

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation Against:

LION PHARMACY

Pharmacy License No. PHY 52544; and

CHI MAI

Pharmacist License No. RPH 66348,

Respondents

Agency Case No. 6406

OAH No. 2019081152

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public Repeval is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on April 15, 2020.

It is so ORDERED on March 16, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", written in a cursive style.

By

Greg Lippe
Board President

1 XAVIER BECERRA
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 CHRISTOPHER M. YOUNG
Deputy Attorney General
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Attorneys for Complainant
7

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation
Against:

13 **LION PHARMACY**
14 **2857 Senter Road, Suite A**
15 **San Jose, CA 95111**
Pharmacy License No. PHY 52544

16 **CHI MAI**
17 **1625 Hermocilla Way**
San Jose, CA 95116
18 **Pharmacist License No. RPH 66348**

19 Respondents.

Case No. 6406

OAH No. 2019081152

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL AS TO RESPONDENT
LION PHARMACY ONLY**

20
21 In the interest of a prompt and speedy settlement of this matter, consistent with the public
22 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
23 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order for Public
24 Reproval which will be submitted to the Board for approval and adoption as the final disposition
25 of the Accusation solely with respect to Lion Pharmacy.

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1 **PARTIES**

2 1. Anne Sodergren (Complainant) is the Interim Executive Officer of the Board of
3 Pharmacy (Board). She brought this action solely in her official capacity and is represented in
4 this matter by Xavier Becerra, Attorney General of the State of California, by Christopher M.
5 Young, Deputy Attorney General.

6 2. Respondent Lion Pharmacy Inc. (Respondent) is represented in this proceeding by
7 attorney Ivan Petrzelka, whose address is: P.O. Box 552, Red Bluff, CA 96080

8 3. On or about May 11, 2015, the Board issued Pharmacy License No. PHY 52544 to
9 Respondent. The Pharmacy License was in full force and effect at all times relevant to the
10 charges brought in First Amended Accusation No. 6406, and will expire on May 1, 2020, unless
11 renewed.

12 **JURISDICTION**

13 4. Accusation No. 6406 was filed before the Board, and is currently pending against
14 Respondent. The Accusation and all other statutorily required documents were properly served
15 on Respondent on September 19, 2018. First Amended Accusation No. 6406 was filed before the
16 Board, and is currently pending against Respondent. The First Amended Accusation and all other
17 statutorily required documents were properly served on Respondent on October 9, 2018.
18 Respondent timely filed its Notice of Defense contesting the Accusation.

19 5. A copy of First Amended Accusation No. 6406 is attached as exhibit A and
20 incorporated herein by reference.

21 **ADVISEMENT AND WAIVERS**

22 6. Respondent has carefully read, fully discussed with counsel, and understands the
23 charges and allegations in First Amended Accusation No. 6406. Respondent has also carefully
24 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
25 Disciplinary Order for Public Reprimand.

26 7. Respondent is fully aware of its legal rights in this matter, including the right to a
27 hearing on the charges and allegations in the First Amended Accusation; the right to confront and
28 cross-examine the witnesses against them; the right to present evidence and to testify on its own

1 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
2 production of documents; the right to reconsideration and court review of an adverse decision;
3 and all other rights accorded by the California Administrative Procedure Act and other applicable
4 laws.

5 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
6 every right set forth above.

7 **CULPABILITY**

8 9. Respondent understands and agrees that the charges and allegations in First Amended
9 Accusation No. 6406, if proven at a hearing, constitute cause for imposing discipline upon its
10 Pharmacy License.

11 10. For the purpose of resolving the First Amended Accusation without the expense and
12 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
13 establish a factual basis for the charges in the First Amended Accusation, and that Respondent
14 hereby gives up its right to contest those charges.

15 11. Respondent agrees that its Pharmacy License is subject to discipline and they agree to
16 be bound by the Board's Disciplinary Order for Public Reproval below.

17 **CONTINGENCY**

18 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
19 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
20 communicate directly with the Board regarding this stipulation and settlement, without notice to
21 or participation by Respondent or its counsel. By signing the stipulation, Respondent understands
22 and agrees that they may not withdraw its agreement or seek to rescind the stipulation prior to the
23 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its
24 Decision and Order, the Stipulated Settlement and Disciplinary Order for Public Reproval shall
25 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
26 between the parties, and the Board shall not be disqualified from further action by having
27 considered this matter.
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13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order for Public Reproval, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order for Public Reprimand is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order for Public Reprimand may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy License No. PHY 52544 issued to Respondent Lion Pharmacy, Inc. (Respondent) shall be publicly reprovved by the Board of Pharmacy under Business and Professions Code section 495 in resolution of First Amended Accusation No. 6406 as to Respondent Lion Pharmacy only, attached as exhibit A.

