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21	PETER VELASCO, et al.,	Case No. 2:13-cv-08080-DDP (VBKx)			
22	Plaintiffs,	FILED UNDER SEAL			
23		PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR			
24	V.				
25	CHRYSLER GROUP LLC,	PRELIMINARY INJUNCTION			
26	Defendant	Defendant.  Date: October 20, 2014 Time: 10:00 a.m.			
27	Dorondant.				
28		Judge: Honorable Dean D. Pregerson Courtroom: 3			

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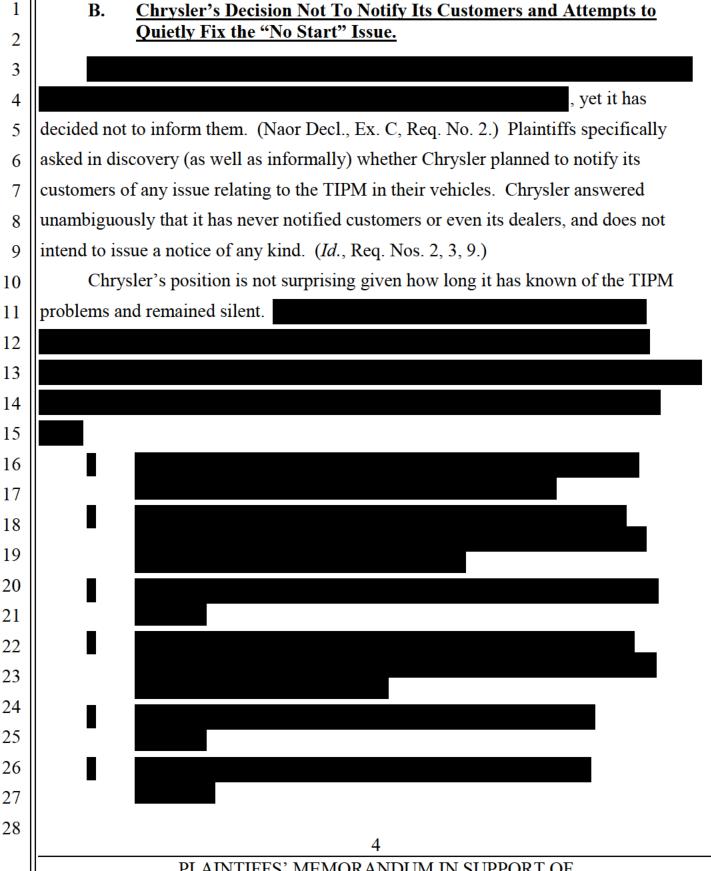
### I. <u>INTRODUCTION</u>

