

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

JASON HARRELL and MELISSA HARRELL,
Individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

SOUTH KENDALL CONSTRUCTION
CORP., a Florida corporation; PALM ISLES
HOLDINGS, LLC, a Florida limited liability
company; KEYS GATES REALTY, INC., a
Florida corporation; BANNER SUPPLY CO.,
a Florida corporation,

Defendants.

CASE NO.: 09-08401 CA (40)

COMPLEX BUSINESS LITIGATION

**CLASS REPRESENTATION
JURY TRIAL DEMANDED**

AMENDED CLASS ACTION COMPLAINT

Plaintiffs, JASON HARRELL and MELISSA HARRELL, (“Plaintiffs”), and on behalf of all others similarly situated, file this Amended Class Action Complaint against defendants South Kendall Construction Corp. (“SKCC”), Palm Isles Holdings, LLC (“PIH”), Keys Gate Realty, Inc. (“KGR”), and Banner Supply Co. (“Banner”), and allege as follows:

INTRODUCTION

1. This is a class action suit brought on behalf of Plaintiffs and others similarly situated who own homes in the State of Florida that contain defective drywall supplied by Banner, caused to be installed in homes and by SKCC and its affiliates, KGR and PIH. On behalf of themselves and the proposed class, Plaintiffs assert three counts: (a) a strict products liability claim; (b) a negligence

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claim; and (c) a breach of the implied warranty of habitability claim. These claims arise out of the Defendants' supply and installation of defective drywall in homes and structures, and the marketing and sale of homes and structures containing defective drywall, all within the State of Florida, to Plaintiffs and members of the proposed class, more than two-thirds of whom are residents of the State of Florida.

2. Drywall is a common manufactured building material used globally for the finish construction of interior walls and ceilings. On information and belief, a substantial quantity of defective drywall was supplied by Banner in the State of Florida and used by SKCC to construct and sell a substantial number of homes in the State of Florida, each of which likely contains defective drywall.

PARTIES

3. At all times material to the allegations set forth herein, Plaintiffs were and are residents of Miami-Dade County, Florida, who, within the applicable statute of limitations period(s), purchased a home with defective drywall that was supplied by Banner, and installed or caused to be installed by SKCC, and was marketed and sold by SKCC, KGR, and PIH.

4. At all times material to the allegations set forth herein, SKCC was and is a Florida corporation with its principal place of business in Miami-Dade County, Florida. SKCC caused the installation of defective drywall into the homes it developed and caused to be constructed and, with PIH and KGR, marketed and sold homes containing defective drywall to Plaintiffs and those similarly situated.

5. At all times material to the allegations set forth herein, KGR was and is a Florida

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corporation with its principal place of business in Miami-Dade County, Florida. KGR is the exclusive or captive real estate broker controlled by those principals of SKCC and/or PIH who sold homes to Plaintiffs and those similarly situated.

6. At all times material to the allegations set forth herein, PIH was and is a Florida limited liability company with its principal place of business in Miami Dade County, Florida. PIH is the assignee and/or seller of homes sold by SKCC and KRG to Plaintiffs and those similarly situated.

7. At all times material to the allegations set forth herein, Banner was and is a Florida corporation with its principal place of business in Miami-Dade County, Florida. Banner marketed, supplied, wholesaled, and/or sold defective drywall to SKCC for installation in homes marketed and sold to Plaintiffs and those similarly situated.

JURISDICTION AND VENUE

8. This action is brought as a class action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure. More than two-thirds of the members of the proposed class, as defined below, are residents and citizens of Florida.

9. The damages suffered and sought to be recovered herein total, in the aggregate, in excess of One-Hundred and Fifty Thousand Dollars (\$150,000.00), exclusive of interest, costs and attorney's fees.

10. This Court has subject matter jurisdiction pursuant to § 26.012, Fla. Stat. This Court also has jurisdiction pursuant to § 48.193, Fla. Stat., because all of the Defendants, either individually or collectively, or through an agent, conduct business in Florida, committed tortious acts

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within Florida, own, use or possess real property in Florida, and/or caused injury to persons and property within Florida arising from acts committed in Florida. Defendants are further subject to the jurisdiction of this Court because, at or about the time of the injuries alleged herein, products and materials manufactured and processed by Defendants were used within the State of Florida in the ordinary course of commerce, trade or use.

11. Venue is proper pursuant to Chapter 47 of Florida Statutes, including §§ 47.011, 47.025 and 47.051, Fla. Stat., because the transactions, acts and occurrences that give rise to this action occurred and/or accrued, among other places, in Miami-Dade County, Florida, and Defendants' wrongful conduct occurred in, among other places, Miami-Dade County, Florida.

