effective communication and denying Plaintiffs an equal opportunity to
 2 enjoy Quest's health care services. FAC ¶¶ 2, 6, 64–65.

3
 4 Many health care providers have adopted electronic technologies for
 5 managing medical records and providing services, such as self-service kiosks, and
 6 these kiosks can offer a variety of functions, including allowing individuals to
 7 check in for appointments, complete medical forms, pay fees, answer health
 8 assessments, and access maps to navigate the facility.² As the Court considers the
 9 pending motion, the United States respectfully submits this Statement to outline
 10 how the ADA's legal framework applies to the use of kiosks in health care settings.
 11
 12

13 **FACTUAL BACKGROUND**

14 The United States does not take a position on the factual disputes at issue in
 15 Defendants' motion for summary judgment. We briefly summarize relevant
 16 allegations only as background for the legal issues discussed.
 17

18 Quest provides diagnostic testing and health care services. At over 2,100 of
 19 its patient service centers, Quest requires patients to use a visual, touchscreen, self-
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 22
 23 ² See, e.g., Glenda Wrenn et al., *Using a self-service kiosk to identify behavioural*
 24 *health needs in a primary care clinic serving an urban, underserved population*, 22
 25 *J. INNOVATION IN HEALTH INFORMATICS* 3, 323 (2015),
 26 <https://informatics.bmj.com/content/bmjhci/22/3/323.full.pdf>; FRANKMAYER,
 27 *Healthcare Kiosks*, <https://www.frankmayer.com/industries/healthcare/> (last visited
 28 Sept. 20, 2021); DYNATOUCH, *Interactive Wayfinding/Directory Kiosk*,
<https://www.dynatouch.com/self-service-solutions/wayfinding-directory-kiosk/>
 (last visited Sept. 20, 2021).

1 service kiosk. Mem. P. & A. Supp. Defs.’ Mot. Summ. J. or Partial Summ. J. 1–2,
2 ECF No. 95-1 (MSJ). When arriving for a scheduled appointment, a patient can
3 use the kiosk to input personal information—name, birth date, and phone
4 number—and to check in to alert staff of their presence. MSJ 5. Patients without a
5 scheduled appointment can use the kiosk to place themselves on a waitlist to be
6 seen. MSJ 5. Based on the information entered into the kiosk, phlebotomists go to
7 the check-in area to call back the next patient. MSJ 4–5. Plaintiffs claim that a
8 patient can also use the kiosk to opt to wait somewhere other than the check-in
9 area, such as outside or in a car, and receive a text message when it is time to meet
10 with a phlebotomist. Pls.’ Mem. P. & A. Supp. Mot. Class Certification 5, ECF
11 No. 107-1 (PMCC); Pls.’ Opp. Quest’s MSJ 7, ECF No. 111 (Opp. MSJ).

12
13 The parties agree that individuals with visual impairments cannot
14 independently navigate all of the functions available on the self-serve kiosk
15 because of their disabilities. MSJ 11; FAC ¶ 5; PMCC 5; Opp. MSJ 4–12.
16 Plaintiffs claim that no staff are available to assist individuals with using the kiosk
17 or checking in for their medical appointments, so they are forced to seek assistance
18 from and divulge personal information to a sighted person, including a stranger in
19 the check-in area, who is not on Quest’s staff. FAC ¶¶ 29–30, 32–33; PMCC 6,
20 14; Opp. MSJ 10–12, 15, 20. Quest claims that its phlebotomists, in addition to
21 providing diagnostic testing services, will assist individuals who cannot
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1 independently use the kiosk with the check-in process, MSJ 4–6, 14–15, but
2 Plaintiffs dispute this, FAC ¶¶ 29–30, 32–33; PMCC 6, 17–18; Decl. Mark Derry
3 Supp. PMCC PA0871–72, ECF No. 107-5 (Derry Decl.); Opp. MSJ 15, 20.
4

