IN THE SUPREME COURT OF THE STATE OF NEVADA

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ROBERT SCOTLUND VAILE,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE CHERYL MOSS, DISTRICT JUDGE, FAMILY COURT DIVISION,

Respondents,

and

CISILIE A. PORSBOLL F/K/A CISILIE A. VAILE,

Real Party in Interest.

S.C. DOCKET NO.: 55446
D.C. CASE: 98-D-230385-D

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REAL PARTY IN INTEREST ON BEHALF OF RESPONDENTS' ANSWER TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

I. INTRODUCTION; SCOPE OF ISSUES:

This Court issued an *Order* requiring an answer to Scotlund's *Petition for WRIT of Mandamus*, limited to the issue of whether the 2003 attorney's fee judgment was properly renewed as required by statute and this Court's precedent.

Both we, and Scotlund, were aware that this was a moot issue well before he filed his *Petition*. No renewal was required, as explained to the lower court in our briefing to that court months before the *Petition* was filed, and as formally found by that court. These facts notwithstanding, we of course address this issue as directed.

The *Petition* now before this Court addresses only the 2003 attorney's fee award issued by the Eighth Judicial District Court. As detailed in our *Real Party In Interest's Opposition to Petitioners' Motion to Stay Interpleading of Funds to the District Court*, the 2003 award is no longer relevant to any of the actions in the lower court. Scotlund and the

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lower court received our November 30, 2009, *Supplemental Filing As Directed by Court*[1] which explained why the 2003 *Order* was moot. This *Answer* will explain the same in summary to avoid repeating our filing as to the *Motion*, which is attached here for convenience as Exhibit B.

II. STATEMENT OF FACTS:

The current filing continues Scotlund's attempts to avoid paying the nearly $1.5 million dollars in damages, attorney's fees, and penalties assessed against him by multiple courts throughout the country and the world; he has evaded all responsibility for actually paying what he owes, despite his six-figure income.[2]

Most of the facts of this case are detailed in the various orders and opinions – including this Court's 2002 *Opinion*.[3] As we are only addressing the one issue, this factual statement will only go over matters not appearing in the record known to this Court, or which we think are central to the issue to which the Court has requested that we respond, but the Court should be aware that we have had to deal with the nation-wide antics of this vexatious litigant in a virtually unbroken chain since this Court ordered recovery and return of the children nearly a decade ago.

On July 24, 2003, the lower court issued its order for the June 4, 2003, hearing, which awarded Cisilie $116,732.09 in attorney's fees incurred in the recovery of the children.[4]

On March 13, 2006, following years of litigation, the U.S. District Court for the District of Nevada issued its *Findings of Fact and Conclusions of Law and Decision* and *Judgment* which listed, arrayed, and ordered several categories of damages, expressly

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[1] Exhibit A.

[2] Scotlund has admitted that he has over a $120,000 per year income. This was confirmed by the Answer to Interrogatories provided by his employer Deloitte & Touche.

[3] *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 44 P.3d 506 (2002).

[4] Exhibit C.

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including attorney's fees incurred in actions in various State courts, including the 2003 attorney's fee award issued by the lower court on remand from this Court.[5] Scot (of course) appealed from that order.

On March 28, 2008, the Ninth Circuit Court of Appeals issued its *Memorandum Decision* which affirmed all aspects of the 2006 *Order* relevant here, including every component of the cumulative damages for attorney's fees incurred.[6]

On July 23, 2008, the U.S. District Court for the District of Nevada, as directed in the remand, issued its *Amended Judgment numc pro tunc*, which again stated the cumulative damages for attorney's fee incurred.[7]

On May 26, 2009, Cisilie filed her *Judgment Renewal* as to the original 2003 State court order,[8] and on June 19, 2009, *Notice of Entry of Judgment Renewal* was made and copied to Scot.[9]

On October 26, 2009, the District Court, Family Division, held a hearing on matters related to the Writ of Garnishment for Attorney Fees in this matter.[10] For the first time, Scot raised an issue as to the renewal of the 2003 order, and we agreed to look into it and to report our findings to the district court.

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[5] Exhibits D and E.

[6] Exhibit F. The Ninth Circuit remanded with instructions to the lower court ***only*** to remove any child support award from that judgment, since those amounts had not been originally pled as damages. The child support award is being separately collected through the State courts and D.A.'s office.

[7] Exhibit G.

[8] Exhibit H.

[9] Exhibit I.

[10] Exhibit J, Events & Orders of the Court.

