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8 **UNITED STATES BANKRUPTCY COURT**
 9
 10 **DISTRICT OF NEVADA**

11 In re
 12 AMERICAN WEST
 DEVELOPMENT, INC., a Nevada
 13 corporation,
 14
 15 Debtor.

Case No. BK-S-12-12349-MKN
 Chapter 11

**MOTION FOR ORDER PURSUANT TO
 11 U.S.C. §§ 105(a) AND 331, AND FED. R.
 BANKR. P. 2016, AUTHORIZING AND
 ESTABLISHING PROCEDURES FOR
 INTERIM COMPENSATION AND
 REIMBURSEMENT OF EXPENSES OF
 PROFESSIONALS**

Hearing Date: April 10, 2012
 Hearing Time: 9:30 a.m.

19
 20 American West Development, Inc. (“AWDI,” or “Debtor”), the debtor and debtor in possession
 21 in the above-captioned case (the “Chapter 11 Case”), hereby files this motion (the “Motion”) for an
 22 order pursuant to sections 105(a) and 331 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*
 23 (as amended, the “Bankruptcy Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure
 24 (as amended, the “Bankruptcy Rules”), authorizing and establishing procedures for the interim
 25 compensation and reimbursement of expenses of professionals.

26 This Motion is supported by the Omnibus Declaration of Robert M. Evans In Support of
 27 Debtor’s First Day Motions (the “Omnibus Declaration”) filed contemporaneously herewith, the papers
 28 and pleadings on file in this Chapter 11 Case, judicial notice of which is respectfully requested, and any

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1 argument of counsel entertained by the Court at the time of the hearing of the Motion. In further
2 support of this Motion, Debtor respectfully represents as follows:

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I.**

5 **INTRODUCTION**

6 1. On March 1, 2012 (the "Petition Date"), Debtor filed a voluntary petition for relief under
7 chapter 11 of the Bankruptcy Code in this Court. See Docket No. 1.

8 2. Debtor has continued and is operating and managing its business as debtor-in-possession
9 pursuant to sections 1107 and 1108 of the Bankruptcy Code. See generally Chapter 11 Case Docket.

10 3. No request has been made for the appointment of a trustee or examiner, and no statutory
11 committee has been appointed. See id.

12 **II.**

13 **STATEMENT OF FACTS**

14 **A. Background**

15 4. Contemporaneous with the filing of the Motion, Debtor is filing applications to retain
16 certain professionals including, among others, Fox Rothschild LLP, as counsel to Debtor; Province
17 Advisors, LLC, as financial advisors to Debtor; The Garden City Group, as claims and noticing agent,
18 and the Law Office of Nathan A. Schultz, as conflicts counsel to Debtor. Debtor anticipates that, as the
19 Chapter 11 Case progresses, it may need to retain other professionals in connection with its chapter 11
20 efforts. In addition, one or more statutory committees (each a "Committee" and collectively, the
21 "Committees") may be appointed in this case. If appointed, Debtor anticipates that any Committees
22 will retain counsel, and possibly other professionals, to assist them in fulfilling their obligations in this
23 case.

24 5. By this Motion, Debtor requests entry of an order, in the form attached as Exhibit A
25 hereto (the "Order"), pursuant to Bankruptcy Code sections 105(a) and 331 and Bankruptcy Rule
26 2016(a), authorizing and establishing procedures for the compensation and reimbursement of court-
27 appointed professionals (collectively, the "Professionals") on a monthly basis, on terms comparable to
28 the procedures established in other similar chapter 11 cases. The Order will streamline the professional

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1 compensation process and enable the Court and all other parties to monitor more effectively the
2 professional fees incurred in this Chapter 11 Case.

3 **B. Proposed Compensation And Reimbursement Procedures**

4 6. Debtor proposes that, except as otherwise provided in an order of this Court authorizing
5 the retention of a particular Professional, the Professionals be permitted to seek interim payment of
6 compensation and reimbursement of expenses in accordance with the following procedures
7 (collectively, the "Compensation Procedures"):

8 a. Subject to the specific terms below, on or before the last day of each calendar
9 month, or as soon as practicable thereafter (but not earlier than the 15th day
10 of each calendar month), each Professional may file an application (a
11 "Monthly Fee Application") with the Court for interim approval and
12 allowance of compensation for services rendered and reimbursement of
13 expenses incurred during any preceding month or months and serve a copy of
14 such Monthly Fee Application by [overnight mail] on:

