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7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA

10  
11 In the Matter of:

12 Rainbow Municipal Water District,  
13 Respondent.

FPPC Case No. 16/238

STIPULATION, DECISION AND ORDER

14  
15 **INTRODUCTION**

16 Respondent Rainbow Municipal Water District (“District”) is a Special District that provides  
17 water and sanitation services to the unincorporated communities of Rainbow, Bonsall and portions of  
18 Vista, Oceanside and Fallbrook. Under the Political Reform Act (the “Act”),<sup>1</sup> a local government agency  
19 that spends \$1,000 or more in public funds to advocate for or against a ballot measure qualifies as a  
20 campaign committee and must comply with all provisions of the Act related to campaign committees,  
21 including filing campaign statements and reports. Further, the Act prohibits local government agencies  
22 from sending mass mailings and campaign related mailings at public expense.

23 The District violated the Act when opposing a Local Agency Formation Commission  
24 (“LAFCO”) proposal to merge the District with the Fallbrook Public Utility District (“FPUD”) by  
25 failing to properly file and disclose all campaign activity, sending a mass mailer featuring a public  
26

27 <sup>1</sup> The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections 81000  
28 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission are  
contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to  
this source.

1 official and sending campaign related mass mailings at public expense.

## 2 **SUMMARY OF THE LAW**

3 All legal references and discussions of law pertain to the Act's provisions as they existed at the  
4 time of the violations.

### 5 **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

6 When enacting the Political Reform Act, the people of California found and declared that  
7 previous laws regulating political practices suffered from inadequate enforcement by state and local  
8 authorities.<sup>2</sup> Thus, it was decreed that the Act "should be liberally construed to accomplish its purposes."<sup>3</sup>

### 9 **LAFCO Requirements**

10 A "LAFCO proposal" means a proposal, as defined in Section 56069, that is initiated as a petition  
11 or by resolution of application of a legislative body or school district for which a certificate of filing has  
12 been issued.<sup>4</sup>

13 A "measure" means any constitutional amendment or other proposition which is submitted to a  
14 popular vote at an election by action of a legislative body, or which is submitted or is intended to be  
15 submitted to a popular vote at an election by initiative, referendum, or recall procedure whether or not it  
16 qualifies for the ballot.<sup>5</sup>

17 The requirements applicable to a measure, as defined in Section 82043, also apply to a LAFCO  
18 proposal, as defined in Section 82035.5.<sup>6</sup>

### 19 **Government Agencies as Campaign Committees**

20 Any person or combination of persons who, in a calendar year, makes independent expenditures  
21 totaling \$1,000 or more qualifies as an independent expenditure committee.<sup>7</sup> When a state or local  
22 governmental agency uses public moneys for a communication that (1) expressly advocates for or against  
23 a clearly identified candidate or ballot measure or (2) unambiguously urges a particular result in an  
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25 <sup>2</sup> Section 81001, subdivision (h).

26 <sup>3</sup> Section 81003.

27 <sup>4</sup> Sections 82035.5 and 56069.

28 <sup>5</sup> Section 82043.

<sup>6</sup> Section 84250.

<sup>7</sup> Section 82013, subd. (b).

1 election, the Act identifies that payment as an independent expenditure.<sup>8</sup> A communication paid for with  
2 public moneys by a state or local governmental agency unambiguously urges a particular result in an  
3 election if: (1) it clearly is campaign material or campaign activity, such as bumper stickers, billboards,  
4 door-to-door canvassing, or other mass media advertising; or (2) when considering the style, tenor, and  
5 timing of the communication, it can be reasonably characterized as campaign material and is not a fair  
6 representation of fact serving only an informational purpose.<sup>9</sup>

7 If a state or local governmental agency distributes communications that qualify as campaign  
8 expenditures and cost \$1,000 or more in a calendar year, it qualifies as an independent expenditure  
9 committee.<sup>10</sup>

