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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 _____)
19 U.S. COMMODITY FUTURES)
20 TRADING COMMISSION and THE)
21 COMMISSIONER OF CORPORATIONS)
22 OF THE STATE OF CALIFORNIA)
23)
24 Plaintiffs,)
25)
26 v.)
27)
28 JINSUP CHOI a/k/a GENE CHOI)
29 d/b/a FUTURES INVESTMENT GROUP,)
30)
31 _____)
32 Defendant.)

CIV. ACTION NO. SACV08-965-AHM (SSx)
CONSENT FINAL ORDER OF
PERMANENT INJUNCTION,
CIVIL MONETARY
PENALTY AND OTHER
EQUITABLE RELIEF

1
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12 **INTRODUCTION**

13 On August 27, 2008, Plaintiffs, the Commodity Futures Trading Commission ("CFTC"
14 or "Commission") and the Commissioner of Corporations of the State of California ("State of
15 California") (collectively, "Plaintiffs"), filed a Complaint against Jinsup Choi a/k/a Gene Choi
16 doing business as Futures Investment Group ("Choi" or "Defendant"). The Complaint seeks a
17 permanent injunction, a civil monetary penalty, and other equitable relief for violations of the
18 Commodity Exchange Act, as amended ("CEA"), 7 U.S.C. §§ 1 *et seq.* (2006), and the
19 California Commodity Law of 1990 ("CCL"), Sections 29500, *et seq.* of the California
20 Corporations Code. Specifically, the Complaint alleges that, from at least June 2002 through
21 April 2007 ("relevant period"), the Defendant violated Sections 4b(a)(2)(i)-(iii) of the CEA, 7
22 U.S.C. §§ 6(b)(a)(2)(i)-(iii) (2006), and Section 29536 of the California Corporations Code by,
23 among other things, fraudulently soliciting members of the retail public in connection with
24 futures contracts ("futures") and, thereafter, stealing the customers' monies.
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1
2 **I. CONSENTS AND AGREEMENTS**

3 1. In order to effect settlement of the matters alleged in the Complaint in this action
4 without a trial on the merits or further judicial proceedings, Defendant:

5 2. Consents to the entry of this Consent Final Order of Permanent Injunction, Civil
6 Monetary Penalty and Other Equitable Relief (“Order”);

7 3. Affirms that he has read this Order and agrees to this Order voluntarily, and that
8 no promise or threat of any kind has been made by the CFTC or the State of California, or any
9 member, officer, agent, or representative thereof, or by any other person, to induce his consent to
10 this Order;

11 4. Acknowledges service of the summons and Complaint;

12 5. Admits that this Court has personal and subject matter jurisdiction over him and
13 the subject of this action pursuant to Section 6c of the CEA, 7 U.S.C. § 13a-1, and the CCL,
14 Sections 29500, *et seq.* of the California Corporations Code;

15 6. Admits that venue properly lies with this Court pursuant to Section 6c of the
16 CEA, 7 U.S.C. § 13a-1, and 28 U.S.C. § 1391;

17 7. Waives:

18 a. Any and all claims that he may possess under the Equal Access to Justice
19 Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and Part 148 of the
20 Commission Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2008), relating to or arising from, this
21 action;
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1 b. Any and all claims that he may possess under the Small Business
2 Regulatory Enforcement Act, Pub. L. 104-121, Subtitle B, Section 223, 110 Stat. 862-63 (March
3 29, 1996), relating to, or arising from, this action;

4 c. The entry of findings of fact and conclusions of law in this action pursuant
5 to Rule 52 of the Federal Rules of Civil Procedure, except as provided below in Section II;

6 d. Any claim of double jeopardy based upon the institution of this
7 proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any
8 other relief; and

9 e. Any and all rights of appeal in this action;

10 8. Consents to the continued jurisdiction of this Court for the purpose of enforcing
11 the terms and conditions of this Order and for any other purposes relevant to this case, even if
12 Defendant now or in the future resides outside the jurisdiction;

13 9. Agrees that neither he nor his agents, employees or representatives under his
14 authority or control shall take any action or make any public statement denying, directly or
15 indirectly, any allegation in the Complaint or the Findings of Fact and Conclusions of Law
16 contained in this Order, or creating or tending to create the impression that the Complaint or this
17 Order are without a factual basis; provided, however, that nothing in this provision shall affect
18 Defendant's: (i) testimonial obligations, or (ii) right to take legal positions in other proceedings
19 to which the Commission or the State of California is not a party. Defendant shall undertake all
20 steps necessary to assure that his agents, employees and representatives understand and comply
21 with this agreement;
22