Cost Recovery. Respondent Lion Pharmacy shall pay \$2,067.00 to the Board for its costs associated with the investigation and enforcement of this matter. Respondent must pay these costs within sixty (60) days of the effective date of the Disciplinary Order, below. If Respondent fails to pay the Board costs as ordered, Respondent shall not be allowed to renew its Pharmacy License until Respondent pays costs in full.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Repeval and have fully discussed it with my attorney, Ivan Petrzelka. I understand the stipulation and the effect it will have on my Pharmacy License. I enter into this Stipulated Settlement and Disciplinary Order for Public Repeval voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED:

1/20/20


CHI HOA MAI

LION PHARMACY
Respondent

DATED:

1-20-20


AN DUY NGUYEN

LION PHARMACY
Respondent

DATED:

1/20/2020



PHILLIP THELAN PHAM

LION PHARMACY
Respondent

I have read and fully discussed with Respondent the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Repeval. I approve its form and content.

DATED:

January 21, 2020


IVAN PETRZELKA
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reapproval is hereby respectfully submitted for consideration by the Board of Pharmacy.

DATED: 1/31/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General



CHRISTOPHER M. YOUNG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 6406

1 XAVIER BECERRA
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2 JOSHUA A. ROOM
Supervising Deputy Attorney General
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E-mail: Chris.Young@doj.ca.gov
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the First Amended Accusation
Against:

Case No. 6406

14 **LION PHARMACY**
15 **2857 Senter Road, Suite A**
San Jose, CA 95111
16 **Pharmacy License No. PHY 52544**

FIRST AMENDED ACCUSATION

17 **CHI MAI**
18 **1625 Hermocilla Way**
San Jose, CA 95116
19 **Pharmacist License No. RPH 66348**

20 Respondents.

21
22 **PARTIES**

23 1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her
24 official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of
25 Consumer Affairs.

26 2. On or about May 11, 2015, the Board of Pharmacy issued Pharmacy License Number
27 PHY 52544 to Lion Pharmacy Inc. (Respondent Pharmacy). Respondent Pharmacy is owned by
28 Chi Hoa Mai (Respondent Mai, RPH No. 66348) along with Phillip Thelan Pham (RPH No.

63752) and An Duy Nguyen (RPH No. 63497). The Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2019, unless renewed.

3. On or about October 19, 2011, the Board issued Pharmacist License No. RPH 66348 to Respondent Mai. The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2019, unless renewed.

JURISDICTION

4. This First Amended Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Code section 4011 provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

6. Code section 4300, subdivision (a), provides that every license issued by the Board may be suspended or revoked.

7. Code section 4300.1 provides that the expiration, cancellation, forfeiture, suspension, or voluntary surrender of a license "shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

8. Code section 4307, subdivision (a), states:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of any partnership, corporation, trust, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

1 (2) Where the license is denied or revoked, the prohibition shall continue until the
license is issued or reinstated.

2 **STATUTORY PROVISIONS**

3 9. Code section 4059, subdivision (a), states:

4 (a) A person may not furnish any dangerous drug, except upon the prescription of a
5 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
6 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
7 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
8 3640.7.

9 10. Code section 4113, subdivision (c), states:

10 (c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all
11 state and federal laws and regulations pertaining to the practice of pharmacy.

12 11. Code section 4301 states, in pertinent part:

13 The board shall take action against any holder of a license who is guilty of unprofessional
14 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is
15 not limited to, any of the following:

16 ...

17 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
18 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
19 whether the act is a felony or misdemeanor or not.

20 (g) Knowingly making or signing any certificate or other document that falsely
21 represents the existence or nonexistence of a state of facts.

22 ...

23 (j) The violation of any of the statutes of this state, of any other state, or of the United
24 States regulated controlled substances and dangerous drugs.

25 ...

26 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation or conspiring to violate any provision or term of this chapter or of the applicable federal
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1 and state laws and regulations governing pharmacy, including regulations established by the
2 board or by any other state or federal regulatory agency.

