

Court File No. CV-18-594281-0000
(Originally Branford Court File No. 406/95)

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS

Plaintiff

- and -

**THE ATTORNEY GENERAL OF CANADA and
HIS MAJESTY THE KING IN RIGHT OF ONTARIO**

Defendants

- and -

MISSISSAUGAS OF THE CREDIT FIRST NATION

Intervenor

**STATEMENT OF DEFENCE
OF THE INTERVENOR
MISSISSAUGAS OF THE CREDIT FIRST NATION**

1. The intervenor Mississaugas of the Credit First Nation admits the allegations contained in the first two sentences of paragraph 2, paragraphs 3–5, 9–10, the first sentence of paragraph 12, and the first sentence of paragraph 21 of the second fresh as amended statement of claim of the plaintiff Six Nations of the Grand River Band of Indians (“SNGR”), dated February 3, 2023 (“statement of claim”).

2. Mississaugas of the Credit First Nation has no knowledge of the allegations contained in paragraphs 6.4, 8, 19–20, 24–74, the second sentence of paragraph 74.1, and paragraphs 74.2–81, and 83–84 of the statement of claim, except as otherwise expressly admitted or denied in this pleading.
3. Mississaugas of the Credit First Nation denies all other allegations in the statement of claim except as expressly admitted in this pleading or with respect to which Mississaugas of the Credit First Nation pleads it has no knowledge.

A. Mississaugas of the Credit First Nation

4. Mississaugas of the Credit First Nation is an Ojibwe collective of Anishinaabe people, one of the “aboriginal peoples of Canada” within the meaning of section 35 of the *Constitution Act, 1982* (“Section 35”), and is part of the broader Michi Saagiig Nishnaabeg and Anishinaabeg Nations. As an Ojibwe people, Mississaugas of the Credit First Nation is part of the Three Fires Confederacy consisting of Ojibwe (Keepers of the Faith), Pottawatomie (Keepers of the Fire), and Odawa (Keepers of the Trade).
5. Mississaugas of the Credit First Nation is also a “band” within the meaning of the *Indian Act*, R.S.C. 1985, s. I-5 with a reserve—referred to by Crown-Indigenous Relations and Northern Affairs Canada as New Credit 40A—located near Hagersville in southwestern Ontario.
6. The traditional territory of Mississaugas of the Credit First Nation is illustrated in the map at Appendix “A” and encompasses the lands and waters extending

from the Rouge River Valley in the east, across to the headwaters of the Thames River, down to Long Point on Lake Erie and back along the shores of Lake Erie, the Niagara River, and Lake Ontario to the Rouge River Valley (“Mississaugas of the Credit Traditional Territory”). The lands allocated to SNGR under the Haldimand Proclamation (“Haldimand Tract”) fall within Mississaugas of the Credit Traditional Territory. The map at Appendix “A” is for illustrative purposes only and is not an admission or denial.

7. In this pleading, Mississaugas of the Credit First Nation and its predecessors are together referred to as “Mississaugas of the Credit First Nation.”

B. SNGR

8. The plaintiff SNGR is an Indigenous community of Haudenosaunee people and a “band” within the meaning of the *Indian Act*, R.S.C. 1985, s. I-5. SNGR has two reserves—Six Nations 40 and Glebe Farm 40B.
9. SNGR descends from those members of the larger Six Nations collective (“Six Nations”) who relocated to the Grand River Valley from the United States of America in or around 1784.

C. The Crown

10. The indivisible Crown—represented by the defendants The Attorney General of Canada (“Canada”) and His Majesty the King in Right of Ontario (“Ontario”)—is Mississaugas of the Credit First Nation’s treaty partner. Each of the

defendants, Canada and Ontario, have rights and obligations under Mississaugas of the Credit First Nation's treaties with the Crown. In this pleading, the defendants Canada and Ontario and their predecessors are together referred to as the "Crown."

