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

12 In the Matter of the Accusation Against:

13 **JONATHAN ANDREW BAUER**
14 **15555 Huntington Village Lane, Apt #80**
Huntington Beach, CA 92647

15 **Pharmacy Technician License No. TCH**
16 **140352**

17 Respondent.
18

Case No. 7471

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

19
20 **FINDINGS OF FACT**

21 1. On or about July 20, 2023, Complainant Anne Sodergren, in her official capacity as
22 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
23 Accusation No. 7471 against Jonathan Andrew Bauer (Respondent) before the Board of
24 Pharmacy. (Accusation attached as Exhibit A.)

25 2. On or about June 27, 2014, the Board of Pharmacy (Board) issued Pharmacy
26 Technician License No. TCH 140352 to Respondent. The Pharmacy Technician License was in
27 full force and effect at all times relevant to the charges brought in Accusation No. 7471 and
28 expired on August 31, 2023, and has not been renewed.

1 3. On or about July 27, 2023, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 7471, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is 15555 Huntington Village Lane, Apt #80, Huntington Beach, CA 92647.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505(c) and/or Business and Professions Code section 124.

9 5. Government Code section 11506(c) states, in pertinent part:

10 (c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense . . . and the notice shall be deemed a specific denial of all
12 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
13 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
14 discretion may nevertheless grant a hearing.

15 6. The Board takes official notice of its records and the fact that Respondent failed to
16 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
17 waived his right to a hearing on the merits of Accusation No. 7471.

18 7. California Government Code section 11520(a) states, in pertinent part:

19 (a) If the respondent either fails to file a notice of defense . . . or to appear at
20 the hearing, the agency may take action based upon the respondent's express
21 admissions or upon other evidence and affidavits may be used as evidence without
22 any notice to respondent

23 8. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
26 finds that the charges and allegations in Accusation No. 7471, are separately and severally, found
27 to be true and correct by clear and convincing evidence.

28 9. The Board finds that the actual costs for Investigation and Enforcement are
\$10,340.75 as of December 7, 2023.

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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Jonathan Andrew Bauer has
3 subjected his Pharmacy Technician License No. TCH 140352 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
6 License based upon the following violations alleged in the Accusation which are supported by the
7 evidence contained in the Default Decision Investigatory Evidence Packet in this case:

8 a. Respondent is subject to disciplinary action under Code section 4059
9 subdivision (a), and 4060, in conjunction with Health and Safety Code sections 11170 and 11350,
10 subdivision (a), on the grounds of unprofessional conduct, in that Respondent unlawfully
11 obtained two hydrocodone/acetaminophen 5-325 mg tablets without a valid prescription.

12 b. Respondent has also subjected his Pharmacy Technician Registration to
13 disciplinary action under Code section 4301, subdivisions (f), (j) and (o), in conjunction with
14 Health and Safety Code sections 11173, subdivision (a) in that Respondent committed acts of
15 moral turpitude, dishonesty and fraud in that he diverted hydrocodone/acetaminophen.

16 c. Respondent is subject to also subject to disciplinary action under Code section
17 4301 subdivision (l), the grounds of unprofessional conduct, in that Respondent was convicted of
18 driving under the influence on August 8, 2022, based on an arrest for driving under the influence
19 on May 30, 2022.

20 d. Respondent has also subjected his Pharmacy Technician Registration to
21 disciplinary action under Code section 4301, subdivisions (h), in that Respondent on or about
22 May 30, 2022, Respondent used alcohol in a manner dangerous to himself and others.

23 **ORDER**

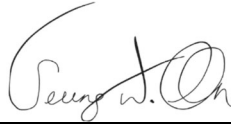
24 IT IS SO ORDERED that Pharmacy Technician License No. TCH 140352, issued to
25 Respondent Jonathan Andrew Bauer, is revoked.