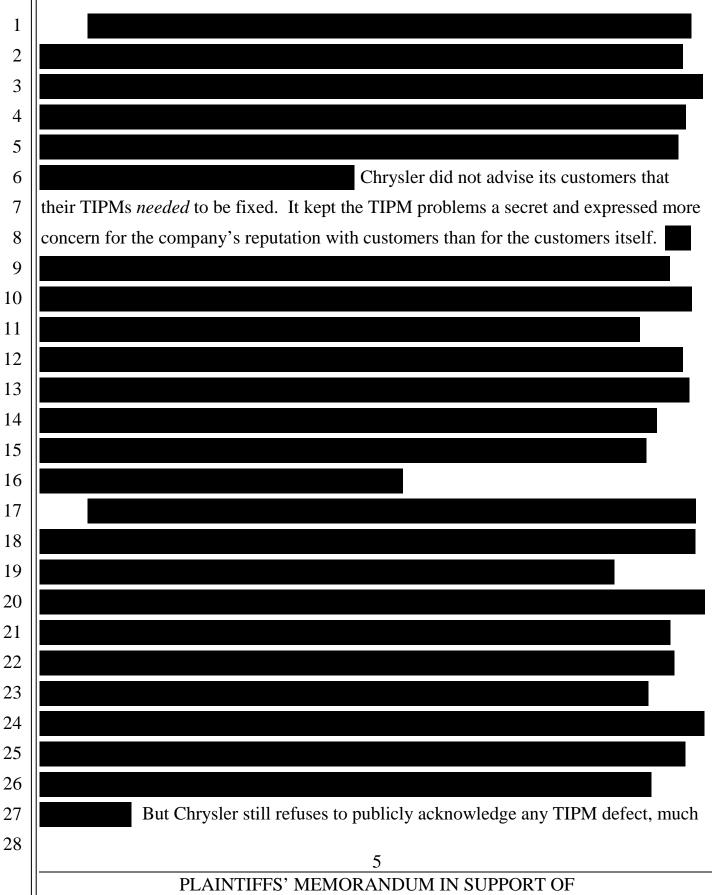
When Plaintiffs filed this lawsuit, alleging that widespread failures of Chrysler's
Totally Integrated Power Modules (TIPMs) were indicative of a systemic defect,
Chrysler called the allegations "long on rhetoric and short on facts." (Doc. 27 at 1.) It
claimed that nothing was wrong with the TIPM and twice moved to dismiss the case on
legal grounds. Now that the Court has allowed the case to proceed, however, Chrysler
has begun producing its internal records, and
Vot Chrysler has never
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	of a potentially dangerous condition in their vehicles—a condition that Chrysler had			
	denied but			
	—cannot wait. The risk of serious injury from widespread TIPM failures and			
	stalling is too high to justify keeping Chrysler's customers in the dark any longer. There			
	is little harm in providing Chrysler's customers with information so they can take			
	precautionary measures during the litigation, but the consequences of not acting could be			
	severe.			
	II. SUMMARY OF FACTS			
	A. <u>Chrysler's Defective TIPM</u>			
	The defective part at issue in this case is the TIPM—a part unique to Chrysler that			
	essentially controls all of the vehicle's electrical functions. The TIPM resides in the			
	engine compartment and is directly connected to the battery. (See Naor Decl., Ex. A at			
	5; Power generated by the battery enters the TIPM, which then			
distributes that power to the rest of the vehicle—as needed—through a series of relays.				
	(See Naor Decl., Ex. A at 5;			
	Because the TIPM is defective, it fails to reliably distribute power throughout the			
	vehicle, resulting in erratic and often unsafe behavior from the vehicle's electrical			
	system. Large numbers of Chrysler owners have reported needing TIPM repairs after			
	they couldn't start their vehicle, stalled while driving, suffered other electrical			
	malfunctions while driving $(e.g., lights turning off, horn blaring)$ , or suffered a dead			
	battery because their vehicle's fuel pump would not turn off. (See, e.g., Naor Decl., Ex.			
	B at 15-17.) So many TIPMs had to be replaced that the part went on national			
	backorder. (Naor Decl., Ex. G, ¶ 4; Ex. K, ¶ 4;			

dealerships have told drivers that the demand for replacement TIPMs is so high that it

1	may be months before their vehicle can be repaired. (Naor Decl., Ex. G, ¶ 4; Ex. K, ¶ 4;
2	Ex. B.)
3	Chrysler has publicly denied that anything is wrong with the TIPM,
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16	A failure rate largely speaks for itself, but it is particularly noteworthy for a
17	part, like the TIPM, that is integral to vehicle operation and is expected to last the life of
18	the vehicle.
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25	and indicative of a very serious TIPM defect that Chrysler owners need to be made
26	aware of.
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less inform its customers that so that they can take steps to protect themselves.

By failing to inform its customers or even its dealerships of the TIPM defect, Chrysler has left drivers to discover it the hard way. Plaintiffs' counsel has heard from over 500 consumers who have suffered TIPM-related problems, including difficulty starting the vehicle, stalling, or stuck-on fuel pumps. (Naor Decl., ¶ 7.) NHTSA's online record of complaints reveals over 300 similar complaints. (*Id.*, ¶ 4.) The Center for auto Safety has received at least 70 complaints related to the TIPM. *See* <a href="http://www.autosafety.org/sites/default/files/imce\_staff\_uploads/TIPM%20Complaint%20without%20email.pdf">http://www.autosafety.org/sites/default/files/imce\_staff\_uploads/TIPM%20Complaint%20without%20email.pdf</a>. And TIPM-related problems are currently the #1 and #2 complaints on <a href="http://www.carComplaints.com">www.CarComplaints.com</a>.

