

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: _____

TONYA SMITH, individually and as next friend and parent of K.S. and I.S.,
minor children;
JOSEPH SMITH, a/k/a RACHEL SMITH, individually and as next friend and
parent of K.S. and I.S., minor children;
K.S., a minor child; and,
I.S., a minor child,

Plaintiffs,

vs.

DEEPIKA AVANTI,

Defendant.

COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF

Plaintiffs TONYA SMITH (“Tonya”) and JOSEPH SMITH a/k/a RACHEL SMITH
 (“Rachel”),¹ individually and as next friends and parents of K.S. and I.S., minor children,
 (collectively, “Plaintiffs” or the “Smith family”), by and through their attorneys, file this
 Complaint for Declaratory, Injunctive, and Other Relief against Defendant DEEPIKA AVANTI
 (“Defendant”) and hereby state and allege as follows:

¹ Although Plaintiff’s legal name is Joseph Smith, she is known by and uses the name Rachel Smith in accordance with her female gender identity. Accordingly, this Complaint refers to Plaintiff as Rachel and uses female pronouns to refer to her.

INTRODUCTION

1. Tonya and Rachel are a loving, committed couple residing in Colorado. They have been married for more than five years and have two children, K.S. and I.S., ages six and two.

2. Tonya and Rachel are both lesbian women. Rachel is also transgender.

3. In early 2015, as a result of circumstances beyond their control, the Smith family had to find a new home. Like any other family in Colorado, Tonya and Rachel sought a home that met their family's needs.

4. For the Smith family, their ideal home was an affordable, cozy space for the four of them that is close to nature and near a small school that would provide the children with close attention and that matched Tonya and Rachel's educational philosophy.

5. On April 24, 2015, the Smith family found a property advertised as being available for rent that met all of their needs – a two-bedroom home in a duplex in Gold Hill, Colorado.

6. Immediately upon learning of this available home, Tonya and Rachel contacted the home's owner and landlord, Defendant Deepika Avanti, and asked if they could see the rental property. That same day, Defendant showed the Smith family the two-bedroom townhouse apartment as well as a three-bedroom house Defendant also had available for rent.

7. Despite Defendant's apparent initial willingness to rent one of her properties to the Smith family, Defendant refused to rent either of the homes to the Smith family after meeting them in person.

8. Defendant told Tonya and Rachel that she would be unable to rent any of the properties to them because of their “uniqueness,” and that she believed that renting a home to the Smith family would jeopardize her position in the community.

9. Defendant also refused to rent the two-bedroom townhouse apartment to the Smith family because of Defendant’s concerns that Tonya and Rachel’s children would make too much noise and disturb the tenants living in the other half of the duplex.

10. Defendant suggested that the Smith family look for housing in a “larger town” where the community would better accept them and intimated that she did not see them as a legitimate familial unit who could live together on her property.

11. Defendant’s refusal to rent either of the two properties to the Smith family was rooted in impermissible discrimination based on sex and sex stereotypes, sexual orientation, Rachel’s transgender status, and the Smiths’ familial status.

12. The Smith family now brings this action for violation of their civil rights, as secured by the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended (“the Fair Housing Act” or “FHA”), 42 U.S.C. § 3604, and by the Colorado Anti-Discrimination Act (“CADA”), C.R.S. § 24-34-502.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this matter pursuant to 42 U.S.C. § 3613 and 28 U.S.C. §§ 1331, 1343, because the Fair Housing Act claims alleged herein arise under the laws of the United States.

14. Venue is proper in this district under 28 U.S.C. § 1391(b) because the alleged discrimination and discriminatory statements occurred in this district, the housing property at issue is located in this district, and Defendant resides in this district.

15. This Court has supplemental jurisdiction over Plaintiffs' claims under the laws of the State of Colorado because they are so related to the Plaintiffs' federal claims that the state and federal claims form part of the same case or controversy pursuant to 28 U.S.C. § 1367(a).

PARTIES

A. The Plaintiffs

16. Tonya Smith, age 30, and Rachel Smith, age 28, both women, are spouses who reside in Arapahoe County, Colorado. They are both lesbians. Rachel is also transgender. Even though Rachel was assigned the sex of male at birth, Rachel has a female gender identity and has taken steps to affirm her female gender since the summer of 2014.

