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UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

In re:
 THE ROMAN CATHOLIC BISHOP OF
 OAKLAND, a California corporation sole,
 Debtor and Debtor-in-Possession

Case No. 23-40523 WJL

Chapter 11

**MOTION TO ALLOW FILING OF
 LATE PROOF OF CLAIM**
 F.R.B.P. 9006(b)(1)

Judge: Hon. William J. Lafferty

Hearing Date: April 22, 2024
 Hearing Time: 10:30 am
 Place: United States Bankruptcy Court
 1300 Clay Street, Courtroom 220
 Oakland, CA 94612

*[In person or via Zoom/AT&T
 Teleconference]*

INTRODUCTORY STATEMENT

This Motion is brought on behalf a claimant who is represented by the firm of Gross & Belsky, P.C. (hereinafter the “**Claimant No. 552**” or “**Claimant**”) seeking an order allowing the filing of a late proof of claim based upon excusable neglect under the provisions of Federal Rule



1 of Bankruptcy Procedure 9006(b)(1). This Motion is based on this Motion and Points and
2 Authorities set forth herein, the Declarations of Terry Gross (hereinafter “**Gross Declaration**”) and
3 Mary Parker (hereinafter “**Parker Declaration**”) in Support of the Motion and the Notice of
4 Motion filed herewith.

5 6 **THE MOVING PARTY**

7 The moving party herein is an individual who is a sexual abuse claimant that holds a claim
8 against the Roman Catholic Bishop of Oakland, the Debtor herein (hereinafter “**RCBO**” or
9 “**Debtor**”). Claimant was represented prior to the filing of this bankruptcy case by the firm of
10 Gross & Belsky, P.C. Pursuant to the confidentiality protocol providing that sexual abuse claims
11 shall be held and treated as strictly confidential in this Court’s *Order Establishing Deadlines for*
12 *Filing Proofs of Claim Approving the Form and Manner of Notice Thereof* [Docket 293], the
13 Claimant is identified for purposes of this Motion by the claim number assigned to the proof of
14 claim of the Claimant that were filed with the official claims agent Kurtzman, Carson Consultants
15 LLC which is Claim # 552. (Gross Declaration ¶ 4)

16 17 18 **STATEMENT OF FACTS**

19 1. Claimant is an individual who holds a claim against the Roman Catholic Bishop of
20 Oakland stemming from childhood sexual abuse.

21 2. Claimant is represented by the law firm of Gross & Belsky, P.C. (“**G&B**”). G&B
22 is a litigation firm located in San Francisco, California with a specialty relating to the handling of
23 Catholic clergy abuse claims. Terry Gross is the managing partner at G&B and is responsible for
24 overseeing of all of the firm’s clergy abuse cases including those related to the Claimant No. 552.
25 (Gross Declaration, ¶ 2).

26 3. G&B’s clergy abuse cases are managed by Mary Parker, the lead paralegal at G&B.
27 Ms. Parker was employed by G&B since May of 2008. Ms. Parker is responsible for all ministerial
28 actions related to G&B’s clergy abuse cases, including without limitation preparing and finalizing

1 documents for filing, serving and filing documents in the cases, calendaring matters relating to the
2 clergy abuse cases, maintaining tables and lists of all G&B cases and keep track of deadlines
3 relating to filing, service, motions and discovery. Ms. Parker has been employed by G&B since
4 May 2008, and her work throughout this period has been exemplary. During the many years Ms.
5 Parker has worked for G&B, she has gotten married, had a child, selflessly fostered and adopted
6 two other children, and also worked hard for the firm. Ms. Parker had always been on top of the
7 firm's calendar, regularly reminding the attorneys of filing and statutory deadlines, communicating
8 with court clerks and opposing counsel, and handling all of the firm's filings in a timely and
9 exemplary manner. (Gross Declaration ¶ 3).

10 4. On or about March 8, 2023, Claimant No. 552 engaged G&B to represent the
11 Claimant in the filing of an action alleging sexual abuse against the RCBO. G&B then promptly
12 investigated the claim, obtained background records, and determined that the claim was timely and
13 proceeded to draft a complaint. On April 11, 2023, G&B timely filed a complaint (the
14 "**Complaint**") on behalf of Claimant alleging sexual abuse against the RCBO and others in the
15 Alameda Superior Court for the Claimant. That case is entitled: John JP Doe v. Roe 1, et. al. [Case
16 # 23 CV 030984] (Gross Declaration ¶ 5).

