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DAVID BANDY, JR.)
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RITA SKEETERS)
209 W. High Street)
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AMBER SLAYTON)
209 W. High Street)
Hodgenville, KY 42748)
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DEFENDANTS)

COMPLAINT

Come the Plaintiffs, Stephany Milby, as Administratrix of the Estate of Dalton Ray Milby, Chastity Milby, as Next Friend of E.M., a minor and G.M., a Minor, and Katie Aubrey, as Next Friend of B.M., a minor and K.M., a minor, by and through Counsel, and for their Complaint, claims, and averments against the Defendants Jamie Underwood, Gary Huffines, Steven Grant, Jason Jones, Jacob Duvall, David Bandy, Jr., Rita Skeeters and Amber Slayton, hereby state as follows:

BACKGROUND

1. This action seeks redress, pursuant to 42 U.S.C. §1983, for the objectively unreasonable failures of the named correctional defendants in providing Dalton Milby with

adequate medical care in violation of the Eighth Amendment and Fourteenth Amendment, the deliberate indifference to the medical and psychological needs of Dalton Milby and the cruel and unusual punishment of Dalton Milby, all of which caused him to suffer and die while within the custody of the Larue County Detention Center (hereinafter “LCDC”). Dalton Milby’s death and the associated damages claimed herein were also the result of the jail’s conditions of confinement imposed upon Dalton Milby, the jail’s customs and practices of inadequate training and supervision, and LCDC’s tolerance and acquiescence of denying adequate medical care to inmates and being deliberately indifferent to the psychological needs of inmates.

2. Defendants Gary Huffines, Steven Grant, Jason Jones, Jacob Duvall, David Bandy, Jr., Rita Skeeters and Amber Slayton (hereinafter “Jail Officers”) were objectively unreasonable in their failures to provide adequate medical assistance to Dalton Milby, were deliberately indifferent to Dalton Milby’s medical and psychological needs and took grossly negligent actions that effectively negated his chances of survival, which caused him worsening injuries, suffering and death and which deprived him of protected and guaranteed rights under the Fourteenth Amendment of the United States Constitution.

3. Defendant Underwood was responsible for operating LCDC so as to not endanger the health and safety of those incarcerated or detained there. As the jailer of LCDC, Defendant Underwood instituted the policies and otherwise authorized, ratified, approved, or otherwise knowingly acquiesced in the unconstitutional customs and practices which led to an inhumane and unlivable environment at LCDC, failed to effectively operate the jail, failed to perform duties to ensure constitutional health care for inmates/detainees, including Dalton Milby, failed to prevent other unconstitutional conditions of confinement, and failed to provide adequate training and supervision to officers regarding medical mental health assistance despite the obvious need for the

same. These policies, customs and failures were deliberately indifferent to inmates' constitutional rights, caused Dalton Milby to be deprived of his constitutionally protected right to adequate medical care and caused him to suffer worsening conditions, suffering and death.

PARTIES, JURISDICTION AND VENUE

4. Stephany Milby, mother of Dalton Ray Milby, brings this action in her representative capacity as the Administratrix of the Estate of Dalton Ray Milby (hereinafter, "the Estate"). Stephany Milby, as Administratrix, is authorized to bring this action on behalf of the Estate.

5. Chastity Milby, mother of E.M. and G.M., minor children of Dalton Milby, brings this action in her representative capacity as Next Friend of E.M. and G.M.

6. Katie Aubrey, mother of B.M. and K.M., minor children of Dalton Milby, brings this action in her representative capacity as Next Friend of B.M. and K.M.

7. Defendant Jamie Underwood was at all times relevant hereto the Jailer at LCDC, acting under color of law and within the scope of his employment. This Complaint is made against Jamie Underwood in his individual capacity.

8. Defendants Gary Huffines, Steven Grant, Jason Jones, Jacob Duvall, David Bandy, Jr., Rita Skeeters and Amber Slayton were at all times relevant herein agents and/or employees of LCDC and acting under color of law. Upon information and belief, these Defendants were on duty during the relevant period of time and acting within the scope of their employment. These Defendants are sued in their individual capacities.

9. Jurisdiction and venue are proper due to the location of the incident, the claimed damages and the matters in controversy.

10. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) as the federal claims are brought under 42 U.S.C. § 1983 and venue is proper pursuant to 28 U.S.C. § 1391 as the parties reside in this district and the events giving rise to the claims occurred in this district. The Court has supplemental jurisdiction over the Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).

FACTUAL ALLEGATIONS

11. Plaintiffs adopt and reiterate each and every allegation as set forth fully herein and incorporate the same by reference.

12. Dalton Milby died on or about February 12, 2022 at LCDC.

13. On the date of December 4, 2021, Mr. Milby was in the custody and care of Larue County Detention Center.

14. During his confinement at LCDC, those persons who interacted with Dalton Milby or who were aware of his medical and psychological needs and his medical and mental health condition were required to provide and administer that degree of care to Mr. Milby which would have been expected of ordinarily prudent medical providers, including medical directors, physicians, nurses and other care givers, under the same or similar circumstances.

15. During his confinement at LCDC, Mr. Milby was entitled to be treated for his medical and mental health conditions.

16. During his confinement at LCDC, Mr. Milby was entitled to the protections afforded him under the United States Constitution, including but not limited to those afforded to him under the Fourteenth and Eighth Amendments of the United States Constitution.

17. During his confinement at LCDC, Mr. Milby was entitled to be treated humanely, and to be free from cruel and unusual punishment.

18. All jail personnel, pursuant to 501 KAR 3:160, are required to receive a minimum of twenty-four (24) hours of annual in-service training. LCDC failed to appropriately train the Defendant Jail Officers in accordance with applicable regulations and statutes.

19. Defendants are responsible for performing direct in-person surveillance of each and every inmate at LCDC. This direct in-person surveillance is required by law and to be conducted at least every 60 minutes, and at least every 30 minutes for inmates in single or detox cells, pursuant to 501 KAR 3:060.

20. Defendants were responsible for performing direct in-person surveillance of Mr. Milby while he was in custody at LCDC, pursuant to 501 KAR 3:060, and failed to do so.

21. Mr. Milby exhibited suicidal tendencies that a reasonable corrections officer would deem a serious risk of harm constituting a serious medical need.

22. Specifically, Mr. Milby told the Defendants that he had recently attempted suicide and Mr. Milby made comments to the Jail Officers that clearly demonstrated that he was in psychological distress. The conduct of Mr. Milby clearly showed a serious medical need, however, the Defendants failed to act reasonably and deliberately ignored the obvious substantial risk of harm.

23. Mr. Milby was originally placed in an anti-suicide smock, commonly referred to as a “turtle suit,” because his comments and behavior were indicative of suicidal tendencies, and the Defendants knew that there was a strong likelihood that Mr. Milby would commit suicide.

24. Despite this known substantial risk, Defendants provided Mr. Milby with a standard jumpsuit, in direct violation of known suicide prevention techniques, standards, policies and procedures.

25. No reasonable corrections officer under the circumstances would have provided Mr. Milby with a standard jumpsuit, as it was obvious that this would create a substantial risk of harm to an inmate/detainee in psychological distress, like Mr. Milby.

26. After providing Mr. Milby with a standard jumpsuit, Defendants failed to appropriately monitor Mr. Milby in direct violation of applicable state and federal laws and regulations, as well as LCDC's own policies and procedures.

27. The failure of Defendants to perform direct in-person surveillance of Mr. Milby directly contributed to his death, as did the other conduct of the Defendants identified and averred herein.

28. Defendant Jamie Underwood had actual knowledge that LCDC employees were not performing direct in-person surveillance as required by 501 KAR 3:060 and refused to hold LCDC employees accountable.

29. At all times relevant herein, Defendant Underwood was responsible for assuring that LCDC detainees/inmates had access to and received appropriate medical treatment for serious medical needs, including those detainees/inmates that demonstrate suicidal tendencies.

30. Defendants failed to implement appropriate policies and procedures to identify inmates with mental health concerns and/or failed to follow policies and procedures to identify inmates with mental health concerns and/or address their psychological needs.

31. Defendants' systematic failure in identifying inmates with mental health concerns was a direct and proximate cause of Mr. Milby's death.

