

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 400
8400 Corporate Dr #200
Landover, MD 20785

GABRIEL WITTES
c/o Handley Farah & Anderson PLLC
1201 Connecticut Avenue NW
Suite 200K
Washington, D.C. 20036

Plaintiffs,

v.

UNION KITCHEN LLC
1369 New York Ave. NE
Washington, D.C. 20002

CULLEN GILCHRIST
23 Bryant St. NW
Washington, D.C. 20001

Defendants.

Civil Action No.:

COLLECTIVE ACTION COMPLAINT

INTRODUCTION

1. This is a suit for unpaid wages under District of Columbia law. It is brought as a collective action, as an individual action on behalf of Plaintiff Gabriel Wittes, and by United Food and Commercial Workers, Local 400 (“Local 400”), a labor organization whose members are and were aggrieved by violations of District of Columbia law (collectively, “Plaintiffs”). This suit asserts that defendants Union Kitchen LLC (“Union Kitchen”) and Cullen Gilchrist (collectively,

“Defendants”) employed Plaintiff Wittes and others similarly situated and is liable for the alleged violations of law.

2. Plaintiff Wittes, individually and on behalf of all others similarly situated, by and through his undersigned attorneys, brings this action against Defendants seeking all available relief to remedy Defendants’ underpayment of and retaliation against Plaintiff Wittes and others similarly situated. Specifically, Plaintiff Wittes alleges that Defendants failed to pay him and others similarly situated their legally mandated wages and retaliated against them in violation of the District of Columbia’s Wage Payment and Collection Law (“WPCL”), D.C. Code § 32-1301 *et. seq.*

3. Since at least 2020, Union Kitchen received payments at its store locations in Washington D.C. for food and beverage products it sold to customers. When paying by credit card, debit card, Apple Pay, or Cash App, customers were given the option to leave a tip for employees of Union Kitchen. Customers were also able to leave cash tips. Many customers generously left tips for Plaintiff Wittes and other Union Kitchen employees.

4. Plaintiff Wittes and other Union Kitchen employees received pay stubs from Union Kitchen showing a line item, either for “reimbursements” or “tips” which they believed reflected the full amount of tips that they had earned in customer transactions. But Plaintiff Wittes’ colleague, another Union Kitchen employee, discovered in July 2021 that the tips on her pay stubs did not match the tips actually paid by customers. This colleague explained the discrepancy to Plaintiff Wittes who identified similar problems with his own compensation. Rather than transmit the full amount of these tips to Union Kitchen employees as required by D.C. law, Defendants had retained a portion of the tips each employee earned.

5. When Plaintiff Wittes and another Union Kitchen employee confronted Defendants with their unlawful compensation practices, Defendants refused to remedy the problem and pay Plaintiff Wittes the amounts he was owed. Instead, Defendants instituted a new tip pooling policy purporting to comply with the law going forward, but otherwise refused to accurately calculate and pay the amount Plaintiff Wittes and other Union Kitchen employees had already been underpaid.

6. When Plaintiff Wittes and his colleagues asserted their rights to accurate repayment, Defendants retaliated against them by eliminating their ability to receive tips altogether. In effect, this policy change substantially reduced Plaintiff Wittes' wages.

JURISDICTION AND VENUE

7. This court has jurisdiction over this claim and venue is proper because Union Kitchen is organized under the laws of the District of Columbia, maintains its principal place of business in the District of Columbia, and a substantial part of the events giving rise to Plaintiffs' claims occurred in the District of Columbia. D.C. Code §§ 11-921; 13-422; 13-423. Defendant Gilchrist resides in the District of Columbia.

PARTIES

8. Plaintiff Local 400 is a labor organization that represents workers in the retail grocery and food industry, among other sectors. On June 29, 2022, the National Labor Relations Board certified Local 400 as the exclusive bargaining representative of members of a bargaining unit at Union Kitchen who fall into the following categories: “[a]ll full-time and regular part-time team members in training, team members, trainers, and shift leads employed by [Union Kitchen].” Current and former members of this bargaining unit represented by Local 400 suffered the violations described herein. Wage theft at Union Kitchen was one driving factor behind Union

Kitchen employees' decision to become members of the bargaining unit represented by Local 400.

