IN THE SUPREME COURT OF THE STATE OF NEVADA

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JESUS LUIS AREVALO,

Appellant,

vs.

CATHERINE MARIE AREVALO, N/K/A CATHERINE DELAO,

Respondent.

S.C. No.: 81359

D.C. Case No.: D-17-545584-D

RESPONDENT'S CHILD CUSTODY FAST TRACK RESPONSE

Appellant in Proper Person:
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1. **Name of party filing this response fast track statement:**

Respondent, Catherine Delao.

2. **Name, Law firm, address, and telephone number of attorney submitting this fast track statement:**

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3. **Proceedings raising same issues. If you are aware of any other appeal or original proceeding presently pending before this court, which raise the same legal issue(s) you intend to raise in this appeal, list the case name(s) and docket number(s) of those proceedings:**

Not aware of any such proceedings.

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATE STATUTES

MISCELLANEOUS

4. Procedural History and Statement of Facts:[1]

There has been continuous litigation since this case was filed in June, 2011, which is why this case has a twelve-volume Record on Appeal. Please see the Registry of Actions for a complete procedural history.[2]

A *Complaint for Divorce* was filed by Jesus Arevalo on June 28, 2011, in Clark County, Nevada.[3] It was assigned to Department Q, the Hon. Bryce C. Duckworth. Catherine Arevalo filed an *Answer* on September 29.[4]

On October 30, 2012, Catherine filed an *Order from Divorce Trial of May 18, 2012* and *Decree of Divorce from Decision of May 22, 2012, and*

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[1] Given Jesus' failure to actually present a factual history or provide citations to the record, we have attempted to provide both for the convenience of the Court.

[2] Respondent's Appendix ("RA") 1.

[3] 1 ROA 1.

[4] 1 ROA 8.

Subsequent hearing.[5] That order divided the PERS benefits in Jesus' name "pursuant to *Gemma* and *Fondi* and the time rule" including explicit language regarding a QDRO to be drafted, for Jesus to obtain an insurance policy in lieu of survivorship benefits upon the parties express stipulation to substitute insurance for the survivorship benefit, and a reservation of jurisdiction over the PERS benefits and insurance requirement.[6]

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[5] 4 ROA 737.

[6] 4 ROA 738, 750:

> the PERS benefits shall be divided pursuant to *Gemma* and *Fondi*. Mike Levy shall prepare the QDRO, with the parties equally sharing in the cost of the QDRO and with each party to pay his/her one-half share prior to the preparation of the QDRO as required by Mr. Levy. The trial date of May 18, 2012, shall be used as the line of demarcation. Per stipulation, in lieu of [Catherine] receiving a survivor benefit on [Jesus'] PERS, [Jesus] has agreed to obtain a life insurance policy with [Catherine] as the

The reservation of jurisdiction over all retirement-related issues was specifically requested to ensure Catherine could obtain any orders necessary at a later date "to protect her interest in the retirement account in the event Jesus remarried, she wishes payment upon first eligibility, etc."[7] Notice of Entry was served and filed in February, 2013; neither party appealed.[8]

Jesus never paid most of what he was ordered to pay; when contempt charges were filed against him, he filed for bankruptcy, discharging tens of

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beneficiary. [Catherine] shall have ownership of [Jesus'] life insurance policy with [Jesus] being responsible for the annual, quarterly, or monthly premiums, whichever applies. The Court retains jurisdiction over this issue.

[7] 3 ROA 625.

[8] 4 ROA 757.

thousands of dollars in property and debt provisions.[9] Jesus never obtained the QDRO or purchased the life insurance policy as ordered.

Jesus continued to refuse to pay spousal or child support, or do much of anything else ordered.[10] Litigation continued for years, mostly seeking to get Jesus to comply with his obligations and ongoing custody, school choice, and support disputes, and addressing Jesus' acting out, threats, stalking, and other misbehavior, which resulted in protective orders and related proceedings.[11]

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[9] *See, e.g.*, 8 ROA 1636-1640; 1641-1654 (detailing discharged property and debts). A number of the matters discharged were improper, such as domestic support obligations and Catherine's share of the vacation and sick leave, but she did not appear in the bankruptcy or appeal. *See* 8 ROA 1677-1681.

[10] *See, e.g.*, 4 ROA 821-826; 5 ROA 970-987. Litigation continued for the next several years regarding Jesus' refusal to take the UNLV Cooperative Parenting Class or to use in Our Family Wizard for communications

[11] *See generally* ROA volumes 4-8; 5 ROA 1048-1049.

