

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 19-47 (WMW)

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 MARGURITE MARY COFELL,)
)
 Defendant.)

**POSITION OF THE UNITED STATES
WITH RESPECT TO SENTENCING**

The United States of America, by and through its attorneys, Erica H. MacDonald, United States Attorney for the District of Minnesota, and Michelle E. Jones, Assistant United States Attorney, hereby submits the Position of the United States with Respect to Sentencing.

For approximately 15 years, defendant Margurite Cofell used her position as the manager and CEO of the St. Francis Campus Credit Union to defraud the credit union out of millions of dollars. She employed various methods to embezzle credit union funds and used those funds to benefit herself, her family, friends and associates in the Little Falls community. To execute and conceal her embezzlement scheme, Cofell conducted literally *thousands* of transactions in the credit union's records. As a result of the massive operating losses caused by Cofell's crime, the St. Francis Campus Credit Union was ultimately liquidated due to insolvency. For the reasons set forth herein, the United States requests that the Court impose a sentence of 135 months of imprisonment and order Cofell to pay restitution of \$2,513,360.77 to the National Credit Union Administration.

I. DEFENDANT'S OFFENSE CONDUCT

The government agrees with the facts set forth in the Presentence Investigation Report (PSR) and requests that they be adopted by the Court. Chartered in 1963, the St. Francis Campus Credit Union (SFCCU) was a federally insured credit union located in Little Falls, Minnesota. (PSR ¶ 6.) From approximately 1986 until January 2014, Margurite Cofell was employed in various capacities at SFCCU, including as the manager, president and CEO of the credit union. (*Id.*) Her responsibilities included oversight of credit union transactions, loan authorization and ensuring proper documentation of credit union transactions. (*Id.*) She was also a member of, and maintained personal accounts at, SFCCU. (*Id.*)

During a routine audit in January 2014, National Credit Union Administration (NCUA) employees discovered a multi-million dollar discrepancy between SFCCU's loan records and its general ledger. Prior to discovery of the discrepancy, Cofell had asked an employee of the credit union to call the NCUA examiners pretending to be an employee of SFCCU's data processing company and tell them that the core data report (known as an AIRES download) that the examiners had requested from Cofell numerous times during the audit was unavailable. (*Id.* ¶ 7.) Despite her discomfort with lying at Cofell's behest, the SFCCU employee complied with Cofell's request and made the call, resulting in the examiners leaving the credit union without the AIRES download. (*Id.*) During the ten days between the examiners' departure from the credit union and their return to complete the audit, Cofell conducted scores of transactions in SFCCU's electronic records in an attempt to hide the difference. (*Id.*) Among other things, Cofell made bogus cash payments

to cover loans and journal entries to reduce or eliminate the discrepancy between SFCCU's financial statement and the AIREs download. (*Id.*) When the NCUA examiners returned to SFCCU, Cofell provided the download, which revealed the discrepancy. (*Id.*)

Cofell eventually admitted that for the preceding 15 years she had used member accounts to create and disburse fraudulent loans in order to pay off delinquent loans and to keep the fraudulent loans current so they would not be discovered during periodic audits. (*Id.* ¶ 8.) She stated that she also used the proceeds from the fraudulent loans to pay overdrawn checking accounts of members so that the credit union would not have to charge off those accounts. (*Id.*) Cofell explained that she initially increased the balances on existing, delinquent loans in order to make payments on those loans. However, because that activity was discoverable by bank examiners, she began creating fraudulent loans so her conduct would be more difficult to detect. (*Id.*) She claimed that she was trying to help account holders whose loans became delinquent or overdrawn until they had sufficient funds to bring their accounts current. (*Id.* ¶ 9.) She denied diverting credit union funds to herself or receiving any personal gain from her fraudulent conduct. (*Id.*)

The subsequent investigation revealed that Cofell used the accounts of unwitting credit union members to authorize fraudulent loans and increase the balances on existing, legitimate loans despite the fact that the members whose accounts were used had neither agreed to, nor were aware of, these additional loans. Consistent with her admissions, Cofell used the proceeds of some of the fraudulent loans to make payments on preexisting loans that were delinquent and to keep the bogus loans current. To ensure that credit union members remained unaware of the new loans she created or increased using their accounts,

Cofell caused statements not to be mailed to members and/or removed member statements from the mail at the local post office. (*Id.*) As part of the execution of her fraud scheme, on or about January 22, 2014, Cofell authorized a fraudulent loan in the amount of \$185,000 using the SFCCU account of members J.H. and J.H. despite being well aware that J.H. and J.H. neither applied for, nor received the proceeds of, that loan.

