UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:	)	**Chapter 11**
VANTAGE TRAVEL SERVICE, INC.,	)	**Case No. 23-11060**
Debtor.	)	

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO (A) THE PLAN SUMMARY AND DISCLOSURE STATEMENT REGARDING DEBTOR'S LIQUIDATING PLAN DATED OCTOBER 3, 2023, AND (B) THE DEBTOR'S LIQUIDATING PLAN DATED OCTOBER 3, 2023

The Official Committee of Unsecured Creditors of Vantage Travel Service, Inc. (the "Committee"), by and through its undersigned counsel, hereby files this objection (the "Objection") to the *Plan Summary and Disclosure Statement Regarding Debtor's Liquidating Plan Dated October 3, 2023* [Dkt. No. 441] (the "Disclosure Statement") and the *Debtor's Liquidating Plan Dated October 3, 2023* [Dkt. No. 434] (the "Plan"), filed by Vantage Travel Service, Inc. (the "Debtor"). In support of this Objection, the Committee respectfully states as follows:

INTRODUCTION

1. The Committee submits this Objection to the Court to make disclosure of troubling process integrity issues resulting from the conduct of Mr. Henry R. Lewis and his trust (collectively, the "Owner/Lender"). These issues (A) prevent approval the Disclosure Statement on a final basis due to a secret, undisclosed condition the Owner/Lender has placed on his willingness to providing funding to the Creditor Trust and the Creditor Trustee (as such terms are defined in the Plan);[1] and, accordingly, (B) make the Plan unconfirmable under section 1129(a)(1)

[1] See, for example, the definition of Creditor Trust Assets in section 1.27 of the Plan.

and (3) of title 11 of the United States Code (the "Bankruptcy Code") because it does not comply with certain provisions of the Bankruptcy Code and was not proposed in good faith.

2. The crux of the issue is this: The Owner/Lender mandated the selection of a specific the individual to serve as Creditor Trustee (the "Proposed Trustee"). While such a selection is customarily within the province of the Committee, the Committee, in good faith, considered the Proposed Trustee and had been prepared to agree to his selection. However, a few hours before a hearing on October 3, 2023, to conditionally approve the Disclosure Statement (the "October 3 Hearing"), the Committee learned that there had been a secret meeting between the Owner/Lender, the Debtor, and the Proposed Trustee at which the Owner/Lender imposed a limitation on who the Proposed Trustee could select as counsel as a condition to the Owner/Lender's consent to plan funding. This was not disclosed to creditors and is contrary to the Proposed Trustee's prior statements to the Committee. It caused the Committee to lose confidence in the Proposed Trustee.

3. The Committee's view is that selection of counsel is a decision for the Creditor Trustee to make and attempted to resolve this issue by proposing an individual with no known connections to the Owner/Lender. However, the Committee understands that the Owner/Lender is intractable in its view that he has the right to select the party that will investigate him and to limit selection of that person's counsel as a condition to plan funding. Presumably this is based upon the golden rule: He who has the gold makes the rule.

4. The Committee's desired outcome is confirmation of the Plan rather than conversion. The Committee requests the Court's assistance to achieve this result in a way that addresses the process integrity concerns identified above and believes that confirmation of the Plan with an independent third-party Creditor Trustee is one way to solve this issue. A handful of additional technical issues have largely (but not entirely) been resolved, as noted below.

BACKGROUND

Allegations Regarding the Committee's Formation and Decision to Object to the Plan

5. On June 29, 2023 (the "Petition Date"), the Debtor filed a voluntary petition with this Court commencing this case. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to manage its business and financial affairs as a debtor in possession.

6. The United States Trustee (the "UST") did not appoint an official committee of unsecured creditors in this case in a final form until August 8, 2023. As a result, the Committee did not participate in many key events prior to its formation. This includes proceedings related to the Debtor's initial request for secured financing and use of cash collateral [Dkt. No. 7] (the "Financing Motion"), a motion to establish bidding and marketing procedures [Dkt. No. 6] (the "Sale Procedures Motion"), a motion to sell substantially all assets [Dkt. No. 3] (the "Sale Motion" and together with the Financing Motion and Sales Procedures Motion, the "Key First Day Motions"), or, among other things, an auction of the Debtor's assets (the "Auction"). The Debtor supported the Key First Day Motions with a declaration of its chief operating officer Gregory Del Greco [Dkt. No. 14] (the "Del Greco Declaration") and a declaration of an investment banker apparently retained by the Owner/Lender Entities [Dkt. No. 15] (the "I-Banker Declaration" and together with the Del Greco Declaration, the "Declarations"). Reference is made to the Key First Day Motions, the Declarations, and the allegations set forth therein.

7. The Committee is comprised of five creditors. Four are former customers of the Debtor and one is a trade creditor. Of the four former customers, two are attorneys. The Committee chairman is an attorney who occasionally represents parties in bankruptcy matters, and another Committee member is an attorney who served as a chapter 7 and chapter 11 trustee,

including in cases involving fraud.

8. The Committee has adopted by-laws and conducted meetings relevant to its business and affairs. This Objection is filed pursuant to a decision of the Committee at a duly held meeting and communicated to the Debtor on or about October 25 and 27, 2023. While the Committee deliberated further after being informed that the Owner/Lender would not moderate its position on selection of the Creditor Trustee, the Committee did not reconsider its prior vote. This was communicated to the Debtor on November 3, 2023, in the hope that there could be a resolution that did not require the filing of this Objection.

Allegations Specific to this Objection

9. Shortly after the Committee was formed, the Committee learned that the Owner/Lender and Debtor intended to propose and seek confirmation of a plan providing full releases of estate causes of action against the Owner/Lender about 60 days later. With the clock running, the Committee was faced with choice: (A) serve a request for documents and information, with the expectation the list would be narrowed, while also engaging in informal discussions to be followed by Rule 2004 examinations, if necessary; or (B) move through a series of interviews and discussions prior to formally requesting documents. Given the time pressure, the Committee chose the former approach to get the diligence process underway. As a result, on September 7, 2023, the Committee sent document requests to the Debtor (the "Document Requests"). A copy of the Document Requests is attached as **Exhibit A**. The purpose of the Document Requests was to assist the Committee in fulfilling its statutory duties under section 1103 of the Bankruptcy Code, including diligence on causes of action and perfection issues pertaining to the Owner/Lender. The Committee also sought to formalize its prior request for various loan documents related to the Owner/Lender's alleged secured claim (the "Secured Claim"), as they had been produced upon

prior request.