Jesus was a Metro police officer who was first suspended and was set to be terminated after he killed an unarmed Black man in 2013 by shooting him seven times with an AR-15.[12] He pre-emptively applied for and received a "disability" retirement claiming "stress," which apparently went into effect sometime in 2014 before he could be formally terminated.[13]

There have been multiple contempt proceedings over the years against Jesus, based on his refusal to follow court orders on multiple subjects, and other proceedings addressing Jesus' recurrent complaints that the lawyers and

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[12] *See, e.g.*, 4 ROA 791; 5 ROA 986-987, 1000-1002.

[13] *See* 7 ROA 1447-1450.

judges were "conspiring" against him.[14] For much of that time both parties were *pro se*.[15]

Judge Hoskin issued an order after hearing from October 9, 2019, recounting the multiple court orders since the *Decree* that Jesus continued to refuse to obey.[16] It noted that the school choice issue was not properly before the court, and that Jesus still had not taken the required parenting class.

On December 30, 2019, Jesus filed yet another motion seeking to alter the minor child's schooling, alter prior orders and "review" child support.[17]

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[14] Jesus brought baseless charges of "bias" against the Hon. Bryce Duckworth in 2013, which were dismissed for being entirely unfounded. *See* 5 ROA 1057-1058, and is currently engaged in similarly baseless proceedings leveled against Judge Hoskin, to whom the case was administratively reassigned in January 2018.

[15] *See* 4 ROA 779; 6 ROA 1217.

[16] 9 ROA 1829-1836.

[17] 9 ROA 1843.

Catherine hired counsel (this office), and we recounted the procedural history and requested a contempt order based on all the things Jesus had still not done as ordered, including support arrears, failure to put a QDRO in place to divide the PERS benefits or to actually divide the PERS retirement payments, failure to secure the stipulated insurance policy, and assorted other matters.[18]

Multiple orders to show cause were issued, and on February 19, 2020, Jesus was found in contempt of multiple orders, addressing medical testing for the minor child as Catherine had requested, requiring a QDRO to be put into place (and permitting the McFarling office to draft it at Jesus' request), finding that the child had not been accepted for possible placement into an alternate school and that inadequate information had been submitted, ordering discovery

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[18] *See* 9 ROA 1867-10 ROA 2006.

on the tax issue, and sentencing Jesus to 20 days of incarceration, stayed upon Jesus' payment of a purge amount, awarding fees and ordering sanctions.[19]

On February 27, 2020, Jesus filed a *Motion to* Reconsider all those orders, and making a variety of excuses, including that his failure to obtain the insurance was "a combination of oversight and ambiguity."[20] He paid the purge amount just after he was supposed to report to jail.

Next, Jesus filed a motion seeking to have the district court "acknowledge" that he did not have to actually pay Catherine any part of his ongoing PERS pension payments or provide the stipulated insurance based on the statute of limitations.[21] Catherine opposed the motions.[22]

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[19] 11 ROA 2256-2264.

[20] 10 ROA 2165, 2179.

[21] 11 ROA 2221.

[22] 11 ROA 2247, 2285.

On May 6, 2020, the district court heard all motions, and noted the school choice issue was not properly raised, that there had been 12 hearings on the same issues since trial.[23]

The court refused to reconsider its prior contempt finding, found that it had retained jurisdiction to address the retirement and insurance orders, found Jesus' statute of limitations irrelevant on that basis, and found that the statute of limitations applied to bar collection of arrears of any payments made prior to six years before Catherine filed her motion seeking those arrears.

The court gave Jesus 10 days to pay the McFarling office to start work on the QDRO, and ordered that if he did not do so, Catherine could have anyone else draft it. The court gave Jesus 30 days to produce an actuarial valuation showing that the value of Catherine's interest to be secured by the

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[23] 11 ROA 2383-2395.

insurance was anything *other* than the $185,000 we had calculated and submitted.

Based on the FDFs on file, the court ordered Jesus to pay child support of $160 per month based on his request to review child support.

The district court found that any taxes assessed Catherine relating to the minor child in a year in which she was entitled to all tax benefits relating to the child had to be reimbursed by Jesus.

Notice of entry was filed June 9; Jesus appealed on June 12.[24]

This Child Custody Fast Track Response follows.

5. Statement of Facts:

Jesus' Fast Track Statement provided his entire legal argument in the "facts" section. Rather than try to parse out one from the other in response, it

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[24] 11 ROA 2395, 2409.

seems more efficient to simply respond to the issues in the argument section, relying on the references to the record above and discussing facts as necessary in the argument.

