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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KINGS

ADRIAN LEON and RICHARD
RODRIGUEZ, JR., on behalf of the State of
California, as private attorney generals,

Plaintiffs,

vs.

CALAVERAS MATERIALS, INC., a
California Corporation; LEHIGH HANSON
SERVICES LLC, a Limited Liability
Company; SOUTH VALLEY MATERIALS,
INC., a Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 21C-0167

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.*, for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 227.3, 246, 351, 510,
512, 558(a)(1)(2), 1194, 1197, 1197.1,
1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B)

1 Plaintiffs Adrian Leon and Richard Rodriguez, Jr., (“PLAINTIFFS”) on behalf of the
2 people of the State of California and as “aggrieved employees” acting as private attorney
3 generals under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”)
4 only, allege on information and belief, except for their own acts and knowledge which are based
5 on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against Defendants CALAVERAS MATERIALS,
8 INC., LEHIGH HANSON SERVICES LLC, and SOUTH VALLEY MATERIALS, INC.,
9 (“DEFENDANT”) seeking only to recover PAGA civil penalties for themselves, and on behalf
10 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFFS
11 do **not seek to recover anything other than penalties as permitted by California Labor**
12 **Code § 2699.** To the extent that statutory violations are mentioned for wage violations,
13 PLAINTIFFS do not seek underlying general and/or special damages for those violations, but
14 simply the civil penalties permitted by California Labor Code § 2699.

15 2. California has enacted the PAGA to permit individuals to bring an action on
16 behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise and
17 sole nature of this action.

18 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 **THE PARTIES**

24 4. Defendant Calaveras Materials, Inc. is a California corporation that at all relevant
25 times mentioned herein conducted and continues to conduct substantial business in the state of
26 California.

27 5. Defendant Lehigh Hanson Services LLC is a limited liability company that at all
28

1 relevant times mentioned herein conducted and continues to conduct substantial business in the
2 state of California.

3 6. Defendant South Valley Materials, Inc. is a California corporation that at all
4 relevant times mentioned herein conducted and continues to conduct substantial business in the
5 state of California.

6 7. PLAINTIFFS allege there has existed a unity of interest and ownership between
7 Defendants such that any individuality and separateness between the entities has ceased and all
8 Defendants are referred to herein as “DEFENDANT.”

9 8. PLAINTIFFS allege that DOES 1-50 are the partners, agents, owners, or
10 managers of DEFENDANT at all relevant times. PLAINTIFFS allege there has existed a unity
11 of interest and ownership between Calaveras Materials, Inc., Lehigh Hanson Services LLC, and
12 South Valley Materials, Inc. such that any individuality and separateness between the entities
13 has ceased. Calaveras Materials, Inc., Lehigh Hanson Services LLC, and South Valley Materials,
14 Inc. are therefore alter egos of each other. Adherence to the fiction of the separate existence
15 of DEFENDANT would permit an abuse of the corporate privilege, and would promote
16 injustice by protecting DEFENDANT from liability for the wrongful acts committed by them.

17 9. PLAINTIFFS further allege that DEFENDANT are the alter egos of each other
18 for the following reasons:

19 (A) On the California Secretary of State’s website
20 (<https://businesssearch.sos.ca.gov/>) Calaveras Materials, Inc., Lehigh
21 Hanson Services LLC, and South Valley Materials, Inc. have the same
22 entity address and/or mailing address and/or Agent for Service of Process;
23 and,

24 (B) On information and belief Calaveras Materials, Inc., Lehigh Hanson
25 Services LLC, and South Valley Materials, Inc. utilize the same
26 standardized employment forms and issue the same employment policies
27 and same pay stubs.

28 10. DEFENDANT specializes in the production and supply of asphalt, ready-mix

1 concrete and aggregates.

2 11. Plaintiff Leon was employed by DEFENDANT from December of 2016 to
3 February 2, 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
4 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
5 of minimum and overtime wages due for all time worked.

6 12. Plaintiff Rodriguez was employed by DEFENDANT from July of 2017 to
7 February 2, 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
8 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
9 of minimum and overtime wages due for all time worked.

