

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant

8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/10-56

13 **NAGHI ABOLFAZLI**
14 **dba MOTORING PERFORMANCE**
1433 Mazda Drive
Walnut Creek, California 94597
15 **Automotive Repair Dealer Registration No. ARD 232974**
16 **Smog Check Test Only Station License No. TC 232974**

A C C U S A T I O N

SMOG CHECK

17 **NAGHI ABOLFAZLI**
111 Santa Rita Drive
Walnut Creek, California 94596
18 **Advanced Emissions Specialist Technician No. EA 304572**

Respondent.

21 Sherry Mehl (Complainant) alleges:

22 **PARTIES**

23 1. Complainant brings this Accusation solely in her official capacity as the Chief of the
24 Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

25 **Automotive Repair Dealer Registration No. ARD 232974**

26 2. On or about June 28, 2004, the Bureau issued Automotive Repair Dealer Registration
27 No. ARD 232974 ("registration") to Naghi Abolfazli ("Respondent"), doing business as Motoring
28 Performance. The registration will expire on or about April 30, 2010, unless renewed.

1 **Smog Check Test Only Station License No. TC 232974**

2 3. On or about August 24, 2004, the Bureau issued Smog Check Test Only Station
3 License No. TC 232974 to Respondent. The license will expire on or about April 30, 2010,
4 unless renewed.

5 **Advanced Emission Specialist Technician License No. EA 304572**

6 4. On or about September 4, 2003, the Bureau issued Advanced Emission Specialist
7 Technician License No. EA 304572 to Respondent. The license will expire on or about
8 June 30, 2010, unless renewed.

9 **STATUTORY PROVISIONS**

10 5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
11 part:

12 (a) The director, where the automotive repair dealer cannot show there was a bona
13 fide error, may refuse to validate, or may invalidate temporarily or permanently, the
14 registration of an automotive repair dealer for any of the following acts or omissions related
15 to the conduct of the business of the automotive repair dealer, which are done by the
16 automotive repair dealer or any automotive technician, employee, partner, officer, or
17 member of the automotive repair dealer.

18 (1) Making or authorizing in any manner or by any means whatever any statement
19 written or oral which is untrue or misleading, and which is known, or which by the exercise
20 of reasonable care should be known, to be untrue or misleading.

21 (2) Causing or allowing a customer to sign any work order which does not state the
22 repairs requested by the customer or the automobile's odometer reading at the time of
23 repair.

24 (3) Failing or refusing to give to a customer a copy of any document requiring his or
25 her signature, as soon as the customer signs the document.

26 (4) Any other conduct which constitutes fraud.

27 (6) Failure in any material respect to comply with the provisions of this chapter [the
28 Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted
pursuant to it.

(b) Except as provided for in subdivision (c), if an automotive repair dealer operates
more than one place of business in this state, the director pursuant to subdivision (a) shall
only refuse to validate, or shall only invalidate temporarily or permanently the registration
of the specific place of business which has violated any of the provisions of this chapter.

1 This violation, or action by the director, shall not affect in any manner the right of the
2 automotive repair dealer to operate his or her other places of business.

3 (c) Notwithstanding subdivision (b), the director may refuse to validate, or may
4 invalidate temporarily or permanently, the registration for all places of business operated in
5 this state by an automotive repair dealer upon a finding that the automotive repair dealer
6 has, or is, engaged in a course of repeated and willful violations of this chapter, or
7 regulations adopted pursuant to it.

8 6. Section 9884.8 of the Code states:

9 All work done by an automotive repair dealer, including all warranty work, shall be
10 recorded on an invoice and shall describe all service work done and parts supplied. Service
11 work and parts shall be listed separately on the invoice, which shall also state separately the
12 subtotal prices for service work and for parts, not including sales tax, and shall state
13 separately the sales tax, if any, applicable to each. If any used, rebuilt, or reconditioned
14 parts are supplied, the invoice shall clearly state that fact. If a part of a component system is
15 composed of new and used, rebuilt or reconditioned parts, that invoice shall clearly state
16 that fact. The invoice shall include a statement indicating whether any crash parts are
17 original equipment manufacturer crash parts or nonoriginal equipment manufacturer
18 aftermarket crash parts. One copy of the invoice shall be given to the customer and one
19 copy shall be retained by the automotive repair dealer.

