

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

**ANTHEM, INC.**

**Plaintiff,**

**v.**

**NANCY GAREAU**

**Defendant.**

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) **CIVIL ACTION**  
) **NO. 1:20-cv-2045**  
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**VERIFIED COMPLAINT AND REQUEST FOR  
TEMPORARY AND PERMANENT INJUNCTIONS**

Plaintiff Anthem, Inc. (“Anthem”) brings this suit against Nancy Gareau (“Gareau”), a former highly-compensated senior executive for Anthem who has repeatedly and flagrantly violated her restrictive covenant obligations to Anthem by soliciting its employees and medical care providers.

**INTRODUCTION**

1. Anthem is an Indianapolis-based company that provides health care services to millions of Americans across the United States. To better serve its members, Anthem operates a number of network-based managed care plans to groups of all sizes, as well as to individuals and the Medicare and Medicaid markets.

2. Anthem operates some of these plans through subsidiaries. Two such subsidiaries are Freedom Health, Inc. (“Freedom Health”) and Optimum HealthCare, Inc. (“Optimum HealthCare”). Freedom Health and Optimum HealthCare are Health Maintenance Organizations (“HMO”) that provides services throughout Florida.

3. Defendant Nancy Gareau worked for Anthem as the Regional Vice President of Provider Solutions, a senior executive position with significant responsibility over Freedom

Health's and Optimum HealthCare's provider networks, as well as other areas of operations.<sup>1</sup>

Befitting her rank and seniority at Anthem, Gareau was highly compensated and received multiple stock grants, including a restricted stock grant as part the 2017 Anthem Incentive Compensation Plan ("the Plan") through a Restricted Stock Unit Award Agreement ("RSU Agreement"). A copy of the Plan is attached as **Exhibit 1**, and a copy of the RSU Agreement is attached as **Exhibit 2**.

4. In exchange for receiving the restricted stock grant, Gareau agreed to restrictions on her ability to use Anthem's confidential information, to compete with Anthem, to solicit Anthem's customers and accounts, and to solicit Anthem's employees.

5. In December 2019, Gareau informed Anthem that she would be leaving Anthem to become the Chief Executive Officer of a competitor, Ultimate Health Plans, Inc. ("Ultimate"). Ultimate, like Freedom Health and Optimum HealthCare, is a Medicare Advantage plan that currently operates in Hernando, Pinellas, Marion, Citrus, Pasco, and Sumter Counties, Florida.

6. Though accepting this position constituted a violation of the non-competition provision in the RSU Agreement, Anthem informed Gareau in writing that it would permit her to be employed by a competing entity, despite her non-compete obligations, *provided* that she complies with her non-solicitation and other obligations to Anthem.

7. Instead of complying with her non-recruitment obligations, Gareau has led what can be described only as a full-on raid of Anthem's organization. In the months following her departure, Anthem has had no fewer than 14 employees provide notice that they were leaving Anthem to join Ultimate, including eight employees in just the last two weeks, while several other employees have reported to Anthem that they have received job offers from Ultimate,

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<sup>1</sup> At Anthem, Gareau also had primary responsibility for another plan: America's 1st Choice of South Carolina, Inc.

including, in some cases, from Gareau directly. By contrast, in Anthem's history prior to Gareau's departure, only one employee had left Anthem to join Ultimate over the course of several years.

8. Gareau's improper and illegal solicitation has also extended to providers. Anthem has learned that Gareau—and other former Anthem employees who joined Ultimate due to Gareau's solicitations—are soliciting Anthem physician providers.

9. The purpose of Gareau's raid is to leverage her knowledge of Anthem's high-performing employees to expand Ultimate into counties where it currently does not do business, primarily to Anthem's detriment.

10. While Anthem agreed to not enforce Gareau's non-competition restriction if (and only if) she abided by the other provisions in the RSU Agreement, her violations of the RSU Agreement, coupled with her misappropriation of Anthem's confidential information and trade secrets, makes clear that immediate injunctive relief is necessary to protect Anthem's legitimate protectable interests.

11. As discussed in more detail below, Anthem respectfully requests that the Court enter immediate injunctive relief barring Gareau from competing against Anthem in the restricted territory and soliciting Anthem's employees and providers, and requiring her to disclose the full extent of her violations of her obligations.

