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

, Individually and On  
Others Similarly Situated,  
Plaintiff,

v.

B. RILEY FINANCIAL, INC.  
BRYANT RILEY, TOM KELLEHER.  
and PHILLIP J. AHN,  
Defendants.

Case No.

**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS**

1 Plaintiff (“Plaintiff”), individually and on behalf of all others  
2 similarly situated, by and through his attorneys, alleges the following upon  
3 information and belief, except as to those allegations concerning Plaintiff, which are  
4 alleged upon personal knowledge. Plaintiff’s information and belief is based upon,  
5 among other things, his counsel’s investigation, which includes without limitation:  
6 (a) review and analysis of regulatory filings made by B. Riley Financial, Inc. (“B.  
7 Riley” or the “Company”) with the United States (“U.S.”) Securities and Exchange  
8 Commission (“SEC”); (b) review and analysis of press releases and media reports  
9 issued by and disseminated by B. Riley; and (c) review of other publicly available  
10 information concerning B. Riley.

### 11 **NATURE OF THE ACTION AND OVERVIEW**

12 1. This is a class action on behalf of persons and entities that purchased or  
13 otherwise acquired B. Riley common stock between May 10, 2023 and November 9,  
14 2023, inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants  
15 under the Securities Exchange Act of 1934 (the “Exchange Act”).

16 2. B. Riley is a financial services platform. The Company, through its  
17 subsidiaries, provides services including: investment banking, brokerage, wealth  
18 management, asset management, direct lending, business advisory, valuation, and  
19 asset disposition. B. Riley’s clients include public and private companies, financial  
20 sponsors, investors, financial institutions, and individuals.

21 3. Brian Kahn (“Kahn”) is a client of B. Riley. Kahn is the Chief Executive  
22 Officer (“CEO”) of Franchise Group, Inc. (“FRG”). FRG is a holding company which  
23 acquires and manages companies, primarily franchises. FRG’s businesses include  
24 Vitamin Shoppe, Pet Supplies Plus, and Buddy’s Newco LLC (d/b/a Buddy’s Home  
25 Furnishings), among others.

26 4. In May 2023, B. Riley entered into an agreement to assist Kahn in  
27 leading a management buyout of FRG. The \$2.8 billion deal to take FRG private was  
28 completed on August 21, 2023. The transaction was partially financed by Nomura

1 Holdings Inc. (“Nomura”) via B. Riley, who secured the financing allowing Kahn and  
2 other senior management of FRG to acquire the remaining 64% stake that they did  
3 not already own.

4 5. On November 2, 2023, Kahn was implicated as the unnamed  
5 coconspirator in a conspiracy to defraud investors of \$294 million in funds.  
6 Specifically, the Department of Justice announced that Prophecy Asset Management  
7 (“Prophecy”) president John Hughes (“Hughes”) had pled guilty to the charge with  
8 two unnamed co-defendants, and the SEC filed a complaint against Hughes for the  
9 same misconduct. *Bloomberg* reported on that same day that Kahn had been identified  
10 by “a person familiar with the matter” as one of the unnamed conspirators.

11 6. On November 3, 2023, after the market closed, The Friendly Bear  
12 tweeted, doubting whether B. Riley knew of Kahn’s involvement and disclosed the  
13 same to Nomura. The Friendly Bear also commented that the DOJ’s “charging  
14 document clearly implicates him [i.e., Kahn] in Hughes’ crime. There is a high chance  
15 of indictment here.”

16 7. On this news, the Company’s stock price dropped \$9.02, or 22%, to close  
17 at \$32.54 per share on the next trading day, November 6, 2023, on unusually heavy  
18 trading volume.

19 8. On November 9, 2023, after the market closed, the Company revealed  
20 significant details concerning the FRG transaction and the years-long series of  
21 complex financial transactions between B. Riley, Kahn, and the Company’s  
22 respective subsidiaries, which culminated in the August 21, 2023 transaction.  
23 Analyzing these complex transactions, The Friendly Bear reported that “B Riley  
24 ended up funding 281MM of what was around a 560MM equity check. That’s over  
25 50% ownership. Yet they claim to have only 31% voting rights. ***It looks like B Riley***  
26 ***engaged in some funny business to avoid consolidation and placed control of FRG***  
27 ***in the hands of the star of ‘Prophecy’ - Brian Kahn.***”



1 materially false and/or misleading information, occurred in substantial part in this  
2 Judicial District. In addition, the Company’s principal executive offices are located in  
3 this District.

4 15. In connection with the acts, transactions, and conduct alleged herein,  
5 Defendants directly and indirectly used the means and instrumentalities of interstate  
6 commerce, including the United States mail, interstate telephone communications,  
7 and the facilities of a national securities exchange.

8 **PARTIES**

9 16. Plaintiff \_\_\_\_\_, as set forth in the accompanying certification,  
10 incorporated by reference herein, purchased B. Riley securities during the Class  
11 Period, and suffered damages as a result of the federal securities law violations and  
12 false and/or misleading statements and/or material omissions alleged herein.

13 17. Defendant B. Riley is incorporated under the laws of Delaware with its  
14 principal executive offices located in Los Angeles, California. B. Riley’s common  
15 stock trades on the NASDAQ exchange under the symbol “RILY.”

16 18. Defendant Bryant Riley (“Bryant Riley”) was the Company’s Co-  
17 Founder, Chairman, & Co-Chief Executive Officer (“Co-CEO”) at all relevant times.

18 19. Defendant Tom Kelleher (“Kelleher”) was the Company’s Co-Founder  
19 and Co-CEO at all relevant times.

20 20. Defendant Phillip J. Ahn (“Ahn”) was the Company’s Chief Financial  
21 Officer (“CFO”) and Chief Operating Officer (“COO”) at all relevant times.

22 21. Defendants Bryant Riley, Kelleher and Ahn (together, the “Individual  
23 Defendants”), because of their positions with the Company, possessed the power and  
24 authority to control the contents of the Company’s reports to the SEC, press releases  
25 and presentations to securities analysts, money and portfolio managers and  
26 institutional investors, i.e., the market. The Individual Defendants were provided with  
27 copies of the Company’s reports and press releases alleged herein to be misleading  
28 prior to, or shortly after, their issuance and had the ability and opportunity to prevent

1 their issuance or cause them to be corrected. Because of their positions and access to  
2 material non-public information available to them, the Individual Defendants knew  
3 that the adverse facts specified herein had not been disclosed to, and were being  
4 concealed from, the public, and that the positive representations which were being  
5 made were then materially false and/or misleading. The Individual Defendants are  
6 liable for the false statements pleaded herein.

