

21-23-00693650
OOCp

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAËL BORDELEAU-TASSILE

Plaintiff

- and -

**CANACCORD GENUITY CORP., GMP SECURITIES L.P.,
and VIII CAPITAL CORPORATION**

Defendants



Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyers or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$5,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date Issued: JAN 27 2023	Issued by:  Sylvia Stanwhite Registrar, Superior Court of Justice
	Address of Court Office: 330 University Avenue <i>8th Floor 22</i> Toronto, Ontario M5G 1R7

TO: EIGHT CAPITAL
Compliance and/or Legal Department
100 Adelaide Street West, Suite 2900
Toronto, ON M5H 1S3

AND TO: CANACCORD GENUITY CORP.
Compliance and/or Legal Department
2200-609 Granville Street
Vancouver, BC V7Y 1H2

AND TO: GMP SECURITIES, L.P.
Compliance and/or Legal Department
145 King Street West, Suite 300
Toronto, ON M5H 1J8

DEFINED TERMS

1. In addition to the terms defined in ss. 1(1) and 138.1 of the *Securities Act*, R.S.O. 1990, c. S. 5, and elsewhere herein, the following capitalized terms used throughout this statement of claim have the meanings indicated below:

- (a) “**Canaccord**” means Canaccord Genuity Corp;
- (b) “**Class**” means all persons, other than Excluded Persons, who acquired Wayland’s securities in one of the Impugned Offerings and who held some or all of those securities until after the release of at least one of the Public Corrective Disclosures;
- (c) “**Class Counsel**” means Andrew Morganti and Albert Pelletier, licensees authorized by the Law Society of Ontario to practice law;
- (d) “**Company**” means Wayland;
- (e) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- (f) “**Equivalent Securities Act**” means, collectively, the *Securities Act*, R.S.A. 2000, c. S-4, as amended; the *Securities Act*, R.S.B.C. 1996, c 418, as amended; *The Securities Act*, C.C.S.M. c. S50, as amended; the *Securities Act*, S.N.B. 2004, c. S-5.5, as amended; the *Securities Act*, R.S.N.L. 1990, c S-13, as amended; the *Securities Act*, S.N.W.T. 2008, c. 10, as amended; the *Securities Act*, R.S.N.S. 1989, c. 418, as amended; the *Securities Act*, S Nu 2008, c. 12, as amended; the *Securities Act*, R.S.P.E.I. 1988, c S-3.1, as amended; the *Securities Act*, R.S.Q. c V-1.1, as amended; *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2, as amended; and the *Securities Act*, S.Y. 2007, c. 16, as amended;

- (g) “**VIII**” means VIII Capital Corporation;
- (h) “**Excluded Persons**” means any of the Defendants, their executives and business partners during the Class Period, and any family member or business entity and any insider of Wayland, including any family member of said insider of Wayland and any identified as a “related person” but not, subject to discovery on the topic of the information-wall between investment bankers and sales representatives at the Underwriter Defendants, and the sales-brokers that received compensation warrants;
- (i) “**GMP**” means GMP Securities L.P.;
- (j) “**Impugned Offerings**” means the securities sold to investors in private and public offerings on or about (a) October 27, 2017; (b) January 9, 2018; (c) August 10, 2018, with the subsequent conversation offering announced on October 1, 2018; and (e) October 31, 2018;
- (k) “**Impugned Statements**” means the documents or statements containing alleged misrepresentations concerning how Wayland was going to use the proceeds from each of the Company’s Class Period offerings, how much each phase of the expansion of the Langton Facility would cost and when it would be completed, that the expansion of the Langton Facility was fully-funded, and how much cannabis the Company would produce beginning in 2019;
- (l) “**Langton Facility**” means Wayland’s main production facility located in Langton, Ontario, which at all times during the Class Period was undergoing a multi-phase expansion that began in November 2016.

- (m) “**NI 51-102**” means the CSA’s National Instrument 51-102—*Continuous Disclosure Obligations*, as amended;
- (n) “**NI 52-109**” means the CSA’s National Instrument 52-109—*Certification of Disclosure in Issuers’ Annual and Interim Filings*, as amended;
- (o) “**OSA**” means the *Securities Act*, R.S.O. 1990 c. S.5, as amended;
- (p) “**OSC**” means the Ontario Securities Commission;
- (q) “**Public Corrective Disclosures**” means the material facts released to the market on: October 1, 2018; November 28, 2018; February 21-22, 2019; and April 23, 2019 concerning when the various phases of expansion of the Langton Facility would be completed, how much each phase would cost, whether the expansion was fully-funded, and how the funds raised in each financing offering conducted during the Class Period were distributed;
- (r) “**SEDAR**” means the Canadian Securities Administrators’ System for Electronic Document Analysis and Retrieval; and
- (s) “**Wayland**” means Wayland Group Corp. (formerly known as Maricann Group, Inc. prior to January 7, 2019).