### **PARTIES**

12. Plaintiff Anthem, Inc. is an Indianapolis-based business. Anthem is an Indiana corporation with its principal place of business in Indianapolis, Indiana. Anthem is registered to do business in the State of Indiana.

13. Defendant Nancy Gareau is an individual and a citizen of Florida. Gareau is domiciled in Florida and resides at 1004 Lake Cooper Drive, Lutz, Florida 33548.

### **JURISDICTION**

14. The Court has subject matter jurisdiction in this matter pursuant to 28 U.S.C. § 1332 because complete diversity exists and the amount in controversy is in excess of \$75,000.

15. Anthem is a citizen of Indiana, and Gareau is a citizen of Florida. Thus, complete diversity is present.

16. The amount in controversy is in excess of \$75,000. As discussed in detail below, Anthem seeks to recover compensatory damages, injunctive relief, and its attorneys' fees and costs. Anthem's claim for compensatory damages alone is far in excess of \$75,000. The injunctive relief sought is also far in excess of \$75,000, because, absent the entry of injunctive relief, Gareau will be free to solicit employees and providers (and, through her agents at Ultimate, Freedom Health's and Optimum HealthCare's members), resulting in damages to Anthem well in excess of the jurisdictional minimum.

### **PERSONAL JURISDICTION AND VENUE**

17. Personal jurisdiction and venue is proper in this District and Division because Gareau's RSU Agreement incorporate by reference the terms of Anthem's Plan. The Plan includes a mandatory forum-selection clause setting venue exclusively in federal and state courts of Indiana for any disputes "[t]hat may arise out of or relate to the Plan or any related agreements." (Plan § 21.11.)

### **FACTUAL ALLEGATIONS**

#### ***A. Anthem's Legitimate Business Interests***

18. Anthem is an Indianapolis-based company that provides health care services to millions of Americans across the United States. To better serve Americans, Anthem operates a

number of network-based managed care plans to groups of all sizes, as well as to individuals and the Medicare and Medicaid markets.

19. Anthem, through two subsidiaries, Freedom Health and Optimum HealthCare, provides Medicare Advantage plans throughout Florida. Freedom Health and Optimum HealthCare are 4.5 star HMOs, which place them among the highest-performing HMOs in the State of Florida.

20. Anthem's success in the healthcare industry is a result of years of hard work and ingenuity. Anthem's confidential, proprietary, and trade secret information and customer relationships are the lifeblood of this business. Anthem's business is profitable by virtue of its strategic structuring and implementation of its provider networks, portfolio of member benefit plans, and member solicitation processes, all of which is driven by information that is regarded as highly confidential by Anthem and its competitors.

21. To maintain Anthem's longstanding client relationships and position in the marketplace, Anthem expends substantial time, effort, and expense developing confidential business information and trade secrets, which include, but are not limited to: medical care provider lists, member lists; customer lists; detailed information about the identities and requirements of current and prospective patients; and business methods, strategies, and plans, including sales strategies and methods.

22. To protect its confidential and proprietary business information and trade secrets, Anthem stores its trade secrets and confidential information on secure computer systems. In addition, the information is compiled and stored in password-protected electronic databases, including proprietary internal programs through which Anthem aggregates and monitors information relating to its operations. Access to confidential information is further restricted to

specific user profiles so that users on the network have access only to specific folders rather than the entire universe of Anthem's trade secrets and confidential information.

23. Anthem has spent a significant amount of time and money cultivating its member and provider relationships in Florida through its team of medical care providers and Field Sales and Service Representatives. Because Anthem's business contains a service component, the relationships that Anthem has with members are keenly dependent on Anthem's physician relationships and on its member-facing employees. If a physician changes to a different HMO, the member is likely to follow that doctor rather than find a new doctor at the existing HMO. Similarly, Anthem's Field Sales and Service Representatives are encouraged to develop relationships with members to ensure member loyalty to the associated plan.

