

1                   **SECOND AMENDED JOINT STIPULATION & SETTLEMENT AGREEMENT**

2                   This Second Amended Joint Stipulation & Settlement Agreement (“Settlement  
3 Agreement”) is made and entered into by and between Plaintiffs Arnold Applebaum, Konstantine  
4 Shechter, and Svetlana Averbukh (hereinafter collectively referred to as the “State Court  
5 Plaintiffs”) individually and on behalf of the putative classes they represent, and Thomas Hebrank,  
6 (“the Receiver”), the court appointed Permanent Receiver for the PWCG Trust (the “Trust”), (the  
7 State Court Plaintiffs and the Receiver are sometimes collectively referred to as the “Plaintiffs”),  
8 on the one hand, and Defendant Mills Potoczak & Company (“Defendant”), on the other hand.  
9 Plaintiffs and Defendant hereinafter collectively referred to as the “Parties”.

10   **RECITALS**

11                   A.       The Trust purchased life insurance policies from the insured owners of the policies  
12 (“Policies), in transactions referred to as “Life Settlements”. The Trust and Pacific West Capital  
13 Group, Inc. (“PWCG”) sold fractional interests in the Policies to investors (“Investors”), who put  
14 up the funds to purchase the Policies and fund premium reserves. PWCG determined the amount  
15 of reserves that would be maintained to pay premiums on the Policies until the death of the  
16 insureds. The Policies were held in the name of the Trust, which also held the reserves that  
17 PWCG determined would be needed to pay premiums until the death of the insured. At all  
18 relevant times, Defendant served as the trustee of the Trust.

19                   B.       On April 7, 2015, the Securities and Exchange Commission (“SEC”) filed a  
20 Complaint in the Federal District Court for the Central District of the State of California, (the  
21 “District Court”), Case No. 2:15-cv-02563, against PWCG, Andrew Calhoun and other officers  
22 and salespersons affiliated with PWCG, and the Trust alleging violation of securities laws (the  
23 “SEC Action”).

24                   C.       On May 23, 2016, Plaintiffs Konstantin Shechter, individually and as the co-trustee  
25 of the Shechter Family Trust, and Svetlana Averbukh filed a Class Action Complaint in the  
26 Complex Litigation Department of the Los Angeles County Superior Court, Case No. BC 621512,  
27 (“Superior Court”) against Defendants PWCG, Andrew Calhoun, and Mills Potoczak & Company  
28 PC (“Defendant MPC”) as trustee of the PWCG Trust, on behalf of themselves individually and

1 all other investors with fractional interests in the Policies sold by PWGC, with causes of action for  
2 Negligence, Breach of Contract, Violation of Corporate Securities Code, Intentional Fraud,  
3 Conspiring to Commit And Aiding and Abetting , Breach of Fiduciary Duty, Financial Elder  
4 Abuse, and Violation of Business and Professions Code § 17200 et seq. (the “Shechter Case”).

5 D. On March 17, 2017, Plaintiff Arnold Applebaum filed a Class Action Complaint  
6 with the Los Angeles County Superior Court, Case No. BC 652409, against Defendants PWCG,  
7 Andrew Calhoun and Defendant MPC for Violation of California Corporations Code §§ 25401,  
8 25504 and 25504.1 (the “Applebaum Case”). The Shechter Case and the Applebaum Case were  
9 deemed “related” with the Shechter Case designated as the lead case. The Applebaum Case was  
10 stayed pending the outcome of the Shechter Case.

11 E. On February 16, 2018, the District Court in the SEC Action entered the Judgment  
12 as to Defendant PWCG Trust [Dkt. 145], appointing the Receiver and, among other things, staying  
13 all cases against the Trust, including but not limited to, the Shechter Case and the Applebaum  
14 Case.

15 F. On September 3, 2020, the Receiver filed a complaint in the District Court against  
16 Defendant MPC for Breach of Fiduciary Duty and Negligence, Case No. 2:20-cv-8097 (the  
17 “Receiver Case”).

18 G. On November 9, 2020, Receiver entered into an agreement with the State Court  
19 Plaintiffs entitled Agreement For Joint Prosecution With Regard to Claims Against Mills Potoczak  
20 & Company (“Joint Prosecution Agreement”). In the Joint Prosecution Agreement, the Receiver  
21 and State Court Plaintiffs agreed to, among other things, lift the litigation stay and submit a Joint  
22 Settlement Demand to Defendant MPC and its insurers.

23 H. Through discovery, Plaintiffs determined that the Defendant MPC had insurance  
24 policies which may have covered MPC totaling \$10 Million. On February 19, 2021, the Plaintiffs  
25 served a Joint Policy Limits Demand on MPC for a payment of \$10 million. There was no  
26 response to Plaintiffs’ initial Joint Policy Limits Demand.

27 I. MPC was involved in a coverage dispute with three of its insurance carriers, the  
28 primary insurance carrier for MPC for the policy period of January 21, 2015 to January 21, 2016

1 and the primary insurance carrier for MPC for the policy period of January 21, 2016 to January 21,  
2 2017 with policy limits of \$5,000,000 under each of those respective policies, and the excess  
3 insurance carrier for MPC over both of the primary policies, which held excess policies of  
4 \$5,000,000 per policy period.

5 J. On January 13, 2022, Defendant and the Plaintiffs attended a full day mediation  
6 with Justice Raymond Ikola (Ret.). Representatives of certain of MPC's insurance carriers  
7 participated at that Mediation. The mediation on January 13, 2022 was not successful in reaching  
8 a settlement.

9 K. On January 14, 2022, the Plaintiffs submitted a second Joint Policy Limits Demand  
10 to MPC in the amount of \$10 Million.

11 L. Prior to the expiration of the second Joint Policy Limits Demand, MPC agreed to  
12 cause the sum of \$9,750,000 to be paid to Plaintiffs by payment from its insurers. The Receiver  
13 and the State Court Plaintiffs agreed to accept the \$9,750,000 payment (the "Settlement  
14 Proceeds"), in full settlement of all claims of the Receiver and the State Court Plaintiffs against  
15 MPC.

