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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDING
File No. 3-16339

In the Matter of JOHN BRINER, ESQ., et al.	ANSWER OF RESPONDENTS M&K CPAS, PLLC, JON RIDENOUR, AND MATTHEW MANIS

I. Introduction

The Division of Enforcement's dispute with Respondent M&K CPAS, PLLC ("M&K"), Jon Ridenour ("Ridenour"), and Matthew Manis ("Manis") (collectively the "M&K Respondents") in this administrative proceeding is primarily based on its dissatisfaction with the minimal auditing requirements applicable to minimally capitalized development stage companies under Generally Accepted Auditing Standards ("GAAS"). The required audit procedures are minimal because such a company's assets and operations are minimal. As set forth below in detail, M&K did all that was required and more under GAAS and under general auditing practices while auditing the eleven companies which are the subject of this proceeding. If the Commission wants to impose more extensive and costly auditing procedures on small development stage companies, it has the authority to do that both through its oversight of the Public Company Accounting Oversight Board ("PCAOB") and its statutory authority over public accounting under the Securities Exchange Act of 1934. Instead of

rule-making, however, the Division of Enforcement is attempting to heighten and expand auditing requirements by creating new case law in litigation, claiming with benefit of hindsight that the minimal audit procedures applicable were deficient because they did not detect a fraud. If the Division's goal is to shut off access to auditors for such small development stage companies, such litigation will help it, causing auditors to conclude that providing services to such companies is just not worth the business risk, but such claims have no basis under current GAAS.

II. Counter-statement of facts.

The Division's allegations concern eleven development stage mining companies that M&K audited [OIP ¶¶ 27-37]. These companies were introduced to M&K by John Briner, a Canadian attorney with whom M&K had had previous dealings in connection with auditing another client. As evidence at the hearing will establish, it is not unusual in the micro-cap auditing world for an attorney to act as the contact person with an auditor for a group of companies.

The Division has alleged that Briner controlled all of these companies, that the officers and directors were nominees, that none of the officers had in fact purchased stock and capitalized the companies with the de minimis amounts claimed, and that the companies had never in fact purchased the mineral interests described in Forms S-1 from Jervis Exploration, Inc., an entity controlled by Briner. [OIP ¶¶ 2-5, 39-49, 54-56] The M&K Respondents are agnostic on these allegations against Briner and the companies, not having reviewed the Division's evidence and not having any independent knowledge of any of these alleged facts. However, they note that, whatever the legal ownership of the alleged mineral interests and whether the transfers

were consummated, M&K required all of these issuers to fully impair these assets and reduce them to a carrying value of zero.

None of the financial statements for these eleven issuers audited by M&K had cash balances of more than $20,000, none reflected any revenue, all reflected a full impairment charge for the entire balance of their mineral claims, and all reflected that these were exploration stage companies. Further, the financial statements of all of the companies reflected minimal operations and transactions, a net loss, an accumulated deficit, and negative cash flows from operations. All of the issuers were characterized as "an exploration stage company," and M&K's audit opinions contained a going concern qualification for each. The total fees M&K collected for auditing all of these companies was $49,500, which was commensurate with industry standards for the minimal amount of work required under GAAS and performed or exceeded by M&K in auditing small companies with essentially no assets, no revenues, and no operations.

None of the registration statements for these issuers ever went effective. The Division initiated stop order proceedings, and there was never an offer or sale of any of their securities to the best of our knowledge.

III. The Respondents

M&K has been a PCAOB registered public accounting firm since July 18, 2006. As of the latest Exhibit B (client listing) provided to the PCAOB by M&K, M&K has 85 "issuer audit clients" that collectively reported market capitalization of $617,984,119 and revenue of $87,225,065. M&K was ranked number 10 in Accounting News Report's 2012 SEC Registrant Auditor Analysis for number of SEC registrants. M&K has undergone four PCAOB inspections with the latest inspection report having no

comments despite the PCAOB sending eight inspectors to review its files, including one of the highest ranking inspection officials at the PCAOB. It is our understanding that M&K is one of only a few firms auditing this many issuers (nearly a hundred) to have a clean PCAOB opinion. We note that an important part of the PCAOB inspection process concerns evaluating an auditing firm's choices in applying appropriate procedures based on audit risk, user considerations, and cost benefit analysis. M&K's methodology has been strongly endorsed by its PCAOB inspection results, but it is this same methodology that the Division is challenging in this proceeding.