6. Issues on Appeal:

Jesus purports to list ten issues (at pages 16-17), but they really break down to the following:

a. Was the district court's charter school ruling an abuse of discretion?

b. Was there legal error in the contempt proceedings?

c. Did the district court err by enforcing the retirement and insurance provisions of the Decree by QDRO and related orders?

d. Was the child support order an abuse of discretion?

e. Was the order to reimburse tax assessment an abuse of discretion?

f. Was there a showing of "bias" in the district court proceedings?

7. Legal Argument:

a. Charter School

The *Order* filed March 24, 2020, found that the child had not yet been accepted to the Charter School Jesus wanted him to attend, and if he had been accepted, the Court had been provided no information as to the child's wishes or other required information under the controlling case law.[25] As the child was not accepted into the Charter School for the 2020-2021 school year, the parties enrolled their child into public school.

Jesus points to nothing in the record to support the supposed "facts" he proposes (at 5-6) as to the child's application for admission to the other school,

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[25] *See Arcella v. Arcella*, 133 Nev. ___, ___ P.3d ___ (Adv. Opn. No. 104, Dec 26, 2017).

and it is believed that no such support exists. The district court made detailed findings.[26]

As briefly noted in the procedural history, Jesus has been filing demands that school choice be at his direction since at least 2013. As with his other "issues," Jesus fails to identify an actual disputed issue of material fact, which is a prerequisite for any evidentiary proceeding.[27] No error as to the district court's rulings on school choice has been shown.

b. The Contempt Proceedings Were Proper

Jesus argues the Orders to Show Cause were "procedurally defective" as the applications did not contain "affidavits." They had declarations,

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[26] 11 ROA 2258-2259.

[27] *See, e.g., Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123 (1993).

attached per NRS 53.350,[28] as Jesus has repeatedly been informed, in written filings and in proceedings in open court.[29]

As noted by the district court in multiple orders, Jesus has been in standing contempt of repeated orders on the same subjects (support arrears, untimely payments, the required parenting class, etc.) for multiple years, in defiance of multiple court orders from two judges. No impropriety of any kind to the contempt proceedings was or could be demonstrated.

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[28] "If a law of this State requires or permits the use of a sworn declaration, an unsworn declaration meeting the requirements of NRS 53.250 to 53.390, inclusive, has the same effect as a sworn declaration."

[29] *See, e.g.*, 11 ROA 2385; 12 ROA 2517.

c. The District Court's Enforcement of the Retirement and Insurance Provisions of the Decree by QDRO and Related Orders was Entirely Proper

The Court fully addressed every aspect of the QDRO and the survivorship orders at multiple hearings, as detailed above. Jesus' scatter-gun complaints as to the QDRO and insurance constitute the bulk of his filing (at 8-13) are but all are baseless.

First, Jesus falsely claims (at 8) that the *Divorce Decree* did not indicate continuing jurisdiction. The explicit reservation of jurisdiction to enter follow-up orders, and why it was ordered, are quoted above.[30]

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[30] See text and notes at fn. 6-8 *supra*.

This was thoroughly gone over in open court during the hearing of May 6, 2020.[31] An explicit reservation of jurisdiction has no time limit. No Nevada case we have found since it became a state indicates that such a reservation ever expires. There are at least 32 Nevada opinions involving reservations of jurisdiction, going back to at least the 1940s, and they all appear to address such reservations as indefinite in duration.[32]

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[31] See 12 ROA 2516; I cannot quote from the transcript because Jesus refused to order them. See "Notice of Non-Payment for Transcripts" filed October 22, 2020; NRAP 9(b). In such circumstances, in the absence of a transcript or agreed statement of the proceedings below "it is assumed that the record supports the lower court's findings." *Kockos v. Bank of Nevada*, 90 Nev. 140, 143, 520 P.2d 1359, 1361 (1974), *quoting City of Las Vegas v. Bolden*, 89 Nev. 526, 516 P.2d 110 (1973).

[32] *See, e.g., Winn v. Winn*, 86 Nev. 18, 467 P.2d 601 (1970); *Smith v. Smith*, 100 Nev. 610, 691 P.2d 428 (1984).

As discussed at great length in the written submissions below, even if there had *not* been an explicit reservation of jurisdiction, no statute of limitations consideration is relevant to either entry of the QDRO or Jesus' obligation to provide the ordered insurance policy, for multiple reasons.