17 5. On April 28, 2023 G&B, as required by California Code of Civil Procedure
18 §340.1(g), filed an Ex Parte Application Requesting In Camera Review of Certificates of Merit and
19 for Orders (1) Permitting Plaintiff to Serve Roe Defendants with Process, and (2) That the
20 Concurrently Lodged Certificates of Merit be Filed under seal and be kept Confidential (the "Ex
21 Parte Application"). Pursuant to CCP section 340.1(h), Claimant was not permitted to serve the
22 Complaint unless and until this Ex Parte Application was granted. (Gross Declaration ¶ 6).

23 6. On May 3, 2023 the Alameda Superior Court entered an order granting the Ex Parte
24 Application (the "Order"). However, the certificate of mailing attached to this Order states that
25 Superior Court clerk did not mail the Order to G&B until May 23, 2023. (Gross Declaration ¶)

26 7. On May 8, 2023 the RCBO filed its bankruptcy petition.

27 8. When G&B received the Order shortly after May 23, 2023, Mr. Gross conferred
28 with Ms. Parker, the firm's paralegal in charge of the sexual abuse cases handled by G&B, and

1 requested Ms. Parker to contact counsel for the RCBO to obtain a stipulation to have Claimant No.
2 552's case added to the JCCP 5108 proceedings with the Alameda Superior Court. (Gross
3 Declaration ¶ 9).

4 9. Ms. Parker thereafter emailed a copy of the Complaint, the Ex Parte Application and
5 the Order to RCBO's counsel at Foley & Lardner and asked if RCBO would stipulate to adding the
6 case to the coordinated clergy abuse proceeding, JCCP 5108. RCBO's counsel informed Ms.
7 Parker that because of the RCBO bankruptcy his firm could no longer stipulate to adding cases to
8 JCCP 5108, and said that he would put Ms. Parker in touch with one of RCBO's bankruptcy
9 attorneys. However, Ms. Parker was not contacted by any of RCBO's bankruptcy attorneys.
10 (Parker Declaration ¶ 8)

11 10. Shortly after July 25, 2023, G&B received a copy of the bankruptcy court's order
12 establishing deadlines for the filing of Proofs of Claim and approving the form in manner of notice
13 thereof [Docket No. 293] and learned that the bar date for submitting claims against RCBO in this
14 bankruptcy proceeding was September 11, 2023. At this point Ms. Parker calendared this date in
15 the G&B firm calendar (Gross Declaration ¶ 10) (Parker Declaration ¶ 9).

16 11. After receiving the notice of claims bar date, Mr. Gross instructed Ms. Parker to
17 prepare proofs of claim for all of the G&B clients who had filed complaints against RCBO. There
18 were seven such cases being handled by G&B, including the case of Claimant No. 552. In order to
19 be able to fill out the section of the Optional Supplement form for each client, which has questions
20 about the damages incurred, Mr. Gross instructed Ms. Parker to contact the firm's retained
21 psychology expert and request him to interview the various plaintiffs and analyze the damages our
22 clients each have suffered, and obtain the information that was required to fill in portions of the
23 claim forms concerning psychological damages. Ms. Parker informed Mr. Gross that she had
24 communicated with the firm's expert, and that he was going to interview all the clients with claims
25 against RCBO and would utilize this information to complete the claim forms for each client.
26 (Gross Declaration ¶ 11).

27 12. Ms. Parker contacted the retained psychology expert of G&B to request him to
28 interview the various plaintiffs and obtain the information that was required to fill in portions of

1 the claim forms concerning psychological damages. Ms. Parker gave the expert a list of cases that
2 she maintained for the firm's cases that were coordinated in JCCP 5108 that named RCBO as a
3 defendant, and which contained the contact information for the plaintiffs. (Parker Declaration ¶ 11).

4 13. However, Claimant's case was not included in this list. Since Claimant's case had
5 not been transferred to JCCP 5108, it was not on this list maintained by Ms. Parker, and Ms. Parker
6 forgot that Claimant's case had not been transferred into JCCP 5108. (Parker Declaration ¶ 12).