10 The Commission adopted Regulation 18420.1 after the California Supreme Court's decision in  
11 *Vargas v. City of Salinas, et. al.* (2009) 46 Cal. 4th 1.<sup>11</sup> The Court in *Vargas* considered whether written  
12 communications concerning a ballot measure sent by the City of Salinas that did not contain express  
13 advocacy nevertheless was campaign activity and therefore an unauthorized use of public funds. The  
14 communications in question consisted of minutes from a city council meeting; city reports posted to the  
15 city's website regarding the potential impact on city services the measure would cause; a one page  
16 document available at city buildings that listed the service and program reductions the city would  
17 institute if the measure passed; and a city newsletter that described the proposed reductions in services  
18 that would result if the measure passed.

19 In its decision in *Vargas*, the Court relied on and reaffirmed its decision in *Stanson v. Mott* (1976)  
20 17 Cal. 3d 206. *Stanson* established the analysis for determining when communications by a  
21 governmental agency that do not contain express advocacy still constitute campaign activity. The Court  
22 drew a distinction between campaign expenditures made with public funds, which are prohibited absent  
23 express authority, and informational activities by public agency which are generally permissible. The  
24 Court stated:

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26 <sup>8</sup> Section 82031 and Regulation 18420.1, subd. (a).

27 <sup>9</sup> Regulation 18420.1, subd. (b).

28 <sup>10</sup> Regulation 18420, subd. (d).

<sup>11</sup> Fair Political Practices Commission, Minutes of Meeting, Public Session, Sept. 10, 2009, item no. 25.

1 With respect to some activities, the distinction is rather clear: thus, the use of public funds  
2 to purchase such items as bumper stickers, posters, advertising “floats,” or television and  
3 radio “spots” unquestionably constitutes improper campaign activity.<sup>12</sup>

4 Neither *Vargas* nor *Stanson* directly concerned any provisions of the Act. They were decided  
5 based on the constitutional prohibition against unauthorized use of public funds by public officials.  
6 Specifically, the use of public funds for campaign activity, which advocates for or against a ballot  
7 measure, as opposed to activity that merely educates the voters on an issue. But since in those cases the  
8 California Supreme Court had defined when government agencies are prohibited from using public  
9 moneys to pay for communications related to ballot measures, the Commission adopted the parameters  
10 described in *Vargas* for determining when a government agency participates in campaign activity by  
11 making independent expenditures under the Act.<sup>13</sup> That being the case, while *Vargas* and *Stanson* were  
12 instructive in determining when communications by a public agency constitute campaign activity,  
13 Regulation 18420.1 is the authority for determining when a payment of public money qualifies as an  
14 “independent expenditure” under the Act.

### 15 **Campaign Statement and Reports**

16 If a local government agency makes expenditures and qualifies as a committee, it must file  
17 campaign statements.<sup>14</sup> A local government agency as an independent expenditure committee must file  
18 semi-annual campaign statements each year for the period ending June 30 and December 31 if it made  
19 independent expenditures during the 6-month period prior to those dates.<sup>15</sup> However, if an independent  
20 expenditure committee newly forms during the second half of a year, the reporting date begins on  
21 January 1.<sup>16</sup>

22 “Expenditure” is defined as a payment, forgiveness of a loan, payment of a loan by a third party,  
23 or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that  
24 it is not made for political purposes. “An expenditure is made on the date the payment is made or on the

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26 <sup>12</sup> *Stanson*, 17 Cal.3d 206, 221.

27 <sup>13</sup> Fair Political Practices Commission, Minutes of Meeting, Public Session, Sept. 10, 2009, item no. 25.

28 <sup>14</sup> Regulation 18420.

<sup>15</sup> Section 84200, subd. (b).

<sup>16</sup> Section 82046, subd. (b).

