

Item 12 - Enforcement Report with attachment



Ryan Micik, Chair
Charlotte Hill, Vice Chair
Alea Gage
Arvon Perteet
Vincent Steele
Francis Upton IV

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: September 27, 2023
RE: Enforcement Unit Program Update for the October 11, 2023, PEC Meeting

This report summarizes the PEC Enforcement Unit’s major activities since the most recent PEC meeting, to the extent permissible under our confidentiality requirements.

Overview of the Enforcement Process



The PEC’s Enforcement Unit investigates and, where appropriate, administratively prosecutes alleged violations of the City’s ethics, campaign finance, lobbying, and related laws. Violations can result in the issuance of a monetary fine, a warning letter, or some other remedy to ensure compliance with the law (e.g. a diversion agreement or injunction). Some violations can also be referred to the District Attorney for criminal prosecution.

Enforcement matters begin with a complaint. “Formal” complaints are submitted on the PEC’s official complaint form and are signed under penalty of perjury. “Informal” complaints are received in any other manner (e.g. via e-mail, a phone call, etc.) and are not signed under penalty of perjury. By law, the Enforcement Unit must review all formal complaints and report to the Commission at one of its public meetings whether or not it has decided to open an investigation into a formal complaint. By contrast, Enforcement has the discretion not to review an informal complaint and does not have to report rejected complaints to the Commission. Commission staff may also initiate its own “pro-active” complaints.

Complaints do not automatically trigger an investigation. Instead, they enter what is called “Preliminary Review,” in which Enforcement determines whether there are sufficient legal and

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evidentiary grounds to open an investigation. This can involve some preliminary fact-finding, usually for purposes of verifying or supplementing the facts alleged in the complaint.

At the completion of Preliminary Review, the Enforcement Chief and the PEC Executive Director jointly decide whether to open an investigation or dismiss the complaint. All dismissals are reported to the Commission at one of its public meetings. Investigations are confidential, though complainants and respondents (the people being investigated) are usually notified that an investigation has been opened. Enforcement will usually confirm the existence of an investigation if asked, but it will not share any of its findings or analysis until it is ready to present them to the Commission or a court.

The Enforcement Chief and the PEC Executive Director jointly decide whether the evidence gathered during an investigation merits prosecution or closure of the case. This internal decision-making process is referred to as “Legal Analysis” in Enforcement’s case processing workflow. Investigative activity may also continue during this process. If Enforcement recommends closure of a case at this stage, it must present its findings to the Commission at one of its public meetings and obtain a majority vote in favor of closure.

If Enforcement chooses to prosecute a violation, it will usually try to work out a joint settlement agreement with the respondent(s). Settlement negotiations are confidential, and for administrative purposes Enforcement classifies matters at this stage as “Seeking Settlement.” Investigative activity may also continue during this process. All proposed settlement agreements must be presented to the Commission at one of its public meetings and require a majority vote for their approval.

If Enforcement is unable to settle a case within a reasonable time or otherwise decides that a hearing is necessary, it will file an Investigation Summary with the Commission at one of its public meetings. This document, also known as a “probable cause report,” lays out the allegations that Enforcement wishes to prosecute, as well as supporting evidence. A majority of the Commission must vote to find probable cause and send the matter to an administrative hearing.

Matters at this stage are classified as “Administrative Hearing” in Enforcement’s internal workflow. The Executive Director and the hearing officer will arrange the logistical and procedural details of the hearing. All administrative hearings are open to the public, and are conducted either by the full Commission, a panel of Commissioners, a single Commissioner, a single hearing officer not from the Commission, or an administrative law judge.

After an administrative hearing, the hearing officer(s) will issue their factual findings and proposed penalty (if any). The full Commission will then vote at one of its public meetings whether to adopt those findings and impose the recommended penalty. The Commission may impose a penalty different from the one recommended by the hearing officer(s).