Despite her claims to the contrary, Cofell diverted millions of dollars in SFCCU funds to herself, various family members, friends and other SFCCU account holders using various methods. First, she recorded “cash” deposits into SFCCU member accounts, although no corresponding cash deposits were made into the credit union. (*Id.* ¶ 12.) Between 2006 and 2014, Cofell made electronic “cash” deposits into numerous SFCCU accounts, including accounts held in her name, the names of various family members and friends, and those held by various businesses in the Little Falls area. (*Id.*) These fictitious cash deposits allowed the account holders to take \$1,051,482.99 out of SFCCU between 2006 and 2014. (*Id.*) Among other things, Cofell used the proceeds from the fraudulent loans she created was to offset the nonexistent deposits. (*Id.* ¶ 11.)

Second, Cofell authorized fraudulent loans under member accounts without the knowledge or consent of the account holders, then used the loan proceeds to cover overdrafts in those accounts. (*Id.* ¶ 13.) Between 2006 and 2014, Cofell deposited loan proceeds totaling \$1,026,313.07 into various member accounts to cover overdrafts, despite knowing that the members had neither the intent nor the ability to repay the loans. These account holders essentially had bottomless checking accounts as a result of Cofell’s fraudulent deposits into their accounts. (*Id.*) The net benefits to these account holders

ranged from approximately \$3,000 for one account holder to in excess of \$160,000 for another. (*Id.*) Moreover, Cofell often had close personal relationships with the account holders who benefitted from this aspect of her scheme. (*Id.*)

A third method Cofell used to embezzle money from SFCCU was to use the fraudulent loan proceeds she generated to fund check disbursements from the credit union. Cofell issued credit union checks payable to various entities, local and otherwise, although SFCCU received no corresponding deposits in exchange for the checks. (*Id.* ¶ 14.) She also posted check withdrawals directly to dormant accounts in which she held fraudulent loan proceeds until she used them to clear delinquent or overdrawn accounts or to make fictitious cash deposits into accounts. (*Id.*) During the charged time period, Cofell funded unreimbursed check disbursements from SFCCU totaling \$339,669.04.

Fourth, Cofell recorded bogus “cash” payments on loans held by her family members, despite the absence of any cash deposits into SFCCU. (*Id.* ¶ 15.) To conceal the falsified payments, Cofell disbursed fraudulent loan proceeds in cash or deposited them into various compromised accounts she used to execute her scheme. She altered names and/or addresses on the compromised accounts to avoid detection of her fraudulent activity. (*Id.*) Between 2006 and 2014, Cofell made “cash” payments on family members’ loans in the amount of \$27,655.37.

Lastly, Cofell took cash out of SFCCU through the tellers’ cash drawers and the credit union’s cash vault. When she took money from the vault, Cofell generally transferred an amount greater than was required for a legitimate transaction and retained the balance. (*Id.* ¶ 16.) When she stole money from the tellers’ cash drawers, Cofell

concealed the theft by layering the transaction amongst numerous others. (*Id.*) The amount of cash Cofell stole from SFCCU totaled \$68,240.30 during the charged period. (*Id.*)

Through the various methods described above, Cofell embezzled at least \$2,513,360.77 from SFCCU between 2006 and 2014 for the benefit of herself, her family members, friends and associates in the Little Falls community. (*Id.* ¶ 17.) Due to limitations in available records, however, the NCUA could not tie Cofell to specific transactions prior to 2006 – despite her admission that she had been engaged in fraudulent activity at the SFCCU for 15 years prior to its discovery in January of 2014. (*Id.*) Cofell’s fraudulent conduct resulted in massive losses to the SFCCU, including the money she and others stole from the credit union and resultant operating losses that accumulated over the lengthy period during which she committed the fraud. (*Id.* ¶ 18.) While the National Credit Union Share Insurance Fund (NCUSIF), the federal insurance that protects member shares for credit unions, estimates its losses to be \$13,705,772, the readily provable loss caused by Cofell’s fraudulent conduct is the \$2,513,360.77 described above. Nevertheless, Cofell’s fraud was fatal to the SFCCU, which was involuntarily liquidated not long after her conduct was discovered. (*Id.*)

On February 15, 2019, Cofell was charged by Information with one count of credit union fraud, in violation of 18 U.S.C. § 1344. She entered a plea of guilty on April 3, 2019.