9. Plaintiff Gabriel Wittes was employed by Union Kitchen in the District of Columbia. From approximately December 2019 through March 2020 and again from May 2021 through April 2022, he was employed by Union Kitchen at its 3rd Street Location and K Street Location, where he performed work including customer transactions, food preparation and barista services. Plaintiff Wittes is a former member of the bargaining unit represented by Local 400 and continues to maintain his status as a member of Local 400.

10. Defendant Union Kitchen is a food business accelerator based in the District of Columbia. Union Kitchen operates five stores in the District of Columbia.

11. Defendant Cullen Gilchrist is the Chief Executive Officer and beneficial owner of Union Kitchen and works in the District of Columbia.

FACTUAL ALLEGATIONS

12. Between 2019 and 2022, Plaintiff Wittes and other similarly situated individuals provided customer transaction, food preparation, building maintenance, and related services for Union Kitchen at two of its five District of Columbia locations: 1301 K Street NW, Washington, D.C. 20005 (the "K Street Location") and 538 3rd Street NE, Washington, D.C. 20002 (the "3rd Street Location"). Union Kitchen employees similarly situated to Plaintiff Wittes provided these services at Union Kitchen's three other District of Columbia locations and one Virginia location: 1924 8th Street NW, Washington, D.C. 20001; 1251 9th Street NW, Washington, D.C. 20001; and 1625 Eckington Place NE, Washington, D.C. 20002; and 4102 Wilson Blvd, Arlington, VA 22203.

13. Defendants controlled and directed the services of Plaintiff Wittes while he was employed by Union Kitchen.

14. Defendants controlled and directed the services of individuals similarly situated to Plaintiff Wittes while those individuals were employed by Union Kitchen.

15. Plaintiff Wittes' work was within the usual course of Union Kitchen's business.

16. Plaintiff Wittes was not engaged in work that is customarily an independently established trade and was not an exempt employee.

17. While employed at Union Kitchen, Plaintiff Wittes and similarly situated individuals were not paid all wages earned. Specifically, Defendants failed to pay Plaintiff Wittes the tips to which he was entitled under District of Columbia law.

18. From August 30, 2021 through October 25, 2021 alone, Defendants underpaid Plaintiff Wittes at least \$418.58.

19. Individuals similarly situated to Plaintiff Wittes experienced similar wage and hour violations while employed by Union Kitchen.

20. When a customer buys a product at Union Kitchen using a credit card, debit card, Apple Pay, or Cash App, she pays using the point-of-sale payment processing system, Square. During checkout, customers may select an additional amount to tip the Union Kitchen employees who serve them. Using a password set by the company, it is possible for employees to view sales reports on the Square system, including a breakdown of the tips paid by customers. As of July 2021 and until November 2, 2021, Plaintiff Wittes had access to Square sales reports.

21. Union Kitchen pays its employees through the payroll system, Rippling. In Rippling, employees can see a breakdown of their pay, including wages and tips. Prior to October 21, 2020 Rippling labeled Union Kitchen employees' tips as "reimbursements." On October 21,

2020, Lauren Watkins of Union Kitchen emailed employees noting that, going forward, tips would appear on employees' pay stubs as "Tips."