## 7 SUBSTANTIVE ALLEGATIONS

### 8 Background

9 22. B. Riley is a financial services platform. The Company, through its  
10 subsidiaries, provides services including: investment banking, brokerage, wealth  
11 management, asset management, direct lending, business advisory, valuation, and  
12 asset disposition. B. Riley's clients include public and private companies, financial  
13 sponsors, investors, financial institutions, and individuals.

14 23. Kahn is a client of B. Riley, and the CEO of FRG. FRG is a holding  
15 company which acquires and manages companies, primarily franchises. FRG's  
16 businesses include Vitamin Shoppe, Pet Supplies Plus, and Buddy's Newco LLC  
17 (d/b/a Buddy's Home Furnishings), among others.

### 18 Materially False and Misleading

#### 19 Statements Issued During the Class Period

20 24. The Class Period begins on May 10, 2023. On that day, B. Riley  
21 announced in a press release that it had entered into a merger agreement regarding  
22 FRG, stating in relevant part:<sup>1</sup>

23 Franchise Group, Inc. (NASDAQ: FRG) ("Franchise Group" or the  
24 "Company"), today announced that it has entered into a definitive  
25 agreement and plan of merger (the "Merger Agreement") *pursuant to*  
26 *which members of the senior management team of Franchise Group*  
*led by Brian Kahn, the Company's Chief Executive Officer,*  
*(collectively with affiliates and related parties of the senior*  
*management team, the "Management Group"), in financial partnership*

27 <sup>1</sup> Unless otherwise stated, all emphasis in bold and italics hereinafter is added, and all  
28 footnotes are omitted.

1 **with a consortium that includes B. Riley Financial, Inc. and Irradiant**  
2 **Partners**, will acquire the approximately 64% of the Company’s issued  
3 and outstanding common stock that the Management Group does not  
4 presently own or control. The transaction has an enterprise value of  
5 approximately \$2.6 billion, including the Company’s net debt and  
6 outstanding preferred stock.

7 \* \* \*

8 Brian Kahn, CEO of Franchise Group stated, “We are excited to have  
9 this opportunity to continue our business strategy of partnering with high  
10 quality franchisees, operators and financial institutions, while also  
11 delivering certain value to our public stockholders despite a challenging  
12 business environment.”

13 25. The same day, the Company filed a Form 8-K, which reported, in  
14 relevant part:

15 On May 10, 2023, **B. Riley Financial, Inc., a Delaware corporation (the**  
16 **“Company” or “B. Riley”)**, entered into certain agreements pursuant  
17 to which B. Riley has, among other things, agreed to provide certain  
18 equity funding and other support in connection with the acquisition  
19 (the “Acquisition”) by Freedom VCM, Inc., a Delaware corporation  
20 (the “Parent”), of Franchise Group, Inc., a Delaware corporation  
21 (“FRG”). Parent has agreed to acquire FRG pursuant to an Agreement  
22 and Plan of Merger, dated as of May 10, 2023, by and among the Parent,  
23 Freedom VCM Subco, Inc., a Delaware corporation and a wholly-owned  
24 subsidiary of the Parent (the “Merger Sub”), and FRG (the “Merger  
25 Agreement”), pursuant to which, upon the terms and subject to the  
26 conditions set forth therein, at the closing, Merger Sub will merge with  
27 and into FRG, with FRG surviving the merger as a wholly owned  
28 subsidiary of Parent. The buyer group includes members of the senior  
management team of FRG, led by Brian Kahn, **FRG’s Chief Executive  
Officer, in financial partnership with a consortium that includes B.  
Riley. B. Riley is not a party to the Merger Agreement. Pursuant to a  
commitment letter, B. Riley has agreed to fund upon the closing of the  
merger up to \$560 million in equity financing, though expects the  
actual amount to be funded to be substantially less.** A copy of the press  
release issued by FRG is furnished as Exhibit 99.1 to this Current Report  
on Form 8-K.

29 26. On May 11, 2023, the Company announced its entry into an Equity  
30 Commitment Letter and Limited Guarantee, in a press release that stated in relevant  
31 part:

32 The buyer group includes members of the senior management team of  
33 FRG, led by Brian Kahn, FRG’s Chief Executive Officer, in financial  
34 partnership with a consortium that includes B. Riley. B. Riley is not a  
35 party to the Merger Agreement.

36 \* \* \*

1 B. Riley entered into the Equity Commitment Letter and the Limited  
2 Guarantee, each as defined below in connection with the  
Acquisition.[SIC]

3 *Equity Commitment Letter*

4 B. Riley entered into an Equity Commitment Letter, dated as of May 10,  
5 2023 (the “Equity Commitment Letter”), with Freedom VCM Holdings,  
6 LLC (“TopCo”) and Parent, pursuant to which ***B. Riley, subject to the  
7 terms and conditions of the Equity Commitment Letter, has agreed to  
8 contribute to TopCo, at or prior to the closing of the Merger, an  
9 amount equal to \$560 million in equity financing (the “B. Riley Equity  
10 Commitment”). The B. Riley Equity Commitment will then be used by  
11 TopCo to fund part of the Acquisition. FRG is a third party beneficiary  
12 of the Equity Commitment Letter, and FRG is entitled to specifically  
13 enforce the Equity Commitment Letter; provided, however, that B.  
14 Riley’s obligations under the Equity Commitment Letter will terminate  
15 in the event that any claim is brought by FRG with respect to the Limited  
16 Guarantee, as defined below. Subject to certain conditions set forth in  
17 the Equity Commitment Letter, B. Riley has the right to assign all or a  
18 portion of such commitments to its affiliates, financing sources or other  
19 investors, and B. Riley expects the actual amount to be funded by it at  
20 Closing to be substantially less than the \$560 million.***

