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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF SPOKANE

STEPHEN R. HORMEL, LISA WERNER
and BILLY PROCTOR,

Plaintiffs,

v.

FEDERAL DEFENDERS OF EASTERN
WASHINGTON AND IDAHO, a Washington
Non-Profit Corporation, and ROGER PEVEN,

Defendants.

No. 10-02-00353-8

AMENDED COMPLAINT

COME NOW the Plaintiffs, Stephen R. Hormel, Lisa Werner and Billy Proctor, by and through their attorneys, Judith A. Lonnquist and Mitchell A. Riese, and allege as follows:

I. PARTIES

1.1. Plaintiff Stephen R. Hormel was formerly employed by Defendant for over 16 years. In his last position with Defendant, Hormel held the position of Chief Trial Attorney. Hormel is a resident of Spokane Valley, Spokane County, Washington.

1.2. Plaintiff Lisa Werner was formerly employed by Defendant for over 16 years. Werner's last position with Defendant was as Administrative Officer. Werner is a resident of Spokane, Spokane County, Washington.



1 1.3. Plaintiff Billy Proctor was formerly employed by Defendant for over 17 years.
2 Proctor's last position with Defendant was as Chief Investigator. Proctor is a resident of
3 Liberty Lake, Spokane County, Washington.

4 1.4. Defendant Federal Defenders of Eastern Washington and Idaho ("FDEWI" or
5 "Defenders") is a Washington non-profit corporation with its principal place of business
6 located in Spokane, Spokane County, Washington. FDEWI provides criminal defense
7 representation in the United States District Courts for the Eastern District of Washington and
8 the Northern Division of the District of Idaho pursuant to a grant from the Office of Defender
9 Services of the Administrative Office of the United States Courts. Defendant formerly
10 employed Plaintiffs.
11

12 1.5. Defendant Roger Peven is and has been the Executive Director of FDEWI since
13 June 2002. Peven is a resident of Spokane County, Washington.
14

15 II. STATEMENT OF FACTS

16 2.1 Roger Peven is and has been the Executive Director of FDEWI since June 2002.

17 2.2 Throughout much of 2007, Plaintiffs observed Mr. Peven progressively
18 withdraw from active management of FDEWI. Mr. Peven informed Plaintiffs of serious
19 personal problems he was experiencing. Plaintiffs observed that these personal problems were
20 impacting Mr. Peven's ability to perform day-to-day duties required of the executive director of
21 FDEWI.
22

23 2.3 The issues with Mr. Peven's inability to lead FDEWI and lack of attention to
24 office administration became more severe around May of 2007 and continued into the Fall of
25 2007. Plaintiffs observed this as an extremely chaotic period in Mr. Peven's personal life and
26 Mr. Peven reported additional and continuing serious issues in his personal life. This resulted

1 in a nearly complete disengagement from his day-to-day activities as executive director of
2 FDEWI. Out of concern for Mr. Peven's physical and emotional health, in late October,
3 Plaintiffs Hormel, Werner and other staff were determined to find help for Mr. Peven. In
4 cooperation with other individuals, including former FDEWI Board President John Maurice,
5 they retained a psychologist with the appropriate expertise to advise in organizing an
6 intervention for Mr. Peven.
7

8 2.4 On November 8, 2007, an intervention was conducted. Several FDEWI board
9 members and other staff were present, including Plaintiffs Werner and Hormel.

10 2.5 Mr. Peven agreed to participate in an inpatient alcohol treatment evaluation at
11 Hazeldon Treatment Center in Portland, Oregon. Hazeldon then determined that Mr. Peven
12 required a minimum of 30 days of inpatient alcohol abuse treatment. Mr. Peven was placed on
13 a leave of absence during his treatment program. Mr. Peven was released from treatment on or
14 about December 8, 2007, and was eventually reinstated as executive director of FDEWI on
15 January 22, 2008.
16

