

CaseBank: Cases Added during December 2020 (sorted by Court)

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MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - PROBATION LENGTH - 1203a PC

Amendment to PC 1203a - effective 1/1/2021 - limits probation length for MISDEMEANORS to ONE year. HELD: this is retroactive to all non-final cases. (This case was on appeal. Opinion does NOT address if ALL defs on probation have a non-final case.)

BURTON P. v. () 11/9/2020 **SUPP**

PAROLE / PAROLE DECISIONS

PROP 57 - REGULATIONS - ELIGIBILITY BASED ON CURRENT CRIMES

Eligibility for possible early parole under Prop 57 is determined solely on def's CURRENT convictions, not all of def's past convictions.

GADLIN In Re () 12/28/2020 **CAL**

INSTRUCTIONS/ELEMENTS / HOMICIDE

AID & ABET - NAT/PROB CONSEQS - SB 1437 v. CHIU

SB 1437 goes farther than CHIU. Natural/Probable consequence doctrine can NOT support a 2nd Degree 187 conviction.

GENTILE P. v. () 12/17/2020 **CAL**

EVIDENCE / EXPERT

GENERALLY - COURT MAY EXCLUDE OPINIONS W/OUT FOUNDATION

Independent from KELLY, trial court has authority to prevent EXPERT from stating opinions that exceed the foundational basis shown by the evidence. This case: Expert said matching marks on shell casings meant ABSOLUTELY they came from same gun (as opposed to "likely, highly probable")

AZCONA P. v. () 12/10/2020 **6:**

EVIDENCE / HEARSAY

EXPERTS - HEARSAY - MY SUPERVISOR AGREES WITH MY OPINION

Expert testifies "My supervisor reviewed my work and agrees with me." HELD: this is inadmissible HEARSAY.

AZCONA P. v. () 12/10/2020 **6:**

EVIDENCE / EXPERT

KELLY - DEF BURDEN TO SHOW PRIOR CONSENSUS NO LONGER EXISTS

Once courts have ruled that a technique meets the KELLY standard, the burden shifts to the defense to show that the relevant scientific community has CHANGED its collective mind and no longer thinks it is reliable.

AZCONA P. v. () 12/10/2020 **6:**

PAROLE / PAROLE DECISIONS

PROP 57 - REGULATIONS - NONVIOLENT SEX REGISTRANTS

Dept of Correction regulations implementing Prop 57 re: eligibility for possible early parole excluded ALL nonviolent 290 registrants. HELD: Prop 57 did NOT authorize such an exception. Prop 57 applies to ALL nonviolent offenders.

GADLIN In Re () 12/28/2020 **CAL**

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - CASES ON APPEAL

SB 1437 does NOT apply to cases on appeal at time of enactment. The procedures under PC 1170.95 are the SOLE means for applying SB 1437 to prior cases.

GENTILE P. v. () 12/17/2020 **CAL**

INSTRUCTIONS/ELEMENTS / CHILD AS VICTIM CRIMES

HUMAN TRAFFICKING - 236.1 PC - ATTEMPTS

Def solicits undercover officer to be a prostitute for him after officer tells def she is age 17. Officer is actually over 21. HELD: this is a direct violation of PC 236.1 (c)(1) - Attempt Human Trafficking. There is no need to resort to PC 664 attempt.

MOSES P. v. () 12/28/2020 **CAL**

EVIDENCE / EXPERT

HEARSAY - "OTHER EXPERTS AGREE WITH ME"

Expert testifies "My supervisor reviewed my work and agrees with me." HELD: this is inadmissible HEARSAY.

AZCONA P. v. () 12/10/2020 **6:**

EVIDENCE / EXPERT

KELLY - TOOL MARKS COMPARISON

Comparing tool marks on shell casings and saying they MATCH, and therefore likely came from the same gun does NOT involve new, exotic technology or methods. Therefore, KELLY does not apply.