32. During his confinement at LCDC, Mr. Milby exhibited suicidal tendencies that constituted a serious medical need.

33. Mr. Milby's suicidal tendencies, combined with the conditions of his incarceration, imposed a substantial risk of serious harm.

34. The Defendants had direct knowledge of Mr. Milby's suicidal tendencies and serious medical needs yet disregarded and/or responded unreasonably to those needs.

35. The substantial risk of harm to Mr. Milby was obvious, yet Defendants were deliberately indifferent and disregarded and/or responded unreasonably.

36. The conduct of Defendants was unreasonable, unlawful and unjustified.

37. Defendants had a legal duty to institute policies or customs, and to take reasonable measures to secure the safety, health and welfare of inmates at LCDC. Defendants had a legal duty to adequately train and supervise jail personnel and/or those under contract with LCDC in the administration of health care policies related to the care and treatment of inmates, among other policies affecting inmate rights.

38. Defendant Underwood failed to institute any (or adequate) policies, rules, customs, practices, or procedures or to employ qualified persons, or to properly train corrections officers and/or medical staff and/or to supervise same so as to prevent or alleviate the conditions and results such as those set forth herein. His actions and inactions, as well as those of the employees he was charged with training and supervising, exhibited a deliberate indifference to the health and safety of inmates, including Mr. Milby.

39. Mr. Milby's death was caused by, and was the direct, proximate and foreseeable result of, the Defendants' actions and inactions as alleged herein, individually or in concert.

40. Mr. Milby will never recover from the injuries he sustained as a result of the illegal conduct herein. He has lost his life, his right to enjoyment of life, and his ability to labor and earn. He will never again be able to see his four children that he loved and cared for so deeply.

41. Defendants' actions, individually or in concert, were so willful, wanton, malicious and in utter disregard for Mr. Milby's rights as to warrant the imposition of punitive damages.

42. No reasonable jail administration or other corrections officers, or any reasonable nurse or medical staff worker working for a correctional facility, would or could have engaged in the kind of conduct, in relation to Mr. Milby, as alleged herein, nor could any reasonable jail administration, corrections officers or medical staff member have believed that their actions were lawful in light of the clearly established law and under the circumstances of the facts presented to them.

COUNT I: NEGLIGENCE

(All Defendants)

43. Plaintiffs adopt and reiterate each and every allegation as if set forth herein and incorporate the same by reference.

44. Defendants breached their duty of care to Mr. Milby.

45. Defendants breached their duty of care by failing to follow standard corrections procedures.

46. Defendants breached their duty of care by failing to act as reasonable corrections officers or employees under the same or similar circumstances.

47. Defendants Underwood owed a duty of care to hire, train, and supervise the Jail Officer Defendants and other employees of LCDC and to take steps to prevent suicide at LCDC.

48. Defendants breached their duty of care by violating various ministerial acts and obligations including but not limited to failing to use care in hiring the Jail Officer Defendants and other correctional officers; and/or failing to properly train the Jail Officer Defendants and other correctional officers; and/or failing to supervise the Jail Officer Defendants and other correctional

officers to ensure that their conduct met the standard of ordinary corrections officers; and/or failing to adhere to LCDC and/or state correctional standards in connection with the care, treatment and/or supervision and surveillance of Mr. Milby during his time at LCDC.

49. Defendant Underwood breached his duty of care by failing to use care in hiring, training and supervising correctional officers and medical staff at LCDC.

50. The breach of these duties by the Defendants was the actual and proximate cause of the injuries sustained by Mr. Milby and ultimately, Mr. Milby's death.

51. Defendant Underwood is liable for the actions or inactions of the Jail Officer Defendants under the doctrine of *respondeat superior*.

COUNT II: NEGLIGENCE PER SE

(All Defendants)

52. Plaintiffs adopt and reiterate each and every allegation as if set forth herein and incorporate the same by reference.

53. Defendants owed a statutory duty of care to Mr. Milby under 501 KAR 3:060 to see that Mr. Milby received reasonable medical treatment while in custody.

54. Defendants breached the aforementioned duty of care by neglecting to see that Mr. Milby received reasonable medical treatment.

55. The breach of this statutory duty by the Defendants was the actual and proximate cause of the injuries sustained by Mr. Milby, and ultimately, Mr. Milby's death.

