

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>DERRICK THOMAS, et al.</b>	:	Case Number: 1:17-CV-00411
	:	
Plaintiffs,	:	Judge Michael R. Barrett
	:	
vs.	:	<b>ANSWER OF FRANCHISEE</b>
	:	<b>DEFENDANTS IT'S ONLY</b>
<b>PAPA JOHN'S INTERNATIONAL,</b>	:	<b>DOWNTOWN PIZZA, INC., IT'S ONLY</b>
<b>INC., et al.</b>	:	<b>PIZZA, INC., IT'S ONLY DOWNTOWN</b>
	:	<b>PIZZA, II INC., IT'S ONLY PAPA'S</b>
Defendants.	:	<b>PIZZA LLC, AND MICHAEL</b>
	:	<b>HUTMIER</b>

The Franchisee Defendants It's Only Downtown Pizza, Inc., It's Only Pizza, Inc., It's Only Downtown Pizza, II Inc., It's Only Papa's Pizza LLC and Michael Hutmier (the "Franchisee Defendants"), answer the Plaintiff's Complaint as follows:

1. In response to the allegations contained in paragraph 1 of Plaintiff's Complaint, the Franchisee Defendants admit that Plaintiff has filed his Complaint, which document speaks for itself. The Franchisee Defendants deny that Plaintiff is entitled to any relief, and deny the remaining allegations contained in paragraph 1 for lack of information sufficient to form a belief as to the truth or falsity thereof.

2. The Franchisee Defendants deny the allegations contained in paragraph 2 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

3. The Franchisee Defendants deny the allegations contained in paragraph 3 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

4. The Franchisee Defendants deny the allegations contained in paragraph 4 of Plaintiff's Complaint.

5. The Franchisee Defendants admit that Derrick Thomas worked as a delivery driver at the Papa John's Pizza restaurant in Norwood, Ohio. The Franchisee Defendants deny the remaining allegations contained in paragraph 5.

6. The Franchisee Defendants deny the allegations contained in paragraph 6 of Plaintiff's Complaint.

7. The Franchisee Defendants deny the allegations contained in paragraph 7 of Plaintiff's Complaint.

8. The Franchisee Defendants deny the allegations contained in paragraph 8 of Plaintiff's Complaint.

9. The Franchisee Defendants deny the allegations contained in paragraph 9 of Plaintiff's Complaint.

10. The Franchisee Defendants deny the allegations contained in paragraph 10 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

11. The Franchisee Defendants deny the allegations contained in paragraph 11 of Plaintiff's Complaint.

12. In response to the allegations contained in paragraph 12 of Plaintiff's Complaint, the Franchisee Defendants admit that Plaintiff has brought this civil action which speaks for itself. The Franchisee Defendants deny any remaining allegations contained in paragraph 12 for lack of information sufficient to form a belief as to the truth or falsity thereof.

13. In response to the allegations contained in paragraph 13 of Plaintiff's Complaint, the Franchisee Defendants admit that Plaintiff has brought this action which speaks for itself. The Franchisee Defendants deny any remaining allegations contained in paragraph 12 for lack of information sufficient to form a belief as to the truth or falsity thereof.

14. The Franchisee Defendants admit the allegations contained in paragraph 14 of Plaintiff's Complaint.

15. The Franchisee Defendants deny the allegations contained in paragraph 15 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

16. The Franchisee Defendants deny the allegations contained in paragraph 16 of Plaintiff's Complaint.

17. The Franchisee Defendants deny the allegations contained in paragraph 17 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

18. The Franchisee Defendants deny the allegations contained in paragraph 18 of Plaintiff's Complaint.

19. The Franchisee Defendants deny the allegations contained in paragraph 19 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

20. The Franchisee Defendants deny the allegations contained in paragraph 20 of Plaintiff's Complaint.

21. The Franchisee Defendants deny the allegations contained in paragraph 21 of Plaintiff's Complaint.

22. The Franchisee Defendants deny the allegations contained in paragraph 22 of Plaintiff's Complaint.

23. The Franchisee Defendants deny the allegations contained in paragraph 23 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

24. The Franchisee Defendants deny the allegations contained in paragraph 24 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

25. The Franchisee Defendants deny the allegations contained in paragraph 25 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

26. The Franchisee Defendants deny the allegations contained in paragraph 26 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

27. The Franchisee Defendants deny the allegations contained in paragraph 27 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