17 2.6 After Mr. Peven's release from inpatient treatment in December 2007, the Board
18 resolved to be vigilant against retaliation to and by anyone due to Mr. Hormel, Ms. Werner and
19 other staff having informed the Board of Mr. Peven's declining condition which led to his
20 treatment and mandatory leave of absence, and due to disagreements Mr. Peven had with
21 certain decisions made by Mr. Hormel during Mr. Peven's forced leave. On June 22, 2009,
22 FDEWI Board President-Elect Jeffry Finer wrote the Board regarding a conversation he had
23 with Steve Asin from the Office of Defender Services. Mr. Finer recalled that Plaintiffs Hormel
24 and Werner both had expressed fear of retaliation by Mr. Peven after his return as executive
25 director, and had been given assurances that the Board would protect them against retaliation.
26

1 2.7 During the period of Peven's leave of absence, Plaintiff Hormel, who was
2 named Acting Executive Director, had made the decision to terminate the employment of an
3 FDEWI staff attorney. Prior to Mr. Peven's reinstatement as Executive Director, he indicated
4 to Mr. Hormel his disagreement with Mr. Hormel's decision to terminate the staff attorney, and
5 that, upon his reinstatement as Executive Director, he would initiate a personal investigation
6 into the termination. Upon his return, Mr. Peven did initiate a personal investigation into Mr.
7 Hormel's termination decision. Mr. Hormel filed a formal complaint with Board President
8 John Maurice and the Board claiming retaliation and harassment. The Board of Directors met
9 in special session on or about February 12, 2008, and ended Peven's personal investigation.

11 2.8 The Board of Directors sought the assistance of Dick Rubin, Idaho attorney and
12 executive director of the Federal Defender Services of Idaho, to conduct a review of Mr.
13 Peven's performance as executive director of FDEWI since his return to duties on January 22,
14 2008. Mr. Rubin conducted the performance review in late February, 2008. After Mr. Rubin
15 submitted his report to the FDEWI Board, the Board decided that it would contact the Office of
16 Defender Services of the Administrative Office of the United States Courts in Washington,
17 D.C., the federal agency that provides a grant to FDEWI for it to provide criminal defense
18 services, and request assistance in evaluating Mr. Peven and the office.

21 2.9 The Board also decided that a facilitator should be sought to work with the
22 office's leadership. As a result, Mr. Peven suggested to Ms. Werner, Mr. Hormel and Tina
23 Hunt, Defendant's Senior Litigator, that they locate a facilitator to help resolve organizational
24 problems. A facilitator was retained, and between April and October 2008, the facilitator
25 conducted at least three sessions with the FDEWI leadership group. The leadership group that
26 participated in the facilitation sessions included Plaintiffs, Mr. Peven, and others.

1 2.10 Early in June 2008, a team from the Office of Defender Services in Washington,
2 D.C., conducted an administrative assessment and submitted its report in early July 2008. The
3 report essentially concluded that (1) the office would not rise to a level it once enjoyed without
4 a unified leadership; and (2) that "cronyism" in the office had to end.

5 2.11 On October 8, 9 and 10, 2008, a retreat was held in Leavenworth, Washington,
6 among the leadership group, which included Plaintiffs. Before the retreat, Mr. Peven and Mr.
7 Hormel went golfing. Mr. Peven told Mr. Hormel that the report from the Office of Defender
8 Services indicated that he and Ms. Werner were the problem and told Hormel that he should
9 write a letter to the Board giving Mr. Peven his complete support. Mr. Hormel made no such
10 commitment. Mr. Peven also told Plaintiff Hormel that it would be improper for any staff
11 member to speak to any member of the Board without Mr. Peven's knowledge
12

13 2.12 At an annual Board meeting on November 24, 2008, Plaintiffs and Ben
14 Hernandez, the manager of FDEWI's Yakima office, reported to the Board about their
15 optimism resulting from the Leavenworth retreat. However, they also told the Board that the
16 office was not "out of the woods" in regards to the leadership problems.
17

18 2.13 On May 4, 2009, Plaintiff Werner sent a letter to Joe Downey at the Office of
19 Defender Services, and on May 25, 2009, Mr. Hormel sent a letter to Mr. Downey. They both
20 described continuing problems with Mr. Peven's leadership, including his continued absences
21 from the office, his lack of accountability in time, work and attendance issues with employees,
22 creation of divisions within the office by exhibiting favoritism toward certain employees, unfair
23 treatment of other employees, and a lack of support for Plaintiff Hormel and the other
24 supervisors. Mr. Hormel also stated that he was concerned that Mr. Peven's leadership did not
25 promote the responsible use of public grant funds.
26