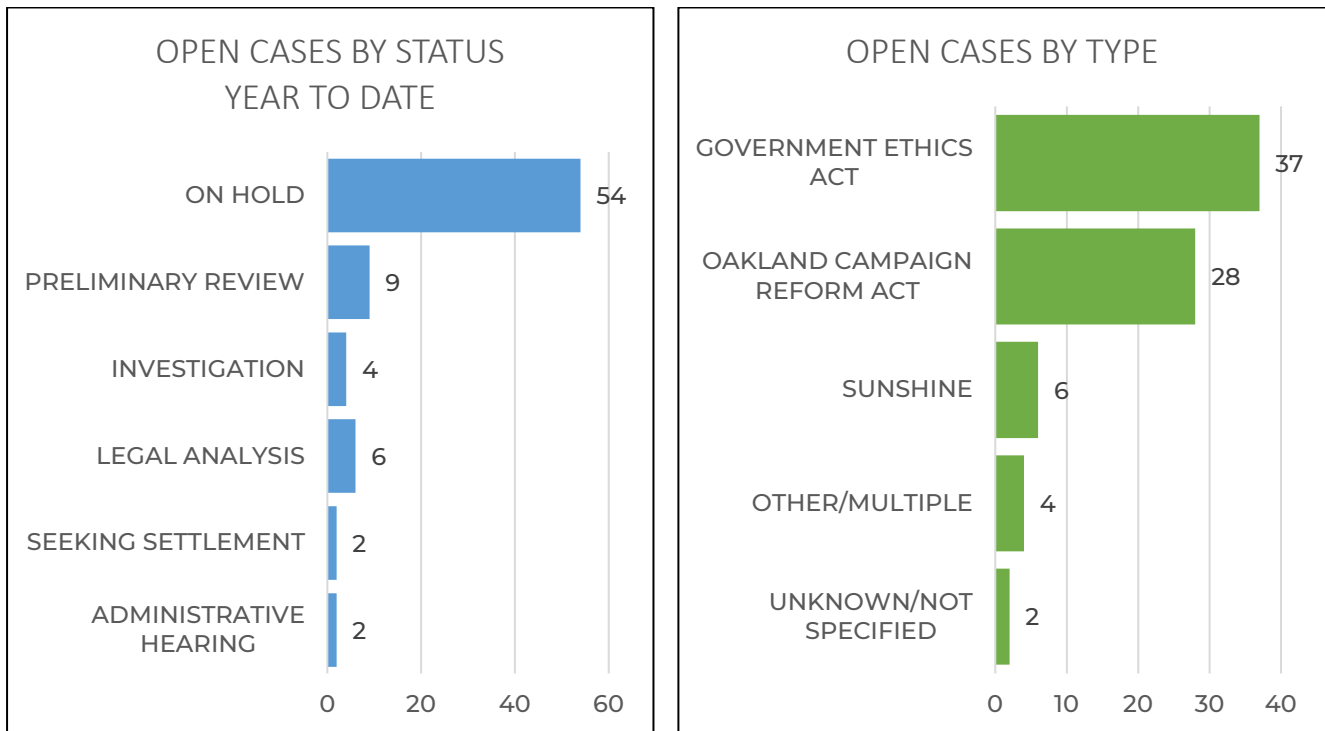
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The Enforcement Unit’s full Complaint Procedures and Penalty Guidelines can be found on our website.

Current Enforcement Caseload

Since the Enforcement Unit Program Update submitted to the Commission on July 27, 2023, Commission staff received 5 formal complaints, of which 2 are under preliminary review and 3 are on hold. Enforcement also received 30 informal complaints, of which 25 were rejected, 2 are under preliminary review, 1 was opened for investigation, and 2 are still in intake (i.e. awaiting a decision on whether to reject them or escalate them to preliminary review).

This brings Enforcement’s caseload to 77 matters at all stages, from preliminary review through to investigation, settlement negotiations or administrative hearing. That includes 54 matters that are now “On Hold.” It does not include informal complaints that are still in intake.



