

E-Served: Aug 19 2022 12:14PM AST Via Case Anywhere
IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

**MOHAMMAD HAMED, BY HIS
AUTHORIZED AGENT WALEED
HAMED,**

PLAINTIFF/COUNTERCLAIM DEFENDANT,

V.

**FATHI YUSUF AND UNITED
CORPORATION,**

DEFENDANTS/COUNTERCLAIMANTS,

V.

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED,
AND PLESSEN ENTERPRISES, INC.,**

COUNTERCLAIM DEFENDANTS.

Civil No. SX-12-CV-370

**ACTION FOR INJUNCTIVE RELIEF,
DECLARATORY JUDGMENT,
PARTNERSHIP DISSOLUTION,
WIND UP, and ACCOUNTING**

**WALEED HAMED, AS EXECUTOR OF THE
ESTATE OF MOHAMMAD HAMED,**

V. PLAINTIFF,

UNITED CORPORATION,

DEFENDANT.

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

MOHAMMAD HAMED,

V. PLAINTIFF,

FATHI YUSUF,

DEFENDANT.

CONSOLIDATED WITH

Civil No. SX-14-CV-278

ACTION FOR DEBT and CONVERSION

**HAMED'S SUPPLEMENTAL BRIEFING AND STATEMENT OF FACTS AS TO
MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO CLAIM Y-10 WITH REGARD
TO FAILURE OF BDO TO PROPERLY SUPPLEMENT**

I. Background

On August 2, 2021, Hamed filed a motion to compel responses to discovery served in connection with Yusuf Claim No. Y-10 arguing that with regard to Yusuf's responses to Interrogatory 49 and RFPD 23, the primary exhibit, the BDO Summary of Withdrawals did not comply with the Limitations Order because it facially stated pre-cutoff amounts--and requested that the Master order the BDO Summary of Withdrawals.

Hamed stated therein that Yusuf admitted in discovery responses (later included in a Yusuf Opposition) that entries therein were definitely prior to the Cutoff Date established in the Limitations Order.

In response, Yusuf filed an opposition and Hamed filed a reply thereto.

On August 1, 2022, the Master entered an order that Hamed's motion to compel as to his request for the BDO Summary of Withdrawals (as to Yusuf Claim No. Y-10) to be updated to comply with the Limitations Order was denied without prejudice.

In the August 1, 2022 order, the Master further explained:

As to Interrogatory 49 and RFPD 23, Hamed argued in the reply that the BDO Summary of Withdrawals did not comply with the Limitations Order and requested that the Master order the BDO Summary of Withdrawals to be updated to comply with the Limitations Order and to reflect the actual amount being claimed for Y-10 so Hamed knows what he is defending. (Opp., pp. 5, 7.) However, this request goes beyond the scope of Hamed's motion to compel discovery responses and is therefore, improperly included in his reply without giving Yusuf an opportunity to respond. As such, the Master will deny without prejudice Hamed's request, but Hamed may raise this request in a separate motion.

Id. at footnote 9.

On August 5, 2022, Hamed filed a renewed/corrected motion to compel seeking Yusuf and BDO's compliance with the Limitations Order – the removal of pre-Limitations Order materials.

On August 18, 2022, the Master entered a supplemental order in which he stated:

although Hamed filed his motion as a motion to compel, this is not the usual motion to compel filed pursuant to Rule 37 of the Virgin Islands Rules of Civil Procedure. . . .the Master will construe Hamed's motion as motion for partial summary judgment and not a motion to compel. . . . More specifically, the Master will construe Hamed's motion as a motion for partial summary judgment as to **the limited issue of whether the BDO Summary of Withdrawals (as to Yusuf Claim No. Y-10) complied with the Limitations Order.** At this time, the Master will grant Hamed leave to supplement his motion with a statement of undisputed facts in compliance with Rule 56 of the Virgin Islands Rules of Civil Procedure. See V.I. R. CIV. P. 56(c)(1) ("Each summary judgment motion shall include a statement of undisputed facts in a separate section within the motion. Each paragraph stating an undisputed fact shall be serially numbered and each shall be supported by affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon regarding such fact."). Additionally, the Master will also grant Hamed leave to supplement his motion with an additional brief if he wishes to expand on his argument as the result of the Master construing his motion as motion for partial summary judgment.

