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**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of:

**BAJA CONCRETE USA CORP.,
NEWWAY FORMING INC., and
ANTONIO MACHADO**

From a Final Order of the Decision
issued by the Director, Seattle Office of
Labor Standards

Hearing Examiner File:

**No: LS-21-002
LS-21-003
LS-21-004**

**BAJA CONCRETE USA CORP.'S
WITNESS AND EXHIBIT LIST**

Pursuant to the case schedule in this matter, Baja Concrete USA Corp. presents the
following Plaintiff's Witnesses and Exhibits List:

WITNESS LIST

1. Claudia Penunuri
Member of Baja Concrete USA Corp.
c/o MDK Law
Mark Kimball
Alex Larkin
777 108th Ave NE, Suite 2000
Bellevue, WA 98004
Telephone: (425) 455-9610
Email: mkimball@mdklaw.com
E-mail: alarkin@mdklaw.com

This witness is expected to testify regarding the business operations of Appellant Baja.

1 Estimated time for direct examination: 20 minutes.

2 2. Mercedes de Armas
3 Governor of Mercedes Accounting & Associates LLC
4 (425) 747-0952
5 12727 Northup Way, Suite 7
6 Bellevue, WA 98005
7 Mercedes@mercedesaccounting.com

8 This witness is expected to provide testimony regarding Mercedes Accounting's
9 bookkeeping services provided to Appellant Baja, as well invoicing by Appellant Baja to
10 Appellant Newway Forming for services provided which may be relevant to the project
11 sites at issue in this case.

12 Estimated time for direct examination: 90 minutes.

13 3. Daron Williams
14 Senior Investigator
15 City of Seattle Office of Labor Standards
16 c/o Seattle City Attorney's Office
17 Lorna Sylvester
18 Cindi Williams
19 Trina Pridgeon
20 (206) 684 7732
21 701 Fifth Avenue, Suite 2050
22 Seattle, WA 98104
23 Lorna.Sylvester@seattle.com
24 Cindi.Williams@seattle.gov
25 Trina.Pridgeon@seattle.gov

This witness is expected to testify regarding the City of Seattle Office of Labor Standards' investigation and findings in the above-referenced case.

Estimated time for direct examination: 60 minutes.

4. Ashley Harrison
Investigator
City of Seattle Office of Labor Standards
c/o Seattle City Attorney's Office
Lorna Sylvester
Cindi Williams
Trina Pridgeon
(206) 684 7732
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Lorna.Sylvester@seattle.com
Cindi.Williams@seattle.gov

1 Trina.Pridgeon@seattle.gov

2 This witness is expected to testify regarding the City of Seattle Office of Labor Standards’
3 investigation and findings in the above-referenced case.

4 Estimated time for direct examination: 30 minutes.

5 5. Katie Jo Keppinger
6 Enforcement Manager
7 City of Seattle Office of Labor Standards
8 c/o Seattle City Attorney’s Office
9 Lorna Sylvester
10 Cindi Williams
11 Trina Pridgeon
12 (206) 684 7732
13 701 Fifth Avenue, Suite 2050
14 Seattle, WA 98104
15 Lorna.Sylvester@seattle.com
16 Cindi.Williams@seattle.gov
17 Trina.Pridgeon@seattle.gov

18 This witness is expected to testify regarding the City of Seattle Office of Labor Standards’
19 investigation and findings in the above-referenced case.

20 Estimated time for direct examination: 30 minutes.

21 6. Appellant Antonio Machado
22 Superintendent of Appellant Newway Forming
23 Newway Forming Inc.
24 c/o Rocke Law
25 Aaron Rocke
Allen McKenzie
(206) 652-8670
500 Union Street, Suite 909
Seattle, WA 98101
Aaron@rockelaw.com
Allen@rockelaw.com

This witness is expected to testify regarding business activities of Appellant Newway Forming, work activities, assignments, and hours of workers at the project sites at issue in this case, and the recruiting, hiring and termination of such workers. This witness is also expected to testify regarding the business interactions between Appellant Newway Forming and Appellant Baja, in particular to invoices by Appellant Baja Concrete to Appellant Newway Forming.

Estimated time for direct examination: 30 minutes.

