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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY M. JONAS,

Plaintiff,

v.

SHIRE PHARMACEUTICALS LLC; SHIRE PLC; FLEMMING ORNSKOV; ANGUS RUSSELL; and DOES 1 through 100 inclusive,,

Defendants.

Case No. **'13CV1237 DMS DHB**

COMPLAINT FOR

(1) FRAUD

(2) CONCEALMENT

(3) FRAUDULENT INDUCEMENT

(4) NEGLIGENT MISREPRESENTATION

(5) AGE DISCRIMINATION, 29 U.S.C. § 621 *et seq.* and CAL GOV'T CODE § 12900 *et seq.*

(6) WRONGFUL CONSTRUCTIVE DISCHARGE,

(7) VIOLATION OF CALIFORNIA LABOR CODE § 970 *et seq.*

[Jury Trial Requested]

NATURE OF THE ACTION

1. This is an action for damages and injunctive and other relief by Plaintiff Dr. Jeffrey M. Jonas, M.D. ("JONAS") against Defendants Shire Pharmaceuticals, LLC, Shire Plc (collectively "SHIRE"), Flemming Ornskov ("ORNSKOV"), and Angus Russell ("RUSSELL"). JONAS is the former President of SHIRE's Regenerative Medicine ("RM") business. ORNSKOV is the current CEO of SHIRE, and RUSSELL is the former CEO.

2. JONAS was asked by SHIRE and RUSSELL to become President of SHIRE's Regenerative Medicine (RM) division in late 2012. Numerous material representations were made by RUSSELL and other senior managers at SHIRE as to the nature of the new position, the support the position would have at the Board level and the state of the RM business. At the time, JONAS had comparable opportunities and offers for similar positions at other companies, and JONAS told RUSSELL that.

3. Shortly after accepting the position of President of RM, JONAS learned that SHIRE planned to appoint a new CEO. Concerned about the potential implications of that appointment for his new job, JONAS sought and received assurances from RUSSELL and others in SHIRE's senior management that his new position would not be affected by the change in leadership, that the prior representations about the strength of the opportunity for JONAS remained true and that JONAS should not accept a position elsewhere as a result.

4. In reliance on these assurances, JONAS moved from Philadelphia, Pennsylvania to San Diego, California to assume the Presidency of RM. Shortly after JONAS assumed that position in early 2013, SHIRE's new CEO, ORNSKOV, began to strip away JONAS's rights and responsibilities. He did so as part of an express plan to replace current senior managers over 40 with younger employees. SHIRE thus reneged on its prior promises and methodically reduced JONAS's responsibilities, relegating him to a role inferior to the position he had

been promised, and inferior even to his former role. SHIRE and ORNSKOV also demeaned JONAS' contributions to the organization, notwithstanding the successes achieved by the RM business while JONAS was its president, as well as Jonas's well-recognized prior successes.

5. When JONAS voiced his concerns about these and other matters, SHIRE's leadership retaliated by placing him on administrative leave, and he continues in that purgatory as of the filing of this Complaint. SHIRE and ORNSKOV have published derogatory and baseless comments about the reasons for putting JONAS on leave, including that JONAS had engaged in "disruptive behavior that is harmful to the business". The situation has become so intolerable as to constitute wrongful constructive discharge. JONAS has suffered and continues to suffer economic and psychological harm and damages as a result of SHIRE's unlawful actions.

6. To redress SHIRE's fraudulent, discriminatory and retaliatory actions, JONAS brings this action for: (1) Fraud/Deceit; (2) Concealment; (3) Fraudulent Inducement; (4) Negligent Misrepresentation; (5) Age Discrimination under 29 U.S.C. § 621 *et seq.* (the ADEA) and Cal. Gov't Code § 12900 *et seq.*; (6) Wrongful Constructive Discharge; and (7) Violation of California Labor Code section 970 *et seq.*; and (8) Punitive Damages.

THE PARTIES, JURISDICTION, AND VENUE

7. JONAS is a citizen of the State of California over 18 years of age and is a resident of San Diego County. At all times relevant to the Complaint, JONAS was also over the age of 40.

