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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

INCHEN HUANG, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ASSERTIO THERAPEUTICS, INC.,
ARTHUR JOSEPH HIGGINS, JAMES
A. SCHOENECK, and AUGUST J.
MORETTI,

Defendants.

Case No. 4:17-cv-04830-JST

AMENDED

**~~PROPOSED~~ ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE *AS MODIFIED***

1 WHEREAS, a class action is pending in this Court entitled *Huang et al v. Assertio*
2 *Therapeutics, Inc. et al*, Case No. 4:17-cv-04830-JST (the “Action”);

3 WHEREAS, (a) Plaintiffs Aurelio Scarpatetti, Manuele Scarpatetti, Mark Madrack and
4 Duy Vu (collectively, “Plaintiffs”), on behalf of themselves and the Settlement Class (defined
5 below); and (b) Defendants Depomed, Inc., n/k/a Assertio Therapeutics, Inc. (“Depomed”), Arthur
6 Joseph Higgins, James A. Schoeneck, and August J. Moretti (collectively, “Defendants”); and
7 together with Plaintiffs, the “Parties”) have determined to settle all claims asserted against
8 Defendants in this Action with prejudice on the terms and conditions set forth in the Stipulation
9 and Agreement of Settlement dated July 30, 2021 (the “Stipulation”) subject to approval of this
10 Court (the “Settlement”);

11 WHEREAS, Plaintiffs have made an application, pursuant to Rule 23 of the Federal Rules
12 of Civil Procedure, for an order preliminarily approving the Settlement in accordance with the
13 Stipulation, certifying the Settlement Class for purposes of the Settlement only, and allowing
14 notice to Settlement Class Members as more fully described herein;

15 WHEREAS, the Court has read and considered: (a) Plaintiffs’ motion for preliminary
16 approval of the Settlement, and the papers filed and arguments made in connection therewith; and
17 (b) the Stipulation and the exhibits attached thereto; and

18 WHEREAS, unless otherwise defined herein, all capitalized words contained herein shall
19 have the same meanings as they have in the Stipulation;

20 **NOW THEREFORE, IT IS HEREBY ORDERED:**

21 1. **Class Certification for Settlement Purposes** – Pursuant to Rule 23(a) and (b)(3)
22 of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the
23 proposed Settlement, a Settlement Class consisting of all persons who purchased or otherwise
24 acquired common shares of Depomed from July 29, 2015 to August 7, 2017, inclusive. Excluded
25 from the Settlement Class are Defendants and their respective successors and assigns; past and
26 current executive officers and directors of Depomed, Inc. n/k/a Assertio Therapeutics Inc.;
27 members of the Immediate Families of the Individual Defendants; the legal representatives, heirs,
28 successors or assigns of the Individual Defendants; any entity in which any of the above excluded

1 persons have or had a majority interest; and any person who validly requests exclusion from the
2 Settlement Class. Also excluded from the Settlement Class are any persons or entities who or
3 which exclude themselves by submitting a request for exclusion that is accepted by the Court.

4 2. **Class Findings** – Solely for purposes of the proposed Settlement of this Action, the
5 Court finds that each element required for certification of the Settlement Class pursuant to Rule 23
6 of the Federal Rules of Civil Procedure has been met: (a) the members of the Settlement Class are
7 so numerous that their joinder in the Action would be impracticable; (b) there are questions of law
8 and fact common to the Settlement Class which predominate over any individual questions; (c) the
9 claims of Plaintiffs in the Action are typical of the claims of the Settlement Class; (d) Plaintiffs
10 and Lead Counsel have and will fairly and adequately represent and protect the interests of the
11 Settlement Class; and (e) a class action is superior to other available methods for the fair and
12 efficient adjudication of the Action.

13 3. The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules
14 of Civil Procedure, and for the purposes of the Settlement only, Plaintiffs Aurelio Scarpatetti,
15 Manuele Scarpatetti, Mark Madrack and Duy Vu are adequate class representatives and certifies
16 them as Class Representatives for the Settlement Class. The Court also appoints Lead Counsel as
17 Class Counsel for the Settlement Class, pursuant to Rule 23(g) of the Federal Rules of Civil
18 Procedure.

