No. 20-1217

In the Supreme Court of the United States

DANIEL KRISTOF LAK, Esquire,

Petitioner,

v.

STATE OF CALIFORNIA, et. al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the 9th Circuit

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QUESTIONS PRESENTED

1. Whether a state can be shielded from suit in federal court via 11th Amendment immunity in actions brought pursuant to Title IV-D of the Social Security Act when (i) Congress has clearly abrogated state immunity, (ii) when Section 5 of the 14th Amendment limits the state's immunity, (iii) when a private right of action arises under Title IV-D of the Social Security Act, (iv) the state has consented to suit, and (v) the state has voluntarily invoked the jurisdiction of the federal courts for suits brought under Title IV-D of the Social Security Act?

2. Whether a Plaintiff has complied with Rule 8 of the Federal Rules of Civil Procedure when Plaintiff's original complaint, although complex and voluminous, is otherwise presented in a simple and plausible manner?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner is Daniel Kristof Lak, an individual.

Respondents are State of California, State of California Department of Child Support Services, State Disbursement Unit, County of Orange, Department of Child Support Services County of Orange, Steven Eldred, in his official capacity as Director of the Department of Child Support Services County of Orange, Steven Eldred, as an individual.

TABLE OF CONTENTS

TABLE OF APPENDICES/OPINIONS BELOW

Page

TABLE OF CITED AUTHORITIES

CASES **Page(s)**

TABLE OF CITED AUTHORITIES (Continued)

Page(s)

TABLE OF CITED AUTHORITIES (Continued)

STATUTES

JURISDICTION

The district court judgment was entered on September 10, 2018. The United States Court of Appeals for the 9th Circuit filed a memorandum opinion on June 5, 2020. The United States Court of Appeals for the 9th Circuit filed an order denying petition for rehearing on September 18, 2020.

On March 19, 2020, this Court extended the deadline to file petitions for writs of certiorari in all cases due on or after the date of that order to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. Therefore, this Court has jurisdiction under 28 U.S.C. § 1254(1).

Jurisdiction in the District Court arises under 28 U.S.C. §1331 and 28 U.S.C. §1343. Federal question jurisdiction arises pursuant to 42 U.S.C. §1983; 42 U.S.C. §21 §2000d; 42 U.S. C. §629a (a)(2)(B); 42 U.S. C. §666 (a)(7)(B); 42 U.S. C. §666 (a)(10); 18 U.S.C §§1961-1968; and 18 U.S.C. §1341.

SUPPLEMENTAL JURISDICTION

Supplemental jurisdiction in the District Court over ancillary state law claims arises under 28 U.S. C. §1367(a) which provides that "the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy."

Jurisdiction in the United States Court of Appeals arises under 28 U.S.C. §1291 which provides "the courts of appeals... shall have jurisdiction of appeals from all final decisions of the district courts of the United States."

Jurisdiction in the United States Court of Appeals for the Ninth Circuit is proper as this appeal is taken from a decision of the United States District Court for the Central District of California, the Honorable Philip S. Gutierrez presiding.

PETITION FOR WRIT OF *CERTIORARI*

The State of California created the Department of Child Support Services (the "Department") with Assembly Bill 1058 for the primary purpose of maximizing incentive payments from the federal government under Title IV-D of the Social Security Act (the "Act").

The Department's (i) authority, (ii) enforcement powers, and (iii) compensation structure are all created by the Act. As such, the Department effectively acts as a collection agency of the federal government and receives incentive payments based upon its performance (i.e., the more money the Department collects from non-custodial parents, the more money it gets from the federal government in the form of incentive payments).

Additionally, the Act creates specific affirmative duties for the Department. These are: (i) to promote the safety and well-being of children and families, (ii) to increase the strength and stability of families, (iii) to support and retain foster families so they can provide quality family based settings for children in foster care, (iv) to increase parents' confidence and competence in their parenting abilities, (v) to afford children a safe, stable, and supportive family environment, (vi) to strengthen parental relationships and promote healthy marriages, and (vii) to enhance child development. *42 U.S.C. §629a (a)(2)(B).*

More specifically, the Act requires the Department to (i) review and adjust child support orders upon the request of either parent, taking into the consideration the best interests of the child involved, (ii) inform parents of their right to request this review and, if appropriate, (iii) adjust existing child support orders accordingly. Additionally, the Act requires the Department to conduct a review, with or without a parent's request, not less than every three years, to determine if a child support adjustment is appropriate. *42 U.S.C. 666(a)(7)(B), 42 U.S.C. 666(a)(10).* Lastly, the Act prohibits the Department from erroneously reporting derogatory credit information to credit reporting bureaus. *42 U.S.C. (7)(b)(i) and (ii).*

Plaintiff/Appellant brought suit in federal district court against the Department for, among other claims, violations of the aforementioned provisions of the Act.

This appeal arises from the decision of the lower district court which granted Appellees' motion to dismiss under Federal Rule of Procedure §12(b)(6). No hearings, evidentiary or otherwise, were conducted at the lower court level. Because there was no court reporter, there is no court reporter's transcript. Therefore, the record for this appeal consists solely of the district court's CM/ECF docket ("Docket").

The United States States Court of Appeals for the 9th Circuit affirmed the district court's judgment primarily on the grounds that (i) the Department was protected from suit in federal court via 11th Amendment immunity and (ii) Appellant failed to make a clear and concise statement of the claims against defendants in violation of Rule 8 of the Federal Rules of Civil Procedure.