- 15 i. AWDI, 250 Pilot Road, Suite 140, Las Vegas, Nevada 89119 (Attn:
16 Robert M. Evans);
- 17 ii. Fox Rothschild, LLP, 3800 Howard Hughes Parkway, Suite 500, Las
18 Vegas, Nevada 89169 (Attn: Micaela Rustia Moore, Esq.);
- 19 iii. U.S. Trustee of the District of Nevada, 300 Las Vegas Boulevard
20 South, Suite 4300, Las Vegas, Nevada 89101 (Attn: Athanasios
21 Agelakopoulos); and
- 22 iv. counsel to any Committees

23 (each a "Notice Party" and collectively, the "Notice Parties"). Any
24 Professional that fails to file a Monthly Fee Application for a particular
25 month or months may subsequently submit a consolidated Monthly Fee
26 Application for a particular month or months. All Monthly Fee Applications
27 will comply with the Bankruptcy Code, the Bankruptcy Rules, applicable
28 Ninth Circuit law, and the Local Rules of Bankruptcy Procedure for the
District of Nevada (as amended, the "Local Rules").

b. Each Notice Party will have twenty (20) days after service (or the next
business day if the 20th day is not a business day) of a Monthly Fee
Application (the "Objection Deadline") to object to the requested fees and
expenses in accordance with the procedures described in subparagraph (c)
below. If no objections are raised on or before the expiration of the
Objection Deadline, the Professional submitting the Monthly Fee Application
shall file a certificate of no objection with the Court, after which Debtor shall
be authorized to pay such Professional an amount equal to 80 percent of the

1 fees and 100 percent of the expenses requested in its Monthly Fee
2 Application (the “Maximum Monthly Payment”). If an objection is properly
3 filed, Debtor shall be authorized to pay the Professional 80 percent of the fees
4 and 100 percent of the expenses not subject to an objection (the “Actual
Monthly Payment”). The first Monthly Fee Application submitted by each
5 Professional shall cover the period from the Petition Date through and
6 including March 31, 2012.

- 7
- 8 c. If any Notice Party objects to a Professional’s Monthly Fee Application, it
9 must, on or before the Objection Deadline, (i) file a written objection (an
10 “Objection”) with the Court and serve such Objection on such Professional
11 and each other Notice Party so as to be received on or before the Objection
12 Deadline. Thereafter, the objecting party and the affected Professional may
13 attempt to resolve the Objection on a consensual basis. If the parties are
14 unable to reach a resolution of the Objection, the affected Professional may
15 either (i) file a request with the Court for payment of the difference between
16 the Maximum Monthly Payment and the Actual Monthly Payment made to
17 the affected Professional (the “Incremental Amount”) or (ii) forego payment
18 of the Incremental Amount until the next interim or final fee application
19 hearing, at which time the Court will consider and dispose of the objection if
20 requested by the parties.
- 21 d. Beginning with the approximately 120-day period beginning on the Petition
22 Date and ending on June 30, 2012, and at each 120-day period thereafter (the
23 “Interim Fee Period”), each Professional shall file with the Court and serve
24 on the Notice parties an application (an “Interim Fee Application”) for
25 interim Court approval and allowance of the compensation and
26 reimbursement of expenses sought by such Professional in its Monthly Fee
27 Applications, including any holdbacks, filed during the Interim Fee Period,
28 pursuant to section 331 of the Bankruptcy Code. The Interim Fee
Application must include a brief description identifying: (i) the Monthly Fee
Applications that are the subject of the request; (ii) the amount of fees and
expenses requested; (iii) the amount of fees and expenses paid to date or
subject to an Objection; (iv) the deadline for parties other than the Notice
Parties to file objections (the “Additional Objections”) to the Interim Fee
Application; and (v) any other information requested by the Court or required
by the Local Rules. Objections, if any, to the Interim Fee Applications shall
be filed and served upon the affected Professional and the Notice Parties so
as to be received on or before the 20th day (or the next business day if such
day is not a business day) following service of the applicable Interim Fee
Application.
- e. Debtor will request that the Court schedule a hearing on the Interim Fee
Application at least once every four months or at such other intervals as the
Court deems appropriate. If no Objections are pending and no Additional
Objections are timely filed, the Court may grant an Interim Fee Application
without a hearing.

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- f. Each Professional must file and serve its first Interim Fee Application on or before the 30th day following the end of the first Interim Fee Period. The first Interim Fee Application shall cover fees and expenses incurred from the Petition Date through and including June 30, 2012.
- g. The pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from the future payment of compensation or reimbursement of expenses under the Compensation Procedures. Any Professional that fails to file a Monthly Fee Application or an Interim Fee Application when due or permitted will be ineligible to receive further interim payments of fees or expenses under the Compensation Procedures until such time as a Monthly Fee Application or Interim Fee Application is submitted by the Professional. There will be no other penalties for failing to file a Monthly Fee Application or an Interim Fee Application in a timely manner.
- h. Neither (i) the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses under the Compensation Procedures nor (ii) the filing of or failure to file an Objection will bind any party in interest or the Court with respect to the final allowance of applications for compensation and reimbursement of expenses of Professionals. All fees and expenses paid to Professionals under the Compensation Procedures are subject to disgorgement until final allowance by the Court.