5 Quest also asserts that it provides effective communication to patients with
6 visual impairments by offering a “three-finger swipe” option on the self-service
7 kiosks. MSJ 8–9, 15. The patient can swipe three fingers simultaneously across
8 the kiosk screen to alert staff of their presence. MSJ 8–9. Quest alleges that it
9 broadcasts an audio announcement on a television in the check-in area to alert
10 individuals about the three-finger swipe function. MSJ 9. Plaintiffs contest
11 whether Quest provides this function on all self-service kiosks and whether Quest
12 broadcasts the audio announcement at each patient service center. PMCC 12–15;
13 Opp. MSJ 8–10.
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17 Plaintiffs allege that where a patient successfully uses the three-finger swipe
18 function, that patient is treated, in terms of check-in priority, similarly to someone
19 who arrives without a scheduled appointment and elects to join the waitlist.
20 PMCC 11, 12; Decl. Rachael Bradley Montgomery Supp. PMCC ¶¶ 36, 38, ECF
21 No. 107-5 (Montgomery Decl.); Derry Decl. PA0871–72; Opp. MSJ 8. In other
22 words, according to Plaintiffs, patients with visual impairments who successfully
23 use Quest’s purported means of providing effective communication are placed at
24 the end of the waitlist and must wait to be assisted even if they have a scheduled
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1 appointment. *Id.* Plaintiffs allege that the three-finger swipe function does not
2 afford individuals with visual impairments the opportunity to use the self-service
3 kiosks to choose the option to wait somewhere other than the check-in area.
4 PMCC 11–13; Montgomery Decl. ¶¶ 36, 38; Opp. MSJ 8.

6 DISCUSSION

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8 Congress’s purpose in enacting the ADA was “to provide a clear and
9 comprehensive national mandate for the elimination of discrimination against
10 individuals with disabilities.” 42 U.S.C. § 12101(b)(1). Congress found that
11 individuals with disabilities continually encounter various forms of discrimination
12 including “communication barriers” and that discrimination persists in “critical
13 areas” such as “health services.” *Id.* § 12101(a)(3), (5). To remedy such
14 discrimination, the ADA prohibits public accommodations, such as Quest, from
15 denying individuals with disabilities the full and equal enjoyment of their goods,
16 services, facilities, privileges, advantages, or accommodations. *Id.* § 12182(a).

17
18 Plaintiffs claim that Quest violates the ADA by denying them a service
19 offered as a matter of course to others—the opportunity to privately and
20 independently control important aspects of their health care visits—and, because of
21 this, Quest denies them full and equal enjoyment of its health care services. Quest
22 argues that all that this Court should consider is whether patients with visual
23 impairments can access its diagnostic testing services and not whether individuals
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1 with disabilities face unequal opportunities in accessing those same diagnostic
2 services or are denied other services that Quest provides. MSJ 11–12. Quest also
3 argues that the check-in and related services that it provides through its kiosks are
4 not services covered by the ADA and that, even if these services are covered, the
5 ADA’s goods and inventory regulation, 28 C.F.R. § 36.307, does not compel Quest
6 to alter its services and kiosks. MSJ 11. Quest’s interpretation of the ADA cannot
7 be squared with the text of the statute, its implementing regulation, or the
8 principles underlying them.
9
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11
12 **A. Quest must provide auxiliary aids and services so that individuals with**
13 **disabilities can fully and equally enjoy all of its services.**

