

DISTRICT COURT
XXXX COUNTY, XXXXXXXXX

XXXXXXXXXXXXXXXXXXXX,

Plaintiff,

-vs-

CASE No : A494299
DEPT. No.: IX

NORDSTROM, INC., a XXXXX corporation;
NORDSTROM, INC., a Washington
corporation; LES BOUTIQUES CLARINS
LTD., a Delaware corporation; LES
BOUTIQUES CLARINS LTD., a New York
corporation; CLARINS GROUP NORTH
AMERICA INC., a Delaware corporation;
CLARINS GROUP NORTH AMERICA INC.,
a New York corporation; CLARINS NORTH
AMERICA INC., a Delaware corporation;
CLARINS U.S.A. INC., d b a THIERRY
MILIGI FR, a New York corporation;
CLARINS ON LINE, INC., a New York
corporation; CLARINS DFC, INC., a New
York corporation; DOES I through X, and
ROE CORPORATIONS I through X
inclusive,

Defendants.

Date of Hearing: October 24, 2006
Time of Hearing: Chambers

**REPLY TO PLAINTIFF XXXXXXXX MOTION TO COMPEL FOR PRODUCTION OF
DOCUMENTS CERTIFYING VALIDITY OF MANUFACTURED EXHIBITS BY
DEFENDANT CLARNS**

COMES NOW, Plaintiff, XXXXXXXXX hereby submits her REPLY TO PLAINTIFF
XXXXXXXXXX MOTION TO COMPEL FOR PRODUCTION OF DOCUMENTS CERTIFYING
VALIDITY OF MANUFACTURED EXHIBITS BY DEFENDANT CLARINS

The information presented by Mrs. XXXXX in her opposition to the Plaintiff's Motion is
a feeble attempt to cover up gross mistakes by the presentation of scientifically inconclusive
and deceptive information in the form of the second MSDS sheet stamped "LEGAL
APPROVED", Exhibit 1. This "legal approved" document is scientifically untenable and
baseless.

1 It is VERY IMPORTANT to note that this FIRST SHEET, Exhibit 2, is in fact **NOT A**
2 **DRAFT** or **PRELIMINARY COPY**, but in FACT a final copy that was **INADVERTENTLY**
3 submitted to the Plaintiff. There was not a **SINGLE REFERENCE** that this was a draft, but,
4 in fact this was a more **COMPLIANT MSDS** sheet that confirms to the requirements of both
5 United States and European Laws governing such.

6 The reference on the FIRST MSDS sheets confirms what Clarins provided to their
7 stock holders regarding hazardous materials, Exhibit 7, (solvents, which is what DENATURED
8 ethyl alcohol is). Which was intentionally LEFT out of the “legal approved” MSDS sheet.

9 It must also be noted that this is a “**GENERIC MSDS Sheet**” which is stamped “Legal
10 Approved”. By incorporating ALL of the Thierry Mugler Fragrances under this “GENERIC”
11 MSDS Sheet, they are stating that ALL THE HAZARDS of the various chemicals...mixture are
12 the same, along with all of the following regulations which **MUST BE UPHELD** and
13 **ADDRESSED** on the MSDS Sheets:

14 **1910.1200(g)(2)(i)(B)**

15 If the hazardous chemical is a mixture which has been tested as a whole to determine its hazards, the
16 chemical and common name(s) of the ingredients which contribute to these known hazards, and the
17 common name(s) of the mixture itself; or,

18 **1910.1200(g)(2)(i)(C)**

19 If the hazardous chemical is a mixture which has not been tested as a whole:

20 **1910.1200(g)(2)(i)(C)(1)**

21 The chemical and common name(s) of all ingredients which have been determined to be health hazards,
22 and which comprise 1% or greater of the composition, except that chemicals identified as carcinogens
23 under paragraph (d) of this section shall be listed if the concentrations are 0.1% or greater; and,

24 **1910.1200(g)(2)(i)(C)(3)**

25 The chemical and common name(s) of all ingredients which have been determined to present a physical
26 hazard when present in the mixture;

27 **1910.1200(g)(2)(ii)**

28 Physical and chemical characteristics of the hazardous chemical (such as vapor pressure, flash point);

1910.1200(g)(3)

If no relevant information is found for any given category on the material safety data sheet, the chemical
manufacturer, importer or employer preparing the material safety data sheet shall mark it to indicate that
no applicable information was found.