21 *Limited Guarantee*

22 B. Riley and FRG entered into a Limited Guarantee dated as of May 10,  
23 2023 (the “Limited Guarantee”) in favor of FRG, pursuant to which ***B.  
24 Riley agreed to guarantee to FRG the due and punctual payment,  
25 performance and discharge when required by Parent or Merger Sub to  
26 FRG of certain liabilities and obligations of Parent or Merger Sub  
27 under the Merger Agreement pursuant to and in accordance therewith,  
28 including (i) a termination fee due to FRG in the amount of \$55,000,000  
if the Merger Agreement is terminated under certain specified  
circumstances provided for in the Merger Agreement; (ii) certain  
reimbursement obligations of Parent when required to be paid by  
Parent pursuant to the Merger Agreement; and (iii) liabilities or  
damages resulting from any actual fraud or Willful and Material  
Breach (as defined in the Merger Agreement) by Parent or Merger Sub  
required to be paid by Parent or Merger Sub pursuant to the Merger  
Agreement; provided, that, except in the case of actual fraud or Willful  
and Material Breach by Parent or Merger Sub, the aggregate liability  
of B. Riley under the Limited Guarantee will not exceed \$57,000,000.***  
B. Riley also waived certain defenses arising out of certain events set  
forth in the Limited Guarantee.

27. On July 27, 2023, the Company filed with the SEC a Form 424B5  
Prospectus supplement which contained the following description of the proposed  
FRG Transaction:

*Proposed FRG Transaction*



1 On May 10, 2023, Franchise Group, Inc. (“FRG”) announced that it had  
2 entered into a definitive merger agreement pursuant to which members  
3 of the senior management team of FRG and related entities would  
4 acquire the approximately 64% of FRG’s common stock not owned by  
5 them. *At the same time, the Company entered into an equity  
6 commitment letter with the acquisition vehicle formed by FRG senior  
7 management pursuant to which, among other things, the Company  
8 agreed to provide certain equity funding and other support in  
9 connection with the transaction.* Specifically, the equity commitment  
10 letter provides, subject to its terms and conditions, that *the Company will  
11 contribute an amount equal to up to \$560 million in equity financing  
12 for the transaction (the Company currently expects to invest  
13 approximately \$250 million pursuant to the equity commitment, with  
14 the remainder to be funded by co-investments).* FRG has scheduled a  
15 special meeting of stockholders for August 17, 2023 to vote on the  
16 transaction and related matters. The proposed transaction is anticipated  
17 to close in the second half of 2023, subject to satisfaction or waiver of  
18 the closing conditions contained in the definitive documentation.

#### 19 *Credit Facility*

20 The Company is in discussions with certain of its lenders in respect of a  
21 new secured credit facility that, if fully drawn, would increase the  
22 Company’s aggregate consolidated indebtedness by up to *an additional  
23 \$300 million, a portion of the proceeds of which would be used to  
24 finance the Company’s equity investment in FRG. If entered into, the  
25 new secured credit facility is expected to be secured by a first priority  
26 lien on, among others, all assets secured by the Company’s existing  
27 secured credit facility.*

28 28. On August 9, 2023, the Company filed its quarterly financial report for  
the fiscal period ended June 30, 2023 on Form 10-Q with the SEC, which stated in  
relevant part:

#### 29 *Badcock Loan Receivable*

30 On December 20, 2021, the Company entered into a Master Receivables  
31 Purchase Agreement with W.S. Badcock Corporation, a Florida  
32 corporation (“WSBC”), *an indirect wholly owned subsidiary of  
33 Franchise Group, Inc., a Delaware corporation (“FRG”). The Company  
34 paid \$400,000 in cash to WSBC for the purchase of certain consumer  
35 credit receivables of WSBC. On September 23, 2022, the Company’s  
36 subsidiary, B Riley Receivables II, LLC (“BRRII”), a Delaware limited  
37 liability company, entered into a Master Receivables Purchase  
38 Agreement (“2022 Badcock Receivable”) with WSBC. This purchase  
of \$168,363 consumer credit receivables of WSBC was partially  
financed by a \$148,200 term loan discussed in Note 11. During the six  
months ended June 30, 2023, BRRII entered into Amendment Nos. 2  
and No. 3 to the 2022 Badcock Receivable with WSBC for a total of  
\$145,278 in additional consumer credit receivables. The accounting for  
these transactions resulted in the Company recording a loan receivable  
from WSBC with the recognition of interest income at an imputed rate  
based on the cash flows expected to be received from the collection of*

1 the consumer receivables that serve as collateral for the loan. The loan  
2 receivable was measured at fair value on the condensed consolidated  
balance sheets.

3 In connection with these loans, the Company entered into a Servicing  
4 Agreement with WSBC pursuant to which WSBC provides to the  
5 Company certain customary servicing and account management services  
6 in respect of the receivables purchased by the Company under the  
7 Receivables Purchase Agreement. In addition, subject to certain terms  
and conditions, FRG has agreed to guarantee the performance by WSBC  
of its obligations under the Master Receivables Purchase Agreements  
and the Servicing Agreement.

8 \* \* \*

9 *FRG Commitments and Guarantees*

10 ***On May 10, 2023, we entered into certain agreements pursuant to  
11 which we have, among other things, agreed to provide certain equity  
12 funding and other support in connection with the acquisition*** (the  
13 “Acquisition”) by Freedom VCM, Inc., a Delaware corporation  
14 (“Parent”), of Franchise Group, Inc., a Delaware corporation (“FRG”).  
15 Parent has agreed to acquire FRG pursuant to an Agreement and Plan of  
16 Merger, dated as of May 10, 2023, by and among Parent, Freedom VCM  
17 Subco, Inc., a Delaware corporation and a wholly-owned subsidiary of  
18 Parent (the “Merger Sub”), and FRG (the “Merger Agreement”),  
19 pursuant to which, upon the terms and subject to the conditions set forth  
20 therein, at the closing, Merger Sub will merge with and into FRG, with  
21 FRG surviving the merger as a wholly owned subsidiary of Parent. ***The  
22 buyer group includes members of the senior management team of  
23 FRG, led by FRG’s Chief Executive Officer. We are not a party to the  
24 Merger Agreement.***

