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9 ATAIN SPECIALTY INSURANCE COMPANY

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF NEVADA

12 ATAIN SPECIALTY INSURANCE) Case No.
13 COMPANY, a Michigan corporation,)
14)
15 Plaintiff,)
16)
17 v.)
18)
19 KARANS, LLC D/B/A HAPPY DAYZE)
20 CIGAR & SMOKE, a Nevada limited liability)
21 company; and KN GROUP, LLC, a Nevada)
22 limited liability company,)
23)
24 Defendants.)
25)
26)
27)
28)

COMPLAINT FOR DECLARATORY JUDGEMENT

1 The Plaintiff, ATAIN SPECIALTY INSURANCE COMPANY (“Atain”), a foreign
2 insurance company, pursuant to 28 U.S.C. § 2201 and FED. R. CIV. P. 57, files this complaint for
3 declaratory judgment against Defendants, KARANS, LLC d/b/a HAPPY DAYZE CIGAR &
4 SMOKE (“Happy Dayze”) and KN GROUP, LLC, both Nevada limited liability companies, and
5 states:

NATURE OF ACTION

1 1. Atain requests that the Court issue a judgment pursuant to 28 U.S.C. § 2201
2 declaring that Atain Policy CIP417114 issued to Karans, LLC d/b/a Happy Dayze Cigar &
3 Smoke for the period of November 20, 2021 to November 20, 2022 (the “Policy”), a certified
4 copy of which is attached as **Exhibit A**, excludes Products-Completed Operations, and declaring

1 that Atain has no duty under the Policy to defend or indemnify Happy Dayze in the underlying
2 lawsuit entitled *Paul A. Valente, individually and as Special Administrator of the Estate of*
3 *Michelle Horning Valente, deceased and Michael R. Kich, as natural father and legal guardian*
4 *of KMK and KNK, minors v. CKL Sales, LLC d/b/a Smok'n Ray's Smoke Shop; KN Group, LLC*
5 *d/b/a Happy Dayze Cigar and Smoke Shop; Fisher Botanicals, LLC; Shaman Supplies, Inc.;*
6 *Kono Labs d/b/a Whole Herbs; Does I-V, Case No. 22-01705 (Washoe County, Nevada) (the*
7 *"Valente Litigation" or "Valente Complaint").*

8 2. Atain seeks a declaratory judgment to determine an actual controversy between
9 the parties regarding insurance coverage under the Policy for the *Valente* Litigation.

10 **JURISDICTION AND VENUE**

11 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because
12 this dispute arises between citizens of different states and the amount in controversy exceeds the
13 sum or value of \$75,000, exclusive of interest and costs.

14 4. This Court has authority to grant Atain declaratory relief pursuant to the
15 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and FED. R. CIV. P. 57.

16 5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) because a
17 substantial part of the events or omissions giving rise to the *Valente* Litigation and the insurance
18 coverage dispute between Atain and Happy Dayze concerning the *Valente* Litigation occurred in
19 this district, and the Defendant, Happy Dayze, is domiciled in this district.

20 **THE PARTIES**

21 6. Atain is a Michigan corporation with its principal place of business in Oakland
22 County, Michigan. Atain is a Michigan surplus lines insurer, and is engaged in the business of
23 selling insurance in Nevada.

24 7. Karans, LLC d/b/a Happy Dayze is, and at all times relevant hereto was, a limited
25 liability company formed under the laws of Nevada, with its sole member and manager and
26 registered agent Surinder Preet being a citizen of Nevada, and with its principal place of business
27 in Nevada and its retail tobacco store located at 1700 Victorian Ave., Sparks, NV 89431. None
28 of Karans, LLC's members are citizens of Michigan.

1 8. KN Group, LLC is, and at all times relevant hereto was, a limited liability
2 company formed under the laws of Nevada, with its member and manager and registered agent
3 Surinder Preet being a citizen of Nevada, and with its principal place of business in Nevada in
4 connection with the ownership and/or management of the retail property located at 1700
5 Victorian Ave., Sparks, NV 89431. None of KN Group, LLC's members are citizens of
6 Michigan.