STATEMENT OF THE CASE

(Docket No. 1, Pages 25-53)

To facilitate the maximizing of federal incentive payments, the Department created what are known as "Title IV-D courts." These courts are presided over by Title IV-D Commissioners and all open child support cases must only be heard in a Title IV-D court before a Title IV-D Commissioner. Title IV-D courts and the Commissioners that preside over them, were intended to be independent arbiters of child support cases brought by either a custodial or non-custodial parent. However, Title IV-D courts are directly funded by the Department itself. Furthermore, not only are the Title IV-D Commissioners paid by the Department itself, they are even required to submit their timesheets directly to the Department for approval *prior to getting paid.* Therefore, the Department has established a system, originally intended to be impartial, which is something far less than "arms length" and cannot even remotely be perceived as being impartial. In addition, the Department has delegated its collection powers to local child support agencies ("LCSA"). These agencies are entities of local county governments and are supposed to act as "neutral interveners" – mediating between custodial and non-custodial parents for

the benefit of the children in Title IV-D courts. However, these LCSA's are likewise charged with the collection of child support obligations and are financially incented to collect as much as possible from non-custodial parents. Again, the Department has created a system that is supposed to be impartial, however, cannot even remotely be considered a "neutral intervener."

Plaintiff/Appellant is a father of three children, was a member in good standing of the California State Bar for over 12 years with a thriving estate planning practice in Orange County, California. Plaintiff/Appellant *always* provided financially for his children, *never* missed a birthday, soccer game, piano recital, parent teacher conference, or *anything* relating to his children. However, following his divorce, the Department and the LCSA, in violating the provisions of the Act, have reduced Plaintiff/Appellant from a hard working, always present, loving father, to a hopeless, homeless, penniless, indigent who has (i) lost his business, (ii) lost his home, (iii) lost his car, (iv) lost all of his personal property, (v) has been forced to file Bankruptcy, (vi) has been forced to live "on the streets," and (vii) eventually has been diagnosed with, and continues to suffer from, Severe Post Traumatic Stress Disorder ("PTSD") whose symptoms include, but are not limited to, severe depression and severe anxiety.

However, the aforementioned sufferings pale in comparison to the damage effected upon the relationship between Plaintiff/Appellant and his children.

Being homeless and without financial resources, Plaintiff/Appellant has lost custody of his children whereas before, custody was shared equally (i.e., 50/50 legal and physical custody). Being homeless and without financial resources, Plaintiff/Appellant has been unable to see his children on a regular basis nor provide for them financially as previously. Consequently, the relationship between Plaintiff/Appellant and his children has suffered severely, but hopefully, Plaintiff/Appellant fervently prays, not irreparably. The Department and the LCSA have intentionally and continuously: (i) enforced the wrong child and spousal support orders to their financial benefit, (ii) wrongfully levied father's personal bank accounts, (iii) wrongfully suspended father's California State Bar license and falsely reported father to the California State Bar ("STATE BAR") as being delinquent on support obligations based on the wrong support orders and wrong support amounts, (iv) wrongfully suspended father's California driver's license and falsely reported father to the California Department of Motor Vehicles ("DMV") as being delinquent on support obligations based on the wrong support orders and wrong support amounts, (v) falsely reported father as being delinquent to multiple credit reporting agencies based on the wrong support orders and wrong support amounts, (vi) intentionally and continuously ***ignores any*** order of the court that is beneficial to father, (vii) ***retaliates*** against father by ordering the suspension of his STATE BAR and California driver's licenses ***every*** time father files a motion to modify child and spousal support, (viii) ***retaliated*** against father by attempting to have him incarcerated when father filed a motion to modify child and spousal

support, (ix) refused to provide father with an audit of his child and spousal support accounts, as ordered by the court, for over 1 ½ years, and (x) only complied with the court's order to provide the audit after father brought a motion to compel and, when the audit was finally produced, it showed the Department and LCSA had committed accounting errors in excess of $50,000.00.

Additionally, the Department and LCSA (xi) continually instructs the custodial parent to ignore all discovery orders, (xii) continually opposes, without cause, all of Plaintiff/Appellant's modification motions, and (xiii) continually requests the Title IV-D Commissioners to have Plaintiff/Appellant's modification motions "taken off calendar" which has resulted in a situation where Plaintiff/Appellant has ***never*** had the opportunity to have his modification motions heard. Plaintiff/Appellant can't even appeal the Commissioner's decisions to "take the matter off calendar" as they are not "final" decisions. As a result, Plaintiff/Appellant's motions are stuck in perpetual "limbo" and the cycle continues to this day.

The Department and the LCSA have conducted the aforementioned actions, without any due process of law whatsoever, in violation of both federal and state laws.

REASONS FOR GRANTING THE PETITION FOR WRIT OF *CERTIORARI*

The lower district court ruled that the 11th Amendment barred all claims against the State Defendants. (Docket No. 30, Page 8, beginning with Line 22). Plaintiff/Appellant believes the lower court erred in so ruling as set forth below. This judgment was affirmed by the 9th Circuit.

11TH AMENDMENT IMMUNITY IS NOT ABSOLUTE.

State Defendants would have this Court believe that 11th Amendment immunity is absolute. In support of it's position, State Defendants cite various Supreme Court precedent[1] in hopes this Court will accept as "gospel truth" the implied contention that 11th Amendment bars ***all*** suits against ***all*** states in federal courts - ***always***. Nothing could be further from the truth.

The United States Supreme Court has long since held that 11th Amendment immunity is ***not*** absolute. *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1191 (9th Cir. 2005).

Specifically, a plaintiff may overcome an 11th Amendment bar if (i) the State or State agency has ***waived*** its sovereign immunity, or if (ii) Congress has ***abrogated*** the State or State agency's 11th Amendment immunity. *Pennhurst State School & Hosp. v. Halderman.*, 465 U.S. 89, 99-100 (1984).

There are certain well-established exceptions to the reach of the 11th Amendment and if a State waives its immunity and consents to suit in federal

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[1] *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 438 (1997); *Seminole Tribe of Florida v. Florida*, 517 U.S.

court, the 11th Amendment does not bar the action. *Clark v. Barnard,* 108 U.S. 436, 108 U. S. 447 (1883).

