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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER, on behalf of
itself, and ANN CUPOLO-FREEMAN,
RUTHEE GOLDKORN, and JULIE
REISKIN, on behalf of themselves and a
proposed class of similarly situated persons
defined below,

Plaintiffs,

v.

HOSPITALITY PROPERTIES TRUST,

Defendant.

Case No. 3:15-cv-00221-JST

**PLAINTIFFS' FIRST AMENDED CLASS
ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

1 Plaintiffs, the Civil Rights Education and Enforcement Center (“CREEC”), on behalf of
2 itself, and Ann Cupolo-Freeman, Ruthee Goldkorn, and Julie Reiskin on behalf of themselves
3 and a proposed class defined below, by and through undersigned counsel, file their Class Action
4 Complaint for Declaratory and Injunctive Relief and respectfully allege as follows:

5 **INTRODUCTION**

6 1. For more than 20 years, the Americans with Disabilities Act has required hotels
7 that provide transportation services to their guests to provide equivalent accessible transportation
8 services to guests who use wheelchairs or scooters.

9 2. Nevertheless Defendant Hospitality Properties Trust (“HPT”) – which owns
10 and/or operates approximately 290 hotels spread among 38 states – has repeatedly failed to
11 provide equivalent wheelchair-accessible transportation in hotels that provide transportation to
12 nondisabled guests.

13 3. As a result, while HPT’s nondisabled guests staying at these hotels can take
14 advantage of airport shuttle services and transportation services to areas near the hotel, guests
15 who use wheelchairs or scooters are denied equivalent services. This action is limited to HPT’s
16 violations of state and federal requirements governing accessible transportation, including for
17 example purchase and lease of accessible vehicles and provision of accessible transportation.

18 4. Plaintiffs seek declaratory and injunctive relief establishing that HPT has engaged
19 in violations of the ADA and California state law, and requiring HPT to comply with these
20 statutes by providing wheelchair-accessible transportation services that are equivalent to the
21 transportation services provided to nondisabled guests at HPT’s hotels.

22 **JURISDICTION AND VENUE**

23 5. Plaintiffs’ claims arise under Title III of the Americans with Disabilities Act, 42
24 U.S.C. § 12181, *et seq.* (“ADA”), and the Unruh Civil Rights Act, Cal. Civ. Code § 51, *et seq.*
25 (“the Unruh Act”).

26 6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
27 §§ 1331 and 1343, and pursuant to its supplemental jurisdiction over Plaintiffs’ claims brought
28 under the laws of the State of California. This Court has jurisdiction over Plaintiffs’ claims for

1 declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

2 7. Venue is proper within this District pursuant to 28 U.S.C. § 1391(b).

3 **INTRADISTRICT ASSIGNMENT**

4 8. This action arises in part in San Mateo County and thus is properly assigned to the
5 San Francisco/Oakland Division.

6 **PARTIES**

7 9. Plaintiff the Civil Rights Education and Enforcement Center (“CREEC”) is a
8 nationwide civil rights membership organization based in Denver, Colorado whose mission
9 includes, among other purposes, ensuring that persons with disabilities participate in our nation’s
10 civic life without discrimination, including in the opportunity to benefit from the services
11 provided by hotels.

12 10. Plaintiff Ann Cupolo-Freeman is a member of CREEC and is and has been at all
13 relevant times a resident of the State of California. Plaintiff Cupolo-Freeman has diastrophic
14 dysplasia and uses a motorized wheelchair for mobility. She has a disability within the meaning
15 of the ADA, 42 U.S.C. § 12102, and a physical disability as that term is defined in applicable
16 California law, including California Government Code section 12926. Because Ms. Cupolo-
17 Freeman requires a wheelchair-accessible vehicle in order to utilize transportation services
18 offered by hotels, she has a personal interest in ensuring that hotels comply with federal and state
19 requirements governing provision of accessible transportation services to hotel guests. She is
20 also a tester in this litigation.

