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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

14 KATHY MADISON and RAGEEM
15 MARABLE, on behalf of the State of
16 California, as private attorney generals,

17 Plaintiffs,

18 vs.

19 COMMUNITY ACTION PARTNERSHIP
20 OF SAN BERNARDINO COUNTY, a
21 California Nonprofit Corporation; and DOES
22 1 through 50, inclusive,

23 Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 31 2022

BY: Stephanie Garcia, Deputy

Case No. **CIV SB 22 19004**

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, 218, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).

1 Plaintiffs Kathy Madison and Rageem Marable (“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 Community Action Partnership of San
8 Bernardino County (referred to as “DEFENDANT”) seeking only to recover PAGA civil
9 penalties for themselves, and on behalf of all current and former aggrieved employees that
10 worked for DEFENDANT. PLAINTIFFS do **not seek to recover anything other than**
11 **penalties as permitted by California Labor Code § 2699.** To the extent that statutory
12 violations are mentioned for wage violations, PLAINTIFFS do not seek underlying general
13 and/or special damages for those violations, but simply the civil penalties permitted by
14 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 Community Action Partnership of San Bernardino County
25 (“DEFENDANT”) is a California Corporation that at all relevant times mentioned herein
26 conducted and continues to conduct substantial business in the state of California.

27 5. DEFENDANT provides support for low-income residents in San Bernardino
28

1 County.

2 6. Plaintiff Madison has been employed by DEFENDANT in California since
3 December of 2021 and has been at all times classified by DEFENDANT as a non-exempt
4 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
5 payment of minimum and overtime wages due for all time worked.

6 7. Plaintiff Marable has been employed by DEFENDANT in California since May
7 of 2021 and has been at all times classified by DEFENDANT as a non-exempt employee, paid
8 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
9 minimum and overtime wages due for all time worked.

10 8. 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 DEFENDANT in
14 California, including any employees staffed with DEFENDANT by a third party, and classified
15 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of May 2,
16 2021 until a date as determined by the Court (the "PAGA PERIOD").

17 9. 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, 218,
21 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
22 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
23 Order(s). Based upon the foregoing, PLAINTIFFS and all AGGRIEVED EMPLOYEES are
24 aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

25 10. The true names and capacities, whether individual, corporate, subsidiary,
26 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
27 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
28 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint

1 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
2 ascertained. PLAINTIFFS are informed and believe, and based upon that information and
3 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
4 inclusive, are responsible in some manner for one or more of the events and happenings that
5 proximately caused the injuries and damages hereinafter alleged.

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

14 THE CONDUCT

15
16 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
17 required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time worked,
18 meaning the time during which an employee is subject to the control of an employer, including
19 all the time the employee is suffered or permitted to work. DEFENDANT required
20 PLAINTIFFS and the AGGRIEVED EMPLOYEES to work without paying them for all the
21 time they were under DEFENDANT's control. Among other things, DEFENDANT required
22 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
23 duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while
24 clocked out for what should have been PLAINTIFFS' off-duty meal break. PLAINTIFFS and
25 the AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent
26 undergoing mandatory drug testing or any other testing and/or examination required as a
27 condition of employment. DEFENDANT, as a matter of established company policy and
28 procedure, administered a uniform practice of rounding the actual time worked and recorded

1 by PLAINTIFFS and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT,
2 so that during the course of their employment, PLAINTIFFS and the AGGRIEVED
3 EMPLOYEES were paid less than they would have been paid had they been paid for actual
4 recorded time rather than “rounded” time. Additionally, DEFENDANT engaged in the practice
5 of requiring PLAINTIFFS and the AGGRIEVED EMPLOYEES to perform work off the clock
6 in that DEFENDANT, as a condition of employment, required these employees to submit to
7 mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to
8 clocking into DEFENDANT’s timekeeping system for the workday. As a result, PLAINTIFFS
9 and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and
10 off-duty meal breaks by working without their time being correctly recorded and without
11 compensation at the applicable rates. DEFENDANT’s policy and practice not to pay
12 PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked, is evidenced by
13 DEFENDANT’s business records.

14 13. State law provides that employees must be paid overtime and meal and rest break
15 premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFFS and the
16 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
17 tied to specific elements of an employee’s performance.