28. The Franchisee Defendants deny the allegations contained in paragraph 28 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

29. The Franchisee Defendants deny the allegations contained in paragraph 29 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

30. The Franchisee Defendants deny the allegations contained in paragraph 30 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

31. The Franchisee Defendants deny the allegations contained in paragraph 31 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

32. The Franchisee Defendants deny the allegations contained in paragraph 32 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

33. The Franchisee Defendants deny the allegations contained in paragraph 33 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

34. The Franchisee Defendants deny the allegations contained in paragraph 34 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

35. The Franchisee Defendants deny the allegations contained in paragraph 35 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

36. The Franchisee Defendants deny the allegations contained in paragraph 36 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

37. The Franchisee Defendants admit the allegations contained in paragraph 37 of Plaintiff's Complaint.

38. The Franchisee Defendants deny the allegations contained in paragraph 38 of Plaintiff's Complaint.

39. The Franchisee Defendants deny the allegations contained in paragraph 39 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

40. The Franchisee Defendants deny the allegations contained in paragraph 40 of Plaintiff's Complaint.

41. The Franchisee Defendants deny the allegations contained in paragraph 41 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

42. The Franchisee Defendants deny the allegations contained in paragraph 42 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

43. The Franchisee Defendants deny the allegations contained in paragraph 43 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

44. The Franchisee Defendants admit the allegations contained in paragraph 44 of Plaintiff's Complaint.

45. The Franchisee Defendants admit the allegations contained in paragraph 45 of Plaintiff's Complaint.

46. In response to the allegations contained in paragraph 46 of Plaintiff's Complaint, the Franchisee Defendants admit that Michael Hutmier is the sole shareholder of It's Only Pizza,

Inc. and serves as its President. The Franchisee Defendants deny the remaining allegations contained in paragraph 46 of Plaintiff's Complaint.

47. The Franchisee Defendants deny the allegations contained in paragraph 47 of Plaintiff's Complaint.

48. The Franchisee Defendants deny the allegations contained in paragraph 48 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

49. The Franchisee Defendants deny the allegations contained in paragraph 49 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

50. The Franchisee Defendants deny the allegations contained in paragraph 50 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

51. The Franchisee Defendants admit the allegations contained in paragraph 51 of Plaintiff's Complaint.

52. The Franchisee Defendants admit the allegations contained in paragraph 52 of Plaintiff's Complaint.

53. The Franchisee Defendants deny the allegations contained in paragraph 53 of Plaintiff's Complaint.

54. The Franchisee Defendants deny the allegations contained in paragraph 54 of Plaintiff's Complaint.

55. The Franchisee Defendants deny the allegations contained in paragraph 55 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

56. The Franchisee Defendants deny the allegations contained in paragraph 56 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

57. The Franchisee Defendants deny the allegations contained in paragraph 57 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

58. The Franchisee Defendants deny the allegations contained in paragraph 58 of Plaintiff's Complaint.

59. The Franchisee Defendants admit the allegations contained in paragraph 59 of Plaintiff's Complaint.

60. In response to the allegations contained in paragraph 60 of Plaintiff's Complaint, the Franchisee Defendants admit that Michael Hutmier is a member of It's Only Papa's Pizza LLC. The Franchisee Defendants deny the remaining allegations contained in paragraph 60 of Plaintiff's Complaint.

61. The Franchisee Defendants deny the allegations contained in paragraph 61 of Plaintiff's Complaint.

62. The Franchisee Defendants deny the allegations contained in paragraph 62 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.



63. The Franchisee Defendants deny the allegations contained in paragraph 63 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

64. The Franchisee Defendants deny the allegations contained in paragraph 64 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

65. The Franchisee Defendants admit the allegations contained in paragraph 65 of Plaintiff's Complaint.

66. The Franchisee Defendants deny the allegations contained in paragraph 66 of Plaintiff's Complaint.

67. The Franchisee Defendants deny the allegations contained in paragraph 67 of Plaintiff's Complaint.

68. In response to the allegations contained in paragraph 68 of Plaintiff's Complaint, the Franchisee Defendants admit that Michael Hutmier is the sole shareholder of It's Only Pizza, Inc. The Franchisee Defendants deny the remaining allegations contained in Paragraph 68 of Plaintiff's Complaint.

