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14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA**

16 TESLA, INC.,

17 Plaintiff,

18 vs.

19 ALAMEDA COUNTY, CALIFORNIA;

20 Defendant.

21 Case Number: 4:20-cv-03186

22 **COMPLAINT FOR INJUNCTIVE AND
23 DECLARATORY RELIEF**

NATURE OF THE ACTION

1
2 1. As COVID-19 loomed, local officials scrambled to implement myriad measures
3 protecting the Californians in their jurisdictions. The State stepped in to ensure California’s
4 response was clear, uniform, and coordinated using state-wide regulations. On some issues, that
5 meant establishing baseline policies, and on others, it meant choosing *the* policy across the state.

6 2. The Governor’s March 20, 2020 stay-at-home order sought to balance the need to
7 protect Californians from infection against the need to maintain Californians’ access to vital
8 supplies and services. In so doing, the Governor chose *the* policy on one issue: businesses
9 classified by the federal government as “critical infrastructure” are essential to Californians and
10 are allowed to continue operating as part of California’s coordinated response to COVID-19.

11 3. The Order was clear on this point: “I order that Californians working in these 16
12 critical infrastructure sectors may continue their work because of the importance of these sectors
13 to Californians’ health and well-being.” This purpose was to “establish consistency” and that
14 “the supply chain must continue, and Californians must have access to such necessities as food,
15 prescriptions, and health care.” This was not a state-level baseline inviting county innovation
16 above and beyond a minimum; this is an order that certain essential businesses shall be permitted
17 to remain open statewide to provide essential goods and services to all Californians.

18 4. Nevertheless, Alameda County decided that—notwithstanding the clear language
19 and statewide logic of the Governor’s order on this point—it would insist that its prior (and
20 subsequent) conflicting pronouncements controlled over the state-wide order. Alameda County
21 thus arrogated to itself the power to force *closure* of businesses that the state government had
22 ordered could remain *open* because they are federally-defined “critical infrastructure” serving
23 vital security, safety, or economic needs of Californians.

1 5. Inexplicably, Alameda County proceeded to direct its shutdown at Tesla, even as
2 Alameda County has simultaneously maintained and publicized a FAQ that expressly describes
3 essential businesses in terms that encompass Tesla’s Fremont Facility:¹

4 **My business installs distributed solar, storage, and/or electric vehicle charging**
5 **systems – can it continue to operate?**

6 Yes, this is permissible construction activity and must comply with the Construction
7 Project Safety Protocols in Appendix B of the Order. **Businesses may also operate to**
8 **manufacture distributed energy resource components**, like solar panels.

9 6. What is more, the County has asserted that violations of its orders carry criminal
10 penalties, even though it lacks statutory or other legal authority to do so. Thus, Alameda County
11 has not only created a legal quagmire by wrongly declaring that its own orders trump the state-
12 level orders, it has threatened jail time and significant fines for businesses and individuals that do
13 not comply, even where they are clearly authorized by the State Order to continue critical
14 infrastructure activities.

15 7. To be clear, Alameda County is not using the “existing authority of local health
16 officers” to supplement a baseline set by the State, issuing policies “more restrictive than” or “in
17 addition to” that baseline, as referenced in a May 4, 2020 Order. The County is making rules
18 that directly contradict and undermine the policy announced by the Governor in his Orders.

19 8. Alameda County’s power-grab not only defies the Governor’s Order, but offends
20 the federal and California constitutions. *First*, the County’s order violates the Due Process
21 Clause of the Fourteenth Amendment because it fails to give reasonable notice to persons of
22 ordinary intelligence of what is forbidden under the law. By prohibiting what the Governor’s
23 Order expressly permits, the County’s Order puts businesses deemed critical to the nation’s
24 wellbeing by the federal and state governments between a rock and a hard place—unable to
25 discern what the applicable law permits, under threat of criminal prosecution. This is precisely
26 the dilemma the Due Process Clause’s requirement of fair notice seeks to avoid, particularly

27 _____
28 ¹ <https://covid-19.acgov.org/index.page>.