Matthew Manis is a licensed Certified Public Accountant with approximately fifteen years of public accounting experience, including time at KPMG, LLP, and MaloneBailey, LLP. He received his undergraduate degree from the University of Houston. He is a member of the American Institute of Certified Public Accountants and the Texas Society of Certified Public Accountants.

Jon Ridenour is a licensed Certified Public Accountant with approximately ten years of public accounting experience, including time at MaloneBailey, LLP. He received his undergraduate degree from Texas A&M University and his graduate degree from the University of Houston. He is a member of the American Institute of Certified Public Accountants and the Texas Society of Certified Public Accountants.

IV. Specific charges and responses.

The Division repeats the same allegations against M&K a number of times in the OIP with only slight variations and permutations, referenced to a number of different auditing standards. We will summarize and group these factual allegations and provide M&K's response, referencing paragraphs where the allegations appear in the Order

Instituting Administrative and Cease-and-Desist Proceedings ("OIP").

1. General allegations that M&K was negligent in performing inadequate audit procedures.

The Division has alleged generally, in connection with almost every specific complaint below, that M&K's audit procedures were inadequate, failing to expand the scope of their audit beyond the minimum procedures typically used in auditing a small development stage company with minimal assets and operations and failing to ask the kind of questions that might be asked in a fraud investigation.

M&K's response. Paragraph 6 of Auditing Standard No. 10, Supervision of the Audit Engagement, states the following:

> To determine the extent of supervision necessary for engagement team members to perform their work as directed and form appropriate conclusions, the engagement partner and other engagement team members performing supervisory activities should take into account:
>
> a. The nature of the company, including its size and complexity;
>
> b. The nature of the assigned work for each engagement team member, including:
>
> (1) The procedures to be performed, and
>
> (2) The controls or accounts and disclosures to be tested;
>
> c. The risks of material misstatement; and
>
> d. The knowledge, skill, and ability of each engagement team member.
>
> Note: In accordance with the requirements of paragraph 5 of Auditing Standard No. 13, The Auditor's Responses to the Risks of Material Misstatement, the extent of supervision of engagement team members should be commensurate with the risks of material misstatement.

The financial statements of the eleven issuers whose financial statements M&K audited reflected no assets other than a cash balance of $9,570 to $19,825, no

revenue, an impairment charge for the entire balance of their mineral claims, and minimal equity transactions. Further, their financial statements reflected minimal operations, net losses, accumulated deficits, and negative cash flows from operations. They characterized each of them as "an exploration stage company," and M&K's audit opinion contained a going concern disclosure in each case. As described below, M&K required each of the issuers it audited to fully impair the value they carried for their mineral assets. They did not volunteer to do so.

In the view of M&K, all of these factors indicated a low level of risk of material misstatement, and would therefore not require any procedures be performed beyond those called for by their audit programs. M&K performed all procedures called for in the peer-reviewed and PCAOB-reviewed package of tools, audit programs, and practice aids it uses, prepared by Thomson Reuters ("PPC") to meet the requirements of the auditing standards. The PPC materials are used by 90 percent of accounting firms across the United States.

2. Alleged unqualified opinions by M&K.

The Division alleges that M&K issued unqualified opinions on the eleven issuers referred by Briner. [OIP ¶ 69]

M&K's response. This is misleading. M&K included explanatory going concern disclosure in all the audit opinions at issue, stating in each case:

> The accompanying financial statements have been prepared assuming that the company will continue as a going concern. The company does not have a sufficient working capital for its planned activity, and to service its debt, which raises substantial doubt about its ability to continue as a going concern.

3. Alleged failure by M&K to do adequate background checks on company personnel and otherwise assure itself of management integrity.