10 13. PLAINTIFFS, and such persons that may be added from time to time who satisfy
11 the requirements and exhaust the administrative procedures under the Private Attorney General
12 Act, bring this Representative Action on behalf of the State of California with respect to
13 themselves and all individuals who are or previously were employed by Calaveras Materials,
14 Inc. and/or Lehigh Hanson Services LLC, and/or South Valley Materials, Inc. in California and
15 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
16 of March 17, 2020 until a date as determined by the Court (the "PAGA PERIOD").

17 14. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
18 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this
19 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
20 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
21 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
22 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
23 applicable Wage Order(s).¹ Based upon the foregoing, PLAINTIFFS and all AGGRIEVED
24 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

25 15. The true names and capacities, whether individual, corporate, subsidiary,
26 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently

27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
2 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
3 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
4 ascertained. PLAINTIFFS are informed and believe, and based upon that information and
5 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
6 inclusive, are responsible in some manner for one or more of the events and happenings that
7 proximately caused the injuries and damages hereinafter alleged.

8 16. The agents, servants and/or employees of the Defendants and each of them acting
9 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
10 agent, servant and/or employee of the Defendants, and personally participated in the conduct
11 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
12 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
13 all Defendants are jointly and severally liable to PLAINTIFFS and the other AGGRIEVED
14 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
15 agents, servants and/or employees.

16 **THE CONDUCT**

17 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
18 required to pay PLAINTIFFS and AGGRIEVED EMPLOYEES for all their time worked,
19 meaning the time during which an employee is subject to the control of an employer, including
20 all the time the employee is suffered or permitted to work. DEFENDANT required
21 PLAINTIFFS and the AGGRIEVED EMPLOYEES to work without paying them for all the
22 time they were under DEFENDANT's control. DEFENDANT required PLAINTIFFS and the
23 AGGRIEVED EMPLOYEES to work off the clock without paying them for all the time they
24 performed work duties, specifically by failing to provide enough labor hours to accomplish all
25 the job tasks that DEFENDANT expected PLAINTIFFS and the AGGRIEVED EMPLOYEES
26 to complete on a daily and/or weekly basis. DEFENDANT failed to pay. From time to time,
27 DEFENDANT required PLAINTIFFS to work while clocked out during what was supposed to
28 be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted by

1 work assignments. DEFENDANT also engaged in the practice of requiring PLAINTIFFS and
2 AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a
3 condition of employment, required these employees to submit to mandatory questionnaires for
4 COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the
5 workday. PLAINTIFFS and other AGGRIEVED EMPLOYEES were required by
6 DEFENDANT to answer a COVID-19 questionnaire regarding any symptoms and possible
7 exposure to COVID-19. DEFENDANT failed to pay PLAINTIFFS and other AGGRIEVED
8 EMPLOYEES for their time spent performing the mandatory waiting off the clock during the
9 shift change and completing the COVID-19 questionnaire. Even if PLAINTIFFS and other
10 AGGRIEVED EMPLOYEES showed up to DEFENDANT's work place and then failed the
11 questionnaire, DEFENDANT still failed to pay PLAINTIFFS the proper reporting time pay
12 wages. Additionally, DEFENDANT, as a matter of established company policy and procedure,
13 administered a practice of rounding the actual time worked and recorded by PLAINTIFFS and
14 the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the
15 course of their employment, PLAINTIFFS and AGGRIEVED EMPLOYEES were paid less
16 than they would have been paid had they been paid for actual recorded time rather than
17 "rounded" time. As a result, PLAINTIFFS and other AGGRIEVED EMPLOYEES forfeited
18 minimum wage and overtime compensation by from time to time working without their time
19 being accurately recorded and without compensation at the applicable minimum wage and
20 overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and other
21 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business
22 records.

23 18. State and federal law provides that employees must be paid overtime at one-and-
24 one-half times their "regular rate of pay." PLAINTIFFS and other AGGRIEVED
25 EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific
26 elements of an employee's performance.

27 19. The second component of PLAINTIFFS' and other AGGRIEVED EMPLOYEES'
28 compensation was DEFENDANT's non-discretionary incentive program that paid

1 PLAINTIFFS and other AGGRIEVED EMPLOYEES incentive wages based on their
2 performance for DEFENDANT. The non-discretionary incentive program provided all
3 employees paid on an hourly basis with incentive compensation when the employees met the
4 various performance goals set by DEFENDANT. However, when calculating the regular rate
5 of pay in order to pay overtime to PLAINTIFFS and other AGGRIEVED EMPLOYEES,
6 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
7 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
8 the incentive program to potential and new employees as part of the compensation package. As
9 a matter of law, the incentive compensation received by PLAINTIFFS and other AGGRIEVED
10 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted
11 in an underpayment of overtime compensation to PLAINTIFFS and other AGGRIEVED
12 EMPLOYEES by DEFENDANT.