SUBSTANTIVE ALLEGATIONS
Factual Allegations Related to Defendants

12. SKCC was founded in or about 1999 in Miami-Dade County, Florida to engage in a for-profit business as a contractor to develop, improve and sell real property, including single-family residences.

13. SKCC developed, among others, communities, including those in Miami-Dade County, Florida commonly known as Palm Isles, Arbor Park and Augusta Greens.

14. Banner, in the course of engaging in a for-profit business, procured drywall for supply in the State of Florida.

15. The drywall procured by Banner for supply in construction in the State of Florida was and is defective because it contains and emits toxins, including sulphur and sulphur compounds such as carbon disulfide, carbonyl sulfide and hydrogen sulfide, which damage homes, fixtures attached thereto, and personal property contained therein, in many ways, including, but not limited to: (a)

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eroding, corroding and/or tarnishing various metals within residences, including plumbing and interior electrical wiring; (b) disrupting and/or interfering with the operation of electric and electronic equipment and appliances within said residences, including but not limited to microwaves, computers, air conditioning and refrigerator coils; and (c) creating a noxious rotten egg-like odor that renders the homes uninhabitable. The defect in the drywall was latent and existed at the time of manufacture, supply, installation and sale of the defective drywall. The defect exists irrespective of the manner in which the drywall was installed, maintained, or painted. The defect cannot be repaired.

16. Banner supplied defective drywall to SKCC, who caused the defective drywall to be installed in houses in developments SKCC caused to be constructed, including Palm Isles, Arbor Park, and Augusta Greens.

Factual Allegations Related to Plaintiffs

17. In or about January 2008, Plaintiffs, through KGR, purchased a residence from SKCC, which was later assigned to PIH prior to closing. Plaintiffs agreed to pay SKCC and/or its assigns \$360,000.00 for their new residence.

18. In or about February 2008, Plaintiffs closed on their new residence. In or about June 2008, Plaintiffs moved into their new home, which -- unbeknownst to them -- was built with defective drywall that was supplied by Banner in the State of Florida and used by SKCC in the construction of Plaintiffs' newly-purchased home.

19. The defective drywall supplied by Banner and installed by SKCC in the home sold to Plaintiffs by SKCC, KGR and PIH caused damages to Plaintiffs and putative class members

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because they have experienced damage to their homes, fixtures attached thereto, and personal property contained therein as a direct result of the sulphuric toxins emitted by the defective drywall. Consequently, the homes of Plaintiffs and members of the putative class in which defective drywall has been installed are in need of costly remediation.

20. Plaintiffs' home was supposed to be habitable and free from defects but, in reality, it fails to meet ordinary, normal standards that are reasonably to be expected of living quarters of comparable kind because of the defective drywall installed therein.

21. Pursuant to § 558.003, Fla. Stat., and like notice provisions in contracts signed in connection with the purchase of their home, Plaintiffs have provided to Banner and SKCC and/or its assigns written notices of the defects relating to their home in letters dated February 3 and 4, 2009. Banner, SKCC and/or its assigns have so far failed to repair these defects and replace the property damaged thereby.

CLASS REPRESENTATION ALLEGATIONS

22. Plaintiffs bring this action on their own behalf and as a class action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure. The class Plaintiffs propose to represent is defined as follows: "All natural persons and business entities residing in the State of Florida who purchased homes from SKCC and/or its assigns or affiliated companies between January 2004 and the present and whose homes contain the defective drywall" supplied by Banner (the "Class"). Excluded from the Class are Defendants, their parents, subsidiaries and affiliates, their directors and officers, and members of their immediate families. Also excluded from the Class are the Court, the Court's spouse or partner, if applicable, all persons within the third degree of relationship to the Court and

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its spouse, and the spouses of all such persons.

23. The prerequisites to class representation pursuant to Rule 1.220(a) are present in this action as follows:

A. **Numerosity.** The members of the Class are so numerous and geographically diverse that joinder of all of them is impracticable. While the exact number and identities of members of the Class are unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe and therefore aver that there are hundreds if not thousands of Class members in the State of Florida because, upon information and belief, hundreds of people have purchased homes from SKCC in Palm Isles, Arbor Place, Augusta Green and elsewhere, some or all of which contain the defective drywall.