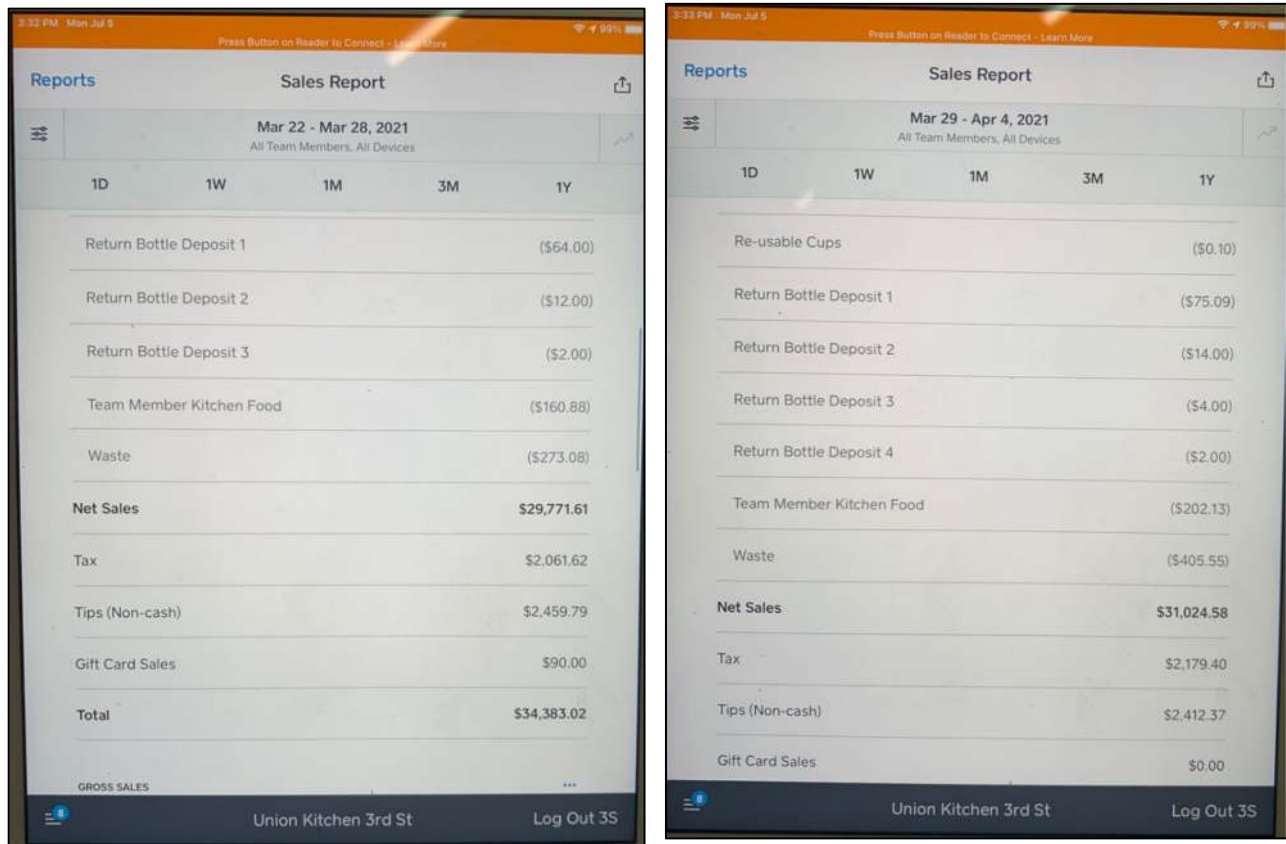
Plaintiffs Identify Underpayment of Tips

22. In July 2021, Plaintiff Wittes' colleague compared her Rippling pay stubs and Square sales reports and noticed discrepancies between the amount of tips paid by customers and the amount of tips she received in her paycheck. When she informed Plaintiff Wittes about the discrepancy, Plaintiff Wittes also identified differences between his own pay stubs and the Square sales reports.

23. For example, the colleague's April 16, 2021 Rippling pay stub stated that she had earned \$343.57 in tips during the pay period from March 22, 2021 through April 4, 2021:

EARNINGS	RATE	HOURS	CURRENT	YTD
Base Pay	\$17.00	79.78	\$1,356.32	\$7,608.35
Overtime(1.5x Base)	\$25.50	5.02	\$127.92	\$456.87
Tips	-	-	\$343.57	\$2,155.04
COVID-19: Emergency Sick Leave Personal	\$17.00	0.00	\$0.00	\$229.50

24. But Square sales reports show that tips at the 3rd Street Location from March 22, 2021 through March 28, 2021 totaled \$2,459.79 and from March 28, 2021 through April 4, 2021 totaled \$2,412.37.



25. Plaintiff Wittes' colleague worked 82 hours over those two weeks, equal to approximately 14% of the total hours worked by all tip-eligible employees at the 3rd Street Location. If Defendant Union Kitchen had properly pooled and distributed tips, this employee should have received \$681.48 for the March 22, 2021 through April 4, 2021 pay period. She was therefore underpaid by \$337.91 during that period.