***B. Nancy Gareau's Employment With Anthem***

24. On September 18, 2008, Gareau joined Freedom Health as the Vice President of Network Operations and Business Development. In this role, Gareau had substantial responsibility for Freedom Health's and Optimum HealthCare's provider contracting and provider network management. Gareau, through her position, developed significant and extensive relationships with medical service providers. Gareau also hired, coached, and managed her 21 direct reports, who had responsibility for the provider network operations of Freedom Health and Optimum HealthCare. Gareau reported directly to the CEO of Freedom Health and Optimum HealthCare.

25. In or around February 2018, Anthem acquired America's 1st Choice, which operated Freedom Health and Optimum HealthCare. As a result of the acquisition, Gareau became an Anthem employee and received significant compensation and stock awards for joining Anthem, including stock grants worth hundreds of thousands of dollars at Anthem's then share price.

26. During her employment with Anthem as a highly-compensated senior executive, Gareau received the opportunity to participate in Anthem's Plan and receive restricted stock grants. On or about March 1, 2019, Gareau received a restricted stock grant for 147 shares of Anthem stock, subject to conditions enumerated in the RSU Agreement.

27. The RSU Agreement contained restrictions on Gareau's ability to use Anthem's confidential information, to compete against Anthem, and to solicit Anthem's customers, providers, and employees.

28. In Section 7(a) of the RSU Agreement, Gareau recognized that Anthem derives substantial economic value from its "Confidential Information," which is defined to include:

plans, designs, concepts, computer programs, formulae, and equations; product fulfillment and supplier information; customer and supplier lists, and confidential business practices of the Company, its affiliates and any of its customers, vendors, business partners or suppliers; profit margins and the prices and discounts the Company obtains or has obtained or at which it sells or has sold or plans to sell its products or services (except for public pricing lists); manufacturing, assembling, labor and sales plans and costs; business and marketing plans, ideas, or strategies; confidential financial performance and projections; employee compensation; employee staffing and recruiting plans and employee personal information; and other confidential concepts and ideas related to the Company's business.

(*Id.* § 7(a).) "Confidential Information" is also defined to include information protected by the Indiana Uniform Trade Secrets Act, unless such information is known to Gareau or the general public through means other than a breach of a duty to maintain the confidentiality of such information.

29. Gareau agreed that, for so long as Anthem's Confidential Information remained confidential, she would not:

(A) use Confidential Information for the benefit of any person or entity other than the Company or its affiliates; (B) remove, copy, duplicate or otherwise reproduce any document or tangible item embodying or pertaining to any of the Confidential Information, except as required to perform the Participant's duties for the Company or its affiliates; or (C) while employed and thereafter, publish, release, disclose or

deliver or otherwise make available to any third party any Confidential Information by any communication, including oral, documentary, electronic or magnetic information transmittal device or media.

(*Id.*)

30. In Section 7(b) of the RSU Agreement, Gareau agreed to the following restriction on her ability to compete against Anthem:

During any period in which the Participant is employed by the Company, and during a period of time after the Participant's termination of employment (the "Restriction Period") which, unless otherwise limited by applicable state law, is (i) twenty-four (24) months for Executive Vice Presidents and the President & Chief Executive Officer, and (ii) the greater of the period of severance or twelve (12) months for all other Participants, the Participant will not, without prior written consent of the Company, directly or indirectly seek or obtain a Competitive Position in a Restricted Territory and perform a Restricted Activity with a Competitor, as those terms are defined herein.

(i) Competitive Position means any employment or performance of services with a Competitor (A) the same as or similar to the services in which Participant performed for the Company in the last twenty-four (24) months of Participant's employment with Company, or (B) in which the Participant will use any Confidential Information of the Company.

(ii) Restricted Territory means any geographic area in which the Company does business and in which the Participant provided services in, had responsibility for, had a material presence or influence in, or had access to Confidential Information about, such business, within the thirty-six (36) months prior to the Participant's termination of employment from the Company.

(iii) Restricted Activity means any activity for which the Participant had responsibility for the Company within the thirty-six (36) months prior to the termination of the Participant's employment from the Company or about which the Participant had Confidential Information.

(iv) Competitor means any entity or individual (other than the Company or its affiliates) engaged in management of network-based managed care plans and programs, or the performance of managed care services, health insurance, long term care insurance, dental, life or disability insurance, behavioral health, vision, flexible spending accounts and COBRA administration or other products or services substantially the same or similar to those offered by the Company while the Participant was employed, or other products or services offered by the Company within twelve (12)



months after the termination of Participant's employment if the Participant had responsibility for, or Confidential Information about, such other products or services while the Participant was employed by the Company.