LIMITATIONS PERIOD AND DEEMED UNDERTAKING

2. On September 3, 2019, a statement of claim under the Ontario *CPA* was issued by Jonathan Lubus against Wayland and the Underwriter Defendants Canaccord and GMP that advanced securities’ primary market common law and statutory law causes of action.

3. There the putative primary market causes of action class members were defined as those that purchased Wayland’s securities from the Underwriter Defendants.

4. On August 19, 2021, the September 3, 2019 statement of claim was amended, additional primary market class members were added to the title of the proceeding, and was assigned a new file number to reflect the transfer from Sarnia to Toronto, Ontario.

5. Thereafter, during spring 2022, limited discovery was produced to Class Counsel. Documents from this production were incorporated into the Plaintiff's motion record as evidence in support of s. 138.8 of the *OSA*, and between April 28 and September 8, 2022, filed with the Ontario Superior Court of Justice.

6. Plaintiff Tassile relies upon s. 28 of the *CPA* and 30.1.01(5) of the Rules of Civil Procedure in advancing this new proceeding and adding VIII as an Underwriter Defendant and adding the January 9, 2018 and October 27, 2017 offerings and Impugned Offerings based upon information learned from the evidence in support of s. 138.8 of the *OSA*, and between April 28 and September 8, 2022, filed with the Ontario Superior Court of Justice.

CAUSES OF ACTION

7. The causes of action asserted by the Plaintiff in this proceeding are:

- (a) Primary Market common law negligent misrepresentation against the Underwriter Defendants that certified the accuracy of the relevant Impugned Offerings; and
- (b) Primary Market statutory s. 130(1) of the *OSA* against the Underwriter Defendants that certified the accuracy of the relevant Impugned Offerings.

RELIEF CLAIM

8. The Plaintiff claims on his own behalf and on behalf of the members of the Class, subject to further disclosures, discovery and due diligence:

- (a) An order pursuant to s. 5 of the *CPA* certifying this action as a class proceeding and appointing him as the representative plaintiff for the Class advancing the causes of action identified herein;

- (b) Statutory and common law damages to be determined in accordance with the *OSA* and Court;
- (c) An order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;
- (d) Prejudgment and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;
- (e) Costs of this action on a full indemnity scale, or in an amount that provides substantial indemnity, plus, pursuant to s. 26(9) of the *CPA*, the costs of administering the plan of distribution of the recovery in this action; and
- (f) Such further and other relief that this Honourable Court deems just.

NATURE OF THIS ACTION

9. Wayland was a company incorporated pursuant to Ontario's *Business Corporations Act*, which maintained its headquarters in Burlington, Ontario (it has since been liquidated and sold-off into various pieces). Wayland was a federally licensed producer and distributor of cannabis with facilities in Canada, Europe, and South America. Its main production facility was in Langton, Ontario, Canada.

10. During the Class Period, Wayland's common shares were listed on the Canadian Securities Exchange, the Frankfurt Stock Exchange, and the U.S. OTC Market. Wayland was a Reporting Issuer in Ontario and subject to the *OSA* and its investor documents were distributed on SEDAR.

11. The Plaintiffs' causes of action concern the Underwriter Defendants' raising of capital (over \$100 million) from the Plaintiff and Class and how they (Underwriters)

certified as true the material facts stated within the Impugned Documents and Offerings about the use of proceeds being raised; cost and timing of Wayland's cannabis production facility located at 150 8th Concession Road, Langton, Ontario (a/k/a, "Site 150") with its expansion phases at "Site 138" ("Expansion"): Phase One (217,000 sq. ft.), Phase Two (635,000 sq. ft.), and Phase Three (90,000 sq. ft.) (together, the "Langton Facility").

12. The Impugned Documents represented to investors, *infra*, that the Langton Facility was on-schedule, on-budget, and fully-funded, and would commence generating revenues during the Class Period, when it was none of those things. Wayland represented to investors that the monies raised in its securities-offerings would be applied to certain uses, including the Langton Facility Expansion and acquisitions of smaller cannabis companies, and said funds were not allocated as represented or certified as being allocated as such.