14 Title III’s text and implementing regulation are straightforward. Title III
15 mandates generally that a public accommodation, such as Quest, not discriminate
16 against any individual “on the basis of disability in the full and equal enjoyment of
17 [its] goods, services, facilities, privileges, advantages, or accommodations.” 42
18 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a). Quest may not deny individuals with
19 disabilities opportunities or afford them unequal opportunities to participate in and
20 benefit from its goods, services, privileges, or advantages. 42 U.S.C.
21 § 12182(b)(1)(A)(i)-(ii); 28 C.F.R. § 36.202(a)-(b).
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25 Discrimination under Section 12182(a) includes a failure to take steps
26 necessary to ensure that no individual with a disability is excluded, denied
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1 services, segregated, or “otherwise treated differently than other individuals”
2 because of the absence of auxiliary aids and services.³ 42 U.S.C.
3 § 12182(b)(2)(A)(iii). The term “auxiliary aids and services” refers to the various
4 ways to communicate with people who have communication disabilities, such as
5 visual impairments. *See id.* § 12103(1) (defining “auxiliary aids and services” to
6 include “qualified readers,” “other effective methods of making visually delivered
7 materials available to individuals with visual impairments,” and “acquisition or
8 modification of equipment or devices”).
9
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11
12 The Attorney General, as charged by the statute, issued regulations to
13 implement Title III. *See* 28 C.F.R. pt. 36. Those regulations provide further
14 guidance on public accommodations’ obligation to provide auxiliary aids and
15 services and effective communication. *See* 28 C.F.R. § 36.303. Particularly
16 significant here, the regulations provide additional examples of auxiliary aids and
17 services that may provide effective communication, including “accessible
18 electronic and information technology.” *Id.* § 36.303(b). The regulations also
19 clarify that auxiliary aids and services must be provided “in accessible formats, in
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24 ³ The ADA does not require the provision of auxiliary aids or services where the
25 entity can demonstrate that doing so “would fundamentally alter the nature of the
26 good, service, facility, privilege, advantage, or accommodation being offered or
27 would result in an undue burden.” 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R.
28 § 36.303(a). Quest does not allege that providing effective communication as
requested by Plaintiffs would result in a fundamental alteration or undue burden.

1 a timely manner, and in such a way as to protect the privacy and independence of
2 the individual with a disability” in order to be effective. *Id.* § 36.303(c)(1)(ii). The
3 type of auxiliary aid or service necessary to ensure effective communication
4 depends on “the context in which the communication is taking place.” *Id.* The
5 confidentiality of private information is important in determining what auxiliary
6 aid or service would be appropriate, particularly in the health care context where
7 patient privacy is critical. *See id.*

10 As these general and specific prohibitions illustrate, and as recently
11 reaffirmed by the Ninth Circuit, Title III “prohibits anything less than the full and
12 equal enjoyment of places of public accommodation by individuals with
13 disabilities.” *Landis v. Washington State Major League Baseball Stadium Pub.*
14 *Facilities Dist.*, 2021 WL 3891566, --- F.4th --- (9th Cir. Sept. 1, 2021) (citing 42
15 U.S.C. § 12182(a)); *see also Baughman v. Walt Disney World Co.*, 685 F.3d 1131,
16 1135 (9th Cir. 2012) (observing that Title III provides for “more than mere access”
17 and instead guarantees full and equal enjoyment). Full and equal enjoyment is
18 informed, first and foremost, by considering how a public accommodation’s
19 facilities are used by individuals without disabilities and then taking reasonable
20 steps to afford individuals with disabilities a “like experience.” *Baughman*, 685
21 F.3d at 1135 (citing *Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 128–29
22 (2005)); *see also Fortune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1083–84
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1 (9th Cir. 2004) (requiring public accommodation to provide a moviegoer with a
2 disability an adjacent seat for his companion to ensure enjoyment equal to that of
3 moviegoers without disabilities).
4

5 Similarly here, Quest must provide auxiliary aids and services to afford its
6 patients with disabilities a “like experience” and a full and equal opportunity to
7 enjoy its services. *See Baughman*, 685 F.3d at 1135. Quest provides services
8 through a visual and electronic means, the self-service kiosk, and the
9 inaccessibility of Quest’s kiosks allegedly prevents individuals with visual
10 impairments from accessing those services and subjects them to unequal treatment.
11 Quest must furnish auxiliary aids or services that provide individuals with
12 disabilities the same opportunities as those afforded to individuals without
13 disabilities, including services offered through visual and electronic means like its
14 self-service kiosks. *See* 42 U.S.C. § 12182(a) (requiring “full and equal
15 enjoyment”); *id.* § 12182(b)(1)(A)(i)-(ii) (prohibiting the denial of opportunities or
16 provision of unequal opportunities); 42 U.S.C. § 12182(b)(2)(A)(iii) (requiring
17 auxiliary aids or services so that individuals with disabilities are not excluded,
18 denied services, segregated, or treated differently); 28 C.F.R. § 36.303(a) (stating
19 same); *Robles v. Domino’s Pizza, LLC*, 913 F.3d 898, 902, 903–06 & n.4 (9th
20 Cir.), *cert. denied*, 140 S. Ct. 122 (2019) (remanding to district court to consider
21 whether restaurant provided effective communication and “full and equal
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1 enjoyment” to blind patrons where, *inter alia*, restaurant provided allegedly
2 inaccessible website and mobile app for internet ordering and only telephone and
3 in-person ordering options for blind patrons).
4