20 7. Section 9884.9 of the Code states:

21 (a) The automotive repair dealer shall give to the customer a written estimated price
22 for labor and parts necessary for a specific job. No work shall be done and no charges shall
23 accrue before authorization to proceed is obtained from the customer. No charge shall be
24 made for work done or parts supplied in excess of the estimated price without the oral or
25 written consent of the customer that shall be obtained at some time after it is determined
26 that the estimated price is insufficient and before the work not estimated is done or the parts
27 not estimated are supplied. Written consent or authorization for an increase in the original
28 estimated price may be provided by electronic mail or facsimile transmission from the
customer. The bureau may specify in regulation the procedures to be followed by an
automotive repair dealer when an authorization or consent for an increase in the original
estimated price is provided by electronic mail or facsimile transmission. If that consent is
oral, the dealer shall make a notation on the work order of the date, time, name of person
authorizing the additional repairs and telephone number called, if any, together with a
specification of the additional parts and labor and the total additional cost, and shall do
either of the following:

(1) Make a notation on the invoice of the same facts set forth in the notation on the
work order.

(2) Upon completion of repairs, obtain the customer's signature or initials to an
acknowledgment of notice and consent, if there is an oral consent of the customer to
additional repairs, in the following language:

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1 I acknowledge notice and oral approval of an increase in the original estimated price.

2 _____
(signature or initials)

3 Nothing in this section shall be construed as requiring an automotive repair dealer to
4 give a written estimated price if the dealer does not agree to perform the requested repair.

5 8. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
6 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding
7 against an automotive repair dealer or to render a decision invalidating a registration temporarily
8 or permanently.

9 9. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
10 "commission," "committee," "department," "division," "examining committee," "program," and
11 "agency." "License" includes certificate, registration or other means to engage in a business or
12 profession regulated by the Code.

13 10. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
14 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
15 the Motor Vehicle Inspection Program.

16 11. Section 44072.2 of the Health and Safety Code states, in pertinent part:

17 The director may suspend, revoke, or take other disciplinary action against a license
18 as provided in this article if the licensee, or any partner, officer, or director thereof, does
19 any of the following:

20 (a) Violates any section of this chapter [the Motor Vehicle Inspection Program
21 (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which
22 related to the licensed activities.

23 (c) Violates any of the regulations adopted by the director pursuant to this chapter.

24 (d) Commits any act involving dishonesty, fraud, or deceit whereby another is
25 injured.

26 12. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
27 expiration or suspension of a license by operation of law, or by order or decision of the
28 Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not
deprive the Director of jurisdiction to proceed with disciplinary action.

1 13. Section 44072.8 of the Health and Safety Code states:

2 "When a license has been revoked or suspended following a hearing under this article, any
3 additional license issued under this chapter in the name of the licensee may be likewise revoked
4 or suspended by the director."

5 **REGULATORY PROVISIONS**

6 14. California Code of Regulations, title 16, section 3356(a)(1), states:

7 (a) All invoices for service and repair work performed, and parts supplied, as
8 provided for in Section 9884.8 of the Business and Professions Code, shall comply with the
9 following:

10 (1) The invoice shall show the automotive repair dealer's registration number and the
11 corresponding business name and address as shown in the Bureau's records.

12 **COST RECOVERY**

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

17 **UNDERCOVER OPERATION - DECEMBER 23, 2008**

18 16. On or about December 23, 2008, a Bureau undercover operator ("operator") drove a
19 Bureau documented 1992 Oldsmobile Bravada to Respondent's facility and requested a smog
20 inspection. The vehicle had a non-functional Exhaust Gas Recirculation ("EGR") system,
21 rendering the vehicle incapable of passing a smog inspection. Respondent quoted the operator
22 \$70 for the smog inspection. The operator completed and signed Estimate No. 1253, but was not
23 provided with a copy. Respondent performed the smog inspection and issued electronic
24 Certificate of Complaint No. NG440908C, certifying that he had tested and inspected the 1992
25 Oldsmobile Bravada and that the vehicle was in compliance with applicable laws and regulations,
26 when in fact, the vehicle could not have passed the functional portion of the smog inspection
27 because of the vehicle's non-functional EGR system. The operator paid Respondent \$70, and
28 was provided with a copy of Estimate No. 1253 and Invoice No. 1253.