17. Tonya and Rachel each appear individually and as parent and next friend of their sons, K.S. and I.S., minor children.

18. Tonya and Rachel have been harmed by Defendant's refusal to rent after the making of a bona fide offer, refusal to negotiate for the rental of, denying, and/or otherwise making unavailable to them a dwelling because of their sex, their sexual orientation, Rachel's transgender status, and their familial status.

19. K.S. and I.S. sue through their parents and next friends, Tonya and Rachel, who bring this action on behalf of K.S. and I.S. because they also have been harmed by Defendant's refusal to rent after the making of a bona fide offer, refusal to negotiate for the rental of, denying, and/or otherwise making unavailable to them a dwelling because of their familial status.

B. The Defendant

20. Upon information and belief, Defendant Deepika Avanti resides in Boulder County, Colorado. Defendant owns several residential and commercial properties within the State of Colorado.

21. Upon information and belief, Defendant owns more than three single-family houses and/or is in the business of renting dwellings in that she has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or she has, within the preceding twelve months, participated as agent in providing rental facilities or rental services in two or more transactions involving the rental of any dwelling or any interest therein.

22. Upon information and belief, at all times relevant to this action, Defendant has been the owner of real property located at 698 Dixon Road, Gold Hill, Colorado 80302.

23. Upon information and belief, there are multiple dwellings within the property at 698 Dixon Road, including but not limited to two townhouse apartments and a three-bedroom house.

24. The townhouse apartments and three-bedroom house are “dwellings” within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b), and “housing” within the meaning of CADA, C.R.S. § 24-34-501(2).

STATEMENT OF FACTS

25. Tonya and Rachel are two women in a loving, committed relationship. They have been married for more than five years and have two young sons, K.S. and I.S.

26. All members of the Smith family are native Coloradans that have lived in Colorado most of their lives.

27. In April 2015, Tonya and Rachel began searching for a new home for their family, because their landlord at the time had informed them that the property where they then lived was going to be sold.

28. Tonya and Rachel began searching for housing that would meet their family's needs. Their budget for housing was tight, so they were looking for something affordable. They also wanted to raise their children close to nature and with a public school where the children would be able to get close individual attention and the best education possible.

29. On April 24, 2015, Tonya and Rachel found an advertisement on craigslist.org for a two-bedroom home that seemed perfect for them.

30. The craigslist advertisement was titled "Love a new dream house? Windows? Light? Views? Friends nearby? Trails?" and offered a two-bedroom townhouse at 698 Dixon Road in Gold Hill, Colorado for \$1,100 per month.

31. The advertisement stated that the townhouse had two large bedrooms, a new kitchen, living room, and bathroom; that it would be a "super paradise" for people with young children because of the "instant playmate" they would have in the 17-month-old living in the townhouse next door; that the townhouse is surrounded by property that included a swing set and trampoline, gardens, and hiking trails; that the townhouse had low heating bills because of the way it is built; and that the town of Gold Hill had a two-room "private Waldorf" style public school.

32. Excited about having found what seemed to be the “dream home” for their young family, Tonya responded to the craigslist ad immediately by email. In her response, Tonya mentioned her excitement at having found the ad for what seemed to be the perfect home for them—“the house, the property, the school, all of it.”

33. Tonya’s email explained that the Smith family includes herself, her wife Rachel, and their then 5-year-old and 15-month-old sons. It noted how the Smith family “love[s] getting out into nature,” how K.S. “loves school,” and “would really thrive in a smaller school with more attention,” and would benefit from a Waldorf-style education. It also mentioned that Rachel is transgender.

34. That afternoon, Defendant responded by email that the two-bedroom apartment was available for rent for \$1,100 per month and that she also had a three-bedroom place available for rent for \$1,600 per month. Defendant then asked if the Smith family could meet her that evening or the next day at 698 Dixon Road and asked Tonya to “please send photos of all of you.”