7. Debtor further requests that the Court limit service of Monthly Fee Applications, Interim Fee Applications and final fee applications (collectively, the “Applications”) to the Notice Parties. Debtor further requests that all other parties that have filed a notice of appearance with the Clerk of the Court and requested notice of pleadings in the Chapter 11 Case shall be entitled to receive only notice of hearings on the Applications (the “Hearing Notice”). Serving the Applications and the Hearing Notices in this manner will permit the parties most active in this case to review and object to the Professionals’ fees while saving unnecessary duplication and mailing expenses.

III.
BASIS FOR RELIEF

8. The authority for establishing procedures for the interim compensation and reimbursement of expenses of professionals is found within section 331 of the Bankruptcy Code, which provides, in relevant part:

A trustee, an examiner, a debtor’s attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case

1 under this title, or more often if the court permits, for such compensation
2 for services rendered before the date of such an application or
3 reimbursement for expenses incurred before such date as is provided
4 under section 330 of this title. After notice and a hearing, the court may
allow and disburse to such applicant such compensation or
reimbursement.

5 11 U.S.C. § 331. Furthermore, section 105(a) of the Bankruptcy Code authorizes the bankruptcy court
6 to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of
7 [Title 11].” Walls v. Wells Fargo Bank, N.A., 276 F.3d 502, 506 (9th Cir. 2002).

8 9. The underlying purpose of section 331 of the Bankruptcy Code is to provide financial
9 relief to court-appointed professionals engaged in protracted bankruptcy proceedings and cases, so that
10 these professionals do not have to wait for what may be years before receiving compensation. See In re
11 Commercial Consortium of Ca., 135 B.R. 120, 123 (Bankr. C.D. Cal. 1991) (stating that the essential
12 function of section 331 is to relieve counsel and other professionals the burden of “financing” lengthy
13 bankruptcy proceedings). Indeed, courts have commonly authorized more frequent payments in large
14 cases in order to avoid undue delays in payment. See In re Knudsen Corp., 84 Bankr. 668, 672 (B.A.P.
15 9th Cir. 1988).

16 10. Courts in this district have regularly entered orders approving professional compensation
17 procedures that provide for interim compensation and expense reimbursement on a monthly basis, such
18 as those proposed herein. See In re 155 East Tropicana, LLC, Case No. 11-22216-BAM (Bankr. D.
19 Nev. Sep. 16, 2011); In re Nevada Cancer Institute, Case No. 11-28676-MKN (Bankr. D. Nev. Jan. 18,
20 2012); In re Station Casinos, Inc., et. al, Case No. 09-52477 (Bankr. D. Nev. Aug. 7, 2009).

21 11. Debtor submits that the Compensation Procedures herein are appropriate and consistent
22 with the interim procedures approved in the above-cited cases. The implementation of the
23 Compensation Procedures is validated by the size and complexity of this Chapter 11 Case, and Debtor’s
24 limited staff and resources. Debtor must hire Professionals to help it satisfy the burdens of this case and
25 navigate the reorganization process. The proposed Compensation Procedures streamline the
26 professional compensation process for the Professionals and enables the Court and all other parties to
27 effectively monitor the professional fees incurred in this Chapter 11 Case.

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EXHIBIT A

PROPOSED FORM OF ORDER

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

AMERICAN WEST
DEVELOPMENT, INC., a Nevada
corporation,

Debtor.

Case No. BK-S-12-12349-MKN

Chapter 11

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a)
AND 331, AND FED. R. BANKR. P. 2016,
AUTHORIZING AND ESTABLISHING
PROCEDURES FOR INTERIM
COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF
PROFESSIONALS**

Hearing Date: April 10, 2012
Hearing Time: 9:30 a.m.