16 M. The Settlement Proceeds will be administered by the Receiver and distributed to  
17 Settlement Class Members in accordance with the Order For Approval of the Procedures for the  
18 Administration of Claims Against the Receivership Estate ("Claims Administration Order") [Doc  
19 294], and Order (1) Approving Receiver's Recommendations Regarding Allowed Claims;(2)  
20 Approving Recommendations Regarding Disputed and Disallowed Claims; (3) Approving  
21 Distribution Plan; and (4) Authorizing Interim Distribution ("Claims Allowance and Distribution  
22 Plan Order") [Doc 393], which orders were entered by the District Court in the receivership  
23 proceedings as part of the SEC Action. Those Class Members whose claims were disallowed or  
24 subordinated by the District Court will not receive a distribution from the Settlement Proceeds.

### 25 DEFINITIONS

26 1. "Actions" shall mean, collectively, the Shechter Case, the Applebaum Case, and  
27 the Receiver Case.

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1           2.       “Class Counsel” shall mean Thomas G. Foley of Foley Bezek Behle & Curtis, LLC  
2 and Richard E. Donahoo of Donahoo & Associates, P.C.

3           3.       “Class Members” shall mean all individuals that (a) invested in Life Settlements  
4 sold by PWCG during the Class Period or (b) were or are a Claimant as that term is defined in the  
5 Distribution Plan of Receiver Thomas Hebrank approved by the District Court in the SEC Action,  
6 Dkt. 375-2, 393.

7           4.       “Class Period” shall be the time period from January 1, 2012 through February 18,  
8 2018 (the “Class Period”).

9           5.       “Class Representatives” shall mean Plaintiffs Konstantin Shechter, Svetlana  
10 Averbukh and Arnold Applebaum.

11          6.       “District Court” shall mean the Federal District Court for the Central District of  
12 California. “State Court” shall mean the Superior Court of the State of California for the County  
13 of Los Angeles.

14          7.       “Court’s Final Order and Judgment” means the Final Order Approving Class  
15 Action and Judgment in a form to be agreed upon by the Parties and approved by the State Court.

16          8.       “Defendant’s Counsel” shall mean collectively, Dennis Kelly and James Roosa.

17          9.       “Effective Date” shall have the meaning ascribed to it in Paragraph 22, below.

18          10.       “Final Approval Hearing” shall mean the hearing whereat the State Court shall  
19 consider, without limitations, any objections to the Settlement from Settlement Class Members,  
20 testimony from the Parties or their counsel, and/or declarations regarding the claims process from  
21 the Receiver, and otherwise make a final determination regarding the fairness of the Settlement as  
22 set forth herein. The Receiver shall separately file a motion with the District Court requesting  
23 approval of the Settlement.

24          11.       “Gross Settlement Amount” or “Settlement Proceeds” means Nine Million Seven  
25 Hundred and Fifty Thousand Dollars (\$9,750,000.00), which is the maximum amount that  
26 Defendant will pay pursuant to this Settlement.

27          12.       “Incentive Award” shall mean the payment made to Plaintiffs in their capacities as  
28 Class Representatives, which sum is over and above their Individual Settlement Payment.

1           13.    “Individual Settlement Payment” will be the portion of the Net Settlement Amount  
2 payable to a Settlement Class Member.

3           14.    “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 27,  
4 below.

5           15.    “Notice of Proposed Settlement” or “Notice” means the Notice of Pendency of  
6 Class Action in substantially the form attached hereto as Exhibit A, and as approved by the State  
7 Court.

8           16.    “Parties” shall refer to the Plaintiffs and Defendant MPC, each of whom is a  
9 “Party.” As set forth in Paragraph 43 below, under the terms of this Settlement Agreement both  
10 sides are releasing claims against one another. The Releasing Parties in this Settlement  
11 Agreement are Plaintiffs, Defendant Mills Potoczak & Company (“Defendant MPC”), Settlement  
12 Class Members and Class Representatives (collectively “Releasing Parties”). are Releasing  
13 Parties and their employees, officers, directors, agents, attorneys, assigns, heirs, representatives,  
14 agents, successors, MPC’s participating insurance companies Landmark Insurance Company, and  
15 Westchester Surplus Lines Insurance Company. (“collectively hereinafter Released Parties”).

16           “Receiver” shall mean Thomas Hebrank in his capacity as Court-appointed permanent  
17 receiver for PWCG Trust.

18           17.    “Settlement” or “Settlement Agreement” shall mean this Second Amended  
19 Settlement Agreement.

20           18.    “Settlement Class” shall mean all individuals that (a) invested in Life Settlements  
21 sold by PWCG during the Class Period or (b) were or are a Claimant as that term is defined in the  
22 Distribution Plan of Receiver Thomas Hebrank approved by the District Court in the SEC Action,  
23 Dkt. 375-2, 393, and who did not opt-out of the Settlement by submitting a valid request for  
24 exclusion as described in Paragraph.

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27           19.    “Settlement Class Members” shall mean the individual Class Members who did not  
28 opt-out of the Settlement by submitting a valid request for exclusion as described in Paragraph 35.

1 **TERMS OF SETTLEMENT**

2 20. In consideration of the mutual covenants, promises and agreements set forth herein,  
3 the Parties agree, subject to the approval by the District Court for the Receiver Action and the  
4 Superior Court for the State Court Actions, on the terms set forth herein.

5 21. It is agreed by and between Plaintiffs and Defendant that the Actions and any  
6 claims, demands, liabilities, penalties, damages or causes of action of any kind whatsoever  
7 claimed by the Receiver, on behalf of the receivership entities and by the State Court Plaintiffs for  
8 themselves and the putative class members arising out of the disputes and claims which are the  
9 subject of the State Court Actions, be settled and compromised, and released pursuant to the terms  
10 and conditions set forth in this Settlement Agreement, subject to approval of the Settlement by the  
11 District Court for the Receivership and the Superior Court for the State Court Actions.