Updates Coming to How Enforcement Presents Caseload Data

As mentioned by the Enforcement Chief during the August 2023 PEC retreat, this year Enforcement updated and refined our internal case management system, known as the Enforcement Database. Among other things, the Enforcement Database now includes data on the specific types of violations at issue in each case. Previously, we had only tracked this information in broad categories based upon the subject matter, e.g. “GEA” (Government Ethics Act violations) or “OCRA” (Oakland

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Campaign Reform Act violations). Now, we also track the particular types of violations at issue, e.g. “Bribery,” “Lobbyist Non-Filer,” “Contribution Limit,” etc. We also now track this data for each stage of a particular case, from preliminary review through to administrative hearing. (This is helpful because violations can be added or dropped at different stages, as new evidence comes in; whereas the previous version of the Enforcement Database only tracked the violation categories at issue in the initial complaint, even if these were later amended). We have also standardized our classification scheme for different violation types.

With this data, we will be able to provide more refined caseload reports to the Commission every month. In line with the Commissioners’ suggestions during the August 2023 retreat discussion on this subject, we will be revamping the caseload information in these reports in the following ways:

- Instead of reporting “Open Cases By Type” only by broad categories (e.g. “Oakland Campaign Reform Act,” “Government Ethics Act,” etc.) we will also be reporting the number of open cases involving a particular type of violation (e.g. the number of open cases involving allegations of “Bribery,” “Lobbyist Non-Filer,” “Contribution Limit,” etc.).
- In addition to total numbers, we will be breaking down how many types of violations are at each stage in the Enforcement process (e.g., how many matters involving “Bribery” are in Preliminary Review, under Investigation, under Legal Analysis, etc.).
- We will be eliminating the “Multiple/Other” category because our new database can individually account for each particular violation in a case involving multiple types.

It is hoped that this more refined data will give the Commissioners and the public a more informed sense of the types of cases Enforcement is currently working on, the scale of Enforcement’s caseload, and the most common types of violations being reported to us or identified by Enforcement staff.

Stepping Up Our Enforcement of Form 700 Non-Filers

Most City elected officials, commissioners, candidates, and employees are required to file what is called a “Form 700” every year. Essentially, a Form 700 lists all of the sources of income (including gifts and real estate interests) that might impact someone’s impartiality on the job, either because the source of income is based in Oakland or because it conducts the type of business over which the Form 700 filer has some type of governmental authority. It is meant to be a safeguard against conflicts of interest and pay-to-play politics.

Form 700s are filed with the City Clerk, though the PEC has the authority to investigate and prosecute non-filers. In the wake of an Alameda County Grand Jury report that found serious levels

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of non-compliance with the Form 700 filing requirements by City staff and officials, the City Clerk and the PEC have held a number of meetings with the goal of increasing collaboration on Form 700 enforcement.

As a result of this collaboration with the City Clerk, the PEC's Enforcement Unit now has access to the list of all known City officials and staff that have not filed their required Form 700. Enforcement plans to contact all non-filers and foster their compliance with the filing requirement, primarily through the use of our streamline and diversion programs. Our goal is to raise the Citywide compliance rate to at least 90% of all known, required filers by the end of 2024; and to report to the PEC with our analysis and recommendations should we be unable to reach that target.

Further Matters Put On "Hold" Pending New Hires

Currently, the Enforcement Unit has no investigators on staff. Total Enforcement staff currently consists of the Enforcement Chief (who typically handles preliminary review of complaints, legal analyses of completed investigations, prosecution of cases, and administrative and policy matters, as well as supervising investigations) and an Enforcement Assistant (who typically assists with complaint intake and administrative tasks).

As stated in previous Enforcement Unit updates to the Commission, at our current caseload we would need a minimum of two full-time investigators just to keep pace with incoming complaints (which often need an investigator assigned for initial fact-finding prior to determining whether to open a full investigation), and a total of four investigators to resolve most preliminary reviews and investigations in a timely manner (to give a sense of scale, one major investigation alone can consume much of a single investigator's daily worktime; and we currently have at least half a dozen cases on our docket that we would consider "major" in terms of their complexity and potential public impact. This does not include lower-level and mid-level cases). We would also need another staff attorney (in addition to the Enforcement Chief) to keep pace with legal analyses of incoming complaints and completed investigations, as well as conducting settlement negotiations and prosecutions (as with investigators, one major case alone can consume much of an attorney's daily worktime). These minimum staffing levels are comparable to those of other Ethics Commissions that handle a similar caseload (e.g. San Francisco, or Los Angeles on a proportional basis relative to population).

