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

JOHN B. THOMPSON,

Plaintiff,

v. Case No. 07-21256 (Judge Adalberto Jordan)

THE FLORIDA BAR and
DAVA J. TUNIS,

Defendants.

PLAINTIFF'S VERIFIED 60(d)(3) MOTION FOR RELIEF FROM THIS COURT'S ORDER OF DISMISSAL FOR FRAUD ON THE COURT AND MEMORANDUM OF LAW IN SUPPORT THEREOF

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, on his own behalf, and moves this court, pursuant to Rule 60 (d) (3), Federal Rules of Civil Procedure, for relief from its order of dismissal, on the basis of fraud on the court by the defendant Bar, stating:

1. This court dismissed this lawsuit without prejudice in October 2007.

2. The court did so on federal abstention grounds, having been assured by The Florida Bar (The Bar), the "official arm" of the Florida Supreme Court, that Thompson would have adequate state remedies to challenge any defects in the state lawyer disciplinary process applied to him. Thompson's raising of certain constitutional issues to this court in that lawsuit and *before* the state disciplinary proceedings were concluded bars the defendants from now raising *Rooker-Feldman* abstention to defeat judicial review of what Thompson presciently warned was happening and that has now happened, as will be seen, *infra*.

3. Thompson pointed out to this court while this suit was still pending that we was being denied substantive due process in the state disciplinary proceedings and that it was increasingly clear that he would be denied any "adequate state remedy" to correct those constitutional defects. Proof: the Florida Supreme Court had already entered an order prohibiting Thompson from seeking, on his own behalf, any relief to correct any defects, constitutional or otherwise, in the disciplinary process, even going so far as to prohibit Thompson, under threat of contempt, from filing a Petition for Review of any Referee's Report that would subsequently be handed down.

4. In other words, The Bar and the Supreme Court had informed Thompson that he would not be allowed to exercise the one basic right from which all other rights flow and could be vindicated—*the right to assert his rights*. This is such a basic right that the core right of the federal constitution's First Amendment is the "right to petition the government for a redress of grievances." What is new this day is the proof of the fraud that the Florida Bar and Supreme Court perpetrated upon this court in asserting that it had some legal "right" to block Thompson from filing with the latter a Petition for Review of the Referee's Report.

5. That proof of fraud aside, *infra*, there is an unqualified right found in the Florida Constitution's Article I, Section 21 regarding the absolute right of access to the courts as to any matter. Further, Florida Statute 454.18 guarantees an absolute right to the courts or any civil tribunal of any resident ***acting on his own behalf and without benefit of counsel***, in any civil matter. As to any criminal or quasi-criminal matter, which courts sometimes characterize bar disciplinary proceedings to be by virtue of their penal and confiscatory nature, the right to proceed *pro se* is federally guaranteed under

the Sixth Amendment, as explained in *Faretta*, as US Supreme Court Justice Stewart explained that not since England's notorious Star Chamber has any tribunal successfully asserted that the defendant is not entitled to represent himself unless he is incapacitated.

6. Nevertheless, the Florida Supreme Court, prior to this federal court's dismissal of this action without prejudice, had already, as indicated above, entered an order prohibiting Thompson from representing himself before it, even for the ultimate purpose of pointing out defects in the Referee's Report. The High Court, to be blunt, found Thompson too insistent in his assertions that the Referee below was making a mockery of the lawyer disciplinary process. The Court cited the US Supreme Court case of *In re McDonald* as ***the legal basis*** for such a banishment of a *pro se* respondent from its august presence. As will be seen below, this was what is now known to be a fraudulent subterfuge by the highest court in this state.