1 2.14 On June 11, 2009, Plaintiff Hormel met with Joe Downey and Steve Asin from
2 the Office of Defender Services, who were conducting another assessment. Mr. Downey and
3 Mr. Asin asked Mr. Hormel if he believed Mr. Peven should be terminated as Executive
4 Director. Hormel responded "Yes." Mr. Downey told him that Ms. Werner, Mr. Proctor and
5 Mr. Hernandez all felt the same way.
6

7 2.15 That afternoon, Mr. Peven, Plaintiffs and Mr. Hernandez (by phone) met with
8 the assessment team. Joe Downey told Mr. Peven that all of his administrators believed he
9 should be terminated as Executive Director. Mr. Downey asked each of the administrators to
10 explain to Mr. Peven the reasons for their opinions, and each did so.
11

12 2.16 On June 17, 2009, Steve Asin wrote FDEWI Board President Jim Siebe a letter,
13 in which Mr. Asin stated that Mr. Peven "has not resolved the organizational and leadership
14 issues that [his] board charged him with addressing when he resumed his Executive Director
15 responsibilities following his return from a leave of absence in January 2008." Mr. Asin
16 suggested that the Board meet with Plaintiffs, Mr. Hernandez and Mr. Peven.
17

18 2.17 On June 19, 2009, Plaintiffs and Mr. Hernandez submitted a letter to the Board
19 asking to meet with the Board as part of the assessment process.
20

21 2.18 On June 25, 2009, Mr. Hormel wrote Jeffrey Finer (now Board President) an e-
22 mail, in which he again stressed that he, Ms. Werner, Mr. Proctor, and Mr. Hernandez wanted
23 to meet with the Board. Neither Mr. Finer nor any other member of the Board ever directly
24 spoke to or asked the leadership team to meet and discuss concerns about Mr. Peven's
25 performance with the Board.
26

 2.19 On July 1, 2009, then Board President Jim Siebe sent a letter to Plaintiffs and
Mr. Hernandez, asking that they submit their grievances against Mr. Peven in writing. Mr.

1 Hormel again responded to Mr. Siebe's letter. Mr. Hormel expressed concern over Mr. Siebe's
2 use of a formal "grievance" request since Mr. Hormel understood the Board to be conducting
3 Mr. Peven's annual performance review.

4 2.20 On July 6, 2009, Steve Asin sent Mr. Peven an e-mail stating that he understood
5 that Mr. Peven had not met with his leadership team since the visit from the Office of Defender
6 Services assessment team nor had he had discussions with the team regarding their concerns.
7 Mr. Asin wrote, "I encourage you to meet with them now. While I believe that matters will not
8 be resolved unless and until your Board hears directly from the leadership team, you should be
9 in a position to advise your Board of your leadership team's concern."

10 2.21 On July 7, 2009 both Plaintiffs Werner and Proctor submitted letters to the
11 FDEWI Board detailing their concerns about Mr. Peven's performance as Executive Director.
12 They submitted additional information on July 11 (Ms. Werner) and July 13 (Mr. Proctor). On
13 July 8, Mr. Hormel submitted a letter to the Board regarding Mr. Peven's job performance. Mr.
14 Hormel also submitted documentation supporting his letter.

15 2.22 On July 10, 2009, Mr. Peven met with Plaintiffs and Mr. Hernandez. Mr.
16 Peven said that he thought nothing could be done regarding making progress on the
17 management team's concerns until the Board met regarding the information that Plaintiffs and
18 Mr. Hernandez had provided to the Board. Mr. Peven had no further conversations regarding
19 leadership concerns with any of Plaintiffs or Mr. Hernandez after the meeting on July 10, 2009.

20 2.23 From that date until August 5, 2009, Plaintiffs received no word from the Board.
21 A special Board meeting was held on August 4, 2009, and on August 5, Plaintiffs each received
22 a letter from President Siebe indicating that the Board had met and no action would be taken
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1 against Mr. Peven, based on the information that Plaintiffs had submitted, and to notify the
2 Board of any retaliation.