19 4. **Preliminary Approval of the Settlement** – The Court hereby preliminarily
20 approves the Settlement, as embodied in the Stipulation, as being fair, reasonable and adequate to
21 the Settlement Class, subject to further consideration at the Settlement Hearing to be conducted as
22 described below.

23 5. **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement
24 Hearing”) on July 28, 2022 at 2:00 p.m. via Zoom webinar
25 (<https://www.cand.uscourts.gov/zoom/>) ~~in Courtroom 6, 2nd Floor of the United States~~
26 ~~Courthouse, 1301 Clay Street, Oakland, CA 94612,~~ for the following purposes: (a) to determine
27 whether the proposed Settlement on the terms and conditions provided for in the Stipulation is
28 fair, reasonable and adequate to the Settlement Class, and should be approved by the Court; (b) to

1 determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation
2 should be entered dismissing the Action with prejudice against Defendants; (c) to determine
3 whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable
4 and should be approved; (d) to determine whether the motion by Lead Counsel for an award of
5 attorneys' fees and reimbursement of Litigation Expenses should be approved; and (e) to consider
6 any other matters that may properly be brought before the Court in connection with the
7 Settlement. Notice of the Settlement and the Settlement Hearing shall be given to Settlement
8 Class Members as set forth in paragraph 7 of this Order.

9 6. The Court may adjourn the Settlement Hearing without further notice to the
10 Settlement Class, and may approve the proposed Settlement with such modifications as the Parties
11 may agree to, if appropriate, without further notice to the Settlement Class. The Court reserves the
12 right to hold the Settlement Hearing telephonically or by other virtual means.

13 7. **Retention of Claims Administrator and Manner of Giving Notice – Lead**
14 Counsel is hereby authorized to retain Analytics Consulting LLC (the “Claims Administrator”) to
15 supervise and administer the notice procedure in connection with the proposed Settlement as well
16 as the processing of Claims as more fully set forth below. Notice of the Settlement and the
17 Settlement Hearing shall be given by Lead Counsel as follows:

18 (a) within ten (10) business days of the date of entry of this Order, Defendants shall
19 provide or cause to be provided to the Claims Administrator in electronic format (at no
20 cost to the Settlement Fund, Lead Counsel or the Claims Administrator) its stockholder
21 of record lists (consisting of names and addresses) for the Depomed common shares
22 during the relevant time period;

23 (b) not later than twenty (20) business days after the date of entry of this Order (the
24 “Notice Date”), the Claims Administrator shall cause a copy of the Postcard Notice,
25 substantially in the form attached hereto as Exhibit 4, to be mailed by first-class mail to
26 potential Settlement Class Members at the addresses set forth in the records provided by
27 Defendants or in the records which Defendants caused to be provided, or who otherwise
28 may be identified through further reasonable effort;

- 1 (c) contemporaneously with the mailing of the Postcard Notice, the Claims
2 Administrator shall cause copies of the Notice and the Claim Form to be posted on a
3 website to be developed for the Settlement, from which copies of the Notice and Claim
4 Form can be downloaded;
- 5 (d) not later than ten (10) business days after the Notice Date, the Claims
6 Administrator shall cause the Summary Notice, substantially in the form attached hereto
7 as Exhibit 3, to be published once in Investor’s Business Daily and to be transmitted
8 once over the PR Newswire; and
- 9 (e) not later than seven (7) calendar days prior to the Settlement Hearing, Lead
10 Counsel shall serve on Defendants’ Counsel and file with the Court proof, by affidavit
11 or declaration, of such mailing and publication.