21 11. Plaintiff Ruthee Goldkorn is a member of CREEC and is and has been at all times
22 material hereto a resident of the State of California. Plaintiff Goldkorn has multiple sclerosis and
23 uses a power wheelchair for mobility. She has a disability within the meaning of the ADA, 42
24 U.S.C. § 12102, and a physical disability as that term is defined in applicable California law,
25 including California Government Code section 12926. Because Ms. Goldkorn requires a
26 wheelchair-accessible vehicle in order to utilize transportation services offered by hotels, she has
27 a personal interest in ensuring that hotels comply with federal and state requirements governing
28 provision of accessible transportation services to hotel guests. She is also a tester in this

1 litigation.

2 12. Plaintiff Julie Reiskin is a member of CREEC and is and has been at all times
3 material hereto a resident of the State of Colorado. Plaintiff Reiskin is a Board Member of the
4 Legal Services Corporation and the Executive Director of the Colorado Cross-Disability
5 Coalition. She travels frequently across the country. Plaintiff Reiskin has multiple sclerosis and
6 uses a power wheelchair for mobility. She has a disability within the meaning of the ADA, 42
7 U.S.C. § 12102, and a physical disability as that term is defined in applicable California law,
8 including California Government Code section 12926. Because Ms. Reiskin requires a
9 wheelchair-accessible vehicle in order to utilize transportation services offered by hotels, she has
10 a personal interest in ensuring that hotels comply with federal and state requirements governing
11 provision of accessible transportation services to hotel guests. She is also a tester in this
12 litigation.

13 13. Defendant HPT is an investment trust incorporated in Maryland, with its principal
14 place of business at Two Newton Place, 255 Washington Street, Suite 300, Newton,
15 Massachusetts. HPT is a publicly traded real estate investment trust. HPT owns and/or operates
16 hotels throughout the United States, including approximately 37 hotels in the State of California.

17 **FACTS APPLICABLE TO ALL CLAIMS**

18 14. Defendant HPT owns and/or operates the Country Inn & Suites by Carlson
19 Sunnyvale located in Sunnyvale, CA, a hotel that provides its guests with a shuttle to and from
20 the San Jose International Airport, in addition to a local shuttle service to business parks within a
21 five-mile radius of the hotel. The shuttle is available from 7 AM until 7 PM Monday through
22 Friday. Guests simply notify the front desk when they arrived that they will want a ride. The
23 website for this hotel provides information concerning the inaccessible shuttle, but provides no
24 information concerning accessible shuttle services.

25 15. On or about October 28, 2014, Plaintiff Cupolo-Freeman telephoned the Country
26 Inn & Suites by Carlson Sunnyvale and asked if it provided wheelchair-accessible shuttle
27 services. She was informed that the hotel does not offer wheelchair-accessible shuttle services.

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1 16. Had the hotel provided equivalent wheelchair-accessible shuttle services, and had
2 it informed Plaintiff Cupolo-Freeman of those services, she intended to stay at the hotel and to
3 use those services. She was deterred from doing so by the hotel’s lack of equivalent wheelchair-
4 accessible shuttle services.

5 17. On or about June 17, 2015, Plaintiff Cupolo-Freeman again telephoned the
6 Country Inn & Suites by Carlson Sunnyvale and asked if it provided wheelchair-accessible
7 shuttle services. She was informed that the hotel does not have an accessible shuttle, but that
8 arrangements could be made to secure wheelchair-accessible transportation. Plaintiff Cupolo-
9 Freeman requested the phone number of the taxi company that the hotel would call to make these
10 arrangements. Plaintiff Cupolo-Freeman called this company to request information on their
11 wheelchair-accessible transportation services, and was given the phone number of a separate
12 company, a company called Just Go.

13 18. According to its website, Just Go is “super busy” and recommends that
14 reservations be made “as far in advance as you can (we accept reservations for up to 30 days in
15 advance),” and at a minimum at least 48 hours in advance to ensure a ride. Further, whereas
16 transportation services provided by the hotel are available beginning at 7 AM, Just Go begins
17 operations at 8 AM.