69. The Franchisee Defendants deny the allegations contained in paragraph 69 of Plaintiff's Complaint.

70. In response to the allegations contained in paragraph 70 of Plaintiff's Complaint, the Franchisee Defendants admit that Michael Hutmier is a member of It's Only Papa's Pizza LLC. The Franchisee Defendants deny the remaining allegations contained in paragraph 70 of Plaintiff's Complaint.

71. In response to the allegations contained in paragraph 71 of the Complaint, the Franchisee Defendants admit that a LinkedIn profile for Michael Hutmier states that Hutmier is a czar at It's Only Pizza, Inc.

72. The Franchisee Defendants admit the allegations contained in paragraph 72 of Plaintiff's Complaint.

73. The Franchisee Defendants deny the allegations contained in paragraph 73 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

74. The Franchisee Defendants deny the allegations contained in paragraph 74 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

75. Defendants deny the allegations contained in paragraph 75 of Plaintiff's Complaint.

76. The Franchisee Defendants deny the allegations contained in paragraph 76 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

77. The Franchisee Defendants deny the allegations contained in paragraph 77 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

78. The Franchisee Defendants deny the allegations contained in paragraph 6 of Plaintiff's Complaint.

79. The Franchisee Defendants deny the allegations contained in paragraph 79 of Plaintiff's Complaint.

80. The Franchisee Defendants deny the allegations contained in paragraph 80 of Plaintiff's Complaint.

81. The Franchisee Defendants deny the allegations contained in paragraph 81 of Plaintiff's Complaint.

82. The Franchisee Defendants deny the allegations contained in paragraph 82 of Plaintiff's Complaint.

83. The Franchisee Defendants admit the allegations contained in paragraph 83 of Plaintiff's Complaint.

84. The Franchisee Defendants admit the allegations contained in paragraph 84 of Plaintiff's Complaint.

85. The Franchisee Defendants deny the allegations contained in paragraph 85 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

86. The Franchisee Defendants deny the allegations contained in paragraph 86 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

87. The Franchisee Defendants deny the allegations contained in paragraph 87 of Plaintiff's Complaint.

88. The Franchisee Defendants deny the allegations contained in paragraph 88 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

89. The Franchisee Defendants deny the allegations contained in paragraph 89 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

90. The Franchisee Defendants deny the allegations contained in paragraph 90 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

91. The Franchisee Defendants deny the allegations contained in paragraph 91 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

92. The Franchisee Defendants deny the allegations contained in paragraph 92 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

93. The Franchisee Defendants deny the allegations contained in paragraph 93 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

94. The Franchisee Defendants deny the allegations contained in paragraph 94 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

95. The Franchisee Defendants deny the allegations contained in paragraph 95 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

96. The Franchisee Defendants deny the allegations contained in paragraph 96 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

97. The Franchisee Defendants deny the allegations contained in paragraph 97 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

98. The Franchisee Defendants deny the allegations contained in paragraph 98 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

99. The Franchisee Defendants deny the allegations contained in paragraph 99 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

100. The Franchisee Defendants deny the allegations contained in paragraph 100 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

101. The Franchisee Defendants deny the allegations contained in paragraph 101 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

102. The Franchisee Defendants deny the allegations contained in paragraph 102 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

103. The Franchisee Defendants deny the allegations contained in paragraph 103 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

104. The Franchisee Defendants deny the allegations contained in paragraph 104 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

105. The Franchisee Defendants deny the allegations contained in paragraph 105 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

106. The Franchisee Defendants deny the allegations contained in paragraph 106 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

107. The Franchisee Defendants deny the allegations contained in paragraph 107 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

108. The Franchisee Defendants deny the allegations contained in paragraph 108 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

109. The Franchisee Defendants deny the allegations contained in paragraph 109 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

110. The Franchisee Defendants deny the allegations contained in paragraph 110 of Plaintiff's Complaint.

111. The Franchisee Defendants deny the allegations contained in paragraph 111 of Plaintiff's Complaint.

112. The Franchisee Defendants deny the allegations contained in paragraph 112 of Plaintiff's Complaint.

113. The Franchisee Defendants deny the allegations contained in paragraph 113 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

114. In response to the allegations contained in paragraph 114 of the Complaint, the Franchisee Defendants admit that Plaintiff delivered pizza and other food items. The Franchisee Defendants deny the remaining allegations contained in paragraph 114 for lack of information sufficient to form a belief as to the truth or falsity thereof.