B. **Commonality:** There are questions of fact and law common to the claims of the Plaintiffs and the members of the Class that predominate over any questions affecting any individual members including, among others, the following questions:

1. Whether the drywall was defective;
2. Whether the defective drywall was supplied by Banner;
3. Whether the defective drywall was negligently supplied by Banner;
4. Whether the defective drywall was installed in homes of Plaintiffs and members of the putative class;
5. Whether the defective drywall was installed in homes of Plaintiffs and members of the putative class negligently by SKCC;
6. Whether SKCC, KGR, and PIH marketed and/or sold homes

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containing defective drywall;

7. Whether Banner breached its duties of care to Plaintiffs and members of the class by supplying defective drywall that was in violation of applicable laws, codes, regulations and standards applicable to its industry and intended to protect Plaintiffs and members of the putative class;

8. Whether defendants failed to disclose that the drywall was defective;

9. Whether the homes with defective drywall that were sold by SKCC, KGR and PIH failed to meet ordinary, normal standards that are reasonably to be expected of living quarters of comparable kind; and

10. Whether the defective drywall caused damages to the homes, fixtures attached thereto, and personal property contained therein belonging to Plaintiffs and members of the Class.

C. **Typicality.** Plaintiffs' claims are typical of the claims of the other members of the Class in that Plaintiffs allege a common course of conduct by Defendants towards members of the Class. Plaintiffs, like other members of the respective Class, have purchased homes containing defective drywall that was supplied and installed in a home that was marketed and sold to Plaintiffs by Defendants. Plaintiffs and the other members of the Class seek identical remedies under identical legal theories, and there is no antagonism or material factual variation between Plaintiffs' claims and those of the Class.

D. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs' claims are coextensive with, and not antagonistic to, the claims of the other

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members of the Class. Plaintiffs are willing and able to vigorously prosecute this action on behalf of the Class, and Plaintiffs have retained competent counsel experienced in litigation of this nature.

24. Plaintiffs bring this action under Rule 1.220(b)(3) of the Florida Rules of Civil Procedure because common questions of law and fact predominate over questions of law and fact affecting individual members of the Class. Indeed, the predominant issues in this action are whether Defendants are violating and have violated the law by supplying defective drywall in the State of Florida, installing defective drywall in homes constructed in the State of Florida, and selling homes constructed with defective drywall in the State of Florida. In addition, the expense of litigating each Class member's claim individually would be so cost prohibitive as to deny Class members a viable remedy. Should individual Class members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by this Court. Certification under Rule 1.220 of the Florida Rules of Civil Procedure is therefore appropriate because a class action is superior to the other available methods for the fair and efficient adjudication of this action, and Plaintiffs envision no unusual difficulty in the management of this action as a class action.

EQUITABLE TOLLING

25. The running of any applicable statute of limitations has been tolled by reason of Defendants' fraudulent concealment. Defendants, by failing to disclose a known defect to Plaintiffs

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and the Class, and failing to disclose the defective nature of their product, concealed from Plaintiffs and the Class the risks associated with drywall.

26. As a result of Defendants' actions, Plaintiffs and the Class could not reasonably know or have learned of the defect in the drywall through the exercise of reasonable diligence.

27. Defendants must be estopped from relying on any statute of limitations because of their fraudulent concealment of the defective nature of the drywall installed in the homes of Plaintiffs and the Class.

28. Plaintiffs and the Class had no knowledge that Defendants were engaged in wrongdoing and, because of Defendants' concealment thereof, any applicable statute of limitations must be tolled.

COUNT I
PRODUCTS LIABILITY
Strict Liability (Defective Product)
All Defendants

29. Plaintiffs hereby adopt and incorporate by reference paragraphs 1 to 28 as if fully set forth herein.

30. This Count addresses the unlawful practice of placing a defective product -- defective drywall -- into the stream of commerce through the supply by Banner of defective drywall in the State of Florida, through the installation of defective drywall in homes in Florida caused to be constructed by SKCC, and through the marketing and sale of homes containing defective drywall by SKCC, KGR and PIH.

31. Banner is in the for-profit business of supplying drywall in the State of Florida and

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placed defective drywall into the stream of commerce in the State of Florida by supplying defective drywall to SKCC, an expected consumer and/or handler of drywall. The drywall was defective at the time Banner supplied it to SKCC.

32. SKCC is in the for-profit business of developing and constructing homes and placed defective drywall into the stream of commerce in Florida by installing or causing to be installed defective drywall into homes and structures it constructed or caused to be constructed. The drywall was defective at the time SKCC installed or caused it to be installed in homes SKCC constructed.

33. SKCC, KGR, and PIH are in the for-profit business of selling homes and placed defective drywall into the stream of commerce in Florida by marketing and/or selling or causing to be sold to Plaintiffs and the Class homes and structures constructed or caused to be constructed by SKCC which contained defective drywall. The drywall was defective at the time of the sale of the homes. Plaintiffs and the Class were expected consumers of homes containing drywall.