25 \* \* \*

26 *Equity Commitment Letter*

27 We entered into an Equity Commitment Letter, dated as of May 10, 2023  
28 (the “Equity Commitment Letter”), with Freedom VCM Holdings, LLC  
(“TopCo”) and Parent, pursuant to which we, subject to the terms and  
conditions of the Equity Commitment Letter, ***have agreed to contribute  
to TopCo, at or prior to the closing of the Merger, an amount equal to  
up to \$560.0 million in equity financing (the “B. Riley Equity  
Commitment”). The B. Riley Equity Commitment will then be used by  
TopCo to fund part of the Acquisition. FRG is a third party beneficiary  
of the Equity Commitment Letter,*** and FRG is entitled to specifically  
enforce the Equity Commitment Letter; provided, however, that our  
obligations under the Equity Commitment Letter will terminate in the  
event that any claim is brought by FRG with respect to the Limited  
Guarantee, as defined below. Subject to certain conditions set forth in  
the Equity Commitment Letter, we have the right to assign all or a  
portion of such commitments to its affiliates, financing sources or other  
investors, and we expect the actual amount to be funded by it at Closing  
to be less than the \$560.0 million.

1            *Limited Guarantee*

2            We entered into a Limited Guarantee with FRG dated as of May 10, 2023  
3            (the “Limited Guarantee”) in favor of FRG, pursuant to which we agreed  
4            to guarantee to FRG the due and punctual payment, performance and  
5            discharge when required by Parent or Merger Sub to FRG of certain  
6            liabilities and obligations of Parent or Merger Sub under the Merger  
7            Agreement pursuant to and in accordance therewith, including (i) a  
8            termination fee due to FRG in the amount of \$55.0 million if the Merger  
9            Agreement is terminated under certain specified circumstances provided  
10           for in the Merger Agreement; (ii) certain reimbursement obligations of  
11           Parent when required to be paid by Parent pursuant to the Merger  
12           Agreement; and (iii) ***liabilities or damages resulting from any actual  
13           fraud or Willful and Material Breach (as defined in the Merger  
14           Agreement) by Parent or Merger Sub required to be paid by Parent or  
15           Merger Sub pursuant to the Merger Agreement;*** provided, that, except  
16           in the case of actual fraud or Willful and Material Breach by Parent or  
17           Merger Sub, our aggregate liability under the Limited Guarantee will not  
18           exceed \$57.0 million. We also waived certain defenses arising out of  
19           certain events set forth in the Limited Guarantee.

20           29.    On August 25, 2023, the Company filed with the SEC the “Credit  
21           Agreement, dated August 21, 2023, among B. Riley Financial, Inc., BR Financial  
22           Holdings, LLC, each of the lenders from time to time parties thereto, Nomura  
23           Corporate Funding Americas, LLC, and Computershare Trust Company, N.A.,” as  
24           Exhibit 10.1 to a Form 8-K. In the Company’s 8-K filing, the Company announced  
25           the completion of equity financing in connection with the acquisition of FRG and  
26           stated:

27           On August 21, 2023, B. Riley Financial, Inc. (the “Company” or “B.  
28           Riley”) completed a previously announced equity financing (the “Equity  
29           Investment”) in connection with the acquisition (the “Acquisition”) of  
30           Franchise Group, Inc., a Delaware corporation (“FRG”), ***by a buyer  
31           group that included members of senior management of FRG, led by  
32           Brian Kahn, FRG’s Chief Executive Officer, in a financial partnership  
33           with a consortium that includes certain of Brian Kahn’s affiliate  
34           entities,*** the Company and certain other investors. The Acquisition was  
35           completed pursuant to the terms of that certain Agreement and Plan of  
36           Merger, dated as of May 10, 2023 (the “Merger Agreement”), by and  
37           among FRG, Freedom VCM, Inc., a Delaware corporation (“Parent”) and  
38           Freedom VCM Subco, Inc., a Delaware corporation and wholly-  
39           owned subsidiary of Parent (“Merger Sub”). Pursuant to the Merger  
40           Agreement, Merger Sub merged with and into FRG (the “Merger”), with  
41           FRG surviving the Merger as a subsidiary of Parent. The Company was  
42           not a party to the Merger Agreement. In connection with the Acquisition,  
43           a subsidiary of the Company made a new cash Equity Investment of  
44           ***\$216.5 million in FRG’s new parent entity, bringing the Company’s  
45           entire equity investment in the parent entity to approximately \$280  
46           million.***

1           30.     On August 28, 2023, the Company issued a press release entitled “B.  
2 Riley Leads Financing for Management Buyout of Franchise Group” which stated in  
3 relevant part that the Company:

4           led the equity financing to facilitate the \$2.8 billion management-led  
5 acquisition of Franchise Group, Inc. (“FRG”) which was completed on  
6 August 21, 2023.

7           ***B. Riley invested \$216.5 million of new capital in the transaction. Other institutional, financial and strategic investors invested approximately \$280 million of additional equity capital in the new FRG alongside significant rollover equity contributions from FRG management.*** As result of the completed transaction, the management-  
8 led consortium has acquired all the outstanding and issued common and  
9 preferred stock of FRG.

10          31.     The above statements identified in ¶¶ 24-30 were materially false and/or  
11 misleading, and failed to disclose material adverse facts about the Company’s  
12 business, operations, and prospects. Specifically, Defendants failed to disclose to  
13 investors: (1) that Brian Kahn had been credibly implicated in a conspiracy to defraud  
14 investors of millions of dollars; (2) that, in spite of this involvement, B. Riley  
15 continued to finance the transaction enabling Kahn and others to take FRG private  
16 through complex arrangements; (3) that the foregoing was reasonably likely to draw  
17 regulatory scrutiny to B. Riley; and (4) that, as a result of the foregoing, Defendants’  
18 positive statements about the Company’s business, operations, and prospects were  
19 materially misleading and/or lacked a reasonable basis.