Additionally, the 11th Amendment is "necessarily limited by the enforcement provisions of § 5 of the Fourteenth Amendment," that is, by Congress' power "to enforce, by appropriate legislation, the substantive provisions of the Fourteenth Amendment." *Fitzpatrick v. Bitzer,* 427 U. S. 445, 427 U. S. 456 (1976). Consequently, when acting pursuant to § 5 of the 14th Amendment, Congress can abrogate 11th Amendment immunity without a State's consent. *Ibid.*

The Supreme Court has also held that the 11th Amendment does not bar suits against State officials sued in their individual capacities, nor does it bar suits for prospective injunctive relief against the State or State officials sued in their official capacities. *Will v. Michigan Dep't of State Police,* 491 U.S. 58, 64-66 (1989); Hafer v. Melo, 502 U.S. 21, 30 (1991).

Here, Plaintiff/Appellant seeks prospective/injunctive relief from State Defendants in the form of an ongoing protective order. Consequently, the 11th amendment does not bar Plaintiff/Appellant's action against State Defendants and the motion to dismiss was granted in error.

11TH AMENDMENT IMMUNITY IS NOT AVAILABLE TO STATE DEFENDANTS HERE AS CONGRESS HAS CLEARLY ABROGATED STATE IMMUNITY FOR PLAINTIFF/APPELLANT'S CIVIL RIGHTS CLAIMS.

To determine whether Congress has abrogated the State Defendants' immunity, the Supreme Court has established a two-part test known as the "Seminole Tribe test." *Seminole Tribe of Florida v. Florida,* 517 U.S. 44.

The first part of the Seminole Tribe test requires that a federal statute contain an "unequivocal expression" of Congress's intent to abrogate the states' immunity. *Ibid* at 55.

Here, Plaintiff/Appellant brought suit in federal court against State Defendants for, among other causes, civil rights violations pursuant to 42 U.S.C.§21 and §2000d. Additionally, 42 U.S.C. §2000d-7(a)(1) states the following:

> A State ***shall not be immune under the Eleventh Amendment*** of the Constitution of the United States from suit in Federal court for a violation of ... ***title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]***, or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

The Supreme Court has characterized §2000d-7 as meeting its requirement that Congress must unambiguously express, in the text of the statute, its intent to remove the 11th Amendment bar to private suits against States in federal court. *Lane v. Pena*, 518 U.S. 187, 198-200 (1996); *Franklin v.Gwinnett County Pub. Sch.*, 503 U.S. 60, 72 (1992); id. at 78 (Scalia, J., concurring); *Crawford v. Davis*, 109 F.3d 1281, 1283 (8th Cir. 1997).

The second part of the Seminole Tribe test requires that a statute be an appropriate exercise of Congress' constitutional powers for its abrogation provision to have effect. *Seminole Tribe of Florida v. Florida*, 517 U.S. at 55.

Historically, the Supreme Court has recognized only one constitutional power under which Congress may abrogate the States' 11th Amendment immunity. This constitutional power is the power granted Congress by §5 of the Fourteenth Amendment. *Florida Prepaid v. College Savings*, 119 S. Ct. 2205-06.

In *Fitzpatrick,* the Supreme Court held that Congress' decision to abrogate States' 11th Amendment immunity from sex discrimination suits brought under Title VII, 42 U.S.C. 2000e et seq., was a proper exercise of its §5 power. *Fitzpatrick v. Bitzer*, 427 U.S. at 456 (1976).

The Supreme Court explained that "the Eleventh Amendment, and the principle of state sovereignty which it embodies, are necessarily limited by the enforcement provisions of §5 of the Fourteenth Amendment." *Ibid.* The Court concluded that "Congress may, in determining what is 'appropriate legislation' for the purpose of enforcing the provisions of the Fourteenth Amendment, provide for private suits against States or state officials." *Ibid.*

Here, Congress' decision to abrogate States' 11th Amendment immunity from race discrimination suits brought under Title VI, 42 U.S.C. §2000d would likewise be a proper exercise of its §5 power under the 14th Amendment.

Therefore, Congress, in enacting title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d and §2000d-7) has (i) enacted a federal statute that contains an "unequivocal expression" of Congress' intent to abrogate the States' immunity, and (ii) enacted a federal statute by an appropriate exercise of its constitutional powers under §5 of the 14th Amendment.

Therefore, Congress has met the two-part Seminole Tribe test and in so doing, has properly abrogated the State Defendants' 11th Amendment immunity in Plaintiff/Appellant's suit under 42 U.S.C. §2000d.

Therefore, the State Defendants' motion was granted in error.

11th AMENDMENT IMMUNITY IS NOT AVAILABLE TO STATE DEFENDANTS HERE AS THE ENFORCEMENT PROVIONS OF §5 OF THE 14TH AMENDMENT LIMIT THE STATE DEFENDANTS' 11TH AMENDMENT IMMUNITY IN 42 U.S.C §1983 SUITS.

The Supreme Court has held that a State's 11th Amendment immunity may not exist where Congress, in the exercise of its power to enforce the 14th Amendment, has authorized suits against the State by an individual. *Fitzpatrick v. Bitzer,* 427 U. S. 445 (1976).

Additionally, the Supreme Court has long since recognized the ability of Congress to allow suits by individuals against States in the following language:

> We think that the Eleventh Amendment, and the principle of state sovereignty which it embodies, *see Hans v. Louisiana,* 134 U. S. 1 (1890), are necessarily limited by the enforcement provisions of §5 of the Fourteenth Amendment. In that section, Congress is expressly granted authority to enforce "by appropriate legislation" the substantive provisions of the Fourteenth Amendment, which themselves embody significant limitations on state authority. We think that Congress may, in determining what is "appropriate legislation" for the purpose of enforcing the provisions of the Fourteenth Amendment, provide for private suits against States or state officials which are constitutionally impermissible in other contexts. *Edelman v. Jordan,* 415 U. S. 651 (1974); *Ford Motor Co. v. Department of Treasury,* 323 U. S. 459 (1945).

Here, the 14th Amendment provides that no State shall deprive any person of ... property ... without due process of law. Additionally, §5 of the 14th Amendment

provides that Congress shall have power to enforce, by appropriate legislation, the provisions of the 14th Amendment.