56. Defendants owed a statutory duty of care to Mr. Milby under 501 KAR 3:060 to conduct in-person surveillance of Mr. Milby while in their custody.

57. Defendants breached the aforementioned duty of care by refusing to conduct in-person surveillance of Mr. Milby as required by law.

58. The breach of this statutory duty by the Defendants was the actual and proximate cause of the injuries sustained by Mr. Milby, and ultimately, Mr. Milby's death.

59. Defendants owed a statutory duty of care to Mr. Milby and other inmates under 501 KAR 3:160 to ensure that all jail personnel receive a minimum of twenty-four (24) hours of annual in-service training.

60. Defendants breached the aforementioned duty of care by neglecting to conduct in-service training for jail personnel as required by law.

61. The breach of this statutory duty by the Defendants was the actual and proximate cause of the injuries sustained by Mr. Milby, and ultimately, Mr. Milby's death.

62. That in addition to the above statutory violations, the Plaintiff reserves the right to allege additional statutory and/or regulatory violations as those violations are revealed through the course of discovery.

63. Mr. Milby suffered damages as a result of the injuries inflicted by the Defendants, and Mr. Milby is in the class of persons and his injuries are of the type that the applicable statutes are designed to protect.

64. Plaintiffs are entitled to recover damages for the Defendants' statutory violations.

COUNT III: ASSAULT AND BATTERY

(Defendants Jones and Grant)

65. Plaintiffs adopt and reiterate each and every allegation as if set forth fully herein and incorporate the same by reference.

66. That the actions of the attacking Jail Officers, Defendants Jones and Grant, constituted offensive physical contact without the consent of Mr. Milby.

67. That the actions of the attacking Jail Officers were undertaken intentionally, willfully, and wantonly.

68. That as a result of the aforementioned conduct of the Defendants, the Defendants committed assault and battery upon Mr. Milby.

69. With utter indifference and conscious disregard, the Defendants used excessive force against Mr. Milby under circumstances where Mr. Milby posed no threat of injury or harm to the Defendants.

70. That as a result of the aforementioned conduct, the Defendants caused Mr. Milby to suffer severe physical injuries and emotional distress.

71. The actions of the Defendants in battering Mr. Milby justify an award of punitive damages.

72. Defendant Underwood is liable for the actions of the Unknown Defendants under the doctrine of *respondeat superior*.

COUNT IV: WRONGFUL DEATH

(All Defendants)

73. Plaintiffs adopt and reiterate each and every allegation as if set forth herein and incorporate the same by reference.

74. The death of Mr. Milby resulted from the negligence or wrongful acts of the Defendants. Pursuant to KRS 411.130, damages may be recovered for the death from Defendants.

75. The wrongful acts of the Defendants in this case were willful and were grossly negligent, and pursuant to KRS 411.130, punitive damages should be awarded.

COUNT V: LOSS OF PARENTAL CONSORTIUM

76. Plaintiffs adopt and reiterate each and every allegation as if set forth herein and incorporate the same by reference.

77. Plaintiffs Chastity Milby, as Guardian and Next Friend of E.M., a minor and G.M., a Minor, and Katie Aubrey, as Guardian and Next Friend of B.M., a minor and K.M., a minor, are entitled to recover damages for loss of parental consortium on behalf of their minor children, pursuant to KRS 411.135, made applicable to her through Kentucky statute and common law.

78. Mr. Milby's minor children, E.M., G.M., B.M. and K.M. will never again be able to enjoy the love and affection of their father, and accordingly, are entitled to recover damages.

79. The wrongful acts of the Defendants in this case were willful and were grossly negligent, and pursuant to KRS 411.130, punitive damages should be awarded.

**COUNT VI: MONELL VIOLATIONS: POLICIES OR CUSTOMS OF INADEQUATE
MEDICAL CARE & INADEQUATE CONDITIONS OF CONFINEMENT IN
VIOLATION OF THE EIGHTH & FOURTEENTH AMENDMENT**

(Defendant Underwood)

80. Plaintiffs adopt and reiterates each and every allegation as if set forth herein and incorporates the same by reference.