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On November 30, 2009, Cisilie filed her *Supplemental Filing As Directed By Court*, addressing the *Renewal of Judgment* of the June 23, 2003, *Order*.[11]

On December 23, 2009, the *Notice of Entry of Order for Hearing Held October 26, 2009*, was entered.[12]

On February 1, 2010, Cisilie filed the *Foreign Order/Judgment* with the District Court, Family Division.[13]

On February 3, 2010, the court entered a *Stipulation and Order to Quash Writ of Garnishment*.[14] This was to terminate the expensive and wasteful cross-litigation in two States that Scot was machinating, in favor of having the district court directly order enforcement of its own orders.

On February 17, 2010, Scotlund filed his *Petition for Writ of Mandamus or Prohibition.*

On March 25, 2010, the District Court, Family Division issued *Court's Decision and Order on Attorney's Fees From March 8, 2010 Hearing* which awarded an additional $100,000 in attorney's fees to the WILLICK LAW GROUP from Scot.[15]

III. ARGUMENT

A. Scotlund's *Petition for Writ* was Moot Before it was Filed

As was explained in our recently filed *Real Party in Interest's Opposition to Petitioners' Motion to Stay Interpleading of Funds to the District Court*,[16] the lower court is no longer using the 2003 attorney's fee award as a basis for collections from Scotlund.

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[11] Exhibit A.

[12] Exhibit K.

[13] Exhibit L.

[14] Exhibit M.

[15] Exhibit N.

[16] Exhibit B.

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That award was subsumed in the U.S. District Court District of Nevada's *Amended Judgment nunc pro tunc*.[17] We ask the Court to review our *Opposition* in concert with this filing as the argument therein directly goes to the question we have been asked to answer here. We seek not to repeat the argument from the earlier filing, but will summarize it here for the convenience of the Court.

The *Amended Judgment Nunc Pro Tunc*, of July 23, 2008, filed by the United States District Court, District of Nevada, consolidated the family court's 2003 attorney's fee award within the various categories and classes of damages awarded to Cisilie and against Scot, including them (*see* Exhibit G at 2 Paragraph 4) in the cumulative formal attorney's fee award as follows:

> Plaintiff Cisilie Vaile Porsboll is awarded damages of attorneys fees and costs, awarded in other cases as a result of her having to come to the United States to recover her children, overturn fraudulently obtained orders, and regain custody of her children, in the amount of $272,255.56, plus interest until paid.[18]

The $116,732.09 incurred in Nevada was part of the $272,255.56 awarded.

Once filed or registered in the local district, the federal judgment has "the same effect as a judgment of the district court of the district where registered and may be enforced in like manner."[19] In other words, any need to renew the 2003 judgment was mooted by the 2008 federal court judgment, which need not be renewed until either 2012 or 2014.[20]

Those facts ***should*** have resulted in removal of the 2003 judgment from the list of judgments requiring renewal in our calendaring system, but it did not, and when the previously-calendared renewal date came around, the process was initiated, although it was apparently abandoned once it was discovered that it was unnecessary.

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[17] Exhibit F.

[18] *See* Exhibits D and E, *Finding of Fact and Conclusions of Law and Decision*, and *Judgment*.

[19] 28 U.S.C. § 1963.

[20] We are not sure of the exact date it is due to be renewed as it is either six years from the March 13, 2006, *Judgment*, or the July 23, 2008, *Amended Judgment nunc pro tunc*.

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In other words, the June, 2003, judgment was not renewed in accordance with the statutory procedure, and thus "renewal" did not occur, the successful action for damages which incorporated the fees incurred in 2003 resulted in a new judgment which is enforceable.

The bottom line is that the requirement for Scotlund to ***pay*** the $116,732.09 incurred in recovering the children is alive and well and a component of the attorney's fees found to be owing as of March 13, 2006, in the sum of $272,255.56, plus interest.

B. The Filing of the Federal Judgment Establishes An Enforceable Order

We originally filed the federal judgment with the district court as Exhibit A to Cisilie's *Motion to Reduce Arrears in Child Support to Judgment, To Establish A Sum Certain Due Each Month In Child Support, and For Attorney's Fees and Costs*, filed November 14, 2007. The judgment was valid and enforceable by the lower court at that time. Scotlund's failure to object in a timely manner to that filing was a waiver to any legitimate objection that might have existed – and there ***is*** no legitimate objection.

