STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Jane Doe #5, individually, and now over the age of eighteen (18) and Jane Roe #5, as the parent and natural guardians of Jane Doe #5 while she was under the age of eighteen (18),	)	Civil Action No.: 2024-CP-46-00583
Plaintiff,	)	**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**
vs.	)	
Morningstar Fellowship Church, Richard Joyner, David Yarnes, Douglas Lee, Comenius School for Creative Leadership ("CSCL") and Sandra Woods	)	
Defendants.	)	

Plaintiffs Jane Doe No. 5 and Jane Roe No. 5 respectfully submit their memorandum of law in opposition to the motion to dismiss filed by Defendants Morningstar Fellowship Church, Richard Joyner, David Yarnes, Douglas Lee, Comenius School for Creative Leadership ("CSCL") and Sandra Woods.

COMPLAINT ALLEGATIONS

Jane Doe No. 5 brings this civil action to recover for damages she suffered during a miserable experience as a student at CSCL, a school owned, operated, and/or otherwise controlled by Morningstar and its leaders (Defendants Joyner, Yarnes, and Lee). (Compl. ¶¶ 40-41). Jane Doe No. 5 enrolled in CSCL in fall 2012 and was a student there form more than five years. (Compl. ¶178). Jane Doe No. 5 alleges she was victim of a series of sexual assaults and harassment by fellow CSCL students on CSCL premises. For example, once during an art class, a classmate forcibly placed Jane Doe No. 5's hand on his penis. (Compl. ¶¶ 184-86). Another classmate tried to forcibly kiss Jane Doe No. 5. (Compl. ¶ 225). On other occasions, Jane Doe No. 5 was subjected to lewd gestures by one male classmate and received unsolicited nude photographs from another.

(Compl. ¶¶ 213-14). The Complaint further describes an incident where Jane Doe No. 5 was propositioned for sex by a classmate after that same classmate cornered her in the school's hallway. (Compl. ¶¶ 222-23). Jane Doe No. 5 came to feel so unsafe at CSCL that she had to ask a female classmate to accompany her to the restroom for fear of harassment or assault should she go alone. (Compl. ¶¶ 219-20).

What Jane Doe No. 5 endured at CSCL was just the latest in a long line of sexual misconduct Morningstar, its leaders, and CSCL principal Sandra Woods facilitated and condoned at the school. Dating back to the 2000s, Morningstar and its leaders were aware CSCL students were being sexually assaulted and harassed. During one particularly disturbing organizational meeting regarding the issue, Morningstar founder Joyner acknowledged there was a problem but ultimately concluded the victims were at least partially at fault for the harms done to them. (Compl. ¶¶ 156-59) (Joyner calling the victims "Jezebels" and accusing them of creating lust in their attackers). Beyond flagrant victim blaming, cover-ups were the other core strategy Morningstar and its leaders used to address its sex abuse issues. It has long been Morningstar's practice to tell victims not to report the crimes against them to police or anyone else. (Compl. ¶¶ 166-67).

Jane Doe No. 5 experienced the same victim blaming and cover-up culture that had infected Morningstar for many years. Following the art class incident, Jane Roe No. 5 immediately notified Woods. (Compl. ¶ 191). Woods' instinctual response was to encourage Jane Roe No. 5 not to report the matter to police. (Compl. ¶ 192). Woods promised the matter would be addressed by the school but soon began ignoring Jane Roe No. 5 altogether. (Compl. ¶¶ 192-97). Once she finally agreed to meet with Jane Doe No. 5 and Jane Roe No. 5, Woods "made th[e] meeting as traumatic and dismissive as possible." (Compl. ¶ 205). Woods claimed that she knew Jane Doe No. 5 had not kept herself pure and her loose morals were the reason she had been assaulted (Compl. ¶ 208).

The Complaint alleges the long-standing history of sexual assault and harassment at CSCL was known to Morningstar and its leaders. Rather than addressing the issues with policies designed to protect the young girls in their care, Defendants negligently chose to blame the victims and cover-up the offenses. (Compl. ¶¶ 230-43). Woods' conduct was especially egregious as she attacked Jane Doe No. 5 with challenges to her chastity and with accusations that the assault on her was her fault. (Compl. ¶¶ 244-59). The negligence and intentional/reckless infliction of emotional distress claims arising out of this misconduct are properly pled, and Defendants' motion to dismiss should be denied.