81. At all times relevant herein, Defendant Underwood was the decision and policy maker for the operations of LCDC and the safety and care of the detainees/inmates.

82. Defendant Underwood knowingly and deliberately failed to implement or otherwise enforce policies and procedures to ensure constitutionally appropriate housing and adequate access to mental health and medical care for detainees/inmates.

83. Defendant Underwood, acting under color of state law and pursuant to a policy or custom, operated and maintained LCDC and trained the Jail Officers in a manner that posed a risk to the health and safety of the inmates/detainees, including failing to operate the facility and

properly train the staff to properly observe and care for and protect the inmates/detainees and failing to provide adequate mental health and medical care to the inmates/detainees, resulting in the death of Mr. Milby.

84. Defendant Underwood was aware, at all times relevant herein, that inmates/detainees were frequently denied access to adequate, timely, and appropriate medical care, resulting in the inmates/detainees' exposure to needless harm and suffering, but failed to take steps to ensure that inmates/detainees at LCDC were adequately monitored and afforded access to timely and necessary medical care for medical and psychological needs of inmates/detainees that posed a substantial risk of harm.

85. Defendant Underwood failed to take remedial action in the face of objective constitutional shortcomings.

86. Defendant Underwood knew or should have known that the serious mental health and medical needs of inmates/detainees were going unaddressed, and that Mr. Milby and others would suffer without access to timely, appropriate, and constitutionally required care.

87. Defendant Underwood failed to take steps to remedy or prevent the danger to Mr. Milby, although he knew that the Jail Officers were engaging in conduct that endangered the health and safety of inmates/detainees, including Mr. Milby. Among the failures known was the failure by deputies to perform proper security and health checks, the failure to properly monitor inmates/detainees, the failure to execute emergency medical plans, the failure to timely and properly respond to inmate/detainees calls for aid/assistance, the failure to follow policies, procedures and requirements related to suicide prevention and the failure to respond to or provide inmates/detainees with access to appropriate care for serious medical and psychological needs.

88. These Defendants blatantly ignored state regulations and LCDC's own stated requirements for appropriate housing, detainee/inmate observation, medical staffing, medical training, suicide prevention and reviews of employees in relation adherence to housing placement and mental health/medical policies.

89. These unaddressed failures manifested in the deliberate indifference to Mr. Milby's serious need for mental health and medical care and were a direct proximate cause of his suffering and death.

90. Defendant Underwood failed to properly manage and supervise LCDC operations and failed to ensure that appropriate procedures, protocols, and disciplinary measures were in place to prevent constitutional deprivations at LCDC, including but not limited to constitutionally appropriate housing conditions and constitutionally required attention to the serious medical and psychological needs of inmates/detainees, such as Mr. Milby.

91. Defendant Underwood and the Jail Officers had direct, personal, and specific knowledge of the constitutionally inadequate operations, medical care, and training at LCDC and engaged in a policy or custom which caused a deliberate indifference towards Mr. Milby.

92. The persistent and widespread practice of deliberate indifference to the needs of the inmates/detainees was sufficient to constitute an official custom and practice.

93. Serious, unaddressed injuries and medical conditions occur again and again at LCDC as a result of the failures to properly observe detainees/inmates, report their medical issues, and/or properly address the serious medical issues.

94. Defendant Underwood has long been on notice of these failures and failed to do anything about it and deliberately ignored them.

95. Defendant Underwood's policies and customs of failing to train or otherwise assure that subordinates were observing, reporting and caring for issues related to detainees/inmates' housing, observation and mental health/medical needs fostered a culture of indifference.

96. Defendant Underwood's policies and customs caused a deliberate indifference to and a deprivation of Mr. Milby's constitutional rights and were a direct proximate cause of Mr. Milby's death.

97. As a direct and proximate result of the aforementioned conduct of the Defendants, Mr. Milby was deprived of the rights, privileges and immunities secured to her under the Constitution and laws of the United States of America, including her rights under the Eighth and/or Fourteenth Amendments to the United States Constitution.

98. As a direct proximate result of these Defendants' conduct, Mr. Milby suffered physically and emotionally and the surviving beneficiaries of Mr. Milby have suffered and will continue to suffer sorrow, mental anguish, loss of companionship, loss of comfort and guidance, funeral bills and burial expenses, loss of income and support, and other related bills and expenses.