AZCONA P. v. () 12/10/2020 **6:**

INSTRUCTIONS/ELEMENTS / MISDEMEANORS AND INFRACTIONS

RESISTING - 148 PC - OBSTRUCTING OFFICER - KNOWLEDGE ELEMENT

Disagreeing with In Re A.L., this DCA holds that PC 148 is violated when the def knows OR REASONABLY SHOULD HAVE KNOWN that the person he is resisting is a police officer.

MACKRETH P. v. () 12/9/2020 **6:**

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INSTRUCTIONS/ELEMENTS / MISDEMEANORS AND INFRACTIONS

RESISTING - 148 PC - OBSTRUCTING OFFICER - KNOWLEDGE ELEMENT

A def's mental illness, if any, does NOT affect def's liability for a general intent crime requiring that def KNOW, OR REASONABLY SHOULD HAVE KNOWN a particular fact. This case: PC 148 requires def know the police were the police.

MACKRETH P. v. () 12/9/2020 6:

MOTIONS / PITCHES

SUFFIC OF AFFIDAVIT - COP CREDIBILITY MUST BE AN ISSUE IN CASE

Entire event was recorded by 4 video cameras (3 officer body cameras & 1 security camera). Therefore officer credibility is NOT at issue. Therefore no basis for PITCHES motion.

MACKRETH P. v. () 12/9/2020 6:

INSTRUCTIONS/ELEMENTS / MISC -

BAIL BOND EMPLOYEES - SEEKING INFORMATION - 10 CCR 2076

Cal Code of Regulations, title 10, section 2076, prohibits bail bond employees from entering into agreements with other people to give the bail agent information about arrests and criminal complaints. HELD: Section 2076 violates 1st Amend right to free speech, even under moderate scrutiny.

MARTINEZ P. v. () 12/30/2020 6:

MENTAL HEARINGS / 1368

WHEN TO START - CT USE OF ITS OWN OBSERVATIONS

Pretrial, due to Def's bizarre and disruptive behavior, Court has mental eval done under PC 4011.6 / W&I 5150. Def atty says def is NOT 1368. -- Trial starts. Mid-trial, Def atty says def IS 1368 due to recent Schizophrenia diagnosis. Trial court refuses to declare a doubt re: 1368 UPHELD.

HINES P. v. () 12/14/2020 4:2

MOTIONS / WITHDRAW PLEA / STRIKE PRIOR

W/DRAW GROUNDS - ADVISE RE: I.N.S. CONSEQ'S - 1473.7 PC

Def's 2018 motion to withdraw his guilty plea from 1997 per PC 1473.7 is denied. UPHELD. Record showed that def took the deal, in part, to avoid being in jail during upcoming INS sweep of the jail.

BRAVO P. v. () 12/23/2020 4:2

JUVENILE / MISC - JUVENILE

RECORDS - SEALING OF - 786 (a) AND (e) W&I

Minor is made 602 Ward and violates Wardship terms. THEN, minor's 602 case is dismissed due to new W&I 300 petition re: minor. HELD: on these facts, neither W&I 786 (e) nor 786 (a) permit the sealing of def's 602 records.

D. H. In Re () 11/9/2020 4:2

INSTRUCTIONS/ELEMENTS / MENTAL

MENTAL ILLNESS - KNEW, OR SHOULD HAVE KNOWN CRIMES

A def's mental illness, if any, does NOT affect def's liability for a general intent crime requiring that def KNOW, OR REASONABLY SHOULD HAVE KNOWN a particular fact. This case: PC 148 requires def know the police were the police.

MACKRETH P. v. () 12/9/2020 6:

CONSTITUTIONAL ISSUES / FIRST AMENDMENT

1ST AMEND - SPEECH - BAIL BOND INFORMATION - 10 CCR 2076

Cal Code of Regulations, title 10, section 2076, prohibits bail bond employees from entering into agreements with other people to give the bail agent information about arrests and criminal complaints. HELD: Section 2076 violates 1st Amend right to free speech, even under moderate scrutiny.

MARTINEZ P. v. () 12/30/2020 6:

MOTIONS / BAIL / OR

MOTION TO VACATE FORFEITURE - DEFECTS IN ORIGINAL IMPOSITION

Even assuming the court was wrong to Forfeit Bail because the def had a sufficient excuse for being absent, the court had jurisdiction to do so. Therefore forfeiture was not VOID, it was voidable IF, and only if, Bond Company takes necessary steps to reverse it in TIMELY manner.