3 2.24 The next afternoon, August 6, 2009, Mr. Hormel e-mailed a retaliation/
4 harassment complaint to Jim Siebe, the Board and Mr. Peven. Shortly thereafter, Mr. Peven
5 called Mr. Hormel on the phone and directed him to be in Mr. Peven's office at 5 p.m. that day.
6 At about 5 o'clock, Mr. Peven called Mr. Hormel into his office and terminated him. Mr.
7 Peven terminated Ms. Werner about half an hour after Mr. Hormel's termination. Mr. Peven
8 terminated Mr. Proctor early the next morning, August 7, 2009.

9
10 2.25 Plaintiffs made numerous efforts to address and report to FDEWI's Board of
11 Directors problems in the office caused by Mr. Peven's actions. These problems included
12 favoritism, failing to enforce reasonable time and attendance requirements on staff, as well as
13 failing to enforce other reasonable accountability and work standards upon staff. Mr. Peven
14 was absent from the office much of the time. He would exhibit a lack of attention to his work
15 responsibilities, and made numerous decisions based on friendship, rather than merit, with
16 regard to issues such as staff discipline, hiring, promotions and salary decisions. These actions
17 created a working environment at FDEWI that made supervision by Plaintiffs of their
18 subordinate staff very difficult and left supervisors such as Plaintiffs unsupported.

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21 2.26 Plaintiffs, in addressing their concerns to the FDEWI Board and to the Office of
22 Defender Services, were engaged in concerted activity for the purpose of their mutual aid or
23 protection and to improve their working conditions. Plaintiffs were working together in such
24 concerted activity to protect grant funds received by FDEWI from the federal government to
25 provide quality legal representation for individuals accused of federal offenses, consistent with
26 state and federal policy through the Sixth Amendment to the United States Constitution, Article

1 I, Section 3 of the Washington State Constitution, federal statutory authority, including 18
2 U.S.C. § 3006A, policy of the Office of the Administrator of the United States Courts' Office
3 of Defender Services, and the Rules of Professional Conduct. Such concerted activity by
4 Plaintiffs also sought to report lack of accountability and the irresponsible use of such grant
5 funds, including the lack of time, work and attendance standards within the office for FDEWI
6 staff and Mr. Peven.
7

8 2.27 In December 2007, the FDEWI Board had passed a formal resolution requiring
9 it to be vigilant against retaliation to and by anyone in response to Mr. Hormel and Ms.
10 Werner's reporting of Mr. Peven's performance problems as Executive Director which led to
11 his forced leave of absence and treatment for alcohol abuse.
12

13 2.28 Plaintiffs relied on the promise from the Board that they would not be retaliated
14 against for submitting information to the Board about Mr. Peven, and submitted information to
15 the Board, as requested by the Board, during the three assessments of Mr. Peven conducted
16 after his return on January 22, 2008.
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18 2.29 After the June 2009 assessment, Plaintiffs repeatedly asked to meet with the
19 Board to discuss their concerns about the information they provided and asked the board to
20 keep the information confidential due to possible retaliation by Mr. Peven until after they had
21 the opportunity to meet with the Board and/or until the Board received permission to disclose
22 the information to him. The Board disregarded Plaintiffs' requests.
23

24 2.30 Plaintiffs have been substantially damaged as a result of the termination of their
25 employment. They have experienced severe emotional distress as a result of the retaliation
26 before their termination as well as from the termination itself.

1 2.31 Plaintiffs were terminated in violation of the Board's promise that they would
2 not be retaliated against.

3 2.32 In August 2010, after the initial Complaint in this matter had been filed and
4 served, Plaintiff Hormel was contacted by an attorney from Colorado seeking to acquire private
5 counsel for a potential client named John Doe, which is a pseudonym for the individual's real
6 name. Doe was charged with federal offenses in the United States District Court for the
7 District of Idaho. Hormel came highly recommended during a national search conducted by
8 the Colorado attorney.

