

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No.:
)	
LANIER POINTE, LLC;)	
LANIER POINTE PHASE II, LLC;)	
AZALEA GARDENS, LLC;)	COMPLAINT AND DEMAND
COTTAGES AT AZALEA, LLC;)	FOR JURY TRIAL
MANOR RIDGE L.P.; MILLERS RIDGE)	
APARTMENTS, L.P.;)	
THE PENDERGRAPH COMPANIES, LLC;)	
PENDERGRAPH DEVELOPMENT, LLC;)	
PENDERGRANT, LLC; and CALIBER)	
BUILDERS, LLC,)	
)	Injunctive Relief Sought
Defendants.)	
)	

COMPLAINT

The United States of America alleges as follows:

NATURE OF THE ACTION

1. The United States brings this action to enforce the Fair Housing Act, as amended (“FHA”), 42 U.S.C. §§ 3601-3619, and the FHA’s implementing regulations, 24 C.F.R. §§ 100.202 and 100.205; and the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181-12213, and the ADA Standards for Accessible Design, 28 C.F.R. Pt. 36 Appendices A & D (“ADA Standards”). As set forth below, the United States alleges that the Defendants—the owners, developers and builders of multifamily housing developments in North Carolina and

South Carolina—have discriminated against persons with disabilities by failing to design and construct covered multifamily dwellings that are accessible to persons with disabilities.

2. The FHA requires that certain multifamily dwellings developed for first occupancy after March 13, 1991, defined in the FHA as “covered multifamily dwellings,” contain specified accessibility features to make them accessible to persons with disabilities. 42 U.S.C. § 3604(f).

3. The ADA prohibits the failure to design and construct places of public accommodation built for first occupancy after January 26, 1993, that are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(1). Facilities are not readily accessible to and usable for individuals with disabilities if they do not comply with the requirements of the ADA Standards.

4. All six multifamily properties described below were built using Low-Income Housing Tax Credits (“LIHTCs”). LIHTCs assist developers with financing affordable multifamily housing serving the lower-income population as well as the elderly and persons with disabilities.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3614(a) and 12188(b)(1)(B).

6. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial number of the Defendants are headquartered and/or conduct business in this District and a substantial part of the events or omissions giving rise to the United States’ allegations occurred in this District.

SUBJECT PROPERTIES

7. The Defendants have participated in the design, construction, or design and construction, of one or more of the properties identified in the paragraphs below (collectively “the Subject Properties”).

8. Lanier Pointe I is a multifamily development located at 1030 Sue Lane, Shelby, NC. The property has three residential buildings with approximately 24 covered multifamily dwellings. Lanier Pointe I has public and common use areas, including a leasing office, tenant community spaces in the leasing office, a mail center, trash facilities, benches throughout the property, picnic tables, pavilions, grills, and a playground. The property was designed and constructed for first occupancy in approximately 2009.

9. Lanier Pointe II is a multifamily development located at 1020 Sue Lane, Shelby, NC. The property has four residential buildings with approximately 20 covered multifamily dwellings. Lanier Pointe II has public and common use areas, including a leasing office, tenant community spaces in the leasing office, a mail center, trash facilities, benches, picnic tables, pavilions, grills, and a playground. The property was designed and constructed for first occupancy in approximately 2010.

10. Azalea Gardens Apartments (“Azalea Gardens”) is a multifamily development for senior citizens located at 200 Monroe Highway, Lancaster, SC. The property consists of a single, two-story building with an elevator and has approximately 36 covered multifamily dwellings. Azalea Gardens has public and common use areas, including a leasing and management office, a mail center, parking, trash facilities, a grill, picnic tables, and a covered pavilion. The property was designed and constructed for first occupancy from approximately 2005 to 2006.

11. Cottages at Azalea Apartments (“Cottages at Azalea”) is a multifamily development located at 100 Pond Ridge Lane, Lancaster, SC. The property consists of two one-story buildings with approximately 48 covered multifamily dwellings. Cottages at Azalea has public and common use areas, including a leasing and management office, a tenant lounge area, an exercise room, a computer room, a mail center, grills, benches, covered pavilions, trash facilities, and a playground. The property was designed and constructed for first occupancy in approximately 2013.