10. Subsequently, on September 11, 2023, counsel for the Debtor and the Committee discussed the scope of investigation, the feasibility (or lack thereof) of completing a thorough investigation in the timeline proposed, and the scheduling issues that could ensue if causes of action or perfection challenges were identified. They discussed the benefits of deferring most investigative activity until post-confirmation. The Debtor may have mentioned the Proposed Trustee as an individual to consider as Creditor Trustee. No agreements were reached.

11. The next day, on September 12, 2023, about 24 hours before a further hearing on use of alleged cash collateral of the Owner/Lender (the "Cash Collateral"), counsel for the Debtor, Owner/Lender, and Committee participated in a meeting conducted via Zoom. From that meeting, the Committee understood that the Owner/Lender threatened to withhold consent to use of Cash Collateral unless (A) all investigative activity ceased other than limited perfection issues; (B) all other causes of action against the Owner/Lender would be preserved for investigation by the Creditor Trustee; (C) the Proposed Trustee would be selected as the Creditor Trustee and no other person could be considered or proposed by the Committee; and (D) the Owner/Lender would not consent to a post-confirmation committee to provide any direction, oversight, or consultation by or with the Creditor Trustee.

12. After deliberation, the Committee agreed to conditions (A) and (B) to ensure access to use of Cash Collateral and avoid the threat of conversion. However, because the Proposed Trustee was unknown the Committee or its counsel at that time, the Committee did not agree to condition (C), though the Committee was willing to consider the issue. The Committee subsequently engaged in good faith diligence and deliberation regarding the Proposed Trustee and his qualifications to serve as Creditor Trustee. This included communications and meetings with

the Proposed Trustee.

13. Several weeks of challenging communications ensued during which the Committee became increasingly concerned about the Owner/Lender's control over the Debtor. This resulted in the filing of *The Official Committee of Unsecured Creditors' Motion for Appointment of a Chapter 11 Trustee or, Alternatively, Conversion to a Case under Chapter 7* [Dkt. No. 410] (the "Trustee Motion") on September 29, 2023. The Trustee Motion is incorporated by reference herein.

14. Subsequently, between September 30, 2023, and October 3, 2023, the parties, with the Debtor as intermediary, engaged in discussions resulting a proposed chapter 11 plan all accepted *for the purpose of solicitation*. This was the version of the Plan presented to the Court at the October 3 Hearing.[2] Leading up to the filing of the Plan, the Committee (at the request of its members) had requested that the Proposed Trustee consider retention of the Committee's professionals based on the perceived benefit to creditors from avoiding additional expense or loss of expediency by selection of new counsel. This was not a condition to the Committee's consent to the Proposed Trustee's selection, nor would it be for any individual proposed as Creditor Trustee.[3] While the Proposed Trustee agreed, the Owner/Lender refused to permit the Plan to contain such a provision. Nevertheless, the Committee did not believe these issues should stand in the way of solicitation and communicated to the Debtor that it reserved all of its rights pending

[2] The Plan provided that the Proposed Trustee would serve as Creditor Trustee, though the Committee had not yet provided final sign-off on this point (or a few others).

[3] The Committee thought it appropriate to make this request for a few reasons. First, the Committee was not familiar with the Proposed Trustee but does have confidence in its current professionals. Second, the Creditor Trustee will be succeeding to the rights held by the Committee and acting for the benefit of general unsecured creditors. Thus the Committee considered it to be appropriate to engage in discussion with the Proposed Trustee about this issue and the manner in which the interests of general unsecured creditors would be represented. However, because provisions in plans mandating the selection of counsel or other professionals can create self-interest for professionals in the outcome of confirmation, the undersigned informed the Proposed Trustee of the Committee's view that the selection of counsel had to be a decision made with the Proposed Trustee's approval and was not a condition to the Proposed Trustee's selection to serve as Creditor Trustee.

confirmation.

15. However, shortly before the October 3 Hearing, at about 12:30 p.m. that same day, counsel for the Debtor called counsel for the Committee and relayed that there was a new, undisclosed condition to the Owner/Lender's agreement funding the Creditor Trust. In this call, and in one or more subsequent calls that same day, counsel for the Debtor communicated the following:

- Counsel for the Owner/Lender, Debtor, and Proposed Trustee had attended a meeting that morning at which counsel for the Owner/Lender stated that the Owner/Lender was conditioning his agreement to fund the Creditor Trust on the Proposed Trustee agreeing to hire counsel other than the Committee's professionals.

- A reason given for this demand was that the Document Requests were, in the Owner/Lender's view, extensive and broad and the Owner/Lender expressed concern that post-confirmation work would not be performed efficiently by the Committee's professionals.[4]

- The Proposed Trustee agreed to this restriction.

- If the Committee acquiesced, then it would decrease the chance of objections by the Owner/Lender to the Committee's professionals' compensation, decrease the risk of requests for sanctions against the Committee's professionals, and decrease the risk of lawsuits against members of the Committee individually.[5]

16. Despite this troubling new information, the Committee did not object to conditional approval of the Disclosure Statement at the October 3 Hearing, though the Committee reserved all of its rights. While there were some technical issues to address, the economic terms to the Plan were fundamentally sound, there was time to resolve disputes before confirmation, and the

[4] As the Court will recall, the Document Requests were served after the Owner/Lender and Debtor informed the Committee that they intended to seek confirmation of a plan providing releases of estate claims to the Owner/Lender on an expedited schedule. No judicial process was used to limit the scope of the Document Requests.

[5] Consistent with this final bullet point, the exculpation provision in the version of the Plan solicited was amended from the version initially filed to make clear that acts in "bad faith" or that are "ultra vires" would not be shielded (nor should they be). However, the Owner/Lender had previously made threats to sue members of the Committee if they did not support the Plan on the basis that they would be acting in bad faith or ultra vires. As a result, the Committee viewed this amendment as consistent with those threats.

Committee required additional time to consider the consequence of this new information. Moreover, a cooling off period seemed likely to be beneficial to the parties.