20          32.     The truth began to emerge on November 2, 2023, when the Department  
21 of Justice announced Hughes pled guilty to conspiring to defraud investors out of  
22 \$294 million in connection Prophecy (the “DOJ Charging Papers”). The DOJ  
23 Charging Papers stated, in relevant part:

24           From in or around January 2015 to in or around March 2020, ***defendant***  
25 ***John Hughes (“HUGHES”) conspired with Co-conspirator-1 and Co-***  
26 ***conspirator-2 to defraud dozens of investors (“Victims”)*** who had  
27 invested approximately \$360 million in investment funds managed by  
28 Prophecy Asset Management LP (“Prophecy”), through lies, deception,  
misleading statements, and material omissions relating to, among other  
things: (a) the purported low-risk, transparent, and diversified nature of  
Prophecy’s funds; (b) the manner and purpose in which HUGHES, Co-  
conspirator- 1, and Co-conspirator-2 used money from those funds; and,

1 (c) the financial position of Prophecy’s funds leading up to its collapse  
2 in or around March 2020

3 33. The DOJ Charging Papers described the fraud perpetrated in conjunction  
4 with “Co-conspirator-2” who was as “an investment manager (called a ‘sub- advisor’)  
5 for Prophecy.” Specifically, it stated that “Since in or around 2019, Co-conspirator-2  
6 *was also the CEO and President of a multi-billion dollar company that owned and*  
7 *managed large and diversified retail franchises.*”

8 34. On the same day, the SEC filed a civil complaint against Hughes in  
9 connection with these allegations, *Securities and Exchange Commission v. John*  
10 *Hughes*, No. 3:23-cv-21816 (D.N.J. filed November 2, 2023) (the “SEC Complaint”).  
11 The SEC Complaint alleged that Hughes, in conjunction with “Individual 2,”  
12 committed fraud, including that “Individual 2” was at the heart of the admitted fraud.  
13 Specifically, the SEC Complaint stated, in relevant part:

14 ...entering into sham transactions to provide Individual 2 with cash to  
15 cover his trading losses and falsifying documentation designed to create  
16 the appearance that Individual 2’s trading losses remained secured by  
17 non-cash collateral

18 \* \* \*

19 To purportedly secure the receivable with collateral, Prophecy and  
20 Individual 2 entered into at least six agreements consisting of, among  
21 other things, personal guaranties, promissory notes, and other pledged  
22 “assets,” which did not exist or had questionable value.

23 35. The SEC Complaint detailed numerous sham transactions entered into  
24 by “Individual 2” including:

25 *Hughes and Individual 2 fabricated certain documents* concerning a  
26 purported agreement between Prophecy and *Buddy’s Newco LLC*  
27 *(“Buddy’s”), a company controlled by Individual 2.* Specifically,  
28 Individual 2 created an agreement titled, *“Buddy’s Newco LLC Series A*  
*Preferred Stock Agreement” (“Buddy’s Preferred Stock Agreement”).*  
On April 10, 2019, Individual 2 emailed Hughes a draft of the Buddy’s  
Preferred Stock Agreement that purported to show Prophecy’s  
ownership of \$125 million worth of preferred shares of Buddy’s stock,  
*backdated* to January 1, 2018. By June 3, 2019, Individual 2 delivered  
to Hughes two Buddy’s Convertible Stock Certificates (“Buddy’s  
Certificates”) backdated to January 3, 2018. *One of the certificates was*  
*for 75 shares with a purported valuation of \$75 million. The second*  
*certificate was for 150 shares with a purported valuation of \$150*  
*million.* Subsequently, Hughes provided Prophecy’s auditor with the

1 Buddy's Preferred Stock Agreement and the Buddy's Certificate  
2 purportedly valued at \$75 million. In response to a series of questions  
3 from Prophecy's auditor to Individual 2, which he forwarded to Hughes,  
4 Individual 2 falsely confirmed that Individual 2 had authority to issue the  
5 preferred stock to Prophecy and that the preferred stock was collateral  
6 used to secure Individual 2's 2018 trading losses, was issued and  
7 outstanding as of December 31, 2018, and was issued in Prophecy's  
8 name. In reality, ***Buddy's Newco LLC Series A Preferred Shares were  
9 never issued to Prophecy or anybody else because the shares never  
10 existed. The entire agreement and transaction was a sham created by  
11 Hughes and Individual 2.***

12 36. The SEC Complaint further set out:

13 Although Individual 2 had a cash collateral deficit in excess of \$50  
14 million during the fall of 2018, ***Prophecy provided a \$36 million  
15 unsecured loan to Vintage Capital Management LLC ("Vintage"), an  
16 asset management company controlled by Individual 2.***

17 ***Hughes and Individual 1 understood that Individual 2 was going to use  
18 the loan proceeds to provide rescue financing to a company in which  
19 Vintage was heavily invested.***

20 Hughes and Individual 2 again entered into a series of complex sham  
21 transactions to conceal the failed loan. This time, Prophecy "invested"  
22 \$36 million into two other entities controlled by Individual 2, which then  
23 routed the money to Vintage so it could repay the loan owed to Prophecy.

24 37. On the same day, after the market closed, *Bloomberg* reported Kahn had  
25 been identified as one of two co-conspirators by "a person familiar with the matter."

26 38. Then, on November 3, 2023, after the market closed, The Friendly Bear  
27 posted on Twitter an excerpt of the *Bloomberg* report and questioned:<sup>2</sup>

28 Did Kahn disclose this to B Riley? Hard to believe that this was withheld  
or unknown. ***The parallel civil litigation was known and available for  
years. Did B Riley disclose it to Nomura when they upsized the facility  
to buy \$FRG ?***

39. The Friendly Bear also commented on the DOJ Charging Papers and  
stated: "***Brian Kahn is co-conspirator 2 here. This charging document clearly  
implicates him in Hughes' crime.*** There is a high chance of indictment here. ***\$FRG***

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<sup>2</sup> The "civil litigation" is a 2020 lawsuit filed by a group of Prophecy investors alleging that Kahn (with the other named defendants) fraudulently extracted tens of millions of dollars and used more than \$100 million to amass a controlling stake for himself in FRG.

1 *is extremely overlevered, a ‘bet on Kahn’, and could lose access to critical funding*  
2 *upon indictment.”*

3 40. On this news, the Company’s stock price dropped \$9.02, or 22%, to close  
4 at \$32.54 per share on the next trading day, November 6, 2023, on unusually heavy  
5 trading volume.

6 41. In the following days, Defendants offered unmitigated support for Kahn.  
7 During an earnings call on November 8, 2023, Defendant Bryant Riley stated: “I know  
8 that today, a statement came out from Brian [Kahn] denying any involvement and  
9 what happened with Prophecy, and that’s good enough for me.” He continued that  
10 “our confidence in these businesses [FRG] has not waned at all.... As CEO, Brian  
11 Kahn was the architect to help put these businesses together to form FRG as it is  
12 known today. I’ve known Brian for many years and have had no direct experience  
13 with what has been alleged.”