This filing supplements the original brief and supplies the statement of undisputed facts.

II. **Statement of Undisputed Facts**¹

1. In 2012, Hamed filed a complaint against United whereby Hamed sought, inter alia, "Declaratory Relief against both defendants to establish Hamed's rights under his partnership with Yusuf..." (Compl.) Subsequently, Yusuf and United filed their counterclaim on December 23, 2013, followed by their first amended counterclaim on January 13, 2014 (hereinafter "Counterclaim"). In 2016, per the Master's order, the parties filed their respective accounting claims.

¹ All of the facts herein are taken directly from documents of record in this case. None are supported by affidavit, declaration or any extrinsic documents or other proof.

2. Yusuf's accounting claims, filed on September 30, 2016 (hereinafter "Yusuf's Accounting Claims"), included Yusuf's claim for the reconciliation of past Partnership withdrawals and distributions based on the lifestyle analysis prepared by Yusuf's accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C. (Yusuf Claim No. Y-11).
3. In support of the aforementioned claim, Yusuf attached to Yusuf's Accounting Claims an accounting report of the Partnership prepared by Yusuf's accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C (hereinafter "BDO Report").
4. On October 3, 2016, Hamed filed a motion to strike the BDO Report pursuant to Rules 702, 401, and 403 of the Federal Rules of Civil Procedure. Subsequently, this matter came before the Court for a hearing on the various pending motions, including a *Daubert* hearing on Hamed's fully briefed motion to strike the BDO Report.
5. On July 25, 2017, the Court entered an order whereby the Court denied without prejudice Plaintiff's motion to strike the BDO Report. More importantly, at the same time the Court contemporaneously entered a memorandum opinion and order limiting accounting (hereinafter "Limitations Order").
6. There the Court "exercise[d] the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter and ordered, inter alia, that "the accounting in this matter, to which each partner is entitled under 26 V.I.C. §177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. §71(a), based upon transactions that occurred on or after September 17, 2006." (Id., at pp. 32, 34.)

7. In the instant matter, Yusuf admits the use of amounts from before that cutoff date. In his November 20, 2021 *Opposition to Hamed Motion to Compel Re Claim Y-10 – Past Partnership Withdrawals*, Yusuf attached as an exhibit and agreed with his original discovery response in his *Supplemental Responses to Hamed’s Discovery*. The Opposition and the attached Exhibit are appended here as **Exhibit 1**. Yusuf stated:

2. Waleed \$237,352.75

As to the \$237,352.75 which remains in the Waleed column for receipts, that amount was left in the table because it relates to the overall accounting relating to Mr. Yusuf’s removal of the \$2,784,706. The amount reflects certain receipts which accompanied the August 15, 2012 letter. **While these amounts were prior to the September 17, 2006 timeframe, they were kept in the chart** as the withdrawal by Yusuf straddled the cutoff date. The Table 8B and receipts relating thereto are again reproduced here (although previously produced in October 2016). These documents satisfy RTP 23.

III. Applicable Standard of Review

The Special Master has repeatedly set forth the applicable standard. Rule 56 of Virgin Islands Rules of Civil Procedure (hereinafter “Rule 56”) governs motions for summary judgment and sets forth the procedures thereto. Under Rule 56, “[a] party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought” and “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.I. R. CIV. P. 56; see *also Rymer v. Kmart Corp.*, 68 V.I. 571, 575 (V.I. 2018) (“A summary judgment movant is entitled to judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record.”). “A factual dispute is deemed genuine if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party[,]” and a fact is material only where it “might affect the outcome of the suit under the

governing law[.]” *Todman v. Hicks*, 70 V.I. 430, 436 (V.I. Super. Ct. April 17, 2019)(quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008)).

The reviewing court must view all inferences from the evidence in the light most favorable to the nonmoving party and take the nonmoving party's conflicting allegations as true if properly supported. *Kennedy Funding, Inc. v. GB Properties, Ltd.*, 2020 V.I. 5, ¶14 (V.I. 2020). “The movant may discharge this burden simply by pointing out to the ... court that there is an absence of evidence to support the nonmoving party's case.” *Id.* (internal quotation marks and citation omitted).