The district court looked to the laws of this State to determine if a judgment issued by some other court could be filed and enforced here, under NRS 17.340:

> As used in NRS 17.330 to 17.400 inclusive, unless the context otherwise requires, "foreign judgment" means ***any*** judgment of a court of the United States or of any other court which is entitled to full faith and credit in this state, except:
> 1. A judgment to which chapter 130 of NRS applies; and
> 2. An order for protection issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders.

The lower court has determined that the *Amended Judgment nunc pro tunc* can be filed and enforced by the district courts of this State. Since full faith and credit applies between federal and State courts as to matters within their jurisdiction,[21] as well as between States, and is specifically delineated in the United States Constitution, it would be very hard

[21] *See, e.g., Morton v. Morton*, 982 F. Supp. 675 (D. Neb. 1997).

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to argue that any judgment issued by a federal court – no matter where it was located – is not entitled to full faith and credit in, and enforcement by any court of this State.[22]

The 2008 federal judgment as reiterated "nunc pro tunc" on remand from the Ninth Circuit was filed in the District Court before the February 3, 2010, hearing to avoid any further hyper-technical objections from Scot and to make it crystal clear that it remains fully enforceable as any judgment issued by that court.

IV. IMPOSITION OF SANCTIONS ON APPEAL IS WARRANTED FOR SCOTLUND'S SUBMISSION OF A PETITION FOR WRIT THAT HE KNEW WAS MOOT

A. Background

This Court has historically issued only the most slight penalties for violations of its rules.[23] In *Barry v. Lindner*,[24] this Court sanctioned Appellant's counsel $500 for failures to cite to the record, provide relevant authority, and comply with the procedural and substantive rules governing appellate litigation. The Court expressed, however, its intent to enforce its nearly 20-year-old expectation that "all appeals . . . be pursued with high standards of diligence, professionalism, and competence."

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[22] *See* U.S. Const., art. IV, § 1. This would be true even if the judgment was granted for a cause of action not recognized in this State. *See, e.g.*, *Burdick v. Nicholson*, 100 Nev. 284, 680 P.2d 589 (1984) (full faith and credit clause required Nevada to give effect to a North Carolina judgment for alienation of affections). Of course, in this case, the judgments are for massive child support arrears, interest, penalties, tort damages, and attorney's fees incurred in recovering kidnaped children – all of which are strongly favored by Nevada public policy). An action to enforce the judgment is an action to enforce a debt, not the underlying cause of action. *Id.*

[23] *See Pittman v. Lower Court Counseling*, 110 Nev. 359, 871 P.2d 953 (1994) (appellant sanctioned for failure to cite to the record); *Varnum v. Grady*, 90 Nev. 374, 528 P.2d 1027 (1974) (appellant sanctioned for failure to comply with multiple procedural rules); *In re Candidacy of Hansen*, 118 Nev. 570, 574 n.9, 52 P.3d 938, 940 n.9 (2002) (sanctions may be imposed for defective appendix).

[24] 119 Nev. 661, 75 P.3d 388 (2003).

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In *Miller v. Wilfong*,[25] this Court again imposed a $500 fine where the appellant's performance was so sub-standard that additional work was generated on the part of both the Respondent and this Court. Such minor penalties were in keeping with prior practice.[26]

However, the Court has been a bit more punitive when it detected that it was being deliberately lied to, or its offices were being otherwise misused.[27] Further, this Court has stated that it is more likely to find sanctions appropriate under NRAP 38 where the record reveals an abuse of court processes below, since it gives rise to the inference of abuse of the appellate process as well.[28]

It is hard to conceive of a clearer record of "abuse of court processes below," where the district court has assessed – but not managed to actually get Scot to pay – over $250,000 in fees, costs, and sanctions for his misbehavior and frivolous filings.[29]

A failure to actually enforcement ***payment*** of those sanctions encourages frivolous litigation and the serial pursuit of baseless claims in the hopes of forcing either Cisilie – who has no money – or her attorneys – who have had to bear the cost of litigation for ten years –

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[25] 121 Nev. 619, 119 P.3d 727 (2005).

[26] *See* NRAP 28(a)(4); *State, Emp. Sec. Dep't v. Weber*, 100 Nev. 121, 123-24, 676 P.2d 1318 (1984) (advising counsel of sanctions for failure to refer to relevant authority); *Smith v. Timm*, 96 Nev. 197, 606 P.2d 530 (1980) (inadequate "discharge of the appellant's obligation to cite legal authority"); *Carson v. Sheriff*, 87 Nev. 357, 487 P.2d 334 (1971) (contentions not supported by relevant authority need not be considered); *Barry v. Lindner*, *supra*; *Smith v. Emery*, 109 Nev. 737, 743, 856 P.2d 1386, 1390 (1993).