In light of this severe under-staffing in Enforcement, the Enforcement Chief (in consultation with the Executive Director and the Commission) has decided to use our limited staff resources in the following manner:

- the Enforcement Chief will personally conduct only the most serious and high-impact preliminary reviews and prosecutions currently on our docket. Regarding the latter, we

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tentatively anticipate that these cases will be presented to the Commission (either as settlements, probable cause reports, or hearing findings) in the first half of 2024;

- the Enforcement Chief will personally conduct some of our most serious and high-impact, ongoing investigations (despite this not normally being the Chief's role), until we are able to hire more investigators; and
- the Enforcement Assistant will handle much of the work on the anticipated streamline cases described in the previous section of this report.

This means that, for the short- to medium-term, the following decisions have also been made to lighten staff's workload, in addition to those previously described in the Enforcement report of April 26, 2023:

- a greater number of ongoing matters have formally been placed on hold. In April we anticipated this would be about half of our cases; it is now approximately three-quarters of our open matters, and anticipated to grow as most new complaints are automatically put on hold. Most of the complaints and cases being placed on hold are matters that – though important on their own terms – we would consider to be of low- to mid-level seriousness when compared with other cases on our docket.
- we are automatically placing the preliminary review of all but the most serious incoming complaints on hold. All new complainants and respondents are being told to expect significant delays in the processing of complaints. The Enforcement Chief is conducting preliminary review of incoming complaints as time permits, but most of these will not be completed until we hire more staff and/or resolve the major cases on our docket.
- the Enforcement Chief is no longer meeting or corresponding with complainants on all but the most serious incoming complaints, due to time severe time constraints. (Typically the Chief and/or an investigator will correspond with complainants in order to gather evidence and respond to their inquiries re: complaint processing status, as well as to explain the reasoning behind any decision to dismiss their complaint). The Enforcement Assistant is handling the bulk of such meetings and correspondence.

We anticipate hiring a permanent, full-time Investigator by the end of October, with an anticipated start date sometime in November. We are also trying to use short-term salary savings to hire a temporary investigator, with an anticipated start date by the end of 2023. We also anticipate hiring at least one management intern (typically a law student or new lawyer) to assist with Preliminary Review and Legal Analysis. Once these hires are in place, we anticipate resuming work on some matters currently on hold; though it will take time to train and onboard any new hires.

No Enforcement Files Leaked During Ransomware Attack; New Measures Being Implemented to Prevent and/or Mitigate Such Attacks in the Future

In February 2023, the City of Oakland suffered a “ransomware” attack, in which hackers obtained confidential records located on the City’s internal computer system and leaked them online. After learning that the City had recently finished accounting for all of the materials included in the leak, Enforcement staff contacted the City’s response team in order to determine whether any of our own files were included in the leaked materials. After a review of all the files known to have been released online, Enforcement has determined that none of the Enforcement Unit’s files were included in the leak.

We are instituting new practices and exploring options to guard against any such potential leaks in the future, and to minimize the potential impacts of any future cyberattacks. These include:

- Enforcement staff must now use two-factor authentication before they can access our internal file-sharing system.
- We have begun making our own weekly backups of our electronic case files (in addition to any other backups made by the City) in order to mitigate any potential data loss or downtime if the City’s server ever gets taken offline again. These backups are maintained separately from the City’s server.
- Budget permitting, we are exploring the possibility of migrating Enforcement’s electronic case files from the City’s internal server to an external cloud service.
- As part of a larger, comprehensive review of Enforcement’s record-retention policies, we have begun purging older case files (e.g. those closed more than seven years ago) of sensitive data which we are no longer legally required to maintain, such as personal contact information or financial records not used as evidence. We are also organizing newer case files in a manner which will make the separation and purging of such records much easier in the future (for example, by requiring all records used as evidence during an investigation to be marked and maintained in a consistent manner across all case files, and kept separate from records not ultimately used as evidence). As part of our ongoing revision of our Complaint Procedures, we will be presenting the Commission with proposed changes to Enforcement’s records retention policy in order to clarify and mandate the purging of sensitive information not required to be retained by law.