12. Manor Ridge Apartments (“Manor Ridge”) is located at 209 S. Main Street, Wingate, NC. The property consists of eight two-story buildings with approximately 16 covered multifamily dwellings. Manor Ridge has public and common use areas including a leasing office, mail center, trash facilities, and a playground. The property was designed and constructed for first occupancy in approximately 1997.

13. Millers Ridge Apartments (“Millers Ridge”) is located at 1000 Millers Ridge Lane, Lancaster, SC. The property has nine residential buildings and has approximately 36 covered multifamily dwellings. Millers Ridge has public and common use areas, including a leasing office, tenant community spaces within the leasing office, a mail center, trash facilities, and a playground. The property was designed and constructed for first occupancy in approximately 1999.

DEFENDANTS

14. Lanier Pointe, LLC is a for-profit corporation whose principal place of business is located at 3924 Browning Place, Raleigh, NC. Lanier Pointe, LLC was the owner of Lanier Pointe I during design and construction, and remains the owner today, and in that capacity participated in the design and/or construction of Lanier Pointe I.

15. Lanier Pointe Phase II, LLC is a for-profit corporation whose principal place of business is located at 3924 Browning Place, Raleigh, NC. Lanier Pointe Phase II, LLC was the owner of Lanier Pointe II during design and construction, and remains the owner today, and in that capacity participated in the design and/or construction of Lanier Pointe II.

16. Azalea Gardens, LLC is a for-profit corporation whose principal place of business is located at 3700 Forest Drive, Suite 405, Columbia, SC. Azalea Gardens, LLC was the owner of Azalea Gardens during design and construction and remains the owner today, and in that capacity participated in the design and/or construction of Azalea Gardens.

17. Cottages at Azalea, LLC is a for-profit corporation whose principal place of business is located at 9789 Charlotte Highway, Suite 400, #025, Fort Mill, SC. Cottages at Azalea, LLC was the owner of Cottages at Azalea during design and construction and remains the owner today, and in that capacity participated in the design and/or construction of Cottages at Azalea.

18. Manor Ridge Limited Partnership is a for-profit corporation whose principal place of business is located at 7000 Six Forks Road, Raleigh, NC. Manor Ridge Limited Partnership was the owner of Manor Ridge during design and construction, and in that capacity participated in the design and/or construction of Manor Ridge.

19. Millers Ridge Apartments, L.P. is a for-profit corporation whose principal place of business is located at 1401 Main Street, Suite 601, Columbia, SC. Millers Ridge Apartments, L.P. was the owner of Millers Ridge during design and construction, and in that capacity participated in the design and/or construction of Millers Ridge.

20. The Pendergraph Companies, LLC (“The Pendergraph Companies”) is a for-profit corporation whose principal place of business is located at 3924 Browning Place, Raleigh, NC.

The Pendergraph Companies is a property development, construction, and management firm that participated in the design and/or construction of the Subject Properties, alongside Pendergraph Development, LLC.

21. Pendergraph Development, LLC (“Pendergraph Development”) is a for-profit corporation whose principal place of business is located at 3924 Browning Place, Raleigh, NC. Pendergraph Development is a construction development firm that participated in the design and/or construction of the following Subject Properties: Azalea Gardens, Cottages at Azalea, Lanier Pointe I, Lanier Pointe II, and Millers Ridge.

22. Pendergrat, LLC (“Pendergrat”) is a for-profit corporation whose principal place of business is located at 3924 Browning Place, Raleigh, NC. Pendergrat is a construction development firm that participated in the design and/or construction of the following Subject Properties: Manor Ridge and Millers Ridge.

23. Caliber Builders, LLC (“Caliber Builders”) is a for-profit corporation whose principal place of business is located at 3924 Browning Place, Raleigh, NC. Caliber Builders was the general contractor for and participated in the design and/or construction of the following four Subject Properties: Lanier Pointe I, Lanier Pointe II, Azalea Gardens, and Cottages at Azalea.