It is bad enough when drivers are left stranded because of an inability to start their vehicles, but the real danger occurs when the TIPM fails on the road—which, as first-hand accounts show, can be a harrowing experience:

I was on the way to work one morning with my stepson in the car when the car's engine suddenly lost power while we were traveling at around 55 miles per hour on a main street. Fortunately, I was able to coast to the side of the road and put on my hazard lights. When the car stalled, my heart was racing and I kept thinking "Oh my God, the car just shut off." My stepson could tell I was very frightened, and tried to calm me down.

(Id., Ex. E, ¶ 3.)

During the first week of September, the car's engine went dead while I was driving out of the parking lot of my son's school after dropping my son off. There was no warning that the car was about to stall, and I was very shocked when the car suddenly lost power. At the time the car stalled, I was making a left turn and another car was coming toward me. My car died while I was in front of the oncoming car, which was very frightening. I tried to turn the car back on, but the car cranked and would not start, so I turned on my hazard lights and hoped that the oncoming car would not hit me. Fortunately, the oncoming car had enough time to come to a full stop

and avoid a collision. I eventually got the car to turn on, and I pulled over to the side of the road.

(*Id.*; Ex. F,  $\P$  4.)

We also experienced a fearful and life-threatening event in the form of a complete loss of power in our vehicle. My husband was driving in town and merged into the middle lane in order to make a left-hand turn out of traffic. Suddenly, the vehicle completely shut off. My family was left shaken that this happened with our Dodge.

(*Id.* Ex. G,  $\P$  3.)

Plaintiffs have submitted 11 declarations from Chrysler customers whose vehicles stalled while they were driving, and have heard from several others who had similar experiences. (Naor Decl.,  $\P$  7; Ex. E-O.) Of the complaints submitted to NHTSA, at least 70 report stalling. (Id.,  $\P$  4.) There are undoubtedly many more incidents that have not been reported,

#### III. <u>LEGAL ANALYSIS</u>

The Court may issue a preliminary injunction to protect consumers from harm pending the outcome of this litigation if the record establishes: (i) a likelihood of success on the merits; (ii) irreparable harm is likely to result in the absence of preliminary relief; (iii) the balance of hardships and equities favors consumers; (iv) an injunction is in the public interest. *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1044 (9th Cir. 2012) (affirming preliminary injunction in putative class action). These elements are typically evaluated on a sliding scale, "so that a stronger showing of one may offset a weaker showing of another." *Towery v. Brewer*, 672 F.3d 650, 657 (9th Cir. 2012). For example, if the balance of hardships tips sharply toward consumers, the Court may issue a preliminary injunction even if Plaintiffs have only raised "serious questions" going to the merits." *Id*.

An analysis of each element shows that a preliminary injunction is warranted, particularly in light of the safety risks and irreparable damage consumers will suffer if they continue to drive a class vehicle unaware that it may stall at any time.

A. Plaintiffs Are Likely to Prevail on the Merits.

This lawsuit alleges that Chrysler has unlawfully withheld material information from its customers—namely, that the TIPM in their vehicles is defective and poses a safety hazard. (2nd Am. Compl. [Doc. 39], ¶¶ 108, 116, 124, 129, 136, 146.) Chrysler has already sought dismissal of Plaintiffs' claims on legal grounds—arguing that, even if Plaintiffs' allegations of dangerous TIPM defect were true—it would not be obliged to

disagreed and ruled that—assuming the facts stated in the complaint turned out to be true—Chrysler would have a legal duty to disclose the TIPM defect under state consumer protection laws. (*See* 8/22/14 Order [Doc. 46] at 11-12 ("Courts have routinely found that an auto manufacturer's alleged failure to disclose a material defect