7. Kwynne Forler-Grant

1 Project Coordinator of Appellant Newway Forming
Newway Forming Inc.
2 c/o Oles Morrison
Nicole Wolfe
3 (206) 623-3427
701 Pike Street, Suite 1700
4 Seattle, WA 98101

5 This witness is expected to testify regarding certain email exchanges between the witness,
6 internal communications, procedures and policies of Newway, communications and course
of dealing between Newway and Baja Concrete and Mercedes Accounting, Tom Grant and
7 Roberto Soto Contreras, and about the procedures for obtaining workers at project sites,
making payments for compensation of such workers, directing the activities of workers,
8 invoicing by Baja Concrete and payment of such invoicing.
Estimated time for direct examination: 40 minutes.

9 8. Tom Grant
10 Senior Project Coordinator of Appellant Newway Forming
Newway Forming Inc.
11 c/o Oles Morrison
Jason Wandler
12 Nicole Wolfe
(206) 623-3427
13 701 Pike Street, Suite 1700
14 Seattle, WA 98101

15 This witness is expected to testify regarding certain email exchanges between the witness,
16 internal communications, procedures and policies of Newway, communications and course
of dealing between Newway and Baja Concrete and Mercedes Accounting, Kwynne Grant
17 and Roberto Soto Contreras, and about the procedures for obtaining workers at project
sites, making payments for compensation of such workers, directing the activities of
workers, invoicing by Baja Concrete and payment of such invoicing.
18 Estimated time for direct examination: 20 minutes, if called to testify.

19 9. Connor Forler
20 Employee of Newway Forming Inc.
c/o Oles Morrison
21 Jason Wandler
Nicole Wolfe
22 (206) 623-3427
701 Pike Street, Suite 1700
23 Seattle, WA 98101
24 Estimated time for direct examination: 20 minutes, if called to testify.
25

1 10. Adam Pilling
2 Employee of Newway Forming Inc.
3 C/O Jason Wandler and Nicole Wolfe
4 Oles Morrison Rinker & Baker LLP
5 701 Pike St., Suite 1700
6 Seattle, WA 98101
7 206-623-3427

8 Mr. Pilling is may be called to testify regarding internal communications, procedures and
9 policies of Newway and directing the activities of workers at the project sites.
10 Estimated time for direct examination: 20 minutes, if called to testify.

11 11. Salvatore Giantomaso
12 C/O Jason Wandler and Nicole Wolfe
13 Oles Morrison Rinker & Baker LLP
14 701 Pike St., Suite 1700
15 Seattle, WA 98101
16 206-623-3427

17 Salvatore Giantomaso is a governor of Newway Forming and may be called to testify at to
18 procedures and policies of Newway Forming.
19 Estimated time for direct examination: 30 minutes, if called to testify.

20 12. Ezio Bortolussi
21 C/O Jason Wandler and Nicole Wolfe
22 Oles Morrison Rinker & Baker LLP
23 701 Pike St., Suite 1700
24 Seattle, WA 98101
25 206-623-3427

 Ezio Bortolussi is a governor of Newway Forming and may be called to testify at to procedures
 and policies of Newway Forming.
 Estimated time for direct examination: 20 minutes, if called to testify.

 13. Jonathan Ivan Parra Ponce
 C/O Asst. Seattle City Attorney
 701 Fifth Avenue, Suite 2050
 Seattle, WA 98104

 Mr. Ponce is a laborer who performed work at the project sites at issue in this matter. He
 provided a signed statement in this matter. Mr. Ponce is expected to testify about the work
 activities he and others performed at the project sites, direction of work activities, work
 locations, working hours, wages and benefits, rest breaks, meal/lunch breaks, recruiting of
 workers, hiring and termination of employment and related matters.

1 Estimated time for direct examination: 30 minutes.

2 14. Angel Martin Gomez Chavez
3 C/O Asst. Seattle City Attorney
4 701 Fifth Avenue, Suite 2050
5 Seattle, WA 98104

6 Mr. Chavez is a laborer who performed work at the project sites at issue in this matter. He
7 provided a signed statement in this matter. Mr. Chavez is expected to testify about the
8 work activities he and others performed at the project sites, direction of work activities,
9 work locations, working hours, wages and benefits, rest breaks, meal/lunch breaks,
10 recruiting of workers, hiring and termination of employment and related matters.