23 10. In consenting to the entry of this Order, Defendant admits all of the allegations of
24 the Complaint and the Findings of Fact and the Conclusions of Law contained in this Order.
25

1 Defendant further agrees, and the parties to this Order intend, that the allegations of the
2 Complaint and the Findings of Fact and Conclusions of Law made by this Court and contained in
3 Section II of this Order shall be taken as true and correct and be given preclusive effect without
4 further proof in any proceeding in bankruptcy relating to Choi; any proceeding to revoke,
5 restrict, or condition the Defendant's registration or attempt to register under the CEA; or any
6 proceeding to enforce the terms of this Order. Defendant also shall provide immediate notice of
7 bankruptcy filed by, on behalf of, or against him by certified mail, in the manner required by
8 Section V, Part 2 of this Order; and

9 11. No provision of this Order shall in any way limit or impair the ability of any
10 person to seek any legal or equitable remedy against Defendant or any other person in any other
11 proceeding.

12 **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13 12. This Court, being fully advised in the premises, finds that there is good cause for
14 the entry of this Order and that there is no just reason for delay. This Court therefore directs the
15 entry of Findings of Fact, Conclusions of Law, a permanent injunction, civil monetary penalty,
16 and other equitable relief pursuant to Section 6c of the CEA, 7 U.S.C. § 13a-1, the CCL,
17 Sections 29500, *et seq.* of the California Corporations Code, as set forth herein.

18 **A. Findings of Fact**

19 **The Parties**

20 21. Plaintiff Commodity Futures Trading Commission is an independent federal
22 regulatory agency that is charged with responsibility for administering and enforcing the
23 provisions of the CEA, 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated thereunder
24
25

1 (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2008). The CEA and its Regulations establish a
2 comprehensive system for regulating the solicitation for, and/or the purchase and sale of, futures.

3 14. Plaintiff Commissioner of Corporations of the State of California, through Preston
4 DuFauchard, Corporations Commissioner, is empowered by legislative enactment to protect the
5 people of the California from unlawful commodity transactions and activities.

6 15. Defendant Choi resides in Orange, California. He is, and was at all times relevant
7 herein, doing business as Futures Investment Group (“FIG”). During the relevant period, Choi
8 was not registered in any capacity with the CFTC.

9 **Choi’s Sales Solicitations and Theft of Customer Funds**

10 16. During the relevant period, the Defendant solicited more than 83 individuals in
11 around the Los Angeles, California area to purchase futures.

12 17. The “Client Agreement” signed by Choi’s customers provided, in pertinent part,
13 that “FIG will make trades on Client’s behalf in futures/Currency Market.”
14

15 18. Choi solicited members of the retail public to send him money purportedly to
16 purchase futures by, among other things:

17 a. falsely guaranteeing customers that he could earn eight to ten percent
18 profit per month trading in futures and that they would split evenly such profits;

19 b. falsely promising customers that he could reduce their risk of loss to ten
20 percent by employing a ten percent stop-loss on each investment such that an individuals’
21 potential loss would not exceed ten percent of the investment; and

22 c. falsely representing to customers that their funds would be pooled with the
23 funds of other customers for the purpose of engaging in futures trading.
24
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1 19. Choi solicited customers to send funds to domestic bank accounts under his
2 control, including accounts at Wells Fargo Bank in Los Angeles, California.

3 20. As a result of his solicitations, Choi received and accepted approximately
4 \$19,000,000 to purportedly purchase futures contracts.

5 **The Ponzi Scheme**

6 21. In fact, the vast majority of the money Choi solicited and received from the retail
7 public was never used by Choi to purchase futures. Rather, Choi invested only \$1.8 million of
8 the customers' money, and none of that money was used in the futures markets.

9 22. To lull customers into a false sense of security that their funds were secure and
10 not at risk and to prevent customers from complaining to federal and/or state authorities, Choi
11 mailed false account statements to his customers. Those account statements, prepared by Choi,
12 falsely stated that the customers' trading accounts had increased in value.

13 23. In fact, Choi did not generate any profits from engaging in futures transactions.
14 Rather, Choi conducted a large "Ponzi" scheme by paying alleged interest and profits to
15 customers with monies paid to Choi by other customers, instead of from profits generated by
16 Choi's investments. Nonetheless, Choi falsely told customers that the interest and profits paid to
17 them were generated from his futures transactions.

18 24. In addition, Choi used customers' monies to purchase, without the customers
19 knowledge or consent, jewelry, luxury automobiles, a yacht, and a home, among other personal
20 items and services, to support his lavish lifestyle.