3 12. Code section 4306.5, subdivision (a), provides, in pertinent part, that unprofessional
4 conduct for a pharmacist may include acts or omissions that involve, in whole or in part, the
5 inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or
6 not the act or omission arises in the course of the practice of pharmacy or the ownership,
7 management, administration, or operation of a pharmacy or other entity licensed by the board.

8 13. Health & Safety Code section 11165, subdivision (d), states, in pertinent part:

9 (d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled
10 substance, as defined in the controlled substances schedules in federal law and regulations, the
11 dispensing pharmacy, clinic, or other dispenser shall report to the Department of Justice as soon
12 as reasonably possible, but not more than seven days after the date a controlled substance is
13 dispensed, in a format specified by the Department of Justice.

14 **REGULATORY PROVISIONS**

15 14. California Code of Regulations, title 16, section 1716, states: Pharmacists shall not
16 deviate from the requirements of a prescription except upon the prior consent of the prescriber or
17 to select the drug product in accordance with Section 4073 of the Business and Professions Code.
18 Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-
19 accepted pharmaceutical practice in the compounding or dispensing of a prescription.

20 **COST RECOVERY**

21 15. Code section 125.3 provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licensee found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 **FACTUAL BACKGROUND**

26 16. Respondent Pharmacy, located in San Jose, California, failed to return undelivered
27 inventory to its stock and failed to ensure compliance with applicable reporting laws as described
28 below. Respondent Mai, as Pharmacist in Charge (PIC) at Respondent Pharmacy from May 11,

1 2015 through the present, was responsible for ensuring compliance with all applicable laws.

2 Respondent Mai, as described below, dispensed medications without a prescription, and falsified
3 prescription information, at her job at CVS Pharmacy, which terminated her on August 3, 2015.

4 17. On or about October 25, 2016, pursuant to an inspection, inspectors discovered
5 numerous prescriptions in the pick-up area of Respondent Pharmacy dating back several months.
6 The industry standard is to reverse the billing to the third party insurance company within 14 days
7 after the prescription is billed, since the third party usually makes reimbursement payment on a
8 30-day cycle. Respondent Pharmacy's policy indicated that it would return to stock any
9 prescriptions not picked up within 10 days. Following the inspection, Respondent Pharmacy
10 electronically reversed over 123 prescriptions to insurance companies and manually reversed
11 numerous other prescriptions too old to process electronically.

12 18. On or about October 25, 2016, Respondent Pharmacy produced records of its most
13 recent CURES submission, which occurred on or about September 27, 2016. Respondent
14 Pharmacy failed to submit CURES data for three weeks from September 28, 2016. Moreover, the
15 records available indicated inconsistent transmission of CURES data.

16 19. Respondent Mai, from approximately September 2013 through August 3, 2015, while
17 employed by CVS Pharmacy, furnished dangerous drugs to patients HL and VL without a
18 legitimate prescription from a prescriber, and duplicated/overfilled dangerous drugs in unknown
19 quantities. The dangerous drugs dispensed included Voltaren gel, amlodipine, spironolactone,
20 furosemide, atorvastatin, Cialis, and triamcinolone 0.1% cream, without authorization from a
21 prescriber, and generated false records of authorization for these dangerous drugs. Respondent
22 Mai further generated false records of authorization for over-the-counter products. Respondent
23 admitted that she dispensed these drugs to HL and VL, and falsified records of authorization,
24 while employed at CVS Pharmacy.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Respondent Pharmacy and Respondent Mai as PIC)

3 (Unprofessional Conduct-Failure to Return Prescriptions to Stock)

4 20. Respondent Pharmacy and Respondent Mai are subject to disciplinary action under
5 Code section(s) 4113(c), 4301, and/or 4306.5, for failure to follow Pharmacy policy and industry
6 standards regarding returning to stock prescriptions not picked up by a patient after billed to
7 insurance, as described above in paragraph 17, and incorporated herein.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Respondent Pharmacy and Respondent Mai as PIC)

10 (Failure to Report CURES Data)

11 21. Respondent Pharmacy and Respondent Mai are subject to disciplinary action under
12 Code section(s) 4301(j) and/or (o), 4113(c), and/or Health and Safety Code section 11165(d), for
13 failure to transmit the dispensed controlled substance prescriptions data to CURES on a weekly
14 basis, as described above in paragraph 18, and incorporated herein.