12 22. Effective Date: The Settlement embodied in this Settlement Agreement shall  
13 become effective on the date when the last of the following events have occurred (“Effective  
14 Date”): (i) this Settlement Agreement has been executed by Plaintiffs Receiver, Konstantin  
15 Shechter, Svetlana Averbukh, Arnold Applebaum, Defendant MPC, Receiver’s Counsel, Class  
16 Counsel and Defendant’s Counsel; (ii) the District Court has entered an order approving the  
17 Settlement (“District Court Order”); (iii) the State Court has given Preliminary Approval to the  
18 Settlement (“Preliminary Approval Order”); (iv) Notice of the proposed Settlement has been sent  
19 to the Class Members in the manner ordered by the State Court, providing Class Members the  
20 opportunity to object to the Settlement, and the opportunity to opt out of the Settlement as required  
21 by law; (v) the State Court has held a formal fairness hearing, entered an order giving Final  
22 Approval to the Settlement, and entered the Superior Court’s Final Order and Judgment (“State  
23 Court Order”); and (vi) the later of the following events: (A) when the period for filing any  
24 appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any appeal,  
25 writ or other appellate proceeding having been filed; (B) when any appeal, writ or other appellate  
26 proceeding opposing the Settlement has been dismissed finally and conclusively with no right to  
27 pursue further remedies or relief; or (C) when any appeal, writ or other appellate proceeding has  
28 upheld whichever of the District Court Order and the State Court Order that was contested in the

1 appeal, with no right to pursue further remedies or relief. All negotiations, statements and  
2 proceedings and data relating thereto shall be protected by California Evidence Code §1152 and  
3 shall be without prejudice to the rights of any of the Parties.

4       23.     Gross Settlement Amount: To implement the terms of this Settlement, Defendant  
5 agrees to pay or cause to be paid the Gross Settlement Amount. Defendant shall not be required to  
6 pay any additional monies beyond the amount of the Gross Settlement Amount. Further, no  
7 portion of the Gross Settlement Amount shall revert to Defendant, except as provided by  
8 paragraph 37 and 50 below. Class Members are not required to submit a claim in order to receive  
9 compensation under this Agreement.

10       24.     Funding of Settlement Amount: Within twenty (20) calendar days after the later of  
11 the date on which the District Court enters the District Court Order and the date on which the State  
12 Court enters the State Court Order, Defendant shall transfer or cause to be transferred to the  
13 Receiver an amount equal to the Gross Settlement Amount. The delivery of the Gross Settlement  
14 Amount to the Receiver shall constitute full and complete discharge of the entire obligation of  
15 Defendant under this Settlement Agreement. The delivery of the Gross Settlement Amount to the  
16 Receiver shall constitute full and complete discharge of the entire obligation of Defendant MPC  
17 under this Settlement Agreement. Subject to paragraphs 37 and 50 below, once Defendant MPC  
18 has made or caused to be made such transfers as set forth in this paragraph 24, it will be deemed to  
19 have satisfied all terms and conditions under this Settlement, shall be entitled to all protections  
20 afforded to Released Parties under this Settlement, and shall have no further obligations under the  
21 terms of this Settlement Agreement regardless of what occurs with respect to those sums.

22       25.     The Gross Settlement Amount will be funded 100% by Defendant's insurers.  
23 Defendant MPC represents that its insurers have executed agreements requiring them to pay the  
24 Gross Settlement Amount as set forth in this Agreement.

25       26.     If Defendants' insurers do not timely pay the Gross Settlement Amount as set forth  
26 in this Agreement, Plaintiffs will have no right of action or claim against Defendant MPC for  
27 payment of the Gross Settlement Amount, provided that Defendant (i) does not release any of its  
28 primary or excess insurers until their portion of the Gross Settlement Amount is paid to the

1 Receiver, (ii) undertakes all reasonable efforts to effectuate payment by such insurer(s), and (iii)  
2 cooperates with Plaintiffs in obtaining payment.

3         27.     Calculation of Net Settlement Amount and Distribution: Subject to approval by the  
4 District Court, approval by the State Court and the conditions specified in this Agreement, and in  
5 consideration of the mutual covenants and promises set forth herein, the Parties agree that the Net  
6 Settlement Amount shall be calculated by reducing the Gross Settlement Amount (\$9,750,000) by  
7 the State Court Plaintiffs' Incentive Awards (\$10,000 to each of the named Class Representatives  
8 for a total of \$30,000) and Class Counsel's fees and expenses approved by both the District Court  
9 and the State Court (the amount proposed to be paid to Class Counsel for both their attorneys' fees  
10 and costs is \$1,462,500), with no other deductions (the "Net Settlement Amount"). The Receiver  
11 reserves the right to request the District Court to reimburse the Receiver for the costs of mailing  
12 Notices from the receivership estate, which would not affect the Net Settlement Amount. Neither  
13 the Receiver nor his counsel will request payment from the Gross Settlement Amount, but the  
14 Receiver reserves the right to request payment from the District Court for his fees and costs and  
15 his counsel's attorneys' fees and costs from the receivership estate, which will not affect the Net  
16 Settlement. The Net Settlement Amount (\$8,257,500) shall be distributed as follows.

17             a.         Within thirty (30) days of the Effective Date, the Net Settlement Amount  
18 shall be distributed by the Receiver among the Settlement Class Members in accordance  
19 with the Claims Allowance Motion and Distribution Plan approved by the District Court in  
20 the SEC Action, Dkt. 375-1, 375-2, 393. The Receiver's Claims Allowance Motion,  
21 Distribution Plan and Approval Order shall collectively be defined as the "Claims  
22 Allowance and Distribution Plan Order." The Claims Allowance and Distribution Plan  
23 Order provides for a pro rata distribution of funds. The percentages for such pro rata  
24 distribution were determined by identifying the amount each Class Member invested in  
25 PWCG Trust and deducting any amounts paid by the PWCG Trust to such Class Member  
26 pre-receivership (resulting in that Class Member's "Allowed Amount"), then comparing  
27 each Class Member's Allowed Amount to the total amount of all Class Members' Allowed  
28 Amounts. Each Class Member's pro rata percentage, as well as the estimated payment to



1 such Class Member from the Net Settlement Amount, is set forth on Exhibit A attached  
2 hereto. <sup>1</sup> No new claims need to be submitted by Class Members in order to obtain  
3 compensation under this settlement.