18 19. The purportedly accessible transportation services are not equivalent to those
19 offered nondisabled guests in at least the following ways: the accessible transportation services
20 are not offered during the same hours that the inaccessible transportation services are offered; the
21 accessible transportation services require longer advance notice than the inaccessible
22 transportation services; and information concerning the inaccessible shuttle is available on the
23 hotel website, whereas information concerning the accessible shuttle is not. Discovery may
24 reveal additional ways in which the accessible transportation services are not equivalent to those
25 offered to nondisabled guests.

26 20. Had the hotel provided equivalent wheelchair-accessible shuttle services, and had
27 it informed Plaintiff Cupolo-Freeman of those services, she intended to stay at the hotel and to

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1 use those services. She was deterred from doing so by the hotel's lack of equivalent wheelchair-
2 accessible shuttle services.

3 21. Plaintiff Cupolo-Freeman would like to stay at the Country Inn & Suites by
4 Carlson Sunnyvale in the future and use the hotel's transportation services, and will do so if the
5 hotel accurately informs her that it provides equivalent accessible transportation services.

6 22. Defendant HPT owns and/or operates the Staybridge Suites San Diego-Sorrento
7 Mesa in San Diego, CA, a hotel that, according to its website, provides its guests with free local
8 shuttle service to locations within a five-mile radius of the hotel.

9 23. On or about June 24, 2015, Plaintiff Goldkorn telephoned the Staybridge Suites
10 San Diego-Sorrento Mesa and asked if it provided wheelchair-accessible shuttle services. She
11 was informed that the hotel does not have an accessible shuttle. Plaintiff Goldkorn was told that
12 the hotel could request a local wheelchair-accessible taxi for a guest requiring accessible
13 transportation, but that the guest would have to pay for the taxi.

14 24. The purportedly accessible transportation services are not equivalent to those
15 offered nondisabled guests in at least the following ways: guests who use wheelchairs or scooters
16 for mobility must pay for accessible transportation services, whereas nondisabled guests are
17 provided with free transportation services. Discovery may reveal additional ways in which the
18 accessible transportation services are not equivalent to those offered to nondisabled guests.

19 25. Had the hotel provided equivalent wheelchair-accessible shuttle services, and had
20 it informed Plaintiff Goldkorn of those services, she intended to stay at the hotel and to use those
21 services. She was deterred from doing so by the hotel's lack of equivalent wheelchair-accessible
22 shuttle services.

23 26. Plaintiff Goldkorn would like to stay at the Staybridge Suites San Diego-Sorrento
24 Mesa in the future and use the hotel's transportation services, and will do so if the hotel
25 accurately informs her that it provides equivalent accessible transportation services.

26 27. Defendant HPT owns and/or operates the Hyatt Place Colorado Springs Garden of
27 the Gods in Colorado Springs, CO, a hotel that provides its guests with free local shuttle service
28 within a five-mile radius of the hotel, including to downtown Colorado Springs. The website for

1 this hotel provides information concerning the inaccessible shuttle, but provides no information
2 concerning accessible shuttle services.

3 28. On or about June 23, 2015, Plaintiff Reiskin telephoned the Hyatt Place Colorado
4 Springs Garden of the Gods and asked if it provided wheelchair-accessible shuttle services. She
5 was informed that the hotel does not have an accessible shuttle. Plaintiff Reiskin was told that
6 the hotel could request a local accessible taxi for a guest requiring accessible transportation, but
7 that the guest would have to pay for the taxi.

8 29. The purportedly accessible transportation services are not equivalent to those
9 offered nondisabled guests in at least the following ways: guests who use wheelchairs or scooters
10 for mobility must pay for accessible transportation services, whereas nondisabled guests are
11 provided with free transportation services; and information concerning the inaccessible shuttle is
12 available on the hotel website, whereas information concerning the accessible shuttle is not.
13 Discovery may reveal additional ways in which the accessible transportation services are not
14 equivalent to those offered to nondisabled guests.

15 30. Had the hotel provided equivalent wheelchair-accessible shuttle services, and had
16 it informed Plaintiff Reiskin of those services, she intended to stay at the hotel and to use those
17 services. She was deterred from doing so by the hotel's lack of equivalent wheelchair-accessible
18 shuttle services.

19 31. Plaintiff Reiskin would like to stay at the Hyatt Place Colorado Springs Garden of
20 the Gods in the future and use the hotel's transportation services, and will do so if the hotel
21 accurately informs her that it provides equivalent accessible transportation services.