7 **THE VALENTE LITIGATION**

8 9. The *Valene* Litigation arises from an incident on or about January 8, 2022 in
9 which the Decedent, Michelle Horning Valente (the “Decedent”), purportedly died of a Kratom
10 overdose. Valente allegedly consumed Kratom powder purchased from Happy Dayze on the date
11 of her death.

12 10. On October 19, 2022, Valente's surviving spouse and minor children (hereafter,
13 the “Estate”) filed the *Valente* Complaint seeking damages based on theories of wrongful death
14 and survival, a copy of which is attached as **Exhibit B**.

15 11. In the *Valente* Complaint, the Estate alleges that on the day of her death, the
16 Decedent was taking Kratom manufactured, distributed, marketed and sold by Happy Dayze,
17 among others. **Ex. B, ¶ 13.**

18 12. On January 8, 2022, the Estate alleges that the Decedent reported to work at
19 approximately 1:00 p.m. to begin making her rounds inspecting vacation homes and ensuring
20 they were properly prepared for guest arrivals. **Ex. B, ¶ 15.**

21 13. The Estate alleges that a man walking his dog found the Decedent laying face up
22 in the snow beside her car. **Ex. B, ¶ 15.**

23 14. The Estate alleges that the Decedent was pronounced dead at the scene after
24 paramedics exhausted resuscitation efforts. **Ex. B, ¶ 16.**

25 15. The Estate alleges that the autopsy and toxicological exam later identified the sole
26 cause of death as acute mitragynine toxicity—the active ingredient in Kratom. *Id.*

27 16. The Estate further alleges that Happy Dayze marketed Kratom to the Decedent as
28 a dietary supplement with an array of potential benefits, including as an energy drink. **Ex. B, ¶**
14.

1 17. The Estate alleges that it is illegal to sell or market Kratom as a drug or dietary
2 supplement in the United States because it is not Food and Drug Administration (FDA)
3 approved. **Ex. B, ¶ 17.**

4 18. The Estate alleges that the FDA banned importing and marketing Kratom in the
5 United States in 2012. **Ex. B, ¶ 17.**

6 19. The Estate alleges that Happy Dayze advertised and sold Kratom products as
7 “safe”, “beneficial”, and intended for treatment of pain, anxiety and other health problems. **Ex.**
8 **B, ¶ 18.**

9 20. The Estate further alleges that Happy Dayze failed to warn of its potentially
10 addictive properties or regarding how much an individual can safely consume. **Ex. B, ¶ 18.**

11 21. The Estate also alleges that the FDA issues guidance describing such
12 advertisements for Kratom products as “Health Fraud Scams” and the sale of such products as a
13 violation of the Federal Food, Drug, and Cosmetic Act. **Ex. B, ¶ 19**

14 22. The Estate alleges that several accredited medical authorities including the Center
15 for Disease Control (CDC), New England Journal of Medicine, and the Mayo Clinic warn that
16 any alleged benefits of Kratom “are significantly outweighed by the side effects and risks,
17 including death.” **Ex. B, ¶¶ 20-23.**

18 23. The Estate alleges that Happy Dayze:

- 19 (a) knowingly marketed and sold an unreasonably dangerous product to
20 customers;
- 21 (b) “made no effort to warn Decedent of the toxic and deadly risks associated
22 with Kratom”
- 23 (c) sold Kratom in packaging that promoted the product as “organic and non-
24 gmo” and
- 25 (d) sold Kratom in packaging that contained no instructions regarding dosage;
26 and
- 27 (e) sold Kratom without any warnings regarding its potentially deadly effects.

28 **Ex. B, ¶¶ 24-25.**

1 24. The Estate alleges that Happy Dayze proximately caused the Decedent's death.
2 **Ex. B, ¶¶** 26, 29, 32, 34.

3 25. The Estate seeks wrongful death and survival damages to fairly and reasonably
4 compensate the Estate for any and all pecuniary damages for each person's grief and sorrow, loss
5 of probable support, companionship, society, comfort and consortium, and damages for pain,
6 suffering or disfigurement of the Decedent. **Ex. B, ¶** 35.