13 20. As a result of their rigorous work schedules, PLAINTIFFS and other
14 AGGRIEVED EMPLOYEES were also from time to time unable to take off duty meal breaks
15 and were not fully relieved of duty for meal periods. PLAINTIFFS and other AGGRIEVED
16 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
17 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
18 DEFENDANT failed to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with a
19 second off-duty meal period from time to time in which these employees were required by
20 DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFFS and the other
21 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
22 and in accordance with DEFENDANT's corporate policy and practice.

23 21. During the PAGA PERIOD, PLAINTIFFS and other AGGRIEVED
24 EMPLOYEES were also required from time to time to work in excess of four (4) hours without
25 being provided ten (10) minute rest periods. Further, these employees were denied their first
26 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
27 hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts
28 worked of between six (6) and eight (8) hours from time to time, and a first, second and third

1 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
2 time to time. PLAINTIFFS and other AGGRIEVED EMPLOYEES were also not provided
3 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS
4 and other AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods
5 by DEFENDANT and DEFENDANT's managers. Additionally, the applicable California
6 Wage Order requires employers to provide employees with off-duty rest periods, which the
7 California Supreme Court defined as time during which an employee is relieved from all work
8 related duties and free from employer control. In so doing, the Court held that the requirement
9 under California law that employers authorize and permit all employees to take rest period
10 means that employers must relieve employees of all duties and relinquish control over how
11 employees spend their time which includes control over the locations where employees may
12 take their rest period. Employers cannot impose controls that prohibit an employee from taking
13 a brief walk - five minutes out, five minutes back. Here, DEFENDANT's policy restricted
14 PLAINTIFFS and other AGGRIEVED EMPLOYEES from unconstrained walks and was
15 unlawful based on Defendant's rule which stated PLAINTIFFS and other AGGRIEVED
16 EMPLOYEES could not leave the work premises during their rest period.

17 22. DEFENDANT also failed to provide PLAINTIFFS and the other AGGRIEVED
18 EMPLOYEES with complete and accurate wage statements which failed to show, among other
19 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
20 employer shall furnish each of his or her employees with an accurate itemized wage statement
21 in writing showing, among other things, gross wages earned and all applicable hourly rates in
22 effect during the pay period and the corresponding amount of time worked at each hourly rate.
23 PLAINTIFFS and AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the
24 wage statements should reflect all applicable hourly rates during the pay period and the total
25 hours worked, and the applicable pay period in which the wages were earned pursuant to
26 California Labor Code Section 226(a)(2). The wage statements DEFENDANT provided to
27 PLAINTIFFS and other AGGRIEVED EMPLOYEES failed to identify such information. More
28 specifically, the wage statements failed to identify the accurate total hours worked each pay

1 period. When the hours shown on the wage statements were added up, they did not equal the
2 actual total hours worked during the pay period. DEFENDANT also violated Cal. Lab. Code
3 Section 226(a)(8) by failing to list the correct legal entity that was the employer of
4 PLAINTIFFS and other AGGRIEVED EMPLOYEES. Aside, from the violations listed above,
5 DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the
6 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
7 time provided PLAINTIFFS and the other AGGRIEVED EMPLOYEES with wage statements
8 which violated Cal. Lab. Code § 226.

9 23. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
10 employment are due and payable twice during each calendar month, on days designated in
11 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
12 requires employers to pay employees all wages owed within seven (7) days of the close of the
13 payroll period. DEFENDANT from time to time failed to pay PLAINTIFFS and other
14 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
15 payroll period.

16 24. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
17 to collect or receive from an employee any part of wages theretofore paid by said employer to
18 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFFS and other
19 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
20 PLAINTIFFS and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
21 deductions from compensation payable to PLAINTIFFS and the AGGRIEVED EMPLOYEES,
22 and thereby failed to pay these employees all wages due at each applicable pay period and upon
23 termination. PLAINTIFFS and the AGGRIEVED EMPLOYEES seek recovery of all illegal
24 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

25 25. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other
26 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay.
27 Specifically, PLAINTIFFS and other non-exempt employees earn non-discretionary
28 remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick

1 pay to PLAINTIFFS and other AGGRIEVED EMPLOYEES at their base rates of pay.