11 Estimated time for direct examination: 40 minutes.

12 15. John Edward Hiestroza Diaz
13 C/O Asst. Seattle City Attorney
14 701 Fifth Avenue, Suite 2050
15 Seattle, WA 98104

16 Mr. Diaz is a laborer who performed work at the project sites at issue in this matter. He
17 provided a signed statement in this matter. Mr. Diaz is expected to testify about the work
18 activities he and others performed at the project sites, direction of work activities, work
19 locations, working hours, wages and benefits, rest breaks, meal/lunch breaks, recruiting of
20 workers, hiring and termination of employment and related matters.

21 Estimated time for direct examination: 30 minutes.

22 16. Matias Catalan Toro
23 C/O Asst. Seattle City Attorney
24 701 Fifth Avenue, Suite 2050
25 Seattle, WA 98104

Mr. Toro is a laborer who performed work at the project sites at issue in this matter. He
provided a signed statement in this matter. Mr. Toro is expected to testify about the work
activities he and others performed at the project sites, direction of work activities, work
locations, working hours, wages and benefits, rest breaks, meal/lunch breaks, recruiting of
workers, hiring and termination of employment and related matters.

Estimated time for direct examination: 30 minutes.

17. All employees who testified or were otherwise relied upon during the investigation
in this matter, including, without limitation, the individuals listed in Attachment B of the
Findings of Fact, Determination and Final Order of the City of Seattle Office of Labor
Standards, Case No, CAS-2020-00186, which is the subject of this appeal. As of the date
of this preliminary witness list, the identities of specific workers who provided testimony

1 which were relied on in support of findings of joint employment, unpaid wages, unpaid or
2 under-compensated sick and safe time, and wage deductions, in the above-referenced
3 Determination and Final Order have not been disclosed to Appellant Baja.

4 These witnesses are expected to testify regarding such matters as how they were recruited,
5 who hired and employed them, how were their wages determined, who directed their work
6 activities, work locations, working hours, break times, sick leave requests, wage
7 deductions, all of which are central to the assertions of the City of Seattle Office of Labor
8 Standards which form the basis for its allegations and claims against Appellant Baja at
9 issue in this matter.

10 Estimated time for direct examination: 2-4 hours.

11 18. Any witness called by any other party.

12 Respondent Baja reserves the right to amend or supplement this disclosure, including
13 without limitation adding expert witnesses.

14 EXHIBITS LIST

15 Ex. No	16 Description	17 Bates Range
18 1.	19 Baja 2018 Invoices to Newway	20 APPBAJA0185- 21 APPBAJA0247
22 2.	23 Baja 2019 Invoices to Newway	24 APPBAJA0248- 25 APPBAJA0359
3.	Baja 2020 Invoices to Newway	APPBAJA0360- APPBAJA0400
4.	2018.01.30 Soto Email re Payroll	APPBAJA1240- APPBAJA1244
5.	2018.02.12 Soto Email re Payroll	APPBAJA1245- APPBAJA1246
6.	2018.02.27 Soto Email re Payroll	APPBAJA1247- APPBAJA1251
7.	2018.03.26 Soto Email re Payroll	APPBAJA1252- APPBAJA1254
8.	2019.01.01 Soto Email re Payroll	APPBAJA1255- APPBAJA1257
9.	2019.01.16 Soto Email re Payroll	APPBAJA1258- APPBAJA1260
10.	2019.01.30 Soto Email re Payroll	APPBAJA1261- APPBAJA1263
11.	2019.02.27 Soto Email re Payroll	APPBAJA1264- APPBAJA1265