17. During this time, the Committee considered the issue and ramifications of disclosure to the Court. The Committee further discussed the issue with the Debtor, the Proposed Trustee, and the Proposed Trustee's counsel.[6] Based on these discussions, it was clear that the Committee would be the only party that might be inclined to seek assistance from the Court.

18. Subsequently, on October 25 and 27, 2023, the Committee informed the Debtor that it would object to confirmation based on the facts and circumstances above. To resolve this objection, the Committee proposed that Mr. Soneet Kapila serve as Creditor Trustee and that he be permitted to make decisions free from interference by the Owner/Lender. A copy of Mr. Kapila's biography is attached as **Exhibit B**. Mr. Kapila has an impressive background. He is president of the American Bankruptcy Institute and a Fellow of the American College of Bankruptcy. He holds many certifications that would be valuable to service as Trustee: Certified Public Accountant, Certified Insolvency & Restructuring Advisor, Certified Fraud Examiner, Certified in Financial Forensics, Certified in Bankruptcy Mediation. He has been appointed as a chief restructuring officer, S.E.C. corporate monitor, examiner, chapter 11 trustee, liquidating trustee, and receiver in addition to presently serving as a chapter 7 panel and subchapter V trustee.

19. Despite the fact that Mr. Kapila has unimpeachable credentials, his own staff (which the Proposed Trustee does not have), and a lower hourly rate than the Proposed Trustee, the Committee understands from the Debtor that Mr. Kapila is unacceptable to the Owner/Lender. The Owner/Lender's refusal to consider someone such as Mr. Kapila or explain why he is not qualified only reinforces the Committee's concerns about selection of the Proposed Trustee.

[6] In these discussions, the Proposed Trustee indicated that he had turned down different engagement that would have resulted in millions of dollars in fees based on a similar request—though he chose not to do so here.

20. To be clear, as disclosed to the Debtor, Dentons does not demand work representing the Creditor Trustee and might not take it even if offered given how contentious this case has been. Rather, the issue is that the Owner/Lender is making secret agreements that have not been disclosed to creditors and apparently trying to muscle and intimidate the Committee by threatening Committee members and its counsel.

21. The Committee prefers that the Plan (as modified to address this Objection) be confirmed rather than conversion to chapter 7 because of the benefit from being able to select a Creditor Trustee who will have a certain budget of unencumbered funds to commence work as well as resolution of certain disputes. However, the Committee understands that one possible outcome is that the case converts to chapter 7. In the reasonable exercise of the Committee's business judgment, the Committee determined this risk was justified. First, customers are likely no worse off after conversion: they can use travel credits either way, and conversion leaves open the possibility of priority status for deposits. Second, the outcome for trade creditors is uncertain under either path. While the Plan provides a budget with certainty, the Proposed Trustee's independence has been compromised by agreement to be bound to a secret condition to funding that was not disclosed to creditors. Moreover, the Trustee Motion outlines a viable perfection challenge for any chapter 7 trustee to consider.

22. Accordingly, in consideration of the serious process integrity issues raised by the Owner/Lender's conduct, the Committee determined that filing this Objection was appropriate.

ARGUMENT

A. The Disclosure Statement Lacks Adequate Information for Soliciting Acceptance or Rejection of the Plan Under Section 1125 of the Bankruptcy Code.

23. The Court cannot approve the Disclosure Statement on a final basis because the Owner/Lender and Proposed Trustee have agreed to a secret condition to the Owner/Lender's willingness to funding the Creditor Trust.

24. Section 1125(b) of the Bankruptcy Code conditions solicitation of a plan upon "a written disclosure statement approved . . . by the court as containing adequate information." 11 U.S.C. § 1125(b). Section 1125(a) of the Bankruptcy Code defines "adequate information" as information "in sufficient detail, as far as is reasonably practicable . . . that would enable [] a hypothetical investor . . . to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1).

25. It is critical that a disclosure statement contain sufficient information because creditors and the Court rely upon the disclosure statement as the basis upon which to evaluate the proposed plan. *See Oneida Motor Freight, Inc. v. United Jersey Bank (In re Oneida Motor Freight, Inc.)*, 848 F.2d 414, 417 (3d Cir. 1988) ("Given this reliance, we cannot overemphasize the debtor's obligation to provide sufficient data to satisfy the Code standard of 'adequate information.'"); *see also Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996) ("[D]isclosure requirements are crucial to the effective functioning of the federal bankruptcy system [because] creditors and the bankruptcy court rely heavily on the debtor's disclosure statement in determining whether to approve a proposed reorganization plan . . . ."). The Third Circuit has called filing a disclosure statement with adequate information a "pivotal concept in reorganization under the Code." *Onieda Motor Freight, Inc.*, 848 F.2d at 417. "The importance of full disclosure is underlaid by the reliance placed upon the disclosure statement by the creditors and the court." *Id.*

26. Whether a disclosure statement contains adequate information for purposes of section 1125 of the Bankruptcy Code is within the sole discretion of the Court and is to be determined on a case-by-case basis. *Tex. Extrusion Corp. v. Lockheed Corp.* (*In re Tex. Extrusion Corp.*), 844 F.2d 1142, 1157 (5th Cir. 1988); *In re River Village Assocs.*, 181 B.R. 795, 804 (E.D. Pa. 1995). However, as a general rule, "[t]he plan proponent bears the ultimate risk of nonpersuasion on the questions of compliance with the requirement to disclose adequate information . . . ." *Official Comm. Of Unsecured Creditors v. Michelson (In re Michelson)*, 141 B.R. 715, 720 (Bankr. E.D. Cal. 1992).