34. At all material times, the defective drywall and homes or structures containing defective drywall were used for their intended purposes and the defective drywall was installed in the normal course of construction without any known changes or alterations to its condition.

35. The defective drywall was incorporated into the homes and structures sold to Plaintiffs and the Class before the damages to Plaintiffs and the Class were caused.

36. Unknown to and hidden from Plaintiffs and the Class, the drywall installed in their homes was defective because it contained toxins like sulphur and sulphuric compounds that damaged homes, fixtures attached thereto, and personal property contained therein, in many ways, including, but not limited to: (a) eroding, corroding and/or tarnishing various metals within residences,

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including plumbing and interior electrical wiring; (b) disrupting and/or interfering with the operation of electric and electronic equipment and appliances within said residences, including but not limited to microwaves, computers, air conditioning and refrigerator coils; and (c) creating a noxious rotten egg-like odor that renders the homes uninhabitable. The drywall also did not conform to applicable building standards, guidelines and/or codes intended to protect Plaintiffs and the Class.

37. As a result of the supply of defective drywall in the State of Florida, the installation of defective drywall in homes and structures in the State of Florida, and the marketing and sale of homes and other structures containing defective drywall in the State of Florida, Plaintiffs and members of the Class suffered damages, including, but not limited to, property damage to their homes, fixtures attached thereto and property contained therein.

38. If Defendants had exercised that degree of care that a prudent or reasonably cautious person acting under the same circumstances would exert, the Defendants could have foreseen that the drywall was defective and that damages to Plaintiffs and the Class would reasonably be expected to ensue as a result of the supply and installation of defective drywall and the marketing and sale of homes containing defective drywall.

39. As a result of the foregoing acts and omissions of the Defendants, the homes of Plaintiffs and the Class have required, require or will require extensive reconstruction and repairs and will incur inspection, repair and replacement costs to repair their homes, fixtures attached thereto, and personal property contained therein.

40. Plaintiffs seek to obtain a pecuniary benefit for the Class in the form of all actual and consequential damages from Defendants. Plaintiffs' counsel are entitled to recover their reasonable

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attorneys' fees and expenses as a result of conferring a pecuniary benefit on behalf of the Class, and will seek an award of such fees and expenses at the appropriate time.

COUNT II
NEGLIGENCE
Banner

41. Plaintiffs hereby adopt and incorporate by reference paragraphs 1 to 28 as if fully set forth herein.

42. Plaintiffs bring this claim for the unlawful practice of breaching a duty to supply materials that are free from defects and in compliance with applicable laws, codes, regulations and standards applicable to its industry.

43. At all material times, Banner owed duties of care to Plaintiffs and the Class to supply materials that were free from defects and in compliance with applicable laws, codes, regulations and standards applicable to the industry. At all material times, Banner was also under duties to disclose any defects in the materials supplied. These duties were independent of any duty to perform under any written contract or warranty.

44. At the time Banner supplied the drywall in the State of Florida, the drywall was defective and not in compliance with applicable laws, codes, regulations and standards applicable to Banner's industry and intended to protect Plaintiffs and the Class.

45. Banner breached its duty of care to Plaintiffs and the Class by one or more of the following means:

A. Acquiring, procuring, marketing, distributing, wholesaling and/or selling defective drywall that was likely to cause property and other damage to the intended user through

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exposure to sulphur and sulphur compounds;

B. Failing to exercise reasonable care in overseeing, managing, controlling, inspecting, investigating and/or auditing the manufacturers or distributor of the drywall it supplied in the State of Florida;

C. Failing to exercise reasonable care in the inspection and testing of the drywall it supplied in the State of Florida;

D. Failing to comply with applicable laws, codes, regulations and standards applicable to its industry and intended to protect Plaintiffs and the Class;

E. Failing to adequately warn foreseeable users of the defective nature of the drywall it supplied in the State of Florida;

F. Supplying defective drywall in the State of Florida and/or failing to disclose its defects; and

G. Failing to initiate a timely recall of the defective drywall it supplied in the State of Florida.

46. If Banner had exercised that degree of care that a prudent or reasonably cautious person acting under the same circumstances would exert, Banner could have foreseen that the drywall was defective and that damages to Plaintiffs and the Class would reasonably be expected to ensue as a result of the supply and installation of defective drywall.

47. Plaintiffs and the Class were damaged by Banner's breaches of its duties of care, which caused property damage to Plaintiffs' homes, to fixtures attached thereto and to property contained therein.