Mrs. XXXXXXXX in her Opposition to this Motion, Page 2 lines 6-7), is stating that

1 "Plaintiff ranted and raved because in this first MSDS sheet there was a reference to a
2 "section 3", however no "section 3" was on the sheet. "MSDS" stands for Material Safety Data
3 Sheet, a more scientific definition is forthcoming.

4 There is in fact a "SECTION 3" as it is a **SUPPLEMENT** that Mrs. XXXXXXXX can
5 NOT UNDERSTAND. The FIRST MSDS sheet references "section 3" which purports to list
6 the Total Fractional Values which clearly shows that there are ADDITIONAL PAGES to this
7 MSDS Sheet. When in fact this "Section 3" would contain the breakdown of the chemical
8 components in Angel Perfume and their percentages or "fractional values", i.e. 0.86 or 86%
9 DENATURED Ethyl Alcohol, Exhibit 19. It apparently is VERY DIFFICULT for those who have
10 no understanding of MSDS sheets to understand that references to such items as Total
11 Fractional Values, which are in fact items that are DIRECTLY and NECESSARY additions
12 to the finished MSDS Sheet.

13 Mrs. XXXXXXXX asserts, page 2 lines 9-14, that she was put in touch with Clarins
14 representatives both in New York and France. That these representatives provided her with
15 the DIFFERENT MSDS sheets, along with stating that Exhibit 2 was not the final draft and the
16 "Legal Approved" was the corrected MSDS correct sheet. In conjunction with, (page 3 lines
17 8-9) whereby Mrs. XXXXXXXX claims "the idea that there might be two different versions of
18 the MSDS in such a large corporation is not surprising". This is in fact **STRICTLY**
19 **MISLEADING AND FALSE**, you do **NOT GENERATE DIFFERENT MSDS** Sheets for EACH
20 division/location for the **SAME PRODUCT**, these are **unfounded *statements*** which are
21 completely **UNTENABLE** in the chemical or manufacturing arena. Since the MSDS sheets are
22 predicated on **CERTAIN and SPECIFIC UNDENIABLE** facts which are **NOT DYNAMIC** but
23 in actuality **STATIC**. These facts CAN NOT and DO NOT change with other
24 offices/divisions/locations etc. The only way to alter these facts is to change the formulation.

25 This court certainly understands that you can not create documents such as the one
26 in question, "legal approved", **WITHOUT SPECIFIC CERTAIN INFORMATION** that is
27 PURPOSELY being **EXCLUDED** by entities such as Clarins. Mrs. XXXXXXXX has no
28 knowledge as to what is required and it apparently is well beyond her ability to comprehend

1 and to understand the federal regulations that must be complied with.

2 Plaintiff is going to apologize in advance to this Honorable Court for the following basic
3 chemistry/science inclusions that must be provided to show why Mrs. XXXXXXXX is
4 producing insufficient and intentionally MISLEADING manufactured MSDS sheets.

5 Mrs. XXXXXXXX is claiming that a Material Safety Data Sheet (MSDS) is NOT relevant
6 in this action. Considering by Mrs. XXXXXXXX's OWN ADMISSION she had given up on
7 science in High School her lack of education in this arena is becoming quite evident and
8 extremely taxing to all concerned. Every product that is sold that has a chemical make up,
9 produces MSDS sheets and they are HIGHLY relevant to determine whether or NOT A
10 PRODUCT has HAZARDOUS INGREDIENTS in it and the PRECAUTIONS that need to be
11 taken when using such a product.

12 In Defendant Clarins 2nd Supplemental Disclosure, page 2 lines 15-18, (It is rather
13 voluminous and it's only a 1999 DERMAL INSULT PATCH TEST) as referenced by Mrs.
14 XXXXXXXX as Plaintiff's Exhibit 5 in the original Motion, along with a CLAIM that she has
15 produced ANOTHER EUROPEAN STUDY on PERFUME in her 7th Supplemental Disclosures.

16 This OTHER study that Mrs. XXXXXXXX is referencing is in fact an **INDIVIDUAL**
17 **CHEMICAL** in Angel Perfume called Diethyl Phthalate it is NOT A PERFUME STUDY, Exhibit
18 4, this again just reinforces Plaintiff's ONGOING assertions that Mrs. XXXXXXXX does not
19 know what the Plaintiff is asking for nor does she even understand what she is providing to
20 the Plaintiff.