(RSU Agreement § 7(b).)

31. In Section 7(c) of the RSU Agreement, Gareau agreed to the following restriction on her ability to solicit Anthems' customers and accounts:

During any period in which the Participant is employed by the Company, and during the Restriction Period after the Participant's termination of employment, the Participant will not, either individually or as an employee, partner, consultant, independent contractor, owner, agent, or in any other capacity, directly or indirectly, for a Competitor of the Company as defined in subsection (b) above: (i) solicit business from any client or account of the Company or any of its affiliates with which the Participant had contact, participated in the contact, or responsibility for, or about which the Participant had knowledge of Confidential Information by reason of the Participant's employment with the Company, (ii) solicit business from any client or account which was pursued by the Company or any of its affiliates and with which the Participant had contact, or responsibility for, or about which the Participant had knowledge of Confidential Information by reason of the Participant's employment with the Company, within the twelve (12) month period prior to termination of employment. For purposes of this provision, an individual policyholder in a plan maintained by the Company or by a client or account of the Company under which individual policies are issued, or a certificate holder in such plan under which group policies are issued, shall not be considered a client or account subject to this restriction solely by reason of being such a policyholder or certificate holder.

(*Id.* § 7(c).)

32. In Section 7(d) of the RSU Agreement, Gareau agreed to the following restriction on her ability to solicit Anthems' employees:

During any period in which the Participant is employed by the Company, and during the Restriction Period after the Participant's termination of employment, the Participant will not, either individually or as an employee, partner, independent contractor, owner, agent, or in any other capacity, directly or indirectly solicit, hire, attempt to solicit or hire, or participate in any attempt to solicit or hire, for any non-Company affiliated entity, any person who on or during the six (6) months immediately preceding the date of such solicitation or hire is or was an officer or

employee of the Company, or whom the Participant was involved in recruiting while the Participant was employed by the Company.

(*Id.* § 7(d).)

33. In Section 9(a) of the RSU Agreement, Gareau acknowledged that the restrictive covenants in the RSU Agreement “are reasonable and necessary to preserve the legitimate business interests of the Company, its present and potential business activities and the economic benefits derived therefrom; that they will not prevent him or her from earning a livelihood in the Participant's chosen business and are not an undue restraint on the trade of the Participant, or any of the public interests which may be involved.”

34. In Section 9(b) of the RSU Agreement, Gareau agreed that the term of the restrictive covenants would be extended by the period that Gareau was not in compliance with the RSU Agreement.

***C. Gareau Leaves Anthem and Joins Ultimate***

35. On or about December 2, 2019, Gareau informed Anthem that she would be leaving Anthem to accept a position as the CEO of Ultimate, a direct competitor to Anthem.

36. Ultimate competes with Anthem because it is a Medicare Advantage health care plan and operates in counties where Anthem operates through Freedom Health and Optimum HealthCare. Specifically, Ultimate has members in Citrus, Hernando, Marion, Pasco, Pinellas, and Sumter Counties, Florida and, upon information and belief, it intends to expand into Hillsborough, Indian River, Lake, Martin, and St. Lucie Counties, Florida through its raiding and hiring of Freedom Health employees and physician providers who have relationships with current Freedom Health members in those counties. On information and belief, Gareau intends to specifically target Anthem's member and provider network in Florida by, among other measures,

misappropriating Anthem's confidential information, soliciting Anthem's employees, and soliciting Anthem's medical care providers.

37. Through Freedom Health and Optimum HealthCare, Anthem offers Medicare Advantage plans in all of these counties and others in Florida.

38. On December 4, 2019, Anthem sent Gareau a letter reminding her of her continuing obligations to Anthem. A copy of that letter is attached as **Exhibit 3** to this Complaint.

39. In that letter, Anthem indicated that it would not seek to enforce the non-compete to prevent Gareau from being hired as the CEO of Ultimate, *provided* that she strictly comply with the restrictive covenants in her RSU Agreement in all other respects.