Once the moving party meets this burden, “the non-moving party then has the burden of set[ting] out specific facts showing a genuine issue for trial.” *Id.* (internal quotation marks and citation omitted). The non-moving party “may not rest upon mere allegations, [but] must present actual evidence showing a genuine issue for trial.” *Rymer*, 68 V.I. at 576 (quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008)). “Such evidence may be direct or circumstantial, but the mere possibility that something occurred in a particular way is not enough, as a matter of law, for a jury to find it probably happened that way.” *Kennedy*, 2020 V.I. 5, ¶14.

Moreover, the court “should not weigh the evidence, make credibility determinations, or draw ‘legitimate inferences’ from the facts when ruling upon summary judgment motions because these are the functions of the jury.” *Todman*, 70 V.I. at 437 (quoting *Williams*, 50 V.I. at 197); see *Kennedy*, 2020 V.I. 5, ¶14; see also, *Rymer*, 68 V.I. at 577 (“When considering a summary judgment motion, a trial judge may not weigh the credibility of evidence or witnesses.”). In deciding a motion for summary judgment, the court’s role “is not to determine the truth, but rather to determine whether a factual dispute exists that warrants trial on the merits.” *Todman*, 70 V.I. at 437 (citations omitted); see *Kennedy*, 2020 V.I. 5, ¶14 (noting that the court “decide only whether there is a genuine issue for trial such that a reasonable jury could return a verdict for the non-

moving party”). Accordingly, “if a credibility determination is necessary as to the existence of a material fact, a grant of summary judgment would be improper.” *Rymer*, 68 V.I. at 577.

Because summary judgment is “[a] drastic remedy, a court should only grant summary judgment when the ‘pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.’” *Rymer*, 68 V.I. at 575-76 (quoting *Williams*, 50 V.I. at 194). The Court is required to “state on the record the reasons for granting or denying the motion.” V.I.

R. CIV. P. 56(a).

IV. Argument

The legal standard for cutoff is set forth in the Limitations Order. It requires no reference to exterior authority or any accounting standards. It is clear and unequivocal.

On the face of Yusuf’s own admission, the figures used are from dates prior to that cutoff. Moreover, **it must be BDO, not Yusuf amending that information, as it is a BDO exhibit filed under BDO’s report and supporting statements..**

Thus, while the reviewing court must view all inferences from the evidence in the light most favorable to the nonmoving party and take the nonmoving party’s conflicting allegations as true if properly supported, the most favorable reading of this situation comes from Yusuf’s own filings. He states without equivocation that the entries arose from dates prior to the cutoff. Because “the movant may discharge this burden simply by pointing out to the ... court that there is an absence of evidence to support the nonmoving party’s case.” Hamed has met this burden. Yusuf then has the impossible burden of setting out specific facts showing a genuine issue for trial – he may not rest upon mere allegations that “the withdrawal by Yusuf straddled the cutoff date” but must present actual evidence showing a genuine issue for trial; that the dates were after the cutoff.

The entries with were prior to the cutoff or they were not. Yusuf admits they were. This is, indeed, the third time that Yusuf has tried different machinations to claw back amounts clearly before that date – in fact, the pending joint motion of the parties as to Claim H-37 represents fourth, simultaneous effort by Yusuf to accomplish the identical effect.....to find SOME way to get what YUSF ADMITS ARE PRE-CUTOFF AMOUNTS to “carry forward” into post-cutoff accountings.

V. Conclusion

Amounts prior to the cutoff date do not form the proper basis for a claim. The supplemented exhibit does not comply with the Limitations Order.

Dated: August 19, 2022



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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2022, I served a copy of the foregoing by email, as agreed by the parties, on:

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CERTIFICATE OF WORD/PAGE COUNT

This document complies with the limitations set forth in Rule 6-1 (e).



**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
)	
Plaintiff/Counterclaim Defendant,	)	CIVIL NO. SX-12-CV-370
v.)	
	)	ACTION FOR INJUNCTIVE
FATHI YUSUF and UNITED CORPORATION,	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEED HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES, INC.,)	
)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-287
Plaintiff,)	
v.	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
Defendant.)	
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,	)	ACTION FOR DEBT AND
v.	)	CONVERSION
)	
FATHI YUSUF,)	
)	
Defendant.)	