26 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
27 written motion requesting that the Decision be vacated and stating the grounds relied on within
28

1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

3 This Decision shall become effective at 5:00 p.m. on March 15, 2024.

4 It is so ORDERED on February 14, 2024.

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7 _____
8 Seung W. Oh, Pharm.D.
9 Board President
10 FOR THE BOARD OF PHARMACY
11 DEPARTMENT OF CONSUMER AFFAIRS

12 DOJ Matter ID:SD2023800450

13 Attachment:
14 Exhibit A: Accusation
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Exhibit A

Accusation

1 ROB BONTA
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Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 7471

14 **JONATHAN ANDREW BAUER**
15555 Huntington Village Lane, Apt #80
15 Huntington Beach, CA 92647

ACCUSATION

16 **Pharmacy Technician License No. TCH**
17 **140352**

Respondent.

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20 **PARTIES**

21 1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

23 2. On or about June 27, 2014, the Board issued Pharmacy Technician License Number
24 TCH 140352 to Jonathan Andrew Bauer (Respondent). The Pharmacy Technician License was in
25 full force and effect at all times relevant to the charges brought herein and will expire on August
26 31, 2023, unless renewed.

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1 **JURISDICTION**

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

5 4. Code section 4300, subdivision (a), states, "Every license issued may be suspended or
6 revoked."

7 5. Code section 4300.1 states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license
9 by operation of law or by order or decision of the board or a court of law, the placement
10 of a license on a retired status, or the voluntary surrender of a license by a licensee shall
11 not deprive the board of jurisdiction to commence or proceed with any investigation
12 of, or action or disciplinary proceeding against, the licensee or to render a decision
13 suspending or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Code section 482 states:

14 (a) Each board under this code shall develop criteria to evaluate the rehabilitation
15 of a person when doing either of the following:

16 (1) Considering the denial of a license by the board under Section 480.

17 (2) Considering suspension or revocation of a license under Section 490.

18 (b) Each board shall consider whether an applicant or licensee has made a
19 showing of rehabilitation if either of the following are met:

20 (1) The applicant or licensee has completed the criminal sentence at issue
21 without a violation of parole or probation.

22 (2) The board, applying its criteria for rehabilitation, finds that the applicant
23 is rehabilitated.

24 ...

25 (d) This section shall become operative on July 1, 2020.

26 7. Code section 490 provides, in pertinent part, that a board may suspend or revoke a
27 license on the ground that the licensee has been convicted of a crime substantially related to the
28 qualifications, functions, or duties of the business or profession for which the license was issued.

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1 8. Code section 493 states:

2 (a) Notwithstanding any other law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or
4 revoke a license or otherwise take disciplinary action against a person who holds a
5 license, upon the ground that the applicant or the licensee has been convicted of a crime
substantially related to the qualifications, functions, and duties of the licensee in
question, the record of conviction of the crime shall be conclusive evidence of the fact
that the conviction occurred, but only of that fact.

6 (b) (1) Criteria for determining whether a crime is substantially related to the
7 qualifications, functions, or duties of the business or profession the board regulates
shall include all of the following:

8 (A) The nature and gravity of the offense.

9 (B) The number of years elapsed since the date of the offense.

10 (C) The nature and duties of the profession.

11 (2) A board shall not categorically bar an applicant based solely on the type
12 of conviction without considering evidence of rehabilitation.

13 (c) As used in this section, "license" includes "certificate," "permit," "authority,"
14 and "registration."

15 ...

16 (e) This section shall become operative on July 1, 2020.

17 9. Section 4059 of the Code, in pertinent part:

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

20 ...

21 10. Section 4060 of the Code states:

22 No person shall possess any controlled substance, except that furnished to a
23 person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
24 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
25 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
26 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
shall not apply to the possession of any controlled substance by a manufacturer,
27 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
28 physician assistant, when in stock in containers correctly labeled with the name and
address of the supplier or producer.

1 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
2 physician assistant, or a naturopathic doctor, to order his or her own stock of
3 dangerous drugs and devices.