12 8. **Approval of Form and Content of Notice** – The Court approves, as to form and
13 content, the Notice, the Claim Form, the Summary Notice, and the Postcard Notice subject to the
14 following changes:

- 15 (a) Objectors will not be required to provide all the detailed information that is
16 requested in the Proposed notice. Instead, objectors must provide only the information
17 requested in the following proposed language:

18 You may object to the proposed settlement in writing by providing
19 your full name, the basis for your belief that you are a member of
20 the settlement class, the basis of your objection, and your signature.
21 You may not ask the Court to order a larger settlement; the Court
22 can only approve or deny the settlement. You may also appear at
23 the Final Approval Hearing, either in person or through your own
24 attorney. If you appear through your own attorney, you are
25 responsible for paying that attorney.

26 All written objections and supporting papers must (a) clearly
27 identify the case name and number (Huang et al. v. Assertio
28 Therapeutics, Inc. et al, Case No. 4:17-cv-04830-JST); (b) be
submitted to the Court either by mailing them to the Clerk of the
Court for the United States District Court for the Northern District
of California, 1301 Clay Street, Oakland, CA 94612, or by filing
them in person at any location of the United States District Court for
the Northern District of California; and (c) be filed or postmarked on
or before [the objection date].

1 The parties may elect to use this format, or adopt a different format requesting the same,
2 but not more, information.

3 (b) Notice shall include the date, time, and zoom link for the settlement hearing.

4 9. The Court finds that the mailing and distribution of the Postcard Notice, the posting
5 of the Notice and Claim Form online, and the publication of the Summary Notice in the manner
6 and form set forth in paragraph 7 of this Order (i) is the best notice practicable under the
7 circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to
8 apprise Settlement Class Members of the pendency of the Action, of the effect of the proposed
9 Settlement (including the Releases to be provided thereunder), of Lead Counsel's motion for an
10 award of attorneys' fees and reimbursement of Litigation Expenses, of their right to object to the
11 Settlement, the Plan of Allocation and/or Lead Counsel's motion for attorneys' fees and
12 reimbursement of Litigation Expenses, of their right to exclude themselves from the Settlement
13 Class, and of their right to appear at the Settlement Hearing; (iii) constitutes due, adequate and
14 sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement;
15 and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United
16 States Constitution (including the Due Process Clause), the Private Securities Litigation Reform
17 Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable law and rules. The date and
18 time of the Settlement Hearing shall be included in the Postcard Notice, Notice, and Summary
19 Notice before they are mailed, posted online, and published, respectively.

20 10. **Nominee Procedures** – Brokers and other nominees who purchased or otherwise
21 acquired common shares of Depomed from July 29, 2015 to August 7, 2017, inclusive shall (a)
22 within seven (7) calendar days of receipt of the Postcard Notice, request from the Claims
23 Administrator sufficient copies of the Postcard Notice to forward to all such beneficial owners and
24 within seven (7) calendar days of receipt of those Postcard Notices forward them to all such
25 beneficial owners; or (b) within seven (7) calendar days of receipt of the Postcard Notice, send a
26 list of the names and addresses of all such beneficial owners to the Claims Administrator in which
27 event the Claims Administrator shall promptly mail the Postcard Notice to such beneficial owners.
28 Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable

1 expenses actually incurred in complying with this Order, by providing the Claims Administrator
2 with proper documentation supporting the expenses for which reimbursement is sought. Such
3 properly documented expenses incurred by nominees in compliance with the terms of this Order
4 shall be paid from the Settlement Fund, with any disputes as to the reasonableness or
5 documentation of expenses incurred subject to review by the Court.

6 11. **Participation in the Settlement** – Settlement Class Members who wish to
7 participate in the Settlement and to be eligible to receive a distribution from the Net Settlement
8 Fund must complete and submit a Claim Form in accordance with the instructions contained
9 therein. Unless the Court orders otherwise, all Claim Forms must be postmarked no later than one
10 hundred twenty (120) calendar days after the Notice Date. Notwithstanding the foregoing, Lead
11 Counsel may, at its discretion, accept for processing late Claims provided such acceptance does
12 not delay the distribution of the Net Settlement Fund to the Settlement Class. By submitting a
13 Claim, a person or entity shall be deemed to have submitted to the jurisdiction of the Court with
14 respect to their Claim and the subject matter of the Settlement.