21 Mrs. XXXXXXXX in her "Claims of Fabrication", page 3 lines 13-15, "Moreover, if
22 counsel for Clarins were to actually enter into a scheme to manufacture documents, she
23 certainly would not have created a document that would give Plaintiff fodder for cross
24 examination". Plaintiff will **NOW prove this "FODDER"** predicated on both European and
25 United States laws governing MSDS Sheets.

26 Mrs. XXXXXXXX also STATED, bear in mind this is not her opinion but a FACT she
27 is referencing, page 2 lines 13-14, "the Exhibit 1 was not the final draft of the MSDS Sheet and
28 that the MSDS sheet with "Legal Approved" was the correct sheet". As this second sheet was

1 PRODUCED by Clarins in France. The following will CONFIRM that indeed this second sheet
2 was **FALSIFIED/MANUFACTURED** predicated on Mrs. XXXXXXXX' clients claiming it was
3 the **LEGAL COPY**, when in fact it does **NOT** even **COMPLY** with EUROPEAN DIRECTIVES
4 on Safety Data Sheets (2001/58/EC), Exhibit 5, let alone comply with United States
5 Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard
6 (HCS), Exhibit 6, which states:

7 **"The MSDS is used to convey the details on a materials identity, manufacturer**
8 **information, hazard identity, emergency information, instructions on what to do if a**
9 **hazardous situation has occurred, information on the prevention of hazardous**
10 **situations, as well as other technical information. Recognizing the importance of this**
11 **document, many other countries (e.g. the EU, Australia, Canada) have adopted the**
12 **HCS into their own chemical safety initiatives."** Exhibit 3. It is important to note that this
13 legal copy does not list the concomitant ingredients which are necessary information in a
14 certifiable MSDS sheet.

15 Even in Clarins FINANCIAL STATEMENTS, Exhibit 7, they reference the
16 REGULATIONS they must follow because they are handling such large volumes of hazardous
17 materials, which is the PRIME COMPONENT in Angel Perfume, at a STRENGTH of 95%,
18 Exhibit 8, which is ALMOST PURE DENATURED Ethyl Alcohol, in a container whereby this
19 concentration makes up 86% of the total volume in Angel Perfume.

20 To clearly understand **ALL THE INTENDED MISINFORMATION** and **OMISSION of**
21 **RELEVANT INFORMATION** Plaintiff will LINE by LINE and SECTION by SECTION show
22 what is "believed" to be the fact/s by Clarins are in reality the actual **FACTUAL**
23 **DISTORTIONS** in this "legal approved" MSDS sheet do in fact scientifically validate all the
24 allegations in this Motion

25 Exhibit 1, the "Legal Approved" MSDS sheet shows/references the following sections:

26 **Supplier** : Name and Address reiterates the same information on their 2005 Complete
27 Financial Statement.

28 **Product Type/s**: Perfumery Flammable Liquid. The product is flammable and

1 that is a correct fact.

2 **Product Name/s** : See attached list. One can only *assume” that this sheet is only
3 referencing these fragrances.

4 **HAZARDS OF PRODUCT:**

5 **IT IS IMPORTANT TO NOTE THAT TWO OF THE FOLLOWING CHEMICALS HAVE**
6 **HIGHLY VISIBLE WARNING SYMBOLS OF EITHER IRRITANT OR HARMFUL.**

7 **Eyes:** N/A.

8 **FACTUALLY UNTRUE.** The MSDS sheets for the following chemicals used in
9 this finished product CLEARLY state it can IRRITATE the eyes: **Denatured Ethyl Alcohol**
10 (targets the eyes), **Isopropyl Myristate** (ocular irritant), **Benzophenone-2** (ocular irritant),
11 **Alpha-pinene** (ocular irritant), **Diethyl Phthalate** (ocular irritant, TARGETS EYES), **3-Carene**
12 (TARGETS EYES, eye irritation), Exhibits 9-16.

13 **Ingestion:** N/A

14 **FACTUALLY UNTRUE.** The MSDS sheets for the following chemical used in
15 this finished product CLEARLY state it can harm the gastrointestinal system: **3-Carene**
16 (irritation of digestive track, maybe HARMFUL is SWALLOWED.), Exhibit 15.