II. SENTENCING PROCEDURE AND GUIDELINES

In *Gall v. United States*, the Supreme Court set forth the appropriate sentencing methodology. 552 U.S. 38, 49-50 (2007). Initially, the district court should calculate the advisory Sentencing Guidelines range. The United States agrees with the advisory

Sentencing Guidelines calculations set forth in the PSR, which are largely consistent with those set forth in the Plea Agreement and Sentencing Stipulations (Plea Agreement) – with one exception that will be discussed herein – and requests that the Court adopt them.

A. Sentencing Guidelines Calculations

There is no dispute between the parties about most of the guidelines calculations set forth in the PSR. The base offense level is 7 for the offense of conviction in this case, credit union fraud, pursuant to U.S.S.G. § 2B1.1(a)(1). The offense level is increased by 16 levels pursuant to § 2B1.1(b)(1)(I) because the loss amount is greater than \$1,500,000 but less than \$3,500,000. An additional 2-level increase applies because the offense involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means, pursuant to § 2B1.1(b)(10)(B). Cofell's fraud involved creating fraudulent loans and increasing loan balances fraudulently in numerous SFCCU member accounts, as well as conducting thousands of transactions over 15 years to execute and conceal her fraudulent activity. A 4-level enhancement applies under § 2B1.1(b)(17)(B)(i) because the offense jeopardized the safety and soundness of a financial institution. As a result of Cofell's embezzlement and theft, the SFCCU was involuntarily liquidated due to insolvency. In addition, a 2-level enhancement applies for abuse of a position of trust pursuant to § 3B1.3, as Cofell abused her position as manager and CEO to steal millions of dollars from the SFCCU for herself, her family members, friends and associates in the Little Falls community. Finally, the parties agree that a 3-level reduction is warranted for Cofell's acceptance of responsibility under § 3E1.1.

The parties disagree about the applicability of two enhancements in the PSR: the means-of-identification enhancement and the obstruction of justice enhancement.

1. Means-of-Identification Enhancement

The PSR applies a 2-level increase because the offense involved the unlawful transfer or use of a means of identification to produce or obtain another means of identification under § 2B1.1(b)(11)(C)(i). The defendant has objected to the enhancement, but has not identified the basis for the objection. The enhancement is properly applied.

The term “means of identification” is defined as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual.” 18 U.S.C. § 1028(d)(7). “The means-of-identification enhancement was originally designed to combat the harm ‘which results from using someone’s identifying information to establish new credit.’” *United States v. Norwood*, 774 F.3d 476, 480 (8th Cir. 2014) (quoting *United States v. Williams*, 355 F.3d 893, 900 (6th Cir. 2003)). In fact, the application notes to § 2B1.1 provide the example of a defendant who uses an individual’s name and social security number to obtain a bank loan as conduct warranting application of the enhancement. U.S.S.G. § 2B1.1(b)(11)(C)(i), cmt. n.10(C)(ii)(I). The relevant application note further explains that “the account number of the bank loan is the other means of identification that has been obtained unlawfully.” *Id.*

The Guidelines example is squarely on point with this case. Cofell used the means of identification of SFCCU members, specifically their names, to create fraudulent loans that the account holders did not authorize. The loan account numbers generated after Cofell unlawfully used the account holder’s names to originate the loans constitute the second

means of identification obtained through Cofell's fraudulent conduct. Cofell's fraudulent use of one form of identification of SFCCU members to create a second form of identification, specifically a line of credit, in the names of those members supports application of the enhancement. *See United States v. Hamad*, 300 F. App'x 401, 405 (6th Cir. 2008) (stating that where defendant used names and social security numbers of others without their consent to obtain mortgage loans the conduct was exactly that targeted by the means-of-identification enhancement). Cofell's objection to the means-of-identification enhancement should be overruled.