7 26. The Estate also seeks special damages, including, but not limited to medical
8 expenses incurred and sustained before the Decedent's death, funeral and burial expenses, past
9 and future lost wages of the Decedent, as well as any penalties, including, but not limited to
10 exemplary or punitive damages, that the Decedent could have recovered if the Decedent had
11 lived. **Ex. B, ¶¶** 36-37.

12 27. In addition, the Estate seeks exemplary damages in connection with Happy
13 Dayze's conduct which it asserts "involved both malice and oppression either expressly or
14 implied." **Ex. B, ¶** 37.

15 **THE ATAIN POLICY**

16 28. Atain issued Policy No. CIP417114 to Karans LLC d/b/a Happy Dayze for the
17 policy period of November 20, 2021 to November 20, 2022 which includes a Commercial
18 General Liability coverage part subject to a \$1 million limit per occurrence and a \$2 million
19 aggregate limit of insurance.

20 29. A certified copy of the Policy is attached hereto as **Exhibit A**.

21 30. The Policy is subject to a \$500 per claim deductible.

22 31. The Policy provides a "Business Description" of Happy Dayze as "Smoke Shop
23 and Accessories", with the assigned "Class Code" as 18708 for "Tobacco Products Stores."

24 32. The Policy provides the Designated Premises is located at 1700 Victorian Ave,
25 Sparks, NV 89431.

26 33. The Policy provides Bodily Injury and Property Damage Liability Coverage
27 pursuant to Form No. CG 00 01 04 13, which includes the following provisions:

28 ///

1 **SECTION I - COVERAGES**
2 **COVERAGE A- BODILY INJURY AND PROPERTY DAMAGE**
3 **LIABILITY**

4 **1. Insuring Agreement**

5 a. We will pay those sums that the insured becomes legally obligated
6 to pay as damages because of “bodily injury” or “property dam-
7 age” to which this insurance applies. We will have the right and
8 duty to defend the insured against any “suit” seeking those
9 damages. However, we will have no duty to defend the insured
10 against any “suit” seeking damages for “bodily injury” or
11 “property damage” to which this insurance does not apply. ...

12 b. This insurance applies to “bodily injury” and “property damage”
13 only if:

14 (1) The “bodily injury” or “property damage” is caused by and
15 “occurrence” that takes place in the “coverage territory”;

16 (2) The “bodily injury” or “property damage” occurs during
17 the policy period ...

18 **2. Exclusions**

19 This insurance does not apply to:

20 **a. Expected Or Intended Injury**

21 “Bodily injury” or “property damage” expected or intended from
22 the standpoint of the insured. This exclusion does not apply to
23 “bodily injury” resulting from the use of reasonable force to
24 protect persons or property. ...

25 **SECTION V – DEFINITIONS ...**

26 3. “Bodily injury” means bodily injury, sickness or dis-ease sustained by a
27 person, including death resulting from any of these at any time.

28 13. “Occurrence” means an accident, including continuous or repeated
 exposure to substantially the same general harmful conditions. ...

 16. “Products-completed operations hazard”:

 a. Includes all “bodily injury” and “property damage” occurring away
 from premises you own or rent and arising out of “your product’ or
 “your work” except:

1 (1) Products that are still in your physical possession ...

2 b. Does not include “bodily injury” or “property damage” arising out
3 of:

4 (1) The transportation of property, unless the injury or damage
5 arises out of a condition in or on a vehicle not owned or
6 operated by you, and that condition was created by the
“loading or unloading” of that vehicle by any insured;

7 (2) The existence of tools, uninstalled equipment or abandoned
8 or unused materials; or

9 (3) Products or operations for which the classification, listed in
10 the Declarations or in a policy Schedule, states that
11 products-completed operations are subject to the General
Aggregate Limit. ...

12 21. “Your product”:

13 a. Means:

14 (1) Any goods or products, other than real property,
15 manufactured, sold, handled, distributed or disposed of by:

16 (a) You;

17 (b) Others trading under your name; or

18 (c) A person or organization whose business or assets
19 you have acquired; and

20 (2) Containers (other than vehicles), materials, parts or
21 equipment furnished in connection with such goods or
products.

22 b. Includes:

23 (1) Warranties or representations made at any time with respect
24 to the fitness, quality, durability, performance or use of
“your product”, and

25 (2) The providing of or failure to provide warnings or
26 instructions.