The Division alleges that M&K's procedures were inadequate to assure itself about the issuers' managements. [OIP ¶ 71-76] Specifically, it complains that M&K did not conduct an investigation of Briner and of Dalmy. It argues that conducting Google searches on the actual officers and directors of the issuers was inadequate without stating why it was inadequate under GAAS and further states that M&K failed to sufficiently question the managements, "which would have revealed Briner's undisclosed role as a control person." [OIP ¶ 77]

M&K's response. M&K followed accepted procedures to investigate management of the issuers. It not only conducted a Google search on management, it checked their names against FINRA's and the SEC's website. It also sent and obtained completed related party questionnaires, fraud questionnaires, and other requests for background information on company practices and policies from all of the clients. There is no requirement under auditing standards that an auditor conduct investigations of attorneys and other professionals providing services to an issuer in connection with a registration. The PCAOB has inspected M&K four times. For each inspection, M&K has explained to the PCAOB exactly what background searches it performs and has shown it evidence that a list of these individuals is maintained. The PCAOB has never once given M&K a comment or finding related to its client acceptance procedures.

Further, M&K had a prior working relationship with Briner based on its audit of Avro Energy beginning in 2008 and no reason to regard Briner with any suspicion when he introduced it to the issuers in dispute. The Division has alleged that the DeJoya Griffith firm had some knowledge of Briner's regulatory problems, but it has not made any such allegations against M&K.

4. Alleged failure by M&K to question overlap of dates, owners and business plans among the companies introduced by Briner.

The Division has alleged that the overlap of certain officers and dates of incorporation of the issuers that Briner referred to M&K should have caused M&K to question the reasons for this overlap, and that it failed to do so. [OIP ¶¶ 78-81] It makes the same allegations with respect to the issuers' business plans, as set forth in the Forms S-1. [OIP ¶85-86]

M&K's response: It's not unusual in the microcap issuer world for multiple development stage or exploration stage companies to employ the same professionals, whether attorneys, accountants, geologists or others. There are economies of scale in doing so. The Division is trying to draw an inference that simply because companies are formed in a short time window or by the same attorney, there is some indication of fraud. M&K has had the experience on a number of occasions of the same attorney, bookkeeper, investment banker, or hedge fund referring a group of companies to it for audits, and it believes that its experience is typical of its peers auditing microcaps. An attorney or other professional with a group of clients, for example, is often able to negotiate a better rate for them. The suggestion that there is something suspicious in an attorney using the same disclosure and business plan template for similarly situated companies is close to frivolous. If the Commission believes it appropriate to require extraordinary audit evidence in the case of microcaps represented by the same attorney, it has that authority, but nothing in current GAAS or auditing practice suggests that such overlaps raise "red flags" of hidden ownership or control and require such extraordinary evidence.

5. Alleged failure by M&K to sufficiently understand the issuers' businesses.

The Division has alleged that M&K failed to adequately obtain an understanding of the issuers and their business environment, relying only on the Forms S-1. [OIP ¶¶ 82-86] It has further alleged that M&K's audits "amounted to no audits at all." [OIP ¶ 5]

M&K's response. Aside from the complaint that M&K did not ask questions relating to any similarities in the issuer's business plans, discussed above, it is not clear what the Division is alleging that there is to understand about such companies without operations that might bear on financial statements showing no revenues and trivial capitalization. Nothing in GAAS requires an exhaustive fraud audit of such companies.

With regard to the Division's claims that M&K accepted the issuer's representations about their business without any questions, we note that all of these issuers came to M&K with significant claims about the worth of their mineral rights. M&K made them write down these valuations to zero. It is important to distinguish the financial statements of the issuers audited by M&K from those of the other issuers audited by the DeJoya Griffith firm, about which the Division complains in this same proceeding. It is our understanding that the mining assets of those other issuers were not fully impaired. M&K noted that the issuers it was auditing were structured in a manner consistent with industry practice, and it used this information to design its audit procedures to minimize the risk of material misstatement. The primary risk was misstatement about the value of the mining properties, which M&K fully mitigated by fully impairing the reported value. The only assets left to audit were the cash balances of the issuers, which M&K did.