115. The Franchisee Defendants deny the allegations contained in paragraph 115 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

116. The Franchisee Defendants deny the allegations contained in paragraph 116 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

117. The Franchisee Defendants deny the allegations contained in paragraph 117 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

118. The Franchisee Defendants deny the allegations contained in paragraph 118 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

119. The Franchisee Defendants deny the allegations contained in paragraph 119 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

120. The Franchisee Defendants deny the allegations contained in paragraph 120 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

121. The Franchisee Defendants deny the allegations contained in paragraph 121 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

122. The Franchisee Defendants deny the allegations contained in paragraph 122 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

123. The Franchisee Defendants deny the allegations contained in paragraph 123 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

124. The Franchisee Defendants deny the allegations contained in paragraph 124 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

125. The Franchisee Defendants deny the allegations contained in paragraph 125 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.



126. The Franchisee Defendants deny the allegations contained in paragraph 126 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

127. The Franchisee Defendants deny the allegations contained in paragraph 127 of Plaintiff's Complaint.

128. The Franchisee Defendants deny the allegations contained in paragraph 128 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

129. The Franchisee Defendants deny the allegations contained in paragraph 129 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

130. The Franchisee Defendants deny the allegations contained in paragraph 130 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

131. The Franchisee Defendants deny the allegations contained in paragraph 131 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

132. The Franchisee Defendants deny the allegations contained in paragraph 132 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

133. The Franchisee Defendants deny the allegations contained in paragraph 133 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

134. The Franchisee Defendants deny the allegations contained in paragraph 134 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

135. The Franchisee Defendants deny the allegations contained in paragraph 135 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

136. The Franchisee Defendants deny the allegations contained in paragraph 136 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

137. The Franchisee Defendants deny the allegations contained in paragraph 137 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

138. The Franchisee Defendants deny the allegations contained in paragraph 138 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

139. The Franchisee Defendants deny the allegations contained in paragraph 139 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

140. The Franchisee Defendants deny the allegations contained in paragraph 140 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

141. The Franchisee Defendants deny the allegations contained in paragraph 141 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

142. The Franchisee Defendants deny the allegations contained in paragraph 142 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

143. The Franchisee Defendants deny the allegations contained in paragraph 143 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

144. The Franchisee Defendants deny the allegations contained in paragraph 144 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

145. The Franchisee Defendants deny the allegations contained in paragraph 145 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

146. The Franchisee Defendants deny the allegations contained in paragraph 146 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

147. The Franchisee Defendants deny the allegations contained in paragraph 147 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

148. The Franchisee Defendants deny the allegations contained in paragraph 148 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

149. The Franchisee Defendants deny the allegations contained in paragraph 149 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

150. The Franchisee Defendants deny the allegations contained in paragraph 150 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

151. The Franchisee Defendants deny the allegations contained in paragraph 151 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

152. The Franchisee Defendants deny the allegations contained in paragraph 152 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

153. The Franchisee Defendants deny the allegations contained in paragraph 153 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

154. The Franchisee Defendants deny the allegations contained in paragraph 154 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

155. The Franchisee Defendants deny the allegations contained in paragraph 155 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

156. The Franchisee Defendants deny the allegations contained in paragraph 156 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

157. The Franchisee Defendants deny the allegations contained in paragraph 157 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

158. The Franchisee Defendants deny the allegations contained in paragraph 158 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

159. The Franchisee Defendants deny the allegations contained in paragraph 159 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

160. The Franchisee Defendants deny the allegations contained in paragraph 160 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

161. The Franchisee Defendants deny the allegations contained in paragraph 161 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

162. The Franchisee Defendants deny the allegations contained in paragraph 162 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

163. The Franchisee Defendants deny the allegations contained in paragraph 163 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

164. The Franchisee Defendants deny the allegations contained in paragraph 164 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

165. The Franchisee Defendants deny the allegations contained in paragraph 165 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

166. The Franchisee Defendants admit the allegations contained in paragraph 166 of Plaintiff's Complaint.

167. The Franchisee Defendants deny the allegations contained in paragraph 167 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

168. The Franchisee Defendants deny the allegations contained in paragraph 168 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

169. The Franchisee Defendants deny the allegations contained in paragraph 169 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

170. The Franchisee Defendants deny the allegations contained in paragraph 170 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