1 where, as here, there is no procedure for Plaintiff even to challenge the County’s determination
2 that it is not an essential business that may continue operations under the County’s Order.

3 9. **Second**, the County’s Order discriminates against identically situated parties
4 without any rational basis and thereby violates the Fourteenth Amendment’s Equal Protection
5 Clause. Even as at least one neighboring county is allowing car manufacturing to resume,
6 Alameda County continues to insist—in violation of the Governor’s Order and against reason—
7 that what is permitted in a neighboring county will endanger the public health if permitted to also
8 occur within Alameda County borders. Furthermore, even as Alameda County itself declares
9 businesses like Tesla essential, it somehow simultaneously insists, without rational explanation,
10 that Tesla is to remain shut down

11 10. **Third**, a county may only “make and enforce within its limits . . . ordinances and
12 regulations not in conflict with general laws.” Calif. Const., art. XI, § 7. By purporting to
13 override an express order of the Governor of California, Alameda County has far exceeded its
14 ambit under the California Constitution. In sum, the County’s Orders threaten not only to close
15 businesses supplying critical infrastructure, thereby violating multiple federal and state
16 constitutional principles, but also to jail people pursuant to criminal statutes that simply do not
17 apply here. To that extent, the County’s Orders should be declared void and without legal effect.

18 **THE PARTIES**

19 11. Plaintiff Tesla, Inc., is a corporation organized under the laws of Delaware, with
20 its principal place of business in California.

21 12. Defendant Alameda County, California, is a local government entity organized
22 under the Constitution and laws of the State of California.

23 **JURISDICTION AND VENUE**

24 13. The Court has subject matter jurisdiction over the claims asserted in this action
25 pursuant to 28 U.S.C. § 1331 (federal question) because this action involves interpretation of the
26 Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S.

1 Constitution (U.S. Const. amend. XIV) and because the action seeks to prevent Defendants from
2 interfering with federal rights.

3 14. Jurisdiction is also appropriate in this Court pursuant to 28 U.S.C. § 1343(a)(3)–
4 (4) to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom
5 or usage, of any right, privilege, or immunity secured by the Constitution, and to secure equitable
6 or other relief under any Act of Congress providing for the protection of civil rights.

7 15. This Court has supplemental jurisdiction over Plaintiff’s state law claim pursuant
8 to 28 U.S.C. § 1367(a) because Plaintiff’s state claim is so related to its federal claims that they
9 form part of the same case or controversy under Article III of the United States Constitution.

10 16. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391 because all
11 defendants reside in this district and most of the conduct that underlies this action occurred in the
12 Northern District of California.

13 17. There is a present and actual controversy between the parties.

14 18. The relief requested is authorized pursuant to 28 U.S.C. §§ 2201 and 2202
15 (declaratory judgment), 28 U.S.C. § 1651(a) (injunctive relief), and 42 U.S.C. § 1988 (right to
16 costs, including attorneys’ fees).

17 **SUBSTANTIVE ALLEGATIONS**

18 **I. THE GOVERNOR’S STAY-AT-HOME ORDER**

19 19. On March 4, 2020, California Governor Gavin Newsom declared a state of
20 emergency to exist in California in light of the COVID-19 pandemic.

21 20. Subsequently, on March 19, 2020, Governor Newsom signed Executive Order
22 N-33-20 (the “**Governor’s Order**”). The Governor’s Order directs all residents “to immediately
23 heed the current State public health directives,” including an order of the state public health
24 officer reprinted in the Governor’s Order.

25 21. The Governor’s Order “order[ed] all individuals living in the State of California
26 to stay home or at their place of residence except as needed to maintain continuity of operations
27 of the federal critical infrastructure sector as outlined at <https://www.cisa.gov/identifying->
28

1 [critical-infrastructure-during-covid-19.](#)” The Governor’s Order further explained that “[t]he
2 federal government has identified 16 critical infrastructure sectors whose assets, systems, and
3 networks, whether physical or virtual, are considered so vital to the United States that their
4 incapacitation or destruction would have a debilitating effect on security, economic security,
5 public health or safety, or any combination thereof.” Governor Newsom therefore “order[ed]
6 that Californians working in these 16 critical infrastructure sectors may continue their work
7 because of the importance of these sectors to Californians’ health and well-being.”