Ex. No	Description	Bates Range
12.	2019.03.13 Soto Email re Payroll	APPBAJA1266-APPBAJA1267
13.	2019.03.26 Soto Email re Payroll Template	APPBAJA1268-APPBAJA1271
14.	2019.04.09 Soto Email re Payroll	APPBAJA1272-APPBAJA1273
15.	2019.04.24 Soto Email re Payroll Template	APPBAJA1274-APPBAJA1275
16.	2019.05.08 Soto Email re Payroll Template	APPBAJA1276-APPBAJA1277
17.	2019.05.22 Soto Email re Payroll Template	APPBAJA1278-APPBAJA1279
18.	2019.06.05 Soto Email re Payroll Template	APPBAJA1280-APPBAJA1281
19.	2019.06.19 Soto Email re Payroll Template	APPBAJA1282-APPBAJA1283
20.	2019.07.01 Soto Email re Payroll Template	APPBAJA1284-APPBAJA1285
21.	2019.07.17 Soto Email re Payroll Template	APPBAJA1286-APPBAJA1287
22.	2019.07.31 Soto Email re Payroll	APPBAJA1288-APPBAJA1289
23.	2019.08.14 Soto Email re Payroll	APPBAJA1290-APPBAJA1291
24.	2019.08.28 Soto Email re Payroll	APPBAJA1292-APPBAJA1293
25.	2019.09.11 Soto Email re Payroll	APPBAJA1294-APPBAJA1295
26.	2019.09.25 Soto Email re Payroll	APPBAJA1296-APPBAJA1297
27.	2019.10.09 Soto Email re Payroll	APPBAJA1298-APPBAJA1299
28.	2019.10.23 Soto Email re Payroll	APPBAJA1300-APPBAJA1301
29.	2019.11.06 Soto Email re Payroll	APPBAJA1302-APPBAJA1303
30.	2019.11.20 Soto Email re Payroll	APPBAJA1304-APPBAJA1305
31.	2019.12.04 Soto Email re Payroll	APPBAJA1306-APPBAJA1307
32.	2019.12.18 Soto Email re Payroll	APPBAJA1308-APPBAJA1309

Ex. No	Description	Bates Range
33.	2019.12.31 Soto Email re Payroll	APPBAJA1310-APPBAJA1311
34.	2020.01.15 Soto Email re Payroll	APPBAJA1312-APPBAJA1313
35.	2020.01.28 Soto Email re Payroll	APPBAJA1314-APPBAJA1315
36.	2020.02.14 Payroll Notes	APPBAJA1316
37.	2020.02.26 Soto Email re Payroll	APPBAJA1317-APPBAJA1318
38.	2020.03.11 Soto Email re Payroll	APPBAJA1319-APPBAJA1320
39.	2020.03.25 Soto Email re Payroll	APPBAJA1321-APPBAJA1322
40.	2020.04.20 Soto Email re Payroll	APPBAJA1323-APPBAJA1324
41.	2020.04.24 Soto Email re Payroll	APPBAJA1325-APPBAJA1326
42.	2020.05.06 Soto Email re Payroll	APPBAJA1327-APPBAJA1328
43.	2020.05.20 Soto Email re Payroll	APPBAJA1329-APPBAJA1330
44.	2020.06.03 Soto Email re Payroll	APPBAJA1331-APPBAJA1332
45.	Paystubs Alejandro Fiol	APPBAJA0401-APPBAJA0413
46.	Paystubs Angel Gomez Chavez	APPBAJA0414-APPBAJA0430
47.	Check Antonio Machado	APPBAJA0431
48.	Paystubs Antonio Yevenes	APPBAJA0432-APPBAJA0439
49.	Paystubs Bulfrano Brito	APPBAJA0440-APPBAJA0452
50.	Paystubs Claudia Penunuri	APPBAJA0453-APPBAJA0507
51.	Paystubs Claudio Gamboa	APPBAJA0508-APPBAJA0545
52.	Paystubs Cristhian Pelaez Ruiz	APPBAJA0546-APPBAJA0558
53.	Paystubs Cristian Navejas	APPBAJA0559-APPBAJA0593
54.	Paystubs David Giron	APPBAJA0594-APPBAJA0597