27. The Bankruptcy Code does not set forth the type of information that a disclosure statement must include, though certain courts have identified the following non-exclusive list:

A. The circumstances that gave rise to the filing of the bankruptcy petition;
B. A complete description of the available assets and their value;
C. The anticipated future of the debtor, with accompanying financial projections;
D. The source of the information provided in the disclosure statement;
E. The condition and performance of the debtor while in chapter 11;
F. Information regarding claims against the estate, including those allowed, disputed, and estimated;
G. A liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;
H. The accounting and valuation methods used to produce the financial information in the disclosure statement;
I. Information regarding the future management of the debtor, including the amount of compensation to be paid to any insiders, directors, and/or officers of the debtor;
J. A summary of the plan of reorganization;
K. An estimate of all administrative expenses, including attorneys' fees and accountants' fees;
L. The collectability of any accounts receivable;
M. Any financial information, valuations or *pro forma* projections that would be relevant to creditors' determinations of whether to accept or reject the plan;
N. Information relevant to the risks being taken by the creditors and interest holders;
O. The actual or projected value that can be obtained from avoidable transfers;
P. The existence, likelihood and possible success of nonbankruptcy litigation;

Q. The tax consequences of the plan;
R. The relationship of the debtor with affiliates.

In re Ferretti, 128 B.R.16, 18-19 (Bankr. D.N.H. 1991); *see also In re Oxford Homes, Inc.,* 204 B.R. 264, 269 n.17 (Bankr. D. Me. 1997) (citing foregoing list)*; In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988) (setting forth substantially similar list); Alan N. Resnick & Henry J. Somer, 7 *Collier on Bankruptcy* ¶ 1125.02[2] (16th Ed.) (collecting cases setting forth substantially similar lists).

28. Relatedly, another court observed that "[t]he disclosure statement must describe fully, completely, and in detail all transactions within insiders. If there are no such transactions Debtor must so state." *In re Malek*, 35 B.R. 443, 444 (Bankr. E.D. Mich. 1983).

29. Here, the Disclosure Statement is irrevocably deficient. The Owner/Lender has imposed a secret condition on his willingness to comply with provisions of the Plan requiring funding the Creditor Trust—and the Proposed Trustee has agreed to this condition. In other words, there has been no disclosure to creditors of a side-deal with an insider deferring to preferences of the insider by permitting him to pick his preferred investigator and influence the selection of counsel.

30. As a result, the Court either (A) must decline to approve the Disclosure Statement on a final basis and mandate further disclosure or (B) rule that the secret condition is not valid and enforceable because it was not disclosed to creditors, which still would not resolve selection of the Creditor Trustee.

B. The Plan Cannot be Confirmed Because it Violates Section 1129(a)(1) and (3) of the Bankruptcy Code.

31. The Court cannot confirm the Plan because it violates section 1129(a)(1) and (3) of the Bankruptcy Code in that it does not comply with applicable provisions of the Bankruptcy Code and was not proposed in good faith.

32. Section 1129(a)(1) of the Bankruptcy Code provides that a court may confirm a plan of reorganization only if that plan complies with the applicable provisions of the Bankruptcy Code. The phrase "applicable provisions" is commonly interpreted to mean sections 1122 and 1123 of the Bankruptcy Code, which govern, respectively, the classification of claims and interests and the contents of a plan of reorganization. *See Kane v. JohnsMansville Corp*., 843 F.2d 636, 648-9 (2nd Cir. 1988) (discussing that the legislative history of section 1129(a)(1) suggests that Congress intended the phrase "applicable provisions" to mean provisions of chapter 11 that concern the form and content of reorganization plans); *In re Texaco, Inc*., 84 B.R. 893, 905 (Bankr. S.D.N.Y. 1988) ("In determining whether a plan complies with section 1129(a)(1), reference must be made to Code §§ 1122 and 1123 with respect to the classification of claims and the contents of a plan of reorganization.") (citation omitted).

33. The Plan does not comply with section 1129(a)(1) because it does not satisfy section 1123 of the Bankruptcy Code, in addition to apparently being subject to a secret condition in violation of section 1125. Section 1123 of the Bankruptcy Code contains mandatory and permissive provisions. Relevant here, the Plan does not satisfy section 1123(a)(5) or (7) of the Bankruptcy Code.

34. Section 1123(a)(5) requires that a plan provide adequate means for its implementation. Implementation of the Plan requires distribution of $250,000.00 to the Creditor Trust so that the Creditor Trustee can fulfill its duties, including investigation of causes of action

and perfection challenges regarding the Owner/Lender. Given the secret condition to funding that the Owner/Lender has imposed, the Plan no longer contains adequate means for its implementation in a manner consistent with the independent exercise of fiduciary duties by the Creditor Trustee—unless the Court rules that the secret condition is ineffective.

35. Section 1123(a)(7) requires that a plan include only provisions that are consistent with the interests of creditors, among others, as well as public policy regarding the selection of any trustee under the plan. The Committee's view is that secret conditions of the Owner/Lender limiting the independent decision-making and judgment of the Creditor Trustee are not consistent with the interests of creditors and that the Creditor Trustee, who will represent the interests of general unsecured creditors, must be free to exercise its fiduciary duties in all aspects of its decision-making. While the Committee believes that creditors will benefit from continuity of legal counsel due to facts and information learned pre-confirmation, which will mean funds are not wasted with new counsel getting up to speed, Dentons has not mandated that it be selected and, as disclosed to the Debtor, may very well decline such an engagement due to the acrimony in this case. Either way, the decision must rest with the Creditor Trustee in the exercise of the Creditor Trustee's fiduciary duties—not the Owner/Lender.

36. The Committee also does not believe that provisions in the Plan appointing the Proposed Trustee are in the best interests of creditors or consistent with public policy regarding the selection of a trustee under a plan. The Proposed Trustee did not disclose to the Committee his participation in the secret meeting on October 3 or his agreement to the Owner/Lender's condition until directly asked. The Proposed Trustee's willingness to agree to a secret condition to the Plan rather than being prepared to enforce the terms of the Plan in order to preserve

independent decision-making caused the Committee to lose confidence in him and seek appointment of a truly independent fiduciary instead.

37. Finally, the Plan does not comply with section 1129(a)(3) of the Bankruptcy Code's requirement that the Plan be proposed in good faith. Secret conditions to funding and limitations on the independent decision-making of a plan fiduciary cannot be in good faith.

C. Additional Grounds for Objection.

38. There are several additional grounds for objection to confirmation of the Plan as presently filed. The Committee raised these issues with the Debtor and understands that most, but not all, are resolved, as follows:

39. First, the Plan must provide that the Creditor Trustee succeeds to the Debtor's attorney-client privilege and that Rule 2004 power remains available to the Creditor Trustee in connection with the administration of the Creditor Trust assets and duties. The Committee understands this is resolved and that the confirmation order will provide for an interlineation to the Plan.