8 22. As noted above, the Governor’s Order linked to a federal website identifying the
9 “16 critical infrastructure sectors.”² Three of those sixteen sectors are relevant to this litigation:
10 (i) “Transportation Equipment Manufacturing,” which includes “Vehicles and Commercial Ships
11 Manufacturing”; (ii) “Electrical Equipment, Appliance, and Component Manufacturing,” which
12 includes “Electric Motor Manufacturing”; and (iii) the “Energy Sector.” Governor Newsom also
13 reserved the authority to “designate additional sectors as critical in order to protect the health and
14 well-being of all Californians.”

15 23. The Governor’s Order explained that it sought “to establish consistency across the
16 state in order to ensure that we mitigate the impact of COVID-19.”

17 24. The State of California created a “Frequently asked questions” regarding the
18 Governor’s Order. One question asks, “How does this order interact with local orders to shelter
19 in place? Does it supersede them?,” to which the State responded, “This is a statewide order.”
20 Another asks whether an individual who “run[s]/work[s] at an exempted business” must “get an
21 official letter of authorization from the state to operate,” to which the State responded, “No.”
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26 ² *Identifying Critical Infrastructure During Covid-19*, Cybsersecurity & Infrastructure Security
27 Agency, <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19> (last revised
28 Apr. 28, 2020).

1 The State went on to clarify that a “business or organization . . . in the list of exempt sectors . . .
2 may still operate” without “any specific authorization from the state to do so.”³

3 **II. THE ALAMEDA COUNTY ORDERS**

4 25. Shortly before Governor Newsom issued his state-wide order, on March 16, 2020,
5 the Interim Health Officer of Alameda County, Dr. Pan, issued a shelter-in-place order (“**First**
6 **County Order**”). In bold text, beneath the date, the First County Order warned that “[v]iolation
7 of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or
8 both.” Under the First County Order, “[a]ll businesses with a facility in the County, except
9 Essential Businesses . . . are required to cease all activities at facilities located within the County
10 except Minimum Basic Operations.” By contrast, “Essential Businesses [we]re strongly
11 encouraged to remain open.” The First County Order listed 21 different “Essential Businesses,”
12 including “Essential Infrastructure,” but did not reference or incorporate the list of “16 critical
13 infrastructure sectors” that the Governor’s Order would incorporate three days later. Finally, the
14 First County Order “request[ed] that the Sheriff and all chiefs of police in the County ensure
15 compliance with and enforce this Order.”

16 26. After the Governor’s Order was issued, Dr. Pan issued a second shelter-in-place
17 order superseding the First County Order (“**Second County Order**”). Like the First County
18 Order, the Second County Order conspicuously warned that “[v]iolation of or failure to comply
19 with this Order is a misdemeanor punishable by fine, imprisonment, or both,” and listed the
20 criminal statutes that, as discussed herein, simply do not apply. Although largely similar to the
21 list of “Essential Business” in the First County Order, the Second County Order added six
22 categories of “Essential Businesses.” Specifically, it added certain types of construction,
23 “[b]icycle repair and supply shops,” various real estate professionals, and various types of
24 landscaping professionals, among others. Again, the Second County Order did not reference or

26 ³ *Stay Home Order: Frequently Asked Questions*, California Coronavirus (COVID-19)
27 Response, <https://covid19.ca.gov/stay-home-except-for-essential-needs/> (last visited May 6,
28 2020).

1 incorporate the list of “16 critical infrastructure sectors,” which the Governor’s Order by then
2 had ordered may remain open.