17 **Skin:** N/A

18 **FACTUALLY UNTRUE.** The MSDS sheets for the following chemicals used
19 in this finished product CLEARLY states: **Denatured Ethyl Alcohol** (targets the skin),
20 **Isopropyl Myristate** (skin irritant), **Benzophenone-2** (skin irritant, slight to MODERATE skin
21 irritant, slightly **TOXIC** by skin absorption, may cause delayed skin irritation and blistering,
22 **EXTENSIVE/PROLONGED** or **REPEATED Exposure to this material can result in**
23 **SIGNIFICANT ABSORPTION**), **Alpha-pinene** (skin irritant), **Diethyl Phthalate** (skin irritant,
24 **TARGETS SKIN**), **3-Carene** (**TARGETS SKIN, SKIN SENSITIZATION** with contact).

25 **Inhalation:** **IF INGESTION OCCURS** seek medical attention.

26 **MEDICALLY IMPOSSIBLE:** since they STATED under INGESTION that it is
27 **NOT APPLICABLE.** Also, **INGESTION** as defined by Tabers Cyclopedic Medical Dictionary
28 “the process of taking material (particularly food) into the **gastrointestinal** tract or the process

1 by which a cell takes in foreign particles. **GASTROINTESTINAL** as defined by Tabers
2 Cyclopedic Medical Dictionary “Pertaining to the Stomach and intestine”. **INHALATION** as
3 defined by Tabers Cyclopedic Medical Dictionary “act of drawing in of breath, vapor, or gas
4 into the lungs; inspiration”

5 **If this so called “Legal Approved” MSDS is their FINAL and CORRECT SHEET,**
6 **it is erroneous, as the RESPIRATORY SYSTEM is NOT the same as the**
7 **GASTROINTESTINAL System and the reference to seek medical treatment under this**
8 **section makes it both scientifically and medically non-sensical as the two systems are**
9 **NOT interchangeable.** The following chemicals used in the finished products clearly state:
10 **Denatured Ethyl Alcohol** (targets the respiratory system), **Isopropyl Myristate** (respiratory
11 irritant), **Benzophenone-2** (respiratory irritant,), **Alpha-pinene** (respiratory irritant), **Diethyl**
12 **Phthalate** (respiratory irritant, TARGETS RESPIRATORY SYSTEM), **3-Carene** (TARGETS
13 RESPIRATORY SYSTEM

14 **FIRST AID:**

15 **Eyes:** Rinse well with plenty of water, seek medical attention if irritation
16 persist a reasonable treatment, if there weren't so many ingredients that either were irritants
17 or targeted the eyes, when in fact they previously referenced that there were **NO HEALTH**
18 **HAZARDS** associated with this product.

19 **Ingestion:** If ingestion occurs seek medical attention. But this sheet is citing
20 that there are NO HAZARDS associated with Ingestion.

21 **Skin:** Not applicable for normal product use. FACTUALLY DISTORTED as the
22 previously referenced chemicals used in the finished product carry warnings of SKIN
23 IRRITANTS and SENSITIZER.

24 **Inhalation:** Not Applicable for normal product use. FACTUALLY DISTORTED
25 the previously referenced chemicals are KNOW to be RESPIRATORY IRRITANTS .

26 **SAFETY OF HANDLING/USE:**

27 Respiratory Protection, Ventilation, Personal Protection, Other Protective Equipment
28 cites : Not applicable for normal product use. Eyes: Keep out of eyes.

1 **EMERGENCY MEASURES:**

2 Disposal:

3 Exhibit 8, The following ARE REQUIRED categories that must be on EVERY MSDS
4 sheet in the UNITED STATES: Please NOTE that there is NO REQUIREMENT for a stamp
5 of "Legal Approved".

6 **Sections:**

7 1. **Manufacturers Name and Contact Information**

8 2. **Hazardous Ingredients/Identity Information**

9 Clarins INTENTIONALLY DID NOT DISCLOSED this requirement in their "Legal Approved"
10 MSDS Sheet.

11 A. No CAS Numbers, "Chemical Abstract Services" CAS registry
12 numbers are unique numerical identifiers for chemical compounds, polymers, biological
13 sequences, mixtures and alloys.