9 2.33 After an initial review of the court file, Hormel determined that the case required
10 two defense attorneys. Counsel discussed with the Colorado attorney the amount of the
11 retainer fees for both counsel, and discussed anticipated expenses for investigation and expert
12 witnesses. Thereafter, Hormel, with a professional colleague, attorney Peter S. Schweda, met
13 with the potential client at the Spokane County Jail to discuss the client's desire to retain
14 Hormel and Schweda to represent him in criminal charges pending in federal court in Idaho.
15 Doe signed a release of information form for Hormel and Schweda, authorizing them to obtain
16 or review Doe's records, case files, investigation files and discovery in FDEWI's possession.
17 The federal court in Idaho had previously appointed FDEWI to represent Doe.

18 2.34 Hormel contacted Roger Peven by email and explained to Mr. Peven that Doe
19 was considering retaining Hormel and Schweda. Hormel provided Mr. Peven with a copy of
20 the release of information and authorization form, and requested that he and Schweda be
21 permitted to review Doe's case file, discovery and investigative file. In a responsive email, Mr.
22 Peven denied Hormel's request to review Doe's file, and stated that he was not going to permit
23 Hormel to review the discovery until after Mr. Peven talked to the prosecution. In an effort to
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1 prevent Mr. Peven from disclosing confidential communications with Doe, Hormel cautioned
2 Mr. Peven in another email "that letting the US Attorneys Office know at this point that [Doe]
3 is pursuing private counsel is not in his interest."

4 2.35. In response to Mr. Peven's refusal to permit Hormel and Schweda access to
5 Doe's case file, discovery and investigative material, Hormel reminded Mr. Peven that "the
6 case file and all matters in the possession of your office belong to the client." Mr. Peven
7 refused access to the case file, discovery and investigative file, claiming such matters were
8 work product, and claiming the FDEWI has "restrictions on releasing discovery as well as work
9 product and investigative materials."

10
11 2.36 During Plaintiff Hormel's employment with FDEWI, private counsel who had
12 authorization from the prospective client were not prevented from inspecting the necessary
13 items, including discovery, investigative work or other materials needed to facilitate
14 meaningful discussions between private counsel and a prospective client due to the client's
15 constitutional right to have private counsel of choice. FDEWI's policy was to make such
16 material available at private counsel's earliest convenience to help facilitate such discussions.
17 Mr. Peven's actions that delayed Hormel and Schweda's access to the material when requested
18 prevented Hormel and Schweda from complying with the deadline for further discussions with
19 Doe.
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22 2.37 In an effort to chill Hormel from further speaking to Doe about obtaining
23 Hormel and Scwheda's legal services, Mr. Peven faxed an undeliverable email to Hormel's
24 office facsimile. In that email/fax, Mr. Peven implied that Hormel had violated the Rules of
25 Professional Conduct that govern the conduct of attorneys in the State of Washington by
26 speaking to Doe before notifying Mr. Peven. Mr. Peven wrote:

1 I ask you again not to contact [Doe] unless you first notify either Kailey Moran
2 or myself. I refer you to Rule 4.2 of the Washington Rules of Professional
3 Conduct which strictly prohibit a lawyer from contacting a person known to be
4 represented unless the lawyer has the consent of the other lawyer to do so. The
5 comment to the rule indicates that this is the case even if the “represented person
6 initiates or consents to the communication.”

7 2.38 Mr. Peven’s implication that Hormel had violated the Rules of Professional
8 Conduct (“RPC”) is contrary to Rule 4.2 when a person is seeking legal representation.
9 Comment 4 to Rule 4.2 specifically states:

10 This Rule does not prohibit communication with a represented person ...
11 concerning matters outside the representation.... **Nor does this Rule preclude
12 communication with a represented person who is seeking advice from a
13 lawyer who is not otherwise representing a client in the matter.**

14 Additionally, the Rules of Professional Conduct prohibited Hormel from disclosing his
15 communications with Doe as a prospective client until Doe authorized Hormel to disclose such
16 communications. Had Hormel notified Mr. Peven or Ms. Moran of Doe’s communications
17 with Hormel before Doe executed the release authorizing disclosure, Mr. Hormel would have
18 violated RPC Rule 1.18(b), relating to a prospective client, which states:

19 Even when no client-attorney relationship ensues, a lawyer who has had
20 discussions with a prospective client shall not use or reveal information learned
21 in the consultation ...