4 b. Any disputes regarding payments to Settlement Class Members that cannot  
5 be resolved by the Receiver, Class Counsel and Defendant's Counsel may be brought  
6 before the State Court pursuant to sections 38-40 below.

7 c. Notwithstanding provisions in the Distribution Plan stating a shorter  
8 timeframe, any funds from uncashed checks distributed from the Net Settlement Amount  
9 not cashed within one-hundred eighty (180) days from the date of issuance of the check to  
10 a Settlement Class Member shall be directed to the Controller of the State of California to  
11 be held in Settlement Class Members' names pursuant to California's Unclaimed Property  
12 Law.

13 28. Subject to the approval of the District Court and the State Court, Class Counsel in  
14 the State Court Actions shall request attorneys' fees and costs which collectively shall not exceed  
15 thirty percent (30%) of one half (50%) the Gross Settlement Amount, which is estimated to be  
16 \$1,462,500. Defendant MPC agrees not to object to Class Counsel's application for attorneys'  
17 fees and costs in these amounts. The amount set forth above will cover all work performed and all  
18 fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred  
19 in the future in connection with the approval by the District Court and the State Court of this  
20 Settlement Agreement, and the administration of the Settlement. Should the District Court or the  
21 State Court approve a lesser amount of attorneys' fees and/or attorneys' costs, the difference  
22 between the lesser amount and the maximum amount set forth above shall be added back into the  
23 Net Settlement Amount. No Class Counsel shall be entitled to further fees or costs from  
24 Defendant MPC if it or they elect to appeal any reduction in the requested fee or cost award. Any  
25

26 \_\_\_\_\_  
27 <sup>1</sup> To the extent there are Class Members with claims in the receivership who opt out of this  
28 Settlement, those Class Members will be removed from the Receiver's pro rata methodology and  
will not receive a pro rata distribution of the Net Settlement Funds. The distribution percentage,  
and estimated payment amount for each participating Settlement Class Member will be adjusted  
accordingly, as necessary.

1 reduction by the Federal Court or the State Court of Class Counsel’s requested attorneys’ fees  
2 and/or reasonable costs/expenses shall not be sufficient grounds to void the Settlement. Defendant  
3 shall bear its own attorney’s fees and costs.

4 29. Class Representatives’ Incentive Award: Subject to the State Court’s approval, the  
5 Class Representatives will each be paid an Incentive Award in an amount up to a maximum of Ten  
6 Thousand Dollars (\$10,000.00) in recognition for their service as a Class Representatives, which  
7 shall be paid from the Gross Settlement Amount. Defendant MPC will not object to Class  
8 Counsel’s application for Court approval of an Incentive Award to the Class Representatives in  
9 the amount of Ten Thousand Dollars (\$10,000.00) each. It is understood that the Incentive Award  
10 is in addition to any claimed Individual Settlement Payment to which Plaintiff Class  
11 Representatives are entitled. The Incentive Awards will be reported by the Receiver on an IRS  
12 Form 1099-Misc., if applicable.

13 **NOTICE TO THE SETTLEMENT CLASS**

14 30. The Receiver has in his possession certain records of the PWCG Trust and  
15 Defendant MPC, which records contain the full name, and last known address of Class Members  
16 as reflected in the books and records of the PWCG Trust, the books and records of Defendant  
17 MPC as former trustee of the former PWCG Trust and information obtained through the claims  
18 administration process reflected in the District Court’s Claims Administration Order.

19 31. Only Settlement Class Members will be eligible to receive a payment from the Net  
20 Settlement Amount. . For avoidance of doubt, the Net Settlement Amount will be deposited with  
21 the Receiver as set forth in Paragraph 24 and thereafter distributed as set forth in Paragraph 27.a  
22 (subject to adjustments per footnote 1) within thirty (30) days of the Effective Date.

23 32. The Receiver shall, within twenty (20) days of preliminary approval of the  
24 Settlement by the State Court, provide a Notice of the Settlement to the Class Members (“Notice”)  
25 by first class mail to the last known address of the Class Member as set forth in the information in  
26 the possession of the Receiver. The Notice shall provide an individualized estimated payment to  
27 each Class Member, as well as information regarding procedures to dispute those proposed  
28 payments. The Notice will advise Settlement Class Members that they can receive a copy of the

1 Second Amended Settlement Agreement and Notice in Spanish by contacting the Receiver, which  
2 will include a phone number to contact the Receiver. The Receiver's website will have posted on  
3 it a copy of the Second Amended Settlement Agreement and Notice in Spanish. Prior to the initial  
4 mailing the Receiver shall conduct a National Change of Address search using the National  
5 Change of Address Registry on all Class Members before mailing the Class Notice to each Class  
6 Member's address. If a mailed Notice is returned as non-deliverable but with a forwarding  
7 address, the Receiver shall resend the Notice to the forwarding address. If a mailed Notice is  
8 returned as non-deliverable with no forwarding address, the Receiver will conduct an advanced  
9 skip trace to locate the most current address of the person to whom the Notice was addressed and  
10 shall resend the Notice to any updated address within ten (10) calendar days of receiving such  
11 updated address. If the Notice is re-mailed, the Receiver will note for its own records and notify  
12 all counsel of the date and address of each such re-mailing. The time to respond to the Notice for  
13 those Class Members whose notice was re-mailed shall be extended to the date forty-five (45)  
14 days following re-mailing of the Notice. Upon completion of these steps, the Parties shall be  
15 deemed to have satisfied their obligations to provide the Notice to affected Class Members.