The Supreme Court has "made it clear" that the term "enforce" is to be taken seriously and that the object of valid §5 legislation must be the carefully delimited remediation or prevention of constitutional violations. *City of Boerne* v. *Flores,* 521 U. S. 507, 516-529 (1997).

Here, Plaintiff/Appellant, among other causes, brings a suit against the State Defendants for violations (denial) of due process under 42 U.S.C. §1983. Specifically, Plaintiff/Appellant alleges that State Defendants deprived him of the property right of a California driver's license and a California State Bar license without due process as required by the 14th Amendment.

Because a driver's license and state bar license, once issued, are constitutionally protected property rights, the State Defendants' deprivation thereof, without due process, is violative of the 14th Amendment.

The due process guarantees of the 14th Amendment are carefully delimited constitutional violations which §5 of the 14th Amendment seeks the remediation or prevention thereof.

Therefore, Congress acted under appropriate authority to abrogate the State Defendants' sovereign immunity in 42 U.S.C. §1983 actions by legislating under §5 of the Fourteenth Amendment to enforce the Amendment's other provisions (i.e., due process requirement). *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd., 527 U.S. 666 (1999).*

Therefore, 11th Amendment immunity does not bar Plaintiff/Appellant's suit against State Defendants for violations of 42 U.S.C. §1983 – the due process guarantees of the 14th Amendment.

Therefore, the State Defendants' motion to dismiss was granted in error.

11th AMENDMENT IMMUNITY IS NOT AVAILABLE TO STATE DEFENDANTS HERE AS STATE DEFENDANTS VIOLATED PLAINTIFF/APPELLANT'S FEDERAL RIGHTS CREATED BY TITLE IV-D OF THE SOCIAL SECURITY ACT AND ARE, THEREFORE, SUBJECT TO THE ENFORCEMENT PROVISIONS OF §5 OF THE 14TH AMENDMENT.

Plaintiff/Appellant also brings causes of action against State Defendants for violations of federal rights created by Title IV-D of the Social Security Act and relies upon the enforcement provisions given to Congress under §5 of the 14th Amendment to redress violations of these federal rights.

The Supreme Court has stated that a violation of a federal right is necessary for a 42 U.S.C. §1983 claim. *Gonzaga University v. Doe*, 536 U.S. 273, 283 (2002).

Additionally, the Supreme Court has held that a plaintiff "must assert the violation of a federal right, not merely a violation of federal law" to bring an action against a state under §1983. *Blessing v. Freestone*, 520 U.S. 329, 340 (1997).

The Supreme Court has held that a statute creates a federal right if (i) Congress intended that the provision in question benefit the plaintiff, (ii) the right assertedly protected by the statute is not so 'vague and amorphous' that its enforcement would strain judicial competence, and (iii) the statute in question unambiguously imposes a binding obligation on the States. *Id.* at 340-41.

In *Blessing*, the Supreme Court used these factors to determine that Title IV-D, ***as an undifferentiated whole***, does not give rise to individual federal rights. *Id.* at 342-45.

However, the Supreme Court also stated that it ***did not*** "foreclose the possibility that some provisions of Title IV-D give rise to individual federal rights." *Id.* at 345-46.

The Court went on to hold that a plaintiff, in order to allege that a specific provision of Title IV-D creates a particular individual federal right must identify, with particularity, the rights claimed. *Blessing*, 520 U.S. at 342.

PLAINTIFF HAS A PRIVATE RIGHT OF ACTION UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AS PLAINTIFF HAS "SPECIFIC" AND "WELL DEFINED" CLAIMS WHICH CREATE INDIVIDUAL FEDERAL RIGHTS AS REQUIRED BY THE UNITED STATES SUPREME COURT.

In *Blessing v. Freestone*, the United States Supreme Court granted certiorari to resolve disagreement among the Courts of Appeals as to whether individuals have private rights of action under 42 U.S.C. §1983 for violations of Title IV-D of the Social Security Act. *Blessing v. Freestone*, 520 U.S. 329 (1997).

Firstly, the Supreme Court looked at whether Congress specifically foreclosed a remedy for violation of Title IV-D of the Social Security Act under 42 U.S.C. §1983. *Id.* at 330, citing *Smith* v. *Robinson,* 468 U. S. 992, 1005 (1984).

In determining this preliminary issue, the Supreme Court looked at whether Congress had specifically foreclosed a remedy for violation of Title IV-D of the Social Security Act under 42 U.S.C. §1983 either by (i) expressly forbidding recourse to 42

U.S.C. §1983 in the statute itself, or by (ii) impliedly creating a comprehensive enforcement scheme that was incompatible with individual enforcement under 42 U.S.C. §1983. *Ibid.* citing *Livadas* v. *Bradshaw,* 512 U. S. 107, 133 (1994).

The Supreme Court held that 42 U.S.C. §1983 ***did not*** foreclose an individual remedy for violation of Title IV-D of the Social Security Act either expressly, because Title IV-D itself does not expressly foreclose this remedy, or impliedly as, the Supreme Court held, the enforcement scheme of Title IV-D was compatible with individual enforcement and "not comprehensive enough to close the door on [42 U.S.C.] §1983 liability." *Id.* at 331.

Ultimately in *Blessing*, the Supreme Court held the original plaintiffs failed to establish that Title IV-D of the Social Security Act gave plaintiffs individual rights of action under 42. U.S.C. §1983 ***only*** because the "substantial compliance" relief they sought painted "with too broad a brush" and failed to identify ***specific*** and ***well-defined individual*** rights.

However, the Supreme Court remanded the case back to the District Court for further inquiry into whether Title IV-D did create individual rights of action in the following language:

> Only by manageably breaking down the complaint into specific allegations can the District Court proceed to determine whether any specific claim asserts an individual federal right. *Id.* at 341-346.