14 B. No EINECS Numbers, The European Inventory of Existing
15 Commercial Substances (EINECS) originally listed all substances that were reported to be
16 on the market in Europe between 1 January 1, 1971 and September 18, 1981.

17 C. NO R-Phrases or S-Phrases: R-Phrase The European Union (EU)
18 requires that **risk phrases (R-phrases)** appear on each label and safety data sheet for
19 hazardous chemicals, see Exhibits 17-18. R-Phrases consist of the letter R followed by a
20 number. S-Phrases The European Union (EU) requires that **safety phrases (S-phrases)**
21 appear on each label and safety data sheet for hazardous chemicals. S-Phrases consist of
22 the letter S followed by a number

23 3. **Physical/Chemical Characteristics**

24 Clarins INTENTIONALLY DID NOT DISCLOSE as confirmed in this "Legal Approved" MSDS
25 Sheet, only a SINGLE reference to a Flash Point, which is defined as "the lowest temperature
26 at which a liquid can form an ignitable mixture in air near the surface of the liquid. The
27 LOWER the FLASH POINT the easier it is to IGNITE the MATERIAL, Exhibit 20. Under
28 OSHA 1910.106 (a)(14)(iii):"

1 For liquid that is a MIXTURE of COMPOUNDS that have DIFFERENT
2 volatilities
3 and flash points, it's FLASH POINT shall be determined by used the procedure specified in
4 paragraph (a)(14)(1).

5 In Exhibit 21, the Flash Point for this product is 18.0 Celsius, which when
6 CONVERTED into Fahrenheit is 64.4 Degrees, considering that ambient room air temperature
7 is defined as 68-70 degrees Fahrenheit, this product is FLAMMABLE at BELOW ROOM
8 TEMPERATURE, by Clarins own admission. The "Legal Approved" MSDS lists a RANGE
9 of temperatures from 15-22 degrees Celsius, when in fact there should be only a single
10 temperature cited. This product requires that testing be done in a Closed Cup which was
11 done, Exhibit 20, and therefore, this 7 degree Celsius range computes out to a RANGE of
12 59.0 to 71.60 degrees Fahrenheit and is not a scientifically compliant definition of Flash Point.
13 It is impossible to reference a "FLASH POINT" range of 12.60 degrees which is
14 SCIENTIFICALLY INVALID and nonsense.

15 In addition, there are no vapor pressure, boiling point, specific gravity,
16 evaporation
17 rate, solubility in water, vapor density included as demonstrated in Exhibits 1-2.

18 4. Fire & Explosive Hazard Data
19 **FACTUALLY and MATERIALLY INSUFFICIENT.**

20 5. Reactivity Data
21 **FACTUALLY and MATERIALLY INSUFFICIENT.**

22 6. Health Hazard Data
23 **FACTUALLY and MATERIALLY INSUFFICIENT.**

24 7. Precautions for Safe Handling and Use
25 **FACTUALLY and MATERIALLY INSUFFICIENT.**

26 8. Control Measures.
27 **FACTUALLY and MATERIALLY INSUFFICIENT.**

28 Exhibit 5, the European Directive on Safety Data Sheets (2001/58/EU) which went into

1 effect on July 30, 2002 **REQUIRES 16 MANDATORY sections**, which Clarins has not even
2 attempted to fulfill.

3 Exhibit 22, is a **FULLY COMPLIANT MSDS** to BOTH United States OSHA and the EU
4 2001/58/EU, that when compared to Clarins **LEGAL APPROVED MSDS** sheet very **CLEARLY**
5 Shows the **DEFICIENCIES** in the “**MANUFACTURED/FALSE “Legal Approved” MSDS** sheet.

6 Since this “**Legal Approved” MSDS** sheet was **GENERATED** in France for a finished
7 product that was manufactured under the European Auspices, one could attempt to argue that
8 this still, must be made to confirm to the United States requirements, in that case it is **STILL**
9 **INCOMPLETE** And **FACTUALLY DISTORTED**, even attempting to state it was made to
10 confirm to European Law shows it’s highly deficient in all areas.

11 The **ENTIRE** purpose of an **MSDS** sheet is to **ALERT** either a consumer, end user or
12 employee of hazards, dangers or warnings of either a chemical or a finished product.