NORTH RIVER P. v. () 12/8/2020 5:

EVIDENCE / IMPEACH/INCONSIS

PAST ACTS ANALOGOUS TO LYING IN COURT

Def calls 3 employees on his behalf. In rebuttal, DDA calls witnesses who say those 3 employees tried to intimidate them re: a difference lawsuit. HELD: Willingness to intimidate equals willingness to lie. This is proper Rebuttal.

HINES P. v. () 12/14/2020 4:2

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - AID/ABET 187'S - INTENT TO KILL X, Y KILLED BY MISTAKE

In 1995, Def and Co-def set out to kill X. Co-def shoots and kills Y by mistake. HELD: when the unintended Natural/Probable consequence is the same Crime that Def intended (187), then CLARK and BANKS and SB 1437 do not apply. PC 1170.95 petition properly DENIED.

PALACIOS P. v. () 12/1/2020 4:2

PAROLE / PAROLE DECISIONS

PAROLE VIOLATIONS - RIGHT TO JURY TRIAL (NOT)

Being sent back to prison for a PAROLE violation does NOT add to def's originally imposed sentence. Therefore, def is NOT entitled to a Jury on the allegation he violated Parole.

MARTIN P. v. () 12/7/2020 4:2

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CONSTITUTIONAL ISSUES / RIGHT TO JURY TRIAL

JURY RIGHT - PAROLE HEARING

Being sent back to prison for a PAROLE violation does NOT add to def's originally imposed sentence. Therefore, def is NOT entitled to a Jury on the allegation he violated Parole.

MARTIN P. v. () 12/7/2020 4:2

SENTENCING / DIVERSION

DIVERSION - MENTALLY ILL - 1001.36 PC - DUI CASES - 23640 VC

VC 23640 says no DUI defendant can get diversion. Years later, Mental Health Diversion, PC 1001.36 is created saying ALL eligible def's get diversion. HELD: VC 23640 controls. Statutory construction rule: Court should NOT presume Legislature meant to REPEAL something.

MOORE P. v. () 12/11/2020 4:2

CONSTITUTIONAL ISSUES / DUE PROCESS / EQUAL PROTECTION

DUE PROCESS - NOTICE REQUIREMENTS - PAROLE v PRCS

Upon discharge from prison, def was MISTAKENLY assigned to PAROLE and not PRCS. PC 3000.08 says all such defs must request reassignment to PRCS within 60 days of starting Parole, after which, they are barred from asking out of Parole. HELD: PC 3000.08 violate DUE PROCESS.

RUIZ P. v. () 12/30/2020 4:1

PAROLE / PAROLE DECISIONS

PAROLE v. PRCS - CORRECTING MIS ASSIGNMENTS - 3000.08 PC

Upon discharge from prison, def was MISTAKENLY assigned to PAROLE and not PRCS. HELD: Notwithstanding PC 3000.08, a Court can correct this error at ANY time, including during def's parole violation hearing.

RUIZ P. v. () 12/30/2020 4:1

INSTRUCTIONS/ELEMENTS / MISC -

CONSPIRACY - CRIMINAL NEGLIGENCE CASES

While you cannot aid/abet and/or Conspire to commit a Crime based on NEGLIGENCE, you can if the crime is based on CRIMINAL NEGLIGENCE. This case: Corporations Code 25401 requires Criminal Negligence.

KOENIG P. v. () 12/15/2020 3:

INSTRUCTIONS/ELEMENTS / GENERALLY

CRIMINAL NEGLIGENCE - GENERAL INTENT

A crime involving CRIMINAL NEGLIGENCE is a General Intent crime.

KOENIG P. v. () 12/15/2020 3:

MISCELLANEOU / STATUTORY CONSTRUCTION

RULE - AVOID REPEAL BY IMPLICATION - CONFLICTING STATUTES

VC 23640 says no DUI defendant can get diversion. Years later, Mental Health Diversion, PC 1001.36 is created saying ALL eligible def's get diversion. HELD: VC 23640 controls. Statutory construction rule: Court should NOT presume Legislature meant to REPEAL something.