4 11. Code section 4301 states:

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

7 ...

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

10 ...

11 (j) The violation of any of the statutes of this state, of any other state, or of the
12 United States regulating controlled substances and dangerous drugs.

13 ...

14 (h) The administering to oneself, of any controlled substance, or the use of any
15 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous
or injurious to oneself, to a person holding a license under this chapter, or to any other
16 person or to the public, or to the extent that the use impairs the ability of the person to
conduct with safety to the public the practice authorized by the license.

17 ...

18 (l) The conviction of a crime substantially related to the qualifications, functions,
19 and duties of a licensee under this chapter. The record of conviction of a violation of
Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
20 regulating controlled substances or of a violation of the statutes of this state regulating
controlled substances or dangerous drugs shall be conclusive evidence of
21 unprofessional conduct. In all other cases, the record of conviction shall be conclusive
evidence only of the fact that the conviction occurred. The board may inquire into the
22 circumstances surrounding the commission of the crime, in order to fix the degree of
discipline or, in the case of a conviction not involving controlled substances or
23 dangerous drugs, to determine if the conviction is of an offense substantially related to
the qualifications, functions, and duties of a licensee under this chapter. A plea or
24 verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a
conviction within the meaning of this provision. The board may take action when the
25 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
or when an order granting probation is made suspending the imposition of sentence,
26 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the
person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting
27 aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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

8

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10 12. Health and Safety Code section 11350, subdivision (a), states, in pertinent part:

11 Except as otherwise provided in this division, every person who possesses (1) any
12 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of
13 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
14 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
15 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
16 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the
17 written prescription of a physician, dentist, podiatrist, or veterinarian
18 licensed to practice in this state, shall be punished by imprisonment in a county jail
19 for not more than one year, except that such person shall instead be punished pursuant
20 to subdivision (h) of Section 1170 of the Penal Code if that person has one or more
21 prior convictions for an offense specified in clause (iv) of subparagraph (C) of
22 paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense
23 requiring registration pursuant to subdivision (c) of Section 290
24 of the Penal Code.”

25 13. Health and Safety Code section 11373, subdivision (a), states, in pertinent part:

26 (a) No person shall obtain or attempt to obtain controlled substances, or procure
27 or attempt to procure the administration of or prescription for controlled substances,
28 (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a
material fact.

(b) No person shall make a false statement in any prescription, order, report, or
record, required by this division.

(c) No person shall, for the purpose of obtaining controlled substances, falsely
assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist,
physician, dentist, veterinarian, registered nurse, physician's assistant, or other
authorized person.

(d) No person shall affix any false or forged label to a package or receptacle
containing controlled substances

25 14. Health and Safety Code section 11377, subdivision (a), states, in pertinent part:

26 Except as authorized by law and as otherwise provided in subdivision (b) or Section
27 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of
28 the Business and Professions Code, every person who possesses any controlled
substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic
drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14),

(15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.

15. Health and Safety Code section 11170 states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

16. Health and Safety Code section 11173 states:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant, or other authorized person.

(d) No person shall affix any false or forged label to a package or receptacle containing controlled substances.

REGULATORY PROVISIONS

17. California Code of Regulations, title 16, section 1769, subdivision (c), states:

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee has been convicted of a crime, the board will consider whether the licensee made a showing of rehabilitation and is presently fit for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board will consider the criteria in subdivisions (b)(1)(A) through (E). If the licensee has not completed the criminal sentence at issue without a violation of parole or probation or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivisions (b)(1)(A) through (E), the board will apply the following criteria in evaluating the licensee's rehabilitation:

(1) Nature and gravity of the act(s) or offenses.

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offenses.

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) The criteria in subdivisions (b)(1)(A) through (E), as applicable.

(6) Evidence, if any, of rehabilitation submitted by the licensee, including as provided in the board's Disciplinary Guidelines, identified in section 1760.