D. Mississaugas of the Credit First Nation's Aboriginal and Treaty Rights

11. Mississaugas of the Credit First Nation has a deep and enduring relationship with and to Mississaugas of the Credit Traditional Territory. Mississaugas of the Credit First Nation possesses both Aboriginal and treaty rights, including inherent and inalienable rights and jurisdictions. These include governance and stewardship rights, which imbue Mississaugas of the Credit First Nation with the authority and responsibility to care for Mississaugas of the Credit Traditional Territory for current and future generations, harvesting—including hunting and fishing—rights, and economic rights, which entitle Mississaugas of the Credit First Nation to sustain its people from Mississaugas of the Credit Traditional Territory and to share in wealth generated from those lands and waters. Mississaugas of the Credit First Nation continues to use, occupy, and exercise rights and jurisdictions across Mississaugas of the Credit Traditional Territory to the present day.

E. Six Nations Attempted and Failed to Conquer Southwestern Ontario

12. In the 1600s, Six Nations sent war parties from its traditional territory south of Lake Ontario north into what is now southern and southwestern Ontario, lands

that today include Mississaugas of the Credit Traditional Territory. At the time of Six Nations' invasion, its traditional territory was located entirely south of Lake Ontario and east of the Niagara River in what is now the United States of America.

13. Following Six Nations' invasion, collectives of Anishinaabeg peoples, including Mississaugas of the Credit First Nation, engaged in a decades-long conflict with Six Nations. As part of broader Anishinaabeg efforts to expel Six Nations from what is now Ontario and secure peace in the region, Mississaugas of the Credit First Nation left settlements on Lake Huron and travelled south. Alongside other collectives of Anishinaabeg peoples, Mississaugas of the Credit First Nation fought Six Nations during this period of conflict.
14. In the late 1600s, the conflict culminated in the defeat of Six Nations and its expulsion from what is now Ontario, its return to its traditional territory in what is now the United States of America, and a regional peace agreement between the Anishinaabeg, including Mississaugas of the Credit First Nation, and Six Nations.
15. Contrary to SNGR's allegation at, inter alia, paragraphs 11–13 of the statement of claim, neither SNGR nor Six Nations from time immemorial occupied, possessed, or used lands within Mississaugas of the Credit Traditional Territory, including for harvesting or trade. Prior to SNGR's resettlement to Canada following the American Revolution, any occupancy, possession, or use by SNGR or Six Nations of lands within Mississaugas of the Credit Traditional

Territory was short-lived and was confined to a few decades in the mid-1600s. Moreover, any occupancy, possession, or use of those lands by SNGR or Six Nations during this period was subject to continuing conflict with, and contestation by, Mississaugas of the Credit First Nation and other Anishinaabeg peoples. Neither SNGR nor Six Nations ever established control or sovereignty over Mississaugas of the Credit Traditional Territory or any portion thereof.

F. Peace Between Mississaugas of the Credit First Nation and Six Nations was Formalized in the Dish with One Spoon and Great Peace of Montreal

16. The expulsion of Six Nations from Mississaugas of the Credit Traditional Territory, and Mississaugas of the Credit First Nation's uncontested control of those lands and waters, was formalized, including in two peace agreements entered into around the turn of the eighteenth century: the Dish with One Spoon and the Great Peace of Montreal.

i. The Dish with One Spoon

17. In the decade leading up to 1700, representatives of Mississaugas of the Credit First Nation and other collectives of Anishinaabeg peoples met with representatives of Six Nations to negotiate an agreement formalizing Six Nations' defeat and expulsion from lands north of Lake Ontario. They reached a peace agreement based on ancient principles—known as a Dish with One Spoon—which was recorded in a wampum belt and confirmed understandings between Mississaugas of the Credit First Nation and Six Nations.

18. Among other things, this Dish with One Spoon established that Six Nations (including what would become SNGR) would remain in its traditional territory in what is now the United States of America but could pass through and use Mississaugas of the Credit Traditional Territory with Mississaugas of the Credit First Nation's agreement. It did not grant ownership, control, or any form of sovereignty over Mississaugas of the Credit Traditional Territory to Six Nations, including SNGR.

ii. The Great Peace of Montreal

19. In the summer of 1701, representatives of Mississaugas of the Credit First Nation and other collectives of Anishinaabeg peoples, Six Nations, and the French convened in Montreal to engage in further peace discussions. As a result of discussions over a two-week period, the attendees reaffirmed the Dish with One Spoon, and entered into a further agreement: the Great Peace of Montreal.