[27] *See, e.g.*, *Sierra Glass & Mirror v. Viking Industries*, 107 Nev. 119, 808 P.2d 512 (1991) (omitting pertinent part of deposition violated SCR 172(1)(a)&(d) and merited referral to Bar for discipline); *Vaile v. District Court*, 118 Nev. 262, 44 P.3d 506 (2002) (J. Young, concurring, referring Scot to the District Attorney for possible fraud prosecution, and his attorney to the State Bar for the same purpose).

[28] *Young v. Johnny Ribiero Building*, 106 Nev. 88, 787 P.2d 777 (1990).

[29] In addition to the 2003 $116,000, another $39,000 in fees assessed during litigation over the past several years – all of which have been ignored – and an ***additional*** $100,000 in fees assessed for Scot's outright abuse of judicial processes in two States during the past year. *See* Exhibit N.

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to abandon pursuit of judgments that rightfully belong to Cisilie and her children that were abused at Scot's hands.

The claims pursued by Scot were at all times frivolous.[30] This Court has held that fees are appropriate where the moving party's claim was brought or maintained without reasonable grounds or to harass.[31] This is such a case.

Where the record makes clear the moving party's abuse of the judicial system in pursuit of frivolous claims, and the record includes clear instances of that party's knowledge that his claims are frivolous, the failure of the judicial system to shift financial responsibility for the ensuing costs onto the wrongdoing party fails to accord substantial justice, because it leaves the innocent damaged.[32]

If our count is correct, this is the eleventh time Scotlund has filed something in this Court to try to avoid payment of child support and the nearly $1.5 million in judgments that he owes. The number of filings alone demonstrates that he is a vexatious litigant and justifies an extraordinary order prohibiting further filings. This Court, like others, has taken this step where required.[33] It is required here, where a scofflaw has evaded justice for a

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[30] *Barozzi v. Benna*, 112 Nev. 635, 918 P.2d 301 (1996) (matters frivolous upon initiation of an action merit an award of fees); *Bergmann v. Boyce*, 109 Nev. 670, 675 P.2d 560, 563 (1993) ("prosecution of one colorable claim does not excuse the prosecution of [other] groundless claims").

[31] *Mack-Manley v. Manley*, 122 Nev. 849, 138 P.3d 525 (2006).

[32] *See Trustees v. Developers Surety*, 120 Nev. 56, 84 P.3d 59 (2004) (discussing 2003 legislature's amendments to NRS 18.010: "It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public," S.B. 250, 72d Leg. (Nev. 2003); 2003 Nev. Stat., ch. 508, Sec. 153, at 3478).

[33] *See Jordan v. State ex rel. Dept. of Motor Vehicles*, 121 Nev. 44, 110 P.3d 30 (2005); *Goad v. Rollins*, 921 F.2d 69 (5th Cir.), *cert. denied*, 500 U.S. 905, 111 S. Ct. 1684 (1991).

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decade while inflicting financial misery on everyone and everything around him, to date without paying any penalty for that behavior.

B. Costs to Cisilie

The *Petition* was filed for the sole purpose of increasing our costs,[34] and justifies the imposition of attorney's fees under NRAP 38 "as costs on appeal . . . to discourage like conduct in the future," because this *Petition* has most certainly "been processed in a frivolous manner," and "the appellate processes of this court have otherwise been misused."[35] The sum of attorney's fees "appropriate to discourage like conduct in the future" is the ***entire*** sum of fees caused to have been incurred by this firm in defending its client against this frivolous *Petition*.

In this case, Scot's antics in just this single appellate file (among the many he has initiated), have cost Cisilie some $10,000, which should be the minimum sum assessed for knowingly filing a fraudulent petition in this Court.[36]

C. Application to Scot

In this case, Scot's *Petition* asks for relief that will have no effect whatsoever on the orders of the lower court, since the issue was rendered moot before Scot even sought the aid of this Court. The sole purpose of the filing was to generate waste, confusion, and costs for both the Court and this law office.

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[34] Our client is impecunious and has been unable to pay for any of the litigation that has taken place over the past ten years.

[35] *See Works v. Kuhn*, 103 Nev. 65, 732 P.2d 1373 (1987); *Flangas v. Herrmann*, 100 Nev. 1, 677 P.2d 594 (1984); *Holiday Inn v. Barnett*, 103 Nev. 60, 732 P.2d 1376 (1987).