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FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

17. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in that on or about December 23, 2008, he made statements which he knew or which by exercise of reasonable care he should have known to be untrue or misleading by issuing electronic Certificate of Compliance No. NG440908C for the 1992 Oldsmobile Bravada, certifying that the vehicle was in compliance with applicable laws and regulations, when in fact, it could not have passed the functional portion of the smog inspection because of the vehicle's non-functional EGR system.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

18. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in that on or about December 23, 2008, he committed acts constituting fraud by issuing electronic Certificate of Compliance No. NG440908C for the 1992 Oldsmobile Bravada without performing a bona fide inspection of the emission control devices and systems on the vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Provisions of the Automotive Repair Act)

19. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that on or about December 23, 2008, he failed to comply with section 9884.9(a) of that Code by failing to provide the operator with a written estimated price for parts and labor for a specific job.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Record Odometer Reading on a Signed Document)

20. Respondent's registration is subject to discipline under Code section 9884.7(a)(2), in that on or about December 23, 2008, he failed to record the current odometer reading of the 1992 Oldsmobile Bravada on signed Estimate No. 1253.

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FIFTH CAUSE FOR DISCIPLINE

(Failure to Provide Copy of Document)

21. Respondent's registration is subject to discipline pursuant to Code section 9884.7(a)(3), in that on or about December 23, 2008, he failed to provide the operator with a copy of Estimate No. 1253 as soon as she signed the document.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Comply with Regulations)

22. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in that on or about December 23, 2008, he failed to materially comply with California Code of Regulations, title 16, section 3356(a)(1), by failing to set forth the business name as reflected on the Bureau records.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Comply with Chapter Requirements)

23. Respondent's station license is subject to discipline under Health and Safety Code section 44072.2(a), in that on or about December 23, 2008, he failed to comply with the following sections of that Code:

a. Section 44012(a): Respondent failed to determine that all emission control devices and systems required by law were installed and functioning correctly in accordance with test procedures.

b. Section 44012(f): Respondent failed to perform emission control tests on the vehicle in accordance with procedures prescribed by the department.

c. Section 44015(b): Respondent issued electronic Certificate of Compliance No. NG440908C for the vehicle without properly testing and inspecting the vehicle to determine if it was in compliance with Code section 44012.

d. Section 44059: Respondent willfully made false entries for electronic Certificate of Compliance No. NG440908C by certifying that the vehicle had been tested and inspected as required, when in fact, it had not.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations)**

3 24. Respondent's station license is subject to discipline under Health and Safety Code
4 section 44072.2(c), in that on or about December 23, 2008, regarding the 1992 Oldsmobile
5 Bravada, he failed to comply with provisions of California Code of Regulations, title 16, as
6 follows:

7 a. Section 3340.24(c): Respondent falsely or fraudulently issued electronic Certificate of
8 Compliance No. NG440908C for the vehicle, in that the vehicle could not pass the functional
9 portion of the smog inspection because of the vehicle's non-functional EGR system.

10 b. Section 3340.35(c): Respondent issued electronic Certificate of Compliance No.
11 NG440908C for the vehicle even though the vehicle had not been tested and inspected in
12 accordance with the procedures specified in Code section 3340.42.

13 c. Section 3340.42: Respondent failed to conduct the required smog tests and inspections
14 on the vehicle in accordance with the Bureau's specifications.

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Dishonesty, Fraud, or Deceit)**

17 25. Respondent's station license is subject to discipline under Health and Safety Code
18 section 44072.2(d), in that on or about December 23, 2008, he committed acts involving
19 dishonesty, fraud, or deceit whereby another was injured by issuing electronic Certificate of
20 Compliance No. NG440908C for the 1992 Oldsmobile Bravada without performing a bona fide
21 inspection of the emission control devices and systems on that vehicle, thereby depriving the
22 People of the State of California of the protection afforded by the Motor Vehicle Inspection
23 Program.

24 **TENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with Chapter Requirements)**

26 26. Respondent's technician license is subject to discipline under Health and Safety Code
27 section 44072.2(a), in that on or about December 23, 2008, regarding the 1992 Oldsmobile
28 Bravada, he failed to comply with the following Code sections:

1 a. Section 44012(a): Respondent failed to determine that all emission control devices and
2 systems required by law were installed and functioning correctly in accordance with test
3 procedures.