MOORE P. v. () 12/11/2020 4:2

APPELLATE

MISC APPELLATE

WENDE BRIEF - NOT APPLICABLE TO APPEALS OF 1170.95 DENIALS

Appellate atty files a WENDE brief on def's appeal of a denial of his post-judgment PC 1170.95 petition. HELD: No independent review of the entire record is required before the appeal can be dismissed/denied.

SCOTT P. v. () 12/22/2020 4:2

PAROLE / PAROLE DECISIONS

PAROLE v. PRCS - CORRECTING MIS ASSIGNMENTS - 3000.08 PC

Upon discharge from prison, def was MISTAKENLY assigned to PAROLE and not PRCS. PC 3000.08 says all such defs must request reassignment to PRCS within 60 days of starting Parole, after which, they are barred from asking out of Parole. HELD: PC 3000.08 violates DUE PROCESS.

RUIZ P. v. () 12/30/2020 4:1

INSTRUCTIONS/ELEMENTS / GENERALLY

CRIMINAL NEGLIGENCE - CONSPIRACY / AID/ABETTERS

While you cannot aid/abet and/or Conspire to commit a Crime based on NEGLIGENCE, you can if the crime is based on CRIMINAL NEGLIGENCE. This case: Corporations Code 25401 requires Criminal Negligence.

KOENIG P. v. () 12/15/2020 3:

INSTRUCTIONS/ELEMENTS / THEFT / FRAUD CRIMES

SECURITIES FRAUD - 25401 CORP - AID/ABET - CONSPIRACY

While you cannot aid/abet and/or Conspire to commit a Crime based on NEGLIGENCE, you can if the crime is based on CRIMINAL NEGLIGENCE. This case: Corporations Code 25401 requires Criminal Negligence.

KOENIG P. v. () 12/15/2020 3:

INSTRUCTIONS/ELEMENTS / DEFENSES

MISTAKE OF LAW - CONSPIRACY / AID/ABET CASES

While crime X maybe be a general intent crime, Conspiracy to Commit X, or, Aid/Abetting Crime X, require Specific intent. Therefore MISTAKE OF LAW is not a defense to X, it might be a defense to Conspiracy to Commit X and/or Aid/Abet X.

KOENIG P. v. () 12/15/2020 3:

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INSTRUCTIONS/ELEMENTS / THEFT / FRAUD CRIMES

SECURITIES FRAUD - 25540 CORP - "INDIRECTLY" NEEDS DEFINITION

As used in the instruction re: Corporations Code 25541 - securities fraud - the word INDIRECTLY does NOT have common meaning, therefore, it needs to be defined.

KOENIG P. v. () 12/15/2020 3:

SEARCH & SEIZURE / GOOD FAITH

RELIANCE ON - IMPROPERLY IMPOSED SEARCH TERMS

Court imposes Search Terms on def's CASH BAIL. Pursuant to the terms, def is searched and drugs found. Appellate Court later says terms were improper and strikes them. HELD: Good Faith exception applies to UPHOLD the search.

MAXWELL P. v. () 12/11/2020 3:

MISCELLANEOU / WRITS

HABEAS - RETROACTIVE CHANGES - SEEKING BENEFIT OF - BANKS / CLARK

Def get LWOP has aid/abetter in 2006. Def files HABEAS under CLARK, BANKS, and SCOGGINS. DCA finds the Habeas properly raises the issues, but finds def was still a Major Participant acting with Reckless Disregard. Habeas DENIED.

PARRISH In Re () 12/11/2020 2:8

INSTRUCTIONS/ELEMENTS / HOMICIDE

MISC FACT PATTERN - KILL ZONE INSTRUCTIONS - WHEN TO GIVE

Def fires 5 shots into a car containing two people. HELD: this is NOT sufficient evidence for a KILL ZONE instruction.