**YUSUF’S OPPOSITION TO HAMED MOTION TO COMPEL RE CLAIM Y-10 – PAST
PARTNERSHIP WITHDRAWALS**

Hamed's Current Motion to Compel Relating to Yusuf Claim Y-10 – Past Partnership
Withdrawals is premised upon Yusuf’s alleged failure to fully respond to Hamed Interrogatory

No. 49 and Requests to Produce 23 and 24. The focus of this discovery is as to the supporting information and explanation relating to the categories of funds initially prepared by BDO on behalf of Yusuf which would be deemed as distributions between the partners so as to properly adjust and off-set a final disbursement between the partners as part of the wind up process. BDO chronicles, categorized and tallied extremely voluminous documents, divided into the type of funds; *i.e.*

- 1) Funds received from partnership through checks,
- 2) Withdrawals from the partnership with a signed ticket/receipt,
- 3) Amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike's testimony these tickets were burned. (Refer to Letter dated August 15, 2012),
- 4) Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks,
- 5) Funds received by cashier's checks

From there, any document which reflected one of these 5 categories was sorted by name and year and then summarized in individual tables. Every table and every single supporting document was saved, all of the information was produced to Hamed in September and October of 2016. After the ruling from Judge Brady limiting the timeframe for the partnership accounting, BDO created a revised Summary of Withdrawals by simply eliminating those amounts in each category as to each name that pre-dated September 2006. All of the supporting documentation for the revised Summary of Withdrawals (which was simply a limited version of the Summary previously produced) had already been provided in October of 2016.

In the Supplementation Provided, Yusuf shows that he simply directed Hamed to information that he had already provided to him years before. See **Exhibit 1**. All of the

supporting documentation was provided in October of 2016. Hence, there is no basis for an Order to Compel.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG, LLP

DATED: November 19, 2021

By: s/Charlotte K. Perrell

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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 2021, I caused the foregoing **Yusuf's Opposition to Hamed's Current Motion to Compel Relating to Yusuf Claim Y-10**, which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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s/Charlotte K. Perrell

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
)	
Plaintiff/Counterclaim Defendant,	)	CIVIL NO. SX-12-CV-370
v.)	
	)	ACTION FOR INJUNCTIVE
FATHI YUSUF and UNITED CORPORATION,	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEED HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES, INC.,)	
<u>Additional Counterclaim Defendants.</u>)	Consolidated With
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Estate of MOHAMMAD HAMED,)	
)	CIVIL NO. SX-14-CV-287
Plaintiff,)	
v.)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
<u>Defendant.</u>)	
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,	)	ACTION FOR DEBT AND
v.	)	CONVERSION
)	
FATHI YUSUF,)	
<u>Defendant.</u>)	
FATHI YUSUF and)	
UNITED CORPORATION,)	
	)	CIVIL NO. ST-17-CV-384
Plaintiffs,)	
v.	)	ACTION TO SET ASIDE
	)	FRAUDULENT TRANSFERS
)	
THE ESTATE OF MOHAMMAD HAMED,)	
Waleed Hamed as Executor of the Estate of)	
Mohammad Hamed, and)	
THE MOHAMMAD A. HAMED LIVING TRUST,)	
)	
Defendants.)	
<u>Defendants.</u>)	

**SUPPLEMENTAL RESPONSES
TO HAMED'S DISCOVERY**

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley Newman Feuerzeig, LLP hereby provide their Supplemental Responses to Hamed's discovery as follows:

1. Interrogatory 49 of 50

With regard to the post September 17, 2006 claims in Y-10, and more specifically your "J-2" Exhibit to Yusuf's Amended Accounting Claims Limited to Transactions Occurring on or after September 17, 2006, dated October 30, 2017, explain in detail with reference to witnesses, documents, dates and amounts, why the claim and referenced in exhibit reflect the following: there appears to be only one \$2,000 amount (Maher) for withdrawals from the Partnership with a signed ticket/receipt and payments to third parties on behalf of Hamed/Yusuf with partnership funds for the Yusuf's during the entire eight year period between 2006 and 2014 – where are all of those amounts; also, [questions regarding attorneys fees which is now withdrawn]; also, why is the amount listed as owed by Waleed \$1,778,103 rather than the \$1,600,000 that has always been discussed and listed in the August 15, 2012 letter referenced on Exhibit J-2?