4 b. Section 44012(f): Respondent failed to perform emission control tests on the vehicle in
5 accordance with procedures prescribed by the department.

6 c. Section 44032: Respondent failed to perform a test of the emission control devices and
7 systems on the vehicle in accordance with Health and Safety Code section 44012.

8 d. Section 44059: Respondent willfully entered false information for electronic Certificate
9 of Compliance No. NG440908C by certifying that the vehicle had been inspected as required,
10 when in fact, it had not.

11 **ELEVENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations)**

13 27. Respondent's technician license is subject to discipline under Health and Safety Code
14 section 44072.2(c), in that on or about December 23, 2008, regarding the 1992 Oldsmobile
15 Bravada, he failed to comply with provisions of California Code of Regulations, title 16, as
16 follows:

17 a. Section 3340.24(c): Respondent falsely or fraudulently issued electronic Certificate of
18 Compliance No. NG440908C for the vehicle, in that the vehicle could not pass the functional
19 portion of the smog inspection because of the vehicle's non-functional EGR system.

20 b. Section 3340.30(a): Respondent failed to inspect and test the vehicle in accordance with
21 Health and Safety Code section 44012.

22 c. Section 3340.41(c): Respondent entered false information into the Emission Inspection
23 System unit by entering "Pass" for the functional inspection of the EGR system, when in fact, that
24 system was non-functional.

25 d. Section 3340.42: Respondent failed to conduct the required smog tests and inspections
26 on the vehicle in accordance with the Bureau's specifications.

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1 TWELFTH CAUSE FOR DISCIPLINE

2 (Dishonesty, Fraud, or Deceit)

3 28. Respondent's technician license is subject to discipline under Health and Safety Code
4 section 44072.2(d), in that on or about December 23, 2008, he committed acts involving
5 dishonesty, fraud, or deceit whereby another was injured by issuing electronic Certificate of
6 Compliance No. NG440908C for the 1992 Oldsmobile Bravada without performing a bona fide
7 inspection of the emission control devices and systems on the vehicle, thereby depriving the
8 People of the State of California of the protection afforded by the Motor Vehicle Inspection
9 Program.

10 PRIOR CITATIONS

11 29. To determine the degree of discipline, if any, to be imposed on Respondent,
12 Complainant alleges the following:

13 **Automotive Repair Dealer Registration and Smog Check Test Only Station License**

14 a. On or about November 27, 2007, the Bureau issued Citation No. C08-0514 against
15 Respondent's registration and station licenses for violations of Health and Safety Code section
16 44012(f) (failure to perform a visual/functional check of emission control devices according to
17 procedures prescribed by the department), and California Code of Regulations, title 16, section
18 3340.25(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
19 issuing a certificate of compliant to a Bureau undercover vehicle that was missing PCV
20 Valve/Hose Assembly. The Bureau assessed civil penalties totaling \$500 against Respondent for
21 the violations. Respondent complied with this citation on or about February 1, 2008.

22 b. On or about April 25, 2008, the Bureau issued Citation No. C08-0945 against
23 Respondent's registration and station licenses for violations of Health and Safety Code section
24 44012(f) (failure to perform a visual/functional check of emission control devices according to
25 procedures prescribed by the department), and California Code of Regulations, title 16, section
26 3340.25(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
27 issuing a certificate of compliant to a Bureau undercover vehicle that was missing Air Suction
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1 Reed Valve Assembly. The Bureau assessed civil penalties totaling \$1,000 against Respondent
2 for the violations. Respondent complied with this citation on or about June 2, 2008.

3 c. On or about August 14, 2008, the Bureau issued Citation No. C09-0162 against
4 Respondent's registration and station licenses for violations of Health and Safety Code section
5 44012(f) (failure to perform a visual/functional check of emission control devices according to
6 procedures prescribed by the department), and California Code of Regulations, title 16, section
7 3340.25(c) (issuing a certificate of compliance to a vehicle that was improperly tested), for
8 issuing a certificate of compliant to a Bureau undercover vehicle with the ignition timing adjusted
9 beyond the manufacturer's specifications. The Bureau assessed civil penalties totaling \$2,000
10 against Respondent for the violations. On or about September 18, 2008, Respondent appealed the
11 citation. On or about May 1, 2009, the Respondent withdrew his appeal. The decision became
12 effective on or about June 1, 2009, and on or about July 28, 2009, Respondent complied with the
13 citation.