BOOKER P. v. () 12/10/2020 2:7

APPELLATE / MISC APPELLATE

REMAND PROCEDURE - REMAND RE: SENTENCING - NEW EVIDENCE

Def is sentenced on Gun enhancement. Def appeals. Matter remanded for new sentencing hearing due to SB 620 giving courts PC 1385 authority over Gun enhancements. At new hrg, Court refused to consider NEW facts not available a 1st sentencing. REVERSED.

YANAGA P. v. () 12/14/2020 2:6

INSTRUCTIONS/ELEMENTS / PITCHES

SUFFIC OF AFFIDAVIT - COP CREDIBILITY MUST BE AN ISSUE IN CASE

Def's PITCHESS motion is properly denied because nature of def's crime and arrest are such that the officer's credibility are not really an issue in the case.

M. C. In Re () 12/23/2020 2:6

SEARCH & SEIZURE / PROBATION/PAROLE

PROBATION - PASSENGER IN DEF'S CAR HAS SEARCH TERMS

Passenger is def's car is on Probation w/ Search Terms. Police see the Passenger leave the car as they approach. Once police learn of Passenger's search terms, they can search the Passenger area of def's car, including Glove Box.

MAXWELL P. v. () 12/11/2020 3:

JUVENILE / MISC - JUVENILE

MINOR PRESENT AT HEARINGS - 679 W&I - COVID RULES

Minors have Statutory right to be physically present in court during any hearing. W&I 679. Statewide Covid Emergency Rules say Minor must CONSENT to appear remotely via Zoom. -- Local Rule saying Minor has burden to show why Zoom is inadequate is VACATED by DCA.

E. P. def v. SUP CT 12/28/2020 3:

INSTRUCTIONS/ELEMENTS / WEAPON

DANGEROUS WEAPON - 21310 PC - DIRK/DAGGER - BOX CUTTER

If possessed by the right person with right motivations and intents, a common, ordinary, Box Cutter can qualify as a Dirk/Dagger under PC 21310.

HESTER P. v. () 12/14/2020 2:8

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

1170.95 PC - PROCEDURE - DDA'S BURDEN AT HEARING

PC 1170.95 hearing for 2007 conviction. HELD: DDA's burden at the hearing is to Prove Beyond a Reasonable Doubt that def is guilty of what he was convicted of under Current Law. Ct to make it's own finding. Simply finding a jury COULD convict under current law is NOT enough. -- DCA's in conflict

RODRIGUEZ P. v. () 12/7/2020 2:7

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

GENERALLY - RESENTENCE AFTER REMAND - NEW FACTS

Def is sentenced on Gun enhancement. Def appeals. Matter remanded for new sentencing hearing due to SB 620 giving courts PC 1385 authority over Gun enhancements. At new hrg, Court refused to consider NEW facts not available a 1st sentencing. REVERSED.

YANAGA P. v. () 12/14/2020 2:6

APPELLATE / MISC APPELLATE

APPEALABLE ORDERS - DENIAL OF REQUEST TO MODIFY SENTENCE

While on probation, def brings a motion to modify his \$5,100 Restitution Fine due to his inability to pay. Motion summarily denied. HELD: the Denial was NOT an Appealable Order. Appeal Dismissed.

JINKINS P. v. () 12/15/2020 2:5

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INSTRUCTIONS/ELEMENTS / MISC -

TERRORIST THREAT - 422 PC - JOKE ABOUT BRINGING GUN TO SCHOOL

Minor sends SNAPCHAT to friends saying was going to bring GUN to school the next day. Some freak out. Minor deletes it and sends a new one saying "just kidding". Minor convicted of PC 422. UPHeld. No new law, just emphasis that School Shootings are no joking matter.

A. G. *In Re ()* 12/14/2020 2:4

MISCELLANEOUS / MISC

PUBLIC RECORDS - JURY LISTS

The Master list of qualified Jurors is a Public Record (Names and Zip Codes only). Def is entitled to get a copy in preparation for possible motion to disqualify the Panel.

