

SCHEDULE “B”

Court File No. CV-21-00659187-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY DAY, THE 23rd
)
JUSTICE McEWEN) DAY OF NOVEMBER, 2021

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF HYDRX FARMS LTD., CANNSCIENCE
INNOVATIONS INC. AND SCIENTUS PHARMA INC.

**ORDER
(Approval and Vesting Order)**

THIS MOTION, made by Schwartz Levitsky Feldman Inc. (“**SLF**”), in its capacity as monitor of Hydrx Farms Ltd.(“**Hydrx**”), Cannscience Innovations Inc. and Scientus Pharma Inc. (together with Hydrx, collectively, the “**Companies**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an order, among other things: (i) approving the Share Purchase Agreement (the “**SPA**”) between Hydrx and Cobra Ventures Inc. (the “**Purchaser**”) dated as of November 4, 2021, and the transactions contemplated thereby (the “**Transactions**”), (ii) adding 13404994 Canada Inc. (“**ResidualCo**”) as a party to these CCAA proceedings, (iii) transferring and vesting all of the Companies’ right, title and interest in and to the Excluded Contracts and Excluded Liabilities (as defined in the SPA) to and in ResidualCo, and (iv) vesting all of the right, title and interest in and to the New Shares (as defined in the SPA) in the Purchaser, was heard this day by video conference due to the COVID-19 pandemic.

ON READING the Notice of Motion, and the Fifth Report of SLF dated November 12, 2021, in its capacity as Monitor of the Companies (the “**Monitor**”), filed (the “**Fifth Report**”),

and on hearing the submissions of counsel for the Monitor, counsel for the Purchaser, and counsel for those other parties appearing as indicated by the counsel slip, no one appearing for any other party, although duly served as appears from the affidavit of service of [▶], filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the SPA.

APPROVAL AND VESTING

3. **THIS COURT ORDERS AND DECLARES** that the SPA and the Transactions be and are hereby approved and that the execution of the SPA by SLF, on behalf of Hydrx and in its capacity as Monitor, is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary, with the approval of the Monitor. Each of the Companies and SLF in its capacity as Monitor are hereby authorized and directed to perform its obligations under the SPA and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the New Shares to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Companies and SLF in its capacity as Monitor to proceed with the

Transactions (including, for certainty, the Pre-Closing Reorganization), and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS** that the Monitor is hereby authorized to execute Articles of Amendment in respect of Hydrx reflecting the Transactions and to take all other steps for and on behalf of the Companies as may be necessary to give effect to the Transactions.

6. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Monitor's certificate (the "**Monitor's Certificate**") to the Purchaser (the "**Effective Time**") confirming, among other things, that the Transaction has closed, the following shall occur and shall be deemed to have occurred at the Effective Time in the following sequence:

- (a) first, all Excluded Contracts and Excluded Liabilities (which for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of the Companies (other than the Assumed Liabilities) shall be channelled to, assumed by and vest absolutely and exclusively in ResidualCo such that the Excluded Contracts and Excluded Liabilities shall become obligations of ResidualCo and shall no longer be obligations of the Companies, and the Companies and all of their assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate (including, for certainty, the Serafino Indemnity (as defined below) and Retained Assets, the "**Companies' Property**") shall be and are hereby forever released and discharged from such Excluded Contracts and Excluded Liabilities and all related security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not

they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”), including without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Amended and Restated Initial Order of the Court dated March 31, 2021 (the “**Initial Order**”) or any other Order of the Court in this CCAA Proceeding; (ii) those encumbrances listed on Schedule A hereto and (iii) the security interests listed on Schedule B hereto; (all of which are collectively referred to as the “**Encumbrances**”), and all such Claims and all Encumbrances affecting or relating to the Companies’ Property (other than the Assumed Liabilities and permitted encumbrances listed on Schedule “C” hereto), are hereby expunged and discharged as against the Companies’ Property;

- (b) second, all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (defined below) and are convertible or exchangeable for any securities of the Companies or which require the issuance, sale or transfer by the Companies, of any shares or other securities of the Companies and/or the share capital of the Companies, or otherwise relating thereto, shall be deemed terminated and cancelled;
- (c) third, all of the right, title and interest in and to the New Shares shall vest absolutely in the Purchaser, free and clear of and from all Claims and Encumbrances and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the New Shares are hereby expunged and discharged as against the New Shares; and
- (d) fourth, the Companies shall be deemed to cease being parties in these CCAA proceedings, and the Companies shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of this CCAA Proceeding, save and except for this Order, the provisions of which (as they relate to the Companies) shall continue to apply in all respects.

7. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in connection with the Transactions.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from Hydrx and/or the Purchaser regarding the fulfilment of conditions to closing under the SPA and shall have no liability with respect to delivery of the Monitor's Certificate.

9. **THIS COURT ORDERS** that following the Effective Time, no shares of the Companies shall be issued by Domenico Serafino without the prior written consent of the Purchaser, which consent may be unreasonably withheld.

10. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the New Shares (including, for greater certainty, the Priority Payables (as defined in the SPA) (the "**Proceeds**") shall stand in the place and stead of the Companies' Property, and that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the Proceeds with the same priority as they had with respect to the Companies' Property immediately prior to the sale.

11. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, the Monitor is authorized, permitted and directed to, at the Effective Time, disclose to the Purchaser all human resources and payroll information in the Companies' records pertaining to past and current employees of the Companies. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it

in a manner that is in all material respects identical to the prior use of such information by the Applicant.

12. **THIS COURT ORDERS AND DECLARES** that, at the Effective Time, the Purchaser and the Companies shall be deemed released from any and all claims, liabilities, (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to, the Companies (provided, as it relates to the Companies, such release shall not apply to Taxes in respect of the business and operations conducted after the Effective Time), including without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser or the Companies (including their affiliates and any predecessor corporations) pursuant to section 160 of the *Income Tax Act*, R.S.C. 1985 c. 1 (5th Supp.), or any provincial equivalent, in connection with the Companies. For greater certainty, nothing in this paragraph shall release or discharge any Claims with respect to Taxes that are transferred to ResidualCo.

13. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in this Order shall waive, compromise or discharge any obligations of the Companies in respect of any Assumed Liabilities, and (b) the designation of any Claim as an Assumed Liability is without prejudice to the Companies' rights to dispute the existence, validity or quantum of any such Assumed Liability, and (c) nothing in this Order or the SPA shall affect or waive the Companies' rights and defences, both legal and equitable, with respect to any Assumed Liability, including, but not limited to, all rights with respect to entitlements to set offs or recoupments against such Assumed Liability.

14. **THIS COURT ORDERS** that from and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of the Companies then existing or previously

committed by the Companies, or caused by the Companies, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition, or obligation, expressed or implied in any Contract existing between such Person and the Companies (including for certainty, those Contracts constituting Retained Assets) arising directly or indirectly from the CCAA Proceedings and implementation of the Transactions, including without limitation any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a Contract shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse the Companies from performing their obligations under the SPA or be a waiver of defaults by Hydrx under the SPA and the related documents.

15. **THIS COURT ORDERS** that from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Companies relating in any way to or in respect of any Excluded Liabilities or Excluded Contracts and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order.

16. **THIS COURT ORDERS** that from and after the Effective Time:

- (a) the nature of the Assumed Liabilities retained by the Companies including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;

- (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to ResidualCo;
- (c) any Person that prior to the Effective Time had a valid right or claim against the Companies under or in respect of any Excluded Contract or Excluded Liability (each an “**Excluded Liability Claim**”) shall no longer have such right or claim against the Companies but will have an equivalent Excluded Liability Claim against ResidualCo in respect of the Excluded Contract or Excluded Liability from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against ResidualCo; and
- (d) the Excluded Liability Claim of any Person against ResidualCo following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against the Companies prior to the Effective Time.

17. **THIS COURT ORDERS AND DECLARES** that, as of the Effective Time:

- (a) ResidualCo shall be a company to which the CCAA applies; and
- (b) ResidualCo shall be added as a party this CCAA Proceeding and all references in any Order of this Court in respect of this CCAA Proceeding to (i) the Companies shall refer to and include ResidualCo, and (ii) “Property” shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of ResidualCo (the “**ResidualCo Property**”), and, for greater certainty, the Administration Charges (as defined in the Initial Order), shall constitute a charge on the ResidualCo Property.

18. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 195, c. B-3, as amended (the “**BIA**”), in respect of ResidualCo and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of ResidualCo;

the SPA, the implementation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts and Excluded Liabilities in and to ResidualCo, the transfer and vesting of the New Shares in and to the Purchaser) and any payments by or to the Purchaser, ResidualCo or the Monitor authorized herein shall be binding on any trustee in bankruptcy that may be appointed in respect of ResidualCo and shall not be void or voidable by creditors of ResidualCo, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

MONITOR’S ENHANCED POWERS

19. **THIS COURT ORDERS** that in addition to the powers and duties of the Monitor set out in the Initial Order or any other Order of this Court in this CCAA Proceeding, and without altering in any way the limitations and obligations of ResidualCo as a result of these proceedings, the Monitor be and is hereby authorized and empowered, but not required, to:

- (a) take any and all actions and steps, and execute all documents and writings, on behalf of, and in the name of ResidualCo in order to facilitate the performance of any ongoing obligations of ResidualCo, including with respect to any Excluded Liability Claim, and to carry out the Monitor’s duties under this Order or any other Order of this Court in this CCAA Proceeding;

- (b) exercise any powers which may be properly exercised by a board of directors of ResidualCo;
- (c) cause ResidualCo to retain the services of any person as an employee, consultant, or other similar capacity all under the supervision and direction of the Monitor and on the terms as agreed with the Monitor;
- (d) open one or more new accounts (the “**ResidualCo Accounts**”) into which all funds, monies, cheques, instruments and other forms of payment payable to ResidualCo shall be deposited from and after the making of this Order from any source whatsoever and to operate and control, as applicable, on behalf of ResidualCo, the ResidualCo Accounts in such manner as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor’s powers and duties;
- (e) cause ResidualCo to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down of ResidualCo or the distribution of the proceeds of the ResidualCo Property or any other related activities, including in connection with bringing this CCAA Proceeding to an end;
- (f) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of ResidualCo (including any governmental authority) in the name of or on behalf of ResidualCo;
- (g) claim or cause ResidualCo to claim any and all insurance refunds or tax refunds, including refunds of harmonized sales taxes, to which ResidualCo is entitled;
- (h) have access to all books and records that are the property of ResidualCo in ResidualCo’s possession or control;
- (i) assign ResidualCo, or cause ResidualCo to be assigned, into bankruptcy, and the Monitor shall be entitled but not obligated to act as trustee in bankruptcy thereof;

- (j) consult with Canada Revenue Agency or Health Canada with respect to any issues arising in respect of this CCAA Proceeding; and
- (k) apply to this Court for advice and directions or any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter.

20. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Monitor is not and shall not be or be deemed to be, a director, officer, or employee of ResidualCo or the Companies.

21. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, ResidualCo shall remain in possession and control of its Property and Business (each as defined in the Initial Order) and the Monitor shall not take, or be deemed to have taken, possession or control of the Property or the Business of ResidualCo, or any part thereof.

22. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor and its legal counsel shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor and the fulfillment of its duties and the carrying out of the provisions of this Order.

23. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Companies or ResidualCo within the meaning of any

relevant legislation and that any distributions to creditors of ResidualCo or the Companies by the Monitor will be deemed to have been made by ResidualCo.

24. **THIS COURT ORDERS** that the power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of ResidualCo with respect to such matters and, in the event of a conflict between the terms of this Order and those of the Initial Order or any other Order of this Court, the provisions of this Order shall govern.