15 12. Each Claim Form submitted must satisfy the following conditions: (a) it must be
16 properly completed, signed and submitted in a timely manner in accordance with the provisions of
17 the preceding paragraph; (b) it must be accompanied by adequate supporting documentation for
18 the transactions and holdings reported therein, in the form of broker confirmation slips, broker
19 account statements, an authorized statement from the broker containing the transactional and
20 holding information found in a broker confirmation slip or account statement, or such other
21 documentation as is deemed adequate by Lead Counsel or the Claims Administrator; (c) if the
22 person executing the Claim Form is acting in a representative capacity, a certification of their
23 current authority to act on behalf of the Settlement Class Member must be included in the Claim
24 Form to the satisfaction of Lead Counsel or the Claims Administrator; and (d) the Claim Form
25 must be complete and contain no material deletions or modifications of any of the printed matter
26 contained therein and must be signed under penalty of perjury.

27 13. Any Settlement Class Member that does not timely and validly submit a Claim
28 Form or whose Claim is not otherwise approved by the Court: (a) shall be deemed to have waived

1 their right to share in the Net Settlement Fund; (b) shall be forever barred from participating in any
 2 distributions therefrom; (c) shall be bound by the provisions of the Stipulation and the Settlement
 3 and all proceedings, determinations, orders and judgments in the Action relating thereto,
 4 including, without limitation, the Judgment or Alternate Judgment, if applicable, and the Releases
 5 provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) will be
 6 barred from commencing, maintaining or prosecuting any of the Released Plaintiffs' Claims
 7 against each and all of the Defendants' Releasees, as more fully described in the Stipulation and
 8 Notice. Notwithstanding the foregoing, late Claim Forms may be accepted for processing as set
 9 forth in paragraph 10 above.

10 14. **Exclusion From the Settlement Class** – Any member of the Settlement Class who
 11 wishes to exclude himself, herself or itself from the Settlement Class must request exclusion in
 12 writing. ~~within the time and in the manner set forth in the Notice, which shall provide that:~~ (a)
 13 Any such request for exclusion from the Settlement Class must be mailed or delivered such that it
 14 is received no later than twenty-one (21) calendar days prior to the Settlement Hearing, to: *Huang*
 15 *et al v. Assertio Therapeutics, Inc. et al*, EXCLUSIONS, c/o Analytics Consulting LLC, P.O. Box
 16 2004, Chanhassen, MN 55317-2004., ~~and (b) each request for exclusion must (i) state the name,~~
 17 ~~address, and telephone number of the person or entity requesting exclusion, and in the case of~~
 18 ~~entities, the name and telephone number of the appropriate contact person; (ii) state that such~~
 19 ~~person or entity “requests exclusion from the Settlement Class in *Huang et al v. Assertio*~~
 20 ~~*Therapeutics, Inc. et al*, Case No. 4:17-cv-04830-JST”;~~ (iii) state the number of common shares of
 21 ~~Depomed that the person or entity requesting exclusion purchased/acquired during the Class~~
 22 ~~Period; and (iv) be signed by the person or entity requesting exclusion or an authorized~~
 23 ~~representative. A request for exclusion shall not be effective unless it provides all the required~~
 24 ~~information and is received within the time stated above, or is otherwise accepted by the Court.~~
 25 For a class member to request exclusion from the Settlement, the only information the class
 26 member must provide in a letter to the Claims Administrator is (1) the class member's name, (2) a
 27 statement that the class member wishes to be excluded from the settlement class in *Huang et al v.*
 28 *Assertio Therapeutics, Inc. et al*, Case No. 4:17-cv-04830-JST, and (3) the class member's

1 signature. Information regarding class members' transactions involving Well Fargo shares, or
2 class members' telephone numbers and addresses, is not required.