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Respondent Mai)

17 (Furnishing Drugs without Prescription)

18 22. Respondent Mai is subject to disciplinary action under Code section(s) 4301(j) and/or
19 (o), and/or 4059(a), and/or California Code of Regulations, Section 1716, for furnishing
20 dangerous drugs without a prescription from a prescriber, and duplicating/overfilling dangerous
21 drugs in unknown quantities, as described above in paragraph 19, and incorporated herein.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 (Respondent Mai)

24 (Dishonest Conduct—Providing Drugs without Prescription and Falsifying Records)

25 23. Respondent Mai is subject to disciplinary action under Code section(s) 4301(f) and/or
26 (g), and/or 4306.5(a) for furnishing dangerous drugs without a prescription from a prescriber, and
27 duplicating/overfilling dangerous drugs in unknown quantities, as described above in paragraph
28 19, and incorporated herein.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Respondent Mai)

3 **(Unprofessional Conduct—Providing Drugs without Prescription, Falsifying Records)**

4 24. Respondent Mai is subject to disciplinary action under Code section(s) 4301(f) and/or
5 (g), and/or 4306.5(a) for furnishing dangerous drugs without a prescription from a prescriber, and
6 duplicating/overfilling dangerous drugs in unknown quantities, as described above in paragraph
7 19, and incorporated herein.

8 **OTHER MATTERS**

9 25. Pursuant to Code sections 4035 and 4307, if discipline is imposed on Pharmacy
10 License Number PHY 52544 issued to Respondent Lion Pharmacy Inc., Lion Pharmacy Inc. shall
11 be prohibited from serving as a manager, administrator, owner, member, officer, director,
12 associate, or partner of a licensee for five years if Pharmacy License Number PHY 52544 is
13 placed on probation, or until reinstatement if Pharmacy License Number PHY 52544 is revoked.

14 26. Pursuant to Code section 4307, if discipline is imposed on Pharmacy License Number
15 PHY 52544 issued to Respondent Pharmacy while Respondent Mai was an owner, and had
16 knowledge of or knowingly participated in any conduct for which the licensee was disciplined,
17 Respondent Mai shall be prohibited from serving as a manager, administrator, owner, member,
18 officer, director, associate, or partner of a licensee for five years if Pharmacy License Number
19 PHY 52544 is placed on probation, or until reinstatement if Pharmacy License Number PHY
20 52544 is revoked.

21 27. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License
22 Number RPH 66348 issued to Respondent Mai, Respondent Mai shall be prohibited from serving
23 as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee
24 for five years if Pharmacist License Number RPH 66348 is placed on probation, or until
25 reinstatement if Pharmacist License Number RPH 66348 is revoked.

26 **DISCIPLINARY CONSIDERATIONS**

27 28. On or about July 2, 2018, Respondent Pharmacy was issued Citation No. 2016 75374
28 for failing to ensure that customers received written notice of their right to request a consultation

1 with a pharmacist under Code of Regulations Title 16, section 1707.2, subd. (B)(2)(A), and for
2 failing to ensure pharmacy technicians were wearing appropriate identification under Code of
3 Regulations Title 16, section 1793.7, subd. (c). Respondent Pharmacy was assessed a penalty of
4 \$2,750. Respondent Pharmacy complied with the citation and paid the fine.

5 29. On or about July 2, 2018, Respondent Mai was issued Citation No. 2017 80432 for
6 failing to ensure that customers received written notice of their right to request a consultation with
7 a pharmacist under Code of Regulations Title 16, section 1707.2, subd. (B)(2)(A), and for failing
8 to ensure pharmacy technicians were wearing appropriate identification under Code of
9 Regulations Title 16, section 1793.7, subd. (c). Respondent Mai was assessed a penalty of \$750.
10 Respondent Mai complied with the citation and paid the fine.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Pharmacy issue a decision:

14 1. Revoking or suspending Pharmacy License No. PHY 52544 issued to Lion Pharmacy
15 (Respondent Pharmacy);

16 2. Revoking or suspending Pharmacist License No. RPH 66348 issued to Chi Hoa Mai
17 (Respondent Mai);

18 3. Prohibiting Respondent Mai from serving as a manager, administrator, owner,
19 member, officer, director, associate, or partner of a licensee for five years if Pharmacy License
20 Number PHY 52544 is placed on probation, or until reinstatement if Pharmacy License Number
21 PHY 52544 is revoked.

22 4. Ordering Respondent Pharmacy and Respondent Mai, jointly and severally, to pay the
23 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
24 pursuant to Business and Professions Code section 125.3; and,

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5. Taking such other and further action as deemed necessary and proper.

DATED: 9/28/18 Virginia Herold

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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