171. The Franchisee Defendants deny the allegations contained in paragraph 171 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

172. The Franchisee Defendants deny the allegations contained in paragraph 172 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

173. The Franchisee Defendants deny the allegations contained in paragraph 173 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

174. The Franchisee Defendants deny the allegations contained in paragraph 174 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

175. The Franchisee Defendants deny the allegations contained in paragraph 175 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

176. The Franchisee Defendants deny the allegations contained in paragraph 176 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

177. The Franchisee Defendants deny the allegations contained in paragraph 177 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

178. The Franchisee Defendants deny the allegations contained in paragraph 178 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

179. The Franchisee Defendants deny the allegations contained in paragraph 179 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

180. The Franchisee Defendants deny the allegations contained in paragraph 180 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

181. The Franchisee Defendants deny the allegations contained in paragraph 181 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

182. The Franchisee Defendants deny the allegations contained in paragraph 182 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

183. The Franchisee Defendants deny the allegations contained in paragraph 183 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.



184. The Franchisee Defendants deny the allegations contained in paragraph 184 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

185. The Franchisee Defendants deny the allegations contained in paragraph 185 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

186. The Franchisee Defendants deny the allegations contained in paragraph 186 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

187. The Franchisee Defendants deny the allegations contained in paragraph 187 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

188. The Franchisee Defendants deny the allegations contained in paragraph 188 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

189. The Franchisee Defendants deny the allegations contained in paragraph 189 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

190. The Franchisee Defendants deny the allegations contained in paragraph 190 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

191. The Franchisee Defendants deny the allegations contained in paragraph 191 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

192. The Franchisee Defendants deny the allegations contained in paragraph 192 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

193. The Franchisee Defendants deny the allegations contained in paragraph 193 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

194. The Franchisee Defendants deny the allegations contained in paragraph 194 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

195. The Franchisee Defendants deny the allegations contained in paragraph 195 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

196. The Franchisee Defendants deny the allegations contained in paragraph 196 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

197. The Franchisee Defendants deny the allegations contained in paragraph 197 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

198. The Franchisee Defendants deny the allegations contained in paragraph 198 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

199. The Franchisee Defendants deny the allegations contained in paragraph 199 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

200. The Franchisee Defendants deny the allegations contained in paragraph 200 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

201. The Franchisee Defendants deny the allegations contained in paragraph 201 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

202. The Franchisee Defendants deny the allegations contained in paragraph 202 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

203. The Franchisee Defendants deny the allegations contained in paragraph 203 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

204. The Franchisee Defendants deny the allegations contained in paragraph 204 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

205. The Franchisee Defendants deny the allegations contained in paragraph 205 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

206. The Franchisee Defendants deny the allegations contained in paragraph 206 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

207. The Franchisee Defendants deny the allegations contained in paragraph 207 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

208. The Franchisee Defendants deny the allegations contained in paragraph 208 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

209. In response to the allegations contained in paragraph 209 of the Complaint, the Franchisee Defendants admit that Plaintiff purports to bring the First Count on behalf of the FLSA Collective. The Franchisee Defendants deny that collective treatment is appropriate or that the alleged collective action can be certified. The Franchisee Defendants deny the remaining allegations contained in Paragraph 209.

210. The Franchisee Defendants deny the allegations contained in paragraph 210 of Plaintiff's Complaint.

211. The Franchisee Defendants deny the allegations contained in paragraph 211 of Plaintiff's Complaint.

212. The Franchisee Defendants deny the allegations contained in paragraph 212 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

213. The Franchisee Defendants deny the allegations contained in paragraph 213 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

214. The Franchisee Defendants deny the allegations contained in paragraph 214 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

215. The Franchisee Defendants deny the allegations contained in paragraph 215 of Plaintiff's Complaint.

216. The Franchisee Defendants deny the allegations contained in paragraph 216 of Plaintiff's Complaint.

217. The Franchisee Defendants deny the allegations contained in paragraph 217 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

218. The Franchisee Defendants deny the allegations contained in paragraph 218 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

219. The Franchisee Defendants deny the allegations contained in paragraph 219 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

220. In response to the allegations contained in paragraph 220 of Plaintiff's Complaint, the Franchisee Defendants admit that Plaintiff purports to bring the Second, Third, Fourth, and Fifth Claims under Fed. R. Civ. P. 23, on behalf of himself and an alleged class. The Franchisee Defendants deny that class treatment is appropriate or that the alleged class can be certified.