2. Obstruction of Justice Enhancement

Cofell similarly objects to application of a two-level increase for obstruction of justice pursuant to U.S.S.G. § 3C1.1. Section 3C1.1 provides for a two-level increase in the offense level where a defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the offense of conviction or any relevant conduct. Application Note 4 to § 3C1.1 provides examples of conduct triggering the enhancement, which include "producing or attempting to produce a false, altered, or counterfeit document or record during an official investigation or judicial proceeding" and "destroying or concealing or directing or procuring another . . . to destroy or conceal evidence that is material to an official investigation . . . (e.g., shredding a document or destroying ledgers upon learning that an official investigation has commenced or is about to commence), or attempting to do so." U.S.S.G. § 3C1.1., cmt. n.4. "Obstructive conduct that occurred prior to the start of the investigation of the instant offense of conviction may be covered .

. . . if the conduct was purposefully calculated, and likely, to thwart the investigation or prosecution of the offense of conviction.” *Id.* cmt. n.1. A sentencing court “must find the predicate facts supporting . . . an enhancement for obstruction of justice by a preponderance of the evidence.” *United States v. Alvarado*, 615 F.3d 916, 922 (8th Cir. 2010) (citing *United States v. Cunningham*, 593 F.3d 726, 730 (8th Cir. 2010)).

Cofell’s conduct justifies application of the obstruction enhancement. In January 2014, Cofell solicited an employee of the SFCCU to call NCUA examiners and lie to them about the availability of the AIRES download needed for their audit of the credit union, which the employee did. During the resultant delay in the examination, Cofell conducted scores of transactions in the SFCCU’s electronic records system to try to conceal the multi-million dollar disparity between the credit union’s loan records and its general ledger. When the examiners returned to the credit union and discovered the massive discrepancy, Cofell confessed to executing a 15-year scheme to defraud the credit union and NCUA. Cofell’s recruitment of a SFCCU employee to lie about being unable to provide the AIRES download to NCUA examiners, along with her subsequent alteration and falsification of scores of SFCCU records, was intended to, and did, impede the NCUA’s examination of the credit union’s records and subsequent discovery of her massive fraud scheme. Those efforts support application of the obstruction of justice enhancement. *See* U.S.S.G. § 3C1.1, cmt. n.4(C); *United States v. Stallings*, 762 F. App’x 160, 163 (4th Cir. 2019) (“recruiting a third party into a scheme to misdirect the police is sufficient to justify the application of the obstruction of justice enhancement”), *petition for cert. filed*, __ U.S.L.W. __ (U.S. June 13, 2019). Furthermore, Cofell’s alteration and falsification of SFCCU

records during the 10-day period during which the NCUA examiners did not have access to the AIRES download similarly supports application of the obstruction enhancement.

3. Victim/Substantial Financial Hardship Enhancement

Finally, the PSR assesses a 2-level victim enhancement under § 2B1.1(b)(2)(A) because the offense involved 10 or more victims and resulted in substantial financial hardship to one or more victims. (PSR ¶ 29.) Application of this enhancement is based on the fact that the SFCCU became insolvent as a result of Cofell's crime and that Cofell used the means of identification of at least 17 SFCCU members to create fraudulent loans or increase loan balances fraudulently during her scheme. (*Id.*) Although the factual information underlying the enhancement is accurate, this enhancement was not contemplated by the parties in the Plea Agreement. Of course, the government stands by the Plea Agreement. The government also believes that the substantial financial hardship suffered by SFCCU is taken into account by the 4-level enhancement applied under § 2B1.1(b)(17)(B)(i) because the offense substantially jeopardized the safety and soundness of a financial institution, which the defendant does not, and cannot, dispute.

With the exception of the victim/substantial financial hardship enhancement, the United States believes that the Guidelines calculations set forth in the PSR should be adopted by the Court. Accordingly, based on a criminal history category of I and an offense level of 32, after a reduction for acceptance of responsibility, the resulting Guidelines range is 121 to 151 months of imprisonment. This range diverges from that set forth in the PSR, which is 151 to 188 months of imprisonment based on an offense level of 34 and criminal history category of I.