7. *A mere two months ago*, the Florida Supreme Court adopted a new Bar Rule—Rule 3-7.17—by which it gave itself the authority to prohibit a Bar respondent from representing himself. This Honorable Court needs to pause for a moment and ponder the significance of that factual statement, for upon that fact the consequential denial of substantive due process that should have been afforded Thompson is proven. The Supreme Court applied a rule to Thompson that did not exist. Further, the adoption of this new Rule 3-7.17, after the High Court claimed it had the power to prohibit Thompson from representing himself before it, establishes not only the remarkable "bad faith" by the Florida Supreme Court and its Bar in its dealings with Thompson (which bad faith is an exception, as this court knows, to the invocation and application of federal

abstention), but it also proves the fraud upon this court by the defendant Florida Bar, to-wit:

8. Here is the full text of the new Rule 3-7.17, which Thompson learned only two days ago had been adopted formally as a Rule in this state after it claimed such a rule already existed:

RULE 3-7.17 VEXATIOUS CONDUCT AND LIMITATION ON FILINGS

(a) Definition. Vexatious conduct is conduct that amounts to abuse of the bar disciplinary process by use of inappropriate, repetitive, or frivolous actions or communications of any kind directed at or concerning any participant or agency in the bar disciplinary process such as the complainant, the respondent, a grievance committee member, the grievance committee, the bar, the referee, or the Supreme Court of Florida, or an agent, servant, employee, or representative of these individuals or agencies. **(b) Authority of the Court.** Only the Supreme Court of Florida has the authority to enter an order under the provisions of this rule.

(c) Procedure. (1) *Commencement.* Proceedings under this rule may be commenced on the court's own motion, by a report and recommendation of the referee, or a petition of The Florida Bar, acting for itself, the grievance committees or their members, authorized by its executive committee and signed by its executive director, demonstrating that an individual has abused the disciplinary process by engaging in vexatious conduct. The court may enter an order directing the individual(s) engaging in the vexatious conduct to show good cause why the court should not enter an order prohibiting continuation of the conduct and/or imposing limitations on future conduct. (2) *Order To Show Cause.* The court, acting on its own motion, or on the recommendation of the referee or petition of

the bar, may enter an order directing an individual to show cause why the court should not enter an order prohibiting continuation of the vexatious conduct and/or imposing limitations on future conduct. A copy of the order shall be served on the referee (if one has been appointed), the respondent, and The Florida Bar. (3) *Response to Order to Show Cause*. The individual(s) alleged to have engaged in vexatious conduct shall have 15 days from service of the order to show cause, or such other time as the court may allow, in which to file a response. Failure to file a response in the time provided, without good cause, shall be a default and the court may, without further proceedings, enter an order prohibiting or limiting future communications or filings as set forth in this rule, or imposing any other sanction(s) that the court is authorized to impose. A copy of any response shall be served on a referee (if one has been appointed), the respondent, and The Florida Bar. (4) *Reply*. The referee (if one has been appointed), the respondent, and The Florida Bar shall have 10 days from the filing of a response to an order to show cause entered under this rule in which to file a reply. Failure to file a reply in the time provided, without good cause, shall prohibit a reply. (5) *Referral to Referee*. The court may refer proceedings under this rule to a referee for taking testimony and receipt of evidence. Proceedings before a referee under this subdivision shall be conducted in the same manner as proceedings before a referee as set forth in rule 3-7.6 of these rules. **(d) Court Order.** (1) *Rejection of Communications*. An order issued under this rule may contain provisions permitting the clerk of the Supreme Court of Florida, referee, The Florida Bar, and/or any other individual(s) or entity(ies) specified in the order to reject or block vexatious communications as specifically designated in the order. The order may authorize the individual(s), entity(ies), or group(s) specified in the order to block

telephone calls made or electronic mail sent by an individual subject to an order issued under the authority of this rule. (2) *Denial of Physical Access*. The order may deny access to specific physical areas or locations to an individual subject to an order issued under the authority of this rule. The order may also allow the individual(s), entity(ies), or group(s) specified in the order to deny access to those areas or locations. (3) *Prohibition of or Limitation on Filings*. The order of the court may include a requirement that an individual subject to an order issued under the authority of this rule may be prohibited from submitting any future filings unless they are submitted solely by a member of The Florida Bar who is eligible to practice law or another person authorized to appear in the proceedings. If a person who is subject to an order issued under this rule is a member of The Florida Bar, that member may be prohibited from co-signing and submitting future filings. **(e) Violation of Order.** Violation of an order issued under this rule shall be considered as a matter of contempt and processed as provided elsewhere in these Rules Regulating The Florida Bar. **Comment** This rule is enacted to address circumstances involving repetitive conduct of the type that goes beyond conduct that is merely contentious and unsuccessful. This rule addresses conduct that negatively affects the finite resources of our court system, resources that must be reserved for resolution of genuine disputes. As recognized by the United States Supreme Court, "every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice." *In re McDonald*, 489 U.S. 180, 184 (1989).