221. In response to the allegations contained in paragraph 221 of Plaintiff's Complaint, the Franchisee Defendants admit that Plaintiff purports to bring the Second, Third, Fourth, and Fifth Counts under Fed. R. Civ. P. 23, on behalf of himself and an alleged Rule 23 Class, and admits that Plaintiff purports to exclude certain individuals from the class. The Franchisee Defendants deny that class treatment is appropriate or that the alleged class can be certified.

222. The Franchisee Defendants deny the allegations contained in paragraph 222 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

223. The Franchisee Defendants deny the allegations contained in paragraph 223 of Plaintiff's Complaint.

224. The Franchisee Defendants deny the allegations contained in paragraph 224 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

225. The Franchisee Defendants deny the allegations contained in paragraph 225 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

226. The Franchisee Defendants deny the allegations contained in paragraph 226 of Plaintiff's Complaint.

227. The Franchisee Defendants deny the allegations contained in paragraph 227 of Plaintiff's Complaint.

228. The Franchisee Defendants deny the allegations contained in paragraph 228 of Plaintiff's Complaint.

229. The Franchisee Defendants deny the allegations contained in paragraph 229 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

230. The Franchisee Defendants deny the allegations contained in paragraph 230 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

231. The Franchisee Defendants deny the allegations contained in paragraph 231 of Plaintiff's Complaint.

232. The Franchisee Defendants deny the allegations contained in paragraph 232 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

233. The Franchisee Defendants deny the allegations contained in paragraph 233 of Plaintiff's Complaint.

234. The Franchisee Defendants deny the allegations contained in paragraph 234 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

235. The Franchisee Defendants deny the allegations contained in paragraph 235 of Plaintiff's Complaint.

236. The Franchisee Defendants deny the allegations contained in paragraph 236 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

237. The Franchisee Defendants incorporate by reference the foregoing paragraphs as if fully restated herein.

238. The Franchisee Defendants deny the allegations contained in paragraph 238 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

239. The Franchisee Defendants deny the allegations contained in paragraph 239 of Plaintiff's Complaint.

240. The Franchisee Defendants deny the allegations contained in paragraph 240 of Plaintiff's Complaint.

241. The Franchisee Defendants deny the allegations contained in paragraph 241 of Plaintiff's Complaint.

242. The Franchisee Defendants deny the allegations contained in paragraph 242 of Plaintiff's Complaint.

243. The Franchisee Defendants deny the allegations contained in paragraph 243 of Plaintiff's Complaint.

244. The Franchisee Defendants deny the allegations contained in paragraph 244 of Plaintiff's Complaint.

245. The Franchisee Defendants deny the allegations contained in paragraph 245 of Plaintiff's Complaint.



246. The Franchisee Defendants incorporate by reference the foregoing paragraphs as if fully restated herein.

247. The Franchisee Defendants deny the allegations contained in paragraph 247 of Plaintiff's Complaint.

248. Paragraph 248 states a legal conclusion to which no response is required. To the extent a response is required, the Franchisee Defendants deny the allegations in Paragraph 248.

249. The Franchisee Defendants deny the allegations contained in paragraph 249 of Plaintiff's Complaint.

250. The Franchisee Defendants deny the allegations contained in paragraph 250 of Plaintiff's Complaint.

251. The Franchisee Defendants deny the allegations contained in paragraph 251 of Plaintiff's Complaint.

252. The Franchisee Defendants deny the allegations contained in paragraph 252 of Plaintiff's Complaint.

253. The Franchisee Defendants deny the allegations contained in paragraph 253 of Plaintiff's Complaint.

254. The Franchisee Defendants deny the allegations contained in paragraph 254 of Plaintiff's Complaint.

255. The Franchisee Defendants incorporate by reference the foregoing paragraphs as if fully restated herein.

256. The Franchisee Defendants deny the allegations contained in paragraph 256 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

257. The Franchisee Defendants deny the allegations contained in paragraph 257 of Plaintiff's Complaint.

258. The Franchisee Defendants deny the allegations contained in paragraph 258 of Plaintiff's Complaint.

259. The Franchisee Defendants deny the allegations contained in paragraph 259 of Plaintiff's Complaint.

260. The Franchisee Defendants deny the allegations contained in paragraph 260 of Plaintiff's Complaint.

261. The Franchisee Defendants incorporate by reference the foregoing paragraphs as if fully restated herein.

262. Paragraph 262 states a legal conclusion to which no response is required. To the extent a response is required, the Franchisee Defendants deny that Plaintiff or members of the putative class or collective can recover criminal penalties under the FLSA.