99. These Defendants' actions and omissions constituted willful, wanton, reckless, conscious, deliberate indifference to and disregard for Mr. Milby's constitutional rights, such that Plaintiffs are entitled to recover punitive damages.

**COUNT VII: MONELL VIOLATIONS: FAILURE TO ADEQUATELY TRAIN
OFFICERS IN VIOLATION OF 42 U.S.C. § 1983**

(Defendant Underwood)

100. Plaintiffs adopt and reiterate each and every allegation as if set forth herein and incorporate the same by reference.

101. At all times relevant herein, Defendant Underwood was the decision and policy maker for the operations of the jail and the safety and care of the detainees/inmates.

102. At all times relevant herein, those housed within LCDC, including Mr. Milby, had a constitutionally protected right to receive adequate medical assistance.

103. At all times relevant herein, the need for further training to officers on observation of detainees/inmates, suicide prevention and providing medical assistance was obvious.

104. There has been an unreasonable and excessive number of instances in which the mental health and medical needs of incarcerated individuals within LCDC have been ignored, mental health/medical requests have been denied, and in which observations and mental health/medical care has been inadequate.

105. The training on mental health/medical conditions of detainee/inmates — a requirement under the Eighth Amendment — was so inadequate and so widely ignored that Defendant Underwood was on notice that a constitutional violation was a highly predictable consequence of his failure to act.

106. The need to train and enforce policies on detainees/inmates' constitutional rights to medical assessment and treatment was so obvious that the failure to properly do so was a deliberate indifference to Mr. Milby's constitutional rights.

107. Defendant Underwood knowingly and deliberately failed to adequately train the Jail Officers and other agents/employees of LCDC about proper observation of detainees/inmates and providing mental health/medical assistance to those incarcerated within LCDC.

108. Defendant Underwood acted recklessly, intentionally, and/or with gross negligence when he failed to train officers in a manner that constituted a deliberate indifference to the constitutional rights of those housed at LCDC, including Mr. Milby.

109. Mr. Milby would not have suffered and died had Defendant Underwood maintained a training, supervision and policy adherence program that was not deficient to the point where it was deliberately indifferent to inmate medical and psychological needs.

110. Defendant Underwood's failure to properly train officers on providing mental health and medical assistance to those housed in the jail was a direct and proximate cause of Mr. Milby's worsening conditions, his suffering and his death.

111. As a direct and proximate result of the aforementioned conduct of Defendant Underwood, Mr. Milby was deprived of the rights, privileges and immunities secured to him under the Constitution and laws of the United States of America, including his rights under the Eighth and/or Fourteenth Amendments to the United States Constitution.

112. As a direct proximate result of these Defendants' conduct, Mr. Milby suffered physically and emotionally and the surviving beneficiaries of Mr. Milby have suffered and will continue to suffer sorrow, mental anguish, loss of companionship, loss of comfort and guidance, funeral bills and burial expenses, loss of income and support, and other related bills and expenses. These Defendants' actions and omissions constituted willful, wanton, reckless, conscious, deliberate indifference to and disregard for Mr. Milby's constitutional rights, such that Plaintiffs are entitled to recover punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, by counsel, request the following relief:

- a. Trial by jury;
- b. An award of compensatory damages based on Plaintiff's 42 U.S.C. § 1983 and Monell claims for the violations of Dalton Milby's constitutional rights;

- c. An award of punitive damages against the individual capacity Defendants based on the Plaintiffs' 42 U.S.C. § 1983 claims in order to punish the Defendants for their callous and/or reckless indifference to Dalton Milby's constitutional rights;
- d. An award of compensatory damages for the wrongful death of Dalton Milby, including but not limited to all damages allowed by the federal law, Kentucky wrongful death statute KRS 411.130 and any other applicable state law;
- e. Recoverable attorney fees, including but not limited to those recoverable for claims brought under 42 U.S.C. § 1983, as set forth within 42 U.S.C. § 1988;
- f. Any all such other and further relief as this Honorable Court and the jury deems just and proper, including but not limited to attorney's fees, prejudgment and post-judgment interest, and allowable costs incurred.

Respectfully submitted,

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