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48. The damages suffered by Plaintiffs and the Class, which are separate and apart from those damages resulting from any breach of contract or warranty, were directly and proximately caused by Banner.

49. As a result of the foregoing acts and omissions of Banner, the homes of Plaintiffs and the Class require or will require extensive reconstruction and repairs and will incur inspection, repair and replacement costs to repair their homes, fixtures attached thereto, and personal property contained therein.

50. Plaintiffs seek to obtain a pecuniary benefit for the Class in the form of all actual and consequential damages recoverable from Banner. Plaintiffs' counsel are entitled to recover their reasonable attorneys' fees and expenses as a result of conferring of a pecuniary benefit on behalf of the Class, and will seek an award of such fees and expenses at the appropriate time.

COUNT III
BREACH OF IMPLIED WARRANTY OF HABITABILITY
SKCC and/or its Assigns, including PIH

51. Plaintiffs hereby adopt and incorporate by reference paragraphs 1 to 28 as if fully set forth herein.

52. This count addresses the unlawful practice of selling homes that fail to meet the ordinary, normal standards that are reasonably to be expected of living quarters of comparable kind.

53. SKCC, PIH, and their assigns and/or affiliates sold Plaintiffs a new home constructed or caused to be constructed by SKCC. The sale of the home carried an implied warranty of habitability from SKCC, PIH, and their assigns and/or affiliates that the home was reasonably habitable and free of defects.

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54. SKCC, PIH, their assigns and/or affiliates sold new homes to members of the Class that carried the same warranty of habitability. The homes sold by SKCC, PIH and their assigns and/or affiliates contained defective drywall at the time of the sale.

55. Plaintiffs and the Class used and/or occupied the homes sold by SKCC, PIH and their affiliates and assigns consistent with the intended manner.

56. Plaintiffs have provided notice of the breach of warranty but as yet no repairs have been made.

57. SKCC, PIH and their assigns and/or affiliates sold homes that failed to meet the ordinary, normal standards that are reasonably to be expected of living quarters of comparable kind by selling homes containing defective drywall that emitted toxins, including sulphur and sulphur compounds such as carbon disulfide, carbonyl sulfide and hydrogen sulfide, which sulphuric compounds damage homes, fixtures attached thereto, and personal property contained therein, in many ways, including, but not limited to: (a) eroding, corroding and/or tarnishing various metals within residences, including plumbing and interior electrical wiring; (b) disrupting and/or interfering with the operation of electric and electronic equipment and appliances within said residences including but not limited to microwaves, computers, air conditioning and refrigerator coils; and (c) creating a noxious rotten egg-like odor that renders the homes uninhabitable.

58. SKCC, PIH, their assigns and affiliates therefore breached the implied warranty of habitability in connection with the sale of homes containing defective drywall to Plaintiffs and the Class.

59. The breach existed at the time of the sale of the homes to Plaintiffs and to the Class.

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60. As a result of the breach, Plaintiffs and members of the Class have suffered damages, including, but not limited to, property damage to Plaintiffs' homes, to fixtures attached thereto, and to property contained therein.

61. As a result of the foregoing acts and omissions of the Defendants, the homes of Plaintiffs and the Class require or will require extensive reconstruction and repairs and will incur inspection, repair and replacement costs to repair their homes, fixtures attached thereto, and personal property contained therein.

62. Plaintiffs seek to obtain a pecuniary benefit for the Class in the form of all actual and consequential damages recoverable. Plaintiffs' counsel are entitled to recover their reasonable attorneys' fees and expenses as a result of conferring a pecuniary benefit on behalf of the Class, and will seek an award of such fees and expenses at the appropriate time.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief and judgment against Defendants as follows:

- A. For an order certifying the Class under the appropriate provisions of Rule 1.220 and appointing Plaintiffs and their legal counsel to represent the Class;
- B. For damages as provided by law;
- C. For pre-judgment and post-judgment interest to the Class, as allowed by law;
- D. For reasonable attorneys' fees and costs to counsel for the Class if and when pecuniary benefits are obtained on behalf of the Class; and
- E. For such other and further relief as is just and proper.

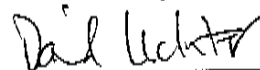
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JURY DEMAND

Plaintiffs, individually and on behalf of all members of the proposed Class, hereby demand a trial by jury on all issues so triable.

DATED this 17th day of March, 2009

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I CERTIFY that on this 17 day of March, 2009, a true and correct copy of the foregoing was served by U.S. Mail, First Class, on all counsel of record on the attached Service List.

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