LEGAL STANDARD

A defending party may assert in its answer or in a pre-answer motion a defense alleging the complaint against the defending party fails to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRCP. When reviewing a 12(b)(6) motion, a court must view a complaint in the light most favorable to the plaintiff and every doubt must be resolved in the plaintiff's favor. Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). If the "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case," then the court may not grant a 12(b)(6) motion. Sloan Constr. Co. v. Southco Grassing Co., 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008). A court may not dismiss a complaint merely because the court doubts the plaintiff will prevail. Plyler, 373 S.C. at 645, 647 S.E.2d at 192.

ARGUMENT

1. The Complaint alleges a valid intentional infliction of emotional distress claim.

Plaintiffs' second cause of action for outrage or intentional/reckless infliction of emotional distress ("IIED") recounts how Woods used meetings with Plaintiffs to blame Jane Doe No. 5 of being a person with loose morals and of being at fault for the sexual assault she suffered at the

hands of a classmate. (Compl. ¶¶ 246-47). This was part of Woods' campaign to "bully and intimidate" Jane Doe No 5 so she would not publicly disclose the multiple incidents of harassment she faced while a student at the school Woods led. (Compl. ¶¶ 250-51). Defendants' two arguments in opposition to the IIED claim are legally unsound and their motion to dismiss should be denied.

First, Defendants raise a structural argument, insisting an IIED claim may not seek relief for conduct also cited in other causes of action. (Defs.' Mem. at 12) (citing Todd v. S.C. Farm Bureau Mut. Ins. Co., 287 S.C. 190, 191, 336 S.E.2d 472, 473 (1985)). However, whatever concerns Todd raised about avoiding double recovery, they do not justify dismissing an IIED claim at the pleading stage. Recently, South Carolina's federal district court rejected the argument Defendants make here, concluding South Carolina does not require a plaintiff to choose between an IIED claim and other tort claims at the pleading stage. Johns v. Univ. of S.C., Civil Action No. 3:21-01197-MGL, 2024 WL 4534622, at * 4 (D.S.C. January 30, 2024) ("South Carolina law fails to support [Defendant's] contention that a plaintiff is unable to proceed on both an [intentional infliction of emotional distress] claim and other tort claims."). Johns feared a ruling that barred a plaintiff from pleading IIED in conjunction with other tort claims would "effectively declaw" the IIED cause of action. Id. The court is still in position to manage potential recovery on the different claims later in the case through the way in which it structures the jury charges and verdict form. Id. Todd does not suggest otherwise. In fact, even after Todd, South Carolina courts still permit IIED claims to go to jury (and to result in a judgment) alongside other tort claims arising out of the same incident. Id. (citing Miller v. City of W. Columbia, 322 S.C. 224, 471 S.E.2d 683 (1996)).

Second, Defendants argue the Complaint fails to allege the outrageous conduct underlying Plaintiffs' IIED claim was directed at Jane Doe No. 5. (Defs.' Mem. at 11-12). That simply is not true. Complaint paragraphs 246-47 allege as follows: "Defendant Woods recklessly or

intentionally inflicted severe emotional distress on Plaintiff Jane Doe #5 by" (1) "blaming her for causing a male student to sexually assault her"; and (2) "telling her she was unpure, and her femininity was the cause of the sexual assault." Thus, Plaintiffs allege outrageous conduct directed by Woods at Jane Doe No. 5. This specific allegation is supported elsewhere in the Complaint by assertions that Woods affirmatively sought to prevent Jane Doe No. 5 from contacting police, initially balked at the school offering any assistance, and uttered truly heinous things to Jane Doe No. 5 (a teenage girl) during meetings regarding incidents of sexual assault and harassment while a student at Woods' school. (Compl. ¶¶ 192, 194). Woods' intention was to make meetings regarding the incidents "as traumatic . . . as possible" for Jane Doe No. 5 (Compl. ¶ 205), which she pursued by telling Jane Doe No. 5 her impure lifestyle was to blame for the violent acts perpetrated against her. (Compl. ¶ 208). These allegations are sufficient to support an IIED claim, and Defendants' motion to dismiss this claim should be denied.