In prior cases, the Supreme Court has been able to determine whether or not a statute created federal, individual rights, which are subject to remedy under 42

U.S.C. §1983 because the plaintiffs articulated, and lower courts evaluated, ***specific*** and ***well-defined claims***. *Wright* v. *Roanoke Redevelopment and Housing Authority,* 479 U. S. 418, 430. In *Blessing*, the Supreme Court held the following:

> We do not foreclose the possibility that some provisions of Title IV -D give rise to individual rights. The lower court did not separate out the particular rights it believed arise from the statutory scheme, and we think the complaint is less than clear in this regard.
>
> In any event, it is not at all apparent that respondents sought any relief more specific than a declaration that their "rights" [in general] were being violated and an injunction forcing Arizona's child support agency to "substantially comply" with all of the provisions of Title IV-D.
>
> We think that this defect is best addressed by sending the case back for the District Court to construe the complaint in the first instance, in order to determine exactly what rights, considered in their most concrete, specific form, respondents are asserting [and] only by manageably breaking down the complaint into specific allegations can the District Court proceed to determine whether any specific claim asserts an individual federal right. *Blessing v. Freestone*, 520 U.S. 345-347 (1997).

Ultimately, the Supreme Court held that "[it] leave[s] open the possibility that Title IV -D may give rise to some individually enforceable rights ***provided a plaintiff can articulate specific and well-defined individual rights under Title IV-D of the Social Security Act.*** *Ibid.*

Here, Plaintiff/Appellant claims specific and well defined individual rights under Title IV-D of the Social Security Act.

Specifically, Plaintiff/Appellant claims the specific and well defined right to (i) promote the safety and well being of ***his*** children and ***his*** family, (ii) the right to increase the strength and stability of ***his*** family, (iii) right to increase the

confidence and competence in ***his*** parenting abilities, and (iv) the right to afford ***his*** children a safe, stable, and supportive family environment, while strengthening ***his*** parental relationships created under of 42 U.S.C. §629a (a)(2)(b).

Additionally, Plaintiff/Appellant claims the specific and well defined right to all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of derogatory credit information, prior to reporting such information, regarding Plaintiff/Appellant's credit history created under 42 U.S.C. §666(a)(7)(B).

Lastly, Plaintiff/Appellant claims the specific and well defined rights to have the State Defendants review ***his*** child support orders upon request and review ***his*** child support orders every three years without request created under violations of 42 U.S.C. §666(a)(10).

The Supreme Court has long since recognized that plaintiffs may use §1983 to enforce not only constitutional rights, but also those rights defined by federal statutes. Because federal regulations have the force of law, they likewise may create enforceable rights. *Maine v. Thiboutot*, 448 U.S. 1, 6-8, 100 S.Ct. 2502, 2505-06 (1980).

Here, Plaintiff/Appellant claims specific, well defined, individual, and enforceable rights created under Title IV-D of the Social Security Act as shown above. As such, 11th Amendment immunity is not available to State Defendants for

Plaintiff/Appellant's actions brought under §5 of the 14th Amendment (i.e., 42 U.S.C. §1983) for violation of these Title IV-D rights.

Therefore, the State Defendants' motion to dismiss was granted in error.

STATE DEFENDANTS HAVE CONSENTED TO SUIT, THEREBY WAIVING ELEVENTH AMENDMENT IMMUNITY BY VOLUNTARILY PARTICIPATING IN AND, RECEIVING FEDERAL INCENTIVE FUNDS UNDER, TITLE IV-D OF THE SOCIAL SECURITY ACT.

The United States Supreme Court has long since held that when a State leaves the sphere that is exclusively its own and enters into activities subject to Congressional regulation, it subjects itself to that regulation as fully as if it were a private person or corporation. *Parden v. Terminal R. Co.*, 377 U.S. 184 (1964) citing *South Carolina v. United States,*199 U. S. 437, 199 U. S. 463.

Furthermore, the Supreme Court, in *Parden*, reaffirmed its position that a State's immunity may, of course, be waived and the State's freedom from suit ***does not protect it*** from a suit to which it has consented. *Clark v. Barnard,*108 U. S. 436, 108 U. S. 447; *Gunter v. Atlantic Coast Line R. Co.,*200 U. S. 273, 200 U. S. 284; *Petty v. Tennessee-Missouri Bridge Comm'n.,* 359 U. S. 275.

In *Pardon*, the Supreme Court held that a State's consent to suit arises from an act, not wholly within its own sphere of authority, but within a sphere subject to the Constitutional power of the Federal Government and ultimately concluded that "States, by venturing into the Congressional realm, "assume the conditions that Congress under the Constitution attached." *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U. S. 281-282.

Here, Congress enacted Title IV-D of the Social Security Act pursuant to its Constitutionally authorized "spending" power.

Under Article I, Section 8, Clause 1 of the Constitution, Congress is granted the power to lay and collect taxes in order "to pay the Debts and provide for the common Defense and General Welfare of the United States."

As required by *United States v. Butler*, 297 U.S. 1 (1936), Congress must exercise its power to tax and spend for the "general welfare."

Through the use of its spending power, Congress is able to place a requirement on states that compliance with specified conditions must take place before the state will be considered to meet the qualification requirement for federal funds.

Under a test provided in *South Dakota v. Dole*, 483 U.S. 203 (1987), for Congress to place a condition on receipt of federal funds by a state, the spending has to serve the general welfare, the condition placed on the state must be unambiguous, the condition has to relate to the particular federal program, unconstitutional action cannot be a contingency of receipt of the funds, and the amount in question cannot be so great that it can be considered coercive to the state's acceptance of the condition.

Here, the State of California Department of Child Support Services was created by California Family Code §17303 which states the following:

> Title IV-D of the Federal Social Security Act... requires that there be a single agency for child support enforcement... [and] the state would benefit by centralizing its obligation to hold counties responsible for collecting support .. and ... oversight would be best accomplished by direct management by the state.

Additionally, California Family Code §17208 (b) also states the following:

> The department [of child support services] shall ***maximize the use of federal funds available*** for the costs of administering a child support services department, and to the maximum extent feasible, ***obtain funds from federal financial incentives*** for the efficient collection of child support, to defray the remaining costs of administration of the department consistent with effective and efficient support enforcement.