16 33. The Receiver shall provide to the State Court, concurrently with Plaintiffs' Motion  
17 for Final Approval, a declaration of due diligence and proof of mailing with regard to the mailing  
18 of the Notices.

19 34. The Receiver shall also be responsible for:

- 20 a. Mailing the Notice as directed by the State Court;
- 21 b. Consulting with counsel for the Parties concerning any relevant issue,  
22 including (without limitation) the form of Notice to Class Members;
- 23 c. Keeping track of timely and proper requests for exclusion by Class  
24 Members;
- 25 d. Calculation of the Individual Settlement Payments to Settlement Class  
26 Members;
- 27 e. Providing periodic status reports to counsel for the Parties, including  
28 updates as to: (a) the number of Notices mailed (including information regarding

1 undeliverable and/or emailed Notices); (b) the number of disputes received from Class  
2 Members (and sending copies of said disputes); (c) the number of objections received; and  
3 (d) the number of requests for exclusion received;

4 f. Notifying Defendant’s Counsel of the wiring instructions to fund the Gross  
5 Settlement Amount as approved by the District Court and the State Court;

6 g. Distributing and paying the Incentive Awards, fees and costs approved and  
7 authorized to Class Counsel, and distributions under the Receiver’s pro rata methodology;

8 h. Issuing tax forms; and

9 i. Such other tasks as the Parties mutually agree or the District Court or State  
10 Court orders the Receiver to perform, including responding to questions from Class  
11 Members. The Receiver shall be responsible to pay the costs of sending the Notice to Class  
12 Members but will be entitled to petition the District Court for reimbursement of those costs  
13 from the receivership estate.

14 **REQUESTS FOR EXCLUSION**

15 35. Each Class Member in the State Court Action shall have forty-five (45) calendar  
16 days from the completion of the mailing of the Notice (the “Notice Completion Date”) within  
17 which to complete and postmark a written request for exclusion, for return to the Receiver. The  
18 deadline for a Class Member whose notice was returned as undeliverable and was re-mailed shall  
19 be extended to forty-five (45) days from date of the re-mailing. The Receiver will identify the  
20 Notice Completion Date on his website which URL is \_\_\_\_\_. The  
21 request need not be in any particular form and will be considered a valid request for exclusion so  
22 long as it communicates a clear desire by the Class Member not to be included in the Settlement  
23 and/or settlement class and identifies his/her/their full name, and current address along with  
24 his/her/their signature. No requests for exclusion shall be accepted if postmarked after the forty-  
25 five (45) calendar day period for the submission of exclusion requests, or 45 days from the date of  
26 re-mailing of the Notice. Class Members are responsible to maintain a photocopy of their request  
27 for exclusion, reflecting that it was submitted in a timely manner. Any disputes regarding the  
28 timeliness of a request for exclusion or whether a written communication constitutes a valid

1 request that cannot be resolved between the Parties shall be determined by the State Court, whose  
2 determination shall be final. Plaintiffs' counsel will not represent any Class Members who opt out  
3 of the Settlement.

4 36. Any Class Member who validly excludes himself/herself/themselves from this  
5 Settlement shall not be bound by this Settlement Agreement and shall not be entitled to any  
6 portion of the Net Settlement Amount.

7 37. If ten percent (10%) or more of the Class Members opt out of the Settlement by  
8 submitting valid and timely requests for exclusion, Defendant MPC shall have the sole and  
9 absolute discretion to rescind/void the Settlement Agreement within twenty (20) days after  
10 receiving from the Receiver the final list of requests for exclusion. Defendant MPC agrees to  
11 meet and confer in good faith with Receiver's counsel and Class Counsel before rescinding or  
12 voiding the Settlement Agreement. In the event Defendant MPC elects to rescind/void the  
13 Settlement Agreement, Defendant MPC shall provide written notice of such rescission to  
14 Receiver's Counsel and Class Counsel. Such rescission shall have the same effect as a  
15 termination of the Settlement Agreement for failure to satisfy a condition of settlement, the  
16 Settlement Agreement shall become null and void and have no further force or effect, and the  
17 Gross Settlement Amount shall be returned to Defendant MPC or its designees and any insurer  
18 that has made a payment toward the Gross Settlement Amount within ten (10) business days of the  
19 date of rescission. The Parties specifically agree not to solicit exclusions by Class Members,  
20 directly or indirectly, through any means.

### 21 **OBJECTIONS TO THE SETTLEMENT**

22 38. Each Class Member shall have forty-five (45) calendar days from the Notice  
23 Completion Date, within which to postmark an objection to the Settlement or to their estimated  
24 payment (an "Objection"), for return to the Receiver. The deadline for a Class Member whose  
25 Notice was returned as undeliverable and was re-mailed shall be extended to forty-five (45) days  
26 from date of the re-mailing. Any Class Member who does not affirmatively opt-out of the  
27 Settlement by submitting a valid and timely request for exclusion may submit an Objection  
28 ("Objecting Settlement Class Member") Any Class Member who makes a timely request for

1 exclusion has waived their right to submit an Objection. The Objecting Settlement Class Member  
2 shall state in the Objection:(1) the full name and current address of the Objecting Settlement Class  
3 Member; and (2) the specific reason(s) for the Objection; and (3) shall also provide any and all  
4 evidence and supporting papers (including, without limitation, all briefs, written evidence, and  
5 declarations) to be considered in support of the Objection.

6 39. An Objecting Settlement Class Member may appear at the Final Approval Hearing  
7 in State Court and be heard with respect to their Objection. With respect to any Objection to an  
8 estimated payment amount, which was calculated pursuant to paragraph 27 above, the amount  
9 reflected in the Receiver’s records will have a rebuttable presumption of correctness.

10 40. Class Counsel and the Receiver’s Counsel shall file any response to the Objections  
11 submitted by Objecting Settlement Class Members or Disputing Class Members, if any, at least  
12 seven (7) calendar days before the date of the Final Approval Hearing in the State Court.