40. Rather than comply with her RSU Agreement, Gareau used her new position at Ultimate to raid Anthem's organization, including its employees and medical care providers, and, on information and belief, to misappropriate Anthem's Confidential Information and trade secrets.

41. On information and belief, Gareau wanted to expand Ultimate into markets where Anthem operated but did not want to spend the capital and time necessary to expand its health plans into these counties from scratch. To circumvent the time and investment necessary to accomplish that expansion legally, Gareau instead violated her restrictive covenant obligations and attempted to rebuild her former reporting and sales network at Anthem by a targeted employee raid on Anthem's operations in Florida.

***D. Gareau Directly and Indirectly Solicits Anthem Personnel***

42. Since Gareau's departure from Anthem, no fewer than **14 employees** have left Anthem to join Ultimate. Gareau began her raid by selecting more senior members of Anthem's organization before expanding her raid to Field Sales and Service Representatives.

43. On or about February 7, 2020, Ronicia Washington, a Manager II - Provider Network left Anthem to become a Director - Provider Network at Ultimate. Washington directly reported to Gareau during her employment with Anthem.

44. On or about February 15, 2020, Sheri Hackney, Freedom Health's Director of Network Relations left Anthem to become the Senior Director of Provider Network Relations and Business Development at Ultimate. Hackney directly reported to Gareau during her employment with Anthem.

45. On or about March 20, 2020, Isis Pinilla, Anthem's Manager - Network Services, left Anthem to become the Chief Compliance Officer at Ultimate.

46. On or about March 27, 2020, Jessica Williams Crandall, a Manager - Provider Network at Anthem, left Anthem to become a Manager II - Provider Network at Ultimate.

47. On or about April 3, 2020, Sandra Altman, a Manager II - Provider Network at Anthem, left Anthem to become the Senior Manager - Provider Network at Ultimate.

48. On or about April 3, 2020, Candi Thompson, a Senior Provider Contract Specialist at Anthem, left Anthem to become a Provider Network Representative at Ultimate.

49. On information and belief, Gareau was directly or indirectly involved in soliciting these employees to leave Anthem and join Ultimate, in violation of her RSU Agreement.

50. A brief respite occurred after this initial wave of resignations, as Gareau then integrated these individual's into Ultimate's business.

51. Then, having laid the required internal infrastructure, on information and belief, Gareau directly and indirectly solicited sales and service representatives to leave Anthem and join Ultimate.

52. Between July 13 and July 15, eight Field Sales and Service Representatives—nearly 10% of Anthem’s employees for this job classification—gave notice that they would be leaving to join Ultimate. The eight field representatives’ names are:

- James Cabble
- Matthew Marino
- Elliot Medina
- Eric Thompson
- Justin White
- Katherine Arellano
- Chris Stewart
- Abraham Garcia

53. In addition to these departures, several other employees have provided Anthem with notice that they are leaving Anthem but have not informed Anthem whether they are leaving to join Ultimate. On information and belief, other employees have been directly and indirectly solicited by Gareau.

54. In some instances, Gareau has directly contacted these employees to urge them to leave Anthem and join Ultimate. In or around May 2020, Gareau called one current Anthem employee and told the employee that Ultimate planned to expand into the employee’s territory, which includes St. Lucie County, Indian River County, and Martin County. Gareau told the employee that the employee should “hold tight” for now (or words to that effect) but that there would be opportunities for the employee in the future. The employee took that to mean that Gareau would extend the employee an offer before the end of the year.

55. Gareau is targeting and specifically soliciting high-performing employees at Anthem and using her knowledge of Anthem’s operations and management to siphon off some

of Anthem's most valuable employees. On information and belief, Gareau has either improperly retained Anthem's confidential information and/or trade secrets or is using such protected information in her new role as the CEO of Ultimate.

56. In addition to soliciting Anthem's employees, Gareau is also soliciting Anthem's medical care providers. HMOs like Freedom Health and Optimum HealthCare contract with medical care providers to provide services to members. By securing contracts with high-quality medical care providers in its network, Anthem is able to make the plans offered by Freedom Health and Optimum HealthCare more attractive to current and potential members.