9. The analysis of the above new Rule 3-7.17 that by a self-inflicted wound damages The Bar, the Florida Supreme Court, thereby necessitating the vacating of this court's dismissal order, is so simple that even a caveman or a lawyer allegedly mentally incapacitated by his Christian faith can do it. Proof:

10. Courts don't need new rules giving them the power they already have. The adoption of the new rule proves there was no power to do what it did before the rule.

11. Because of that self-evident truth, it follows that the Florida Supreme Court did NOT have the legal authority to ban Thompson from filing on his own behalf his Petition for Review.

12. Possibly the clearest proof that the Florida Supreme Court did not have such legal authority, which it now says it had all along, is the Florida Supreme Court's remarkable and telling misrepresentation as to the US Supreme Court's holding in *In re McDonald.* This federal court and its law clerks are invited to actually read this pivotal case, for on it hinges much, as indicated by the fact that the Florida Supreme Court puts the alleged holding in right in text of this Rule. The US Supreme Court did not, however, hold that McDonald could not come back, again and again, to it on his own behalf. No. It held that since McDonald was no longer incarcerated he could not keep coming back as the beneficiary of an *in forma pauperis* waiver of his filing fees and other costs! *McDonald,* then, rather than standing for the proposition that courts can ban annoying litigants from their presence, stands for just the opposite.

13. Surely courts have the need to manage their resources. Fines against a party or their counsel for nettlesome behavior can be assessed to do just that. A court has the contempt power. Scandalous, impertinent, and immaterial matter found in pleadings can

be stricken. Banishment of a litigant into the outer darkness, however, is not an option, and there is no law in this country to that effect other than in this purported Rule 3-7.17, enacted after the fact.

14. Clearly, if this federal court does not grant Thompson the relief he seeks, he will be able to bring a new, stand alone declaratory judgment action that will result in the striking down of this new Rule. Thompson will have standing to do so, as he is the victim, after the fact, of such a Rule, and note that he is actually mentioned in the Rule, at its end, because this is in fact "The Jack Thompson Rule." If this is not a bill of attainder, then there is no such thing.

15. Before we get to that basis for this court's corrective relief right now, note that there is no way in the world that this Rule survives the constitutional strict scrutiny test that must be applied to any effort by a state to limit the First Amendment. It is not even close. First of all, the state must use less restrictive means of serving a legitimate state end, such as managing court resources, than BANNING a party from the state courts, which, as already pointed out, is prohibited by the state constitution as well.

16. Secondly, note that this remarkable Medieval Rule that attempts to throw us all back into Sixteenth Century England actually states that the Florida Supreme Court has arrogated to itself the power to deny a Bar respondent *physical access to locations*:

"(2) *Denial of Physical Access*. The order may deny access to specific physical areas or locations to an individual subject to an order issued under the authority of this rule. The order may also allow the individual(s), entity(ies), or group(s) specified in the order to deny access to those areas or locations."

17. What in the world does this mean? Thompson can tell this court what it means. It means that this state Supreme Court thinks that it has the power to ban a Bar respondent from his own disciplinary proceedings. This is facially unconstitutional. This is where Referee Dava Tunis actually took all this. When Thompson showed up, having passed through Gerstein Justice Building security to deliver a time-sensitive motion to Tunis' bailiff, the bailiff intercepted Thompson and prohibited him from doing so, from even entering the courtroom. This ignominy was visited upon a law-abiding citizen with no history of violence who had gone through a nine-day Bar trial before this Referee without incident and without any hint of an incident. Even England's Star Chamber allowed the accused to attend his own kangaroo proceedings. Such a judicial fiat as this will not survive strict scrutiny in any federal court, and just as importantly it shows the desperation and frankly the collegial paranoia of a state supreme court that has apparently lost touch with the most fundamental precepts of substantive due process.