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Legal Actions/Litigation Update

Since the last litigation update included with the Enforcement Unit Program report on July 27, 2023, the following public court actions have been submitted or scheduled by or on behalf of the Enforcement Unit:

1. *City of Oakland Public Ethics Commission v. Silvia Zhang* (Alameda County Superior Court case no. 2RG20051424). On September 19, 2023, the PEC filed a “Request For Dismissal.” There is no hearing scheduled in the matter.

Except where otherwise noted, no allegations have yet been proved or admitted in any of the above matters, and the existence of these cases and associated litigation should not be taken as an indication that the potential respondent(s) necessarily violated any laws. This information is being provided for the PEC’s informational purposes only.

Case Resolutions

Since the last litigation update included with the Enforcement Unit Program report on July 27, 2023, the following matters have been resolved by way of dismissal or closure:

1. **In the Matter of Christopher Scyphers (PEC No. 23-30).** On August 30, 2023, Enforcement staff received a formal complaint alleging that Planning and Building inspector Christopher Scyphers misused his City position when he attempted to conduct an inspection at a business without proper authority. Enforcement conducted a preliminary review and determined that there was insufficient evidence of any irregularity in the scheduling of the inspection, nor that Scyphers had attempted to procure any type of personal gain for himself or others in the course of the inspection. As such, we have dismissed the complaint with no further action.



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ENFORCEMENT UNIT
1 FRANK H. OGAWA PLAZA, #104
OAKLAND, CA 94612
(510) 238-3593
TDD (510) 238-3254

September 28, 2023

Yuan Lin



Via email: [Redacted]

Re: Notice of Dismissal of Oakland Public Ethics Commission Complaint no. 23-30

To Yuan Lin:

On August 30, 2023, the City of Oakland Public Ethics Commission (PEC) received your complaint (# 23-30) alleging that building inspector Christopher Scyphers had violated one or more laws under our jurisdiction.

The purpose of this current letter is to inform you that we have completed our preliminary review and have decided to dismiss the complaint, for the reasons explained below.

Your complaint alleged that Inspector Scyphers attempted to conduct an inspection of your business without proper authority. The PEC does not have the authority to enforce any internal rules or procedures at the Building Department, including whether a particular inspection was conducted properly. We take no position on whether Inspector Scyphers followed departmental procedures during the inspection in question. If you believe Inspector Scyphers may have violated an internal rule or procedure at the Building Department, you should make your complaint to either of the following people:

- David Miles (Principal Inspections Supervisor), (510) 238-6214, DMiles@oaklandca.gov;
- William Gilchrist (Director of Planning and Building), (510) 238-2229, WGilchrist@oaklandca.gov.

The only law the PEC enforces that might be applicable to your complaint is section 2.25.060(A)(2) of Oakland's Government Ethics Act. That section prohibits City employees from using their official position, or the power or authority of that position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain.

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However, for someone to violate that law, they must have acted outside the scope of their ordinary duties and/or made some sort of threat or solicitation in order to get a private benefit (for example, demanding cash in order to pass an inspection). Our preliminary fact-finding found that Inspector Scyphers was assigned the inspection by his department, therefore he was not acting outside the scope of his duties in carrying out the inspection. And in a phone call with me, you stated that Inspector Scyphers did not make any kind of private threat or solicitation during the inspection. You said that he threatened to obtain an order that would allow him to enter your property without your consent, but even if that is true, it may be a lawful order and would be for the purpose of carrying out his City duties rather than getting some kind of private benefit. As such, no violation of section 2.25.060(A)(2) occurred.