24. The Defendants participated in the design and construction of the Subject Properties. As set forth below, each Subject Property was designed and constructed without the accessibility features required by the Fair Housing Act and the Americans with Disabilities Act. As the entities that owned, developed, designed and constructed the Subject Properties, the Defendants are liable for the violations of the FHA and the ADA at the Subject Properties.

FACTUAL ALLEGATIONS

25. Each of the Subject Properties was designed and constructed for first occupancy after March 13, 1991.

26. Each of the Subject Properties is a “dwelling” and contains “dwellings” within the meaning of 42 U.S.C. § 3602(b).

27. Each of the Subject Properties contains “covered multifamily dwellings” within the meaning of 42 U.S.C. § 3604(f)(7)(B).

28. The covered multifamily dwellings at the Subject Properties are subject to the accessibility requirements of 42 U.S.C. § 3604(f).

29. The covered multifamily dwellings at the properties described above have inaccessible features that do not meet the requirements of 42 U.S.C. § 3604(f)(3)(C), including the following:

- a. the public use and common use portions of the dwellings therein are not readily accessible to and usable by persons with disabilities;¹ and/or
- b. not all doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons who use wheelchairs; and/or
- c. not all premises within such dwellings contain the following features of adaptive design:
 - i. accessible routes into and through the dwellings;
 - ii. light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; and/or

¹ Throughout this Complaint, the United States uses the term “disability” instead of “handicap.” For purposes of the FHA, the terms have the same meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (definition of “disability” under Americans with Disabilities Act taken almost verbatim from definition of “handicap” under the FHA).

- iii. usable kitchens and bathrooms such that an individual who uses a wheelchair can maneuver about the space.

30. The Defendants who participated in the design and construction of those properties were aware that those properties were required to be designed and constructed in accordance with the requirements of 42 U.S.C. § 3604(f)(3)(C) as a condition of obtaining LIHTCs and to remain eligible for those tax credits.

31. The leasing offices, public bathrooms, and other public spaces at the Subject Properties described above are places of public accommodation within the meaning of the ADA, 42 U.S.C. § 12181(7)(E) and 28 C.F.R. § 36.104.

32. The leasing offices, public bathrooms, and other public spaces at the Subject Properties were designed and constructed for first occupancy after January 26, 1993.

33. The leasing offices, public bathrooms, and other public spaces at the Subject Properties are required to meet the accessibility requirements of the ADA Standards.

34. The leasing offices, public bathrooms, and other public spaces at the Subject Properties are not, in part, designed and constructed so that they are readily accessible to and usable by individuals with disabilities, as required by the ADA, 42 U.S.C. § 12183(a)(1). These spaces fail to comply with the ADA Standards.

35. The following is an illustrative, but not exhaustive, list of inaccessible features created and caused by the Defendants in designing and constructing the Subject Properties.

Lanier Pointe I

36. The inaccessible features at Lanier Pointe I, include, but are not limited to:

- a. barriers on the route from site arrival points to the leasing office and other common areas, including a leasing office door that requires too much force, and leasing

office restroom doors with handles that require too much twisting and grasping, for certain persons with disabilities to open;

b. barriers on the routes to covered dwelling units and to the common areas that serve those units, including sidewalks with slopes that are too steep and, in one instance, a change in level that is too high, for persons using wheelchairs to negotiate safely, and designated “accessible” parking spaces with slopes that are too steep to be safely traversed by persons with certain disabilities, including persons using wheelchairs;

c. inaccessible common area features, including hardware on the fitness room door that requires grasping, turning, and/or twisting, making them not usable by persons with certain disabilities; a community room entry door without sufficient maneuvering clearance to permit persons using wheelchairs to open; objects in the community room and laundry room that protrude into the circulation path and create a hazard for persons with visual impairments; and mailboxes at the tenant mail center that are too high for persons using wheelchairs to reach;

d. bathtubs that do not permit the future installation of grab bars, which may be necessary for persons with disabilities to be able to access and use the bathtub; and

e. inaccessible bathrooms, including bathrooms with insufficient clear floor space to allow persons who use wheelchairs to maneuver toward or use the sink, toilet, or bathtub.

