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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

ELIZABETH CRANE, on Behalf of Herself  
and all Others Similarly Situated,

Plaintiff,

vs.

LESSEREVIL, LLC,

Defendant.

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**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff, Elizabeth Crane (“Crane” or “Plaintiff”), by and through her attorneys, brings this action on behalf of herself and all others similarly situated against Defendant, LesserEvil, LLC (“LesserEvil” or “Defendant”), and alleges, on personal knowledge as to all facts related to herself and upon information and belief as to all other matters, as follows:

### **NATURE OF THE ACTION**

1. Plaintiff brings this action individually and on behalf of a proposed class (“Class”) as more fully defined below, of similarly situated consumers in Florida seeking to redress the pervasive pattern of fraudulent, deceptive, false, and otherwise improper advertising, sales, and marketing practices that Defendant engages in regarding its Chia Crisps products (“Chia Crisps” or “Product(s)”).

2. Defendant manufactures, markets, and sells Chia Crisps, which is a line of healthy snack foods that are purported to be all natural, non-GMO, gluten-free, and “[m]ade with black bean and milled with Salba® Chia.” See <http://lesserevil.com/2012/03/>. According to Defendant, the Product is available in four flavors: Feta and Black Olive, Crunchy Dill Pickle, Jalapeno White Cheddar, and Southern Barbeque. See <http://lesserevil.com/>.

3. At all relevant times, LesserEvil has made, and continues to make, misrepresentations and/or omissions regarding its Chia Crisps. Specifically, LesserEvil, based on the label and other forms of advertising to Plaintiff and others similarly situated, represents that the Product contains a significant amount of chia seeds, when, in actuality, the Product is primarily composed of black beans, a less expensive ingredient. LesserEvil knew and purposely misrepresented and failed to disclose this fact to consumers. As a result of these misrepresentations and/or omissions regarding the Chia Crisps, LesserEvil was able to charge a premium on the Product because chia seeds are in high demand and an expensive product.

4. As a consequence of LesserEvil's unfair and deceptive practice, Plaintiff and the Class have purchased Chia Crisps under the false impression that the Product contains a significant amount of chia seeds. Each consumer has been exposed to the material misrepresentations and/or omissions, which are prominently displayed on the Product packaging, prior to purchasing it. Furthermore, LesserEvil makes the same material and misleading statements and/or omissions on its website and other advertising materials.

5. Under the false impression that Defendant's Chia Crisps contained a significant amount of chia seeds, tens of thousands of Florida consumers paid a premium for an inferior product, thereby padding Defendant's pockets with undeserved profits.

6. Had Plaintiff and the Class been aware that the Product contained far less chia seeds than represented, and was actually primarily composed of black beans, a less expensive ingredient, they would not have purchased Chia Crisps, or would have paid less for the Product.

7. As a result of Defendant's false and misleading statements and failure to disclose, Plaintiff and the Class bought tens of thousands of bags of the Product and have suffered – and continue to suffer – injury in fact as a result of Defendant's misrepresentations and/or omissions. Additionally, Defendant acquired money or property from Plaintiff and the Class as a result of its unfair, deceptive, and unlawful conduct as alleged herein.

8. Plaintiff brings this action, on behalf of herself and other similarly situated Florida consumers, to halt the dissemination of this false and misleading advertising, correct the false and misleading perception it has created in the minds of consumers, and to obtain redress for those who have purchased Chia Crisps. Plaintiff alleges violations of the Florida Deceptive and Unfair Trade Practice Act and, alternatively, asserts a claim for unjust enrichment.

**JURISDICTION AND VENUE**

9. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and Plaintiff and certain members of the Class are citizens of states different from that of Defendant.

10. This Court has personal jurisdiction over Defendant because Defendant has conducted and continues to conduct business in the State of Florida, and because Defendant has committed the acts and omissions complained of herein in the State of Florida, which is also the state in which Plaintiff resides and is a citizen.

11. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because Defendant:

- a. is authorized to conduct business in this district and has intentionally availed itself of the laws and markets within this district through the promotion, marketing, distribution, and sale of Chia Crisps here;
- b. does substantial business in this district;
- c. is subject to personal jurisdiction in this district; and
- d. Plaintiff resides in this district.

**PARTIES**

12. Plaintiff is, and at all times relevant to this action has been, a resident of Fort Lauderdale, Broward County, Florida, and, thus, is a citizen of Florida. Prior to purchasing Chia Crisps, Plaintiff was exposed to and saw Defendant's claims, and purchased Chia Crisps in reliance thereon. Plaintiff suffered injury in fact and lost money as a result of Defendant's false and misleading conduct.

13. Defendant is a limited liability company organized under the laws of the State of Connecticut and is based in 83 Newtown Road, Second Floor, Danbury, Connecticut 06810. Therefore, Defendant is a citizen of Connecticut. Defendant promotes, markets, distributes, and sells Chia Crisps throughout the United States, including to consumers in the State of Florida.

### **SUBSTANTIVE ALLEGATIONS**

#### **A. Tapping into the Growing Chia Seed Market**

14. While Chia seeds “[has] been considered a superfood<sup>1</sup> since the time of the Aztec,”<sup>2</sup> only within the past couple of years “did chia seed become recognized as a modern day superfood.”<sup>3</sup> Chia seeds have immediate and sustained health benefits because they are gluten-free; super high in dietary fiber; contain 20% Omega-3 ALA; boast 20% protein; are high in antioxidants; contain a significant amount of calcium, vitamin C, iron, and potassium; and are known to have a positive impact in balancing blood glucose levels. Furthermore, because chia seeds are extremely flexible in that they can be easily incorporated into an individual’s diet, the seeds have grown in popularity and blossomed all over the market in different types of products.

15. With the health benefits of chia seeds becoming widely known, consumer demand for chia seeds has increased rapidly. As a result, chia seeds have become very expensive. It was this growing and fruitful market that LesserEvil tapped into with the sale of its Chia Crisps.

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<sup>1</sup> The Oxford Dictionary defines superfood as a nutrient-rich food considered to be especially beneficial for health and well-being.

<sup>2</sup> Sonia van Gilder Cooke, *Chia Seeds as Superfood: Now You Can Have Your Chia Pet and Eat it Too*, TIMES, <http://newsfeed.time.com/2012/11/28/chia-seeds-as-superfood-now-you-can-have-your-chia-pet-and-eat-it-too/>.

<sup>3</sup> Kris Gunnars, *11 Proven Health Benefits of Chia Seeds*, AUTHORITY NUTRITION, <http://authoritynutrition.com/11-proven-health-benefits-of-chia-seeds/>. See also Stephanie Strom, *30 Years After Chia Pets, Seeds Hit Food Aisles*, THE NEW YORK TIMES, <http://www.nytimes.com/2012/11/24/business/chia-seeds-gain-popularity-for-nutritional-benefits.html>.

16. LesserEvil, through the packaging, marketing, and advertising of Chia Crisps, purports that the Product consists of a significant amount of chia seeds, even though it does not contain such amount, and, in reality, is primarily composed of black beans, a low-cost ingredient that does not offer the same health benefits as chia seeds.

**B. The Label of LesserEvil's Chia Crisps**

17. LesserEvil prides itself in its honesty to the consuming public and encourages other companies to “put the ingredients on the bag.” See <http://lesserevil.com/>. On its website LesserEvil states, “[w]hat we do feel strongly about is American’s [sic] rights to know what they are eating. We are proud to show what is in our foods.” *Id.* While LesserEvil does list the ingredients on Chia Crisps packaging, LesserEvil deceives consumers in another way by leading consumers to think that Chia Crisps contain a substantial amount of chia seeds – the desired superfood – when, in fact, they does not.