Ex. No	Description	Bates Range
55.	Paystubs David San Roman Mendo	APPBAJA0598-APPBAJA0603
56.	Paystubs Diego Rojas Villaseca	APPBAJA0604-APPBAJA0605
57.	Paystubs Edison Chimborazo Macas	APPBAJA0606-APPBAJA0638
58.	Paystubs Emeterio Collins Lopez	APPBAJA0639-APPBAJA0646
59.	Paystubs Evelio Alvarez Ruiz	APPBAJA0647-APPBAJA0662
60.	Paystubs Gabriel Rios Ortiz	APPBAJA0663-APPBAJA0670
61.	Paystubs Gerardo Guzman Barragan	APPBAJA0671-APPBAJA0684
62.	Paystubs Gerardo Valencia	APPBAJA0685-APPBAJA0728
63.	Paystubs Hector Cispedes Rivera	APPBAJA0729-APPBAJA0763
64.	Paystubs Israel Avila Gasca	APPBAJA0764-APPBAJA0784
65.	Paystubs Ivan Ponce	APPBAJA0785-APPBAJA0811
66.	Paystubs Javier Alfaro Perez	APPBAJA0812-APPBAJA0820
67.	Paystubs Jesus Ramon Castro Mendoza	APPBAJA0821-APPBAJA0829
68.	Paystubs John Hinestroz Diaz	APPBAJA0830-APPBAJA0836
69.	Paystubs Jose Acosta Caballero	APPBAJA0837-APPBAJA0857
70.	Paystubs Jose Alvarez Rodriguez	APPBAJA0858-APPBAJA0865
71.	Paystubs Jose Estrada Parra	APPBAJA0866-APPBAJA0900
72.	Paystubs Jose Vega Hernandez	APPBAJA0901-APPBAJA0921
73.	Paystubs Josue Osuna Tallabas	APPBAJA0922-APPBAJA0931
74.	Paystubs Julio Cabellero Pacheco	APPBAJA0932-APPBAJA0940
75.	Paystubs Lucas Ayala	APPBAJA0941-APPBAJA0950

Ex. No	Description	Bates Range
76.	Paystubs Luis Andres Arrigada Aguilera	APPBAJA0951-APPBAJA0968
77.	Paystubs Luis Fernandez Rosas	APPBAJA0969-APPBAJA0974
78.	Paystubs Luis Garcia	APPBAJA0975-APPBAJA0980
79.	Paystubs Manuel Camus Valdes	APPBAJA0981-APPBAJA1022
80.	Paystubs Marco Villasenor Harbolte	APPBAJA1023-APPBAJA1040
81.	Paystubs Martin Ayala Ochoa	APPBAJA1041-APPBAJA1048
82.	Paystubs Matias Catalan Toro	APPBAJA1049-APPBAJA1064
83.	Paystubs Miguel Alfaro Pinto	APPBAJA1065-APPBAJA1073
84.	Paystubs Noe Rios Estrada	APPBAJA1074-APPBAJA1088
85.	Paystubs Patricio Fernandez Borquez	APPBAJA1089-APPBAJA1125
86.	Paystubs Ramon Duenas Gomez	APPBAJA1126-APPBAJA1141
87.	Paystubs Raul Benjamin Hiraes Cuevas	APPBAJA1142-APPBAJA1160
88.	Paystubs Roberto Hiralez Colin	APPBAJA1161-APPBAJA1202
89.	Paystubs Roberto Lopez Hernandez	APPBAJA1203-APPBAJA1209
90.	Paystubs Ruben Gonzalez	APPBAJA1210-APPBAJA1236
91.	Tools Summary Deductions	APPBAJA1239
92.	[deleted]	
93.	[deleted]	
94.	Payroll Summ 061320 to 063020	APPBAJA0031
95.	Payroll Summ 070120 to 073120	APPBAJA0032-APPBAJA0033
96.	Payroll Summ 080120 to 083120	APPBAJA0034-APPBAJA0135
97.	[deleted]	
98.	2019.09.16 Email Grant to Soto	APPBAJA0136-APPBAJA0137
99.	Newway Soto Correspondence	APPBAJA0138-APPBAJA0153

Ex. No	Description	Bates Range
100.	Invoices from Baja Canada	APPBAJA1545-APPBAJA1568
101.	[deleted]	N/A
102.	Payroll Information	APPBAJA1333-APPBAJA1458
103.	Payroll Information 2	APPBAJA1459-APPBAJA1544
104.	Safety Sign In Sheets	APPBAJA0163-APPBAJA0176
105.	[deleted]	
106.	[deleted]	
107.	Certificate of Formation Baja	SEATTLEOLS-0036
108.	1120 Denny Project Update	SEATTLEOLS-0013-SEATTLEOLS-0024
109.	Denny Way Project Desc	SEATTLEOLS-0051-SEATTLEOLS-0054
110.	Newway Overview	SEATTLEOLS-0046-SEATTLEOLS-0048
111.	Newway Washington DOR	SEATTLEOLS-0037-SEATTLEOLS-0041
112.	Articles of Inc Baja	SEATTLEOLS-0009-SEATTLEOLS-0011
113.	[deleted]	
114.	Findings, Determination & Final Order	SEATTLEOLS-0135-SEATTLEOLS-0184
115.	[deleted]	
116.	Emails Baja - Seattle	SEATTLEOLS-0441-SEATTLEOLS-0447
117.	Timecards 1	SEATTLEOLS-0867