3 27. The Second County Order referenced the Governor’s Order, characterizing it as
4 “set[ting] baseline statewide restrictions on non-residential business activities.” The Second
5 County Order purported to “adopt[] in certain respects more stringent restrictions addressing the
6 particular facts and circumstances in this County.” According to the Second County Order,
7 “Where a conflict exists between this Order and any state public health order related to the
8 COVID-19 pandemic, the most restrictive provision controls.” In support of that assertion, the
9 Second County Order cited only one statute: “California Health and Safety Code section
10 131080.” California Health and Safety Code § 131080, however, does not allow a County
11 Health Officer to override a statewide order. Instead, it simply provides: “The [California
12 D]epartment [of Public Health] may advise all local health authorities, and, when in its judgment
13 the public health is menaced, it shall control and regulate their action.”

14 28. Finally, on April 29, 2020, Dr. Pan issued a third shelter-in-place order (“**Third**
15 **County Order**”). “[I]n light of the progress achieved in slowing the spread of COVID-19 in the
16 County of Alameda,” the Third County Order “allow[ed] a limited number of additional
17 Essential Business to resume operating.” The Third County Order largely reiterated the
18 assertions in the Second County Order regarding Alameda County’s authority to adopt “more
19 stringent restrictions,” but it added for the first time: “[T]o the extent any federal guidelines
20 allow activities that are not allowed by this Order, this Order controls and those activities are not
21 allowed.” Again, the Third County Order did not reference or incorporate the list of “16 critical
22 infrastructure sectors” that the Governor’s Order had already ordered may remain open.

23 29. Although the County interprets its Third Order to mean otherwise, the County’s
24 COVID-19 “Frequently Asked Questions” ostensibly authorizes both battery and electric vehicle
25 manufacturing companies to operate. The relevant text provides:

26 **My business installs distributed solar, storage, and/or electric vehicle charging**
27 **systems – can it continue to operate?**

1 Yes, this is permissible construction activity and must comply with the Construction
2 Project Safety Protocols in Appendix B of the Order. **Businesses may also operate to
3 manufacture distributed energy resource components**, like solar panels.⁴

4 30. Critically, this allowance for the “manufacture [of] distributed energy resource
5 components” encompasses substantially all of Tesla’s manufacturing activities in Fremont. As
6 defined by the Public Utility Commission (the state agency solely charged with regulating
7 distributed energy), “distributed energy resource technology” includes both electric vehicles and
8 batteries: “For purposes of this section, ‘distributed resources’ means distributed renewable
9 generation resources, energy efficiency, energy storage, electric vehicles, and demand response
10 technologies.” PUC § 769(a); see also, e.g., *In the Matter of the Application of Pac. Gas & Elec.
11 Co. for Approval of Its Elec. Vehicle Infrastructure & Educ. Program* (U39e), No. 15-02-009,
12 2017 WL 1743098 (Apr. 27, 2017) (explaining that the definition of “‘distributed resources’
13 includes EVs).

14 31. Through its own guidance, Alameda County has expressly recognized and
15 publicized that “businesses may . . . operate to manufacture” batteries and electric vehicles.
16 Inexplicably, however, the Third Order as well as County officials have simultaneously insisted
17 that Tesla must remain shuttered, thereby further compounding the ambiguity, confusion and
18 irrationality surrounding Alameda County’s position as to whether Tesla may resume
19 manufacturing activities at its Fremont Factory and elsewhere in the County.

20 32. Further, while the County has issued all three of its Orders under threat of
21 criminal punishment, citing Health and Safety Code Section 120295 and Penal Code Sections
22 148(a)(1) and 69, none of those statutes have any relevance here. Section 120295 makes it a
23 crime to violate “Section 120130 or any section in Chapter 3.” Of the cited provisions, however,
24 only a handful impose obligations on individual citizens, as opposed to health officials, and only
25 where a health officer orders either “quarantine” or “isolation,” neither of which is applicable
26 here. The former applies only to persons known to have been “exposed to a communicable

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28 ⁴ <https://covid-19.acgov.org/index.page>.