7 14. Frequently during late August and early September 2023, Mr. Gross checked in with
8 Ms. Parker as to her progress in obtaining the necessary information for all the claims that were
9 going to be filed in the RCBO bankruptcy proceeding. Ms. Parker informed Mr. Gross of the status
10 of her efforts, and stated that she was in the process of timely obtaining all necessary information
11 and would prepare and timely file the claim forms for all of the firm's clients with claims against
12 RCBO. (Gross Declaration ¶12) (Parker Declaration ¶13)

13 15. In early September G&B received a report from its psychological expert which
14 provided summaries of the damages suffered by the six G&B claimants on the list provided to the
15 expert by Ms. Parker. (Gross Declaration ¶13) (Parker Declaration ¶14)

16 16. Based thereon, Ms. Parker finalized proof of claim forms in this proceeding for these
17 six clients by adding the information from the expert to the Proof of Claims forms that she had
18 already prepared for each of the six G&B clients on the JCCP 5108 list. Thereafter on September
19 10 and 11, 2023, Ms. Parker filed the six proofs of claim with the claims agent, prior to the bar
20 date. (Parker Declaration ¶15 &16).

21 17. On September 11, 2023, Mr. Gross asked Ms. Parker if she had filed all the proof of
22 claim forms for the G&B clients with complaints against RCBO and she confirmed that she had.
23 (Gross Declaration ¶ 14)

24 18. Ms. Parker did not realize that Claimant's case against RCBO had not been
25 transferred to JCCP 5108, and based on this failure of memory Ms. Parker failed to file a proof of
26 claim form for Claimant by the bar date, and failed to inform Mr. Gross of her omission. (Parker
27 Declaration ¶ 16)

1 19. On January 1, 2024, Mr. Gross reviewed mail regarding the notice concerning the
2 bar date for the bankruptcy claims against the Roman Catholic Archbishop of San Francisco
3 (“RCASF”), as G&B has a number of clergy abuse cases pending against RCASF. Mr. Gross also
4 received from counsel for RCASF a listing of cases that counsel stated contained the names of cases
5 that G&B had filed against RCASF. At that time, Mr. Gross noticed that one of the cases listed by
6 the RCASF counsel was not in fact filed against RCASF, but instead involved the Oakland diocese
7 and was filed against RCBO. At that point Mr. Gross asked Ms. Parker to calendar the bar date and
8 commence efforts to prepare proofs of claim for the clients of G&B with cases against RCASF.
9 Mr. Gross also requested that Ms. Parker contact RCASF counsel and determine why the case for
10 the plaintiff whose complaint was filed against RCBO was categorized as an RCASF case. (Gross
11 Declaration ¶ 16) (Parker Declaration ¶ 17).

12 20. As Ms. Parker prepared to contact counsel for RCASF about that matter, she went
13 to look at the complaint for the client incorrectly included on the RCASF list, but who actually had
14 filed against RCBO. To find the complaint, she looked in the folder that had subfolders for each
15 client with a clergy abuse case filed by G&B. At that time, she saw the list of subfolders and saw
16 the subfolder for Claimant No. 552, and she then realized that, even though Claimant No. 552 had
17 filed a complaint against RCBO, Ms. Parker had inadvertently not filed a proof of claim in this
18 proceeding for Claimant No. 552 because Claimant’s case had not been on the list of cases she used
19 as a basis for filing proofs of claim since Claimant’s case not been transferred to JCCP 5108.
20 (Parker Declaration ¶ 18)

21 21. Immediately thereafter, Ms. Parker informed Mr. Gross that in checking on the
22 situation concerning the RCASF plaintiffs, she had decided to check all proofs of claim she had
23 filed in the bankruptcy proceeding involving RCBO and discovered that she had not filed the proof
24 of claim for Claimant 552. (Parker Declaration ¶ 19) (Gross Declaration ¶ 17)

25 22. At that time Mr. Gross asked Ms. Parker how Claimant No. 552 had been missed.
26 She informed Mr. Gross that in filing proofs of claim for this bankruptcy proceeding involving
27 RCBO, she had utilized the chart she kept of cases in the JCCP 5108 coordinated proceeding, and
28 had filed proofs of claim for all of those cases, but had overlooked Claimant’s case since it had