2. Jane Roe No. 5's "necessaries" claim is not limited in the way Defendants claim.

Plaintiff Jane Roe No. 5 seeks relief in the Complaint's fifth cause of action for "expenses related to" Jane Doe No. 5's injuries during his minority and arising from Defendants' misconduct. (Compl. ¶ 332). Defendants contend South Carolina law strictly limits recovery for this claim to Jane Doe No. 5's medical expenses and, therefore, the Court should dismiss the portion of this claim seeking recovery for Jane Roe No. 5's lost time at work, transportation costs, and other related losses (Defs.' Mem. at 12) (citing Hughey v. Ausborn, 249 S.C. 470, 154 S.E.2d 839 (1967)). But much more recent precedent describes this claim in broader terms. The South Carolina Supreme Court holds that "the parents of an injured child have the right to bring an action against the tortfeasor for **expenses incurred in caring for the child**." Endres v. Greenville Hosp. Sys., 312 S.C. 64, 439 S.E.2d 261 (1993) (emphasis added). Accordingly, all damages sought in Jane

Roe No. 5's "necessaries" claim fall within the claim's scope as recognized by law, and Defendants' motion to dismiss portions of this claim should be denied.

3. The First Amendment does not shield Defendants from liability for failing to supervise a sexual abuser on their staff and to protect vulnerable children in their care.

Defendants' constitutional argument was considered, rejected, and rejected again in a motion to reconsider in claims of similar misconduct by other former YSF participants. John Doe No. 1 at 16-22. (See Exhibit A, attached). The three-sentence argument offered in Defendants' current memorandum offers no substantive basis for a different conclusion in this case.

Defendants' subject-matter jurisdiction arguments are essentially claims for immunity. Defendants argue that even if they failed to reasonably train Erickson Lee or to monitor his conduct as YSF leader, the U.S. Constitution immunizes them from liability simply because of Morningstar's status as a religious entity. South Carolina law does not support that argument, and courts from many other states have expressly rejected it. As many of these courts recognize, Defendants read the First Amendment's Free Exercise Clause in a way that would violate the Establishment Clause and that would unjustly shield religious entities for secular torts.

Training employees to protect children in their care from sexual assault, creating an environment where sexual misconduct issues are reported and addressed rather than concealed, and establishing strong rules against illicit activity at CSCL are basic components of the professional environment. They do not become shrouded in constitutional immunity simply because the employer is a religious organization. The intricate push and pull of the First Amendment's dual religion clauses requires that, while government may not invade a church's "free exercise" of religion by mandating or punishing doctrinal positions, the law also must not place a church's secular activities beyond legal reach, thereby granting the religious institution a

favored position over its similarly situated secular counterpart in violation of the Establishment Clause. Redwing v. Catholic Bishop for Diocese of Memphis, 363 S.W.3d 436, 451 (Tenn. 2012).

South Carolina courts balance these First Amendment principles by holding that, while there are instances where church-related disputes fall outside their jurisdiction, those instances must be limited and the limits aggressively enforced. A leading South Carolina Supreme Court ruling on the issue states plainly that "a tortfeasor is not shielded from liability simply by committing his torts within the walls of a church or under the guise of church governance." Banks v. St. Matthew Baptist Church, 406 S.C. 156, 162, 750 S.E.2d 605, 608 (2013). A church-related claim still lies within the courts' jurisdiction so long as its resolution will not require "extensive inquiry into religious law." McCain v. Brightharp, 399 S.C. 240, 247, 730 S.E.2d 916, 919 (Ct. App. 2012). Courts must assiduously avoid sweeping secular disputes into the legal protection afforded purely ecclesiastical matters. Pearson v. Church of God, 325 S.C. 45, 52, 478 S.E.2d 849, 853 (1996) ("courts cannot avoid adjudicating rights growing out of civil law"). Therefore, it is important for courts to look beyond a religious institution's depiction of the claim against it to determine whether the limited constitutional protection is actually implicated. First Baptized Holiness Church of God of Americas v. Greater Fuller Tabernacle Fire Baptized Holiness Church, 323 S.C. 418, 423-24, 475 S.E.2d 767, 770 (Ct. App. 1996) (citing Turbeville v. Morris, 203 S.C. 287, 26 S.E.2d 821 (1943) ("the court will make sure that the civil right is in fact dependent upon an ecclesiastical matter" before declining jurisdiction).