27 c. Does not include vending machines or other property rented to or
28 located for the use of others but not sold. ...

1 34. The Policy includes Form No. CG 21 04 11 85, titled “Products-Completed
2 Operations Hazard Exclusion,” which provides, in pertinent part:

3 This insurance does not apply to “bodily injury” or “property damage” included
4 within the “products-completed operations hazard.”

5 35. The Policy also includes Form No. AF33510 (07/2012), titled “Classification
6 Limitation,” which provides in pertinent part:

7 Coverage under this policy is specifically limited to, and applies only to those
8 classifications as described under the applicable Coverage Part or Schedule
9 designated in the Declarations Page of this policy.

10 This policy excludes coverage for any operation not specifically listed in the
11 Coverage Part, Schedule or Declarations Page of this policy.

12 36. The Policy further includes Form No. AF3380 (06/17), titled, “Fraud,
13 Concealment and Misrepresentation Endorsement,” which provides, in pertinent part:

14 **A. FRAUD, CONCEALMENT AND MISREPRESENTATION FOR
15 INCEPTION OF THIS POLICY**

16 This policy was issued based on the information supplied on an application and
17 other correspondence, including your claims or loss history. This information is
18 attached to and considered to be part of this policy.

19 You should review this information carefully because the truth of this information
20 was of paramount importance in influencing our decision to issue this policy.

21 You, for all the insureds under this policy, do warrant the truth of such
22 information to the best of your and their knowledge at the inception date of this
23 policy.

24 If such information is false or misleading, it may cause denial of coverage or
25 voiding of the policy. In any such instance, there shall be no duty to defend or
26 indemnify any insured....

27 37. The Policy includes Form No. CG 20 26 04 13, titled “Additional Insured –
28 Designated Person Or Premises,” which lists KN Group, LLC as the scheduled entity. It
provides, in pertinent part:

A. Section II - Who Is An Insured is amended to include as an additional
insured the person(s) or organization(s) shown in the Schedule, but only
with respect to liability for “bodily injury”, “property damage” or
“personal and advertising injury” caused, in whole or in part, by your acts

1
2 or omissions or the acts or omissions of those acting on your behalf:

- 3 1. In the performance of your ongoing operations; or
4 2. In connection with your premises owned by or rented to you.

5 However:

- 6 1. The insurance afforded to such additional insured only applies to
7 the extent permitted by law; and
8 2. If coverage provided to the additional insured is required by a
9 contract or agreement, the insurance afforded to such additional
10 insured will not be broader than that which you are required by the
11 contract or agreement to provide for such additional insured. ...

12 38. KN Group, LLC is also listed as an additional insured under an endorsement
13 titled, "Additional Insured – Managers Or Lessors Or Premises," which provides in pertinent
14 part:

15 **A. Section II - Who Is An Insured** is amended to include as an additional
16 insured the person(s) or organization(s) shown in the Schedule, but only
17 with respect to liability arising out of the ownership, maintenance or use
18 of that part of the premises leased to you and shown in the Schedule and
19 subject to the following additional exclusions:

20 This insurance does not apply to:

- 21 1. Any "occurrence" which takes place after you cease to be a tenant in
22 that premises.
23 2. Structural alterations, new construction or demolition operations
24 performed by or on behalf of the person(s) or organization(s) shown in
25 the Schedule.

26 However:

- 27 1. The insurance afforded to such additional insured only applies to the
28 extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract
or agreement, the insurance afforded to such additional insured will

1 not be broader than that which you are required by the contract or
2 agreement to provide for such additional insured. ...

3 **COUNT I**
4 **DECLARATORY JUDGMENT – KARANS, LLC D/B/A HAPPY DAYZE**

5 39. Atain incorporates and restates each and every allegation set forth in paragraphs 1
6 through 38 of the general allegations of this Complaint for Declaratory Judgment as if fully
7 alleged in this Paragraph 39.

8 40. The *Valente* Complaint alleges bodily injury occurring away from the Designated
9 Premises and arising out of Happy Dayze’s product.