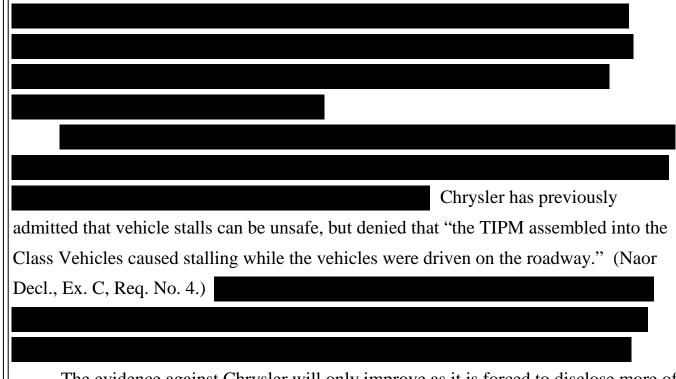
tell its customers. (See Mot. to Dismiss 2nd Am. Compl. [Doc. 42].) The Court

can be the basis for a claim under each statute.").)

The issue now is not whether Plaintiffs' claims are legally viable, but whether they are likely to succeed in proving the facts upon which their claims are premised—or

at least raise factual questions "serious enough to require litigation." *Pimentel v.* 

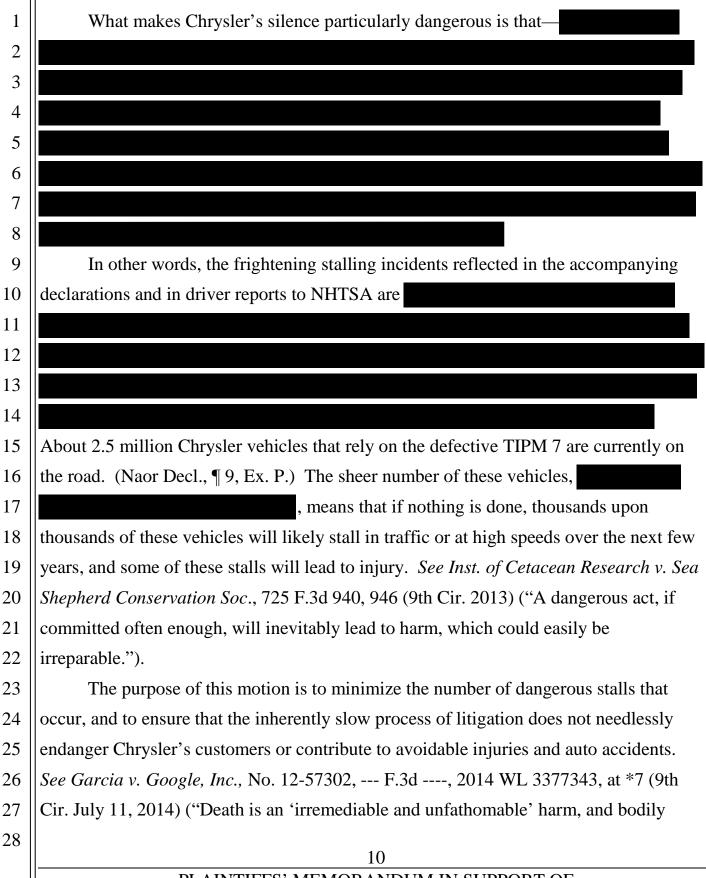
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		n Cir. 2012).	r, 670 F.3d 1096, 1106 (9th	Dreyfus,
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The evidence against Chrysler will only improve as it is forced to disclose more of its internal records. To date, it has yet to electronically search its email or other databases and has only turned over documents manually collected by select individual employees. Yet the evidence now before the Court at this early stage is already rather strong and indicates that Plaintiffs are likely to prevail on the merits of their claims.

# B. <u>Chrysler's Customers Stand To Suffer Irreparable Harm If A</u> <u>Preliminary Injunction Is Not Issued.</u>

The risk of irreparable harm to consumers if Chrysler continues to conceal stalling dangers posed by its TIPMs is quite severe. Driving a vehicle that could lose power at any time is obviously rather dangerous, as Chrysler has acknowledged and as several courts have held. *See, e.g., Howard v. Ford Motor Company*, No. 763785-2, CCH Consumer Prod. Safety Guide ¶ 75,652, 2009 WL 3620336 (Cal. Super. Ct., Alameda Cty., Oct. 11, 2000) ("stalling, under almost any circumstances, presents an unreasonable risk to automobile safety and to the safety of the occupants of any such automobile") (collecting cases).