1 date consideration, if any, is received, whichever is earlier.”<sup>17</sup> An expenditure includes any monetary or  
2 non-monetary payment made by any person that is used for communications which expressly advocate  
3 the nomination, election or defeat of a clearly identified candidate or qualification, passage or defeat of a  
4 clearly identified ballot measure.<sup>18</sup> A measure that has not qualified to be placed on the ballot is clearly  
5 identified if the communication refers to the subject matter of the measure and to the qualification  
6 drive.<sup>19</sup>

## 7 **Mass Mailings Sent at Public Expense**

### 8 **Definition of a Mass Mailer**

9 A “mass mailing” is defined as over two hundred substantially similar pieces of mail sent  
10 in a single calendar month, but not including a form letter or other mail which is sent in response  
11 to an unsolicited request, letter or other inquiry.<sup>20</sup>

### 12 **Prohibited Mass Mailing Featuring a Public Official Sent at Public Expense**

13 No newsletter or other mass mailing may be sent at public expense.<sup>21</sup> A mass mailing is  
14 prohibited if all of the following criteria are met:

15 (1) It is a tangible item delivered by any means to the recipient at his/her residence, place of  
16 employment, or post office box;

17 (2) The item sent features an elected officer affiliated with the agency which produces or sends  
18 the mailing; or includes the name, office, photograph, or other reference to an elected officer affiliated  
19 with the agency which produces or sends the mailing, and is prepared or sent in cooperation,  
20 consultation, coordination, or concert with the elected officer.

21 (3) Its costs of distribution are paid for with public funds, or \$50 or more in public funds is used  
22 to design, produce or print the item; and

23 (4) More than 200 substantially similar pieces are sent in a single calendar month.<sup>22</sup>

25 <sup>17</sup> Former Regulation 18225.

26 <sup>18</sup> Former Regulation 18225, subd. (b).

27 <sup>19</sup> Former Regulation 18225, subd. (b)(1)(D).

28 <sup>20</sup> Section 82041.5, and Regulation 18435, subd. (a).

<sup>21</sup> Section 89001.

<sup>22</sup> Regulation 18901.

1                                   **Prohibited Campaign Related Mass Mailing Sent at Public Expense**

2           A campaign related mass mailing is prohibited if all of the following criteria are met:

- 3           (1) It is a tangible item delivered by any means to the recipient at his/her residence, place of  
4 employment, or post office box;
- 5           (2) The item expressly advocates the qualification, passage, or defeat of a clearly identified  
6 measure, or when taken as a whole and in context, unambiguously urges a particular result in an election;
- 7           (3) Its costs of distribution are paid for with public funds, or \$50 or more in public funds is used  
8 to design, produce or print the item; and
- 9           (4) More than 200 substantially similar pieces are sent during the course of an election, including  
10 items sent during the qualification drive or in anticipation of an upcoming election.<sup>23</sup>

11           An item unambiguously urges a particular result in an election if, when considering the style,  
12 tenor, and timing of the communication, it can be reasonably characterized as campaign material and is  
13 not a fair presentation of facts serving only an informational purpose.<sup>24</sup>

14                                   **SUMMARY OF THE FACTS**

15           In 2013, two local utility districts, the District and Fallbrook Public Utility District (“FPUD”)  
16 established the North County Joint Powers Authority jointly to consider forming one consolidated  
17 agency. About March 2014, after approximately 1 year, the District terminated the North County Joint  
18 Powers Authority after deciding that it was not in the best interests of its ratepayers to combine into one  
19 agency with FPUD. In turn, on or about March 25, 2014, the District received notice that FPUD filed a  
20 resolution of application with LAFCO proposing to dissolve the District, and for FUPD to assume  
21 responsibility for the services provided by the District

22           FPUD failed to provide sufficient legal notice of the initial LAFCO filing. FPUD resubmitted the  
23 resolution of application after a vote of the Board on April 28, 2014, and provided sufficient legal notice  
24 of the LAFCO filing. For filing purposes, April 28, 2014 was the date the resolution of application was  
25 filed by FPUD.