RELEASES

25. **THIS COURT ORDERS** that effective upon filing of the Monitor's Certificate, (i) the current and former directors and officers of the Companies (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Certificate and that relate in any manner whatsoever to the Companies or any of their assets (current or historical), obligations, business or affairs or this CCAA Proceeding, including any actions undertaken or completed pursuant to the terms of this Order, or arising in connection with or relating to the SPA or the completion of the Transactions (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally,

irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, *provided that* nothing in this paragraph shall waive, discharge, release, cancel or bar any claim: (i) that is not permitted to be released pursuant to section 5.1(2) of the CCAA, (ii) against the directors and officers of the Applicant for breach of trust arising from acts or omissions occurring before the date of the Initial Order, (iii) that may be made against any applicable insurance policy of the Companies prior to the date of the Initial Order, (iv) in respect of the indemnity dated April 8, 2021 given by Domenic Serafino to HydrRx and the Monitor (the “**Serafino Indemnity**”) or (v) by Minden Gross LLP against Domenic Serafino for their fees in connection with this and related matters.

GENERAL

26. **THIS COURT ORDERS** that, following the Effective Time, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the New Shares.

27. **THIS COURT ORDERS** that, following the Effective Time, the title of these proceedings is hereby changed to

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED AND IN THE MATTER OF THE
COMPROMISE OR ARRANGEMENT OF 13404994
CANADA INC.

28. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a

motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

29. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist ResidualCo, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to ResidualCo and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist ResidualCo and the Monitor and their respective agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that each of ResidualCo and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

SEALING

32. **THIS COURT ORDERS** that Confidential Appendix 1 to the Fifth Report be and is hereby sealed pending the closing of the Transaction.

CONDUCT AND ACTIVITIES

33. **THIS COURT ORDERS** that the conduct and activities of the Monitor, as described in the Fifth Report, are hereby approved.

FEES

34. **THIS COURT ORDERS** that the fees and disbursements of the Monitor, its counsel and the CRO, all as described and detailed in the Fifth Report, are hereby approved.

SCHEDULE “B”

Schedule “A” – Encumbrances to be Deleted

1. Instrument No. DR1938121 registered 2020/10/23 - Transfer of Charge to Cobra Ventures Inc.
2. Instrument No. DR1964611 registered 2021/01/18 – Transfer of Charge to Rydan Financial Inc.
3. Instrument No. DR1964673 registered 2021/01/18 – Transfer of Charge to Cobra Ventures Inc.
4. Instrument No. DR1990505 registered 2021/04/09 – Notice

SCHEDULE "B"

Schedule "B" – PPSA Registrations to be Deleted

PPSA Registration Number	Debtor	Secured Party	Collateral	Collateral Description	Registration Period
20171115 1432 1530 7267	Hydrx Farms Ltd.	Royal Bank of Canada	Accounts, Other	None	5 Years
20171220 1324 2550 7568	Hydrx Farms Ltd.	Alpine Specialty Chemicals Ltd.	Equipment	CMA EST 44 DISHWASHER SERIAL NO 210001	5 Years

SCHEDULE “B”

Schedule “C” – Permitted Encumbrances

1. Instrument No. DR1626830 registered 2017/08/15 – Charge in favour of Aphria Inc.
2. Instrument No. DR1932365 registered 2020/10/02 – Transfer of Charge from Aphria Inc. to Cobra Ventures Inc.
3. PPSA Registration No. 2020/11/09 160892344149 in favour of Cobra Ventures Inc.
4. PPSA Registration No. 2021/11/10 151215903974 in favour of Cobra Ventures Inc.

SCHEDULE "B"

Court File No. CV-21-00659187-00CL

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND DOMENICO SARAFINO AS A PERSON INTERESTED IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF HYDRX FARMS LTD., CANNSCIENCE INNOVATIONS INC. AND SCIENTUS PHARMA INC.**

23 Nov 21

Order to go as per the draft filed and signed. The relief sought is unopposed. Soundair factors have been met and the credit bid which will include a reverse vesting order is fair and reasonable in the circumstances of this matter.

A sealing order is also appropriate as the Sierra Club criteria are met. Last, as set out in the Share Purchase Agreement (the "SPA") dated Nov 4/21 the transactions contemplated in the SPA won't close until 10 Business days after the later of: (i) the date of this order; and (ii) the date that the leave to appeal the order of Wilton-Siegel J. dated June 30/21 is dismissed or when the appeal of the judgment is dismissed or abandoned.



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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