As for the allegation that Inspector Scyphers misled you by incorrectly citing the “City Attorney’s Office” as the agency requesting the inspection, it is doubtful that this allegation, even if true, would constitute a violation of section 2.25.060(A)(2). It is not a misuse of position to make a good-faith mistake. Inspector Scyphers told us that he simply misspoke and meant to say the “City Administrator’s Office.” Our initial fact-finding found that the inspection in question was indeed initiated by the Special Activity Permits office, in coordination with the Planning and Building Department. Both of those agencies are under the supervision of the City Administrator’s Office, which lends credibility to Inspector Scyphers’ explanation that he misspoke.

We are required to inform the Public Ethics Commission of the dismissal of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. That meeting will be on October 11, 2023, at 6:30PM, and the agenda will be posted on the Commission’s website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials. We are also enclosing a copy of the dismissal notice that we are sending to Inspector Scyphers, as required under our Complaint Procedures.

Respectfully,



SIMON RUSSELL | Enforcement Chief
CITY OF OAKLAND | Public Ethics Commission
City Hall, 1 Frank Ogawa Plaza, Room 104 |
Oakland, CA 94612
Phone: 510.238.2213 | Cell 510.424.3200 | Fax: 510.238.3315
Email: rusSELL@oaklandca.gov | he/him/his
www.oaklandca.gov/pec

Enclosure: Copy of dismissal letter to C. Scyphers



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ENFORCEMENT UNIT
1 FRANK H. OGAWA PLAZA, #104
OAKLAND, CA 94612
(510) 238-3593
TDD (510) 238-3254

September 28, 2023

Christopher Scyphers
Department of Planning and Building
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

Via email: CScyphers@oaklandca.gov

Re: Notice of Dismissal of Oakland Public Ethics Commission Complaint no. 23-30

To Christopher Scyphers:

On September 8, 2023, the City of Oakland Public Ethics Commission (PEC) sent you a letter stating that it had received a complaint against you (# 23-30) alleging that you had violated one or more laws under our jurisdiction.

The purpose of this current letter is to inform you that we have completed our preliminary review and have decided to dismiss the complaint. We will also be notifying the complainant of this.

Specifically, we reviewed whether the allegation in the complaint – that you attempted to conduct an inspection of a business without proper authority – violated section 2.25.060(A)(2) of the Government Ethics Act. That section prohibits City employees from using their official position, or the power or authority of that position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain. We found that the inspection in question was conducted in the ordinary course of your City duties and that there was no evidence or allegation that you attempted to procure any type of private benefit from the inspection. As such, no violation of section 2.25.060(A)(2) occurred.

As for the allegation that you misled the property owner by incorrectly citing the City Attorney's Office as the agency requesting the inspection, it is doubtful that this allegation, even if true, would constitute a violation of section 2.25.060(A)(2). It is not a misuse of position to make a good-faith mistake, and we also found your explanation credible that you simply misspoke and meant to cite the City Administrator's Office. Our initial fact-finding found that the inspection in question was indeed initiated by the Special Activity Permits

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office, in coordination with the Planning and Building Department. As these are both under the supervision of the City Administrator's office, we find your explanation to be credible.

The PEC does not have the authority to enforce any internal rules or procedures at the Building Department regarding the conduct of inspections, and we take no position on whether you followed those procedures during the inspection in question.

No further action is necessary on your part; this letter is just a courtesy notice. A copy has also been provided to the complainant, as required under our Complaint Procedures.

We are required to inform the Public Ethics Commission of the dismissal of this complaint at an upcoming public meeting, as part of our regular monthly update on Enforcement actions. That meeting will take place on October 11, 2023, at 6:30 PM, and the agenda will be posted on the Commission's website in advance of the meeting. The report will be purely informational, and no action will be taken by the Commission regarding this matter, which is now closed. However, you are welcome to attend that meeting and give public comment if you wish. You may also submit written comments to us before that meeting, and we will add them to the meeting materials.

Respectfully,



SIMON RUSSELL | Enforcement Chief
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