57. Gareau has directly or indirectly solicited multiple medical care providers. On or around June 2020, Gareau directly solicited one longstanding Anthem medical care provider to enter into a provider contract with Ultimate. And, on or about July 23, 2020, Gareau directly solicited another longstanding Anthem provider to enter into a provider contract with Ultimate. Anthem was informed by a third provider that Gareau had solicited that provider to enter into a provider contract with Ultimate.

58. These clear and unambiguous violations of Gareau's restrictive covenants have already seriously harmed Anthem's ability to prepare for the Medicare enrollment period, which begins October 15.

59. Without preliminary injunctive relief, Gareau will continue to violate her restrictive covenants and cause irreparable harm to Anthem's operations, in addition to significant monetary damages. There is no adequate remedy at law for the harm that Anthem has suffered and is continuing to suffer as a direct and proximate result of Gareau's unlawful actions. Therefore, Anthem seeks immediate injunctive relief against Gareau.

**COUNT I**  
**Breach of Contract - RSU Agreement**

60. Anthem re-alleges Paragraphs 1-60 above, and incorporate them as if fully set forth herein.

61. Gareau entered into a valid and enforceable contract, the RSU Agreement, for valuable consideration. Gareau has a continuing obligation to abide by the terms of the RSU Agreement and the restrictive covenants contained in that agreement.

62. The restrictive covenants in the RSU Agreement are reasonably necessary for the protection of Anthem's interests in the customer relationships and goodwill associated. Further, the restrictive covenants are reasonably necessary to protect Anthem's confidential information and trade secrets and customer, patient, and client goodwill.

63. The covenants contained in the RSU Agreement remain in full force and effect for one year after the date of Gareau's resignation, through December 20, 2021, and Gareau remains obligated to comply with those covenants.

64. The restrictive covenants contained in the RSU Agreement are valid and enforceable. They contain reasonable limitations as to the time, geographic area and scope of activity to be restrained, and do not impose a greater restraint than was necessary to protect Anthem's goodwill or other business interests.

65. Anthem has satisfied all of its obligations under the terms and conditions of the RSU Agreement. All conditions precedent to this action have been performed, excused, or waived.

66. By the acts described above, Gareau has, both directly and indirectly, breached the RSU Agreement by, among other things, soliciting Anthem employees and raiding its

workforce, soliciting medical care providers, and competing with Anthem, in violation of the restrictive covenants in the RSU Agreement.

67. As a direct and proximate result of Gareau's breaches of the RSU Agreement, Anthem has been harmed.

68. Gareau, both directly and through her agents, has breached and will continue to breach the RSU Agreement by soliciting Anthem employees and raiding its workforce, soliciting medical care providers, and competing with Anthem.

69. The restrictive covenants contained within the RSU Agreement should be extended for the period of time where Gareau is found to have been violated the restrictive covenants in the RSU Agreement.

70. Anthem has been damaged in an amount to be determined at trial.

#### **REQUESTED RELIEF**

WHEREFORE, Anthem requests that the Court grant the following relief:

1. The Court should order that Gareau, along with her agents, employers, employees, attorneys and those persons in active concert or participation with her, be enjoined through a preliminary injunction and permanent injunction from violating the RSU Agreement, from misappropriating or disclosing Anthem's Confidential Information and trade secrets;

2. That any preliminary or permanent injunction incorporate a tolling provision, whereby the protected periods specified in the RSU Agreement are tolled and extended for the length of time in which the Court determines that Gareau violated the RSU Agreement;

3. That Anthem be awarded compensatory damages in an amount to be proven at trial;



4. That Anthem be awarded its costs and attorneys' fees incurred in bringing this action; and

5. That the Court grant such further relief as it deems just.

**JURY TRIAL DEMAND**

Anthem demands a jury trial on all issues triable as a matter of law.

Dated: August 4, 2020

Respectfully submitted,  
By: /s/ Christopher DeGroff  
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*Counsel for Anthem*

**VERIFICATION**

I, Tomas Orozco, the Chief Executive Officer and President of Freedom Health and Optimum HealthCare, declare under penalty of perjury (28 U.S.C. § 1746) that I have read Paragraphs 1-12, 18 to 59 in the Verified Complaint and Request for Temporary and Permanent Injunctions and that the facts stated in it are true to the best of my knowledge and belief.

Executed on August 4<sup>th</sup>, 2020.

  

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Tomas Orozco