263. The Franchisee Defendants deny the allegations contained in paragraph 263 of Plaintiff's Complaint.

264. Paragraph 264 states a legal conclusion to which no response is required. To the extent a response is required, the Franchisee Defendants deny that Plaintiff or members of the putative class or collective can recover exemplary or punitive damages.

265. The Franchisee Defendants deny the allegations contained in paragraph 265 of Plaintiff's Complaint.

266. The Franchisee Defendants incorporate by reference the foregoing paragraphs as if fully restated herein.

267. The Franchisee Defendants deny the allegations contained in paragraph 267 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

268. The Franchisee Defendants deny the allegations contained in paragraph 268 of Plaintiff's Complaint for lack of information sufficient to form a belief as to the truth or falsity thereof.

### **AFFIRMATIVE DEFENSES**

1. The Franchisee Defendants specifically object to the extent that Plaintiff or the putative class, or any of them, are not entitled to a trial by jury on any claims for equitable relief and/or on any other issues as to which a jury trial is not permitted as of right.

2. Some or all of the claims brought or sought to be brought are barred by the applicable statute of limitations.

3. The Franchisee Defendants assert the defense afforded by Section 10 of the Portal to Portal Act as to liability.

4. The Franchisee Defendants assert the defense afforded by Section 11 of the Portal to Portal Act as to liquidated damages.

5. Plaintiff fails to state a claim upon which relief can be granted.

6. Plaintiff's claims fail because Plaintiff contributed to or caused his own alleged harm.

7. Plaintiff's claims are barred because of Plaintiff's unclean hands and failure to act in good faith.

8. Plaintiff and others lack standing to raise some of or all of their claims and of those on whose behalf they purport to complain.

9. Even if Plaintiff and the persons Plaintiff purports to represent prevail, their damage claims, including their claims for liquidated damages, penalties, and pre- and post-judgment interest, are barred to the extent that the forms of relief are duplicative of each other.

10. Plaintiff and/or some or all of the putative collective action members and/or class members are not entitled to some or all of the relief sought under the doctrine of consent or because they otherwise fall within a classification of individuals who may not recover under the causes of action alleged.

11. The Complaint is barred, in whole or in part, because any recovery from the Franchisee Defendants would result in the unjust enrichment of Plaintiff and the persons Plaintiff purports to represent.

12. The types of claims alleged by Plaintiff, and others with whom he is allegedly “similarly situated,” the existence of which is expressly denied, are matters in which individual questions predominate and, accordingly, are not appropriate for collective treatment under FLSA.

13. A collective or class action is not superior to other available methods for the fair and efficient adjudication of this controversy.

14. Certain of the interests of Plaintiff and others are in conflict with the interests of some or all of the members of the alleged group of persons which Plaintiff purports to represent, the existence of which is expressly denied.

15. This action is barred by Section 4 of the Portal to Portal Act, 29 U.S.C. § 254(a), to the extent that Plaintiff and others seek relief for non-compensable activities and/or for time not considered hours worked under that Act.

16. Plaintiff's claims and the claims of the putative class and collective action are barred, in whole or in part, by the *de minimis* doctrine. If, in fact, the Franchisee Defendants failed to pay any non-exempt employee the minimum wage, the uncompensated time is *de minimis* and is therefore not recoverable.

17. Plaintiff, and others with whom he is allegedly "similarly situated," have failed to mitigate or reasonably attempt to mitigate their alleged damages, if any.

18. Plaintiff's claims are barred to the extent he failed to exhaust administrative remedies or to comply with the statutory prerequisites for bringing suit.

19. Although the Franchisee Defendants deny that they have committed any act that could support the recovery of criminal or civil penalties or exemplary or punitive damages in this lawsuit, if and to the extent any such act or responsibility is found, recovery of criminal or civil penalties of exemplary or punitive damages against the Franchisee Defendants is unconstitutional under the Eighth, Fifth, Fourteenth, and Fifth Amendments to the United States Constitution.