20. Like the Dish with One Spoon, the Great Peace of Montreal set out terms that solidified peace between the Anishinaabeg, including Mississaugas of the Credit First Nation, and Six Nations; it did not grant ownership, control, or any form of sovereignty over Mississaugas of the Credit Traditional Territory to Six Nations, including SNGR.

iii. The Nanfan Deed

21. As peace discussions were taking place in Montreal, Lieutenant Governor John Nanfan, the representative of the Crown in New York, asked for a meeting with

Six Nations in Albany. Members of some of the Six Nations met with Lieutenant Governor Nanfan on July 19, 1701. The attendees signed the Nanfan Deed, which purported to place Mississaugas of the Credit Traditional Territory—the lands from which Six Nations was recently expelled—under Crown protection.

22. At the time the Nanfan Deed was signed, Mississaugas of the Credit First Nation's territory was under its control and could not have been treated for by other parties. Mississaugas of the Credit First Nation denies the Nanfan Deed ever had legal force or effect and denies it is a treaty under Section 35.
23. The Nanfan Deed did not and does not grant rights or entitlements to Six Nations, including SNGR, over Mississaugas of the Credit Traditional Territory and did not and does not govern any aspect of the relationship between Six Nations, including SNGR, and Mississaugas of the Credit First Nation or the Crown, including with respect to lands or the exercise of rights thereon. Any territorial description in or associated with the Nanfan Deed is not indicative of the scope of the traditional territory of Six Nations, including SNGR, or their rights on or to such territory.

G. Mississaugas of the Credit First Nation Used, Occupied, and Controlled Its Traditional Territory

24. Following Six Nations' defeat, Six Nations did not return to Mississaugas of the Credit Traditional Territory in any permanent way for more than 80 years, when certain members of Six Nations relocated to the Grand River Valley as refugees

from the United States of America after the American Revolution and became SNGR.

25. Contrary to, inter alia, paragraph 11 of the statement of claim, Mississaugas of the Credit First Nation denies that Six Nations, including SNGR, occupied, possessed, or used any part of Mississaugas of the Credit Traditional Territory in the eighteenth century before 1784, except pursuant to the Dish with One Spoon. As part of that agreement, Six Nations required the agreement of Mississaugas of the Credit First Nation to use its territory as a guest. Mississaugas of the Credit First Nation occupied, used, and controlled Mississaugas of the Credit Traditional Territory exclusively at least until the assertion of Crown sovereignty.

H. SNGR Requested Permission from the Crown to Settle in Mississaugas of the Credit Traditional Territory

26. On October 7, 1763, King George III issued the Royal Proclamation (“Royal Proclamation”). The Royal Proclamation recognized as reserved for Indigenous peoples all land within the territory covered by the Royal Proclamation that was in the possession of Indigenous peoples and that had not been ceded to the Crown. The Royal Proclamation also confirmed that the Crown was solely responsible for treaty making.

i. The Between the Lakes Treaty (1784)

27. At the end of the American Revolution, Six Nations—most of which had fought alongside the British in the war—found its territory under American control. In or around 1784, SNGR requested lands within Ontario from the Crown to which they could relocate and settle. In recognition of Six Nations’ support during the American Revolution, the Crown agreed to request permission from Mississaugas of the Credit First Nation to resettle SNGR on a tract of land in the Grand River Valley in Mississaugas of the Credit Traditional Territory. Contrary to, inter alia, paragraph 12 of the statement of claim, such tract was not within SNGR or Six Nations’ Aboriginal or Indigenous lands nor within lands that were used, occupied, or controlled by SNGR or Six Nations.
28. At that time, the Crown did not have rights to the lands upon which SNGR would settle. SNGR could not relocate until the Crown obtained rights respecting the lands in the Grand River Valley from Mississaugas of the Credit First Nation and its agreement for SNGR to relocate to those lands.
29. On May 22, 1784, Mississaugas of the Credit First Nation and the Crown entered into the Between the Lakes Treaty. Under this treaty, Mississaugas of the Credit First Nation agreed to grant certain rights to the Crown respecting certain of its lands located between Lakes Huron, Ontario, and Erie, including lands along the banks of the Grand River that the Crown would later allocate to SNGR under the Haldimand Proclamation.