Lanier Pointe II

37. The inaccessible features at Lanier Pointe II include, but are not limited to:

- a. on the only route provided between the designated “accessible” parking space and the leasing office, there is a slope that is too steep for persons using wheelchairs or other persons with disabilities to traverse safely;
- b. barriers on the routes to covered dwelling units and to the common areas that serve those units, including sidewalks with slopes that are too steep to be safely traversed by persons with certain disabilities, including persons using wheelchairs;
- c. inaccessible common area features, including, for example, no route provided to the dumpsters, which would require persons using a wheelchair to use the road alongside cars and other vehicles as the only means of access; mailboxes that are too high for persons using wheelchairs to reach; drinking fountains in the leasing office that protrude into the circulation path and create hazards for persons with visual impairments; leasing office restrooms without sufficient clearance for persons using wheelchairs to approach and use the toilet and sink; and toilet flush controls located on the wrong side of the toilet, making them difficult to reach for persons using wheelchairs;
- d. inaccessible controls in covered dwelling units, including countertop outlets that are too high to permit a person using a wheelchair to access, whether they attempt a forward or side approach to the countertop;
- e. bathtubs that do not permit the future installation of grab bars, which may be necessary for persons with disabilities to be able to access and use the bathtub; and
- f. inaccessible bathrooms, including bathrooms with insufficient clear floor space to allow persons who use wheelchairs to maneuver toward or use the sink, toilet, or bathtub.

Azalea Gardens

38. The inaccessible features at Azalea Gardens include, but are not limited to:
- a. barriers on the routes between site arrival points and the building entrance, including slopes on the walkway between the parking lots and the building entrance that are too steep for persons using wheelchairs or other persons with disabilities to traverse safely; slopes in the parking spaces designated as “accessible” that are too steep for certain persons with mobility impairments to navigate safely; entrance ramp handrails that are too short for a person with a disability to use while approaching the entrance ramp; and steep slopes in the building entry way itself, rather than a level and clear floor area;
 - b. barriers on the routes from the covered units to common areas, such as the leasing office and clubroom, including wall-mounted lights and brackets that protrude too far into the circulation path, which could injure persons with visual impairments;
 - c. inaccessible common area features, including picnic tables without a stable, firm, and slip-resistant ground surface, which would prevent persons using a wheelchair from accessing and using these features, and a common area restroom with insufficient clear floor space to allow persons who use wheelchairs to maneuver toward or use the sink or toilet;
 - d. barriers on routes into and through covered units because interior door thresholds, including patio doors, are too high and are not angled in such a way as to allow passage to persons who use wheelchairs; and
 - e. inaccessible bathrooms and kitchens, including master bathrooms with insufficient clear floor space to allow persons who use wheelchairs to maneuver toward

or use the sink or toilet, and kitchens without sufficient clear floor space to permit persons who use wheelchairs to approach and use the sink.

Cottages at Azalea

39. The inaccessible features at Cottages at Azalea include, but are not limited to:

a. no route provided between site arrival points and building entrances, including covered dwelling unit entrances, or to the entrance of the leasing and management office building, which would require persons using a wheelchair or persons with other physical disabilities to use the road alongside cars and other vehicles as the only means of access;

b. barriers on the routes from covered dwelling units to the common areas that serve those units, including walkways with slopes and curb ramps that are too steep to permit persons with wheelchairs to navigate them safely; in at least one instance, an abrupt change in level that is too high for wheelchairs users and other persons with disabilities to traverse safely; and wall-mounted light fixtures that protrude into the circulation path and create a safety hazard for persons with visual impairments;

c. inaccessible common area features, including picnic tables without firm, stable, clear floor space, and mailboxes that are too low for persons using wheelchairs to reach;

d. closets in covered dwelling units that are too narrow to permit a person using a wheelchair to pass through the doorway to reach and use the back of the closet;

e. barriers in the routes through covered dwelling units, including door thresholds at unit entrances and at patio doorways that are too high and that make entry through those doorways difficult for persons using a wheelchair;

f. electrical outlets on patios that are too low for persons using a wheelchair to reach; and

g. inaccessible bathrooms, including bathrooms with insufficient clear floor space to allow persons who use wheelchairs to maneuver toward or use the sink or toilet.