14 42. The above statements identified in ¶ 41 were materially false and/or  
15 misleading, and failed to disclose material adverse facts about the Company’s  
16 business, operations, and prospects. Specifically, Defendants failed to disclose to  
17 investors: (1) that B. Riley was reasonably likely to draw regulatory scrutiny for its  
18 relationship with Kahn and the complex transactions and disclosures that enabled  
19 Kahn and others to take FRG private; and (2) that, as a result of the foregoing,  
20 Defendants’ positive statements about the Company’s business, operations, and  
21 prospects were materially misleading and/or lacked a reasonable basis.

22 **Disclosures at the End of the Class Period**

23 43. On November 9, 2023, after the market closed, the Company filed its  
24 quarterly fiscal report on Form 10-Q for the period ending September 30, 2023 (the  
25 “3Q23 10-Q”), revealing significant details concerning the FRG transaction and the  
26 years-long series of complex financial transactions between B. Riley, Kahn, and their  
27 Company’s respective subsidiaries, culminating in the August 21, 2023 transaction.

1 The 3Q23 10-Q detailed the manner in which B. Riley and FRG executed a series of  
2 complex financial transaction to effectuate the August 21, 2023 deal:

3 a. B. Riley, via wholly owned subsidiary BR Financial Holdings, LLC,  
4 entered into a credit agreement with Nomura Corporate Funding Americans, LLC.

5 b. B. Riley used those funds to fund an equity investment in Freedom VCM  
6 Holdings LLC, an indirect parent entity for FRG, in exchange for \$281.1 million. In  
7 return, B. Riley assumed a 31% voting interest in Freedom VCM Holdings LLC.

8 c. The same day, B. Riley, FRG, and their subsidiaries entered into a series  
9 of related party transactions. One of B. Riley's subsidiaries, B. Riley Receivables II,  
10 LLC, had previously entered into a series of loan receivable transactions between  
11 2021 and 2022 with W.S. Badcock, an indirect subsidiary of FRG, amounting to  
12 \$33.60 million. In connection with the August 21, 2023 deal, B. Riley also sold its  
13 entire equity interest in B Riley Receivables II, LLC to Freedom VCM Receivables,  
14 Inc. for \$58.9 million. In exchange, Freedom VCM Receivables then assumed a  
15 significant obligation and entered into a note receivable with B. Riley Receivables II,  
16 LLC for \$58.87 million and one of FRG's subsidiaries became a related party loan  
17 receivable with a fair value of \$33.60 million.

18 44. In a series of tweets on that day, The Friendly Bear analyzed this  
19 disclosure and stated:

20 In original \$FRG deal, \$RILY estimated the equity account at around  
21 560MM in total (with 1.035B total market cap acquired and 475mm of  
22 that funded by Irradiant). ***B Riley ended up funding 281MM of what  
23 was around a 560MM equity check. That's over 50% ownership. Yet  
they claim to have only 31% voting rights. It looks like B Riley engaged  
in some funny business to avoid consolidation and placed control of  
FRG in the hands of the star of "Prophecy" - Brian Kahn.***

24 45. On this news, the Company's stock price fell \$4.47, or 15%, to close at  
25 \$25.60 per share on November 10, 2023, on unusually heavy trading volume. The  
26 Company's stock price fell \$4.59, or 14%, over the next consecutive trading session  
27 to close at \$22.01 per share on November 13, 2023, on unusually heavy trading  
28 volume.







1 market price of the Company's securities and market information relating to B. Riley,  
2 and have been damaged thereby.

3 55. During the Class Period, Defendants materially misled the investing  
4 public, thereby inflating the price of B. Riley's securities, by publicly issuing false  
5 and/or misleading statements and/or omitting to disclose material facts necessary to  
6 make Defendants' statements, as set forth herein, not false and/or misleading. The  
7 statements and omissions were materially false and/or misleading because they failed  
8 to disclose material adverse information and/or misrepresented the truth about B.  
9 Riley's business, operations, and prospects as alleged herein.

10 56. At all relevant times, the material misrepresentations and omissions  
11 particularized in this Complaint directly or proximately caused or were a substantial  
12 contributing cause of the damages sustained by Plaintiff and other members of the  
13 Class. As described herein, during the Class Period, Defendants made or caused to  
14 be made a series of materially false and/or misleading statements about B. Riley's  
15 financial well-being and prospects. These material misstatements and/or omissions  
16 had the cause and effect of creating in the market an unrealistically positive  
17 assessment of the Company and its financial well-being and prospects, thus causing  
18 the Company's securities to be overvalued and artificially inflated at all relevant  
19 times. Defendants' materially false and/or misleading statements during the Class  
20 Period resulted in Plaintiff and other members of the Class purchasing the Company's  
21 securities at artificially inflated prices, thus causing the damages complained of herein  
22 when the truth was revealed.

### 23 **LOSS CAUSATION**

24 57. Defendants' wrongful conduct, as alleged herein, directly and  
25 proximately caused the economic loss suffered by Plaintiff and the Class.

26 58. During the Class Period, Plaintiff and the Class purchased B. Riley's  
27 securities at artificially inflated prices and were damaged thereby. The price of the  
28 Company's securities significantly declined when the misrepresentations made to the

1 market, and/or the information alleged herein to have been concealed from the market,  
2 and/or the effects thereof, were revealed, causing investors' losses.

3 **SCIENTER ALLEGATIONS**

4 59. As alleged herein, Defendants acted with scienter since Defendants knew  
5 that the public documents and statements issued or disseminated in the name of the  
6 Company were materially false and/or misleading; knew that such statements or  
7 documents would be issued or disseminated to the investing public; and knowingly  
8 and substantially participated or acquiesced in the issuance or dissemination of such  
9 statements or documents as primary violations of the federal securities laws. As set  
10 forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt  
11 of information reflecting the true facts regarding B. Riley, their control over, and/or  
12 receipt and/or modification of B. Riley's allegedly materially misleading  
13 misstatements and/or their associations with the Company which made them privy to  
14 confidential proprietary information concerning B. Riley, participated in the  
15 fraudulent scheme alleged herein.