As shown from California Family Code §17303 and §17208 (b), State Defendants intentionally and specifically formed the Department of Child Support Services for the purposes of (i) complying with Title IV-D of the Federal Social Security Act in order to (ii) ***maximize the use of federal funds available*** and, to the maximum extent feasible, ***obtain funds from federal financial incentives*** through participation in Title IV-D of the Federal Social Security Act.

As a result, State Defendants have "ventured into the Congressional realm" and "assumed the conditions that Congress, under the Constitution, attached" to participation in Title IV-D of the Federal Social Security Act.

In so doing, State Defendants have left "the sphere that is exclusively its own" and entered into activities subject to Congressional regulation, thereby subjecting itself to Title IV-D of the Federal Social Security Act "as fully as if it were a private person or corporation."

Therefore, Defendant has ***consented to suit*** under Title IV-D of the Social Security Act and has thereby ***waived*** its Eleventh Amendment Immunity.

Consequently, the State Defendants' motion to dismiss was granted in error.

STATE DEFENDANTS HAVE WAIVED ELEVENTH AMENDMENT IMMUNITY BY VOLUNTARILY INVOKING THE JURISDICTION OF THE FEDERAL DISTRICT COURTS IN TITLE IV-D ACTIONS.

The Supreme Court has held that a waiver of 11th Amendment immunity will generally exist where the State either voluntarily invokes jurisdiction or makes a clear declaration that it intends to submit itself to the jurisdiction of the federal courts." *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670, 119 S.Ct. 2219, 144 L.Ed.2d 605 (1999). Id. at 675-76, 119 S.Ct. 2219.

Additionally, the Court has held that immunity is a privilege which may be waived, and hence, where a state voluntarily becomes a party to a cause, and submits its rights for judicial determination, it will be bound thereby, and cannot escape the result of its own voluntary act by invoking the prohibitions of the Eleventh Amendment. *Clark v. Barnard,* 108 U. S. 436, 108 U. S. 447. *Gunter v. Atlantic Coast Line R. Co.*, 200 U.S. 273 (1906).

Here, Congress specifically reserved jurisdiction in the federal courts for causes of action brought under Title IV-D of the Social Security Act in the following language:

> The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of Health and Human Services under

> section 452(a)(8) of this Act. A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides. *42 U.S.C. §660.*

Additionally, State Defendants have subjected themselves to federal jurisdiction for Title IV-D cases in the following language as the Supreme Court has long recognized that a suit arises under the law that creates the cause of action. *American Well Works Co. v. Layne & Bowler Co.*, 241 U. S. 257, 260 (1916):

> In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the effective date of the modification or revocation shall be as prescribed by ***federal law*** (42 U.S.C. Sec. 666(a)(9)), or any subsequent date. *California Family Code §17400 (c).*

Here, State Defendants have substituted themselves as payee for the underlying child support liability owed by Plaintiff/Appellant to the custodial parent. Additionally, State Defendants have invoked the jurisdiction of the federal courts by enforcing the child support obligations created by Title IV-D of the Social Security Act.

Moreover, the State Defendants have a vested, pecuniary interest in enforcing child support orders created by Title IV-D of the Social Security Act. Specifically, the State Defendants are incented to collect as much as they can from non-custodial parents via the incentive payment structure of Title IV-D. In short, the more the State Defendants collect, the more they receive in incentive payments from the federal government.

Plaintiff/Appellant's suit arises under the law that creates it (i.e., Title IV-D) and the State Defendants, by substituting themselves as payee in order to enforce a

child support obligation created by Title IV-D have voluntarily become a party to a cause, have submitted its rights for judicial determination and, being bound thereby, cannot escape the result of its own voluntary act by invoking the prohibitions of the Eleventh Amendment. Therefore, the State Defendants' motion to dismiss was granted in error.

PLAINTIFF/APPELLANT COMPLIED WITH RULE 8 OF THE FEDERAL RULES OF CIVIL PROCEDURE

The lower district court granted the County Defendants' motion to dismiss under Federal Rule of Civil Procedure §12(b)(6) solely on the grounds that Plaintiff/Appellant failed to meet the pleading requirements of Federal Rule of Civil Procedure §8. (Docket 30, Page 10, beginning with Line 1).

42 U.S.C. §1983 CLAIMS AGAINST COUNTY DEFENDANTS

The lower district court held that Plaintiff/Appellant failed to "state a claim upon which relief could be granted" with respect to Plaintiff/Appellant's 42 U.S.C §1983 claims against County Defendants in the following language (Docket No. 30, Page 11, Lines 15 and 16):

> the suspension of Plaintiff's licenses were implemented by the State of California – not by the County Defendants and therefore Plaintiff's due process claim against the County Defendants fail.

However, ***there has been no evidentiary hearing of any kind whatsoever at this stage in the proceedings***. In other words, the lower district court completely erred in attributing the acts of license suspensions to the State Defendants and not the County Defendants without having held ***any*** evidentiary hearing ***whatsoever***.

As such, it is entirely inappropriate for the lower district court to make an evidentiary finding at this stage in the proceedings as yet, there have been no evidentiary hearings to date.

Additionally, the lower district court held that Plaintiff/Appellant's 42 U.S.C. §1983 claims fail in the following language (Docket No. 30, Page 12, beginning with Line 8):

> Moreover, to the extent Plaintiff is alleging he has not had notice and an opportunity to be heard regarding the withholding of incorrect amounts of money for his support obligations, there are established procedures that provide sufficient post-deprivation remedies.

Again, at this point in the proceedings in the lower district court, there have been no evidentiary hearing of any kind whatsoever. Therefore, it is entirely inappropriate for the lower district court to hold that "post deprivation remedies were sufficient" at this stage in the proceedings as Plaintiff/Appellant has had no opportunity to present ***any*** evidence, ***whatsoever***, to the contrary.