6. Alleged inadequate confirmation by M&K of issuer cash held by Briner.

The Division has alleged, without specifying any detail, that M&K failed to obtain adequate audit evidence of the cash that Briner was holding for the issuers in his attorney's trust account. [OIP ¶¶ 88-91]

M&K's response. The confirmations M&K obtained from Briner on the cash he was holding for the 11 issuers, in the $10,000 to $20,000 range in each case, were fully compliant with GAAS and PPC guides that M&K followed. Confirmations from third parties are generally deemed to constitute the highest level of audit evidence available to an auditor. See, e.g., AU 330. Further procedures would have been required only if Briner did not confirm the cash or if M&K had some knowledge or reason to believe it could not trust Briner. Furthermore, M&K had no ability to obtain an accounting of all the funds in Briner's trust account, which would necessarily invade the attorney-client confidentiality of Briner's other clients.

7. Alleged disregard by M&K of inconsistent accounting treatment of Briner's fees by the issuers.

The Division has alleged that M&K failed to perform sufficient audit procedures to reconcile an apparent inconsistency in the issuers' accounting, specifically, that their financial statements did not reflect the fees for the legal and other work which it knew Briner was performing for the issuers. [OIP ¶ 92-95]

M&K's response. The purpose of the attorney letter in the audit process is as a test of completeness of accruals for litigation and amounts due to attorneys. The attorney letters received from the issuers did not indicate missing accruals for litigation or amounts due to attorneys. The form of the attorney request letter M&K used was

compliant with AU 337, and, as previously noted, direct third party confirmation is generally accepted as the highest level of audit evidence available. There is no auditing requirement to test for specific legal expenses. M&K tested expenses and performed a search for unrecorded liabilities under the guidelines of PPC. No additional testing is required by the auditing standards or M&K's audit programs.

8. Alleged disregard by M&K of inconsistent accounting treatment of auditing fees by the issuers.

The Division has alleged that M&K failed to perform sufficient audit procedures to reconcile an apparent inconsistency in the issuers' accounting, specifically, that schedules provided by Briner did not reflect the fees for the audits M&K was performing. It alleges that retainers Briner paid to M&K from his trust account in connection with Stone Boat Mining, Inc., Goldstream Mining Inc., Eclipse Mining, Inc., and PRWC Mining, Inc. were not reflected in corresponding schedules Briner sent relating to his trust account. [OIP ¶ 97-102]

M&K's response. Stone Boat Mining, Inc. and Goldstream Mining, Inc. made payments to M&K of $2,000 each on May 22, 2012, for audits of the balance sheets as of May 31, 2012. These payments were not recorded as a reduction of cash. However, had they been recorded as a reduction of cash, the offsetting increase would have been to prepaid expenses, as these payments were for services that had not yet begun as of May 31, 2012. Both cash and prepaid expenses are current assets. Therefore, the effect on working capital, total assets, and net loss was zero. Eclipse Mining, Inc., Chum Mining, Inc., and PRWC Mining, Inc. made payments of $3,300 each on August 14, 2012 for audits balance sheets as of the July 31, 2012. These payments were

made subsequent to the period under audit and would therefore not be recorded in any manner as of July 31, 2012, nor would they be a subsequent event that would require disclosure.

We also note that AICPA Technical Questions and Answers Guidance Section 5290: Other Expenses states the following Q&A:

> .05 Accrual of Audit Fee
>
> Inquiry-A CPA has been engaged to audit the financial statements of a client company. The audit is being conducted after year end. Is it proper to accrue the audit fee as an expense of the year under audit?
>
> Reply-According to FASB Concepts Statement No. 6, Elements of Financial Statements, paragraph 145 "The goal of accrual accounting is to account in the periods in which they occur for the effects on an entity of transactions and other events and circumstances, to the extent that those financial effects are recognizable and measurable." The audit fee expense was incurred in the period subsequent to year end. Therefore, it is properly recorded as an expense in the subsequent period. However, fees incurred in connection with planning the audit, together with preliminary procedures (for example, confirmation work) would be accruable for the year under audit.

9. Alleged failure by M&K to detect inconsistencies between the issuers' financial statements and registration statements and within financial statements.

The Division has alleged a number of small inconsistencies in the financial statements of various issuers and small inconsistencies between their financial statements and financial information in their Forms S-1. [OIP ¶¶ 103-106 and Appendix C]

M&K's response. Most of the discrepancies listed by the Division are in trivial amounts, in the $1,000 to $2,000 range. These amounts are simply not material in the context of a company with no significant assets, no operations, and no revenues.