16 **APPLICABILITY OF PRESUMPTION OF RELIANCE**

17 **(FRAUD-ON-THE-MARKET DOCTRINE)**

18 60. The market for B. Riley's securities was open, well-developed and  
19 efficient at all relevant times. As a result of the materially false and/or misleading  
20 statements and/or failures to disclose, B. Riley's securities traded at artificially  
21 inflated prices during the Class Period. On July 26, 2023, the Company's share price  
22 closed at a Class Period high of \$59.13 per share. Plaintiff and other members of the  
23 Class purchased or otherwise acquired the Company's securities relying upon the  
24 integrity of the market price of B. Riley's securities and market information relating  
25 to B. Riley, and have been damaged thereby.

26 61. During the Class Period, the artificial inflation of B. Riley's shares was  
27 caused by the material misrepresentations and/or omissions particularized in this  
28 Complaint causing the damages sustained by Plaintiff and other members of the Class.

1 As described herein, during the Class Period, Defendants made or caused to be made  
2 a series of materially false and/or misleading statements about B. Riley's business,  
3 prospects, and operations. These material misstatements and/or omissions created an  
4 unrealistically positive assessment of B. Riley and its business, operations, and  
5 prospects, thus causing the price of the Company's securities to be artificially inflated  
6 at all relevant times, and when disclosed, negatively affected the value of the  
7 Company shares. Defendants' materially false and/or misleading statements during  
8 the Class Period resulted in Plaintiff and other members of the Class purchasing the  
9 Company's securities at such artificially inflated prices, and each of them has been  
10 damaged as a result.

11 62. At all relevant times, the market for B. Riley's securities was an efficient  
12 market for the following reasons, among others:

13 (a) B. Riley shares met the requirements for listing, and was listed and  
14 actively traded on the NASDAQ, a highly efficient and automated market;

15 (b) As a regulated issuer, B. Riley filed periodic public reports with  
16 the SEC and/or the NASDAQ;

17 (c) B. Riley regularly communicated with public investors via  
18 established market communication mechanisms, including through regular  
19 dissemination of press releases on the national circuits of major newswire services  
20 and through other wide-ranging public disclosures, such as communications with the  
21 financial press and other similar reporting services; and/or

22 (d) B. Riley was followed by securities analysts employed by  
23 brokerage firms who wrote reports about the Company, and these reports were  
24 distributed to the sales force and certain customers of their respective brokerage firms.  
25 Each of these reports was publicly available and entered the public marketplace.

26 63. As a result of the foregoing, the market for B. Riley's securities promptly  
27 digested current information regarding B. Riley from all publicly available sources  
28 and reflected such information in B. Riley's share price. Under these circumstances,

1 all purchasers of B. Riley’s securities during the Class Period suffered similar injury  
2 through their purchase of B. Riley’s securities at artificially inflated prices and a  
3 presumption of reliance applies.

4 64. A Class-wide presumption of reliance is also appropriate in this action  
5 under the Supreme Court’s holding in *Affiliated Ute Citizens of Utah v. United States*,  
6 406 U.S. 128 (1972), because the Class’s claims are, in large part, grounded on  
7 Defendants’ material misstatements and/or omissions. Because this action involves  
8 Defendants’ failure to disclose material adverse information regarding the Company’s  
9 business operations and financial prospects—information that Defendants were  
10 obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All  
11 that is necessary is that the facts withheld be material in the sense that a reasonable  
12 investor might have considered them important in making investment decisions.  
13 Given the importance of the Class Period material misstatements and omissions set  
14 forth above, that requirement is satisfied here.

15 **NO SAFE HARBOR**

16 65. The statutory safe harbor provided for forward-looking statements under  
17 certain circumstances does not apply to any of the allegedly false statements pleaded  
18 in this Complaint. The statements alleged to be false and misleading herein all relate  
19 to then-existing facts and conditions. In addition, to the extent certain of the  
20 statements alleged to be false may be characterized as forward looking, they were not  
21 identified as “forward-looking statements” when made and there were no meaningful  
22 cautionary statements identifying important factors that could cause actual results to  
23 differ materially from those in the purportedly forward-looking statements. In the  
24 alternative, to the extent that the statutory safe harbor is determined to apply to any  
25 forward-looking statements pleaded herein, Defendants are liable for those false  
26 forward-looking statements because at the time each of those forward-looking  
27 statements was made, the speaker had actual knowledge that the forward-looking  
28 statement was materially false or misleading, and/or the forward-looking statement

1 was authorized or approved by an executive officer of B. Riley who knew that the  
2 statement was false when made.

3 **FIRST CLAIM**

4 **Violation of Section 10(b) of The Exchange Act and**  
5 **Rule 10b-5 Promulgated Thereunder**  
6 **Against All Defendants**

7 66. Plaintiff repeats and re-alleges each and every allegation contained  
8 above as if fully set forth herein.

9 67. During the Class Period, Defendants carried out a plan, scheme and  
10 course of conduct which was intended to and, throughout the Class Period, did: (i)  
11 deceive the investing public, including Plaintiff and other Class members, as alleged  
12 herein; and (ii) cause Plaintiff and other members of the Class to purchase B. Riley's  
13 securities at artificially inflated prices. In furtherance of this unlawful scheme, plan  
14 and course of conduct, Defendants, and each defendant, took the actions set forth  
15 herein.

16 68. Defendants (i) employed devices, schemes, and artifices to defraud; (ii)  
17 made untrue statements of material fact and/or omitted to state material facts  
18 necessary to make the statements not misleading; and (iii) engaged in acts, practices,  
19 and a course of business which operated as a fraud and deceit upon the purchasers of  
20 the Company's securities in an effort to maintain artificially high market prices for B.  
21 Riley's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5.  
22 All Defendants are sued either as primary participants in the wrongful and illegal  
23 conduct charged herein or as controlling persons as alleged below.

24 69. Defendants, individually and in concert, directly and indirectly, by the  
25 use, means or instrumentalities of interstate commerce and/or of the mails, engaged  
26 and participated in a continuous course of conduct to conceal adverse material  
27 information about B. Riley's financial well-being and prospects, as specified herein.