40. Second, sections 4.2 and 4.3 of the Plan should provide that payment of any excess proceeds to the Owner/Lender is subject to the Committee Challenge Rights—meaning no payments will be made until such rights are resolved or, if payments are made, then they can be recovered. The Committee understands this is resolved and that the confirmation order will provide for an interlineation to the Plan.

41. Third, section 5.15 of the Plan must be clarified such that the Creditor Trustee and Owner/Lender must be reasonable in the determination of whether to close the case. This issue remains open. While a parenthetical in this provision arguably applies to the Owner/Lender and the Creditor Trustee, greater clarity is warranted given the trajectory of this case. Alternatively, a

ruling by the Court or agreement by parties on the record that the parenthetical applies to the Owner/Lender as well as the Creditor Trustee would resolve the issue.

42. Fourth, section 8.1 of the Plan contains a self-serving reservation of rights in favor of the Owner/Lender. The reservation of rights states:

> For the avoidance of doubt nothing herein or in the Confirmation Order shall limit, reduce or otherwise affect the right of any Entity, including the Prepetition Lender, to contend in any court or other forum that a Customer Claim has been fully satisfied by the provision of the Travel Credit to the holder of such Customer Claim, whether or not such Travel Credit is used by such holder.

While this language may not limit parties from taking any other position, the Committee requested that this reservation of rights be reciprocal by adding "or has not" as indicated below:

> For the avoidance of doubt nothing herein or in the Confirmation Order shall limit, reduce or otherwise affect the right of any Entity, including the Prepetition Lender, to contend in any court or other forum that a Customer Claim has or has not been fully satisfied by the provision of the Travel Credit to the holder of such Customer Claim, whether or not such Travel Credit is used by such holder.

43. The Committee does not dispute that the Plan will satisfy claims in accordance with its terms. But, given the pendency of other proceedings between non-debtors and the Owner/Lender, the Committee prefers that the reservation be reciprocal to provide clarity to any other tribunal.

CONCLUSION

Neither the Disclosure Statement nor the Plan can be approved by the Court. The Disclosure Statement contains a material omission—a secret condition to funding agreed to between the Owner/Lender and the Proposed Trustee. This is a fatal flaw that cannot be overcome unless the Court rules that the provision is ineffective or orders further disclosure to creditors. In addition, the Plan cannot be confirmed because it does not comply with section 1129(a)(1) or (3)

of the Bankruptcy Code for the reasons discussed above. Thus an independent party must be appointed to serve as Creditor Trustee.

Accordingly, the Committee respectfully requests that the Court confirm the Plan in a manner that addresses the objections set forth herein, including by appointing an independent party to serve as Creditor Trustee, and grant such further and additional relief as the Court deems proper.

Dated: November 6, 2023

Respectfully submitted,

/s/ Andrew C. Helman

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CERTIFICATE OF SERVICE

I, Andrew C. Helman, an individual eighteen years of age or older, hereby certify that on the date set forth below, I filed the foregoing document (with exhibits, if any) on the Court's CM/ECF electronic filing system, thereby serving all parties receiving notice and service in this case through the Court's CM/ECF electronic filing system. Such parties are identified in the following service list:

The following is the list of parties and attorneys who are currently on the list to receive email notice/service for this case.

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- Harvey J Wolkoff camillechirillo@quinnemanuel.com, erikamorabito@quinnemanuel.com; brittanynelson@quinnemanuel.com
- Lynne B. Xerras lynne.xerras@hklaw.com
- Gina M. Young gina.young@dentons.com

Date: November 6, 2023

/s/ Andrew C. Helman

Andrew C. Helman (BBO# 679155)
DENTONS BINGHAM GREENEBAUM LLP
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EXHIBIT A

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Partner

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Dentons Bingham Greenebaum LLP
One City Center
Portland, ME 04101

dentons.com

September 7, 2023 *VIA ELECTRONIC MAIL ONLY*

Michael J. Goldberg
CASNER & EDWARDS, LLP
303 Congress Street
Boston, MA 02210
E-mail: goldberg@casneredwards.com

Re: *In re Vantage Travel Service, Inc.*
United States Bankruptcy Court for the District of Massachusetts
Chapter 11 Bankruptcy Case No. 23-11060

Dear Michael:

As you are aware, my firm represents the Official Committee of Unsecured Creditors (the "Committee") in the chapter 11 bankruptcy case of *In re Vantage Travel Service, Inc.*, Case No. 23-11060 (the "Chapter 11 Case"). I am making this initial request for documents and information ("Documents and Information")[1] from Vantage Travel Service, Inc. (the "Debtor") for the purpose of conducting the Committee's investigation of the purported claim and liens asserted by Henry R. Lewis ("Mr. Lewis") and the Henry R. Lewis Trust u/t/d dated November 24, 2004 (the "HRL Trust" and together with Mr. Lewis, the "Prepetition Lender"). As used in the balance of this letter, the term "Prepetition Lender" shall refer to one or both of Mr. Lewis and HRL Trust.

[1] For purposes of this request, the term "Documents and Information" means any written, recorded, transcribed, printed or impressed matter of any kind, however produced or reproduced, including but not limited to, sound or pictorial recordings, computerized information, books, pamphlets, letters, memoranda, tele-grams, electronic or mechanical transmissions, communications of all kinds, reports, working papers, handwritings, charts, papers, writings, printings, transcriptions, tapes, canceled checks, financial records, bookkeeping entries and records of any kind. The term "Documents and Information" shall also include any and all electronically stored data, which includes, but is not limited to electronically stored data on magnetic or optical storage media as an "active" file or filed (readily readable by one or more computer applications or forensics software); any electronic files saved as backup; any "deleted" but recoverable electronic files on said media; letters, e-mails, text messages, messages or posts on any social media platform, memoranda (whether of visits telephone calls or otherwise), appointment calendars, schedules, books, indices, printed forms (whether official or unofficial), publications, press releases, notices, brochures, pamphlets, guidelines, manuals, instructions, minutes, summaries or abstracts, reports, files, file jackets, transcripts, bulletins, written questions and answers, charts, exhibits, blueprints, drawings, maps diagrams, graphs, tables, photographs, recordings, speeches, microfilm, opinions, studies, papers, analyses, evaluations, proposals, budget materials, invoices, financial statements, contracts, specifications, applications, motions, petitions, complaints, answers, responses, replies, protests, verified statements, hearing transcripts, attachments, filings submissions and pleadings.