18. Even though Chia Crisps contain a minimal amount of chia seeds, and, in reality, are predominantly composed of black beans – a cheap ingredient – LesserEvil made a tactical marketing or advertising decision to create deceptive and misleading labels for its Product that leads a reasonable consumer to think otherwise.

19. The front label on LesserEvil's Chia Crisps Jalapeno White Cheddar appears as follows:



20. As shown by the above front label, the Product is named "Chia Crisps," a title which appears prominently in large white letters on a solid green background and placed at the top of the package. Aside from the flavor of the Product, due to the way the label is created, the Product name is what is eye-catching about the packaging. Moreover, the five widely known beneficial qualities of chia seeds are listed on the bottom half of the package: Omega-3's (ALA), Powerful Antioxidants, EC Free, Good source of fiber, 4g of Protein per serving. And the mention of its predominant ingredient – black beans – is inconspicuously placed in small letters, underneath the pronounced words Chia Crisps, and in the same but darker shade of the background color.

21. The back label on LesserEvil's Chia Crisps Jalapeno White Cheddar further misleads consumers into believing that chia seeds are the primary ingredient of the Product; it appears as follows:



22. As shown by the above back label, below the Product name, which is again prominently displayed in large letters, the questions “Chia? Why?” is written beneath it. Following the question, LesserEvil once again extolls the widely known nutritional benefits of chia seeds:

It's not a plant, it's a seed. A super seed that's rich in **omega-3s (ALA)**, **antioxidants**, **calcium** and loaded with **protein** to help curb your growing hunger. Specifically, we've chosen Salba chia to team up with black bean in our seriously tasty recipe. It's easy to digest, gluten-free, vegan, Kosher and filled with **fiber**. So here's to snacking on something that's jam-packed with the good stuff to keep everyone young at heart. (Emphasis added.)

23. Both the front and back labels of the Product discuss and emphasize the nutritional value of chia seeds, and chia seeds only. Although neither the title nor the Product description located on the front and back label specify the percentage of chia seeds that is



actually contained in the Product, the name, “Chia Crisps,” and the extensive discussion about chia seeds on the packaging, leads consumers to mistakenly believe that chia seeds are the primary ingredient of the Product. Thus, LesserEvil mislead Plaintiff and other consumers, who reasonably expected that the Product contains a significant amount of chia seeds, when, in fact, the Product is primarily composed of black beans, a less expensive ingredient.

24. The labels for LesserEvil’s “Chia Crisps Feta and Black Olive,” “Chia Crisps Crunchy Dill Pickle,” and “Chia Crisps Southern Barbeque,” are substantially similar in content and appearance to the “Chia Crisps Jalapeno White Cheddar,” and had the same effect of misleading Plaintiff and other consumers, who reasonably expected that the Products contain a significant amount of chia seeds, when they do not.

### C. LesserEvil’s Website and Other Forms of Advertising for its Chia Crisps

25. In addition to the Product label, LesserEvil deceptively describes Chia Crisps on its website at <http://lesserevil.com>, which is accessible to the general public. In pertinent part, LesserEvil’s website appears as follow:



26. Similar to the label of the Product, LesserEvil’s website also emphasizes the chia seeds in the Product, rather than its predominant ingredient, black beans. Black beans are not

even listed in the Product description on the website. Further, nowhere on the website does LesserEvil reveal that Chia Crisps contain only a minimal amount of chia seeds, and that they are primarily composed of black beans.

27. In addition, Plaintiff is informed and believes and thereupon alleges that LesserEvil also engaged in other forms of deceptive advertising and/or marketing of its Chia Crisps, including, but not limited to print advertisements, point-of-purchase displays, and social media.