B. Section 3553(a) Sentencing Factors

After calculating a defendant's advisory Sentencing Guidelines range and hearing from the parties, the district court must consider the sentencing factors set forth in 18 U.S.C. § 3553(a) and make an individualized assessment based on the facts in arriving at an appropriate sentence. *Gall*, 552 U.S. at 49-50; *United States v. Ruvalcava-Perez*, 561 F.3d 883, 886 (8th Cir. 2009) ("In sentencing a defendant, the district court should first determine the appropriate Guidelines range, then evaluate whether a traditional departure is warranted, and finally decide whether or not to impose a guideline sentence after considering all the § 3553(a) sentencing factors"). Section 3553(a) of Title 18 requires the Court to analyze a number of factors, including "the nature and circumstances of the offense," "the history and characteristics of the defendant," "the need for the sentence to reflect the seriousness of the offense," "the need for deterrence," "the need to protect the public from further crimes of the defendant," and "the need to avoid unwarranted disparities." 18 U.S.C. § 3553(a). Consideration of these factors supports imposition of a sentence within the advisory guidelines range of 121 to 151 months in this case.

1. Nature, Circumstances, and Seriousness of the Offense

The Court's sentence is required to reflect the nature, circumstances, and seriousness of the offense. 18 U.S.C. § 3553(a). White-collar fraud crimes such as that committed by Cofell are serious crimes and should be treated as such. The declared policies of Congress and the Sentencing Commission are that white-collar fraud crimes should often result in sentences of incarceration rather than the lenient types of sentences that were imposed for such crimes prior to the implementation of the Sentencing

Guidelines. In fact, one of the main reasons for the enactment of Section 3553 was Congress's view that sentences for such white-collar fraud crimes had too often been inadequate. *See generally United States v. Ture*, 450 F.3d 352, 357-58 (8th Cir. 2006).

The nature, circumstances and seriousness of Cofell's offense support a significant sentence in light of its duration, scope and victimization. Cofell orchestrated a multi-year fraud scheme to divert funds from SFCCU to herself, her family members, her friends and associates in the Little Falls area. Although some aspects of her scheme involved paying delinquent loans and overdrawn accounts at the SFCCU, they do not mitigate the long-term, wide-ranging fraud she perpetrated that ultimately consumed the SFCCU causing its collapse. Despite Cofell's duty to act in the interest of the SFCCU and its members, she exploited her position as manager and CEO – and the inside knowledge it afforded her – to fleece the credit union of millions of dollars. Further, in order to accomplish her theft, Cofell engaged in literally *thousands* of transactions over a 15-year period. Her crime was not a momentary lapse in judgment. It involved choices, thousands of choices, to engage in fraud motivated by self-interest.

In addition, Cofell seemingly used every transactional tool available to her as manager and CEO of the credit union to embezzle from it, whether on her own behalf, or that of family, friends and associates in her community. She made fictitious deposits into accounts; created fraudulent loans to cover overdrafts in various member accounts; disbursed SFCCU funds via checks to third parties; recorded loan fraudulent payments for family members and simply stole cash from SFCCU's cash vault and teller drawers. She appears to have left no option unexploited in her embezzlement enterprise.

The fraud orchestrated by Cofell caused considerable harm. In December 2013, prior to discovery of Cofell's fraud, the SFCCU had approximately 3,400 members and assets of approximately \$51,000,000. Cofell's years long embezzlement scheme victimized those members, employees of the credit union, the Little Falls community, and the National Credit Union Share Insurance Fund (NCUSIF), all of which suffered when the SFCCU was liquidated due to insolvency. When a credit union becomes insolvent, the NCUSIF makes up the difference to ensure that members with federally-insured shares do not suffer any loss of shares due to the insolvency. Although records limitations make it impossible to calculate the full extent of losses to SFCCU caused by Cofell's fraud, the NCUSIF estimates that it has incurred losses totaling \$13,705,772 – a staggering amount – due to the credit union's liquidation. (PSR ¶¶ 18, 19.) The methods Cofell used to accomplish and conceal the fraud prolonged its duration and hampered discovery, increasing the losses over time. By Cofell's own admission, she spent a larger share of her 28 years as a SFCCU employee defrauding the credit union and reaping the benefits of her fraud rather than protecting its assets, its members and the community that it served. (*See id.* ¶¶ 6, 7.) The duration, scope and victimization caused by her crime justify a significant sentence.