1 disease” and the latter only to “infected persons.” To the contrary, Plaintiff’s workers would be
 2 those without known exposure or infection. Penal Code Section 148 only applies to a person
 3 willfully resisting, delaying, or obstructing a public official. If Penal Code Section 148 were to
 4 make merely going to work a crime, that would re-write those Health and Safety Code sections
 5 that carefully made some violations criminally enforceable and others not. Further, such an
 6 interpretation would expand criminality to a myriad of other rules and regulations where the
 7 legislature chose to impose civil penalties only: noncompliance with any civil law that a public
 8 official is charged with enforcing would now become criminal in nature. The only other criminal
 9 statute cited by the County is Penal Code Section 69, but that applies only to deterring or
 10 resisting a public official from performing his or her duties by means of threats, force, or
 11 violence.

12 **III. THE GOVERNOR’S REOPENING ORDER**

13 33. On May 4, 2020, Governor Newsom issued Executive Order N-60-20 concerning
 14 the second and third stages of California’s “four-stage framework . . . to allow Californians to
 15 gradually resume various activities” (“**The Governor’s Reopening Order**”). The Governor’s
 16 Reopening Order directed the State Public Health Officer to “establish criteria and procedures
 17 . . . to determine whether and how particular local jurisdictions may implement public health
 18 measures that depart from the statewide directives,” specifically “measures less restrictive than
 19 any public health measures implemented on a statewide basis.”

20 34. The Governor’s Reopening Order also states that it should not be “construed to
 21 limit the *existing authority* of local health officers” to adopt “more restrictive” or “addition[al]”
 22 measures” (emphasis added). Under existing law, “[a] county or city may make and enforce
 23 within its limits all local, police, sanitary, and other ordinances and regulations *not in conflict*
 24 *with general laws.*” Cal. Const. art. XI, § 7 (emphasis added). And when, as here, the Governor
 25 exercises the State’s “police power” during a state of emergency, the Governor’s “orders and
 26 regulations shall have the force and effect of law.” Cal. Gov’t Code §§ 8567, 8627.
 27 Accordingly, the Governor’s Reopening Order only allows counties to act within their “existing
 28

1 authority”—that is, to adopt measures that are consistent with the Governor’s orders or that
2 address matters on which the Governor’s orders are silent. But it does not, and cannot be read to,
3 allow a county to override an express permission in the Governor’s Order to continue to the
4 operations of federal critical infrastructure businesses.

5 **IV. TESLA’S FREMONT FACILITY**

6 35. Plaintiff operates a factory in Fremont, California (the “**Tesla Factory**”), which is
7 in Alameda County.

8 36. After the First County Order was issued, Plaintiff continued to operate the Tesla
9 Factory in the good-faith belief that it was exempt from the shelter-in-place order since its
10 operations clearly fell within multiple federally declared critical infrastructure sectors. At the
11 same time, Plaintiff encouraged any employees who felt sick or uncomfortable coming to work
12 to stay at home.

13 37. Subsequently, on March 17, 2020, Defendant Sheriff Ahern announced on Twitter
14 that Plaintiff was “not an essential business as defined in the Alameda County Health Order” and
15 could therefore only “maintain minimum basic operations.”⁵

16 38. Plaintiff nevertheless continued to operate its plant in accordance with the federal
17 and state governments’ guidance. The Tesla Factory and other facilities in Alameda County
18 manufacture electric cars, electric motors, and energy storage products. Tesla’s Alameda County
19 operations thus encompass three of the federal critical infrastructure sectors: (i) “Transportation
20 Equipment Manufacturing,” which includes “Vehicles and Commercial Ships Manufacturing”;
21 (ii) “Electrical Equipment, Appliance, and Component Manufacturing,” which includes “Electric
22 Motor Manufacturing”; and (iii) the “Energy Sector.” Plaintiff therefore continued to operate the
23 Tesla Factory to maintain the supply of critical federal infrastructure.

24 39. Following that announcement, Plaintiff negotiated with Defendants in a good-
25 faith effort to reach a mutually agreeable resolution. Although Plaintiff believed it had the right
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27 ⁵ Alameda County Sheriff (@ASCOSheriffs), Twitter (Mar. 17, 2020, 7:49 PM),
28 <https://twitter.com/acsosheriffs/status/1240062681635123201?s=21>.

1 to continue operating, on March 19, 2020, Plaintiff decided to stop operations at the Tesla
2 Factory at the end of the day on March 23, 2020.