Supplemental Response:

Yusuf provides this supplemental responses but shows that the original documentation was provided to Hamed on October 4, 2016, when Yusuf's Amended Accounting Claims and exhibits were filed and as explained in Yusuf's original responses to this discovery filed on May 15, 2018.

To eliminate any confusion, the information is again reproduced here:

1. Maher \$2,000:

As to the \$2,000 listed in the BDO Revised Summary (J-2) under Maher Yusuf, a review of Tables accompanying the BDO Report reflect, as to funds received by the partners pursuant to a receipt or ticket, each was chronicled in a Table and a copy of the Supporting Documentation included in a series of folders, per family member. As to Maher, Table 50B – reflects a list of any funds received by Maher from the Partnership from October 2001 to 2012. (BDO had originally divided the tables into two timeframes according to years: Time Period 1 - 1994 -2001 (inception of the partnership to time of the FBI raid), and Time Period 2 - 2001 to 2012 (FBI Raid and period of the Federal Monitors until 2012 when the partnership ended). After 2012, the partnership accounting information was taken over by John Gaffney and provided to both partners.

Table 50B – reflect that there was only one receipt in 2012 for Maher. The actual receipt was included in the folders for Maher. The actual receipt from that folder (also provided back in October of 2016) is attached hereto.

Hence, this is the only information that BDO had as to any funds received from Maher after September 17, 2006 – the period designated by Judge Brady as the cut off point. The fact that there were minimal receipts after the 2001 FBI raid is not surprising because of the existence of the Federal Monitors at the Stores.

As to other members of the Yusuf families, a review of the Tables provided indicates that after the FBI Raid there were no additional funds received via a “receipt.”

The same is true for the Hamed families, no one has “receipts” after 2006. A review of their Tables indicates a few receipts in the year or so shortly after the raid (i.e. before the Monitors were in place), but almost none in 2003 and certainly none after 2006.



2. Waleed \$237,352.75

As to the \$237,352.75 which remains in the Waleed column for receipts, that amount was left in the table because it relates to the overall accounting relating to Mr. Yusuf's removal of the \$2,784,706. The amount reflects certain receipts which accompanied the August 15, 2012 letter. While these amounts were prior to the September 17, 2006 timeframe, they were kept in the chart as the withdrawal by Yusuf straddled the cut off date. The Table 8B and receipts relating thereto are again reproduced here (although previously produced in October 2016). These documents satisfy RTP 23.

Request to Produce Number 24:

With respect to Y-10, please provide all documents substantiating the alleged \$20,311.00 in “payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks by Waleed Hamed, as referenced in BDO Exhibit J-2, titled “Summary calculation of Additional Income as a result of withdrawals from Supermarkets’ accounts (or partnership accounts) – January 1994 to August 2014 (Including adjustments for withdrawals before 9/17/2006 as instructed by the Court).” Attached to Yusuf’s Amended Accounting Claims Limited to Transactions Occurring on or After September 17, 2001, filed on October 30, 2017.

Supplemental Response:

Yusuf provides this supplemental response but shows that the original documentation was provided to Hamed on October 4, 2016 when Yusuf’s Amended Accounting Claims and exhibits were filed and as explained in Yusuf’s original responses to this discovery filed on May 15, 2018.

The \$20,311.00 is comprised of the funds listed in Table 9A for which there is no date. See attached bracketed portions) and Table 9B. The actual documentation is set forth in the Supporting Documentation provided on October 2016, previously provided.

DUDLEY NEWMAN FEUERZEIG, LLP

DATED: November 19, 2021

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Corporation*

CERTIFICATE OF SERVICE

It is hereby certified that on this 20th day of November, 2021, I caused the foregoing a true and exact copy of the foregoing **SUPPLEMENTAL RESPONSES TO HAMED'S DISCOVERY** to be served upon the following via Case Anywhere docketing system:

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