The Court, having reviewed and considered Debtor’s Motion (the “Motion”) for an order pursuant to sections 105(a) and 331 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the “Bankruptcy Code”) and rule 2016 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), authorizing and establishing procedures for the interim compensation and reimbursement of expenses of professionals, as more fully set forth in the Motion;

1 and upon consideration of the Declaration of Robert M. Evans; and the Court having jurisdiction to
2 consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of
3 the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b);
4 and venue being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper
5 notice of the Motion having been provided; and it appearing that no other or further notice need be
6 provided; and the Court having determined that the relief sought in the Motion is in the best interests of
7 Debtor, its creditors and all other parties in interest; and the Court having determined that the legal and
8 factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all the
9 proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is
10 hereby,

11 ORDERED that the Motion is GRANTED; and

12 IT IS FURTHER ORDERED that except as otherwise provided in an order of the Court
13 authorizing the retention of a particular professional, the professionals specifically retained pursuant to
14 an order of the Court in this case (collectively, the “Professionals”) may seek interim payment of
15 compensation and reimbursement of expenses in accordance with the following procedures
16 (collectively, the “Compensation Procedures”):

- 17 a. Subject to the specific terms below, on or before the last day of each calendar
18 month, or as soon as practicable thereafter (but not earlier than the 15th day
19 of each calendar month), each Professional may file an application (a
20 “Monthly Fee Application”) with the Court for interim approval and
21 allowance of compensation for services rendered and reimbursement of
22 expenses incurred during any preceding month or months and serve a copy of
23 such Monthly Fee Application by [overnight mail] on:
 - 24 i. AWDI, 250 Pilot Road, Suite 140, Las Vegas, Nevada 89119 (Attn:
25 Robert M. Evans);
 - 26 ii. Fox Rothschild, LLP, 3800 Howard Hughes Parkway, Suite 500, Las
27 Vegas, Nevada 89169 (Attn: Micaela Rustia Moore, Esq.);
 - 28 iii. U.S. Trustee of the District of Nevada, 300 Las Vegas Boulevard
South, Suite 4300, Las Vegas, Nevada 89101 (Attn: Athanasios
Agelakopoulos); and
 - iv. counsel to any Committees

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1 (each a “Notice Party” and collectively, the “Notice Parties”). Any
2 Professional that fails to file a Monthly Fee Application for a particular
3 month or months may subsequently submit a consolidated Monthly Fee
4 Application for a particular month or months. All Monthly Fee Applications
5 will comply with the Bankruptcy Code, the Bankruptcy Rules, applicable
6 Ninth Circuit law, and the Local Rules of Bankruptcy Procedure for the
7 District of Nevada (as amended, the “Local Rules”).

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- b. Each Notice Party will have twenty (20) days after service (or the next business day if the 20th day is not a business day) of a Monthly Fee Application (the “Objection Deadline”) to object to the requested fees and expenses in accordance with the procedures described in subparagraph (c) below. If no objections are raised on or before the Objection Deadline, the Professional submitting the Monthly Fee Application shall file a certificate of no objection with the Court, after which Debtor shall be authorized to pay such Professional an amount equal to 80 percent of the fees and 100 percent of the expenses requested in its Monthly Fee Application (the “Maximum Monthly Payment”). If an objection is properly filed, Debtor shall be authorized to pay the Professional 80 percent of the fees and 100 percent of the expenses not subject to an objection (the “Actual Monthly Payment”). The first Monthly Fee Application submitted by each Professional shall cover the period from the Petition Date through and including March 31, 2012.
- c. If any Notice Party objects to a Professional’s Monthly Fee Application, it must, on or before the Objection Deadline, (i) file a written objection (an “Objection”) with the Court and serve such Objection on such Professional and each other Notice Party so as to be received on or before the Objection Deadline. Thereafter, the objecting party and the affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution of the Objection, the affected Professional may either (i) file a request with the Court for payment of the difference between the Maximum Monthly Payment and the Actual Monthly Payment made to the affected Professional (the “Incremental Amount”) or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court will consider and dispose of the objection if requested by the parties.
- d. Beginning with the approximately 120-day period beginning on the Petition Date and ending on June 30, 2012, and at each 120-day period thereafter (the “Interim Fee Period”), each Professional shall file with the Court and serve on the Notice parties an application (an “Interim Fee Application”) for interim Court approval and allowance of the compensation and reimbursement of expenses sought by such Professional in its Monthly Fee Applications, including any holdbacks, filed during the Interim Fee Period, pursuant to section 331 of the Bankruptcy Code. The Interim Fee Application must include a brief description identifying: (i) the Monthly Fee Applications that are the subject of the request; (ii) the amount of fees and expenses requested; (iii) the amount of fees and expenses paid to date or

1 subject to an Objection; (iv) the deadline for parties other than the Notice
2 Parties to file objections (the “Additional Objections”) to the Interim Fee
3 Application; and (v) any other information requested by the Court or required
4 by the Local Rules. Objections, if any, to the Interim Fee Applications shall
5 be filed and served upon the affected Professional and the Notice Parties so
as to be received on or before the 20th day (or the next business day if such
day is not a business day) following service of the applicable Interim Fee
Application.