1 never been transferred into the JCCP proceeding and thus hadn't been included in the list she had
2 relying on when she prepared the proofs of claim. (Parker Declaration ¶ 18)

3 23. Ms. Parker further admitted to Mr. Gross for the first time that during the late spring
4 of 2023 and continuing through the fall she had been involved in a very difficult family situation
5 that was life threatening for one of her daughters which had seriously affected Ms. Parker's job
6 performance. Starting in June 2023, one of Ms. Parker's middle-school-age daughters had been
7 having serious medical and psychological issues, and then at the end of August 2023 the situation
8 progressed and became life-threatening. During this period, Ms. Parker became extremely
9 preoccupied with caring for her daughter, and trying to find medical professionals who could help.
10 She had not previously disclosed this situation to Mr. Gross, nor to anyone at the firm. (Gross
11 Declaration ¶ 17) (Parker Declaration ¶ 19).

12 24. Immediately upon learning of the failure to file the proof of claim on behalf of
13 Claimant No. 552, G&B filed the proof of claim for Claimant in this proceeding on January 4,
14 2024. (Gross Declaration ¶ 20).

16 ARGUMENT

17 Bankruptcy courts are often asked to excuse the late filing of claims in chapter 11 cases for
18 a variety of reasons. Federal Rule of Bankruptcy Procedure 3003(c)(3) provides that a court in a
19 chapter 11 case shall "... fix and for cause shown extend the time within which proofs of claim or
20 interest may be filed." Federal Rule of Bankruptcy Procedure 9006 (b)(1) provides for the
21 extension of a bar date once it has passed if failure to act is based on excusable neglect.

22 The United States Supreme Court in *Pioneer Investment Services Company v. Brunswick*
23 *Associates Limited Partnership*, 507 U.S. 380, 113 S.Ct. at 1489, 123 L.Ed. 2d 74 (1993), adopted
24 a liberal standard for the filing of late filed claims in chapter 11 cases holding that such extensions
25 should not be limited to situations in which the delay in filing is caused by circumstances beyond
26 the control of the party filing the proof of claim. The Supreme Court stated in *Pioneer* that the
27 concept of neglect "encompasses both simple, faultless omissions to act and more commonly,
28 omissions caused by carelessness." *Pioneer*, 113 S.Ct. at 1495.

1 In addition, the Supreme Court noted that bankruptcy courts are “necessarily entrusted with
2 broad equitable powers to balance the interests of the effected parties, and that determination for
3 the allowance of late claims due to excusable neglect entails a correspondingly equitable inquiry”.
4 *Pioneer*, 113 S.Ct. at 1495. The Supreme Court set out four criteria that bankruptcy courts should
5 consider in determining whether neglect in filing a late claim is excusable and therefore the
6 extension of a bar date or allowance of a late filed claim appropriate. These factors are (1) whether
7 granting the extension will prejudice the debtor; (2) the length of the delay and its impact on
8 efficient court administration; (3) whether the delay was beyond the reasonable control of the
9 person whose duty it was to perform; and (4) whether the creditor acted in good faith. *Pioneer*,
10 113 S.Ct. at 1498.

11 In considering each of these factors, the Ninth Circuit has instructed courts in this circuit to
12 balance all of these various factors. No one factor is determinative. *See Pincay v. Andrews*, 389
13 F.3d 853 (9th Cir. 2004), *In re Zilog, Inc.*, 450 F.3d 996 (9th Cir. 2006). As will be shown below,
14 each of the factors weighs in favor of Claimant No. 552 and the allowance of their claims.

15 (a) No Prejudice to Debtor. The late filing of Claimant No. 552 claim will have no
16 negative impact upon the Debtor. The Debtor’s chapter 11 case is still in its early stages and there
17 has yet been a plan or a disclosure statement filed in this case.

18 In fact, this Court on two occasions has entered orders extending the exclusivity period for
19 the Debtor to file a plan. The Second Order Extending the Exclusivity Period for the Debtor to File
20 a Plan to May 6, 2024 was entered on December 18, 2023 [Docket No. 702]. Thereafter, on January
21 22, 2024 this Court also entered an order referring the Debtor, the Creditor’s Committee and a
22 group of Insurers to two separate mediations which will have the Debtor, the Committee and the
23 Insurer’s work on negotiating a suitable plan and the resolution of issues among the Debtor, the
24 Committee and Insurers.