18. California Code of Regulations, title 16, section 1770, states:

(a) For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of the practice, profession, or occupation that may be performed under the license type sought or held if to a substantial degree it evidences present or potential unfitness of an applicant or licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the board will consider the following criteria:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of the practice, profession, or occupation that may be performed under the license type sought or held.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, those which:

...

(5) Involve a conviction for driving under the influence of drugs or alcohol.

COST RECOVERY

19. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud and Deceit – Diversion**
3 **of Hydrocodone/Acetaminophen)**

4 26. Respondent is subject to disciplinary action under Code section 4301,
5 subdivisions (f), (j), and (o), in conjunction with Health and Safety Code section 11173,
6 subdivision (a), on the grounds of unprofessional conduct, in that Respondent committed acts
7 involving moral turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to, and
8 by this reference incorporates, the allegations set for above in paragraphs 21 through 24,
9 inclusive, as though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(August 8, 2022 Criminal Conviction for DUI on May 30, 2022)**

12 27. Respondent has subjected his Pharmacy Technician Registration to disciplinary
13 action under Code sections 490 and 4301, subdivisions (h) and (l), because he was convicted of a
14 crime that is substantially related to the qualifications, functions, and duties of a pharmacy
15 technician. On August 8, 2022, in a criminal proceeding entitled *The People of the State of*
16 *California v. Jonathan Andrew Bauer*, in San Diego County Superior Court, Case Number
17 CN435102, Respondent pleaded guilty and was convicted of driving under the influence of
18 alcohol (DUI) (Veh. Code, § 23152, subd. (b), driving with blood alcohol concentration (BAC) of
19 0.08 percent or more), a misdemeanor. The court found, and Respondent admitted to, the
20 enhanced violation of (Veh. Code, § 23578, driving with a BAC of .15 percent or more), a
21 misdemeanor. The court imposed probation for five years, with standard alcohol conditions.
22 Respondent was ordered to pay court fines and to complete a three-month First Conviction DUI
23 Program and the Mothers Against Drunk Driving (MADD) Victim Impact Panel.

24 28. The circumstances that led to the convictions are that on May 30, 2022, at about
25 11:10 p.m., officers with the California Highway Patrol responded to a traffic collision on the
26 freeway in San Diego, California. Upon arrival, the officer located an unoccupied vehicle on its
27 roof. An officer approached the back of the ambulance, which was at the scene, and observed the
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1 driver, later identified as Respondent. The officer immediately detected the odor of an alcoholic
2 beverage emitting from Respondent's person. Respondent had red, glassy, watery eyes, and
3 slurred speech. During questioning, Respondent denied consuming alcohol prior to driving.
4 Assisting officers conducting the investigation determined that Respondent was driving at an
5 unsafe speed and collided with the yellow plastic impact attenuators, causing his vehicle to roll
6 over. Respondent was arrest for DUI. During booking, Respondent provided a blood sample,
7 which registered Respondent's BAC result as .219%.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Dangerous Use of Alcohol on May 30, 2022)**

10 29. Respondent has further subjected his Pharmacy Technician Registration to
11 disciplinary action under Code sections 490 and 4301, subdivision (h), because he used alcohol in
12 a manner dangerous to himself and others, as set forth above in paragraphs 27 and 28 above,
13 incorporated herein by reference

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board issue a decision:

- 17 1. Revoking or suspending Pharmacy Technician License Number TCH 140352, issued
18 to Jonathan Andrew Bauer;
- 19 2. Ordering Jonathan Andrew Bauer to pay the Board the reasonable costs of the
20 investigation and enforcement of this case, pursuant to Code section 125.3; and,
- 21 3. Taking such other and further action as deemed necessary and proper.
- 22

23 DATED: 7/20/2023

24 Sodergren,
25 Anne@DCA

26 ANNE SODERGREN
27 Executive Officer
28 Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

Digitally signed by
Sodergren, Anne@DCA
Date: 2023.07.20 21:18:35
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