22 32. Defendant HPT owns and/or operates the Staybridge Suites San Francisco Airport
23 in San Bruno, CA a hotel that, according to its website, provides its guests with complimentary
24 shuttle service to and from San Francisco Airport and to other locations within a five-mile radius
25 of the hotel. Nondisabled guests using the hotel's shuttle service are asked to notify the hotel an
26 hour in advance for the airport shuttle and a day in advance for the non-airport shuttle. The
27 website for this hotel provides information concerning the inaccessible shuttle, but provides no
28 information concerning accessible shuttle services.

1 33. On or about June 29, 2015, Plaintiff Reiskin telephoned the Staybridge Suites San
2 Francisco Airport and asked if it provided wheelchair-accessible shuttle services. She was
3 informed that the hotel does not have an accessible shuttle, and that the hotel would need at least
4 two days advance notice to arrange accessible transportation for a guest. In addition, the hotel
5 employee stated that it was unclear whether the hotel or the guest would have to pay for the
6 accessible shuttle.

7 34. The purportedly accessible transportation services are not equivalent to those
8 offered nondisabled guests in at least the following ways: guests who use wheelchairs or scooters
9 for mobility must provide at least two days advance notice, whereas nondisabled guests need
10 only provide one hour notice for the airport shuttle, and one day notice for the non-airport
11 shuttle; nondisabled guests know in advance that they will not be required to pay for their
12 transportation services, whereas disabled guests do not know whether this will be the case; and
13 information concerning the inaccessible shuttle is available on the hotel website, whereas
14 information concerning the accessible shuttle is not. Discovery may reveal additional ways in
15 which the accessible transportation services are not equivalent to those offered to nondisabled
16 guests.

17 35. Had the hotel provided equivalent wheelchair-accessible shuttle services, and had
18 it informed Plaintiff Reiskin of those services, she intended to stay at the hotel and to use those
19 services. She was deterred from doing so by the hotel's lack of equivalent wheelchair-accessible
20 shuttle services.

21 36. Plaintiff Reiskin would like to stay at the Staybridge Suites San Francisco Airport
22 in the future and use the hotel's transportation services, and will do so if the hotel accurately
23 informs her that it provides equivalent accessible transportation services.

24 37. On information and belief, HPT owns and/or operates a number of other hotels in
25 the United States that offer transportation services to their guests but do not offer equivalent
26 transportation services to guests who use wheelchairs or scooters. These hotels include, without
27 limitation:

28 A. Radisson Hotel Phoenix Airport, 427 N 44th St., Phoenix, AZ

- 1 B. Hyatt Place Tempe/Phoenix Airport, 1413 W Rio Salado Pkwy., Tempe, AZ
- 2 C. Staybridge Suites Ft. Lauderdale – Plantation, 410 N Pine Island Rd., Plantation,
- 3 FL
- 4 D. Residence Inn Atlanta Alpharetta/North Point Mall, 1325 North Point Dr.,
- 5 Alpharetta, GA
- 6 E. Staybridge Suites Atlanta Perimeter Center, 4601 Ridgeview Rd., Atlanta, GA
- 7 F. Wyndham Atlanta Galleria, 6345 Powers Ferry Rd. NW, Atlanta, GA
- 8 G. Hyatt Place Atlanta/Duluth/Gwinnett Mall, 3530 Venture Pkwy., Duluth, GA
- 9 H. Country Inn & Suites by Carlson Naperville, 1837 Centre Point Cir., Naperville,
- 10 IL
- 11 I. Hawthorn Suites by Wyndham Chicago – Schaumburg, 1200 Bank Dr.,
- 12 Schaumburg, IL
- 13 J. Candlewood Suites Dallas – By the Galleria, 13939 Noel Rd., Dallas, TX
- 14 K. Hyatt Place Dallas – North/By the Galleria, 5229 Spring Valley Rd., Dallas, TX
- 15 L. Wyndham Dallas Suites – Park Central, 7800 Alpha Rd., Dallas, TX
- 16 M. Staybridge Suites Herndon - Dulles, 13700 Coppermine Rd., Herndon, VA

17 38. On information and belief, after August 25, 1990, HPT has purchased or leased
18 vehicles for use on fixed-route and/or demand-responsive transportation systems in place at its
19 hotels.