35. Tonya replied to Defendant via email that she thought the two-bedroom place “would be perfect” for them because they prefer smaller spaces, agreed to meet Defendant that evening at 698 Dixon Road, and sent a picture of the entire Smith family, as Defendant had requested.

36. Tonya, Rachel, K.S., and I.S. met Defendant at 698 Dixon Road on the evening of April 24, 2015. During the visit, the entire Smith family viewed both the two-bedroom and three-bedroom dwellings. They also met the couple that lived with their toddler in the townhouse next door to the two-bedroom townhouse.

37. At the behest of Defendant, Tonya and Rachel discussed with Defendant the possibility of renting the three-bedroom house, which was more expensive. Tonya and Rachel told Defendant that, in order to afford the three-bedroom house, they would need to invite a friend to live with them as a roommate and split the rent. At the end of the visit, Tonya and Rachel reiterated their interest in renting the smaller unit, but agreed with Defendant that they would check with their friend and, if the friend agreed to live with them, they would be interested in renting the larger unit.

38. That night, however, Defendant emailed Tonya twice. In the first email, Defendant informed Tonya that they were not welcome in the two-bedroom townhouse because of their children. Defendant wrote that she “kept asking about your kids and the noise because [she] know[s] how quiet [the couple next door] are . . . they said the noise was too much so they would prefer the couple next door and would welcome you in the larger space in the other home.” As a result, Defendant told Tonya that she hoped their friend would be able to join them in the three-bedroom house and that it would all work out.

39. A few hours later, Defendant wrote Tonya a second email, in which Defendant stated that, after speaking with her husband, Defendant decided that they had “kept a low profile and low attention for 30 years and want to continue it this way. But in a small town, like Gold Hill, this would not be possible.” She conveyed that she would not rent either residence to the Smith family because “we really need to continue low profile.”

40. On April 25, 2015, Tonya responded to Defendant with details about her conversation with the friend with whom they might live and wrote, “As far as keeping a low

profile goes, I'm not quite sure what you mean? It sounded like a town where we would really fit in so I'm confused."

41. That morning, Defendant wrote to Tonya again and refused to rent either of the properties to the Smiths. In her email, Defendant wrote, "Your unique relationship would become the town focus, in small towns everyone talks and gossips, all of us would be the most popular subject of town, in this way I could not be a low profile." She told Tonya that she did not want to "attract the town attention and there is no way to avoid this having the kids go to school, and I am not sure they would not be uninvited due to your uniqueness."

42. The "uniqueness" of Tonya and Rachel's relationship is that they defy heterosexually-defined gender roles. Tonya and Rachel are "unique" because they are women married to each other, and not men. Rachel also is "unique" because, as a transgender woman, she expresses her gender in a non-stereotypical fashion and her gender identity does not conform to sex stereotypes.

43. Upon information and belief, it is precisely that Tonya and Rachel are two women married to each other and that Rachel is a transgender woman whose gender identity and expression do not conform with sex stereotypes that would make them, in Defendant's estimation, stand out and not be accepted in a small town like Gold Hill, and would jeopardize Defendant's standing in the community. Upon information and belief, Defendant did not want to be associated with two women that defy sex stereotypes in these ways.

44. Defendant also told the Smith family that it would be "better" for them if they were in a "larger town" and stated that "Boulder Co has no more than 3 unrelated people on a property."

45. Upon information and belief, Defendant presumed that two women, one of whom is transgender, cannot form a legally-recognized family that will be accepted in the community.

46. Tonya and Rachel are legally married and are both the legal parents of both of their two children.

47. Defendant further explained that she consulted with her husband “who personally would not care but immediately gave [her] this feedback” and with a psychic friend “who gave [her] the same feed back [sic] and has a transvestite friend herself.”

48. Upon information and belief, Defendant conflated Rachel’s transgender status with simply dressing in a manner more commonly associated with a different gender. Upon information and belief, Defendant believed that associating with someone like Rachel, who defies sex stereotypes, would endanger her standing in the community.

49. Defendant concluded the exchange by emphasizing Plaintiffs’ “uniqueness,” stating that it would invite “everyone . . . into my business” and “would jeopardize [sic] what I have had 30 years.”