10 41. The *Valente* Complaint asserts that Happy Dayze knowingly marketed, sold
11 and/or distributed illegal Kratom products in violation of the Federal Food, Drug, and Cosmetic
12 Act and did so without any warning of the known potential risks associated therewith, including
13 death.
14

15 42. The *Valente* Complaint seeks exemplary or punitive damages based upon Happy
16 Dayze’s alleged intentional conduct.

17 43. Atain does not have any obligation to defend or indemnify Happy Dayze in
18 connection with the *Valente* Lawsuit because Products / Completed Operations are excluded by
19 the Policy pursuant to the Products Completed Operations Hazard Exclusion.
20

21 44. Atain does not have any obligation to defend or indemnify Happy Dayze in
22 connection with the *Valente* Complaint because the Policy excludes coverage for Expected or
23 Intended Injury pursuant to Exclusion a..
24

25 45. Atain does not have any obligation to defend or indemnify Happy Dayze in
26 connection with the *Valente* Complaint because the Policy excludes coverage for conduct or
27
28

1 activities occurring outside the Classification Description of the Policy, and under the Policy's
2 Classification Limitation Endorsement.

3 46. Atain does not have any obligation to defend or indemnify Happy Dayze in
4 connection with any claim for exemplary or punitive damages based on intentional conduct
5 which are uninsurable by operation of law.

6 47. Atain does not have any obligation to defend or indemnify Happy Dayze in
7 connection with any claim that is otherwise outside the scope of coverage under the Policy, or
8 any other applicable exclusion, limitation, or endorsement contained within the Policy.
9
10

11 **COUNT II**
12 **DECLARATORY JUDGMENT – KN GROUP, LLC**

13 48. Atain incorporates and restates each and every allegation set forth in paragraphs 1
14 through 38 of the general allegations of this Complaint for Declaratory Judgment as if fully
15 alleged in this Paragraph 48.

16 49. The *Valente* Complaint alleges bodily injury occurring away from the Designated
17 Premises and arising out of KN Group, LLC d/b/a Happy Dayze's product.

18 50. The *Valente* Complaint asserts that KN Group, LLC d/b/a Happy Dayze
19 knowingly marketed, sold and/or distributed illegal Kratom products in violation of the Federal
20 Food, Drug, and Cosmetic Act and did so without any warning of the known potential risks
21 associated therewith, including death.
22

23 51. The *Valente* Complaint seeks exemplary or punitive damages based on KN
24 Group, LLC d/b/a Happy Dayze's alleged intentional conduct.
25

26 52. Atain does not have any obligation to defend or indemnify KN Group, LLC d/b/a
27 Happy Dayze in connection with the *Valente* Lawsuit because Products / Completed Operations
28

1 are excluded by the Policy as to all insureds pursuant to the Products Completed Operations
2 Hazard Exclusion.

3 53. Atain does not have any obligation to defend or indemnify KN Group, LLC d/b/a
4 Happy Dayze in connection with the *Valente* Complaint because the Policy excludes coverage
5 for Expected or Intended Injury pursuant to Exclusion a.
6

7 54. Atain does not have any obligation to defend or indemnify KN Group, LLC d/b/a
8 Happy Dayze in connection with the *Valente* Complaint because the Policy excludes coverage
9 for conduct or activities occurring outside the Classification Description of the Policy, and under
10 the Policy's Classification Limitation Endorsement
11

12 55. Atain does not have any obligation to defend or indemnify KN Group, LLC d/b/a
13 Happy Dayze in connection with any claim for exemplary or punitive damages based on
14 intentional conduct which are uninsurable by operation of law.
15

16 56. Atain does not have any obligation to defend or indemnify KN Group, LLC d/b/a
17 Happy Dayze in connection with any claim that is otherwise outside the scope of coverage under
18 the Policy, or any other applicable exclusion, limitation, or endorsement contained within the
19 Policy.
20

21 **COUNT III (IN THE ALTERNATIVE)**
22 **RESCISSION OF INSURANCE CONTRACT PURSUANT TO N.R.S.A. 687B.110 BASED**
23 **ON MATERIAL MISREPRESENTATIONS IN THE APPLICATION**