3 15. Any person or entity who or which timely and validly requests exclusion in
4 compliance with the terms stated in this Order and is excluded from the Settlement Class shall not
5 be a Settlement Class Member, shall not be bound by the terms of the Settlement or any orders or
6 judgments in the Action and shall not receive any payment out of the Net Settlement Fund.

7 16. Any Settlement Class Member who or which does not timely and validly request
8 exclusion from the Settlement Class in the manner stated in this Order: (a) shall be deemed to have
9 waived their right to be excluded from the Settlement Class; (b) shall be forever barred from
10 requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be bound
11 by the provisions of the Stipulation and Settlement and all proceedings, determinations, orders and
12 judgments in the Action, including, but not limited to, the Judgment or Alternate Judgment, if
13 applicable, and the Releases provided for therein, whether favorable or unfavorable to the
14 Settlement Class; and (d) will be barred from commencing, maintaining or prosecuting any of the
15 Released Plaintiffs' Claims against any of the Defendants' Releasees, as more fully described in
16 the Stipulation and Notice.

17 17. **Appearance and Objections at Settlement Hearing** – Any Settlement Class
18 Member who does not request exclusion from the Settlement Class may enter an appearance in the
19 Action, at their own expense, individually or through counsel of their own choice, by filing with
20 the Clerk of Court and ~~delivering a notice of appearance to both Lead Counsel and Defendants'~~
21 ~~Counsel, at the addresses set forth in paragraph 17 below,~~ such that it is received no later than
22 twenty-one (21) calendar days prior to the Settlement Hearing, or as the Court may otherwise
23 direct. Any Settlement Class Member who does not enter an appearance will be represented by
24 Lead Counsel.

25 18. Any Settlement Class Member who does not request exclusion from the Settlement
26 Class may file a written objection to the proposed Settlement, the proposed Plan of Allocation,
27 and/or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation
28 Expenses and appear and show cause, if he, she or it has any cause, why the proposed Settlement,

1 the proposed Plan of Allocation and/or Lead Counsel’s motion for attorneys’ fees and
2 reimbursement of Litigation Expenses should not be approved; provided, however, that no
3 Settlement Class Member shall be heard or entitled to contest the approval of the terms and
4 conditions of the proposed Settlement, the proposed Plan of Allocation and/or the motion for
5 attorneys’ fees and reimbursement of Litigation Expenses unless that person or entity has filed a
6 written objection with the Court ~~and served copies of such objection on Lead Counsel and~~
7 ~~Defendants’ Counsel at the addresses set forth below such that they are received no later than~~
8 ~~twenty one (21) calendar days prior to the Settlement Hearing.~~

9 **Lead Counsel**

Defendants’ Counsel

10 **Levi & Korsinsky, LLP**
11 Nicholas Porritt, Esq.
11 1101 30th Street, Suite 115
12 Washington, DC 20007

Wilmer Cutler Pickering Hale and Dorr
LLP
Michael Bongiorno
60 State Street
Boston, MA 02109

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14 19. Any objections, filings and other submissions by the objecting Settlement Class
15 Member: (a) must state the name, ~~address, and telephone number~~ of the person or entity objecting
16 and must be signed by the objector; (b) must contain a statement of the Settlement Class
17 Member’s objection or objections, and the specific reasons for each objection, including any legal
18 and evidentiary support the Settlement Class Member wishes to bring to the Court’s attention; ~~and~~
19 ~~(c) must include documents sufficient to prove membership in the Settlement Class, including the~~
20 ~~number of common shares of Depomed that the objecting Settlement Class Member~~
21 ~~purchased/acquired during the Class Period. Objectors who enter an appearance and desire to~~
22 ~~present evidence at the Settlement Hearing in support of their objection must include in their~~
23 ~~written objection or notice of appearance the identity of any witnesses they may call to testify and~~
24 ~~any exhibits they intend to introduce into evidence at the hearing.~~

25 20. Any Settlement Class Member who or which does not make their objection in the
26 manner provided herein shall be deemed to have waived their right to object to any aspect of the
27 proposed Settlement, the proposed Plan of Allocation, and Lead Counsel’s motion for an award of
28 attorneys’ fees and reimbursement of Litigation Expenses and shall be forever barred and

1 foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlement, the Plan
2 of Allocation or the requested attorneys' fees and Litigation Expenses, or from otherwise being
3 heard concerning the Settlement, the Plan of Allocation or the requested attorneys' fees and
4 Litigation Expenses in this or any other proceeding.