5 While Quest is correct that the ADA does not mandate that individuals with
6 disabilities achieve identical results or levels of achievement as those without
7 disabilities, 28 C.F.R. pt. 36, App. C (discussion of § 36.201), the statute explicitly
8 prohibits public accommodations, such as Quest, from treating individuals with
9 disabilities differently because of the absence of auxiliary aids and services. *See*
10 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303(a). Relegating patients with
11 disabilities who have scheduled appointments to the bottom of the walk-in waitlist
12 because of a lack of auxiliary aids and services is treating those patients
13 differently. And if walk-in patients without disabilities can opt to wait somewhere
14 other than the waiting room, then patients with disabilities must not be denied the
15 opportunity to do so as well.
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20 To be clear, the United States does not contend that Quest must provide a
21 particular auxiliary aid or service. But whichever auxiliary aid or service Quest
22 ultimately provides, it must ensure effective communication with patients with
23 disabilities and that no patient with a disability is denied services or otherwise
24 treated less favorably than nondisabled patients.
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B. Quest provides “services” covered under the ADA through its self-service kiosks.

Quest contends that it primarily provides health care services, so all this Court should consider is whether Plaintiffs and other patients with disabilities ultimately receive diagnostic testing services by a phlebotomist. MSJ 11. Quest asserts that the functions it provides through its kiosks are not “services” covered under the ADA, because it does not manufacture or sell the kiosks or sell check-in services. MSJ 10–11. Quest’s attempt to limit the ADA’s definition of “service” cannot be squared with the ordinary meaning of the term and Section 12182’s broad statutory mandate.

Because the ADA does not define the term “service,” the Court should give the term its “ordinary, contemporary, common meaning.” *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 227 (2014) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)). One dictionary defines “service” as “a helpful act.” *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/service>. Another defines “service” as “conduct or performance that assists or benefits someone or something.” *Webster’s Third New Int’l Dictionary* 2075 (2002) (cited by *Levorsen v. Octapharma Plasma, Inc.*, 828 F.3d 1227, 1231 (10th Cir. 2016)).

Under any ordinary definition of the term, Quest provides patients access to a “service” through its self-service kiosk. Quest’s kiosks provide a way for

1 patients to schedule or check in for their appointments, input personal information,
2 and choose where to wait until they can be seen by Quest's phlebotomists. In
3 many other medical offices, the patient accesses these same services by
4 communicating directly with a staff person, but Quest has elected not to follow the
5 traditional reception staff model.⁴ Instead, Quest uses a self-service kiosk to
6 perform this "helpful act" that "assists or benefits" Quest's patients.
7

8
9 Indeed, the tasks that Quest has shifted to its self-service kiosks are
10 unquestionably part and parcel of accessing the health care services that Quest
11 provides. But, as explained above, the ADA does not stop at ensuring "mere
12 access" and instead mandates full and equal enjoyment of all "services" that Quest
13 provides, not just its diagnostic testing services. *See Baughman*, 685 F.3d at 1135.
14 Notably, one of Quest's services—the ability to choose to wait in a car or outside
15 rather than the check-in area—poses a significant benefit in light of the rise of
16 COVID-19 as a persistent health issue, and this service is only accessible to
17 individuals who can use the kiosk. In sum, Quest affords patients who can use
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23 ⁴ Prior to introducing the self-service kiosk model, Quest required patients to check
24 in by using a paper sign-in sheet in the waiting room, and Quest's phlebotomists
25 would review the sheet and call each patient. Quest admits that the paper sign-in
26 sheet was inaccessible to individuals with visual impairments but alleges that its
27 phlebotomists were trained to scan the waiting room to identify and assist
28 individuals who need assistance, such as those with disabilities. Quest's prior
process is not in dispute in this litigation and should not weigh on whether its
current processes provide effective communication.