14 **Advanced Emissions Specialist Technician**

15 a. On or about November 27, 2007, the Bureau issued Citation No. M08-0515 against
16 Respondent's technician license for violations of Health and Safety Code section 44032 (failure
17 to perform tests and inspections in accordance with Health and Safety Code section 44012), and
18 California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in
19 accordance with Health and Safety Code sections 44012 and 44035, and California Code of
20 Regulations, title 16, section 3340.42) for issuing a certificate of compliance to a Bureau
21 undercover vehicle that was missing PCV Valve/Hose Assembly. Respondent was required to
22 attend an 8-hour training course. On or about January 24, 2008, Respondent completed the
23 required training course.

24 b. On or about April 25, 2008, the Bureau issued Citation No. M08-0946 against
25 Respondent's technician license for violations of Health and Safety Code section 44032 (failure
26 to perform tests and inspections in accordance with Health and Safety Code section 44012), and
27 California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in
28 accordance with Health and Safety Code sections 44012 and 44035, and California Code of

1 Regulations, title 16, section 3340.42) for issuing a certificate of compliance to a Bureau
2 undercover vehicle that was missing Air Suction Reed Valve Assembly. Respondent was
3 required to attend a 16-hour training course. On or about June 7, 2008, Respondent completed
4 the required training course.

5 c. On or about August 14, 2008, the Bureau issued Citation No. M09-0163 against
6 Respondent's technician license for violations of Health and Safety Code section 44032 (failure
7 to perform tests and inspections in accordance with Health and Safety Code section 44012), and
8 California Code of Regulations, title 16, section 3340.30(a) (inspect, test, and repair vehicles in
9 accordance with Health and Safety Code sections 44012 and 44035, and California Code of
10 Regulations, title 16, section 3340.42) for issuing a certificate of compliance to a Bureau
11 undercover vehicle with the ignition timing adjusted beyond the manufacturer's specifications.
12 Respondent was required to attend a 68-hour Clean Air Car Course. On or about
13 September 18, 2008, Respondent appealed the citation. On or about May 1, 2009, the
14 Respondent withdrew his appeal. The decision became effective on or about June 1, 2009, and on
15 or about September 4, 2009, Respondent completed the required training course.

16 **OTHER MATTERS**

17 30. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
18 Station License Number TC 232974, issued to Naghi Abolfazli, doing business as Motoring
19 Performance, is revoked or suspended, any additional license issued under this chapter in the
20 name of said licensee may be likewise revoked or suspended by the director.

21 31. Under Health and Safety Code section 44072.8, if Advanced Emission Specialist
22 Technician License Number EA 304572, issued to Naghi Abolfazli, is revoked or suspended, any
23 additional license issued under this chapter in the name of said licensee may be likewise revoked
24 or suspended by the director.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Temporarily or permanently invalidating Automotive Repair Dealer Registration No. ARD 232974 issued to Naghi Abolfazli, doing business as Motoring Performance;

2. Temporarily or permanently invalidating any other automotive repair dealer registration issued to Naghi Abolfazli;

3. Revoking or suspending Smog Check Test Only Station License Number TC 232974, issued to Naghi Abolfazli, doing business as Motoring Performance;

4. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Naghi Abolfazli;

5. Revoking or suspending Advanced Emission Specialist Technician Number EA 304572, issued to Naghi Abolfazli;

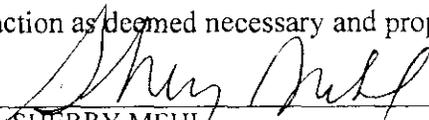
6. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Naghi Abolfazli;

7. Revoking or suspending any additional license issued under this chapter in the name of Naghi Abolfazli;

8. Ordering Naghi Abolfazli to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 3/31/10


SHERRY MEHL
Chief
Bureau of Automotive Repair (I/M Smog)
Department of Consumer Affairs
State of California
Complainant

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