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28 <sup>23</sup> Regulation 18901.1.

<sup>24</sup> Regulation 18901.1, subdivision (c)(2); also see *Vargas v. City of Salinas* (2009) 46 Cal. 4<sup>th</sup> 1.

1 In the April 2014 Newsletter, the District informed the ratepayers of the LAFCO filing by  
2 FPUD. At the July 22, 2014 District Board Meeting, the District Board unanimously adopted Resolution  
3 14-13 formally objecting to the FPUD takeover. On September 14, 2015, LAFCO denied FPUD's  
4 application.

5 The District became an independent expenditure committee to oppose a LAFCO proposal in  
6 August 2014, after spending over \$1,000 for political purposes in connection with mailers sent urging  
7 the public to oppose the LAFCO proposal. While the District filed inconsistent monthly campaign  
8 statements disclosing payments to consultants, no payments in connection with the mailers were  
9 disclosed. The District failed to file Semi-Annual campaign statements for the periods July 1, 2014,  
10 through December 31, 2014 and January 1, 2015, through June 30, 2015. Further, the District sent a  
11 mass mailer featuring a public official and campaign related mass mailers at public expense.

## 12 VIOLATIONS

### 13 Count 1

#### 14 Failure to File Semi-Annual Campaign Statements

15 The District became an independent expenditure committee in August 2014, after spending over  
16 \$1,000 for political purposes. As a result, the District was required to file semi-annual campaign  
17 statements for the periods July 1, 2014, through December 31, 2014 and January 1, 2015, through June  
18 30, 2015.

19 The District filed monthly campaign statements for the months of September 2014, December  
20 2014 through September 2015. These campaign statements disclosed payments to Public Policy, a  
21 consulting firm, for \$5,000 per month and Alchemy Consulting Group, a consulting firm as well, for  
22 \$10,000 per month. The payments to the consultants were not itemized. However, the mailers obtained  
23 through the investigation sent by the consultants were informational in nature, and not required to be  
24 disclosed.

25 In July 2014, the District sent a monthly newsletter as an insert in the ratepayer's bill, which cost  
26 \$864 and a separate newsletter was sent by the District Board President, which cost an estimated \$105. In  
27 August 2014, the District sent another monthly newsletter which cost \$864, qualifying as an independent  
28 expenditure committee. In September 2014, October 2014, February 2015 and March 2015, the District

1 sent monthly newsletter as an insert in the ratepayer's bill, at a cost of \$864 for each mailing. As such,  
2 the District was required to file semi-annual campaign statements for the periods July 1, 2014, through  
3 December 31, 2014 and January 1, 2015, through June 30, 2015, disclosing these payments.

4 By failing to timely file semi-annual campaign statements for the periods July 1, 2014, through  
5 December 31, 2014 and January 1, 2015, through June 30, 2015, the District violated Section 84200.

6 **Count 2**

7 **Mass Mailing Featuring a Government Official**

8 The District paid for, produced and mailed 7,200 monthly newsletters in August 2015 as an insert  
9 in the ratepayer's bill costing \$864 for the newsletters, which featured the District Board President, an  
10 elected official, in a photo accepting an award for the District, in violation of Section 89001, and  
11 Regulation 18901.

12 **Count 3**

13 **Campaign Related Mass Mailing Sent at Public Expense**

14 The District produced and mailed 7,200 monthly newsletters in each of the following months:  
15 July 2014; August 2014; September 2014; October 2014; February 2015; and March 2015. Each  
16 newsletter cost \$864, totaling \$5,184. These newsletters urged the ratepayers to inform LAFCO that they  
17 oppose the hostile takeover by FPUD. In the March 2015 newsletter, a website [www.saynotofpud.org](http://www.saynotofpud.org)  
18 was provided and the newsletter stated that it is critical that everyone who opposes FPUD's takeover of  
19 our District get on this list. Further, in July 2014, the District sent a letter to at least 7,000 ratepayers,  
20 signed by the District Board President, George McManigle, urging opposition to the hostile takeover by  
21 FPUD, which cost approximately an additional \$105.