21 25. As a result, customers' "invested" with Choi approximately \$19 million to
22 purchase futures and Choi paid back to older investors in fictitious "profits" approximately \$9
23
24
25

1 million from new investor money. Thus, the overall loss as a result of the scheme is
2 \$10,035,614.

3 **B. Conclusions of Law**

4 **Jurisdiction and Venue**

5 26. This Court has jurisdiction over this action pursuant to Section 6c of the CEA, 7
6 U.S.C. § 13a-1 (2006).

7 27. This Court also has jurisdiction over the subject matter of this action and all
8 parties hereto, including the State of California, pursuant to Section 6d(1) of the CEA, 7 U.S.C.
9 § 13a-2. Hence, jurisdiction is also appropriate pursuant to the CCL, Sections 29500, *et seq.* of
10 the California Corporations Code.

11 28. Venue properly lies with this Court pursuant to Section 6c(e) of the CEA,
12 7 U.S.C. § 13a-1(e), and 28 U.S.C. § 1391 because the Defendant resides in and transacted
13 business in the Central District of California, and the acts and practices in violation of the CEA
14 occurred within this District, among other places.

15 29. This Court has personal jurisdiction over the Defendant, who acknowledges
16 service of the Complaint and consents to the Court's jurisdiction over him.

17 **Violations of the CEA and California Corporations Code**

18 30. By the conduct described in Section II.A above, Choi violated Sections
19 4b(a)(2)(i)-(iii) of the CEA, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), and Sections 29520 and 29536 of the
20 California Corporations Code.
21

22 31. Under the totality of the circumstances, there is a reasonable likelihood of future
23 violations of the CEA and/or California law by the Defendant. Therefore, a permanent
24 injunction should issue in this action.
25

- 1 a. misappropriating customer funds;
- 2 b. soliciting, receiving, or accepting any funds in connection with the
3 purchase or sale of futures;
- 4 c. making misrepresentations to customers or prospective customers
5 regarding the profit potential of trading futures;
- 6 d. making misrepresentations to customers or prospective customers
7 downplaying the risk of trading futures; and
- 8 e. issuing statements or reports to customers or prospective customers
9 concerning futures trading; in violation of Section 4(b)(a)(2)(i)-(iii) of the CEA, 7 U.S.C.
10 § 6b(a)(i)-(iii) (2006).

11 2. Choi shall be permanently restrained, enjoined, and prohibited from engaging in conduct
12 in violation of Section 29536 of the California Corporations Code by willfully (i)
13 employing any device, scheme, or artifice to defraud, (ii) making any false report,
14 entering any false record, making any untrue statement of a material fact, or omitting to
15 state a material fact necessary in order to make the statements made, in the light of
16 circumstances under which they were made, not misleading, (iii) engaging in any
17 transaction, act, practice, or course of business which operates or would operate as a
18 fraud or deceit upon any persons, or (iv) willfully misappropriating or converting the
19 funds, security, or property of any other person, in connection with the purchase or sale
20 of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into, a
21 commodity, commodity contract, or commodity option.

22
23 3. Choi shall be permanently restrained, enjoined and prohibited from directly or indirectly:
24
25

- 1 a. trading on or subject to the rules of any registered entity, as that term is defined in
2 Section 1a(29) of the CEA, 7 U.S.C. Section 1a(29);
 - 3 b. engaging in, controlling, or directing the trading of any commodity interest
4 accounts for or on behalf of any other person or entity, whether by power of
5 attorney or otherwise;
 - 6 c. soliciting or accepting funds from any person or entity, whether by power of
7 attorney or otherwise, for the purpose of engaging in, controlling, or directing the
8 trading of any commodity interest accounts for or on behalf of any other person or
9 entity ; and
 - 10 d. entering into any commodity interest transactions for his own personal account,
11 for any account in which he has a direct or indirect interest and/or having any
12 commodity interests traded on his behalf;
 - 13 e. engaging in any business activities related to commodity interest trading; and
 - 14 f. applying for registration or claiming exemption from registration with the CFTC
15 in any capacity, and engaging in any activity requiring such registration or
16 exemption from registration with the Commission, except as provided for in
17 Commission Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9) (2008), or acting as a
18 principal, agent, officer or employee of any person registered, exempted from
19 registration, or required to be registered with the Commission, except as provided
20 for in Commission Regulation 4.14 (a)(9), 17 C.F.R. §4.14(a)(9) (2008).
- 21
- 22 4. The injunctive provisions of this Order shall be binding upon Choi, and upon any person
23 insofar as he is acting in the capacity of officer, agent, servant, employee, or attorney of
24 Choi, and upon any person who receives actual notice of this Consent Order, by personal
25

1 service or otherwise, insofar as he or she is acting in active concert or participation with
2 Choi.