First, the PERS benefits were divided by the *Decree*. This Court's holding in *Davidson*[33] that "an action to enforce a decree of divorce must be commenced within six years" per NRS 11.190(1)(a) is irrelevant, because the decree itself constitutes the actual "division" of the asset, and entry of the QDRO is a ministerial act directing a ***third party*** to respect that final adjudication and pay to the proper recipient in recognition of the spouse's

[33] *Davidson v. Davidson*, 132 Nev. 709, 382 P.3d 880 (2016).

already-adjudicated right to the benefits. As detailed in the filings below, this is the overwhelming majority view in the United States.[34]

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[34] *See, e.g., Ryan v. Janovsky*, 999 N.E.2d 895 (Ind. 2013) (20-year delay in having QDRO prepared is not relevant where benefits have not yet entered pay status, so no statute of limitations had even begun to run); *Johnson v. Johnson (Zoric)*, 270 P.3d 556 (Utah 2012) (same); *Gilmore v. Gilmore*, 227 P.3d 115 (NM 2009) (statute of limitations runs from each installment payment of pension benefits, not from divorce); *Fischbach v. Fischbach*, 975 A.2d 333 (Md. Ct. App. 2009); *Jordan v. Jordan*, 147 S.W.3d 255 (Tenn. Ct. App. 2004); *Ochoa v. Ochoa*, 71 S.W.3d 593 (Mo. 2002); *Duhamel v. Duhamel*, 753 N.Y.S.2d 673 (N.Y. Sup. Ct. 2002) (action to compel the entry of a QDRO is an action "to compel the other [spouse] to perform a mere ministerial task necessary to distribute funds previously allocated by the parties' own binding agreement" and is not subject to the limitations period on actions to enforce a judgment). For a more complete recitation of case law around the United States, see 11 ROA 2307-2311; Marshal Willick, *Partition Actions: What Every Nevada Divorce Lawyer Needs to Know* (in *Advanced Family Law* CLE, State Bar of Nevada, Las Vegas, Nevada, Dec., 2015), posted

As this Court has repeatedly held, consistently with the national authority, the proper application of the statute of limitations to a stream of installment payments is not to the date of the obligation, but the dates of each installment, which each trigger their own statute of limitations period. In *Bongiovi*,[35] this Court determined that NRS 11.190 barred a party's recovery of alimony payments that were more than six years old, from a decree entered six and a half years earlier. The decree had ordered the ex-husband to make ten monthly alimony payments of $1,000 to his ex-wife.[36]

On November 29, 1977 – six and a half years after entry of the decree – the ex-wife filed a motion seeking a judgment on the arrearages, and the

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athttp://www.willicklawgroup.com/published-works/; Marshal Willick, *The Danger of Davidson to Pension Divisions*, Nev. Lawyer, Dec. 2016, at 27.

[35] *Bongiovi v. Bongiovi*, 94 Nev. 321, 579 P.2d 1246 (1978).

[36] *Id.* at 322, 579 P.2d 1246.

district court entered a judgment in the ex-wife's favor for $5,000,[37] finding recovery of the first five payments barred by the six-year limitation in NRS 11.190. On appeal, this Court agreed that NRS 11.190 applied to the former wife's motion and held that "[t]he six-year period prescribed by that statute commenced to run against each installment as it became due," regardless of when the decree had been entered.[38]

That holding was re-affirmed in *Clayton*[39] in 1991, affirming the district court order that the limitations statute had run only on the installment payments that were due more than six years before collection was sought. *Davidson* specifically acknowledged *Bongiovi* as good law.

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[37] *Id.* at 322, 579 P.2d at 1247.

[38] *Id.*

[39] *Clayton v. Gardner*, 107 Nev. 468, 813 P.2d 997 (1991). See also *Biel v. Godwin*, 69 Nev. 189, 245 P.2d 997 (1952).

The same ruling was made by the district court in this case. The first pension payment did not become payable until Jesus retired in November 2013. Catherine's *Motion* was filed on January 29, 2020, so all arrears (plus interest) due from January 29, 2014, remain collectible.

If it must be characterized at all, a QDRO is best seen as a "clarifying order." Had the *Decree* included all of the language required by NRS 286 *et. seq.*, it could have been submitted to PERS to confirm the ownership interest, with no separate order being necessary. But few lawyers put such language in decrees, and the *Decree* which awarded Catherine her ownership interest in the PERS pension did not include the required language. As such, a separate Qualified Domestic Relations Order was needed to clarify the Court's intention, and the decree reserved jurisdiction to do so. Even if the decree had

not done so, a trial court always maintains the inherent power to clarify its previous orders and decrees.[40]

In short, the *Decree of Divorce* established the ownership interest, the QDRO was the ministerial order to a third party to begin the payments and analyzes as nothing more than a clarifying *Order*, which can be entered at "any time."