13 41. At no time shall any of the Parties or their counsel seek to solicit or otherwise  
14 encourage Settlement Class Members to submit written objections to the Settlement or to appeal  
15 from the District Court’s Order approving the Settlement or the State Court’s Final Order and  
16 Judgment. Class Counsel agree not to represent any Class Members with respect to any such  
17 objections to this Settlement.

18 **MUTUAL RELEASE OF CLAIMS**

19 42. Release of All Settled Claims. The claims released by the Plaintiffs, Defendant  
20 MPC, Settlement Class Members and Class Representatives will include all claims pleaded in the  
21 Actions and all other claims which could have been alleged against the Released Parties (as  
22 defined below) including, but not limited to, any and all other claims under law that were or could  
23 have been alleged under the allegations and/or claims pleaded in the Actions (hereinafter  
24 collectively referred to as the “Released Claims”).

25 43. Release of Claims. Upon the Effective Date, except for the obligations set forth  
26 herein including the timely payment of the Gross Settlement Amount, in consideration of  
27 Defendant MPC’s promises and agreements as set forth herein, Plaintiffs, Defendant MPC,  
28 Settlement Class Members and Class Representatives (collectively “Releasing Parties”) shall fully

1 release each other and their employees, officers, directors, agents, attorneys, assigns, heirs,  
2 representatives, agents, successors (“Released Parties”), from any and all claims asserted by the  
3 Plaintiffs in the Actions and also generally release and discharge the Released Parties from any  
4 and all any claims for damages of any kind whatsoever, arising out of any common law torts,  
5 contracts, express or implied, any covenant of good faith and fair dealing, any theory of  
6 negligence or any federal, state, or other governmental statute, executive order, regulation or  
7 ordinance, or common law, or any other basis whatsoever, to the fullest extent provided by law  
8 arising out of or related in any way to PWCG, the Trust and the Actions. Upon the Effective Date,  
9 except for the obligations set forth herein including the timely payment of the Gross Settlement  
10 Amount, Plaintiffs and Settlement Class Members and Class Representatives shall also fully  
11 release Landmark American Insurance Company and Westchester Surplus Lines Insurance  
12 Company, and each of their respective affiliates, employees, officers, directors, agents, attorneys,  
13 assigns, representatives, and successors from any and all claims asserted by the Plaintiffs in the  
14 Actions and any and all any claims for damages of any kind whatsoever, whether those claims are  
15 known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent, or  
16 whether those claims are arising from, based upon, attributable to or sound in tort, contract,  
17 negligence, statutory or regulatory right, or other statutory code violations, bad faith, breach of  
18 fiduciary duty, fraud, breach of professional standard of care, malice or oppression, any other legal  
19 theory or right, any theory of negligence or any federal, state, or other governmental statute,  
20 executive order, regulation or ordinance, or common law, or any other basis whatsoever, to the  
21 fullest extent provided by law arising out of or related in any way to PWCG, the insurers’  
22 insurance policies, the insurers’ claims handling, the Trust and the Actions.

23         44.     The Releasing Parties expressly waive and relinquish, to the fullest extent  
24 permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code,  
25 or any other similar provision under federal or state law that purports to limit the scope of a  
26 general release. The Notices sent by the Receiver to the Class Members in the State Court Actions  
27 shall state, and the Parties hereby agree, that pursuant to the Settlement, the Parties agree to waive  
28 Section 1542 of the Civil Code of the State of California, which provides as follows:

1           **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
2           **WHICH THE CREDITOR OR RELEASING PARTY DOES**  
3           **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
4           **FAVOR AT THE TIME OF EXECUTING THE RELEASE,**  
5           **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**  
6           **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**  
7           **WITH THE DEBTOR OR RELEASED PARTY.**

6           **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL/CLASS CERTIFICATION**

7           45.     After entry of the State Court Order, the Receiver shall promptly submit this  
8 Second Amended Settlement Agreement to the District Court for approval, along with approval of  
9 Class Counsel fees and costs and the Incentive Awards.

10          46.     Class Counsel shall promptly submit this Second Amended Settlement Agreement  
11 to the State Court in support of Plaintiffs' Motion for Preliminary Approval and for determination  
12 by the State Court as to whether the proposed Settlement is within the range of possible judicial  
13 approval. Promptly upon execution of this Second Amended Settlement Agreement, Class  
14 Counsel shall apply to the State Court for the entry of an order substantially in the following form:

15               a.     Preliminarily approving the Settlement subject only to the objections of the  
16 Class Members and final review by the State Court;

17               b.     Certifying the Settlement Class;

18               c.     Approving the Class Notice attached hereto as Exhibit A;

19               d.     Directing the mailing by the Receiver of the Notice to the Class Members;

20           and

21               e.     Scheduling of the Final Approval Hearing on the question of whether the  
22 proposed Settlement, including payment of Class Counsel fees and costs and the Incentive  
23 Award, should be finally approved as fair, reasonable and adequate as to the Settlement  
24 Class Members.

25          47.     The Parties will work cooperatively to mutually agree upon the form and content of  
26 the Notice, as well as the Proposed Order Granting Preliminary Approval.



1 **DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

2 48. Following final approval by the State Court of the Settlement provided for in this  
3 Second Amended Settlement Agreement, Class Counsel shall submit a proposed Final Order and  
4 Judgment to the State Court in approximately the following form and with input from Defendant’s  
5 Counsel: Approving the Settlement, adjudging the terms thereof to be fair, reasonable and  
6 adequate, and directing consummation of its terms and provisions including the approval of Class  
7 Counsel’s application for an award of attorneys’ fees and costs and the Incentive Award to the  
8 Class Representatives, subject to approval by the District Court. The Parties will work  
9 cooperatively to mutually agree upon the form and content of the Proposed Order Granting Final  
10 Approval of the Class Settlement and Judgment. The Proposed Order Granting Final Approval of  
11 the Class Settlement and Judgment shall be approved by the Receiver prior to being submitted to  
12 the State Court for approval.