22 By producing and sending monthly newsletters in July 2014, August 2014, September 2014,  
23 October 2014, February 2015 and March 2015, and by sending the newsletter from the District Board  
24 President in July 2014, urging ratepayers to express their opposition to LAFCO regarding the hostile  
25 FPUD takeover, paid for by the District, the District violated Section 89001, and Regulations 18901.1  
26 and 18420.1.



1 **PROPOSED PENALTY**

2 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per  
3 count. Thus, the maximum penalty that may be imposed is \$15,000.<sup>25</sup>

4 In determining the appropriate penalty for a particular violation of the Act, the Commission  
5 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the  
6 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of  
7 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or  
8 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective  
9 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior  
10 record of violations.<sup>26</sup>

11 In mitigation, the District has no prior history of violating the Political Reform Act. The  
12 Enforcement Division did not find evidence of an intent to conceal, deceive, or mislead the public. The  
13 District contends it hired a firm to assist in this matter and did not intend to engage in campaign  
14 activities. Further, the communications were only sent to District water customers and were not targeting  
15 the general public.

16 The Commission also considers penalties in prior cases involving similar violations. Recent  
17 penalties for failure to file campaign statements in connection with a LAFCO proposal includes:

18 *In the Matter San Francisco Bay Area Rapid Transit (BART)*; in December 2018, the  
19 Commission approved a \$1,500 penalty for one count of failing to file a semi-annual campaign statement  
20 for the period covering July 1, 2016, through December 31, 2016. The mitigation in the case includes that  
21 there was no evidence of intent to conceal and according to BART, it did not intend to produce  
22 advertisements that constituted campaign activity.

23 In this case, the District did file campaign statements reporting consulting payments as  
24 Independent Expenditures for September 2014, and December 2014, through September 2015. These  
25 disclosures provided some information regarding the amount the District paid in consulting fees. The  
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27 \_\_\_\_\_  
28 <sup>25</sup> Section 83116, subdivision (c).

<sup>26</sup> Regulation 18361.5, subdivision (d).

1 investigation could not determine what portion of these payments were actually for political  
2 expenditures. However, the District was required to and failed to file semi-annual campaign statements  
3 for the periods July 1, 2014, through December 31, 2014 and January 1, 2015, through June 30, 2015,  
4 disclosing the political expenditures for mailers during these periods. In mitigation, the District contends  
5 it did not intend to engage in campaign activities and followed the advice of a firm hired to assist in the  
6 LAFCO matter. Further, the amount that was undisclosed was fairly small and the District disclosed  
7 some payments made to consultants on monthly statements, showing a lack of intent to conceal the  
8 financial activity. Under these circumstances, it is respectfully submitted that imposition of an agreed  
9 upon penalty in the amount of \$2,000 is justified.

10 Recent previous penalties for mass mailers featuring an elected public official include:

11 *In the Matter of Riverside County Office of Education; FPPC 18/101*; the Commission approved a  
12 \$2,000 penalty in August 2018, for sending a 36-page booklet which featured several elected officers at  
13 public expense.

14 In this case, the Enforcement Division discovered no evidence that the staff producing this mailer  
15 was familiar with the restrictions on featuring a public official in a mass mailer paid for by the District.  
16 The District contends that this was an accident, the public official was not involved with the production  
17 of the mailer and the staff preparing the mailer was unaware of the prohibition under the Act. Further, the  
18 District cooperated with the investigation. Under these circumstances, it is respectfully submitted that  
19 imposition of an agreed upon penalty in the amount of \$2,000 is justified.