13. The truth of Wayland's business situation, capital, and operations became publicly corrected in increments beginning on October 1, 2018, when Wayland disclosed that it was allocating \$15 million of newly raised capital to Phase One of the Langton Facility Expansion, which Wayland, and the Underwriter Defendants had previously represented was fully-funded.

14. Moreover, Wayland disclosed that Phase One production would not be completed during 2018 but, rather, during 2019, and which the Underwriter Defendants certified as accurate, *which Wayland ultimately disclosed in December 2019 was only 65% completed and still required well over \$10 million to complete.*

15. The final public correction was released on April 23, 2019, when Wayland issued a statement that it would be forced to delay the release of its annual 2018 financial statements and MD&A and, implicitly, its Q1 2019 financial statements and MD&A,

indicating to investors that Wayland was unable to comply with the most essential continuous disclosure obligation, without which Wayland could not ascertain such material facts as “on-schedule”, “on-budget”, “fully-funded”, and no additional revenues would be earned from the cannabis grown and sold within Site 138 (Phase One or Phase Two).

16. The Plaintiff alleges that the Defendant Underwriters released multiple negligent misrepresentations for each of the Impugned Offerings about how the raised capital was being used and the status of Wayland’s expansion projects with Phases One and Two.

17. The Plaintiff alleges that the Defendant Underwriters’ negligence resulted in Wayland being able to issue securities when it should not have been able to, or Wayland’s securities being sold at artificially inflated prices, and upon the release of the Public Corrective Disclosures relating to the use of proceeds from the Impugned Offerings and discrepancies in the actual status of the construction of Phases One and Two of the Langton Facility.

18. The Plaintiff also alleges that the direct and foreseeable result was that Wayland’s securities’ dropped in price and became subject to a halt-trade order and delisted.

19. While the Defendant Underwriters earned tens of millions of dollars in underwriting fees and compensation warrants from raising the capital, the Plaintiff suffered an economic loss of over \$100,000.

WAYLAND GROUP

20. During 2017 and 2018, Wayland raised capital through the Underwriter Defendants from Plaintiff and Class Members under the expressed language under “Summary Description of Business”, “Use of Proceeds” and “Business Objectives”, which the

Defendant Underwriters certified as being accurate, and upon which the Plaintiff and Class Members relied upon as being true.

21. The Impugned Offering dates were (a) October 27, 2017 (\$31,00,000 gross proceeds); (b) January 9, 2018 (\$40,250,000 gross proceeds); (c) August 10, 2018 (\$37,400,000 gross proceeds); (d) October 3-5, 2018 (conversion of the August 2019 warrants to shares sold to members of the Class pursuant to an October 1, 2018 prospectus); and (e) October 31, 2018 (\$57,589,000 gross proceeds, including the over-allotment).

THE PLAINTIFF

22. Michael Bordeleau Tassile is an investor who resides in Laval, Quebec, Canada. On October 27, 2017, he purchased 90 debentures at \$1,000 each from Canaccord, January 9, 2018, purchased 10,000 units at \$2.00 each from Mackie Research, and between the October 3 and 31, 2018 Impugned Offerings' distribution period purchased over 100,000 shares; and suffered a loss holding those securities until after the Public Corrective Disclosures.

THE DEFENDANTS

23. Canaccord is an investment bank headquartered in Vancouver, British Columbia, with offices in Toronto, Ontario, that served as the co-lead selling agent and underwriter for the Impugned Offerings. The causes of action against Canaccord relate to the Impugned Offerings that closed on or about October 27, 2017, January 9, 2018, August 10, 2018, October 1, 2018, and October 31, 2018.

24. VIII Capital is an investment bank headquartered in Toronto, Ontario, that served as the co-lead selling agent and underwriter for Wayland's Impugned Offerings. John Esteireiro, was the former Principal and Head of Equities at VIII (formerly Dundee

Securities, Inc.). The causes of action against VIII Capital relate to the Impugned Offerings that closed on or about October 27, 2017, January 9, 2018.

25. GMP is an investment bank headquartered in Toronto, Ontario, that served as the co-lead selling agent and underwriter for Wayland's Impugned Offerings. The causes of action against GMP relate to the Impugned Offerings that closed on or about August 10, 2018, October 1, 2018, and October 31, 2018.

THE IMPUGNED DOCUMENTS AND OFFERINGS

A. October 27, 2017 Impugned Offering

26. During September 2017, Defendant Canaccord reached out to its clients to raise capital for Wayland and advised investors that they could rely upon Wayland's core documents found on SEDAR in making an investment decision.