13 **VOIDING OF AGREEMENT IF SETTLEMENT NOT FINALIZED**

14 49. Subject to the obligations of mutual full cooperation set forth herein, either  
15 Plaintiffs or Defendant MPC may terminate this Settlement if (i) the monetary transfers required  
16 pursuant to paragraph 24 herein are not timely made, (ii) the District Court declines to approve the  
17 Settlement, (iii) the State Court declines to enter the Preliminary Approval Order or the State  
18 Court Order in substantially the forms submitted by the Parties, or (iv) the Settlement as agreed to  
19 by the Parties does not become final because of appellate court action. The terminating Party shall  
20 give to the other Parties (through counsel) written notice of its decision to terminate no later than  
21 fourteen (14) calendar days after receiving notice that one of the enumerated events has occurred.  
22 Termination shall have the following effects:

23 a. The Second Amended Settlement Agreement shall be terminated and shall  
24 have no force or effect, and no Party shall be bound by any of its terms.

25 b. In the event the Second Amended Settlement Agreement is terminated,  
26 Defendant MPC shall have no obligation to make any payments to any party, including the  
27 Receiver, Settlement Class Members, or Class Counsel.

1 c. The preliminary approval Order, final approval Order and Judgment shall  
2 be vacated.

3 d. The Second Amended Settlement Agreement and all negotiations,  
4 statements and proceedings relating thereto shall be without prejudice to the rights of any  
5 of the Parties, all of whom shall be restored to their respective positions prior to the  
6 Settlement.

7 e. The Gross Settlement Amount, if already transferred to the Receiver, shall  
8 be returned to Defendant MPC or its designees and any insurer that has made a payment  
9 toward the Gross Settlement Amount within ten (10) business days of the date of  
10 termination.

11 **PARTIES' AUTHORITY**

12 50. The signatories hereto hereby represent that they are fully authorized to enter into  
13 this Settlement Agreement and bind the Parties hereto to the terms and conditions thereof.

14 **MUTUAL FULL COOPERATION**

15 51. The Parties agree to fully cooperate with each other to accomplish the terms of this  
16 Settlement Agreement, including, but not limited to, execution of such documents and taking of  
17 such action as reasonably may be necessary to implement the terms of this Second Amended  
18 Settlement Agreement. The Parties to this Second Amended Settlement Agreement shall use their  
19 best efforts, including all efforts contemplated by this Second Amended Settlement Agreement  
20 and any other efforts that may become necessary by order of the District Court, the State Court, or  
21 otherwise, to effectuate this Second Amended Settlement Agreement and the terms set forth  
22 herein.

23 **NO PRIOR ASSIGNMENTS**

24 52. The Parties and their respective counsel represent, covenant and warrant that they  
25 have not, directly or indirectly, assigned, transferred, encumbered or purported to assign, transfer  
26 or encumber to any person or entity any portion of any liability, claim, demand, action, cause of  
27 action or right herein released and discharged except as set forth herein.

28

1 **NO ADMISSION**

2 53. Nothing contained herein, nor the consummation of this Settlement, is to be  
3 construed or deemed an admission of liability, culpability, negligence or wrongdoing on the part  
4 of any Released Party. Each of the Parties hereto has entered into this Settlement solely with the  
5 intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

6 **BREACH AND ENFORCEMENT ACTIONS**

7 54. The Parties will jointly request the District Court to retain jurisdiction over this  
8 Settlement, and jointly request the State Court to retain jurisdiction over this Settlement pursuant  
9 to California Code of Civil Procedure § 664.6 to oversee and enforce the terms of this Settlement.  
10 In the event of a breach of this Settlement, the non-breaching Party shall provide notice to the  
11 breaching party and request that the breaching party cure any alleged breach. If the breach is not  
12 cured within thirty (30) days of said notice, the non-breaching party may pursue legal action or  
13 other proceeding against any other breaching party or parties to enforce the provisions of this  
14 Second Amended Settlement Agreement or to declare rights or obligations under this Second  
15 Amended Settlement Agreement. In the event of such enforcement actions, the successful party or  
16 parties shall be entitled to recover from the unsuccessful party or parties' reasonable attorneys'  
17 fees and costs, including expert witness fees incurred in connection with any enforcement actions.  
18 All such disputes shall be resolved by the District Court.

19 **NOTICES**

20 55. Unless otherwise specifically provided herein, all notices, demands or other  
21 communications given hereunder shall be in writing and shall be deemed to have been duly given  
22 as of the third business day after mailing both electronically and by United States registered or  
23 certified mail, return receipt requested, and addressed as follows:

24 To Receiver and his counsel:

25 Michael Farrell  
26 mfarrell@allenmatkins.com  
27 Allen Matkins  
28 865 S. Figueroa Street, #2800  
Los Angeles, CA 90017  
Telephone: (213) 955-5527

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Ted Fates  
tfates@allenmatkins.com  
Allen Matkins  
600 W. Broadway, 27th Floor  
San Diego, CA 92101  
Telephone: (619) 886-4466

To Plaintiffs, the Settlement Class and Class Counsel:

Thomas G. Foley, Jr.  
tfoley@foleybezek.com  
Foley Bezek Behle & Curtis, LLP  
15 W. Carrillo Street  
Santa Barbara, CA 93101  
Telephone: (805) 962-9495  
Facsimile: (805) 962-0722

Richard E. Donahoo  
rdonahoo@donahoo.com  
DONAHOO & ASSOCIATES, PC  
440 West First Street, Suite 101  
Tustin, California 92780  
Telephone: (714) 953.1010  
Facsimile: (714) 953.1777

To Defendant and Defendant’s Counsel:

Dennis J. Kelley  
djk@dillinghammurphy.com  
Dillingham & Murphy  
155 Sansome Street, Suite 700  
San Francisco, CA 94104  
Telephone: (415) 810-3169  
Facsimile: (415) 397-3300

James Roosa  
jkr@roosalaw.com  
3723 Pearl Road #2, Cleveland, OH 44109  
  
Telephone: (216) 635-0636  
Facsimile: (216) 393-0000

**CONSTRUCTION**

56. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Second Amended Settlement Agreement shall not be construed in favor of or against any party by reason

1 of the extent to which any Party or their counsel participated in the drafting of this Stipulation of  
2 Settlement.