3 **IV. RESTITUTION, CIVIL MONETARY PENALTY, AND OTHER**
4 **ANCILLARY RELIEF**

5 **IT IS FURTHER ORDERED THAT:**

6 **A. Restitution**

7 1. Choi shall pay restitution in the amount of \$10,035,614, plus post-judgment
8 interest (the “Restitution Obligation”). Post-judgment interest shall accrue commencing on the
9 date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on
10 the date of entry this Order pursuant to 28 U.S.C. § 1961.

11 2. To effect payment by Choi and distribution of restitution, the Court continues the
12 appointment of the Natural Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor
13 shall collect restitution payments from Choi, and make distributions as set forth below. Because
14 the Monitor is not being specially compensated for these services, and these services are outside
15 the normal duties of the Monitor, the Monitor shall not be liable for any action or inaction arising
16 from the Court’s appointment as Monitor, other than actions involving fraud.

17 3. Choi shall make restitution payments under the Order in the name of “Choi
18 Settlement Fund” and shall send such restitution payments by electronic funds transfer, or by
19 U.S. postal money order, certified check, bank cashier’s check, or bank money order, to the
20 Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800,
21 Chicago, Illinois 60606 under a cover letter than identifies Choi and the name and docket
22 number of the proceeding. Choi shall simultaneously transmit copies of the cover letter and the
23 form of payment to: (a) the Director, Division of Enforcement, Commodity Futures Trading
24

1 Commission, Three Lafayette Centre, 1152 21st Street, N.W., Washington, D.C. 20581; and to
2 (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

3 4. The Monitor shall oversee Choi's restitution obligation, and shall have the
4 discretion to determine the manner for distribution of funds in an equitable fashion to Choi's
5 defrauded customers, or may defer distribution until such time as it may deem appropriate. In
6 the event that the amount of restitution payments to the Monitor are of a de minimis nature such
7 that the Monitor determines that the administrative costs of the making a restitution distribution
8 is impractical, the Monitor may, in its discretion, treat such restitution payments as civil
9 monetary penalty payments, which the Monitor shall forward to the Commission following the
10 instructions for civil monetary penalty payments set forth in Section IV.B., below.

11 5. To the extent that any funds accrue to the U.S. Treasury as a result of the
12 Restitution Obligation in this Order, such funds shall be transferred to the Monitor for
13 disbursement in accordance with the procedures set forth in paragraph 4 above.

14
15 **B. Civil Monetary Penalty**

16 6. Choi shall pay to the CFTC a civil monetary penalty in the amount of \$1,000,000,
17 plus post-judgment interest (the "CMP Obligation").

18 7. Post-judgment interest shall accrue beginning on the date of entry of this Order
19 and shall be determined by using the Treasury Bill rate prevailing on the date of this Order
20 pursuant to 28 U.S.C. § 1961(a).

21 8. Choi's CMP Obligation is immediately due and owing.

22 9. Choi shall pay this CMP Obligation by electronic funds transfer, U.S. postal
23 money order, certified check, bank cashier's check, or bank money order. If payment is to be
24
25

1 made other than by electronic funds transfer, the payment shall be made payable to the
2 Commodity Futures Trading Commission and sent to the address below:

3 Commodity Futures Trading Commission
4 Division of Enforcement
5 Attn: Marie Bateman – AMZ-300
6 DOT/FAA/MMAC
7 6500 S. MacArthur Blvd.
8 Oklahoma City, OK 73169
9 (405) 954-6569

10 If payment is to be made by electronic funds transfer, Choi shall contact Marie Bateman or her
11 successor at the above address to receive payment instructions and shall fully comply with those
12 instructions. Choi shall accompany payment of the penalty with a cover letter that identifies
13 Choi, and the name and docket number of this proceeding. Choi shall simultaneously transmit
14 copies of the cover letter and the form of payment to: a) the Director, Division of Enforcement,
15 Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW,
16 Washington, DC 20581; and b) the Chief, Office of Cooperative Enforcement, Division of
17 Enforcement, at the same address.

18 **C. Priority of Monetary Penalties and Partial Payments**

19 10. All payments by Choi pursuant to this Order shall first be applied to satisfaction
20 of the Restitution Obligation, consistent with the authority granted the Monitor in Part IV.A.,
21 above. After satisfaction of the Restitution Obligation, payments by Defendant pursuant to this
22 Order shall be applied to satisfy Choi's CMP Obligation.