18. Further, the term "vexatious" is unconstitutionally vague. Allow Thompson to explain how its vagueness has unconstitutionally impacted him. Everyone understands that a vexatious *plaintiff* can be sanctioned by a court for wasting its resources and sanctioned in such a way that such wasteful is punished and reined in. But what in the world is a "vexatious" defendant or Bar respondent? In Thompson's case, it is a respondent who has been subjected to an ever-increasing crescendo of due process denials and who keeps alerting the court of original jurisdiction that the Bar referee is refusing even to hear motions on those due process violations. In other words, in this brave new world of judicial intolerance of "vexatiousness," a bar respondent that refuses to accede to his own railroading must be banned from every being heard in the future

about any of it. This is not a plaintiff who keeps filing baseless lawsuits; the Supreme Court would prohibit a bar respondent from defending himself even before the process is over and after as well!

19. This new Rule, enacted by the Florida Supreme Court a full TWO YEARS after the conclusion of Thompson's bar trial, is clearly both *ex post facto* in nature and a bill of attainder singling out Thompson individually. Thompson, in a sense, is flattered by the desperation of the Supreme Court. But Thompson is only dangerous to this increasingly isolated court because of its own actions, not because Thompson ever posed any cataclysmic threat to the Supreme Court and its "official arm." However, now he does, because the Florida Supreme Court has taken to lying (tough word, absolutely accurate) about *In re McDonald*, having its Bar's record counsel herein, Greenberg Traurig, lie to this court about all the wonderful due process Thompson would be given by The Bar and the High Court, and then, in a panic, passing a Rule that attempts to close the barn door after the horse has escaped.

20. When a state supreme court makes a new rule and is foolish enough to put the name of the person right in the rule, thereby proving its bill of attainder and *ex post facto* nature, then it is pretty clear to anyone with eyes what happened here.

21. The Florida Bar threatened every single lawyer Thompson retained with retribution if he continued to represent Thompson. The Bar thus stripped him of legal representation and then told him he could not avail himself of the last advocate he could have—himself. How clever this approach, now embodied in Rule 3-7.17 is: Make it clear to a bar respondent that any counsel who would represent him will be next in line to be targeted. This is precisely what The Bar did to Ray Reiser, Miles Gopman, and then

Barry Rigby. Rigby was deterred in a more subtle way. He is the former husband of the President-Elect of The Bar, Mayanne Downs. He agreed to represent Thompson for the purpose of filing Thompson's Petition for Review. He was the perfect lawyer to represent Thompson, as he had previously headed The Bar's disciplinary process. He knew where the skeletons were. When The Bar found out Thompson had retained him, The Bar made it clear to Mr. Rigby that his specialty in the practice of law—representing Bar respondents—would be severely damaged because The Bar would never cut any future clients any favorable or reasonable bar discipline deals because Mr. Rigby would have committed the ultimate and unforgivable sin—representing Jack Thompson. How could Thompson retain counsel in such a situation? Answer: He could not, which was the plan.

22. The Bar and the court then came up with a Rule 3-7.17 that it said was the un-codified rule all along. The real holding of *McDonald* proves that is a complete lie, and a damnable lie.

23. But this is simply the most easily proven lie, although arguably the most rudimentary denial of good faith, due process, and fairness by The Bar in the whole sordid affair. Were there other deprivations of due process showing bad faith, such as money payments to the Referee after she got Thompson's case, in clear violation of the recent *Caperton v. Massey* Supreme Court ruling? Of course. Thompson also now knows and can prove that the Federal Communications Commission entered an order one month after Thompson was disbarred proving that the Tew Cardenas bar complainants committed perjury both in filing their bar complaints and at Thompson's trial. WQAM agreed to pay the FCC in that October 2008 Consent Decree money for airing indecency

to which it was alerted by Thompson. The FCC says that! Tew Cardenas told Tunis and The Bar that Thompson had lied all about that, and now we know, by the hand of the same federal government in which this court is a servant, that it was all a lie and that Thompson was disbarred because of a tissue of lies.

24. We also now know that the sanction imposed upon Thompson—permanent disbarment with no right ever to apply for readmission—does not even exist in this state, per the findings of the Special Commission chaired by Third District Judge Alan Schwartz, after Thompson was disbarred permanently. More mendacity by a court and a bar is hard to imagine.

25. We also now know that even the disciplinary costs affidavit by which Thompson was forced to pay $43,000 was perjured, as he was quadruple charged for hotel rooms in which Blank Rome lawyers stayed. This is akin to Capone's being caught not for murder but for tax evasion. These people were so petty as to steal from Thompson the money he was forced to pay for the privilege of having all of the aforementioned "due process" lavished upon him.