While Defendants insist the claims against them are purely ecclesiastical matters, the only pleading in the case to date—Plaintiffs' complaint—plainly alleges claims that will require no extensive inquiry into religious law. Morningstar and its employees' failure to protect Jane No. 5 from foreseeable harm (Compl. ¶ 18), failure to implement policies to create a safe school

environment for students (Compl. ¶ 23), and failure to monitor students during instruction time (Compl. ¶ 251) do not involve religious doctrine in any way. (Compl. ¶ 242). Addressing these allegations will not require any extensive inquiry into what Morningstar believes about religious matters as reasonable training and supervision of employees is a reasonable expectation for *all* employers. (Compl. ¶ 50) (alleging employee training, supervision, and monitoring standards apply equally to churches and "secular organizations"); Degenhart v. Knights of Columbus, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992) (recognizing negligent supervision claim regarding actions of insurance agent); Holcombe v. Helena Chem. Co., 238 F. Supp. 3d 767, 773 (D.S.C. 2017) (recognizing training-based negligent supervision claim against chemical company).

Jane Doe's complaint also challenges other routine components of the relationship organizations have with workers. Organizations in every field have a responsibility for (1) instituting policies and procedures to avoid sexual abuse (Compl. ¶ 95); (2) investigating reports that an individual within the organization has committed acts of sexual misconduct (Compl. ¶ 242(l)); and (3) monitoring students' behavior to prevent repeated victimization of one student by others (Compl. ¶ 236). Defendants' basic oversight failures were not the product of some strong doctrinal stance. That is, Defendants do not suggest Morningstar doctrine favors or condones sexual misconduct or that it opposes investigating and overseeing the activities of students who attend its schools.

At this procedural stage, the Court need not go any further than these allegations to deny Defendants' motion to dismiss. South Carolina courts do not inherently reject jurisdiction over church-related claims and will not extend First Amendment protection to secular activities that happen to take place under a church's roof. Plaintiffs' Complaint alleges basic training and supervision issues that are as wrong for Defendants as they would be for any secular organization.

The complaint further alleges Defendants' misconduct was motivated by secular concerns rather than religious doctrine. While Defendants disagree with these assertions, that disagreement is not enough to prevail at the motion to dismiss stage. See e.g. McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc., 966 F.3d 346, 349 (5th Cir. 2020) (reversing district court's dismissal claims against Southern Baptist entity since, "[a]t this early stage of the litigation, it is not clear that any of these determinations will require the court to address purely ecclesiastical questions" and "on the face of the complaint, [the suit] involves a civil rather than religious dispute").

Even if the Court were to look past the complaint allegations, South Carolina's "neutral principles of law" approach to church-related disputes supports this court's jurisdiction over Plaintiffs' claims. Banks emphasized the Supreme Court's rejection of Defendants' overly broad view of First Amendment protection for religious institutions facing civil litigation. The Free Exercise Clause is not to be read to immunize religious actors or leave helpless the victims of their torts. 406 S.C. at 163, 750 S.E.2d at 608 (rejecting church's argument that would "grant tort law immunity to religious practitioners"). When an otherwise secular tort takes place in a religious setting, courts can and must exercise jurisdiction to resolve it. Id. Banks used the "neutral principles of law" analysis to determine whether resolving a legal claim would interfere with church doctrine. Id. at 160-62, 750 S.E.2d at 607-08. That analysis consisted of (1) listing the elements of the alleged tort; (2) asking whether liability for the alleged tort would "require delving into religious issues." Id.