3 40. Although the Governor’s Order expressly permits the operation of the Tesla
4 Factory, Plaintiff has attempted in good faith to negotiate a settlement with Alameda County to
5 allow its plant to reopen and begin producing critical federal infrastructure. Nevertheless,
6 Defendants continue to take the position that the Tesla Factory is not an “Essential Business”
7 under the Third County Order and therefore may not reopen, regardless of the express
8 permission to do so in the Governor’s Order.

9 **CLAIMS FOR RELIEF**

10 **COUNT I:**

11 **DEPRIVATION OF LIBERTY AND PROPERTY IN VIOLATION**
12 **OF THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE**

13 41. Plaintiffs incorporate by reference and re-allege each and every allegation set
14 forth in all preceding paragraphs as if fully set forth herein.

15 42. The Due Process Clause of the Fourteenth Amendment provides that “[n]o State
16 shall . . . deprive any person of life, liberty, or property, without due process of law.” A State
17 “violates this guarantee by taking away someone’s life, liberty, or property under a criminal law
18 so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so
19 standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 135 S. Ct. 2551,
20 2556 (2015).

21 43. Because the Third County Order directly contradicts the Governor’s Order, it fails
22 to provide sufficient notice of which actions will potentially subject Plaintiff to the criminal
23 penalties it incorrectly seeks to apply. Specifically, although the Governor’s Order allows all
24 businesses operating in federal critical infrastructure to continue operating, the Third County
25 Order purports to restrict the operation of many of these businesses. It would therefore be
26 unclear, at best, to any person of ordinary intelligence what the Governor’s Order and the Third
27 County Order collectively prohibit and allow.

1 preempts local law if the local law duplicates, contradicts, or enters an area fully occupied by
2 general law, either expressly or by legislative implication.” *First Resort, Inc. v. Herrera*, 860
3 F.3d 1263, 1280 (9th Cir. 2017) (internal quotations omitted).

4 55. Further, section 131080 of the California Health and Safety Code provides, “The
5 [California D]epartment [of Public Health] may advise all local health authorities, and, when in
6 its judgment the public health is menaced, it shall control and regulate their action.”

7 56. Moreover, California law vests the Governor with substantial additional authority
8 to control the response to state-wide emergencies. Section 8627 of the California Government
9 Code provides, “During a state of emergency the Governor shall, to the extent he deems
10 necessary, have complete authority over all agencies of the state government and the right to
11 exercise within the area designated all police power vested in the state by the Constitution and
12 laws of the State of California in order to effectuate the purposes of this chapter. In exercise
13 thereof, he shall promulgate, issue, and enforce such orders and regulations as he deems
14 necessary, in accordance with the provisions of Section 8567.” Under section 8567(a) of the
15 Government Code, the Governor’s “orders and regulations shall have the force and effect of
16 law.”

17 57. The Governor’s Order incorporates an order of the State Public Health Officer
18 and Director of the California Department of Public Health which expressly “order[s] that
19 Californians working in the[] 16 critical infrastructure sectors may continue their work because
20 of the importance of these sectors to Californians’ health and well-being.”

21 58. The Tesla Factory manufactures electric cars, electric motors, and storage
22 devices. The Tesla Factory therefore operates in three of the federal critical infrastructure
23 sectors: (i) “Transportation Equipment Manufacturing,” which includes “Vehicles and
24 Commercial Ships Manufacturing”; (ii) “Electrical Equipment, Appliance, and Component
25 Manufacturing,” which includes “Electric Motor Manufacturing”; and (iii) the “Energy Sector.”
26 Under the Governor’s Order, Plaintiff is expressly allowed to continue operations at the Tesla
27 Factory.

1 Dated: May 9, 2020

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3 */s/ Alex Spiro*

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ATTESTATION

I, Kyle K. Batter, am the ECF User whose ID and password are being used to file this Complaint for Injunctive and Declaratory Relief. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that Alex Spiro has concurred in this filing.

DATED: May 9, 2020

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ Kyle Batter

Kyle Batter

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