ALFARO *def v. SUP CT* 12/9/2020 1:5

MISCELLANEOUS / WRITS

WRIT - MANDATE - PRETRIAL REVIEW - DISCLOSURE OF JURY LISTS

Pretrial, def seeks copy of the Countywide Master List of Qualified Jurors to help prepare for pretrial motion to disqualify the Panel. Request Denied. HELD: this issue is appropriate subject for pretrial WRIT. -- Question of First Impression of General Importance.

ALFARO *def v. SUP CT* 12/9/2020 1:5

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - PLEA BARGAINS, EFFECT ON

Def enters Plea Bargain for 4 years in Prison, suspended, plus probation. Plea included admission of a one-year prior. Def then violates Probation and is sentenced to 4 years. Def appeals. During appeal, SB 136 voids One-Year prior. HELD: Remedy: Reduce sentence to 3 years.

FRANCE *P. v. ()* 12/15/2020 1:4

INSTRUCTIONS/ELEMENTS / MISC -

GANG MEMBERSHIP - 186.22(a) PC - "BENEFITS" IS NOT VAGUE

PC 182.5 - Street Gang Active Membership is NOT vague. Def argued that the word "benefits" was overbroad.

ABBATE *P. v. ()* 12/3/2020 1:3

CONSTITUTIONAL ISSUES / MISC CONSTITUTIONAL ISSUES

VAGUENESS/OVERBROAD - GANG MEMBERSHIP - 182.5 PC

PC 182.5 - Street Gang Active Membership is NOT vague. Def argued that the word "benefits" was overbroad.

ABBATE *P. v. ()* 12/3/2020 1:3

MISCELLANEOUS / RETROACTIVE

BENEFIT TO DEF - STATUTE CHANGES - PLEA BARGAINS, EFFECT ON

Def enters Plea Bargain for set # of years that included conviction and sentence on a One-Year Prior under PC 667.5(b). After sentencing, statute change made Prior invalid. HELD: the remedy is to void the plea bargain altogether and go back to square one.

JOAQUIN *P. v. ()* 12/4/2020 1:5

MOTIONS / DISCOVERY

ITEM - MASTER JURY LIST (FOR POSSIBLE MOTION)

The Master list of qualified Jurors is a Public Record (Names and Zip Codes only). Def is entitled to get a copy in preparation for possible motion to disqualify the Panel.

ALFARO *def v. SUP CT* 12/9/2020 1:5

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

VETERANS - 1170.91 PC - MILITARY VETS WITH MENTAL ISSUES

Def seeks a resentencing under PC 1170.91 (Veteran Factors). HELD: Def is not eligible because def was originally given an INDETERMINATE sentence.

ESTRADA *P. v. ()* 12/16/2020 1:5

SENTENCING / RE-SENTENCE - 36, 47, 64 & SB 1437

VETERANS - 1170.91 PC - MILITARY VETS WITH MENTAL ISSUES

Def seeks new sentencing under PC 1170.91 (veteran's factors). HELD: Def is NOT eligible because def entered into plea bargain for a set # of years. Original sentencing court never had opportunity to evaluate Veteran Factors.

BROOKS *P. v. ()* 12/22/2020 1:4

INSTRUCTIONS/ELEMENTS / MISC -

GANG MEMBERSHIP - 186.22(a) PC - ACTIVE MEMBERSHIP

PC 182.5 - Street Gang Active Membership does NOT unconstitutionally punish mere passive agreement with unpopular / illegal organizations. It requires active participation with knowledge of criminal activity.

ABBATE *P. v. ()* 12/3/2020 1:3

CONSTITUTIONAL ISSUES / FIRST AMENDMENT

1ST AMEND - ASSOCIATION - GANG MEMBERSHIP - 182.5 PC

PC 182.5 - Street Gang Active Membership does NOT unconstitutionally punish mere passive agreement with unpopular / illegal organizations. It requires active participation with knowledge of criminal activity.

ABBATE *P. v. ()* 12/3/2020 1:3

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PAROLE / PAROLE DECISIONS

PAROLE VIOLATIONS - LIMITS ON COURT AUTHORITY

While presiding over a parole violation hearing, the court DOES NOT have authority to terminate Parole and/or suspend all the terms of Parole.

JOHNSON	<i>P. v. ()</i>	12/9/2020	1:3
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