Without waiver of its right to seek additional Documents and Information, the Committee seeks the following at this time or a statement in writing that such documents do not exist:

1. All corporate bylaws, resolutions, notices of meetings, agendas and minutes of meetings of the board of directors of the Debtor, and any other Documents and Information related to the approval or ratification of any corporate action of the Debtor from January 1, 2018, through and including the Petition Date.

2. All Documents and Information identifying the Debtor's officers, directors and shareholders from January 1, 2018 through and including the Petition Date.

3. All Documents and Information referencing or related in any way to the Debtor's liquidity, the adequacy of the Debtor's capital contributions, or the Debtor's relative level of capitalization from January 1, 2018 through and including the Petition Date.

4. All Documents memorializing or reflecting any attempt by the Debtor or any entity controlled by the Prepetition Lender to obtain financing from a source other than the Prepetition Lender and the terms of any financing offered by a source other than the Prepetition Lender, from and after January 1, 2018, through and including the Petition Date, considered by the Debtor before or in connection with obtaining funds from the Prepetition Lender.

5. All Documents and Information related to any financing provided to the Debtor by a shareholder other than the Prepetition Lender from and after January 1, 2018 through and including the Petition Date.

6. All Documents regarding the corporate authority of the Debtor to incur debt with the Prepetition Lender (or any one of Mr. Lewis or the Trusts), including but not limited to, corporate resolutions, minutes of the board of directors, and articles of incorporation.

7. All Documents and Information which formed the basis for any decision by the Debtor to treat any advance of funds from the Prepetition Lender (or any one of Mr. Lewis or the Trusts) as debt rather than equity.

8. All Documents and Information related to the use of any financing obtained by the Debtor from the Prepetition Lender (or any one of Mr. Lewis or the Trusts) from and after January 1, 2018 through and including the Petition Date.

9. All Documents and Information supporting the Prepetition Lender's purported secured claim against the Debtor, including, but not limited to:

    a. Promissory notes, security agreements, borrowing agreements, mortgages, guaranties and other documents referenced in the *Debtor's Motion for Authority to Sell Substantially All Assets, Including Certain Executory*

Contracts and Personally Identifiable Information of Customers, Pursuant o Sections 363 and 365 of the Bankruptcy Code, Free and Clear of Liens, Claims and Interests [Docket No. 3] (the "Sale Motion");

b. To the extent not included in the preceding request, any and all promissory notes, security agreements, borrowing agreements, mortgages, guaranties and other documents memorializing any debt obligation of the Debtor to the Prepetition Lender (either singly or jointly); and

c. With respect to the one year period prior to June 29, 2023 (the "Petition Date"), account statements, journal entries, or other documents memorializing or reflecting amounts allegedly owed by the Debtor to the Prepetition Lender as well as transfers to, or pay downs of, the Prepetition Lender's purported claim.

10. All Documents and Information evidencing liens that the Prepetition Lender alleges that it has in and to the Debtor's assets prior to the Petition Date, including, but not limited to:

a. Any and all Uniform Commercial Code Financing Statements;

b. Any and all security agreements to the extent not previously produced in response to Question 1 above; and

c. Any and all recorded mortgages.

11. All Documents and Information which formed the basis for the Debtor's stipulations in the proposed order filed with the *Debtor's Motion for Interim and Final Orders Authorizing Secured Financing Pursuant to 11 U.S.C. § 364(d) and Use of Cash Collateral, and Related Relief* [Docket No. 7] (the "Cash Collateral Motion") regarding claims that the Debtor may have against the Prepetition Lender (or any one of Mr. Lewis or the Trusts), the amount of any claim the Prepetition Lender held as of the Petition Date, and any security interests allegedly perfecting any such claim against the Debtor.

12. All Documents and Information related to any guaranty of any party of obligations of the Debtor, including, but not limited to, whether such guarantees are secured by any non-debtor collateral.

13. All Documents and Information relied upon by the Debtor in connection with the Sale Motion.

14. All Documents and Information related to the purported marketing process referenced in the Sale Motion.

15. A list of all parties that the Debtors or its professionals have contacted regarding the purported sale of the Debtor's assets.

16. A copy of any policy of the Debtor regarding the ownership of e-mail sent from an e-mail account at the Debtor's domain (*i.e.* @vantagetravel.com or any other domain owned or used by the Debtor) or electronic information of individual employees stored or maintained on property of the Debtor.

17. All Documents and Information evidencing, memorializing, or reflecting transfers of property or funds to the Prepetition Lender (or any one of Mr. Lewis or the Trusts) from and after January 1, 2018, through and including the Petition Date.

18. All corporate tax returns of the Debtor for the Debtor's tax years from and after January 1, 2018, including any Schedule K-1.

19. To the extent that the Debtor files tax returns as part of a consolidated group or is a disregarded entity for tax purposes with tax liability contained in the tax return of another entity or person, then a copy of such tax returns from and after January 1, 2018, including any Schedule K-1.

20. All financial statements of the Debtor from January 1, 2018, through and including the Petition Date, whether such financial statements were subject to review, audit, or internal documents.

21. A list of all deposit accounts maintained by the Debtor for the time period of January 1, 2018, through and including the Petition Date (the "Bank Accounts") with such list indicating the name of the financial institution where the account is maintained, the title information for such account, the account number, and the balance as of the petition date.

22. A copy of any deposit account control agreement with respect to any of the Bank Accounts.

23. Copies of bank statements for each of the Bank Accounts for the time period of January 1, 2018, through and including the Petition Date. If such information is also available in an Excel or .csv file, then please produce the same (even if you are required to download such information from the applicable financial institution and have not already done so).

24. A complete and unredacted organizational chart identifying all companies or business interests of the Prepetition Lender (or any one of Mr. Lewis or the Trusts).

25. Documents and Information evidencing, memorializing, summarizing, or reflecting transfers in which the Debtor is transferee and the transferor is a company or person on the organizational chart referred to in the immediately preceding request or, if no such chart exists, then that are affiliates of the Debtor or the Prepetition Lender

(or any one of Mr. Lewis or the Trusts) (as the term "affiliate" is used in section 101 of title 11 of the United States Code (the "Bankruptcy Code").