30. The Between the Lakes Treaty—as set out in the preamble to the Purchase No. 3 Treaty, below—states:

all that tract or parcel of land lying and being between the Lakes Ontario and Erie, beginning at Lake Ontario four miles south westerly from the point opposite to Niagara fort, known by the name of Messissague Point, and running from thence along the said lake to the creek that flows from a small lake into the said Lake Ontario known by the name of Washquarter; from thence a north westerly course until it strikes the River La Tranche or New River; thence down the stream of the said river to the part or place where a due south course will lead to the mouth of Cat Fish Creek emptying into Lake Erie, and from the above mentioned part or place of the aforesaid River La Tranche following the south course to the mouth of the said Cat Fish Creek; thence down Lake Erie to the lands heretofore purchased from the Nation of Messissague Indians; and from thence along the said purchase to Lake Ontario at the place of beginning as above mentioned, together with the woods, ways, paths, waters, watercourses, and appurtenances to the said tract or parcel of land belonging.

31. The River La Tranche is today referred to as the Thames River. Lake Washquarter is today referred to as Hamilton Harbour or Burlington Bay.
32. Mississaugas of the Credit First Nation denies the Between the Lakes Treaty is a “quit claim” in favour of SNGR or Six Nations. It is a treaty within the meaning of Section 35. The Crown owes duties to Mississaugas of the Credit First Nation in relation to the Between the Lakes Treaty, including, inter alia, the duty to consult and accommodate and the duties to diligently implement the Between the Lakes Treaty and act in a manner consistent with its intended purposes.
33. Mississaugas of the Credit First Nation did not agree to extinguish or cease exercising Aboriginal rights within the lands addressed in that treaty. Flowing

from the honour of the Crown, the Crown owes Mississaugas of the Credit First Nation, inter alia, a duty to consult and accommodate and a duty to negotiate with respect to unextinguished Aboriginal rights within such lands.

ii. The Haldimand Proclamation (1784)

34. On October 25, 1784, the Crown allocated to SNGR six miles on either side of the Grand River—extending from Lake Erie to the northern border of the Between the Lakes Treaty—under the Haldimand Proclamation of 1784.

35. The Haldimand Proclamation states:

Whereas His Majesty having been pleased to direct that in consideration of the early attachment to His cause manifested by the Mohawk Indians and of the loss of their settlement which they thereby sustained that a convenient tract of land under His protection should be chosen as a safe and comfortable retreat for them and others of the Six Nations who have either lost their settlements within the Territory of the American States or wish to retire from them to the British. I have at the earnest desire of many of these His Majesty's faithful allies purchased a tract of land from the Indians situated between the Lakes Ontario, Erie and Huron, and I do hereby in His Majesty's name authorize and permit the said Mohawk Nation and such others of the Six Nation Indians as wish to settle in that quarter to take possession of and settle upon the banks of the river commonly called Ouse or Grand River, running into Lake Erie, allotting to them for that purpose six miles deep from each side of the river, beginning at Lake Erie and extending in that proportion to the head of the said river, which them and their posterity are to enjoy for ever. Given under my hand and seal at arms at the Castle of St. Lewis, at Quebec, this twenty-fifth day of October, one thousand seven hundred and eighty-four, and in the twenty-fifth year of the reign of Our Sovereign Lord George the Third by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith and so forth.

a) The Haldimand Tract is limited by the Between the Lakes Treaty

36. Contrary to, inter alia, paragraphs 1(a) and 14 of the statement of claim, Mississaugas of the Credit First Nation denies the lands allocated to SNGR under the Haldimand Proclamation (i.e., the Haldimand Tract) extend north of the boundary of the Between the Lakes Treaty at all, nor do they include the riverbed or headwaters of the Grand River.
37. The Haldimand Proclamation uses clear and unambiguous language limiting the Haldimand Tract to the lands treated for under the Between the Lakes Treaty. The northern boundary of the lands treated for under the Between the Lakes Treaty sets the northern boundary of the lands allocated to SNGR under the Haldimand Proclamation. The area of the Haldimand Tract is confined to the lands treated for in the Between the Lakes Treaty and does not include any lands not treated for in the Between the Lakes Treaty.
38. On October 25, 1784, lands north of the boundary of the Between the Lakes Treaty, including at least part of the headwaters of the Grand River, were unceded lands in Mississaugas of the Credit Traditional Territory, a portion of which were not treated for until 1818 under the Ajetance Treaty No. 19, as set out in more detail below. The Crown could not have allocated any such unceded lands to SNGR under the Haldimand Proclamation.