Manor Ridge

40. The inaccessible features at Manor Ridge include, but are not limited to:

a. no continuous route provided between site arrival points and covered dwelling unit entrances or the leasing office entrances, which would require persons using a wheelchair or persons with other physical disabilities to use the road alongside cars and other vehicles as the only means of access, and ramps without appropriate handrails or a stable, level landing space;

b. barriers on the route that is provided between site arrival points and covered dwelling unit entrances, including slopes that are too steep, and changes in level that are too high, to enable persons using wheelchairs or persons with other disabilities to navigate safely; portions of the route that are too narrow to permit passage by persons using wheelchairs; and slopes that are too steep to make the designated accessible parking spaces navigable for persons with wheelchairs;

c. inaccessible common area features in the leasing office, including outlets that are too low and light switches that are too high for persons using wheelchairs to reach;

d. doors in covered dwelling units that are too narrow to permit clear passage by persons using wheelchairs, including bathroom doors that are so narrow that they bar

entry to persons using wheelchairs, and closet doors that are too narrow and too deep for persons with wheelchairs to be able to reach and use the back of the closets;

e. barriers in the routes through covered dwelling units, including door thresholds at unit entrances and at patio doorways that are too high and that make entry through those doorways difficult for persons using a wheelchair;

f. inaccessible controls in covered dwelling units, including wall outlets that are too low for persons using a wheelchair to reach, and kitchen and bathroom countertop outlets that are too high to permit a person using a wheelchair to access, whether they attempt a forward or side approach to the countertop;

g. bathtubs that do not permit the future installation of grab bars, which may be necessary for persons with disabilities to be able to access and use the bathtub; and

h. inaccessible bathrooms and kitchens, including bathrooms with insufficient clear floor space to allow persons who use wheelchairs to maneuver toward or use the sink, toilet, or bathtub, and kitchens without sufficient clear floor space to permit persons who use wheelchairs to approach and use the sink.

Millers Ridge

41. The inaccessible features at Millers Ridge include, but are not limited to:

a. no continuous route provided between site arrival points, the leasing office, common areas, and covered dwelling units, which would require persons using a wheelchair or persons with other physical disabilities to use the road alongside cars and other vehicles as the only means of access;

b. barriers on the route that is provided, including multiple changes in level and one instance of steps; slopes that are too steep and ramps without hand rails or stable

landing surfaces; designated “accessible” parking spaces with slopes that are too steep for persons with disabilities to traverse safely; and portions of the route that are too narrow to permit persons using wheelchairs to pass through;

c. barriers on routes to common areas, including objects that protrude into walkways, creating hazards for persons with visual impairments, and steep slopes at the tenant mail center;

d. inaccessible common area features, including insufficient clear floor space and inadequate grab bars in the leasing office restrooms, making it difficult for persons using wheelchairs to approach and use the toilet or the sink, and an entryway threshold to the tenant laundry room that is too high to permit access by persons using wheelchairs;

e. closets in covered dwelling units with door openings that are too narrow to be usable by persons using wheelchairs;

f. barriers in the routes through covered dwelling units, including primary entrances for units and patio doorways that are too high to permit passage by persons using wheelchairs;

g. inaccessible controls in covered dwelling units, including kitchen and bathroom countertop outlets that are too high to permit a person using a wheelchair to access, whether they attempt a forward or side approach to the countertops;

h. bathtubs that do not permit the future installation of grab bars, which may be necessary for persons with disabilities to be able to access and use the bathtub; and

i. inaccessible bathrooms, including bathrooms with insufficient clear floor space to allow persons who use wheelchairs to maneuver toward or use the sink, toilet, or bathtub, or, where provided, the shower.

FAIR HOUSING ACT CLAIMS

42. The United States re-alleges and incorporates the allegations set forth above.

43. The conduct of the Defendants described above violates 42 U.S.C. §§ 3604(f)(1), (f)(2) and (f)(3)(C).

44. The Defendants failed to design and construct the Subject Properties in a manner required by 42 U.S.C. § 3604(f)(3)(C) and 24 C.F.R. § 100.205(c).