As to the insurance, in addition to the specific reservation of jurisdiction, it is a standing obligation, still current every month that benefits are payable

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[40] *See Henson v. Henson*, 130 Nev. 814, 334 P.3d 933 (2014) (district court had jurisdiction to enter the amended QDRO because a court has an inherent power to enforce its orders); *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d 428 (2007) (a trial court has the inherent authority to enforce its decrees); *Grenz v. Grenz*, 78 Nev. 394, 274 P.2d 891 (1962) (a trial court has the inherent power to construe its judgments and decrees and remove ambiguities in them).

to Jesus. There was no "transaction" triggering the start date of a statute of limitations. To whatever degree Jesus' unfocused argument could be taken as the assertion that the *Decree* was a "transaction" (which it was not) then Jesus reconfirmed and thus revived the obligation by obtaining a $5,000 policy during this litigation.[41]

There is no requirement to get "an actuary" to determine the sum to be secured. The math is simple – Catherine's monthly entitlement multiplied by the number of months of her life expectancy.[42] Jesus had the opportunity to secure an expert to dispute the sum due, and refused to obtain it.[43]

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[41] *See, e.g., Ogden v. Saunders*, 25 U.S. 213 (1827).

[42] This is a minimum sum, not including the COLAs which will increase the sum payable every year.

[43] 11 ROA 2388.

Jesus' claims as to the preparer are likewise hollow. In open court, Jesus selected the McFarling office to prepare the QDRO, and when he did not have them do the work was given a limited time to do so or Catherine would be permitted to hire whoever she wanted to do the drafting.[44]

d. The Child Support Order Was Proper

As detailed above, Jesus insisted on the district court addressing child support, and the Court did so, based on the Financial Disclosure Forms on file. As the district court indicated at the last hearing, Jesus remains free to file for further changes based on any changes of circumstances since then.[45] There was no abuse of discretion.

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[44] 11 ROA 2389; 12 ROA 2522-2523.

[45] 12 ROA 2519, 2521.

e. The Tax Issue was Properly Addressed

As Jesus admits (at 13), the parties alternate all tax benefits for the child annually, and 2017 was Catherine's year. Jesus listed the child on his tax forms that year, resulting in a tax penalty to Catherine of $1,420 which Jesus was ordered to reimburse to Catherine.[46] There was no abuse of discretion to the order.

f. No "Bias" was Demonstrated, or Exists

As noted above, Jesus has for many years made spurious allegations of bias and conspiracies against the bench and Bar. His current conspiracy theory (at 15-16) boils down to the assertions that Catherine's attorneys over the years are "related" to one another and that they might try to kill him if Catherine's

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[46] 12 ROA 2518, 2522.

interest in the PERS benefits is secured by insurance as he stipulated to and was ordered.

First, no, undersigned counsel is not married to attorney Abrams, and the fact that attorney Mayo works with attorney Abrams is utterly irrelevant to anything. Second, the only one involved in this litigation who is known to have ever killed anyone is Jesus.

In short, Jesus' current paranoid babbling is as baseless as that leveled against Judge Duckworth seven years ago. Nothing further need be said.

Dated this 27th day of October, 2020.

Respectfully submitted,

WILLICK LAW GROUP

Marshal S. Willick, Esq.
Attorneys for Respondent

VERIFICATION

1. I hereby certify that this fast track statement complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

   This child custody fast track response has been prepared in a proportionally spaced typeface using WordPerfect 6X in font size 14 and type Style Times New Roman.

2. I further certify that this fast track statement complies with the page- or type-volume limitations of NRAP 3E(e)(2) because it is:

   Proportionately spaced, has a typeface of 14 points or more, and contains 3799 words.

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a child custody fast track response and that the Supreme court of Nevada may impose sanctions for failing to timely file a fast track statement, or failing to raise material issues or arguments in the fast track response. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information, and belief.

DATED this 27th day of October, 2020

MARSHAL S. WILLICK, ESQ.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WILLICK LAW GROUP and that on this 28th day of October, 2020, a document entitled *Respondent's Child Custody Fast Track Response* was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows, to the attorneys listed below at the address, email address, and/or facsimile number indicated below:

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