3 **CAPTIONS AND INTERPRETATIONS**

4 57. Paragraph titles or captions contained herein are inserted as a matter of convenience  
5 and for reference, and in no way define, limit, extend or describe the scope of this Second  
6 Amended Settlement Agreement or any provision of it. Each term of this Second Amended  
7 Settlement Agreement is contractual and not merely a recital.

8 **MODIFICATION**

9 58. This Second Amended Settlement Agreement may not be changed, altered or  
10 modified, except in writing and signed by the Parties hereto and approved by the District Court  
11 and the State Court.

12 **INTEGRATION CLAUSE**

13 59. This Second Amended Settlement Agreement, and the Exhibits attached hereto and  
14 incorporated herein by reference, contain the entire agreement between the Parties relating to the  
15 Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,  
16 understandings, representations and statements, whether oral or written and whether by a Party or  
17 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in  
18 writing.

19 **BINDING ON ASSIGNS**

20 60. This Stipulation of Settlement shall be binding upon and inure to the benefit of the  
21 Parties hereto and their respective heirs, trustees, executors, administrators, successors and  
22 assigns.

23 **CLASS MEMBER SIGNATORIES**

24 61. It is agreed that because the Class Members are so numerous, it is impossible or  
25 impractical to have each member execute this Settlement Agreement. The Class Notice, Exhibit  
26 "A" hereto, will advise the Class Members of the binding nature of the release, and the release  
27 shall have the same force and effect as if this Second Amended Settlement Agreement were  
28 executed by each Class Member.

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**COUNTERPARTS**

62. This Second Amended Settlement Agreement may be executed in counterparts and by facsimile signatures or electronic signatures, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Second Amended Settlement Agreement binding upon and effective as to all Parties.

**TIME OF THE ESSENCE**

63. Time is of the essence for all terms of this Second Amended Settlement Agreement, including, but not limited to, the timing of payments, transfers, and court filings.

IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Second Amended Settlement Agreement and Release between Plaintiffs and Defendant MPC as of the date(s) set forth below:

Dated:   MARCH     2  , 2023



Thomas Hebrank, in his capacity as  
Permanent Receiver

Dated:   March     3  , 2023

DocuSigned by:  
**KONSTANTIN SHECHTER**  
1499B9E70CD74CA...

Konstantin Shechter  
Plaintiff and Class Representative

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Svetlana Averbukh  
Plaintiff and Class Representative

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Arnold Applebaum  
Plaintiff and Class Representative

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
William Potoczak  
Title: President  
Defendant Mills Potoczak & Company

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Dated: MARCH 2, 2023



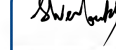
Thomas Hebrank, in his capacity as Permanent Receiver

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Konstantine Shechter  
Plaintiff and Class Representative

Dated: March 2, 2023

DocuSigned by:



\_\_\_\_\_  
Svetlana Averbukh  
Plaintiff and Class Representative

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Arnold Applebaum  
Plaintiff and Class Representative

Dated: \_\_\_\_\_, 2023

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William Potoczak  
Title: President  
Defendant Mills Potoczak & Company

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**COUNTERPARTS**

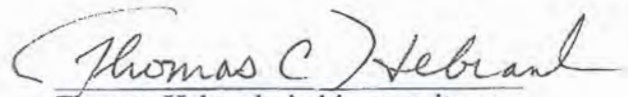
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Dated: MARCH 2, 2023

  
Thomas Hebrank, in his capacity as  
Permanent Receiver

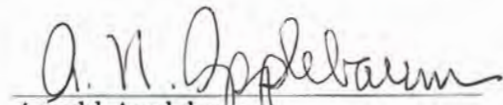
Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Konstantine Schechter  
Plaintiff and Class Representative

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Svetlana Averbukh  
Plaintiff and Class Representative

Dated: March 3, 2023

  
Arnold Applebaum  
Plaintiff and Class Representative

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
William Potoczak  
Title: President  
Defendant Mills Potoczak & Company



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**COUNTERPARTS**

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**TIME OF THE ESSENCE**

63. Time is of the essence for all terms of this Second Amended Settlement Agreement, including, but not limited to, the timing of payments, transfers, and court filings.

IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Second Amended Settlement Agreement and Release between Plaintiffs and Defendant MPC as of the date(s) set forth below:

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Thomas Hebrank, in his capacity as  
Permanent Receiver

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Konstantine Shechter  
Plaintiff and Class Representative

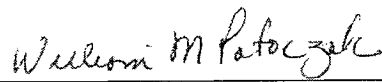
Dated: \_\_\_\_\_, 2023

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Svetlana Averbukh  
Plaintiff and Class Representative

Dated: \_\_\_\_\_, 2023

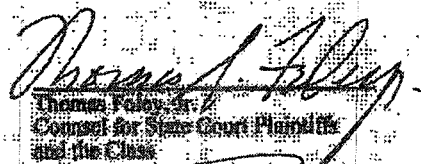
\_\_\_\_\_  
Arnold Applebaum  
Plaintiff and Class Representative

Dated: March 2, 2023


  
\_\_\_\_\_  
William Potoczak  
Title: President  
Defendant Mills Potoczak & Company

APPROVED AS TO FORM:

Dated: March 4, 2023

  
Thomas Foley, Jr.  
Counsel for State Court Plaintiffs  
and the Class

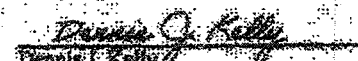
Dated: March 4, 2023

  
Richard E. Donahoe  
Counsel for State Court Plaintiffs  
and the Class


Dated: March 3, 2023

  
Michael Petrell  
Counsel for Receiver Thomas McBrink

Dated: March 7, 2023

  
Dennis J. Kelly  
Counsel for Defendant  
Mills Ponszick & Company

Dated: March 6, 2023

  
James Rosset  
Counsel for Defendant  
Mills Ponszick & Company

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