26. Plaintiff Wittes was similarly underpaid by Union Kitchen at least for several months in 2021 and possibly earlier.

27. On July 6, 2021, Plaintiff Wittes' colleague informed Union Kitchen employee Andrew Geffken that she had noticed a discrepancy between the tips paid by customers and the pay she received in her Rippling pay stub. Mr. Geffken responded that Defendant Union Kitchen would hire a labor law firm to review the "methodology, accounting, and tip pooling arrangement to see if there have been any errors or anything that needs to be fixed." He added that "if our review shows Union Kitchen paid incorrectly at all, then we will make reimbursements immediately to each impacted team member."

28. For several months following that email exchange, Defendant Union Kitchen made no changes to its tip pooling practices and Plaintiff Wittes continued to find underpayment of tips on his pay stubs.

Defendants Admit Wrongdoing

29. On October 1, 2021, Defendant Union Kitchen notified employees by email that they would be receiving one-time "bonuses" which were meant to "reward Team Members who participated in the tip pool previously." Defendant Union Kitchen further stated that it would institute a "new tip pool policy." To calculate the bonuses, Defendant Union Kitchen claimed that it would "apply the new tip pool policy to all tips collected on or after January 1, 2020." Discrepancies between Plaintiff Wittes' pay stubs and the Square sales reports remained at least until October 18, 2021 when Union Kitchen's revised tip pooling policy became active.

30. On October 8, 2021, Plaintiff Wittes' colleague received an email from Defendant Gilchrist stating that she would receive a one-time bonus of \$3,135.24. No information was provided in the email concerning how that figure was calculated or whether it was meant to compensate for Defendants' underpayment of the employee's wages. Plaintiff Wittes also received a bonus from Union Kitchen.

31. Plaintiff Wittes and his colleague sought a meeting with Union Kitchen management to understand the basis for the calculation of their bonuses and to gain confidence that they had been appropriately compensated. In the meeting that followed, Defendant Gilchrist admitted that Union Kitchen's past compensation practices violated D.C. law.

32. On November 2, 2021, Plaintiff Wittes and his colleague met with Defendant Gilchrist concerning Union Kitchen's failure to compensate its employees for tips they earned. According to Defendant Gilchrist, Union Kitchen had hired a labor law firm to assess its compensation practices, pursuant to which the law firm provided its "opinion of some things that [Union Kitchen was] doing and helped [Union Kitchen] realign to . . . make a better plan for improving" those compensation practices. He added that the law firm recommended that Union Kitchen amend its tip pooling practices and procedures based on the law firm's "view of how the tip and wage rules" operate and what Union Kitchen "can and can't do." Mr. Gilchrist acknowledged during the meeting that Union Kitchen "misunderstood some things and took a look at what those things were, took a look at how we could make those things better for the future and how could we, looking back, make sure that everyone was compensated above and beyond whatever money otherwise would have come their way." He directly acknowledged Union Kitchen's wrongdoing: "Things weren't right."

33. During the November 2, 2021 meeting, Defendant Gilchrist refused to explain the basis of Plaintiff Wittes' bonus and stated that Union Kitchen had not specifically calculated the amount it underpaid Plaintiff Wittes or other Union Kitchen employees. Plaintiff Wittes' colleague asked Defendant Gilchrist to confirm whether Union Kitchen "went back and looked at all my paychecks and said she was missing this much this week and this much that week."

Defendant Gilchrist stated that the bonus “was not calculated in the manner that [Plaintiff Wittes’ colleague] did in [her] spreadsheet.”

34. Plaintiff Wittes’ colleague explained to Defendant Gilchrist the method by which she had calculated the underpayment on her spreadsheet. She reviewed the tips she should be receiving by reviewing sales reports on the Square payment platform. Before this meeting, Defendant Gilchrist was not aware that employees could determine the amount of tips they were owed: “I didn’t know you could see that.” He added, “I think it’s important that there is transparency. I don’t necessarily agree that everyone should see all their transaction history.”

35. In an email that same day, Defendant Gilchrist again acknowledged that the company had underpaid Plaintiff Wittes and his colleague: “Mistakes happen, small and large, and we acknowledge them, do our best to fix them, and chart a course that removes them. . . . Your review of the laws around tipping and your spreadsheets and your advice have spurred us to look deeper and make innovations and improvements. I am pleased with our tip pooling policy in the current handbook.”