5 21. **Stay and Temporary Injunction** – Until otherwise ordered by the Court, the
6 Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce
7 the terms and conditions of the Stipulation.

8 22. **Settlement Administration Fees and Expenses** – All reasonable costs incurred in
9 identifying Settlement Class Members and notifying them of the Settlement as well as in
10 administering the Settlement shall be paid as set forth in the Stipulation without further order of
11 the Court.

12 23. **Settlement Fund** – The contents of the Settlement Fund held by Signature Bank
13 (which the Court approves as the Escrow Agent), shall be deemed and considered to be in *custodia*
14 *legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they
15 shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

16 24. **Taxes** – Lead Counsel is authorized and directed to prepare any tax returns and any
17 other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund
18 any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with
19 respect to Taxes and any reporting or filings in respect thereof without further order of the Court
20 in a manner consistent with the provisions of the Stipulation.

21 25. **Termination of Settlement** – If the Settlement is terminated as provided in the
22 Stipulation, the Settlement is not approved, or the Effective Date of the Settlement otherwise fails
23 to occur, this Order shall be vacated, rendered null and void and be of no further force and effect,
24 except as otherwise provided by the Stipulation, and this Order shall be without prejudice to the
25 rights of Plaintiffs, the other Settlement Class Members and Defendants, and the Parties shall
26 revert to their respective positions in the Action as of February 26, 2021, as provided in the
27 Stipulation.

1 26. **Use of this Order** – Neither this Order, the Stipulation (whether or not
2 consummated), including the exhibits thereto and the Plan of Allocation contained therein (or any
3 other plan of allocation that may be approved by the Court), the negotiations leading to the
4 execution of the Stipulation, nor any proceedings taken pursuant to or in connection with the
5 Stipulation and/or approval of the Settlement (including any arguments proffered in connection
6 therewith): (a) shall be offered against any of the Defendants’ Releasees as evidence of, or
7 construed as, or deemed to be evidence of any presumption, concession, or admission by any of
8 the Defendants’ Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity
9 of any claim that was or could have been asserted or the deficiency of any defense that has been or
10 could have been asserted in this Action or in any other litigation, or of any liability, negligence,
11 fault, or other wrongdoing of any kind of any of the Defendants’ Releasees or in any way referred
12 to for any other reason as against any of the Defendants’ Releasees, in any civil, criminal or
13 administrative action or proceeding, other than such proceedings as may be necessary to effectuate
14 the provisions of the Stipulation; (b) shall be offered against any of the Plaintiffs’ Releasees, as
15 evidence of, or construed as, or deemed to be evidence of any presumption, concession or
16 admission by any of the Plaintiffs’ Releasees that any of their claims are without merit, that any of
17 the Defendants’ Releasees had meritorious defenses, or that damages recoverable under the
18 Complaint would not have exceeded the Settlement Amount or with respect to any liability,
19 negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as
20 against any of the Plaintiffs’ Releasees, in any civil, criminal or administrative action or
21 proceeding, other than such proceedings as may be necessary to effectuate the provisions of the
22 Stipulation; or (c) shall be construed against any of the Releasees as an admission, concession, or
23 presumption that the consideration to be given under the Settlement represents the amount which
24 could be or would have been recovered after trial; provided, however, that if the Stipulation is
25 approved by the Court, the Parties and the Releasees and their respective counsel may refer to it to
26 effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the
27 Settlement.

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