23 11. Any acceptance by the Commission and/or the Monitor of partial payment from
24 Choi of the Restitution Obligation and/or CMP Obligation shall not be deemed a waiver of
25 Choi's obligation to make further payments pursuant to this Order, or a waiver of the

1 Commission's and Monitor's right to seek to compel payment from Choi of any remaining
2 balance.

3 **D. Transfer of Assets**

4 12. Within five (5) business days following the date of entry of this Order, Choi shall
5 (i) transfer to the territory of the United States and deliver according to the procedures
6 established in Section IV herein all funds, documents, and assets located in foreign countries
7 including, but not limited to, South Korea, that are held by him, for his benefit, or under his
8 direct or indirect control, whether jointly or singly, and (ii) provide the CFTC and the State of
9 California access to all records of Choi held by financial institutions located outside the
10 territorial United States by signing the Consent to Release of Financial Records attached to this
11 Order.

12 13. Choi shall not transfer, or cause others to transfer, funds or other property to the
13 custody, possession, or control of any members of his family or any other person or entity for the
14 purpose of concealing such funds from this Court, the CFTC, or the State of California until his
15 restitution obligation in Section IV herein and civil monetary penalty obligation in this Order
16 have been satisfied in full.

17 **E. Cooperation**

18 14. Choi shall cooperate fully with the CFTC, the State of California, and any other
19 government agency seeking to enforce the restitution and civil monetary penalty provisions of
20 this Order by providing any requested information relating to his financial status including, but
21 not limited to, income and earnings, assets, financial statements, asset transfers, tax returns and
22 assets held by him in foreign countries including, but not limited to, South Korea.
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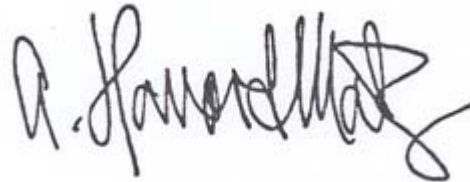
1 5. Successors and Assigns: This Order shall inure to the benefit of and be binding
2 upon the successors, assigns, heirs, beneficiaries, and administrators of all parties to this Order.

3 6. Integration: This Order incorporates all of the terms and conditions of the
4 settlement of the parties to this Order. Nothing shall serve to amend or modify this Order in any
5 respect, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by
6 order of this Court.

7 7. Counterparts and Facsimile Execution: This Agreement may be executed in two
8 or more counterparts, all of which shall be considered one and the same agreement and shall
9 become effective when one or more counterparts have been signed by each of the parties and
10 delivered (by facsimile or otherwise) to the other party, it being understood that all parties need
11 not sign the same counterpart. Any counterpart or other signature to this Agreement that is
12 delivered by facsimile shall be deemed for all purposes as constituting good and valid execution
13 and delivery by such party of this Agreement.

14 8. Entry of Judgment: There being no just cause for delay, the Clerk of the Court
15 shall enter final judgment against Choi forthwith and without further delay.
16

17
18 SO ORDERED, at Los Angeles, California on this 21st day of October, 2008.

19
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21 

22 UNITED STATES DISTRICT JUDGE

23 **Make JS-6**

1 Consented to:

2 DEFENDANT:

3
4 _____/S/_____ Dated: July 25, 2008

5 Jinsup Choi (a/k/a Gene Choi, d/b/a Futures
6 Investment Group)

7 PLAINTIFF U.S. COMMODITY FUTURES
8 TRADING COMMISSION

9 By: _____/S/_____ Dated: August 26, 2008

10 Kim G. Bruno (*pro hac vice*)
11 Kathleen M. Banar (*pro hac vice*)
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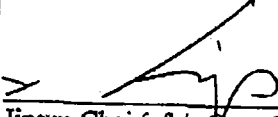
23 PLAINTIFF COMMISSIONER OF
24 CORPORATIONS OF THE STATE OF
25 CALIFORNIA

By: _____/S/_____ Dated: August 25, 2008

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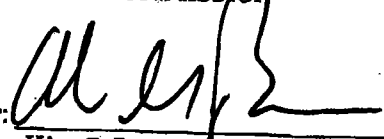
1 Consented to:

2 DEFENDANT:

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4 
5 Jinsup Choi (a/k/a Gene Choi, d/b/a Futures
Investment Group)

Dated: 7/25/08

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7 PLAINTIFF U.S. COMMODITY FUTURES
TRADING COMMISSION

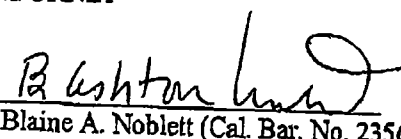
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9 By: 

Dated: 8/26/08

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19 CORPORATIONS OF THE STATE OF
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20
21 By: 

Dated: 8/25/08

22 Blaine A. Noblett (Cal. Bar. No. 235612)
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