25 Furthermore, the Debtor was made aware of the claims of Claimant No. 552. The
26 underlying claim was filed with the Alameda Superior Court in April of 2023 prior to the filing of
27 the Debtors bankruptcy case and G&B contacted Debtor’s counsel thereafter to advise them of the
28 filing in the Superior Court. (See Parker Declaration ¶ 8)

1 Courts have routinely rejected the argument that the mere allowance of the filing of a late
2 or amended claim to be prejudice when no plan or disclosure statement has been filed. As the Ninth
3 Circuit BAP has stated, “We agree that prejudice requires more than simply having to litigate the
4 merits of, or to pay, a claim. There must be some legal detriment to the party opposing.” *In re*
5 *JFSF Corp.*, 344 B. R. 94,102 (9th Cir. BAP, 2006); *aff. In re JSJF Corp.* 277 Fed. App. 718 (9th
6 Cir. 2008).¹

7 (b) Length of Delay and Impact on Court Administration. Similarly, the allowance of
8 the claim for Claimant No. 552 will not hamper the Court’s administration of the case. The length
9 of the delay in filing of the claim was not extensive and the claim was filed within days of G&B
10 becoming aware of the failure to file the claim, in January of 2024. As noted above, no plan or
11 disclosure statement has been filed in the case and there has been no distribution to creditors that
12 would be affected by the filing and the allowance of Claimant No. 552’s claim. Other bankruptcy
13 courts have determined that the filing of a claim prior to the solicitation of votes for a plan did not
14 result in any prejudice to the debtor nor have any adverse impact on court administration. *In re*
15 *Broadmoor Country Club Apartment*, 158 B.R.146, 149 (Bankr. W.D.Mo. 1993).

16 (c) Reason for Delay. As noted in the recitation of facts, the reason for the delay was
17 as the result of unfortunate circumstances within G&B concerning the traumatic family issue
18 involving the daughter of Ms. Parker, which was the major contributing factor in the failure to file
19 the claim that was unknown by G&B at the time. As noted in Ms. Parker’s declaration, the life-
20 threatening issues concerning her daughter were particularly intense in late August and early
21 September (Parker Declaration ¶ 20), and thus Ms. Parker’s mistake that led to her failing to prepare
22 and file Claimant’s proof of claim in this proceeding is patently understandable and excusable. The
23 failure to file as a result of such situations is an adequate ground for the extension of time for filing
24 when taken with the other *Pioneer* factors.

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26
27
28 ¹ To be clear, Claimant No. 552 only seeks an order allowing the claim as timely filed and will
agree to the reservation of rights of the Debtor to assert any defenses to the merits of claim that
may apply.

1 The Ninth Circuit has found that errors and omissions of counsel and paralegals can be
2 grounds for the application of excusable neglect. In *Pincay v. Andrews, supra*, a paralegal was
3 assigned to determine the date for the filing of an appeal in the case. The paralegal determined that
4 there was a sixty-day deadline for the filing of the appeal based on a rule that applied to
5 governmental entities. No governmental entity was a party in the *Pincay* litigation matter which
6 resulted in the appeal period actually being thirty days. The attorney in charge of the case relying
7 on the paralegal's advice failed to file the Notice of Appeal in a timely manner and thereafter
8 brought a Motion for Allowance of the Late Filing under the *Pioneer* standard for excusable
9 neglect. The district court allowed the late filing, but the initial Ninth Circuit three-judge panel
10 overruled the district court finding that counsel's reliance on the paralegal's interpretation of the
11 filing deadline inexcusable as a matter of law. The Ninth Circuit thereafter agreed to rehear the
12 case *en banc*.
13

14
15 On rehearing, the Ninth Circuit panel reviewed various opinions from other circuits
16 applying the *Pioneer* factors wherein excusable neglect for late filings was considered and rejected
17 the application of the *Pioneer* analysis to the late filings of courts in other jurisdictions which held
18 that the misreading of a deadline is not grounds for excusable neglect. The majority of the *Pincay*
19 *en banc* panel held that the correct approach is to avoid any *per se* rule regarding the reason for the
20 delay in filing. Further stating that:
21

22 *Pioneer* cautioned against "erecting a rigid barrier against late filings attributable
23 to any degree to the movant's negligence" (citation omitted). There should similarly
24 be no rigid legal rule against late filings attributable to any particular type of
negligence. Instead, we leave the weighing of *Pioneer's* equitable factors to the
discretion of the district court in every case.