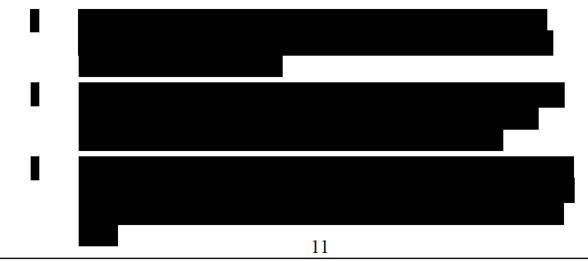


injury is not far behind. To the extent the irreparable harm inquiry is at all a close question, we think it best to err on the side of life.") (citation omitted).

# C. The Balance of Hardships and the Equities Tip Sharply in Favor of Chrysler's Customers.

The Ninth Circuit has made clear that when "faced with a conflict between financial concerns and preventable human suffering, we have little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor." *Rodde v. Bonta*, 357 F.3d 988, 999 (9th Cir. 2004). Such is the case here. If the injunction is granted and Chrysler ultimately prevails on the merits, the hardship it will have suffered would be purely financial: the administrative cost of communicating with its customers. If, on the other hand, an injunction is not granted, those customers will be unnecessarily placed in harm's way and thousands will suffer avoidable, potentially catastrophic, vehicle stalls while driving.

The communication that Chrysler provides to its customers need not be inflammatory or make the company look bad. Chrysler could frame the notice as it sees fit, subject to Plaintiffs' review and the Court's approval. The notice need not even mention a "defect" if Chrysler still maintains that the TIPM failures do not rise to the level of a defect. At this point in the proceedings, Plaintiffs ask only that, at a minimum, Chrysler share with its customers and dealerships some key information that it has already acknowledged internally:



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This information should be non-controversial in light of Chrysler's own records, and would avoid pre-judging the merits of the parties' dispute. The issue of who is at fault and who should pay for TIPM replacements can await a full trial on the merits. But Chrysler's customers should be given enough information now so that they know vehicle stalling is a possibility and take steps to avoid it. As several of the declarations and customer accounts provided to NHTSA illustrate, when vehicles have stalled in traffic, the stalls were often preceded by other symptoms of a failing TIPM—most often, difficulty starting the engine. (Naor Decl., Ex. B; E-G.) Many times, customers even took their vehicles in for service after experiencing the "no start" issue, but the dealership was initially unable to replicate or correctly diagnose the problem because Chrysler had not told them about the widespread TIPM problems either. (*Id.*, Ex. B, O.) If customers and dealerships are told what symptoms to be on the look-out for, the risk of vehicle stalls could be sharply curtailed. In addition, by providing this information, customers and dealerships could ensure that their TIPMs are inspected or replaced regularly to further reduce their risk—something that no customer or dealership would otherwise think of doing.

#### D. TIPM Problems Are A Matter of Public Interest.

The danger posed by TIPMs is not limited to harming only Chrysler customers. Anyone on the road when a TIPM fails is at risk, making TIPM problems a matter of public interest, and awareness of those problems a matter of public safety. Granting the proposed injunction would therefore benefit drivers, passengers, and pedestrians across the country. By looking out for TIPM-related symptoms and replacing their TIPMs before the defective part triggers a stall in traffic, Chrysler customers will be looking out for the public's safety as well as their own.

### E. Provisional Class Certification Is Optional.

The Court is not required to certify the putative classes before issuing the proposed preliminary injunction. *See Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1019 (C.D. Cal. 2011), *aff'd*, 693 F.3d 1022 (9th Cir. 2012) ("the equivalent of

class-wide relief may still be appropriate despite the fact that a class has not yet been certified"); Conte & Newberg, *Newberg on Class Actions* § 24:83 (4th ed. 2002) ("The absence of formal certification is no barrier to classwide preliminary injunctive relief.").