b) The Haldimand Proclamation is not a treaty under Section 35

39. Contrary to, inter alia, paragraphs 1(c)–(d), 6, 7, 14, and 15 of the statement of claim, Mississaugas of the Credit First Nation denies the Haldimand Proclamation is a treaty within the meaning of Section 35. Neither SNGR nor the Crown possess Section 35 protected treaty rights or obligations under the Haldimand Proclamation. SNGR’s interest in the Haldimand Tract is not constitutional in nature and SNGR does not hold Aboriginal title within the Haldimand Tract. Rather, the Haldimand Proclamation is a declaration by the Crown that it would allocate certain lands to be possessed and settled by SNGR.

iii. The Purchase No. 3 Treaty (1792)

40. At the time Mississaugas of the Credit First Nation and the Crown entered into the Between the Lakes Treaty, the northern boundary of the lands addressed therein was described as a line running in a northwest course from Hamilton Harbor to the Thames River. A subsequently conducted survey revealed a line from Hamilton Harbour running in a northwest course does not intersect the Thames River.
41. To correct this error, on December 7, 1792, Mississaugas of the Credit First Nation and the Crown entered into a new treaty—the Purchase No. 3 Treaty—which restated the land description as originally articulated in the Between the Lakes Treaty and clarified the intended northern boundary of the lands addressed in the Between the Lakes Treaty. The Purchase No. 3 Treaty more accurately

describes the lands addressed in the Between the Lakes Treaty, with a corrected description of its northern boundary, as follows:

all that tract or parcel of land lying and being between the Lakes Ontario and Erie, beginning at Lake Ontario four miles south-westerly from the point opposite to Niagara fort, known by the name of Messissague Point, and running from thence along the said lake to the creek that falls from a small lake known by the name of Washquarter into the said Lake Ontario; and from thence north forty-five degrees west fifty miles; thence south forty-five degrees west twenty miles; and thence south until it strikes the River La Tranche; then down the stream of the said river to that part or place where a due south course will lead to the mouth of Catfish Creek emptying into Lake Erie and from the above mentioned part or place of the aforesaid La Tranche following the south course to the mouth of the said Catfish Creek; thence down Lake Erie to the lands heretofore purchased from the Nation of Messissague Indians; and from thence along the said purchase to Lake Ontario at the place beginning as above mentioned, together with all the woods, ways, paths, waters, water courses and appurtenances thereunto belonging.

42. Mississaugas of the Credit First Nation denies the Purchase No. 3 Treaty is a “quit claim.” It is a treaty within the meaning of Section 35. The Crown owes duties to Mississaugas of the Credit First Nation in relation to the Purchase No. 3 Treaty, including, inter alia, the duty to consult and accommodate and the duties to diligently implement the Purchase No. 3 Treaty and act in a manner consistent with its intended purposes.
43. Mississaugas of the Credit First Nation did not agree to extinguish or cease exercising Aboriginal rights within the lands addressed in that treaty. Flowing from the honour of the Crown, the Crown owes Mississaugas of the Credit First

Nation, inter alia, a duty to consult and accommodate and a duty to negotiate with respect to unextinguished Aboriginal rights within such lands.

iv. The Simcoe Patent (1793)

44. On January 14, 1793, the Crown drafted or issued the Simcoe Patent granting the Haldimand Tract to SNGR. Contrary to paragraphs 16–16.1 and 17 of the statement of claim, Mississaugas of the Credit First Nation denies the Simcoe Patent contemplated or ought to have contemplated any lands outside of those treated for under the Between the Lakes Treaty.
45. Like the Haldimand Proclamation, the Simcoe Patent uses clear and unambiguous language limiting the Haldimand Tract to the lands treated for under the Between the Lakes Treaty and the Purchase No. 3 Treaty. The northern boundary of the lands treated for under the Between the Lakes Treaty and the Purchase No. 3 Treaty sets the northern boundary of the lands granted to SNGR under the Simcoe Patent. The Haldimand Tract is limited to the lands treated for in the Between the Lakes Treaty and the Purchase No. 3 Treaty and does not include any lands not treated for in the Between the Lakes Treaty and the Purchase No. 3 Treaty, as set out above.
46. The text of the Simcoe Patent states:

All that District or Territory of Land, being Parcel of a certain District lately purchased by Us of the Mississague Nation, lying and being in the Home District of Our Province of Upper Canada, beginning at the Mouth of a certain River formerly known by the name of the Ouse or Grand River, now called the River Ouse,

where it empties itself into Lake Erie, and running along the Banks of the same for the space of Six Miles on each side of the said River, or a space co-extensive therewith, conformably to a certain Survey made of the said Tract of Land, and annexed to these Presents, and continuing along the said River to a Place called or known by the Name of the Forks, and from thence along the main Stream of the said River for the space of Six Miles on each side of the said Stream, or for a space equally extensive therewith, as shall be set out by a Survey to be made of the same to the utmost extent of the said River as far as the same has been purchased by us, and as the same is bounded and limited in a certain Deed made to Us by the Chiefs and People of the said Mississague Nation, bearing Date the Seventh Day of December, in the year of Our Lord One thousand seven hundred and thirty-two.

47. Contrary to paragraphs 16.1 and 17 of the statement of claim, the Simcoe Patent fully implemented the Haldimand Proclamation. SNGR received all the land allocated to them under the Haldimand Proclamation by the Crown for their use and occupation.
48. Contrary to paragraph 15.1 of the statement of claim, Mississaugas of the Credit First Nation denies that by 1793 the Crown had satisfied itself that it had obtained sufficient consent from Mississaugas of the Credit First Nation to enable it to set aside any lands north of the boundary of the Between the Lakes Treaty or the Purchase No. 3 Treaty as a reserve for SNGR.
- I. **Mississaugas of the Credit First Nation and the Crown Did Not Treat for Lands North of the Between the Lakes Treaty and the Purchase No. 3 Treaty Until 1818**
49. Until 1818, the Crown had not yet treated with Mississaugas of the Credit First Nation with respect to any lands within Mississaugas of the Credit Traditional

Territory located north of the boundary of the Between the Lakes Treaty, including lands in and around the headwaters of the Grand River.

50. In late 1818, the Crown sought to treat with Mississaugas of the Credit First Nation with respect to some—but not all—of Mississaugas of the Credit Traditional Territory north of the boundary of the Between the Lakes Treaty and the Purchase No. 3 Treaty. On October 28, 1818, Mississaugas of the Credit First Nation and the Crown entered into Ajetance Treaty No. 19, which is a treaty within the meaning of Section 35. Under this treaty, Mississaugas of the Credit First Nation agreed to grant certain rights to the Crown with respect to certain of its lands located in the north of Mississaugas of the Credit Traditional Territory, including lands in and around the headwaters of the Grand River.
51. Under Ajetance Treaty No. 19, Mississaugas of the Credit First Nation did not agree to extinguish or cease exercising Aboriginal rights within the lands addressed in that treaty. The Crown owes duties to Mississaugas of the Credit First Nation in relation to Ajetance Treaty No. 19, including, inter alia, the duty to consult and accommodate, the duties to diligently implement Ajetance Treaty No. 19 and act in accordance with its intended purposes, and a duty to negotiate with respect to unextinguished Aboriginal rights and unceded lands north of Ajetance Treaty No. 19 within Mississaugas of the Credit Traditional Territory.

J. Mississaugas of the Credit First Nation Intervenes as a Steward of Its Rights and History and Supports SNGR's Pursuit of Justice

52. Mississaugas of the Credit First Nation supports SNGR in its effort to hold the Crown accountable for its mismanagement and abuses relating to the lands granted to SNGR under the Haldimand Proclamation and related assets.

53. Mississaugas of the Credit First Nation intervenes in this action as a steward of its history, its rights, and its traditional territory, as well as its peoples' relationship with that territory. Mississaugas of the Credit First Nation seeks to ensure these matters are accurately, holistically, and respectfully portrayed in this litigation.

September 29, 2023

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v. The Attorney General of Canada
et al.
(Defendants)

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STATEMENT OF DEFENCE

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