2 26. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
3 PLAINTIFFS and the other AGGRIEVED EMPLOYEES for required business expenses
4 incurred by PLAINTIFFS and other AGGRIEVED EMPLOYEES in direct consequence of
5 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
6 2802, employers are required to indemnify employees for all expenses incurred in the course
7 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
8 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
9 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
10 directions of the employer, even though unlawful, unless the employee, at the time of obeying
11 the directions, believed them to be unlawful."

12 27. In the course of their employment PLAINTIFFS and other AGGRIEVED
13 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
14 cellular phones as a result of and in furtherance of their job duties as employees for
15 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
16 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
17 result, in the course of their employment with DEFENDANT, PLAINTIFFS and other
18 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
19 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
20 for the benefit of DEFENDANT.

21 28. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
23 a matter of company policy, practice and procedure, intentionally and knowingly failed to
24 compensate PLAINTIFFS and the other AGGRIEVED EMPLOYEES for missed meal and rest
25 periods. This policy and practice of DEFENDANT is intended to purposefully avoid the
26 payment for all time worked as required by California law which allows DEFENDANT to
27 illegally profit and gain an unfair advantage over competitors who complied with the law. To
28 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against

1 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

2 29. By reason of this conduct applicable to PLAINTIFFS and all AGGRIEVED
3 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails
4 to accurately calculate and record all missed meal and rest periods and failed to pay all
5 minimum and overtime wages due to PLAINTIFFS and other AGGRIEVED EMPLOYEES.
6 The proper recording of these employees' missed meal and rest breaks is the DEFENDANT's
7 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
8 burden, DEFENDANT fails to properly calculate and/or pay all required compensation for work
9 performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and
10 regulations promulgated thereunder as herein alleged.

11 30. All of the conduct and violations alleged herein occurred during the PAGA
12 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
13 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
14 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
15 AJDAR 12157 (Certified for Publication 12/19/18).

16
17 **JURISDICTION AND VENUE**

18 31. This Court has jurisdiction over this Action pursuant to California Code of Civil
19 Procedure, Section 410.10.

20 32. Venue is proper in this Court pursuant to California Code of Civil Procedure,
21 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT, and
22 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
23 in this County and/or conducts substantial business in this County, and (ii) committed the
24 wrongful conduct herein alleged in this County against PLAINTIFFS and the AGGRIEVED
25 EMPLOYEES.

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1 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
2 PLAINTIFFS may now commence a representative civil action under PAGA pursuant to
3 Section 2699 as the proxies of the State of California with respect to all AGGRIEVED
4 EMPLOYEES as herein defined.

5 37. The policies, acts and practices heretofore described were and are an unlawful
6 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
7 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
8 properly record and provide legally required meal and rest periods, (c) failed to pay overtime
9 wages, (d) failed to pay minimum wages, (e) failed to reimburse employees for required
10 expenses, and (f) failed to pay wages when due, all in violation of the applicable Labor
11 Code sections listed in Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a),
12 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
13 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable
14 Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such
15 conduct.² PLAINTIFFS hereby seek recovery of only civil penalties as prescribed by the
16 Labor Code Private Attorney General Act of 2004 as the representatives of the State of
17 California for the illegal conduct perpetrated on PLAINTIFFS and the other AGGRIEVED
18 EMPLOYEES.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
22 severally, as follows:

23 1. On behalf of the State of California and with respect to all AGGRIEVED
24 EMPLOYEES:

25 A) Recovery of civil penalties as prescribed by the Labor Code Private
26 Attorneys General Act of 2004; and,

27
28 ²Plaintiffs specifically exclude and/or do not allege any claims under California Labor
Code §558(a)(3).

1 B) An award of attorneys' fees and cost of suit, as allowable under the
2 law, including, but not limited to, pursuant to Labor Code §2699.

3
4 Dated: May 26, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
5 LLP

6
7 By: /s/ Norman Blumenthal
8 Norman B. Blumenthal
9 Attorneys for Plaintiff
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