50. Because Defendant refused to rent either property to the Smith family, and although they continued to search for several months, they were unable to find a new place to live that was available before they had to move out of their previous apartment. As a result, they were forced to stay at Rachel’s mother’s house for a week, which was too small for them, and they had to dispose of many of their possessions because they had nowhere to keep them.

51. On July 1, 2015, the Smith family moved into a ground-floor apartment in Aurora, Colorado. This apartment is less attractive than the Defendant’s properties in meeting

the needs of the Smith family, including regarding the quality and type of the school for the children, and the quality of the building and its surroundings.

52. In addition, Rachel's commute to work from her job at the time took one hour, rather than the twenty minutes it would have taken from Gold Hill. While Rachel changed jobs in September 2015, for months, Rachel lost valuable time with her family as a result of the longer commute.

CAUSES OF ACTION

COUNT I – SEX DISCRIMINATION IN VIOLATION OF THE FAIR HOUSING ACT

42 U.S.C. § 3604

(By Tonya Smith and Rachel Smith against Defendant)

53. Plaintiffs incorporate by reference and re-allege all of the preceding paragraphs of this complaint as though fully set forth herein.

54. Pursuant to 42 U.S.C. § 3604(a), the FHA prohibits a person from refusing to rent, refusing to negotiate for the rental of, or otherwise make unavailable, or deny a dwelling to any person "because of . . . sex." Pursuant to 42 U.S.C. § 3604(c), the FHA also prohibits a person from making, printing, or publishing "any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . sex."

55. Defendant engaged in unlawful sex discrimination in violation of the FHA. Defendant refused to rent, refused to negotiate for the rental of, and otherwise made unavailable or denied, a dwelling to Plaintiffs because of Tonya and Rachel's sex (including sex stereotypes about the sex of the person to whom a man or woman should be attracted to, marry, or have children with, and about how a man or woman should appear or act, as well as the sex of the

spouse married by each of Tonya and Rachel, Tonya's and Rachel's sexual orientation, and Rachel's gender identity and gender expression). Defendant also refused to rent, refused to negotiate for the rental of, and otherwise made unavailable or denied, a dwelling to Plaintiffs because Tonya and Rachel did not conform to traditional sex stereotypes relating to "appropriate" intimate, marital, or parenting relationships, sexual orientation, gender identity, and/or gender expression.

56. Defendant also made statements via email indicating her clear "preference, limitation, or discrimination" in the rental of properties she owns, refusing them to Plaintiffs because of Tonya and Rachel's sex (including their non-conformity with traditional sex stereotypes, the sex of each's spouse, their sexual orientation, and Rachel's gender identity and gender expression)—in violation of the FHA.

57. Defendant's actions were taken intentionally, willfully, and in disregard for the rights of others, and constituted a discriminatory housing practice, as defined in 42 U.S.C. § 3602(f).

58. Tonya and Rachel are "aggrieved persons" as defined in 42 U.S.C. § 3602(i). Tonya and Rachel have been injured by Defendant's discriminatory conduct and have suffered damages as a result.

59. Accordingly, under 42 U.S.C. § 3613(c), Tonya and Rachel are entitled to and seek actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

**COUNT II – DISCRIMINATION BASED ON FAMILIAL STATUS
IN VIOLATION OF THE FAIR HOUSING ACT**

42 U.S.C. § 3604

(By all Plaintiffs against Defendant)

60. Plaintiffs incorporate by reference and reallege paragraphs 1-52 of this complaint as though fully set forth herein.

61. Pursuant to 42 U.S.C. § 3604(a), the FHA prohibits a person from refusing to rent, refusing to negotiate for the rental of, or otherwise make unavailable, or deny a dwelling to any person “because of . . . familial status.” Pursuant to 42 U.S.C. § 3604(c), the FHA also prohibits a person from making any statement with respect to the rental of a dwelling that indicates “any preference, limitation, or discrimination based on . . . familial status.”

62. Pursuant to 42 U.S.C. §3602(k), the FHA defines “familial status” as “one or more individuals (who have not attained the age of 18 years) being domiciled with . . . a parent or another person having legal custody of such individual or individuals.”