- 6 e. Debtor will request that the Court schedule a hearing on the Interim Fee
7 Applications at least once every three months or at such other intervals as the
8 Court deems appropriate. If no Objections are pending and no Additional
9 Objections are timely filed, the Court may grant an Interim Fee Application
10 without a hearing.
- 11 f. Each Professional must file and serve its first Interim Fee Application on or
12 before the 30th day following the end of the first Interim Fee Period. The
13 first Interim Fee Application shall cover fees and expenses incurred from the
14 Petition Date through and including June 30, 2012.
- 15 g. The pendency of an Objection to payment of compensation or reimbursement
16 of expenses will not disqualify a Professional from the future payment of
17 compensation or reimbursement of expenses under the Compensation
18 Procedures. Any Professional that fails to file a Monthly Fee Application or
19 an Interim Fee Application when due or permitted will be ineligible to
20 receive further interim payments of fees or expenses under the Compensation
21 Procedures until such time as a Monthly Fee Application or Interim Fee
22 Application is submitted by the Professional. There will be no other
23 penalties for failing to file a Monthly Fee Application or an Interim Fee
24 Application in a timely manner.
- 25 h. Neither (i) the payment of or the failure to pay, in whole or in part, monthly
26 interim compensation and reimbursement of expenses under the
27 Compensation Procedures nor (ii) the filing of or failure to file an Objection
28 will bind any party in interest or the Court with respect to the final allowance
of applications for compensation and reimbursement of expenses of
Professionals. All fees and expenses paid to Professionals under the
Compensation Procedures are subject to disgorgement until final allowance
by the Court.

24 and

25 IT IS FURTHER ORDERED that notice of Monthly Fee Applications, Interim Fee Applications
26 and final fee applications (collectively, the “Applications”) shall be served only on the Notice Parties
27 and that all other parties that have filed a notice of appearance with the Clerk of the Court and requested

1 notice of pleadings in this Chapter 11 Case shall receive only notice of hearings on the Applications
2 (the "Hearing Notice"); and

3 IT IS FURTHER ORDERED that Debtor will include all payments made to Professionals in
4 accordance with the Compensation Procedures in its monthly operating report, identifying the amount
5 paid to each of the Professionals; and

6 IT IS FURTHER ORDERED that all time periods set forth in this Order shall be calculated in
7 accordance with Bankruptcy Rule 9006(a); and

8 IT IS FURTHER ORDERED that, notwithstanding any provision in the Bankruptcy Rules to
9 the contrary, Debtor is not subject to any stay in the implementation, enforcement or realization of the
10 relief granted in this Order, and Debtor may, in its discretion and without further delay, take any action
11 and perform any act authorized under this Order; and

12 IT IS FURTHER ORDERED that the terms and conditions of this Order shall be immediately
13 effective and enforceable upon its entry; and

14 IT IS FURTHER ORDERED that this Court shall retain jurisdiction to hear and determine all
15 matters arising from the implementation and/or interpretation of this Order; and

16 IT IS FURTHER ORDERED that notice of this Motion as provided therein shall be deemed
17 good and sufficient notice of the Motion.

18
19 Prepared and Respectfully Submitted by:

20 **FOX ROTHSCHILD LLP**

21 By _____

22 BRETT A. AXELROD, ESQ.
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23 MICAELA RUSTIA MOORE, ESQ.
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26 *[Proposed] Counsel for American West Development, Inc.*

1 APPROVED/DISAPPROVED:

2 OFFICE OF THE UNITED STATES TRUSTEE

3 BY: _____
4 Athanasios Agelakopoulos
5 Trial Attorney for Acting United
6 States Trustee August B. Landis

7 **CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021**

8 In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- 9 The Court has waived the requirement of approval in LR 9021(b)(1).
- 10 No party appeared at the hearing or filed an objection to the motion
- 11 I have delivered a copy of this proposed order to all counsel who appeared
12 at the hearing, any unrepresented parties who appeared at the hearing, and
13 each has approved or disapproved the order, or failed to respond, as
14 indicated below:

14 ATHANASIOS [INSERT, AS APPLICABLE]
15 AGELAKOPOULOS, OFFICE OF
16 THE UNITED STATES TRUSTEE _____

16 Approved / Disapproved

- 17
- 18 I certify that this is a case under Chapter 7 or 13, that I have served a
19 copy of this order with the motion pursuant to LR 9014(g), and that no
20 party has objected to the form or content of the order.

21 ###

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