25 *Pincay* at 389 F.3d at 860.

26 The situation of the Claimant presented herein is not a case where G&B was blatantly
27 negligent and disregarded the claims bar date, as demonstrated by G&B's timely filing of all the
28 other claims for the claimants that G&B was representing that were already transferred to the JCCP

1 5108 coordinated proceedings. Claimant's case had not been transferred to the JCCP 5108
2 coordinated proceedings due to the intervention of the bankruptcy filing, and Ms. Parker's stressful
3 family situation unfortunately but understandably affected her normal performance of her duties,
4 which up until this incident had been very reliable. The situation of Claimant No. 552 warrants the
5 application of the excusable neglect standards as set out in *Pioneer* and *Pincay*.
6

7 Good Faith of Claimant. Finally, there is nothing among the facts set forth herein that
8 suggests that Claimant No. 552 has acted in bad faith. The Claimant has come forward in this
9 case and filed the claim with the state court prior to the applicable statute of limitations and has
10 provided the information necessary for the proof of claim to provide the information necessary to
11 evaluate the sexual abuse claim. There is nothing herein that would indicate anything but good
12 faith on behalf of Claimant No. 552, and the lack of any motivation to take advantage of the delay
13 in the filing of the proof of claim.
14

15 CONCLUSION

16 All the criteria set forth in the *Pioneer* case weigh in favor of Claimant No. 552's claim
17 being allowed as a late filed claim. There is clearly no prejudice to the Debtor at this point in the
18 bankruptcy process in dealing with this claim and any plan that may be proposed. There is no
19 plan or disclosure statement filed and it is early in the negotiation process with respect to the
20 sexual abuse claims that are the major component of this bankruptcy case. The delay in the filing
21 of the claim was not extensive and will not interfere with the administration of this case. The
22 reason for the delay was based not upon anything Claimant No. 552 did, but due to the
23 combination of factors within G&B, including the serious family situation of Ms. Parker which
24 resulted her inadvertently overlooking and not preparing and filing a proof of claim for Claimant
25 prior to the filing deadline. Finally, there is nothing that would indicate any lack of good faith on
26 behalf of Claimant No. 552 in this case.

27 It is the purpose of the bankruptcy code and in particular the Chapter 11 process to
28 provide a mechanism for handling of all of the Debtor's claims. As a bankruptcy court in a

1 similarly situated case found, in allowing a four month late filed claim of a sexual abuse survivor,
2 "...a Chapter 11 restructuring intends to achieve twin aims of both reorganization of the debtor
3 while avoiding forfeitures by creditors. Not permitting the belated proof of claim under these
4 circumstances would undeniably result in a forfeiture by [claimant] contrary to one of the
5 underlying goals of the reorganization process." *In re Roman Catholic Diocese of Syracuse, New*
6 *York*, 638 B.R. 33, 40 (Bankr. N.D.N.Y., 2022).

7 Claimant No. 552 should be treated similarly herein. It would be unfair to penalize
8 Claimant for the mistake of his counsel's firm in inadvertently overlooking his case when filing
9 proofs of claim, given that the Debtor had been made aware of this case months before the bar
10 date, and especially given the fact that the firm's lead paralegal responsible for preparing the
11 proofs of claim was facing a life-threatening situation with her daughter that arose just before the
12 bar date.

13 WHEREFORE Claimant No. 552 respectfully requests that the Proof of Claim filed herein
14 on January 4, 2024 be allowed as a timely filed claim in this case; reserving the rights of the
15 Debtor to object to the Proof of Claim on any grounds, except for the timeliness of the filing
16 thereof, and for other orders as may be appropriate in the circumstances.

17 Dated: April 22, 2024

FOX ROTHSCHILD, LLP

18
19 by /s/ Edward J. Tredinnick

20 EDWARD J. TREDINNICK
21 Attorneys for Claimant No. 552
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