1 kiosks the opportunity to control important aspects of their health care visit, while
2 individuals with disabilities are denied the same opportunity.

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4 **C. Title III’s regulation on “accessible or special goods” does not shield**

5 **Quest from its obligation to provide auxiliary aids or services under the**

6 **ADA.**

7
8 Quest’s reliance on Section 36.307 of the Title III regulations is also
9 misplaced. The regulation states that a public accommodation need not “alter its
10 inventory to include accessible or special goods that are designed for, or facilitate
11 use by, individuals with disabilities.” 28 C.F.R. § 36.307(a). Examples of
12 “accessible or special goods” include “Brailled versions of books, books on audio
13 cassettes, closed-captioned video tapes, special sizes or lines of clothing, and
14 special foods to meet particular dietary needs.” *Id.* § 36.307(c). This regulation
15 applies only to a public accommodation’s tangible goods, and not (as Quest
16 contends) to its services.
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20 The Department, in promulgating this regulation, explained that Section
21 36.307 does not require alterations to “the nature or mix of goods that the public
22 accommodation has typically provided.” 28 C.F.R. pt. 36, App. C (discussion of
23 § 36.307). “In other words, a bookstore, for example, must make its facilities and
24 sales operations accessible to individuals with disabilities, but is not required to
25 stock Brailled or large print books.” *Id.* Quest provides health care services and is
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1 not a retailer of self-service kiosks. Like the bookstore, Quest must make its
2 operations and services, including those provided through the self-service kiosks,
3 equally available to individuals with disabilities.
4

5 The cases that Quest cites in support are inapposite. In those cases, courts
6 determined that Title III does not require insurance companies to modify key
7 contents or terms of their insurance plans so that they are equally valuable to
8 people with disabilities. *See, e.g., Weyer v. Twentieth Century Fox Film Corp.*,
9 198 F.3d 1104, 1116–18 (9th Cir. 2000); *McNeil v. Time Insurance Co.*, 205 F.3d
10 179, 185–88 (5th Cir. 2000). But here, Plaintiffs do not challenge the content of
11 the services that Quest provides, including those provided through its kiosks.
12 Instead, they seek only auxiliary aids and services to fully and equally access
13 Quest’s services. In fact, the Ninth Circuit explained that *Weyer* and *McNeil* do
14 not eliminate the duty of a public accommodation to provide effective
15 communication since, “[b]y its very definition, an auxiliary aid or service is an
16 additional or different service” that must be provided to individuals with
17 disabilities. *Arizona ex rel. Goddard v. Harkins Amusement Enterprises, Inc.*, 603
18 F.3d 666, 672 (9th Cir. 2010).
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24 This Court should similarly reject Quest’s attempts to misapply Title III’s
25 narrow inventory exception to this case. That exception does not override the
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1 statutory duty to provide auxiliary aids and services necessary to ensuring equally
2 effective communication with individuals with visual impairments.

3
4 **CONCLUSION**

5 For the foregoing reasons, the United States respectfully requests that the
6 Court consider this Statement of Interest in this litigation.

7
8 DATED: September 20, 2021

Respectfully submitted,

9
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27 Date
28

CERTIFICATE OF SERVICE

I hereby certify that, on September 20, 2021, I electronically filed the **Statement of Interest of the United States of America** with the Clerk of the Court using the CM/ECF system, which will send Notices of Electronic Filing (NEF) to all registered participants and that paper copies will be sent to those counsel listed as non-registered participants on this same date.

/s/ Christine Kim
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