20. With respect to some or all claims brought by Plaintiff, and others with whom he is allegedly "similarly situated," the Franchisee Defendants affirmatively plead that any acts or omissions which may be found to be in violation of the rights afforded by the FLSA were not willful but occurred in good faith with reasonable grounds for believing that the Franchisee Defendants were in full compliance with the FLSA.

21. The Complaint is barred in whole, or in part, by § 10 of the Portal-to-Portal Act, 29 U.S.C. § 259 because the Franchisee Defendant relied in good faith on, and acted in conformity with, written interpretations of the FLSA promulgated by the Secretary of Labor and

on the stated administrative practices, enforcement policies, regulations, orders, rulings, approvals, and interpretations of the Department of Labor.

22. The Franchisee Defendants' actions were taken in good faith and with reasonable grounds to believe such conduct comported with the FLSA or interpretations of the FLSA pursuant to 29 U.S.C. § 260.

23. The Franchisee Defendants' actions were taken in good faith with reasonable grounds to believe such conduct comported with the applicable state minimum wage laws.

24. Plaintiff and any member of the putative class or collection action are not entitled to any penalty, multiplication of damages, or extension of any statute of limitations period because the Franchisee Defendants did not willfully, knowingly, or intentionally fail to comply with the overtime provisions of the FLSA.

25. Plaintiff may not maintain this action as a collective action under 29 U.S.C. § 216 because he is not similarly situated to any other employee for purposes of the allegations and claims made in this lawsuit.

26. The Complaint is barred by the doctrine of laches.

27. Certification of this case as a collective action would require a trial where individual issues predominate over common issues; consequently, the Franchisee Defendants would be deprived of their due process rights under the United States Constitution.

28. Plaintiff is an inadequate class representative because he has interests that conflict with those of the putative class action members.

29. Plaintiff is an inadequate class representative because he is not representative of any purported class.

30. Some or all of the claims asserted in the Complaint are unsuitable for class treatment pursuant to Rule 23 of the Federal Rules of Civil Procedure and other relevant legal authority. The Franchisee Defendants specifically maintain that Plaintiff's pleadings fail to meet the requirements necessary to justify a class action.

31. Some or all of the claims asserted in the Complaint are unsuitable for class treatment because the prosecution of separate actions by members of the group of persons who Plaintiff purports to represent, the existence of which is expressly denied, would not create a risk of adjudications with respect to proposed class members which would as a practical matter be dispositive of the interests of the other proposed class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests.

32. Some or all of the claims asserted in the Complaint are barred because a class action is not superior to other available methods for the fair and efficient adjudication of this controversy.

33. Plaintiff's claims, and the claims of the putative collective action class, for liquidated damages are barred, in whole or in part, by statutory exceptions, setoffs, or credits under the FLSA and/or state law.

34. The Complaint is barred to the extent that Plaintiff and any purported member of a class or collective action failed to report or give notice of the allegations upon which they basis their Complaint to their employer and/or failed to avail themselves of their employer's internal procedures, means, or methods relating to violations, grievances, complaints, or disputes.

35. Some or all of Plaintiff's and/or the putative collective action members' and/or class members' claims are barred by the doctrines of estoppel, res judicata, collateral estoppel, and/or equitable estoppel.

36. The Franchisee Defendants deny that there is any basis for Plaintiff or any alleged similarly situated individual's claims against them to the extent that they were not employed by the Franchisee Defendants or any of them within the meaning of the FLSA or the applicable state law.

37. The Franchisee Defendants reserve the right to plead additional affirmative defenses as those defenses may become known through discovery or otherwise in this action.

**WHEREFORE**, the Franchisee Defendants deny that Plaintiff and the class of persons Plaintiff purports to represent are entitled to any relief. The Franchisee Defendants pray:

1. That Plaintiff's Complaint be dismissed in its entirety with prejudice;
2. That Plaintiff take nothing by reason thereof;
3. That judgment be entered in favor of the Franchisee Defendants;
4. That the Franchisee Defendants be awarded their costs and attorneys' fees; and
5. For such other and further relief that the Court deems just and proper.

Respectfully submitted,

/s/ Brian P. O'Connor  
Brian P. O'Connor (0086646)  
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*Attorney for Franchisee Defendants*



**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing has been served upon all attorneys and parties of record registered electronically via the Court's ECF system on October 15, 2018.

/s/ Brian P. O'Connor  
Brian P. O'Connor (0086646)

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