27. The Plaintiff did review and relied upon Wayland's 2Q 2017 financial statements and MD&A as well as other non-core documents from SEDAR and published media and research reports in making a decision to subscribe to the proposed offering.

28. However, by this time of this Impugned Offering, *and only learned during 2022 as reflected in the parallel proceeding's court filing relating to the plaintiffs' s. 138.8 motion record*, Wayland's statements within its core documents had already contained numerous misrepresentations concerning its finances and capital expenditures:

- (a) Wayland's auditor was already advising Wayland that Wayland lacked oversight over finance and revenue processing; that the CFO and Controller operated more like bookkeepers; there lacked a formal Expense Reporting system; questioned whether anyone at Wayland besides for the Controller reviewed published financial statements, etc; and

(b) Sales/Marketing never coordinated with finance - they did what they wanted and gained ad hoc approvals for individual initiatives. Those consultants never checked any of the numbers to support the representations in the core documents released on August 29, 2017.

29. On October 27, 2017, pursuant to the selling offering memorandum containing misrepresentations and negligent misrepresentations of the Underwriter Defendants (as agents), the Underwriter Defendants sold Wayland's units at \$2.00 each for a total of \$31,000,000 of gross proceeds, including the over-allotment.

30. The Plaintiff purchased these securities.

B. The January 9, 2018 Impugned Offering

31. On December 14, 2017, Wayland published a news release informing the market that it entered into an agreement with Defendant VIII and Defendant Canaccord to distribute-sell special warrants at \$2.00 each to raise capital for expenditures relating to Phase One and reported that the second phase of Phase One (217,000 sq. ft. production facility) was already "fully funded."

32. The Plaintiff did review and rely upon this news release, Wayland's 3Q 2017 financial statements and MD&A as well as other non-core documents and published media and research reports in making a decision to subscribe to the proposed offering.

33. However, by this time of this Impugned Offering, *and only learned during 2022 as reflected in the parallel proceeding's court filing relating to the plaintiffs' s. 138.8 motion record*, Wayland's statements within its core documents already contained numerous misrepresentations concerning its finances and capital expenditures:

- (a) The Plaintiff re-alleges the above problems; plus
- (b) The directors of Wayland were communicating with each other that their capital raise likely included misrepresentations based upon their November 2017 board meeting on the topic of the costs and timing of the Phase One expansion project.

34. On January 9, 2018, pursuant to the selling offering memorandum containing misrepresentations and negligent misrepresentations of the Underwriter Defendants (as agents), the Underwriter Defendants sold Wayland's units at \$2.00 each for a total of \$40,250,000 of gross proceeds, including the over-allotment.

35. The Plaintiff purchased these securities.

C. The August 10, 2018 to October 1, 2018 dImpugned Offering

36. On July 18 and 30, 2018, Wayland published a news release informing the market that it entered into an agreement with Defendants Canaccord and GMP to distribute-sell units at \$1.60 each to raise capital for expenditures relating to Phase One and reported that the second phase of Phase One (217,000 sq. ft. production facility) was already "fully funded."

37. The Plaintiff reviewed and relied upon this news release, the October 1, 2018 prospectus, Wayland's 3Q 2017 financial statements and MD&A as well as other non-core documents and published media and research reports in making a decision to purchase shares that were converted from this offering during October 2018.

38. The Underwriter Defendants consented to Wayland publishing this Impugned Document prospectus containing the Certificate of Defendant Underwriters (as Agents) reading that "to the best of our knowledge, information and belief,... together with the

documents incorporated by reference, constitute full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus.”

39. However, by the time of this Impugned Offering, *and only learned during 2022 as reflected in the parallel proceeding's court filing relating to the plaintiffs' s. 138.8 motion record*, Wayland's statements within its core documents had already contained numerous misrepresentations concerning its finances and capital expenditures:

- (a) The Plaintiff re-alleges the above problems, plus
- (b) Wayland's new auditor was already advising Wayland that Wayland continued to lack oversight over finance and revenue processing; lacked internal controls over financial reporting and its operations; that acquisitions were being conducted without full Board approval; that the CFO and Controller operated more like bookkeepers; there lacked a formal Expense Reporting system; questioned whether anyone at Wayland besides for the Controller reviewed published financial statements, etc.;
- (c) The Ontario Securities Commission had sent multiple letters to Wayland that as far back as mid-2017, it had concerns about the reporting in Wayland's most recent F/2016 financial statements concerning the fair value of its biological assets, cost of sales, related party transactions, forward-looking information relating to growth rates, and the Langton Facility expansion; and
- (d) A third-party consultant had reported to Wayland that certain prior acquisitions and proposed acquisitions with the capital being raised lacked fundamental financial and operational information and should be reconsidered.