20 39. On information and belief, HPT relies on third parties to provide accessible
21 transportation services at many of its hotels.

22 40. On information and belief, many of these third parties do not provide accessible
23 transportation services that are equivalent to the transportation services provided to nondisabled
24 guests. For example, and without limitation, these third-party transportation companies do not
25 have the capability or capacity to provide equivalent transportation services, do not provide
26 transportation services during the hours that such services are available to nondisabled guests,
27 and/or require longer advance notice than nondisabled guests must provide.
28

1 41. CREEC brings this action based on associational standing on behalf of its
2 members. CREEC's members – including Ms. Reiskin, Ms. Goldkorn, and Ms. Cupolo-
3 Freeman – include persons with disabilities who use wheelchairs or scooters for mobility, who
4 would like to stay at HPT hotels and use their transportation services, but have been deterred and
5 prevented from doing so by the failure of those hotels to provide equivalent, wheelchair-
6 accessible transportation services. Because CREEC seeks only declaratory and injunctive relief,
7 individual participation of CREEC members is not required.

8 42. Prior to filing this litigation, attorneys from CREEC wrote to HPT, explaining that
9 many of its hotels are in violation of the transportation provisions of the ADA and state law, and
10 requesting that it bring its hotels into compliance with these statutes. HPT did not respond to this
11 letter.

12 **CLASS ACTION ALLEGATIONS**

13 43. Plaintiffs Cupolo-Freeman, Goldkorn, and Reiskin (the “Representative
14 Plaintiffs”) bring this action on behalf of themselves and on behalf of a class defined as follows:
15 individuals who use wheelchairs or scooters for mobility who have been, or in the future will be,
16 denied the full and equal enjoyment of transportation services offered to guests at hotels owned
17 and/or operated by HPT because of the lack of equivalent accessible transportation services at
18 those hotels.

19 44. Joinder of all members of the proposed class would be impracticable because,
20 without limitation, the class consists of numerous individuals who are geographically diverse,
21 these individuals are very difficult to identify and they are unlikely to be able to bring individual
22 suits.

23 45. There are numerous common questions of law and fact, including but not limited
24 to:

- 25 A. Whether Defendant HPT is a “private entity[y] . . . not primarily engaged in the
26 business of transporting people”;
- 27 B. Whether hotels owned and/or operated by Defendant HPT provide fixed-route
28 and/or demand-responsive transportation systems;

1 C. Whether Defendant HPT has purchased or leased any vehicles after August 25,
2 1990 for use on fixed-route or demand-responsive systems, and if so, the seating
3 capacity of those vehicles.

4 D. Whether Defendant HPT's transportation vehicles are readily accessible to and
5 usable by individuals with disabilities, including individuals who use wheelchairs;
6 and

7 E. Whether Defendant HPT has ensured that the transportation system in place at
8 each hotel, when viewed in its entirety, meets the equivalent service requirements
9 of 49 C.F.R. part 37.

10 46. The claims of the Representative Plaintiffs are typical of the claims of the class
11 because they arise from the same course of conduct engaged in by Defendant HPT, are based on
12 the same alleged violations of the same statutes and regulations, and seek the same relief.

13 47. The Representative Plaintiffs will fairly and adequately represent the interests of
14 the class. The Representative Plaintiffs have no interests adverse to the interests of other
15 members of the class. Further, the attorneys they have retained include counsel who have been
16 appointed as class counsel in, and have successfully litigated, numerous disability rights class
17 actions across the country.

18 48. Finally, certification under Rule 23(b)(2) is proper here because Defendant HPT
19 has acted or refused to act on grounds generally applicable to the class, thereby making
20 appropriate final injunctive or declaratory relief with respect to the class as a whole.

21 **FIRST CLAIM FOR RELIEF**

22 **Title III of the Americans with Disabilities Act of 1990 42 U.S.C. § 12181 *et seq.***

23 49. Plaintiffs incorporate by reference each and every allegation herein.