Ex. No	Description	Bates Range
118.	Timecards 2	SEATTLEOLS-0868
119.	Timecards 3	SEATTLEOLS-0869
120.	Machado Interview Statement	SEATTLEOLS-1060- SEATTLEOLS-1067
121.	Machado Interview Statement Ex B	SEATTLEOLS-1068- SEATTLEOLS-1069
122.	Machado Interview Statement Ex A	SEATTLEOLS-1070
123.	Newway Organizational Chart 1	SEATTLEOLS-2246
124.	Newway Organizational Chart 2	SEATTLEOLS-2247
125.	OLS Questions	SEATTLEOLSP DR-0993- SEATTLEOLSP DR-1001
126.	OLS Wage Summaries	SEATTLEOLSP DR-1002- SEATTLEOLSP DR-1027
127.	Declaration of Investigator	SEATTLEOLSP DR-2279 - SEATTLEOLSP DR-2299
128.	[deleted]	
129.	Hours Approved by Newway.	NEWWAY-002495- NEWWAY-002498
130.	Newway email re timecards	N/A
131.	Payments by Newway	NEWWAY-002056- NEWWAY-002069

Ex. No	Description	Bates Range
132.	Timecards – Diego Rojas	NEWWAY-003142- NEWWAY-003143
133.	Timecards – Gerardo Guzman	NEWWAY-002665- NEWWAY-002669
134.	Timecards – Hector Cepedes	NEWWAY-003139- NEWWAY-003140
135.	Timecards – Javier Alfaro	NEWWAY-003141
136.	Timecards – Jesus Castro	NEWWAY-002857- NEWWAY-002881
137.	Timecards – Jose Acosta	NEWWAY-002897- NEWWAY-002902
138.	Timecards – Jose Alvarez	NEWWAY-003218- NEWWAY-003221
139.	Timecards – Jose Vega	NEWWAY-003152- NEWWAY-003153
140.	Timecards – Julio Cabarello	NEWWAY-003174- NEWWAY-003178
141.	Timecards – Luis Ariagada	NEWWAY-002794- NEWWAY-002803
142.	Timecards – Luis Fernandez	NEWWAY-002534- NEWWAY-002538

Ex. No	Description	Bates Range
143.	Timecards – Manuel Camus	NEWWAY-002961- NEWWAY-002965
144.	Timecards – Marco Villesca	NEWWAY-002882- NEWWAY-002886
145.	Timecards – Miguel Alfaro	NEWWAY-002714- NEWWAY-002718
146.	Timecards – Patricio Fernandez	NEWWAY-002983- NEWWAY-002987
147.	Timecards - Raul Hiraes	NEWWAY-003004- NEWWAY-003005
148.	Timecards – Roberto Hiraes	NEWWAY-002613- NEWWAY-002628
149.	Timecards – Roberto Lopez	NEWWAY-002756- NEWWAY-002760
150.	Timecards – Various	NEWWAY-002489- NEWWAY-002494
151.	[deleted]	
152.	Emails OLS and Mercedes Accounting	N/A
153.	OLS Final Order	N/A
154.	[deleted]	N/A
155.	Payroll Summary Dep. of Acc.	N/A
156.	Baja Appeal	N/A
157	OLS Questions	APPBAJA0154- APPBAJA0162
158	Statement of Ponce	N/A

DATED this 11th day of May, 2023.

1 MDK Law

2 */s/ Alex T. Larkin*

3

MARK D. KIMBALL, WSBA # 13146

ALEX T. LARKIN, WSBA # 36613

4 MDK Law

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7 E-mail: alarkin@mdklaw.com

8 Attorneys for Baja Concrete USA Corp.

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