1           70. Defendants employed devices, schemes and artifices to defraud, while in  
2 possession of material adverse non-public information and engaged in acts, practices,  
3 and a course of conduct as alleged herein in an effort to assure investors of B. Riley's  
4 value and performance and continued substantial growth, which included the making  
5 of, or the participation in the making of, untrue statements of material facts and/or  
6 omitting to state material facts necessary in order to make the statements made about  
7 B. Riley and its business operations and future prospects in light of the circumstances  
8 under which they were made, not misleading, as set forth more particularly herein,  
9 and engaged in transactions, practices and a course of business which operated as a  
10 fraud and deceit upon the purchasers of the Company's securities during the Class  
11 Period.

12           71. Each of the Individual Defendants' primary liability and controlling  
13 person liability arises from the following facts: (i) the Individual Defendants were  
14 high-level executives and/or directors at the Company during the Class Period and  
15 members of the Company's management team or had control thereof; (ii) each of  
16 these defendants, by virtue of their responsibilities and activities as a senior officer  
17 and/or director of the Company, was privy to and participated in the creation,  
18 development and reporting of the Company's internal budgets, plans, projections  
19 and/or reports; (iii) each of these defendants enjoyed significant personal contact and  
20 familiarity with the other defendants and was advised of, and had access to, other  
21 members of the Company's management team, internal reports and other data and  
22 information about the Company's finances, operations, and sales at all relevant times;  
23 and (iv) each of these defendants was aware of the Company's dissemination of  
24 information to the investing public which they knew and/or recklessly disregarded  
25 was materially false and misleading.

26           72. Defendants had actual knowledge of the misrepresentations and/or  
27 omissions of material facts set forth herein, or acted with reckless disregard for the  
28 truth in that they failed to ascertain and to disclose such facts, even though such facts



1 were available to them. Such defendants' material misrepresentations and/or  
2 omissions were done knowingly or recklessly and for the purpose and effect of  
3 concealing B. Riley's financial well-being and prospects from the investing public  
4 and supporting the artificially inflated price of its securities. As demonstrated by  
5 Defendants' overstatements and/or misstatements of the Company's business,  
6 operations, financial well-being, and prospects throughout the Class Period,  
7 Defendants, if they did not have actual knowledge of the misrepresentations and/or  
8 omissions alleged, were reckless in failing to obtain such knowledge by deliberately  
9 refraining from taking those steps necessary to discover whether those statements  
10 were false or misleading.

11       73. As a result of the dissemination of the materially false and/or misleading  
12 information and/or failure to disclose material facts, as set forth above, the market  
13 price of B. Riley's securities was artificially inflated during the Class Period. In  
14 ignorance of the fact that market prices of the Company's securities were artificially  
15 inflated, and relying directly or indirectly on the false and misleading statements made  
16 by Defendants, or upon the integrity of the market in which the securities trades,  
17 and/or in the absence of material adverse information that was known to or recklessly  
18 disregarded by Defendants, but not disclosed in public statements by Defendants  
19 during the Class Period, Plaintiff and the other members of the Class acquired B.  
20 Riley's securities during the Class Period at artificially high prices and were damaged  
21 thereby.

22       74. At the time of said misrepresentations and/or omissions, Plaintiff and  
23 other members of the Class were ignorant of their falsity, and believed them to be  
24 true. Had Plaintiff and the other members of the Class and the marketplace known  
25 the truth regarding the problems that B. Riley was experiencing, which were not  
26 disclosed by Defendants, Plaintiff and other members of the Class would not have  
27 purchased or otherwise acquired their B. Riley securities, or, if they had acquired such  
28

1 securities during the Class Period, they would not have done so at the artificially  
2 inflated prices which they paid.

3 75. By virtue of the foregoing, Defendants violated Section 10(b) of the  
4 Exchange Act and Rule 10b-5 promulgated thereunder.

5 76. As a direct and proximate result of Defendants' wrongful conduct,  
6 Plaintiff and the other members of the Class suffered damages in connection with  
7 their respective purchases and sales of the Company's securities during the Class  
8 Period.

9 **SECOND CLAIM**

10 **Violation of Section 20(a) of The Exchange Act**

11 **Against the Individual Defendants**

12 77. Plaintiff repeats and re-alleges each and every allegation contained  
13 above as if fully set forth herein.

14 78. Individual Defendants acted as controlling persons of B. Riley within the  
15 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their  
16 high-level positions and their ownership and contractual rights, participation in,  
17 and/or awareness of the Company's operations and intimate knowledge of the false  
18 financial statements filed by the Company with the SEC and disseminated to the  
19 investing public, Individual Defendants had the power to influence and control and  
20 did influence and control, directly or indirectly, the decision-making of the Company,  
21 including the content and dissemination of the various statements which Plaintiff  
22 contends are false and misleading. Individual Defendants were provided with or had  
23 unlimited access to copies of the Company's reports, press releases, public filings,  
24 and other statements alleged by Plaintiff to be misleading prior to and/or shortly after  
25 these statements were issued and had the ability to prevent the issuance of the  
26 statements or cause the statements to be corrected.

27 79. In particular, Individual Defendants had direct and supervisory  
28 involvement in the day-to-day operations of the Company and, therefore, had the

1 power to control or influence the particular transactions giving rise to the securities  
2 violations as alleged herein, and exercised the same.

3 80. As set forth above, B. Riley and Individual Defendants each violated  
4 Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.  
5 By virtue of their position as controlling persons, Individual Defendants are liable  
6 pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of  
7 Defendants' wrongful conduct, Plaintiff and other members of the Class suffered  
8 damages in connection with their purchases of the Company's securities during the  
9 Class Period.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

12 (a) Determining that this action is a proper class action under Rule 23 of the  
13 Federal Rules of Civil Procedure;

14 (b) Awarding compensatory damages in favor of Plaintiff and the other  
15 Class members against all defendants, jointly and severally, for all damages sustained  
16 as a result of Defendants' wrongdoing, in an amount to be proven at trial, including  
17 interest thereon;

18 (c) Awarding Plaintiff and the Class their reasonable costs and expenses  
19 incurred in this action, including counsel fees and expert fees; and

20 (d) Such other and further relief as the Court may deem just and proper.

21 **JURY TRIAL DEMANDED**

22 Plaintiff hereby demands a trial by jury.  
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24  
25  
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27  
28