45. To the extent a State or unit of general local government has incorporated into its laws the requirements set forth in 42 U.S.C. § 3604(f)(3)(C), the above properties have deficiencies that did not comply with such requirements at the time they were designed and constructed.

46. The Defendants' conduct described above constitutes:

a. a pattern or practice of resistance to the full enjoyment of rights granted by the FHA, 42 U.S.C. §§ 3601-3619; and

b. a denial to a group of persons of rights granted by the FHA, 42 U.S.C. §§ 3601-3619, which raises an issue of general public importance.

47. Persons who have been the victims of the Defendants' discriminatory housing practices are aggrieved persons under 42 U.S.C. § 3602(i), and may have suffered injuries because of the conduct described above.

48. The conduct of the Defendants described above was intentional, willful, and taken in disregard for the rights of others.

AMERICANS WITH DISABILITIES ACT CLAIMS

49. The United States re-alleges and incorporates the allegations set forth above.

50. The Defendants have failed to design and construct the leasing offices and/or other places of public accommodation at the Subject Properties in a manner required by 42 U.S.C. § 12183(a)(1), 28 C.F.R. §§ 36.401 and 36.406, and 28 C.F.R. Part 36, Appendix A.

51. The Defendants' conduct described above constitutes:

a. a pattern or practice of discrimination within the meaning of 42 U.S.C. § 12188(b)(1)(B)(i) and 28 C.F.R. § 36.503(a); and

b. unlawful discrimination that raises an issue of general public importance within the meaning of 42 U.S.C. § 12188(b)(1)(B)(ii) and 28 C.F.R. § 36.503(b).

52. Persons who have been the victims of the Defendants' discriminatory conduct are aggrieved persons as defined in 42 U.S.C. § 12188(b)(2)(B), and may have suffered injuries as a result of the conduct described above.

53. The Defendants' conduct described above was intentional, willful, and taken in disregard for the rights of others.

OTHER MULTIFAMILY PROPERTIES

54. The Defendants' pattern or practice of failing to design and construct dwellings, public and common use areas, and associated places of public accommodation in compliance with the FHA and the ADA, as alleged in this complaint, may extend to other multifamily properties and, absent injunctive relief, to other multifamily properties that may be designed and constructed in the future.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an Order that:

1. Declares that the Defendants' policies and practices, as alleged herein, violates the Fair Housing Act and Americans with Disabilities Act;

2. Enjoins the Defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from:
 - a. Failing or refusing to conduct a survey of the dwelling units and public and common use areas at the above properties and other covered multifamily properties designed and/or constructed by the Defendants to determine all inaccessible features that exist in violation of the FHA and ADA;
 - b. Failing or refusing to bring the dwelling units and public and common use areas at the above properties and other covered multifamily properties designed and/or constructed by the Defendants into compliance with the FHA and ADA;
 - c. Failing or refusing to bring the public accommodations designed and/or constructed by the Defendants including, but not limited to, the leasing offices for the Subject Properties, into compliance with the ADA and the ADA Standards;
 - d. Failing or refusing to conduct compliance surveys at all covered multifamily properties designed and/or constructed by the Defendants to determine whether the retrofits ordered in paragraphs (2)(b) and (c), above, were made properly;
 - e. Designing and/or constructing any covered multifamily dwellings in the future that do not comply with the FHA and ADA;
 - f. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of the Defendants' unlawful practices to the position they would have been in but for the discriminatory conduct;
3. Awards monetary damages under 42 U.S.C. §§ 3614(d)(1)(B) and 12188(b)(2) to all persons harmed by the Defendants' discriminatory housing practices.

4. Assesses a civil penalty against each Defendant who participated in the design and construction of a covered multifamily property within the past five years, in an amount authorized by 42 U.S.C. §§ 3614(d)(1)(C), 12188(b)(2)(C), and 28 C.F.R. § 85.3(b)(3) to vindicate the public interest.

5. The United States further prays for such additional relief as the interests of justice may require.

JURY DEMAND

The United States hereby demands a trial by jury of all issues so triable in accordance with Rule 38.

Dated: September 30, 2021

Respectfully submitted,

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