2. History and Characteristics of the Defendant

Cofell's history and characteristics prior to the instant offense, while commendable, nevertheless support a substantial sentence. Other than minor traffic-related violations, the defendant has no criminal history prior to the instant offense. Although that fact is favorable for Cofell, it is already reflected in the Guidelines calculation. Cofell's lack of

criminal history does not meaningfully distinguish her from many—or even most—white collar defendants, and, therefore, should not be overemphasized or deemed a reason for a downward departure or an unwarranted variance. *See generally, United States v. Sheridan*, 270 F.3d 669, 673 (8th Cir. 2001) (“[A] defendant’s absence of criminal history does not provide a basis for a downward departure.”) The PSR’s description of Cofell’s background shows that she lived a stable life with a mostly supportive family before the offense. (PSR ¶¶ 48-49, 51, 54-55.) She has a history of consistent, gainful employment and a supportive network of family and friends. (*Id.* ¶¶ 49-54, 60, 65-69.) She did not steal from SFCCU to provide necessities such as food and shelter for her family. She did not suffer from any addiction, such as gambling or substance abuse, which often lead to criminal conduct. (*See id.* ¶¶ 60, 61, 62.) Instead, she apparently stole from SFCCU out of the desire to elevate her standard of living and standing in the community, along with that of her family members, friends and various associates in the Little Falls area.

Finally, despite Cofell’s claim that altruism prompted her to create fraudulent loans to help credit union members with delinquent loans and overdrawn accounts, the investigation revealed that charity was not her only motive. She lined her own pockets and those of people close to her with SFCCU’s funds then lied about it to protect herself and the other beneficiaries of her fraud. Moreover, but for the discovery of Cofell’s embezzlement by the NCUA examiners, she might still be defrauding SFCCU had it remained solvent. She did not cease her fraudulent activity voluntarily and even tried to thwart the investigation into that activity. Cofell’s considerable efforts to forestall discovery of her scheme benefitted herself and those with whom she shared the illicit

proceeds. Any mitigation warranted by Cofell's lack of criminal history should be weighed against the long-term fraud scheme she executed at SFCCU, the significant financial loss caused by her scheme and the substantial harm she caused. Her conduct destroyed SFCCU, left other credit union employees jobless and the Little Falls community devoid of the financial institution that had served it for more than 50 years.

3. Deterrence

The Court must also consider the need for the sentence to afford adequate deterrence, promote respect for the law, provide just punishment and protect the public from further crimes of the defendant. 18 U.S.C. § 3553(a). Cofell's crime was not a one-time event committed in the heat of the moment. Instead, it was a calculated, sophisticated and long-running scheme that she used as a cash giveaway to herself, her family, friends and associates. A significant sentence is necessary to promote respect for the law, provide just punishment and discourage others from engaging in similarly calculated, sophisticated and calamitous crimes.

4. Policy Considerations

In determining the appropriate sentence, this Court must also consider the Sentencing Commission's policy statements regarding sentencing. 18 U.S.C. § 3553(a)(5). Several Sentencing Commission policy statements, as well as congressional directives, support a significant term of imprisonment here. In particular, the Sentencing Commission's policy statements urge sentences of imprisonment in white-collar fraud cases; oppose reducing a sentence based on family circumstances, public service, employment record, or vocational skills; and prohibit reducing a sentence below the

applicable guideline range based on the lack of criminal history or the defendant's socioeconomic status. The penal philosophy embodied in the Sentencing Commission's policies, and in the Sentencing Guidelines themselves, is based on the Sentencing Commission's considerable knowledge, experience, and resources, and therefore deserves weighty consideration in fashioning a just sentence.

III. CONCLUSION

For the foregoing reasons, the United States requests imposition of a middle-of-the-range sentence of 135 months' imprisonment and payment of restitution in the amount of \$2,513,360.77 to the NCUA.

Dated: September 15, 2019

Respectfully submitted,

ERICA H. MacDONALD
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s/Michelle E. Jones

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