The lower district court presented its own version of the standard of review in determining whether Plaintiff/Appellants claims met the pleading requirements of F.R.C.P §8 in the following language (Docket No. 30, Page 7, Lines 6-12):

> In determining whether a complaint fails to state a claim ***for screening purposes***, the Court applies the same pleading standard from Rule 8 of the Federal Rules of Civil Procedure ("Rule 8") as it would when evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). See Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012). Under Rule 8(a), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

However, it is not known what the lower district court has meant by "screening purposes" as there is no requirement in F.R.C.P §8 that the court "screen" Plaintiff/Appellant's claims. All that is required under F.R.C.P §8 is a short and clear statement sufficient to provide defendants notice with respect to what claims they are being charged with so defendants may adequately answer the allegations claimed.

Here, the lower district court has created its own, additional level of scrutiny, and appears to have championed County Defendants' cause by taking upon itself the duty of "screening" Plaintiff/Appellant's claims.

This was done in error and therefore, this Court should reverse the 9th Circuit's affirming of the lower district court's judgment dismissing Plaintiff/Appellant's 42 U.S.C. §1983 claims against County Defendants.

CIVIL RIGHTS CLAIMS UNDER 42 U.S.C. § 2000d AGAINST COUNTY DEFENDANTS.

The lower district court held that Plaintiff/Appellant's Civil Rights Claims under 42 U.S.C. §2000d fail because " Plaintiff fails to allege any facts showing the denial of benefits and discrimination was based on Plaintiff's race." (Docket No. 30, Page 13, Lines 12-21).

However, the standard of review for Rule 8 factual pleadings is to be liberally construed as also noted by the lower disctrict court in the following language (Docket No. 30, Page 7, beginning at Line 25 through Page 8, beginning at Line 9):

> A claim is facially plausible when it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." The complaint "must contain sufficient allegations of underlying facts to give fair notice and to enable opposing party to defend itself effectively." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011). "A document filed pro se is 'to be liberally construed,' and a 'pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir. 2008). However, liberal construction should only be afforded to "a plaintiff's factual allegations," Neitzke v. Williams, 490 U.S. 319, 330 n.9, 109 S. Ct. 1827, 104 L. Ed. 2d 339 (1989).

However, Plaintiff/Appellant clearly provides factual allegations "sufficient ... to give fair notice and to enable opposing party to defend itself effectively" with respect to Plaintiff/Appellant's civil rights claims under 42 U.S.C. §2000d. (See the following Section of the original complaint):

(i) CLAIMS AGAINST DEFENDANT: COUNTY OF ORANGE. (Dkt. 1-1, page 122, line 2 through page 123, line 3);

(ii) CLAIMS AGAINST DEFENDANT: DEPARTMENT OF CHILD SUPPORT SERVICES COUNTY OF ORANGE. (Dkt 1-1, page 142, line 3 through page 144, line 3);

(iii) CLAIMS AGAINST DFEENDANT: STEVEN ELDRED IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE DEPARTMENT OF CHILD SUPPORT SERVICES COUNTY OF ORANGE. (Dkt 1-1, page 164, line 6 through page 165, line 8).

The lower district court correctly observed that "a document filed pro se is 'to be liberally construed,' and a 'pro se complaint, however inartfully pleaded, must be held to less stringent standards and... liberal construction should be afforded to "a plaintiff's factual allegations." (Docket No. 30, Page 8, Lines 3-7).

However, the lower district court clearly erred in the application thereof to Plaintiff/Appellant's 42 U.S.C. §2000d claims against County Defendants.

R.I.CO. CLAIMS AGAINST COUNTY DEFENDANTS.

The lower district court has also held that Plaintiff/Appellant has insufficiently plead facts in support of the alleged predicate offense of mail fraud for Plaintiff/Appellant's R.I.C.O. claims. (Docket No. 30, Page 15, beginning with Line15).

However, Plaintiff/Appellant, incorporates by reference, the following sections of the original complaint against County Defendants:

(i) Docket No. 1, page 19, line 5 through line 25; and

(ii) CLAIMS AGAINST DEFENDANT: COUNTY OF ORANGE. (Docket No. 1-1, page 127, line 17 through page 130, line 21);

(iii) CLAIMS AGAINST DEFENDANT: DEPARTMENT OF CHILD SUPPORT SERVICES COUNTY OF ORANGE. (Docket No. 1-1, page 149, line 17 through page 151, line 21);

(iv) CLAIMS AGAINST DFEENDANT: STEVEN ELDRED IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE DEPARTMENT OF CHILD SUPPORT SERVICES COUNTY OF ORANGE. (Docket 1-1, page 170, line 23 through page 173, line 2).

As can be seen from the above, Plaintiff/Appellant clearly has plead facts sufficient to support R.I.C.O claims against County Defendants. Therefore, this Court should reverse the lower district court's ruling accordingly.

CONCLUSION REGARDING COUNTY DEFENDANTS

In general, the lower district court held that Plaintiff/Appellant failed to comply with F.R.C.P §8 with respect to all claims against all County Defendants. However, a review of the following sections of the original complaint clearly shows that Plaintiff/Appellant has provided sufficient factual allegations to provide County Defendants with adequate notice to defend against these allegations in the complaint.

As the Court will see from a review of these sections, Plaintiff/Appellant's complaint more than complies with the "fair notice" requirement of Rule 8 as it contains a "short and plain statement" of each claim showing that Palintiff/Appellant is "entitled to relief" against each County Defendant.

Additionally, each allegation is simple, concise, and direct and provides the defendants with 'fair notice of what the plaintiff's claim is and the grounds upon which it rests.' Fed. R. Civ. P. 8(a), (d).