18 14. The second component of PLAINTIFFS’ and the AGGRIEVED EMPLOYEES’
19 compensation was DEFENDANT’s non-discretionary incentive program that paid
20 PLAINTIFFS and the AGGRIEVED EMPLOYEES incentive wages based on their
21 performance for DEFENDANT. The non-discretionary incentive program provided all
22 employees paid on an hourly basis with incentive compensation when the employees met the
23 various performance goals set by DEFENDANT. However, when calculating the regular rate
24 of pay in order to pay overtime and meal and rest break premiums to PLAINTIFFS and the
25 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as
26 part of the employees’ “regular rate of pay” for purposes of calculating overtime pay and meal
27 and rest break premium pay. Management and supervisors described the incentive program to
28 potential and new employees as part of the compensation package. As a matter of law, the

1 incentive compensation received by PLAINTIFFS and the AGGRIEVED EMPLOYEES must
2 be included in the “regular rate of pay.” The failure to do so has resulted in a underpayment of
3 overtime compensation and meal and rest break premiums to PLAINTIFFS and the
4 AGGRIEVED EMPLOYEES by DEFENDANT.

5 15. As a result of their rigorous work schedules, PLAINTIFFS and the AGGRIEVED
6 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
7 and were not fully relieved of duty for their meal periods. PLAINTIFFS and the AGGRIEVED
8 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
9 for more than five (5) hours during some shifts without receiving a meal break. Further,
10 DEFENDANT from time to time failed to provide PLAINTIFFS and the AGGRIEVED
11 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
12 were required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged
13 in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFFS and
14 the AGGRIEVED EMPLOYEES. PLAINTIFFS and the AGGRIEVED EMPLOYEES
15 therefore forfeit meal breaks without additional compensation and in accordance with
16 DEFENDANT’s corporate policy and practice.

17 16. During the PAGA PERIOD, PLAINTIFFS and the AGGRIEVED EMPLOYEES
18 were also required from time to time to work in excess of four (4) hours without being provided
19 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
20 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
21 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
22 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
23 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
24 PLAINTIFFS and the AGGRIEVED EMPLOYEES were also not provided with one hour
25 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
26 to provide employees with off-duty rest periods, which the California Supreme Court defined
27 as time during which an employee is relieved from all work related duties and free from
28 employer control. In so doing, the Court held that the requirement under California law that

1 employers authorize and permit all employees to take rest period means that employers must
2 relieve employees of all duties and relinquish control over how employees spend their time
3 which includes control over the locations where employees may take their rest period.
4 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
5 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFFS and the
6 AGGRIEVED EMPLOYEES from unconstrained walks and is unlawful based on
7 DEFENDANT's rule which states PLAINTIFFS and the AGGRIEVED EMPLOYEES cannot
8 leave the work premises during their rest period.

9 17. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
10 PLAINTIFFS and the AGGRIEVED EMPLOYEES for the actual amount of time these
11 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
12 DEFENDANT was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all
13 time worked, meaning the time during which an employee was subject to the control of an
14 employer, including all the time the employee was permitted or suffered to permit this work.
15 DEFENDANT required these employees to work off the clock without paying them for all the
16 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
17 known that PLAINTIFFS and the AGGRIEVED EMPLOYEES were under compensated for
18 all time worked. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited time
19 worked by working without their time being accurately recorded and without compensation at
20 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
21 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
22 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
23 1197.1.

24 18. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
25 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
26 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
27 provides that every employer shall furnish each of his or her employees with an accurate
28 itemized wage statement in writing showing, among other things, gross wages earned and all

1 applicable hourly rates in effect during the pay period and the corresponding amount of time
2 worked at each hourly rate. PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid on
3 an hourly basis. As such, the wage statements should reflect all applicable hourly rates during
4 the pay period and the total hours worked, and the applicable pay period in which the wages
5 were earned pursuant to California Labor Code Section 226(a). The wage statements
6 DEFENDANT provided to PLAINTIFFS and the AGGRIEVED EMPLOYEES failed to
7 identify such information. More specifically, the wage statements failed to identify the accurate
8 total hours worked each pay period. When the hours shown on the wage statements were added
9 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
10 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT
11 failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under
12 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
13 PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements which violated Cal.
14 Lab. Code § 226.

15 19. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
16 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
17 wages are paid not more than seven (7) calendar days following the close of the payroll period.
18 Cal. Lab. Code § 210 provides:

19 [I]n addition to, and entirely independent and apart from, any other penalty provided in
20 this article, every person who fails to pay the wages of each employee as provided in
21 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
22 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
23 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
24 for each failure to pay each employee, plus 25 percent of the amount unlawfully
25 withheld.