Paragraph 2 of Auditing Standard No. 11, Consideration of Materiality in Planning and Performing an Audit, states the following:

> In interpreting the federal securities laws, the Supreme Court of the United States has held that a fact is material if there is "a substantial likelihood that the...fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."

Given the total mix of information available in the Form S-1 registration statement, errors in this range would not be viewed by a reasonable investor as being material. The Division's allegations of materiality ignore the fact that any investors in such exploration stage mining companies are essentially taking a flyer on the possibility of finding valuable minerals on the property, not analyzing whether the company has $14,000 or $16,000 in cash, either amount being grossly inadequate for any future plans.

10. Alleged acceptance by Manis of improper accounting by Stone Boat.

The Division alleges that Manis improperly accepted Stone Boat's accounting for subsequent events, in which it reversed transactions occurring before the close of the reporting period, May 31, 2012, based on events occurring after that same date. The reversed transactions comprised a private placement transaction in the amount of $250,000, two property payments by Stone Boat in the cumulative amount of $142,500 and a legal retainer to Briner in the amount of $10,000. It also alleges that Manis accepted unexplained discrepancies in the cash balance of $106,105 supplied by Briner with the financial statements on June 11, 2012, and a later cash confirmation of $9,570 on July 20, 2012. It also charges Ridenour, as the engagement quality review partner, with failing to evaluate Manis' decisions. [¶¶ 153-160]

M&K's response. There is no evidence that Manis or Ridenour were aware of the transactions referenced by the Division or their subsequent reversal, and they deny being aware of them. Any references to the transactions arise in emails. These transactions were not evident in the trial balance or work papers included in M&K's audit file, which did not include emails, nor were Manis or Ridenour included in any email correspondence regarding these transactions or their rescission. There was no requirement in PPC that Manis review the email correspondence of his staff to which he was not a party or redo all of the auditing work.

When the audit senior performing work on the Stone Boat audit became aware of such purported transactions and requested supporting documentation, he was told that the transactions had not come to fruition and were subsequently cancelled, and he appropriately categorized them as Type 1 subsequent events that should not be reflected in Stone Boat's financial statements. Had these transactions (and the related loan referenced in the next point) been left on Stone Boat's financial statements, they would have shown significant assets and claims which as we now know, with benefit of hindsight, would have been very misleading to investors.

11. Alleged failure by Manis to investigate non-interest bearing loan.

The Division alleges that Manis learned that Briner's law firm had made a non-interest bearing demand loan to Stone Boat but failed to investigate whether this constituted a related party transaction, in contradiction of representations Stone Boat had made that there were no related parties. [OIP ¶ 161-164]

M&K's response. The facts are essentially the same as stated in the preceding response. The loan, which M&K now understands to have been agreed in

connection with asset purchases described above, was not reflected in work papers or audit file. The only reference is in emails which were not included in the audit file, and Manis was not aware of planned transaction. When the audit senior did learn of the loan, asked for documentation and support for these transactions, and was informed that the loan had been not been made and could not be supported, he again appropriately categorized it as a Type 1 subsequent event that should not be reflected in Stone Boat's financial statements. What the audit file does reflect is Briner's confirmation that there are no amounts due to him.

In addition, M&K's procedures for identification and review of related party transactions are consistent with the auditing standards and have been reviewed on multiple occasions by the PCAOB without comment.

12. Alleged failure to investigate whether stock purchases by the issuers' officers were shams.

The Division alleges that schedules which Briner provided to M&K on stock purchases by the officers of the respective issuers were inconsistent with the registration statements on the source of the funds and were further inconsistent on the purchase dates vis-a-vis the dates of incorporation and the dates that the issuers purchased their mineral claims. [OIP ¶¶ 165-169]

M&K's response. The schedules that the Division is referring to are not part of M&K's workpapers, were not in its audit file, and were not reviewed by Manis or Ridenour. Because they are not in the file and because they were not a primary source of audit evidence, we are speculating to some extent on what happened. But if Briner at some point sent them to the audit senior, who challenged them, disregarded them

because they were inconsistent or erroneous, and tied the equity roll forward to other primary sources, this would be typical of auditors' dealings with microcaps. Documents and communications from microcaps usually include numerous errors and inconsistencies, and if such errors and inconsistencies suggested fraud, almost all microcaps would be frauds.