24 50. Title III requires that “[n]o individual shall be discriminated against on the basis
25 of disability in the full and equal enjoyment of the goods, services, facilities, privileges,
26 advantages, or accommodations of any place of public accommodation by any person who owns .
27 . . or operates a place of public accommodation.” 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).

28 51. Hotels that provide fixed-route transportation services to guests must comply with

1 the following requirements:

2 A. For all purchases or leases after August 25, 1990, vehicles with a seating capacity
3 over 16 passengers must be wheelchair-accessible;

4 B. For all purchases or leases after August 25, 1990, vehicles with a seating capacity
5 of under 16 passengers must be either wheelchair-accessible or equivalent service
6 must be provided.

7 52. Hotels that provide on-demand transportation services to guests must either
8 provide wheelchair-accessible vehicles or ensure that equivalent service is provided.

9 53. Defendant HPT owns and/or operates “an inn, hotel, motel, or other place of
10 lodging,” which is a place of public accommodation pursuant to 42 U.S.C. § 12181(7)(A), and is
11 also a “private entit[y] not primarily engaged in the business of transporting people” pursuant to
12 49 C.F.R. part 37.

13 54. Defendant HPT has engaged in illegal disability discrimination, as defined by
14 Title III, including without limitation, by failing to ensure that transportation vehicles in use at its
15 hotels are readily accessible to and usable by individuals with disabilities, including individuals
16 who use wheelchairs, by failing to ensure that its hotels provide equivalent accessible
17 transportation services to such individuals, and/or by failing to ensure that personnel are trained
18 to proficiency with respect to the provision of accessible transportation services.

19 55. Defendant HPT’s ongoing and continuing violations of Title III have caused, and
20 in the absence of an injunction will continue to cause, harm to the plaintiffs and the class.

21 **SECOND CLAIM FOR RELIEF**
22 **Unruh Civil Rights Act, Cal. Civ. Code, § 51, *et seq.*, and the Unruh Act’s**
23 **Incorporation of the ADA**

24 56. Plaintiffs incorporate by reference each and every allegation herein.

25 57. Defendant HPT’s hotels are business establishments and, as such, must comply
26 with the provisions of the Unruh Act.

27 58. The Unruh Act guarantees, *inter alia*, that persons with disabilities are entitled to
28 full and equal accommodations, advantages, facilities, privileges, or services in all business

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1 establishments of every kind whatsoever within the jurisdiction of the State of California. Cal.
2 Civ. Code § 51(b).

3 59. A violation of the ADA, the DOJ Standards, or Title 24 is also a violation of the
4 Unruh Act.

5 60. Defendant HPT has violated the Unruh Act by, *inter alia*, denying, or aiding or
6 inciting the denial of, Plaintiffs' and class members' rights to the full and equal accommodations,
7 advantages, facilities, privileges, or services offered at Defendant's business establishments,
8 specifically the transportation services offered at Defendant's hotels.

9 61. Defendant has also violated the Unruh Act by denying, or aiding or inciting the
10 denial of, Plaintiffs' and class members' rights to equal access arising from the provisions of the
11 ADA.

12 62. Defendant HPT's ongoing and continuing violations of the Unruh Act have
13 caused, and in the absence of an injunction will continue to cause, harm to the plaintiffs and the
14 class.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs respectfully request judgment as follows:

17 1. A declaration that Defendant HPT's conduct as alleged here has violated, and
18 continues to violate, Title III of the Americans with Disabilities Act of 1990 and the Unruh Civil
19 Rights Act, as well as their implementing regulations;

20 2. Issuance of a permanent injunction requiring Defendant HPT to comply with the
21 ADA and the Unruh Act;

22 3. Award of Plaintiffs' reasonable attorneys' fees and costs, as provided by law; and

23 4. Such other additional or alternative relief as the Court finds just and proper.
24

25 Dated: August 3, 2015

Respectfully Submitted,

26
27 By: /s/ Timothy P. Fox

28 Timothy P. Fox – Cal. Bar No. 157750
Sarah M. Morris, *Pro Hac Vice*

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