26 20. DEFENDANT from time to time failed to pay PLAINTIFFS and the
27 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
28 accordance with Cal. Lab. Code § 204(d).

21 21. DEFENDANT underpaid sick pay wages to PLAINTIFFS and the AGGRIEVED
22 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
23 Code Section 246. Specifically, PLAINTIFFS and other non-exempt employees earn non-

1 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
2 underpaid sick pay to PLAINTIFFS and the AGGRIEVED EMPLOYEES at their base rates of
3 pay.

4 22. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
5 employees be calculated by dividing the employee's total wages, not including overtime
6 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
7 of employment.

8 23. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
9 the regular rate of pay. PLAINTIFFS and the AGGRIEVED EMPLOYEES routinely earned
10 non-discretionary incentive wages which increased their regular rate of pay. However, when
11 sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and the AGGRIEVED
12 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
13 Code Section 246.

14 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
15 to collect or receive from an employee any part of wages theretofore paid by said employer to
16 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and the
17 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
18 PLAINTIFFS and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
19 deductions from compensation payable to PLAINTIFFS and the AGGRIEVED EMPLOYEES,
20 and thereby failed to pay these employees all wages due at each applicable pay period and upon
21 termination.

22 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
23 PLAINTIFFS and the AGGRIEVED EMPLOYEES for required business expenses incurred
24 by the PLAINTIFFS and the AGGRIEVED EMPLOYEES in direct consequence of discharging
25 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
26 are required to indemnify employees for all expenses incurred in the course and scope of their
27 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
28 her employee for all necessary expenditures or losses incurred by the employee in direct

1 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
2 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
3 believed them to be unlawful."

4 26. In the course of their employment PLAINTIFFS and the AGGRIEVED
5 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
6 cellular phones as a result of and in furtherance of their job duties as employees for
7 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
8 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
9 PLAINTIFFS and the AGGRIEVED EMPLOYEES were required by DEFENDANT to use
10 their personal cellular phones. As a result, in the course of their employment with
11 DEFENDANT, PLAINTIFFS and the AGGRIEVED EMPLOYEES incurred unreimbursed
12 business expenses which included, but were not limited to, costs related to the use of their
13 personal cellular phones all on behalf of and for the benefit of DEFENDANT.

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

19 **JURISDICTION AND VENUE**

20 28. This Court has jurisdiction over this Action pursuant to California Code of Civil
21 Procedure, Section 410.10.

22 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
23 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and
24 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
25 in this County and/or conducts substantial business in this County, and (ii) committed the
26 wrongful conduct herein alleged in this County against PLAINTIFFS and other AGGRIEVED
27 EMPLOYEES.
28

1 **FIRST CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

3 **[Cal. Lab. Code §§ 2698, *et seq.*]**

4 **(By PLAINTIFFS and Against All Defendants)**

5 30. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

7 31. PAGA is a mechanism by which the State of California itself can enforce state
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
9 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
10 fundamentally a law enforcement action designed to protect the public and not to benefit private
11 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
12 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
13 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
14 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
15 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
16 subject to arbitration.

17 32. PLAINTIFFS, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, bring this Representative Action on behalf of the State of California with respect to
20 themselves and all individuals who are or previously were employed by DEFENDANT in
21 California, including any employees staffed with DEFENDANT by a third party, and classified
22 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of May 2,
23 2021 until a date as determined by the Court (the "PAGA PERIOD").

24 33. On May 2, 2022, PLAINTIFFS gave written notice by electronic mail to the Labor
25 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
26 the specific provisions of this code alleged to have been violated as required by Labor Code §
27 2699.3. The statutory waiting period for PLAINTIFFS to add these allegations to the Complaint
28 has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now commence a

1 representative civil action under PAGA pursuant to Section 2699 as the proxies of the State of
2 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

3 34. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
5 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
6 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
7 to pay overtime wages and sick pay wages, and (e) failed to reimburse employees for required
8 expenses, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
9 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197,
10 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-
11 (B), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of
12 such conduct.¹ PLAINTIFFS hereby seek recovery of only civil penalties as prescribed by the
13 Labor Code Private Attorney General Act of 2004 as the representatives of the State of
14 California for the illegal conduct perpetrated on PLAINTIFFS and the AGGRIEVED
15 EMPLOYEES.

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
19 severally, as follows:

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

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

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

26
27
28 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
Code §558(a)(3).

1 Dated: August 31, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2
3
4 By:


Norman B. Blumenthal
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