**D. LesserEvil Misled and Continues to Mislead Consumers**

28. Through its uniform deceptive and misleading advertising and marketing campaign, LesserEvil has led and continues to lead consumers to believe that the primary ingredient in the Product is chia seeds when they are not the primary ingredient. In fact, chia seeds are listed as the *second to last* ingredient on the legally required ingredient list.<sup>4</sup> This position in the list indicates that chia seeds are one of the *least* weighted ingredients in the Product – black beans, which are known as a cheap product, are, conversely, listed first on the ingredient list, signifying that they are the main ingredient in the Products.

29. By naming the product Chia Crisps, underscoring the positive qualities of chia seeds, providing an in-depth description of the health benefits of chia seeds and, at the same time, failing to disclose that chia seeds make up a very small percentage of the Product, LesserEvil misled – and continues to mislead – Plaintiff and other consumers, who reasonably expected that the Product was primarily made of chia seeds.

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<sup>4</sup> 21 C.F.R. § 101.4 provides that the ingredients on the label of a food “shall be listed by common or usual name in descending order of predominance by weight.”

30. As a result of this misleading and deceptive campaign, consumers, including Plaintiff, have purchased the Product believing that it contains a significant amount of chia seeds, even though it is actually primarily composed of a less expensive and less beneficial ingredient.

31. The consumers' confusion is reasonable given (1) the nature of LesserEvil's representations on its label and advertisement, including, *inter alia*, naming the Product, "Chia Crisps"; (2) the fact that LesserEvil markets itself as a company that informs its customers "what is in [their] foods"; and (3) the fact that some companies are selling snacks advertised as consisting of chia seeds, which are truly composed of a substantial amount of chia seeds.

32. As a result of its representations that the Product consists of a substantial amount of chia seeds, an expensive ingredient, Defendant sells Chia Crisps at a premium price, substantially higher than other chip products.

33. Accordingly, LesserEvil's representations regarding Chia Crisps are false, misleading, and fail to disclose material facts. LesserEvil knew or should have known, and should have disclosed, that Chia Crisps contain far less chia seeds than represented. LesserEvil knew or should have known that its representations concerning the Product were likely to deceive consumers into believing that they were purchasing a product that contained a substantial amount of chia seeds, when, in actuality, the Product contains minimal amounts of chia seeds.

34. As a result of LesserEvil's representations and/or omissions, Plaintiff and the Class overpaid for the Chia Crisps they purchased because they did not receive the product they paid for, but instead received an inferior product made out of an ultra-cheap ingredient. Had Plaintiff and the Class been aware that the Product contained substantially less chia seeds than represented, and that the Product is actually predominantly composed of a cheap ingredient, they

would not have purchased the Product, or would have paid less for it. Moreover, for all of the reasons stated above, Plaintiff and the Class suffered ascertainable loss, injury in fact and have lost money or property as a result of LesserEvil's actions and/or omissions.

**PLAINTIFF'S EXPERIENCE WITH CHIA CRISPS**

35. The labeling and advertising of the Product, and the representations therein, were made by Defendant. Reasonably relying on the label and advertisement of the Product and representations therein, Plaintiff purchased the Product. Plaintiff reasonably expected that the Product would, in fact, contain a significant amount of chia seeds, as conveyed in the label and advertisement.

36. In or about January 2014, Plaintiff was shopping at a Whole Foods in Fort Lauderdale, Florida. While shopping, she saw Chia Crisps on the store shelf. Plaintiff then read the label that discussed and emphasized the health benefits of chia seeds. Based on viewing these representations on the label, Plaintiff understood that Chia Crisps contained a significant amount of chia seeds.

37. As a result of her understanding, and in reliance on the label's statements, she purchased and consumed the Product regularly through September 2014. Plaintiff purchased Chia Crisps on multiple occasions at various retail stores, including Whole Foods, Fresh Market, and Nature's Remedy Health Food Store, typically buying multiple bags at a time for approximately \$3.99 per bag, plus tax.

38. Trusting LesserEvil's statements, Plaintiff paid substantially more for Chia Crisps than she would have had she purchased similar products, as LesserEvil charges a price premium due to the purported addition of the expensive ingredient, chia seeds. Plaintiff was willing to,

and did, pay the premium price, because she understood from the labeling and advertising that Chia Crisps contained a significant amount of chia seeds.