63. Defendant refused to rent the two-bedroom apartment townhouse located at 698 Dixon Road in Gold Hill, Colorado to the Smith family because the Smith family includes two children. Defendant excluded the Smith family from housing based on animus toward the children, and made statements plainly setting forth her discrimination on the basis of familial status.

64. Defendant’s statements and actions were made intentionally, willfully, and in disregard for the rights of others, and constituted a discriminatory housing practice, as defined in 42 U.S.C. § 3602(f).

65. Plaintiffs are “aggrieved persons” as defined in 42 U.S.C. § 3602(i). Plaintiffs have been injured by Defendant’s discriminatory conduct and have suffered damages as a result.

66. Accordingly, under 42 U.S.C. § 3613(c), Plaintiffs are entitled to and seek actual damages, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

COUNT III – SEX DISCRIMINATION
IN VIOLATION OF THE COLORADO ANTI-DISCRIMINATION ACT
C.R.S. § 24-34-502
(By Tonya Smith and Rachel Smith against Defendant)

67. Plaintiffs incorporate by reference and reallege paragraphs 1-52 of this complaint as though fully set forth herein.

68. Pursuant to C.R.S. § 24-34-502(1)(a), CADA prohibits a person from refusing to rent or lease, otherwise make unavailable, deny, or withhold housing to any person “because of . . . sex.” CADA also prohibits a person from causing to be made any written or oral inquiry or record concerning the sex of a person seeking to rent or lease any housing.

69. Defendant engaged in prohibited sex-based discrimination by refusing to rent or lease, otherwise making unavailable, denying, or withholding housing to Plaintiffs because of Tonya and Rachel's sex (including sex stereotypes about the sex of the person to whom a man or woman should be attracted to, marry, or have children with, and about how a man or woman should appear or act, as well as the sex of the spouse married by each of Tonya and Rachel, Tonya's and Rachel's sexual orientation and Rachel's gender identity and gender expression). Defendant also refused to rent or lease, otherwise made unavailable, denied, or withheld a dwelling to Plaintiffs because Tonya and Rachel did not conform to traditional sex stereotypes relating to “appropriate” intimate, marital, or parenting relationships, sexual orientation, gender identity, and/or gender expression.

70. Defendant also made statements via email inquiry or record concerning the sex of the persons seeking to rent properties she owns, refusing them to Tonya and Rachel because of

because of Tonya and Rachel’s sex (including their non-conformity with traditional sex stereotypes, the sex of each’s spouse, Tonya and Rachel’s sexual orientation, and Rachel’s gender identity and gender expression)—all of which constitute unlawful sex discrimination in violation of CADA.

71. Defendant’s actions were taken intentionally, willfully, and in disregard for the rights of others, and constituted unfair housing practices, as defined in C.R.S. § 24-34-501(6).

72. Tonya and Rachel are “aggrieved persons” as defined in C.R.S. § 24-34-501(1). Tonya and Rachel have been injured by Defendant’s discriminatory conduct and have suffered damages as a result.

73. Accordingly, under C.R.S. § 24-34-505.6(6), Tonya and Rachel are entitled to and seek actual damages, injunctive relief, and reasonable attorneys’ fees and costs.

**COUNT IV – SEXUAL ORIENTATION DISCRIMINATION IN
VIOLATION OF THE COLORADO ANTI-DISCRIMINATION ACT**
C.R.S. § 24-34-502
(By Tonya Smith and Rachel Smith against Defendant)

74. Plaintiffs incorporate by reference and reallege paragraphs 1-52 of this complaint as though fully set forth herein.

75. Pursuant to C.R.S. § 24-34-502(1)(a), CADA prohibits a person from refusing to rent or lease, otherwise make unavailable, deny, or withhold housing to any person “because of . . . sexual orientation.” CADA also prohibits a person from causing to be made any written or oral inquiry or record concerning the sexual orientation of a person seeking to rent, or lease any housing.

76. Pursuant to C.R.S. § 24-34-301(7), “sexual orientation” is defined, for purposes of CADA, as “an individual’s orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another individual’s perception thereof.”