22 2.39 Mr. Peven intended to and did interfere with Hormel and Schweda’s
23 communications with Doe about seeking their representation.

24 2.40 After Mr. Peven refused access to Doe’s case file, discovery and investigative
25 material, Hormel and Schweda then went to the jail and spoke with Doe the next day. Hormel
26 explained to Doe the pending law suit against FDEWI, and furnished Doe with the email
exchanges regarding his written request to FDEWI to release information to Hormel and
Schweda. Hormel and Schweda explained that Mr. Peven had not allowed Hormel and

1 Schweda to review Doe's file in time to meet the deadline for further discussions with Doe
2 about retaining Hormel and Schweda's legal services.

3 2.41. As a result of this second meeting, Doe discontinued further discussions with
4 Hormel and Schweda. Doe eventually retained the services of two other private attorneys to
5 assist him in his defense.

6
7 2.42 Defendants Peven and FDEWI intentionally interfered with Hormel's expectancy
8 of representing Doe.

9 2.43 Mr. Peven and FDEWI intentionally interfered with Hormel's expectancy of
10 representing Doe for the improper purpose of retaliating against Hormel for having brought the
11 instant lawsuit.

12 2.44 Hormel has been injured and suffered damages as a result of Defendants'
13 wrongful interference in the business relationship between Hormel and Doe.
14

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16 **III. STATEMENT OF CLAIMS**

17 **A. Interference with Concerted Activity.**

18 Plaintiffs' termination violates RCW 49.32.020, which prohibits employers from
19 interfering with, restraining or coercing employees in concerted activities for the purpose of
20 their mutual aid or protection.

21
22 **B. Breach of Implied Contract/Promissory Estoppel.**

23 Plaintiffs have a claim for breach of implied contract/promissory estoppel.

24 **C. Wrongful Termination in Violation of Public Policy.**

25 Plaintiffs have a cause of action for wrongful termination in violation of public policy.

26 Public policy in this case is set forth in the Rules of Professional Conduct for attorneys for the
State of Washington, as well as the policies set forth in the Criminal Justice Act and the Sixth

1 Amendment to the United States Constitution, pursuant to which FDEWI was created and
2 funded.

3 **D. Willful Withholding of Wages – RCW 49.52.070.**

4 Defendant FDEWI has willfully withheld wages from Plaintiffs in violation of RCW
5 49.52.050 and RCW 49.52.070.

7 **E. Tortious Interference with Prospective Business Expectancy.**

8 Defendants tortiously interfered with Plaintiff Hormel's prospective business
9 expectancy with John Doe.

10 **IV. PRAYER FOR RELIEF**

11 Wherefore, Plaintiffs pray that the Court enter a judgment:

- 12 1. Awarding Plaintiffs actual, compensatory and liquidated damages;
- 13 2. Awarding Plaintiffs their attorney's fees and costs; and
- 14 3. For such other and further relief as the Court deems just and equitable.

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18 DATED this 8th day of June, 2011.

19
20 LAW OFFICES OF
21 JUDITH A. LONNQUIST, P.S.

22 

23 Mitchell A. Riese, WSBA #11947
24 Attorneys for Plaintiffs

1 CERTIFICATE OF SERVICE

2
3 I, Ann Holiday, an employee of the Law Offices of Judith A. Lonquist, P.S., declare
4 under penalty of perjury that on the date below, I caused to be served upon the below-listed
5 parties, via the method of service listed below, a true and correct copy of the foregoing
6 document.

7

| Party | Method of Service |
|--|--|
| 8 Thomas W. McLane 9 Randall & Danskin, P.S. 10 1500 Bank of America Financial Center 11 601 West Riverside Avenue 12 Spokane, WA 99201-0653 | 13 <input type="checkbox"/> Hand Delivery 14 <input type="checkbox"/> Legal Messenger 15 <input checked="" type="checkbox"/> Regular Mail 16 <input type="checkbox"/> E-mail 17 <input type="checkbox"/> Facsimile |

18 DATED: June 8, 2011

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