Defendants Remove Tip Transparency

36. On November 2, 2021, the same day that Defendant Gilchrist learned that Plaintiff Wittes and his colleague were able to calculate their tips by viewing Square sales reports, Defendants changed the passcode employees used to gain access to those reports.

37. Plaintiff Wittes, his colleague, and Defendant Gilchrist met again on December 7, 2021. Defendant Gilchrist stated to Plaintiff Wittes that Union Kitchen had revoked access to Square sales reports because employees were not supposed to have access to the Square tip information. Defendant Gilchrist suggested that the person responsible for allowing employees to see their tips on the Square system no longer worked at Union Kitchen because Plaintiff Wittes

and his colleague never “should have seen that data.” He said the data was available because “someone was sharing the passcode that shouldn’t have been sharing it, which is a major breach of someone’s responsibility.” Defendant Gilchrist added that “those people may or may not work here anymore.”

38. Plaintiff Wittes asked Defendant Gilchrist why employees became unable to access sales reports on the Square platform on the same day that they had met with Defendant Gilchrist concerning the underpayment of tips. He responded, “I don’t know, coincidence I guess.”

39. But removal of employees’ ability to verify their tips on the same day that the Plaintiff Wittes met with Defendant Gilchrist was not a coincidence. On the same day Defendant Gilchrist became aware that employees used Square to verify their tips, Defendant Gilchrist posted on a company message board that access to the sales and tip information was confidential and should not be accessed by employees. In addition, other Union Kitchen employees at the 3rd Street Location told Plaintiff Wittes they understood that “someone had done something bad at K Street and that is why [Square sales reports were] taken away.”

40. Defendant Gilchrist informed Plaintiff Wittes and his colleague separately that they and other Union Kitchen employees can request tip information “from here on out,” but that past tip information was not available to them. Union Kitchen employees could email a list-serve and would be provided with tip information relevant only to them.

41. At the conclusion of the December 7, 2021 meeting, Plaintiff Wittes’ colleague presented to Defendant Gilchrist a petition signed by employees (including Plaintiff Wittes) demanding that access to the Square sales reports be returned to employees.

Defendants Retaliate By Removing The Option For Tips

42. Less than two months after Plaintiff Wittes and his colleague delivered their petition to Defendant Gilchrist, Defendants removed the option for customers to tip employees using the Square payment platform. Defendants also removed cash tip jars from Union Kitchen store locations.

43. In late December 2021, Plaintiff Wittes first learned from other Union Kitchen employees that management intended to remove the option for employees to receive tips.

44. On January 17, 2022, Defendant Gilchrist emailed Union Kitchen employees, stating that Union Kitchen had decided to remove the option for customers to tip employees by their credit cards. Defendants also removed cash tip jars from its store locations. This policy was implemented on February 14, 2022. Plaintiff Wittes' inability to obtain tips from credit card transactions and the removal of cash tip jars substantially reduced his total wages.

COLLECTIVE ACTION ALLEGATIONS

45. This action is maintainable as an opt-in collective action pursuant to DC Code § 32-1308.

46. Defendants failed to pay Plaintiff Wittes all wages due, as required by the WPCL.

47. This action can, and should, be maintained as a collective action for all claims to include unpaid wages and liquidated damages that can be redressed under the WPCL.

48. Plaintiffs seek certification of these claims as a collective action on behalf of all individuals who received tips and were employed by Union Kitchen prior to February 14, 2022.

49. Members of the proposed collective action are similarly situated.

50. Members of the proposed collective action have been subjected to the same or substantially the same pay policies and practices.

51. Members of the proposed collective action have been subjected to the same or substantially the same policy or practice that required or permitted them to perform work for the benefit of Defendants, without compensation for all wages due.

52. The identities of the members of the proposed collective action are known to Defendants and can be located through Union Kitchen's records.

53. These individuals would benefit from the issuance of court-supervised notice and the opportunity to join the lawsuit.

54. Plaintiff Wittes and the members of the proposed collective action should therefore be permitted to pursue their claims collectively on their own behalf and on behalf of all individuals who were employed by Defendants and were not paid their lawfully owed wages.