26. Documents and Information evidencing, memorializing, summarizing, or reflecting transfers in which the Debtor is transferor and the transferee is a company or person on the organizational chart referred to in the immediately preceding request or, if no such chart exists, then that are affiliates of the Debtor or the Prepetition Lender (or any one of Mr. Lewis or the Trusts).

27. Documents and Information that the Debtor asserts memorialize or evidence that funds held in the Debtor's deposit account with JP Morgan Chase Bank (formerly First Republic Bank), Account No. ending in 7629, having a Petition Date balance in the amount of $2,119,139.81 and disclosed in the Debtor's Statement of Financial Affairs filed on July 21, 2023 [Dkt. No. 109, p. 140, item #21] (the "Customer Funds") are not property of the Debtor's estate. Without limiting the generality of the foregoing, this request seeks any Documents and Information that the Debtor contends demonstrate or reflect that Customer Funds are impressed with a trust or held for the power of a person other than the Debtor.

28. Documents and Information regarding the use and disposition of all Customer Funds deposited with the Debtor.

29. Documents and Information regarding the amount of all claims for deposits, refunds and travel protection coverage made by customers of the Debtor.

30. Documents and Information regarding any analysis or decision to segregate or to not segregate any and all Customer Funds and the reasons for doing so.

31. Documents and Information in the possession, custody, or control of the Debtor identifying any claims or potential claims against the Prepetition Lender (or any one of Mr. Lewis or the Trusts) or any other officer of the Debtor.

32. Any Documents and Information related to evaluation of risk (including financial risk to the Debtor) with respect to the decision to obtain any vessel or charter a vessel for use in the Debtor's business operations including, without limitation, vessels known as Ocean Explorer and Ocean Odyssey.

33. Documents and Information evidencing the Henry R. Lewis 1998 Irrevocable Trust and the Henry R. Lewis Trust u/d/t dated November 24, 2004 (collectively, the "Trusts").

34. Documents and Information evidencing the transfer of stock in the Debtor to the Trusts and any consideration provided for such transfers.

35. Documents and Information evidencing payments or transfers of any kind from the Debtor to Mr. Lewis or any entity under his control, his family members,

beneficiaries of the Trusts, or the Trusts from and after January 1, 2018, through and including the Petition Date.

36. Copies of any director's and officer's liability insurance policy providing indemnification to any officer or director of the Debtor.

37. Documents and Information related to all travel protection plans, insurance policies or other trip cancellation coverage offered by the Debtor, including but not limited to the underwriter for any insurance products offered by the Debtor.

38. Documents and Information related to the Prepetition Lender's (or any one of Mr. Lewis or the Trusts) involvement in the Debtor's decision to postpone or reschedule customer tours that could not be fulfilled in lieu of paying requested refunds, including but not limited to all related communications sent by or on behalf of the Prepetition Lender.

39. Documents and Information related to the Prepetition Lender's (or any one of Mr. Lewis or the Trusts) involvement in the Debtor's decision to continue marketing a "Risk-Free Cancellation Policy" during 2020 through and including the Petition Date.

40. Documents and Information related to all Paycheck Protection Program ("PPP") or other financial relief obtained by the Debtor in connection with the COVID-19 pandemic, including but not limited to the use of any such funds, and all related applications, submissions, and verifications.

The Committee expects a rolling production to begin no later than Monday September 11, 2023, and to have a complete production from the Debtor by Wednesday September 14, 2023.

The Committee explicitly reserves the right to file a motion for examination under Rule 2004 of the Federal Rules of Bankruptcy Procedure or to seek discovery in any contested matter or adversary proceeding. To the extent necessary, please treat this letter as a formal request for discovery under Rule 34 of the Federal Rules of Civil Procedure, which is applicable to a contested matter pursuant to Rule 9014(c) of the Federal Rules of Bankruptcy Procedure. Notwithstanding this, I understand that you have agreed to cooperate in good faith with respect to production of Documents and Information and to provide prompt responses to facilitate the Committee's investigation.

The Committee and its professionals understand that the Debtor and its professionals have a tremendous amount of work ahead of them in the Chapter 11 Case. I am very happy to have a call with you and a representative of the Debtor to discuss these requests for information and how to most efficiently handle them.

Sincerely,



Andrew C. Helman

EXHIBIT B

Team



Soneet R. Kapila

CPA, CIRA, CFE, CFF

Email
kapila@kapilamukamal.com (mailto:kapila@kapilamukamal.com)
Direct
954-712-3201

Soneet R. Kapila, of East Indian origin, born in Kenya, Africa, is a founding partner of KapilaMukamal, LLP (formerly Kapila & Company). For over twenty-five years, he has concentrated his efforts in the areas of consulting in insolvency, fiduciary and creditors' rights matters. Recognized for his acumen as a "business man," he has been appointed in Federal District Court, Bankruptcy Court and Florida State Court and served in the roles of Chief Restructuring Officer, S.E.C. Corporate Monitor, Examiner, Chapter 11 Trustee of Operating Businesses, Liquidating Trustee and Receiver, among others.

Professional Experience

Mr. Kapila's practice is focused on restructuring, creditors' rights, bankruptcy, fiduciary matters and financial transactions litigation. He represents other bankruptcy trustees, debtors and both secured and unsecured

creditors in and out of bankruptcy court. He also regularly advises clients about the insolvency implications involved in business transactions and operation of distressed businesses. As a Trustee plaintiff, Mr. Kapila has managed complex litigation in significant cases.

As a fiduciary, he has advised and represented debtors and creditors' committees in formulating, analyzing and negotiating plans of reorganization. Recognized as an expert in fraudulent conveyance, Ponzi Schemes and insolvency issues, Mr. Kapila has provided expert testimony and extensive litigation support services to law firms involving complex insolvency issues and commercial damages. He is a sitting trustee on the panel of U.S. Bankruptcy Trustees (Southern District of Florida) and has served in numerous matters in both the Southern and Middle Districts of Florida as a Chapter 7, Chapter 11 and Sub-chapter V Trustee.

He has conducted numerous forensic and fraud investigations, and has worked with the Securities and Exchange Commission (SEC), the Federal Bureau of Investigation (FBI) and the United States Attorney's Office.