Some courts have, however, provisionally certified a class, solely for the purposes of issuing a preliminary injunction. *Meyer*, 707 F.3d at 1040. If the Court chose to do so here, it would be well justified, as each of Plaintiffs' proposed state-wide classes meet requirements of Rule 23(a) and 23(b)(2). (*See* 2nd Am. Compl., ¶ 97 (proposing California, Florida, Maryland, Massachusetts, and Missouri classes).)

Rule 23(a)(1): The members of each proposed class number in the thousands, far too many to individually join in a single action. (

Rule 23(a)(2): Consumer claims for failing to disclose an automotive defect involve on a number of common questions. In particular, whether the TIPM is a defective part and whether that fact would be considered material by a reasonable consumer are central issues that can be decided for all class members in a single proceeding. *See Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010) (finding commonality satisfied in auto defect action asserting consumer protection violations).

Rule 23(a)(3): Each state-wide class would be represented by a named plaintiff with substantially same state law claims against Chrysler for failing to disclose the TIPM defect and its safety implications. *Id.* at 1175.

Rule 23(a)(4): The named plaintiffs would be adequate representatives of the proposed classes, as their interests in pursuing state consumer protection claims are aligned with those of the class, and they have retained counsel experienced in class-wide auto defect litigation to represent the class.

Rule 23(b)(2): Chrysler has refused to act on grounds that apply generally to each state-wide class of consumers, rendering class-wide injunctive relief appropriate.

Chrysler has acknowledged in discovery that it has never informed its customers or

dealerships of any TIPM problem or issue, and that it has no intent to do so. (Naor Decl., Ex.C, Req. Nos. 2, 9.)

### F. The Court Also Possesses the Authority to Order Dissemination of Information to the Putative Classes Under Rule 23.

In addition to its equitable authority to issue a preliminary injunction, the Court also possesses discretion under Rule 23(d) to protect class members by ordering that they be notified of the existence of this lawsuit and dispute over the risks posed by their vehicle's TIPM. There is no requirement that a class be certified before the Court can direct communications with class members. For example, Rule 23(d) has been used to correct misinformation provided to proposed class members, as well as to communicate with proposed class members after certification has been denied. *O'Connor v. Uber Techs. Inc.*, No. C-13-3826 EMC, 2014 WL 1760314, at \*4 (N.D. Cal. May 2, 2014) ("a court's authority over communications under Rule 23(d) extends beyond 'actual class members' to 'potential class members'"); *Puffer v. Allstate Ins. Co.*, 614 F. Supp. 2d 905, 915 (N.D. Ill. 2009) ("it is appropriate to exercise our authority under Rule 23(d)(1)(B)(i) to direct that notice be given to putative class members").

Usually, there is no harm in waiting to inform class members about pending litigation and its allegations until class certification is decided. There is typically nothing that an ordinary class member would do differently if they knew about a dispute, and it is not until the opt-out phase that class members would stop to consider their choices. Here, however, many class members would act differently if they were told about the TIPM dispute. Unless their TIPM has already failed, most have never heard of a TIPM, much less that it may be defective and lead to widespread stalling, inability to start the engine, and other aberrant behavior in their vehicles' electrical system. Informing class members of Plaintiffs' class-wide allegations now, rather than after certification, will give drivers additional time to decide whether they want to act on those allegations and take steps to ensure their safety—whether it be by inspecting their TIPM regularly or replacing it at the first sign of electrical problems. It will also ensure

that class members preserve evidence, such as repair receipts, so that they can prove their individual damages in the event Chrysler is found financially liable. Again, the notice need not disparage Chrysler, but it should give class members an early opportunity to benefit from the action brought in their name and mitigate the harm they stand to suffer as a result of an allegedly defective TIPM.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court issue a preliminary injunction requiring Chrysler to share its knowledge of TIPM problems with its customers so they can take precautions during the litigation. Plaintiffs have submitted a proposed injunction with their motion.

DATED: September 18, 2014 Respectfully submitted,

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