24 57. Atain incorporates and restates each and every allegation set forth in paragraphs 1
25 through 38 of the general allegations of this Complaint for Declaratory Judgment as if fully
26 alleged in this Paragraph 57.
27

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///

1 58. Prior to issuance of the Policy, on or about October 5, 2021, Atain issued a quote
2 for renewal coverage that expressly excluded coverage for products-completed operations, a
3 copy of which is attached hereto as **Exhibit C** (the “First Renewal Quote”).
4

5 59. On or about November 10, 2021, Happy Dayze submitted its application and
6 supplemental addendum seeking commercial general liability and commercial property
7 coverages, a copy of which is attached hereto as **Exhibit D** (the “Application”).
8

9 60. In the Application, Happy Dayze stated that it sold tobacco, electronic cigarettes,
10 wraps, clothing, glass, CBD, sodas beverages, jewelry, vape + vape juice, hookahs.” **Ex. D.**

11 61. Happy Dayze did not disclose its sale of any dietary supplements or any products
12 other than those items listed in paragraph 56 of this complaint.

13 62. Happy Dayze did not disclose its sale of any products sold without FDA approval.

14 63. Happy Dayze did not disclose any sale, distribution, and/or marketing and
15 advertising of Kratom-infused products.
16

17 64. The sale of products banned from distribution in the United States or otherwise
18 lacking FDA approval is material to the risk contemplated by the Policy.

19 65. The sale of Kratom products, including Kratom powder and Kratom-infused
20 energy drinks is material to the risk contemplated by the Policy.
21

22 66. Happy Dayze warranted that the representations made in the Application were
23 true and accurate to the best of its knowledge and affirmed its understanding that the
24 representations contained therein were material to Atain’s decision to issue the Policy.

25 67. Based on the Application dated November 10, 2021, Atain issued a revised quote
26 for renewal coverage, a copy of which is attached hereto as **Exhibit E.**
27

28 ///

1 68. Atain would not have issued the Policy if the nature of the products sold had been
2 disclosed as required by the Application.

3 69. As such, the failure to disclose the sale of Kratom products on the Application
4 submitted by Happy Dayze constitutes a material misrepresentation, concealment, or omission of
5 fact rendering the Policy *void ab initio* pursuant to N.R.S.A. 687B.110.

6 WHEREFORE, Plaintiff, ATAIN SPECIALTY INSURANCE COMPANY, requests a
7 judgment pursuant to 28 U.S.C. § 2201 against Defendants Karans, LLC d/b/a Happy Dayze and
8 KN Group, LLC declaring and awarding the following relief:
9

10 A. That this Court take jurisdiction over the parties and subject matter of this action;

11 B. Declare that Atain Specialty Insurance Company has no duty under Policy No.
12 CIP417114 issued to Karans, LLC d/b/a Happy Dayze Cigar & Smoke for the period of
13 November 20, 2021 through November 20, 2022 to defend or indemnify Karans, LLC d/b/a
14 Happy Dayze Cigar & Smoke, KN Group, LLC or any insured in the lawsuit entitled *Paul A.*
15 *Valente, individually and as Special Administrator of the Estate of Michelle Horning Valente,*
16 *deceased and Michael R. Kich, as natural father and legal guardian of KMK and KNK, minors v.*
17 *CKL Sales, LLC d/b/a Smok'n Ray's Smoke Shop; KN Group, LLC d/b/a Happy Dayze Cigar*
18 *and Smoke Shop; Fisher Botanicals, LLC; Shaman Supplies, Inc.; Kono Labs d/b/a Whole*
19 *Herbs; Does I-V, Case No. 22-01705 (Washoe County, Nevada);*

20 C. In the alternative, the Atain Specialty Insurance Company Policy No. CIP417114
21 issued to Karans, LLC d/b/a Happy Dayze Cigar & Smoke for the period of November 20, 2021
22 through November 20, 2022 is void *ab initio* pursuant to N.R.S.A. 687B.110; and

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1 D. Award costs, as well as any further relief that this Honorable Court deems
2 equitable and just.

3 Dated: April 18, 2023

4 Respectfully submitted:

5 MCKAY LAW FIRM, CHTD.

6 */s/ Pamela McKay*

7 _____
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12 INSURANCE COMPANY
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