39. Plaintiff suffered an ascertainable loss in either the amount of the purchase price of the Product, or the premium she paid for the Product, as a result of Defendant's conduct described herein.

### **CLASS ACTION ALLEGATIONS**

40. Plaintiff brings this lawsuit on behalf of herself and the proposed Class members pursuant to the Federal Rules of Civil Procedure 23(b)(2) and (3). The proposed Class consists of:

All persons who purchased Chia Crisps in the State of Florida (the "Class").

41. Excluded from the Class is (1) Defendant, as well as Defendant's subsidiaries, affiliates, employees, officers, directors, assigns, and successors, and any entity in which Defendant has a controlling interest; (2) the Judge to whom this case is assigned to and any member of the Judge's immediate family; (3) anyone who purchased Chia Crisps for the purpose of resale; and (4) anyone asserting claims for personal injury. Plaintiff reserves the right to amend the definition of the Class if discovery and/or further investigation reveals that the Class should be expanded or otherwise modified.

42. **Numerosity:** The members of the Class are so numerous that joinder of all members is impracticable. Plaintiff reasonably estimates that there are thousands of consumers in Florida.

43. **Commonality and Predominance:** Common questions of law and fact exist as to all members of the Class. These common questions predominate over any questions affecting

only individual Class members. These common legal and factual questions include, but are not limited, to the following:

- a. whether Defendant's claims regarding Chia Crisps are deceptive and misleading;
- b. whether Defendant engaged in false and misleading advertising;
- c. whether Defendant's Product contains an insignificant amount of chia seeds, and, if so, what percentage of chia seeds it contains;
- d. whether Defendant's conducts as alleged herein violates the FDUTPA;
- e. whether Defendant has been unjustly enriched by the conduct alleged herein;
- f. whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and
- g. whether Plaintiff and Class members are entitled to declaratory and injunctive relief.

44. **Typicality:** Plaintiff's claims are typical of the claims of the proposed Class, as all Class members are similarly affected by Defendant's wrongful conduct. Plaintiff, like other members of the Class, purchased Chia Crisps after exposure to the same material misrepresentation and/or omissions appearing on the Product packaging, on LesserEvil's website, and other advertising, and received a product that contained substantially less chia seeds than represented. Plaintiff is advancing the same claims and legal theories on behalf of herself and all absent members of the Class.

45. **Adequacy:** Plaintiff's claims are made in a representative capacity on behalf of the other members of the Class. Plaintiff has no interests antagonistic to the interest of the other members of the proposed Class and is subject to no unique defenses.

46. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. The injury suffered by each individual Class member is relatively small in comparison to the burden and expenses of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class to individually redress the wrongs done to them effectively. Even if the members of the Class could afford such litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents no management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

47. Unless a class is certified, Defendant will improperly retain monies received, as a result of its conduct, from Plaintiff and members of the Class. Unless an injunction is issued, Defendant will continue to commit the violations alleged, and the members of the Class and the general public will continue to be misled.

**COUNT I**  
**Violation Of Florida Deceptive And Unfair Trade Practices Act,**  
**(FLA. STAT. § 501.202(2), et seq. ("FDUTPA")) On Behalf Of The Florida Class**

48. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as though set forth fully therein.

49. At all relevant times, Plaintiff and members of the Florida Class were consumers within the meaning of Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”).

50. At all relevant times hereto, LesserEvil engaged in trade and/or commerce within the meaning of the FDUTPA.

51. The Florida Legislature has expressly stated that FDUTPA “shall be liberally construed to promote” its underlying policies, including “to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practice in the conduct of any trade or commerce.” FLA. STAT. § 501.202(2).