13 There has **NEVER EVER** been any **MSDS** that is **STAMPED LEGAL APPROVED**
14 distributed to **ANY** consumer, business, **GOVERNMENTAL REGULATORY AGENCY**, etc.,
15 except for this “**NEW** one from **FRANCE**.”

16 The most ironic thing to note in Mrs. **XXXXXXXXX** Opposition, is that her **OWN EXPERT**
17 **WITNESS** who **USED** to **WORK** for **Rust-o-leum**, own **MSDS** sheets are **IN COMPLIANCE**
18 with both the United States and Europe, Exhibit 22.

19 The comparisons of the Exhibits 1 & 2, clearly show that the “**Legal Approved” MSDS**
20 Sheet does **NOT** confirm to applicable federal laws. The First **MSDS** sheet Exhibit 2 was
21 slightly more in confirmation to federal regulations but they decided to **ELIMINATE** all
22 **RELEVANT** and **SALIENT** information that was required in order to show a more completely
23 safe and inert product. The **VERY DESIGN** of this “**Legal Approved” MSDS** sheet is **prima**
24 **facie** evidence that this is a **MANUFACTURED** piece of admitted evidence, intentionally
25 created to obscure the **SCIENCE** and **SALIENT FACTS** of the inherent dangers
26 **ASSOCIATED** With the chemical as referenced in Exhibit 8. Along with being a
27 **CONCERTED EFFORT** to **DISREGARD MANDATORY** Information in order to be in
28 compliance with United States OSHA Regulations.

1 Mrs. XXXXXXXX is claiming that "Plaintiff sued 8 different Clarins entities in both the
2 United States and France", page 3 lines 6-7. This is AGAIN another FACTUAL DISTORTION
3 by Mrs. XXXXXXXX as the CAPTION clearly lists either NEW YORK or DELAWARE
4 corporations as Defendant's referencing Clarins entities.. These INTENTIONAL
5 FALSEHOODS or ongoing IN COMPETENCIES exhibited by Mrs. XXXXXXXX are growing
6 extremely tiresome.

7 Mrs. XXXXXXXX states, page 3 line 18-20, that "If Plaintiff yells loud enough and rants
8 long enough someone will listen to her. It is unfortunate that Plaintiff seems incapable of
9 basing her claims and arguments on solid facts and not paranoid delusions". This **ENTIRE**
10 **REPLY is BASED ON SOLID FACTS** that have been scientifically **QUANTIFIED** by other
11 regulatory agencies. The only person with **DELUSIONS** is Mrs. XXXXXXXX who thinks if she
12 doesn't know about something then she is capable of convincing others of her inadequacies.

13 Therefore, it is REASONABLE to conclude that the FIRST MSDS sheet was a complete
14 and FACTUAL representation of the finished product not a draft as Defendants are trying to
15 portray. Even though the FIRST MSDS sheet fell short of the requirements for a complete
16 MSDS under OSHA regulations, it was a MORE ACCURATE representation of the product.
17 It is APPARENT that the FIRST MSDS sheet was inadvertently disbursed to the Plaintiff and
18 the second "Legal Approved" document clearly DOESN'T DELINEATE any of the descriptive
19 and pertinent information needed to be in compliance with either United States or European
20 regulations regarding MSDS.

21 If the first MSDS sheet had in fact been disbursed in it's entirety as the Plaintiff had
22 requested it would have delineated information pertinent to the concominate ingredients and
23 defined the dangerous aspects of these ingredients that the Plaintiff has been citing since the
24 original complaint was filed in this action.

25 Plaintiff requests that her Motion To Compel For Production of Documents Certifying
26 Validity of Manufactured Exhibits by Defendant Clarins be granted, along with REQUIRING
27 that **EVERY SINGLE MSDS SHEET for EVERY INGREDIENT used by Clarins in the**
28 **manufacturing of Angel Perfume be produced at once.** Along with **EVERY**

1 **REFORMULATION** associated with the product since the LAST TESTING in 1999. If there
2 were in fact reformulations or even a single additional additive or ingredient percentage
3 change, then there HAD to be **ADDITIONAL** testing done, as the product **NOW is NOT** in the
4 **SAME PROPORTIONS** it was when it was tested in 1999 and that test is **INVALID** and
5 **INADMISSIBLE** .

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