20 The most recent previous penalty for sending campaign related mass mailers urging a particular  
21 result in an election include:

22 *In the Matter of Amador Water Agency; FPPC 15/1355*; the Commission approved a penalty of  
23 \$3,000 in May of 2016, for producing and mailing 7,269 copies of the August 12, 2015 AWA letter at  
24 public expense. The letter individually named each member of the AWA Board of Directors, and was  
25 sent in concert with the AWA Board of Directors. The AWA letter was sent during the qualification  
26 drive for the referendum, and referred to the subject matter of the referendum: to overturn the temporary  
27 surcharge on water use. In mitigation, AWA cooperated with the investigation and had no prior  
28 Enforcement History.

1 In this case, the monthly newsletters sent included material normally included in the ratepayer's  
2 bill, but also included express advocacy when telling ratepayers to make their voice heard and oppose the  
3 hostile takeover. Further, the District sent seven different mailers that violated the Act. However, the  
4 District contends it did not intend to engage in campaign activities and followed the advice of a firm  
5 hired to assist in the LAFCO matter. Additionally, the District cooperated with the Enforcement Division  
6 investigation. Under these circumstances, it is respectfully submitted that imposition of an agreed upon  
7 penalty in the amount of \$3,000 is justified.

8 For the foregoing reasons, a total penalty in the amount of \$7,000 is recommended.

9 **CONCLUSION**

10 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
11 Respondent Rainbow Municipal Water District hereby agree as follows:

12 1. Respondent violated the Act as described in the foregoing pages, which are a true and  
13 accurate summary of the facts in this matter.

14 2. This stipulation will be submitted for consideration by the Fair Political Practices  
15 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

16 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose  
17 of reaching a final disposition without the necessity of holding an administrative hearing to determine the  
18 liability of Respondent pursuant to Section 83116.

19 4. Respondent has consulted an attorney, Amber Maltbie, Nossaman LLP. Respondent  
20 understands and hereby knowingly and voluntarily waive, any and all procedural rights set forth in  
21 Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not  
22 limited to the right to appear personally at any administrative hearing held in this matter, to be  
23 represented by an attorney at Respondents' own expense, to confront and cross-examine all witnesses  
24 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial  
25 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially  
26 reviewed.

27 5. Respondent agrees to the issuance of the decision and order set forth below. Also,  
28 Respondent agrees to the Commission imposing against it an administrative penalty in the amount of

1 \$7,000. One or more payments totaling this amount—to be paid to the General Fund of the State of  
2 California—is/are submitted with this stipulation as full payment of the administrative penalty described  
3 above, and they will be held by the State of California until the Commission issues its decision and order  
4 regarding this matter.

5 6. If the Commission refuses to approve this stipulation then this stipulation shall become  
6 null and void, and within fifteen business days after the Commission meeting at which the stipulation is  
7 rejected, all payments tendered by Respondent in connection with this stipulation shall be reimbursed to  
8 Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing  
9 before the Commission becomes necessary, neither any member of the Commission, nor the Executive  
10 Director, shall be disqualified because of prior consideration of this Stipulation.

11 7. The parties to this agreement may execute their respective signature pages separately. A  
12 copy of any party's executed signature page—including a hardcopy of a signature page transmitted via  
13 fax or as a PDF email attachment—is as effective and binding as the original.

14  
15 Dated: \_\_\_\_\_

\_\_\_\_\_  
Galena West, Chief of Enforcement  
Fair Political Practices Commission

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19 Dated: \_\_\_\_\_

\_\_\_\_\_  
Rainbow Municipal Water District, Respondent

1 The foregoing stipulation of the parties "In the Matter of Rainbow Municipal Water District,"  
2 FPPC Case No. 16/238, is hereby accepted as the final decision and order of the Fair Political Practices  
3 Commission, effective upon execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: \_\_\_\_\_

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9 Richard C. Miadich, Chair  
10 Fair Political Practices Commission  
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