(i) **CLAIMS AGAINST DEFENDANT: STATE OF CALIFORNIA.** (Pages 53 through 73, Paragraphs 262-376);

(ii) **CLAIMS AGAINST DEFENDANT: STATE OF CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES.** (Pages 74-95, Paragraphs 262-376);

(iii) **CLAIMS AGAINST DEFENDANT: STATE DISBURSEMENT UNIT.** (Pages 95-116, Paragraphs 377-489);

(iv) **CLAIMS AGAINST DEFENDANT: COUNTY OF ORANGE**. (Pages 116-137, Paragraphs 490-601);

(v) **CLAIMS AGAINST DEFENDANT: DEPARTMENT OF CHILD SUPPORT SERVICES COUNTY OF ORANGE**. (Pages 137-158, Paragraphs 602-775);

(vi) **CLAIMS AGAINST DFEENDANT: STEVEN ELDRED IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE DEPARTMENT OF CHILD SUPPORT SERVICES COUNTY OF ORANGE**. (Pages 158-179, Paragraphs 776-887);

(vii) **CLAIMS AGAINST DEFENDANT: STEVEN ELDRED AS AN INDIVIDUAL**. (Pages 180-200, Paragraphs 888-1001); and

(viii) **CLAIMS AGAINST DEFENDANT(S): DOES 1 THROUGH 20**. (Pages 201-221, Paragraphs 1002-1113).

Here, this Court is asked to balance the competing requirements of Federal Rules of Civil Procedure Rule 8 ("Rule 8") and subsequent case law by the United States Supreme Court as shown below.

On the one hand, Rule 8 demands a short and plain statement of the grounds for the court's jurisdiction, and a short and plain statement of the claim showing that the pleader is entitled to relief a demand for the relief sought, which may include relief in the alternative or different types of relief. *F.R.C.P Rule 8 (a)(1)-(3).*

On the other hand, a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do. Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true. *Bell Atlantic Corp. v. Twombly 550 U.S. 544.*

Consequently, this Court is presented with the unique case of balancing the countervailing proscriptions of Rule 8: Namely; (i) requiring a plaintiff to simply state their case while also, (ii) requiring the ***same*** plaintiff to provide sufficient facts to show grounds for their entitlement to relief, which requires more than labels and conclusions.

In short, the current case asks this Court to weigh the competing mandates of Rule 8 upon the following scale: ***Simplicity vs. Plausibility***.

Here, there are thirteen (13) causes of action against six (6) named Defendants, as well as, twenty (20) "Doe" Defendants. Therefore, ***any*** complaint filed sufficient to satisfy the proscriptions of Rule 8, will, ***necessarily***, result in a ***minimum*** of three hundred and thirty eight (338) causes of action along with facts sufficient to show grounds for relief –

"which grounds are more than labels and conclusions."

Therefore, ***any*** plaintiff, similarly situated, will necessarily need to (i) name each defendant, individually, along with (ii) all of the causes of action alleged,

including (iii) the facts sufficient to support the allegations, and (iv) the appropriate relief sought. The result will necessarily be a substantial amount of paper and pages that are not only essential but... in fact... are ***mandated*** by Rule 8.

Again, the requirements of Rule 8, itself, mandate the production of ***all*** of the above. It would then, therefore, be absolutely incredulous to label the results of the production thereof as mere "prolix" when one is mandated to complying with the Federal Rule of Civil Procedures.

Therefore, Appellant urges this Court to reverse the 9th Circuit's order affirming the disctrict court's judgment on the basis that (i) to hold an Appellant to a simplistic Rule 8 standard of a ***mere*** showing of "they done me wrong," while also, (ii) requiring an Appellant to provide facts exceeding "labels and conclusions" and then later ruling that "you said too much" and, therefore, have violated Rule 8, would be an inequitable balancing of the equities created by the exact same statute.

SIMPLICITY

The first prong of the analysis, as discussed above, is simplicity. Here, the original complaint contains headings numbered with Roman numerals such as I., II, III, etc.

Therefore, a simple, cursory, review of the complaint should allow ***each*** defendant to easily ascertain what they are being sued for and the facts alleged to support the allegations in support thereof.

As can be seen from the original complaint itself[2], the heading "VIII. CLAIMS AGAINST THE STATE OF CALIFORNIA" directs the Defendant to the relevant section in order to (i) understand the charges against them along with sufficient facts to (ii) to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true. *Bell Atlantic Corp. v. Twombly 550 U.S. 544.*

This is exactly what the original complaint accomplishes: (i) to allow the defendant to understand the charges, (ii) to provide the facts sufficient to support the Plaintiff's allegations, and (iii) that (i) and (ii) are sufficient so Defendant can file an answer and file a legitimate defense.

In short, the original complaint fully sets forth who is being sued, for what relief, and on what theory, with enough detail to guide discovery. It can be read in seconds and answered in minutes. *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996).

This use of "headings" continues for all defendants. Therefore, it should ***not*** be very difficult for ***any*** defendant to ascertain what they are being sued for.

Therefore, the simplicity requirement of Rule 8 is met.

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[2] Page 53.

PLAUSIBILITY

Plausibility has never been challenged by anyone. Nowhere, in any responsive pleading, anywhere, has any defendant challenged the factual allegations contained in the original complaint.

In fact, the lower district court seemed to have had no problem understanding the causes of action of this case based upon its recommendation and order. See Dkt 30, Case 8:18-cv-00160-PSG-KK, page 3 through 4.

Apparently, in drafting its opinion, the lower district court had no trouble, ***whatsoever***, in determining defendants, causes of actions, and facts to support the allegations in drafting its opinion.

It seems, therefore, absolutely incredulous, that the lower district court, in, when determining that the Appellant's original complaint lacked plausibility, in fact, was able to quote causes of action, ***in great detail*** – including which defendants are "being sued for what" – based solely upon Appellant's original complaint - and then conclude, ultimately, that Appellant violated Rule 8 by failing to state facts sufficient to show liability. (i.e., Plausibility).

Based upon the foregoing, the plausibility requirement has been met in the instant case. In short, no one has ***ever*** repudiated the facts set forth in the original complaint. Moreover, the foundation for which the lower district court has based its ruling – to dismiss based upon lack of facts and law - is based entirely upon the facts/law/causes of action/remedies contained in the original complaint.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari, reverse the court of appeals' decision, and remand with instructions to reverse the district court's judgment granting Defendants' motion to dismiss.

Respectfully submitted,

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