***CIVIC, VOLUNTEER AND PHILANTHROPIC* (Past & Present)**

The Kapila Family Foundation, *Director*

Nova Southeastern University – Kapila Family Starting Right Program, Mailman Segal Center (NSU-MSC) [*Benefitting Autistic Children*]; Kapila Family Foundation Feeding Disorders Clinic and the Kapila Family Foundation Challenging Behaviors Clinic.

The University of Miami – Kapila Family Foundation Student Award, Kapila Family Foundation Scholarship Fund and the Kapila Family Foundation Program Fund [*supporting the Kapila Duberstein Miami Law Moot Court Team and UM law students.]*

Nova Southeastern University Art Museum Fort Lauderdale [*supporting art for children]*

Broward Performing Arts Foundation [*benefiting Encore! Building Community through the Arts capital campaign and Campaign for the Parker}*

Stetson University – The Kapila Family Foundation Scholarship Fund

American Bankruptcy Institute

President (2023-2024)

President-Elect (2022-2023)

Management Committee (2021-2023)

Treasurer (2020-2022)

Member of the Executive Committee (2019)

Member of the Board of Directors (2016)

Southeast Regional Conference:

Co-Chair of Advisory Board (2016)

Advisory Board (2012-2017) and Co-chair (2015)

Caribbean Insolvency Symposium:

Advisory Board (2010-2014)

Co-Chair (2015)

Association of Insolvency & Restructuring Advisors

Past-Chairman and past-President

Board of Directors

Other:

Lecturer to various groups on insolvency and litigation related topics, including insolvency taxation

Member of the Grievances Committee of The Florida Bar

Member of the American Arbitration Association's Panel of Arbitrators

Member of the Board of Directors, Hialeah-Miami Springs-NW Dade Chamber of Commerce

Chairman – Litigation Support Services Committee of the National Training and Experience Sharing Program of The American Group of CPA Firms

Practice Review Committee – FICPA

Bankers Cooperation Committee – Connecticut Society of CPA's

REPRESENTATIVE MATTERS

Laser Spine Institute, et al – *Assignee*

Global Asset Rental, LLC – *CRO, Liquidating Trustee*

FF Fund 1, LLC – *Cro, Liquidating Trustee*

City of Detroit, Michigan – *Financial Advisors to Fee Examiner*

SMF Energy Corporation – *CRO, Liquidating Trustee*

Fontainebleau Las Vegas, LLC – *Chapter 7 Trustee*

Universal Health Care Group, LLC/American Managed Care, Inc.-*Ch. 11/Liq. Trustee*

Simply Fashion Stores, LLC – *Chief Restructuring Officer*

Spear & Jackson, Inc. – *Corporate Monitor – SEC Appointment*

Miami Neurological Institute, LLC – *Chapter 11/Chapter 7 Trustee*

Louis J. Pearlman / TransContinental Airlines, et al – *Chapter 11 / Liquidating Trustee*

Levitt Homes – *Chief Administrator*

Planet Hollywood International, Inc. – *Examiner*

Banco Latino International – *Financial Consultants to Official Committee Unsecured Creditors*

Southeast Bank Corp – *Financial Advisors to Chapter 7 Trustee*

SEC v. Christopher Freeman Brogdon – *Corporate Monitor – SEC Appointment*

(http://www.kapilamukamal.com/wp-content/uploads/2017/07/Testimonials_Page_01.tif)

Accomplishments

President, American Bankruptcy Institute (2023)

Fellow, American College of BAnkruptcy (2013)

Association of Insolvency and Restructuring Advisors – Distinguished Fellow (Class of 2022)

Top CPA's and Litigation Support Professionals, South Florida Legal Guide (multiple years)

Power Leaders in Law and Accounting – South Florida Business Journal (2015, 2014)

Best Trustee, Daily Business Review's Best of 2012

Key Partners Award Honoree – South Florida Business Journal (2010)

Bronze Award/Medal – 3rd highest score, examination of the Association of Insolvency & Restructuring Advisors (1996)

Education / Qualifications

Certified Public Accountant (CPA) – Florida

Certified Insolvency & Restructuring Advisor (CIRA)

Certified Fraud Examiner (CFE)

Certified in Financial Forensics (CFF)

Certified in Bankruptcy Mediation – Training – St. John's University (2014)

MBA, Cranfield School of Management Studies, England (1978)

Institute of Chartered Accountants in England and Wales

Professional Affiliations

American Institute of Certified Public Accountants

Florida Institute of Certified Public Accountants

Association of Insolvency & Restructuring Advisors

Association of Certified Fraud Examiners

American Bankruptcy Institute

National Association of Bankruptcy Trustees

National Association of Federal Equity Receivers

Speaking Engagements

American Bankruptcy Institute

American Bar Association

American College of Bankruptcy

Association of Insolvency & Restructuring Advisors

Bankruptcy Bar Association for the Southern District of Florida

Central Florida Bankruptcy Law Association

Florida Bankruptcy Bar

Florida Institute of Certified Public Accountants

Florida International University, School of Law

National Association of Bankruptcy Trustees

National Bankruptcy Conference

National Business Institute

National Conference of Bankruptcy Judges

New York Law School

St. Thomas University Law School

Stetson College of Law, Insolvency Symposium – Germany

Southeastern Bankruptcy Law Forum

Turnaround Management Association

University of Miami, School of Law

Publications

"New Receivership Act Streamlines Receiver's Role for Lenders, Other Stakeholders" – Daily Business Review – September 2020

"*Eye of the Evaluator – The Role of Contingent Liabilities in an Insolvency Analysis"* – American Bankruptcy Institute Journal – April 2018

"Best Practices in the Treasury Functions of a Chapter 7 Trustee's Office" – American Bankruptcy Trustee Journal (NAB) – Fall, 2015

"*Fraud and Forensics: Piercing Through The Deception In A Commercial Fraud Case*" – American Bankruptcy Institute – 2015

"*Ponzi Schemes: Fiduciaries May Be The Saving Grace"*, ABI Journal (2014)

"*A Health Care Fraud and Bankruptcy Primer*", southern District of Florida Bankruptcy Bar Association Journal (2014)

"Hidden Resources in a Small Business"

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