40. On August 10, 2018, pursuant to the prospectus containing misrepresentations and negligent misrepresentations of the Underwriter Defendants certification, the Underwriters Canaccord and GMP sold Wayland's securities at \$1.65 each for a total of \$57,589,000 gross proceeds, including the over-allotment.

41. The Plaintiff purchased these securities.

D. The October 31, 2018 Impugned Offering

42. On October 11, 2018, Wayland published a news release that it entered into a bought deal agreement with the Underwriter Defendants to raise over \$57 million from investors.

43. On October 24, 2018, Wayland published its final prospectus to sell 30,350,000 units priced at \$1.65 each with the Underwriter Defendants Canaccord and GMP serving as agents.

44. The Underwriter Defendants consented to Wayland publishing this Impugned Document prospectus containing the Certificate of Defendant Underwriters (as underwriters) reading that "to the best of our knowledge, information and belief,... together with the documents incorporated by reference, constitute full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus."

45. However, by this time of this Impugned Offering, *and only learned during 2022 as reflected in the parallel proceeding's court filing relating to the plaintiffs' s. 138.8 motion record*, Wayland's statements within its core documents had already contained numerous misrepresentations concerning its finances and capital expenditures:

- (a) The Plaintiff re-alleges the above problems, plus
- (b) Wayland's auditor had sent Wayland's Board a notice that it had significant concerns about a few acquisitions had been paid for from previously raised capital; and
- (c) The OSC continued to send correspondences to Wayland about its previously released disclosure statements that were incorporated by reference into this Impugned Document (prospectus).

46. On October 31, 2018, pursuant to the prospectus containing misrepresentations and negligent misrepresentation Certificate of the Underwriter Defendants (as underwriters), the Underwriter Defendants sold Wayland's units at \$1.65 each for a total of \$57,589,000 gross proceeds, including the over-allotment.

47. Members of the Class purchased these securities.

THE STORM WARNINGS: PUBLIC CORRECTIVE STATEMENTS

48. On October 1, 2018, Wayland released a prospectus qualifying the securities for a public offering which had previously closed on August 10, 2018. In this core document, Wayland disclosed, in contradiction to prior statements, that its Phase One expansion would be completed in Q1 2019. This corrective statement caused the price of Wayland's shares on the CSE to diminish from \$1.80 down to \$1.58, or a drop of 12.2%.

49. On November 28, 2018, Wayland released its Q3 2018 financial statements and MD&A and disclosed, in contradiction to prior statements, that its Phase One and Two expansions no longer had completion dates. This corrective statement caused the price of Wayland's shares on the CSE to diminish from \$1.44 down to \$1.32, or a drop of 8.3%.

50. On April 23, 2019, Wayland released a statement announcing that it would delay the release of its annual 2018 financial statements and MD&A. This corrective statement caused the price of Wayland's shares on the CSE to diminish from \$0.88 down to \$0.71, or a drop of 19.3%.

51. Soon after, Wayland's securities were subject to a trading halt order and delisted; resulting in a total loss to the Plaintiff and Class; from \$0.71 to \$0.00.

POST CLASS PERIOD'S MATERIAL EVENTS AND DISCLOSURES

52. On December 2, 2019, Wayland applied for and received protection from its creditors pursuant to the *Companies' Creditors Arrangement Act* and received a stay of proceedings.

53. During the Winter 2020, after Wayland filed and received *CCAA* Protection, it prepared a selling memorandum of itself to potential investors which reported that Phase One of the Langton Facility was only 65% completed and still required well over \$12 million in funding to complete.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

54. The Plaintiffs plead that this action has a real and substantial connection with Ontario for the application of Ontario substantive and procedural laws to this claim on behalf of all Class Members because, among other connecting factors, Wayland was a reporting issuer in Ontario and is headquartered in the province of Ontario, and each of the Underwriter Defendants is either headquartered in Toronto or has an office there.

RELEVANT LEGISLATION, PLACE OF TRIAL AND JURY TRIAL

55. The Plaintiff pleads and relies upon the *CJA*, the *CPA*, the *OSA* and the Equivalent Securities Acts.

56. The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

57. The Plaintiffs may serve a jury notice.

JAN 27 2023

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Lawyers for the Plaintiff

MICHAËL BORDELEAU-TASSILE
Plaintiff

and

CANACCORD GENUITY CORP., et al
Defendants

Court File No

2009-08-00693650

2009

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO

STATEMENT OF CLAIM

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