77. Defendant refused to rent or lease, otherwise made unavailable, denied, or withheld housing to Plaintiffs based on Tonya and Rachel’s “orientation toward . . . homosexuality” and Rachel’s transgender status. Defendant also made statements via email inquiry or record concerning the sexual orientation of the persons seeking to rent one of the properties she owns, refusing them to Tonya and Rachel because they are two women married to each other and because Rachel is transgender.

78. Defendant’s actions were taken intentionally, willfully, and in disregard for the rights of others, and constituted unfair housing practices, as defined in C.R.S. § 24-34-501(6).

79. Tonya and Rachel are “aggrieved persons” as defined in C.R.S. § 24-34-501(1). Plaintiffs have been injured by Defendant’s discriminatory conduct and have suffered damages as a result.

80. Accordingly, under C.R.S. § 24-34-505.6(6), Tonya and Rachel are entitled to and seek actual damages, injunctive relief, and reasonable attorneys’ fees and costs.

**COUNT V – DISCRIMINATION BASED ON FAMILIAL STATUS
IN VIOLATION OF THE COLORADO ANTI-DISCRIMINATION ACT**

C.R.S. § 24-34-502

(By all Plaintiffs against Defendant)

81. Plaintiffs incorporate by reference and reallege paragraphs 1-52 of this complaint as though fully set forth herein.

82. Pursuant to C.R.S. § 24-34-502(1)(a), CADA prohibits a person from refusing to rent or lease, otherwise make unavailable, deny, or withhold housing to any person “because of .

. . familial status.” CADA also prohibits a person from causing to be made any written or oral inquiry or record concerning the familial status of a person seeking to rent, or lease any housing.

83. Pursuant to C.R.S. § 24-34-501(1.6), “familial status” is defined, for purposes of CADA, as “one or more individuals, who have not attained eighteen years of age, being domiciled with a parent or another person having legal custody of or parental responsibilities for such individual or individuals.”

84. Here, Defendant refused to rent the two-bedroom townhouse to the Smith family because the Smith family includes two children. Defendant excluded the Smith family from housing based on animus toward the children and made statements plainly setting forth her discrimination on the basis of familial status.

85. Defendant’s statements and actions were made intentionally, willfully, and in disregard for the rights of others, and constituted unfair housing practices, as defined in C.R.S. § 24-34-501(6).

86. Plaintiffs are “aggrieved persons” as defined in C.R.S. § 24-34-501(1). Plaintiffs have been injured by Defendant’s discriminatory conduct and have suffered damages as a result.

87. Accordingly, under C.R.S. § 24-34-505.6(6), Plaintiffs are entitled to and seek actual damages, injunctive relief, and reasonable attorneys’ fees and costs.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter Judgment in their favor and against Defendant on all claims as follows:

- a. Declare that Defendant’s actions violate the Fair Housing Act, 42 U.S.C. § 3604, and the Colorado Anti-Discrimination Act, C.R.S. § 24-34-502;

- b. Enjoin and restrain Defendant, her agents, employees, successors, and all others acting in concert with her, from discriminating on the basis of sex, sexual orientation, transgender status, and/or familial status in the sale, leasing, or rental of housing;
- c. Order Defendant to take affirmative action, including but not limited to instituting and carrying out policies and practices to prevent unlawful discrimination (including on the basis of sex, sexual orientation, transgender status, and/or familial status) in the future and to eliminate, to the extent practicable, the effects of Defendant's unlawful practices;
- d. Order Defendant to complete a fair housing training in order to prevent the reoccurrence of discriminatory housing practices in the future and to eliminate, to the extent practicable, the effects of her unlawful practices;
- e. Award Plaintiffs compensatory and punitive damages under the Fair Housing Act and compensatory damages under the Colorado Anti-Discrimination Act;
- f. Award Plaintiffs the costs and disbursements of this action, including reasonable attorneys' fees; and
- g. Grant such other and further relief in favor of Plaintiffs as this Court deems just and proper.

Dated on this 14th day of January, 2016.

Respectfully submitted,

**LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.**

/s/ Omar Gonzalez-Pagan

Omar Gonzalez-Pagan

/s/ Karen L. Loewy

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