Here, Plaintiffs' negligence-based claims allege Morningstar and its leaders failed to train Erickson Lee to be YSF leader, a role that would inevitably place him in contact with teen boys without parent supervision. Morningstar and its leaders also failed to supervise Erickson Lee's conduct while he worked as YSF leader, even after they knew or should have known he was

supplying YSF participants with illegal substances and pornography. Negligent supervision and training claims focus largely on two elements—the defendant's actual or constructive knowledge of the perpetrator's propensity toward abusive behavior and the defendant's failure to exercise control over the perpetrator's activities. Doe v. Bishop of Charleston, 407 S.C. 128, 139, 754 S.E.2d 494, 500 (2014); Doe v. ATC, Inc., 367 S.C. 199, 624 S.E.2d 447 (Ct. App. 2005) (quoting Restatement (Second) of Torts § 317 cmt. c). Applying those elements to these facts will not require "delving into religious issues." Plaintiffs specifically allege Morningstar and its leaders knew of past sexual abuse incidents by Morningstar employees and knew Erickson Lee was engaging in inappropriate behavior with YSF participants (Compl. ¶¶ 192, 214, 288), and Defendants' denial of that allegation presents a purely factual dispute with no doctrinal overtones. The same is true for whether Morningstar and its leaders failed to supervise Erickson Lee's interactions with YSF participants. At no point will a factfinder be asked to rule on the propriety of a Morningstar religious tenet.

As such, Banks warns that declining jurisdiction would be untenable because it would effectively create a legal wrong without a remedy simply because John Doe # 1 suffered that wrong in a "religious setting." 406 S.C. at 162, 750 S.E.2d at 608. While Banks specifically addressed a defamation claim, it used a very apt analogy to show the error in Defendants' position. No court, Banks reasoned, would hold that a battery claim was beyond a court's jurisdiction simply because it took place in a church meeting. Id. Likewise, Erickson Lee's sexual assault of John Doe # 1 and the torts related to it are not beyond this court's jurisdiction simply because they occurred in a church youth group.

Courts from around the country have also rejected Defendants' jurisdictional argument. The Tennessee Supreme Court's ruling in Redwing applied the "neutral principles of law"

approach to find courts should exercise jurisdiction over some negligent supervision and training claims arising from child sexual abuse in a church setting. 363 S.W.3d at 450-52. Drawing on a host of precedent, Redwing recognized that First Amendment protection from civil litigation applies only where the alleged improper conduct is "rooted in religious belief." Id. at 450 (citing Bryce v. Episcopal Church in the Diocese of Colo., 289 F.3d 648, 657 (10th Cir. 2002) and McKelvey v. Pierce, 800 A.2d 840, 851 (N.J. 2002)). Claims arising from a priest's alleged sexual assault of a teenage boy were not protected by the First Amendment because no religious belief was cited to justify this misconduct. The same principle applied to claims against religious entities responsible for overseeing the offending priest. 363 S.W.3d at 452 ("Claims against a religious institution asserting the negligent hiring of a member of the clergy do not inevitably enmesh the courts in religious doctrine or dogma"). Tennessee joined Ohio's Supreme Court and other states in recognizing "even the most liberal construction of the First Amendment will not protect a religious organization's decision to hire someone who it knows is likely to commit criminal or tortious acts." Id. (quoting Byrd v. Faber, 565 N.E.2d 584, 590 (Ohio 1991)).

Mississippi's Supreme Court reached the same conclusion in Roman Catholic Diocese of Jackson v. Morrison, 905 So.2d 1213 (Miss. 2005). A Catholic church could not claim First Amendment immunity for alleged failures in overseeing a priest who molested three children. Morrison rejected the church's argument that claims by the children's parents presented purely ecclesiastical questions for the court to resolve. Id. at 1226 (finding "[t]here is nothing remotely religious or ecclesiastical about" the reprehensible act of sexual molestation of a child). Nothing about what the priest alleged did was grounded in Catholic doctrine or religious practice. Id. Morrison was also concerned about the larger implications of the church's immunity claim. Id. at 1237 ("the cloak of religion . . . surely cannot serve to shield" churches "from civil responsibility

for . . . abhorrent conduct such as sexual molestation of a child. Nor should it shield those who fail in their duty to protect children from it").