55. Plaintiff Wittes hereby consents to be a plaintiff in this action. If this case does not proceed as a collective action, Plaintiff Wittes intends to seek relief individually.

CAUSES OF ACTION

COUNT I

FAILURE TO TIMELY PAY WAGES (Against All Defendants)

56. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs.

57. D.C. Code § 32-1302 provides that “[a]n employer shall pay *all wages earned* to his or her employees on regular paydays designated in advance by the employer and at least twice during each calendar month” (emphasis added).

58. Wages are defined as “monetary compensation after lawful deductions, owed by an employer for labor or services rendered, whether the amount is determined on a time, task,

piece, commission, or other basis of calculation,” which includes tips earned by employees. D.C. Code § 32-1301(3).

59. D.C. Code § 32-1303 further provides that “[w]henver an employer discharges an employee, the employer shall pay the employee’s wages” within four days and that “[w]henver an employee ... quits or resigns, the employer shall pay the employee’s wages due upon the next regular payday or within 7 days from the date of quitting or resigning, whichever is earlier.”

60. Plaintiff Wittes and similarly situated individuals were employees of Union Kitchen.

61. Defendants are “employers” because they are an “individual . . . [and] corporation . . . employing any person in the District of Columbia.” D.C. Code § 32-1301(1)(B).

62. Defendants violated the WPCL by failing to timely compensate Plaintiff Wittes for all wages due—including paying all gratuities earned by Plaintiff Wittes—on his regular payday.

63. Because of its failure to pay Plaintiff Wittes all wages when due, Defendants failed to timely pay Plaintiff Wittes wages owed.

64. For their violations of the WPCL, Defendants are liable to Plaintiff Wittes for all unpaid wages, plus treble that amount in liquidated damages (or such greater amount as may be authorized by law), interest, attorneys’ fees, litigation costs and any other and further relief this Court deems appropriate.

COUNT II

RETALIATION (Against All Defendants)

65. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs.

66. D.C. Code § 32–1311(a) provides that “it shall be unlawful for any employer to discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee or person because that employee or person has: (1) Made or is believed to have made a complaint to his or her employer . . . or (5) otherwise exercised rights protected under this chapter.”

67. Under D.C. Code § 32–1311(b), an employee need not “make explicit reference to any section or provision of this chapter . . . to trigger the protections of this section.”

68. There is a presumption of retaliation because “the employer, or any person acting on behalf of the employer, [took] adverse action against an employee within 90 days of an employee or other person’s engagement in the activities set for in subsection (s).” D.C. Code § 32–1311(b).

69. Less than two months following Defendant Gilchrist and Plaintiff Wittes’ December 6, 2021 meeting discussing Defendants’ illegal wage practices, Union Kitchen announced that employees would no longer permit employees to receive tips paid by credit card. This action reduced Plaintiff Wittes’ wages because he was no longer able to receive customer tips.

70. Defendants thereby effectively reduced Plaintiff Wittes’ wages in retaliation for his assertion of his rights to the full amount of tips earned.

71. Plaintiffs are entitled to an injunction enjoining Defendants’ retaliatory conduct. D.C. Code § 32–1311(c)(2).

72. Plaintiff Wittes is entitled to civil penalties, liquidated damages, lost compensation, costs, reasonable attorneys’ fees, and any other and further relief this Court deems appropriate. D.C. Code § 32–1311(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court certify a collective action under D.C. law and enter judgment against Defendants, and award Plaintiffs and all similarly situated individuals the following:

- i. Unpaid wages plus an amount equal to three times the amount of unpaid wages earned as liquidated damages, pursuant to the WPCL, D.C. Code §§ 32-1303(4) and 32-1308;
- ii. Civil penalties of not less than \$1,000 and not more than \$10,000, an injunction enjoining Union Kitchen's retaliatory conduct, an award of liquidated damages of an amount equal to the civil penalty to the employee; and an award of lost compensation; pursuant to the WPCL, D.C. Code § 32-1311;
- iii. Reasonable attorneys' fees and expenses incurred in the prosecution of this action;
- iv. The costs that they incur in the prosecution of this action;
- v. Interest as permitted by law; and
- vi. Any additional relief the Court deems just.

Dated: March 7, 2023

Respectfully submitted,

/s/ Matthew K. Handley

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