[36] Imposition of sanctions in that sum – against Scotlund – is authorized and appropriate. *See Burke v. State*, 110 Nev. 1366, 887 P.2d 264 (1997) (court may sanction attorney whose performance falls below required standards of diligence, professionalism, and competence); *Hansen v. Universal Health Serv. of Nev., Inc.*, 112 Nev. 1245, 924 P.2d 1345 (1996).

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NRAP 28(j) states:

> All briefs under this Rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees or other monetary sanctions against the offending lawyer.

The penalties previously handed out by this Court addressed practitioners who presumably wanted to retain their licenses to practice and their reputations, and cared about even minor penalties assessed against them (as well as actually paying them). That is not the case here.

This Court should take account of the parties before it. Scot has evaded judgments from several States, the federal government, and at least one foreign country, for a ***decade***. He has never paid a dime of the million-plus dollars of fees, penalties, or sanctions imposed against him, and could not care less if more are added.

As the district court has noted, Scot has completed law school and used that education to sow disruption, chaos, and inflict costs on multiple innocent parties, but has taken no responsibility for his actions. He is only not a lawyer because he cannot get past a character and fitness review, based on the massive child support and other judgments he owes (nevertheless having kidnaped his children and held them for two years while filing multiple fraudulent documents around the country, leaving them permanently psychologically damaged, according to the examining psychiatrist).

Scot has availed himself of the protections and services of the courts of this State for over ten years. The case is only here because ***he*** chose to file in the courts of Nevada, despite having never lived here. It is clear that he is attempting to avoid any payment ***ever***, and no statute, rule, or policy should be construed to provide legal cover for such a deadbeat. He is well aware that he is in contempt of the court below, and is now petitioning this Court seeking to avoid the punishment for doing so.

We ask the Court to dismiss this *Petition* as being frivolous and without merit, to allow the court below to proceed on its *Order to Show Cause* and otherwise enforce the various orders it has issued and Scot has ignored, to hold Scot accountable for his

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contemptuous attitude toward the court's orders, as expeditiously as possible. His further filings in this Court, designed solely to delay or evade justice, should be prohibited.

Scot is beyond narcissistic. His litigation history in four States over the past decade has shown that he has absolutely no regard for any other person, or the truth. He is quite willing to lie, to cheat, to steal, and to kidnap and abuse children. He certainly has no compunction of any kind limiting his abuse of the processes of this Court to effectuate his aims.

Scot has publicly declared his intention to harm this firm (and thus, indirectly, his ex-wife and children) because of our work in recovering internationally kidnaped children. We, in turn, are relying on this Court to accurately perceive what is actually going on here, and to act with sufficient forcefulness to permanently end Scot's vexatious crusade to cause this firm injury – which, over the past decade has already cost us most of a million dollars in lawyer time, as well as many tens of thousands of dollars in out-of-pocket costs to respond to his frivolous filings across the nation.

Every time this Court indulges one of Scot's filings and requires us to expend time and money to respond to it, the Court allows itself to be mis-used as a means for abuse of this law firm. We ask that this Court recognize this fact, and guide its handling of all matters relating to Scot accordingly.

If the courts wish lawyers to continue to volunteer to protect the innocent and rescue the oppressed – which we have done for the past two decades on behalf of the National Center for Missing and Exploited Children – then the courts must step up to the plate to protect counsel from vexatious and malicious bad actors like Scot.

It is simplistic, but quite accurate to say that sometimes, there are clear "good guys" and "bad guys," and it is a duty of the courts to protect the former from the latter. This is such a situation, and we request this Court's protection from further expense and harm.

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V. CONCLUSION

This Court should dismiss the writ petition as moot, sanction Scot for filing it in the first place while knowing it to be moot, prohibit him from filing any further actions in this Court, and give the district court the scope of latitude required to actually enforce the judgments previously rendered, and so finally bring Scot to justice.

DATED this 29th day of March, 2010.

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CERTIFICATE OF MAILING

I hereby certify that I am an employee of WILLICK LAW GROUP, and on the 29th day of March, 2010, I deposited in the United States Mails, postage prepaid, at Las Vegas, Nevada, a true and correct copy of the Answer to Petition for Writ of Mandamus or Prohibition, addressed to:

Robert Scotlund Vaile
P.O. Box 727
Kenwood, California 95452
Respondent in Pro Se

There is regular communication between the place of mailing and the places so addressed.

Employee of the WILLICK LAW GROUP

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