13. Other allegations.

To the extent that the Division has quoted various sections of auditing standards in the OIP, those quotations speak for themselves and do not require a response. To the extent the Division has made any allegations in the OIP about Respondents John Briner, Esq., Diane Dalmy, Esq., DeJoya Griffith, LLC, Arthur DeJoya, Jason Griffith, Chris Whetman or Philip Zhang, the M&K Respondents lack sufficient knowledge to admit or deny them and, accordingly, deny them. To the extent the Division has made any allegations in the OIP about the M&K Respondents or Ben Ortego not specifically admitted or denied in this Answer above, the M&K Respondents deny such allegations. The M&K Respondents specifically deny each and every allegation in OIP ¶¶ 65-106 and 153-169 that they violated PCAOB standards or otherwise failed to comply with GAAS. The M&K Respondents specifically deny each and every allegation in OIP ¶¶ 5 and 180-185 that they violated Section 17(a) of the Securities Act and Rule 2-02 of Regulation S-X and engaged in improper professional conduct.

V. Affirmative defenses.

1. The Division has alleged facts and theories only supportive of negligence, not scienter. There is no basis for charges of fraud under Section 17(a)(1)

2. There was no offer or sale of the securities of M&K's client issuers under

Section 17(a).

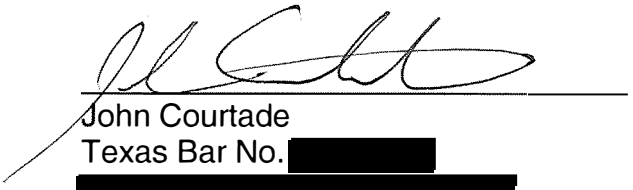
3. This action is barred because of the Division's failure to comply with the requirements of the Dodd-Frank Act (codified in Securities Exchange Act § 4E(a)) to bring an action within 180 days of the Wells notice to the M&K Respondents. The Division did not file this OIP within 180 days and has not carried its burden to show an exception from the requirement.

Conclusion

M&K conducted the audits under attack by the Division with scrupulous attention to generally accepted auditing standards approved by the PCAOB and the PPC audit methodology. These are the same procedures reviewed and approved by the PCAOB in its multiple in-depth inspections of M&K. Following these procedures, M&K appropriately assessed the risk of material misstatements in the issuers' financial statements and took appropriate steps to minimize those risks, most importantly requiring their mineral assets to be fully impaired. The Division's position is that M&K's conduct should be judged not with reference to PCAOB and peer-reviewed methodology but after the fact, with benefit of hindsight and assuming the fraud the Division has discovered in its investigation. If Mr. Briner is assumed to be a fraudster, then everything Mr. Briner did with respect to these issuers constitutes a "red flag." However, Mr. Briner is not assumed to be a fraudster under GAAS, M&K had no knowledge of his previous regulatory difficulties, and conducting an investigation of Mr. Briner because he was a lawyer representing the issuers was not within the scope of M&K's audit procedures or required by GAAS. The M&K Respondents ask that they be judged on whether they carried out their professional responsibilities under GAAS and

that the Administrative Law Judge dismiss the Division's allegations against them in their entirety and provide such other relief to which they may be entitled.

Respectfully submitted,



John Courtade
Texas Bar No. [redacted]
[redacted]

Dated: February 13, 2015

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February 13, 2015

By fax--202.772.9324–and by U.S. Mail

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Securities and Exchange Commission
100 F Street, N.E.
Mail Stop 1090–Room 10915
Washington, D.C. 20549

Att'n: Brent J. Fields, Secretary

Re: In the Matter of John Briner, Esq., et al., Admin. Proc. File No. 3-16339

Dear Mr. Fields:

Please find under cover of this letter the Answer of Respondents M&K CPAS, PLLC, Jon Ridenour, and Matthew Manis in this administrative proceeding. An original will follow by U.S. Mail. If you have any questions, please do not hesitate to contact me.

Very truly yours,

John Courtade

cc: Office of Administrative Law Judges ([redacted]
Jason W. Sunshine, Esq. [redacted]
David Stoelting, Esq. ([redacted]
Jorge Teneiro, Esq. [redacted]
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