26. Finally, Thompson could go on with more evidence of fraud by The Florida Bar and the Supreme Court it supposedly serves. But if he were to do that, then certain other judges in this District Court would assert that Thompson has filed a "rambling and incoherent pleading" that has nothing but "wild accusations" therein. Such a bromide is absurd, now on its face, as the proof of the due process deprivation pudding is in the bad faith eating of Rule 3-7.17. It was the Florida Supreme Court and The Bar's Greenberg Traurig lawyers who told this court that the Florida Supreme Court had the perfect right

to deny Thompson the right to represent himself in filing a Petition for Review. The newly-minted Rule 3-7.17 proves this was a lie and a fraud upon this court.

27. The problem the Florida Supreme Court and The Florida Bar have always had with Thompson is not that he has made any of this up about them or about the porn industry lawyers, but that Thompson has unflinchingly told the truth to people of power, whose power has been reduced not by anything Thompson has done but by their abiding mendacity and bad faith.

28. Florida Supreme Court Justices Polston and Canady recently opined that "The Florida Supreme Court has abdicated its duty to oversee The Florida Bar." Exactly.

29. Thompson bested The Florida Bar back in 1991 in its vendetta against him. When it cranked it up again, with some of the same lawyers it used the last time, The Bar hauled out a new trick: Jack Thompson cannot represent himself. By the above we know, and this court knows, that this is a desperate trick without any foundation whatsoever in the Anglo-American jurisprudential system. Desperate people do desperate things.

30. But the Florida Supreme Court's and Bar's targeting of Thompson is just one side of the bar discipline racket. The flip side from going after whistle blowers is the protection of lawyers too politically wired and "too big to fail." The latest example is seen in the sordid outcome of Bar v. Adorno. Here's a guy that the trial court and the Third District Court of appeal said "orchestrated a scheme to defraud the taxpayers of Miami." Third DCA Judge Cortina concurred in stating that it would be "hard to conceive of a more egregious betrayal of the trust of clients" than what Adorno did.

31. Who showed up in the courtroom of Broward Judge/Referee Tuter to torpedo *res judicata* and vouch that Adorno was as pure as the driven snow? The president of Greenberg Traurig, whose client, The Florida Bar, was prosecuting Adorno! Another was Raoul Cantero, the 14-year mentee of Adorno and who, when he was on the Supreme Court, was calling for the heads of lawyers who were "impolite." How unseemly that two men who should be standing for the enforcement of The Florida Bar's Rules took the position, under oath, that they mean nothing, that Hank Adorno was at best guilty of "unintentional fraud," which is analogous to rape by a rapist in a coma.

32. The predictions of *Lathrop, Keller*, the ABA McKay Commission were that this day when whistle blowers were lynched and crooks too big to fail were protected by the bars and the high and mighty have been proven true.

33. Rule 3-7.17 is unintended and irrefutable proof that if anyone who refuses to go quietly, anyone who squawks that a regulatory process has gone off the rails, anyone who insists upon his right to try to defend the 32 years he practiced law without a single complaint from anyone other than porn lawyers and their apologists, then the Supreme Court of Florida and its Bar will lie and tell an Article III judge that it has the power to fence off the court system and the Bar system from that whistle blower.

34. In hauling out this trick of binding and gagging Thompson so that he could not even protest his own innocence to the Florida Supreme Court, the Florida Supreme Court and its Bar have hoisted themselves upon their own petard. To top it off, the Florida Supreme Court entered a disciplinary sanction that does not exist, stole money from Thompson we now know was his, and then had the utter temerity to state in is disbarment order that it was being entered in an "uncontested matter"! It was

uncontested because this alleged Supreme Court fudged about the holding in *McDonald* and then created a rule aimed at one person and after the fact.

35. This was in fact the most contested bar disciplinary proceeding in The Florida Bar's history, and if it had been a fair fight, with actual due process afforded, Thompson would still be a lawyer in good standing with The Bar, and certain others would be in jail for extortion, fraud, perjury, bribery, and conversion.