52. FDUTPA prohibits the use of “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” FLA. STAT. § 501.204(1)

53. FDUTPA further provides that the Florida courts give “due consideration and great weight” to the Federal Trade Commission and federal court interpretations of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C § 45(a)(1). FLA. STAT. § 501.204(2).

54. Defendant’s labeling and advertising constitutes a deceptive act because it is a representation, omission, or practice that is likely to mislead – and has misled – a consumer acting reasonably under the circumstances, and violate FLA. STAT. § 500.04 and 21 U.S.C. § 343. By naming the Product Chia Crisps and emphasizing the positive qualities of chia seeds, providing an explanation of health benefits of chia seeds on the packaging, and failing to disclose that chia seeds are a small part of the Product, Defendant mislead consumers acting reasonably under the circumstances into believing that the Product is predominantly made out of chia seeds, when, in fact, chia seeds represent an insignificant amount of the Product. As a result of this



reasonable, but erroneous belief, tens of thousands of consumers have paid and continue to pay an unjustified premium for Defendant's Product.

55. Defendant's labeling and advertising constitutes an unfair practice because it offends established public policy and is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

56. As a direct and proximate result of Defendant's deceptive acts and unfair practices, Plaintiff and the Class paid a premium for an inferior product. It was reasonably foreseeable, and intended, that the Product labeling and advertisement would lead a reasonable consumer to believe that the Product contains a significant amount of chia seeds, and that such a consumer would pay a premium for the Product based on that belief.

57. Plaintiff and the Class suffered actual damages because they paid the fair market price for a product containing a significant amount of chia seeds, when, in reality, the Product contains only a minimal amount of chia seeds.

58. The above-described deceptive acts and unfair practices by Defendant present an ongoing threat to the Class.

59. Plaintiff is informed and believes and thereon alleges that Defendant has systematically perpetrated deceptive acts and unfair practices upon members of the public and has knowingly and intentionally misled – and continues to mislead – Plaintiff and the Class.

60. Pursuant to FLA. STAT. §§ 501.211(1), Plaintiff and the Class seek declaratory judgment and a Court Order enjoining the above-described wrongful acts and practices of Defendant.

61. Additionally, pursuant to FLA. STAT. §§ 501.211(2) and 501.2105, Plaintiff and the Class make claims for damages, attorneys' fees and costs.

**COUNT II**  
**Unjust Enrichment On Behalf Of The Florida Class**

62. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as though set forth fully therein.

63. This claim is asserted in the alternative on behalf of Plaintiff and the Class, to the extent that any contracts do not govern the entirety of the subject matter of the disputes with Defendant.

64. As a direct and proximate result of Defendant's misconduct as set forth above, Defendant has been unjustly enriched. Specifically, by its misconduct described herein, Defendant has accepted a benefit (monies paid by Plaintiff and the Class).

65. It would be inequitable for Defendant to retain the profits, benefits, compensation, consideration and other monies obtained by and from its wrongful conduct in promoting, marketing, distributing, and selling Chia Crisps.

66. Plaintiff, on behalf of herself and all others similarly situated, seeks restitution from Defendant and an Order of this Court proportionally disgorging all profits, benefits, compensation, consideration, and other monies obtained by Defendant from its wrongful conduct.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and members of the proposed Class, prays for judgment as follow:

- a. Certification of the Class under Federal Rule of Civil Procedure 23 and appointment of Plaintiff as representative of the Class and her counsel as Class counsel;
- b. Compensatory and other damages identified herein;

- c. Awarding restitution and disgorgement of Defendant's revenues or profits to Plaintiff and the members of the proposed Class as permitted by applicable law;
- d. An Order requiring Defendant to cease and desist from engaging in its wrongful conduct and to engage in a corrective advertising campaign;
- e. Statutory pre-judgment and post-judgment interest on any amounts;
- f. Payment of reasonable attorneys' fees and recoverable litigation expenses as may be allowable under applicable law; and
- g. Such other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: December 16, 2014

Respectfully submitted,

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