Morrison cited as further support the Florida Supreme Court ruling in Malicki v. Doe, which surveyed cases from around the country before concluding

> Substantial authority in both the state and federal courts concludes that the right to religious freedom and autonomy protected by the First Amendment is not violated by permitting the courts to adjudicate tort liability against a religious institution based on a claim that a clergy member engaged in tortious conduct such as sexual assault and battery in the course of his or her relationship with a parishioner.

814 So.2d 347, 358 (Fla. 2002). Malicki found these cases consistently held that only neutral principles of law were required to resolve these disputes despite the religious settings in which they arose. See also Bandstra v. Covenant Reformed Church, 913 N.W.2d 19, 42-43 (Iowa 2018) ("any burden that may result from imposing a secular duty to inquire into the whereabouts and potential misconduct of a pastor is no more than an incidental effect of a generally applicable tort principle, which does not offend the First Amendment"). Malicki made special note of opinions finding the underlying sexual misconduct was not committed in furtherance of some purported religious purpose. 814 So.2d at 358 (citing Sanders v. Casa View Baptist Church, 134 F.3d 331, 338 (5th Cir. 1998) and Destefano v. Grabrian, 763 P.2d 275, 284 (Colo. 1988)).

Malicki, like Redwing, also noted the constitutional peril and public policy worry that would arise from allowing a church to use its religious status to gain immunity for non-religious torts. 814 So.2d at 358 (citing Smith v. O'Connell, 986 F. Supp. 73, 80 (D.R.I. 1997) (holding that to grant immunity under these circumstances would "have the impermissible effect of recognizing a religion in violation of the Establishment Clause"); Bandstra, 913 N.W.2d at 43 ("failing to hold religious employers accountable for their failure to supervise their employees would grant immunity to religious figures, which the state may not do"). For similar reasons, North Carolina's

appellate courts have rejected churches' immunity assertions for negligent retention and supervision claims arising out of clergy sexual abuse. Doe v. Diocese of Raleigh, 776 S.E.2d 29, 38 (N.C. App. 2015) ("determining whether the church defendants knew or had reason to know of its employee's proclivities for sexual wrongdoing required only the application neutral principles of tort law"); Smith v. Privette, 495 S.E.2d 395 (N.C. App. 1998).

Finally, Defendants' argument is rejected by legal commentators who see such an overly broad application of First Amendment immunity as untenable especially in the context of child sexual abuse. Just four years ago, a South Carolina Law Review article traced the origins of the First Amendment's "ecclesiastical abstention doctrine" and concluded it "should not immunize religious institutions or their officials from the torts of . . . negligent hiring, retention, or supervision . . . especially in cases involving child molestation." Alexander J. Lindvall, *Forgive Me, Your Honor, For I Have Sinned: Limiting the Ecclesiastical Abstention Doctrine to Allow Suits for Defamation and Negligent Employment Practices*, 72 S.C. L. REV. 25, 29 (Autumn 2020). Elsewhere, scholars have found the concerns that animate the ecclesiastical abstention doctrine are at their "lowest ebb" in circumstances where religious institutions or their employees "harm innocent and unconsenting third parties." Redwing, 363 S.W.3d at 451 (quoting Marci A. Hamilton, *Religious Institutions, the No-Harm Doctrine, and the Public Good*, 2004 B.Y.U. L. REV. 1099, 1115 (2004)).

In sum, the Court should reject Defendants' arguments that they are immune from suit for allegedly facilitating and overlooking repeated sexual assaults of a teenage girl. Defendants' oversight errors are not grounded in religious doctrine and resolving Plaintiffs' claims will not entangle the Court in resolving religious disputes. Under the "neutral principles of law" approach

applied by Banks and a host of other states, this court has subject-matter jurisdiction, and Defendants' motions should be denied.

CONCLUSION

Based on the arguments stated above, Plaintiffs respectfully request the court deny Defendants' motion to dismiss. Plaintiffs' complaint properly alleges all required elements to state a claim for IIED and for Jane Roe # 5's recovery of Jane Doe # 5's claim-related expenses. Moreover, the First Amendment's religion clauses do not immunize Morningstar and its leaders from liability for the torts Plaintiffs allege here because they have no bearing on and do not in any way implicate Morningstar's religious doctrine. Accordingly, Defendants' motion should be denied.

Respectfully submitted,

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