36. This Honorable Court in the person of Adalberto J. Jordan should be as outraged as is Thompson that it and he were lied to in order to achieve this unfair result. This was achieved through fraud on this court by the very state entities and their lawyers who purport to stand for justice. If this court is not outraged by this fraud upon it, then it possibly it can be outraged by nothing.

37. And this tops it all off: Thompson recently had a lawyer who graciously, *pro bono*, filed a petition to vacate Thompson's disbarment on the basis of fraud. He learned of Thompson by virtue of the news coverage of what The Bar was doing and had done to Thompson. What did the Florida Supreme Court do when it received this petition to vacate Thompson's disbarment on the basis of fraud, which petition was verified and completely unrebutted, with any filing of any sort, by The Bar? Answer: The Supreme Court refused to consider this verified, unrebutted petition of Thompson filed by the Supreme Court's own set of Rules! This proves, irrefutably, that Thompson has NO STATE REMEDIES, and that he never did. The Florida Supreme Court is not concerned about preserving its resources. It is concerned about protecting itself and its Bar from the truth. That is what the unconstitutional Rule 3-7.17 is for. It is to so frustrate justice that anyone will give up. Thompson is not anyone.

38. Thompson may be the biggest jerk this court has ever met. Let's assume he is. That fact, if it is a fact, is no excuse for The Bar and the Florida Supreme Court to get the result they wanted against Thompson, *by any means possible*. What we now know these people did is more heinous than anything Thompson was even charged with doing, let alone allegedly did. It enforced a Rule that did not exist, and that we now know, by the first enactment of this Rule, that it did not exist. It lied about In re McDonald.

39. Quite simply, if this is not "bad faith," if this is not "fraud upon the court" by the defendant, if this is not conduct that provides the basis to set aside this court's dismissal order, then criminal acts committed in open court by the "right people" will be sanctioned by Article III courts everywhere and should be, if this is to be what the law stands for in this country.

40. But don't take Thompson's word for it. The United States Supreme Court in *Indiana v. Edwards*, 128 SC 2379, 554 US 208 (2008) held, before Thompson was "permanently disbarred," that no state can deny a defendant his right to represent himself unless he is mentally incapacitated and unable to ably represent himself.

41. The problem was never that Thompson was mentally incapacitated, The Bar's "unreasonable" (to use this court's own word) demand that Thompson have his head examined was a stunt. What The Bar feared is that Thompson could and would prove to the Florida Supreme Court, through a Petition for Review, what his intimidated three prior counsel were not around to prove.

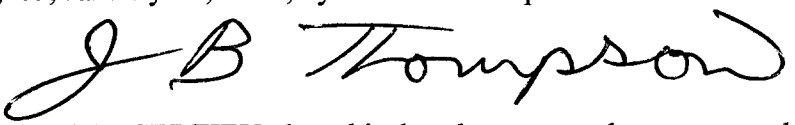
42. This court now has the proof of the fraud: an ex post facto bill or attainder prohibited by state and federal constitutions that denied Thompson his right of self-representation that the *Faretta* and *Indiana* decisions said Thompson had all along.

43. Rule 3-7.17 and its date—November 19, 2009—proves the fraud upon this court.

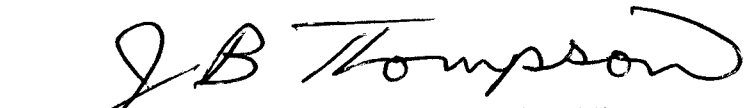
WHEREFORE, although there are multiple "fraud upon the court" grounds for affording relief from this court's order dismissing this case without prejudice, the Rule 3-7.17 fraud is ample for that purpose. Thompson respectfully moves this court for such relief, and also for a full evidentiary proceeding to prove that the Florida Supreme Court and its official arm with middle finger extended, The Florida Bar, have perpetrated a fraud upon this court and in doing so have undermined the rule of law in this state and the necessary majesty of this federal district court which was hoodwinked into entering a dismissal order on false abstention grounds.

I solemnly swear, under penalty of perjury, that the foregoing facts are true, correct, and complete, so help me God.

Signed, January 19, 2010, by John B. Thompson:



I HEREBY CERTIFY that this has been served upon record counsel for The Florida Bar and Dava Tunis this January 19, 2010, by US mail.



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