8. Shire Pharmaceutical LLC is a limited liability company organized under the laws of Delaware with its principal place of business in Philadelphia, Pennsylvania. Shire Pharmaceutical LLC is a subsidiary of Shire plc (collectively "SHIRE"), a global pharmaceutical company registered in the Bailiwick of Jersey (a British Crown Dependency), with its principal place of business in the Republic

of Ireland. ORNSKOV was at all times relevant a resident of the state of Massachusetts. RUSSELL was at all times relevant a resident of the state of Pennsylvania.

9. Federal diversity jurisdiction exists pursuant to 28 U.S.C. § 1332 because Plaintiff JONAS on the one hand, and all Defendants on the other hand, are residents of different states, and the matter in controversy exceeds $75,000 in value.

10. Venue in this district is proper pursuant to 28 U.S.C. § 1391 because JONAS lives and is employed in this district, because substantial portions of the acts and omissions on which the claims here are based occurred in this district, because JONAS would have remained wholly employed in this district but for SHIRE's improper activities, and because SHIRE has conducted and continues to conduct substantial business in this district.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

11. SHIRE hired JONAS as Senior Vice President of Research and Development ("R&D") in 2007. JONAS performed his responsibilities as SVP of R&D exceedingly well, and he received annual raises from 2007-2012 to reflect his performance. After four-plus years at SHIRE, JONAS' skills and abilities had developed to the point where he was a strong candidate for a position as an officer and/or senior executive, either with SHIRE or with other companies.

12. By November 2012, JONAS had received employment offers and interest from a number of other companies for executive positions. JONAS approached SHIRE's senior management regarding the possibility of promotion to an officer or equivalent position within SHIRE. He felt a sense of loyalty toward SHIRE and a desire to build on his four years of work for the company.

13. JONAS told SHIRE that he very much wanted to take on the responsibilities of a high corporate executive, in particular to run a business, to have full responsibility for the business's profit and loss ("P&L") (and the

integrated functions associated with a Business President, including R&D, Manufacturing, Supply Chain, and marketing and sales), and to serve on SHIRE's Executive Leadership Team, which also consists of the CEO, CFO, the General Counsel and the Vice President of Human Resources.

14. In or about October, 2012, JONAS met with SHIRE's CEO, Angus Russell, via videoconference in SHIRE's Philadelphia office. During the meeting, RUSSELL offered JONAS the position of President of SHIRE's Regenerative Medicine (RM) business. RUSSELL represented that, as President of RM, JONAS: (a) would have full responsibility for the profits and losses (P&L) of RM, including Research and Development, manufacturing, sales, and marketing; (b) would be a corporate officer answerable only to the CEO; (c) would be a member of SHIRE's Executive Leadership Team; and (d) would receive a compensation increase at the next annual review in February 2013. RUSSELL further represented that JONAS would receive a relocation allowance for the move from his home in Philadelphia to San Diego, which move was required by the promotion.

15. RUSSELL also represented to JONAS that his creativity and leadership in particular, as well as other skills JONAS had, were needed to help build the RM business beyond the initial product Dermagraft, which was acquired following SHIRE's acquisition of a company called Advanced Biohealing, Inc. (ABH) in 2011. JONAS felt he was well-suited to apply his skill set, particularly his creativity, to the RM division and was reassured by RUSSELL's representations to that effect. At no time did RUSSELL tell JONAS that he, RUSSELL, was going to be replaced as CEO and that an announcement regarding that fact was forthcoming in a matter of days.

16. RUSSELL and other senior management at SHIRE did not tell JONAS about the depth and breadth of the existing problems with the RM business in the wake of the ABH acquisition. For example, they failed to tell him the

particulars of the United States Justice Department's ongoing investigation of the RM business, and it was only later that JONAS learned that the Justice Department was seeking penalties of approximately $1.5 billion in connection with that investigation. SHIRE and RUSSELL also did not advise JONAS of the details of the illegal conduct allegedly engaged in by ABH's sales and marketing group before and after the acquisition, or that several employees in that group had left the company after the investigation commenced. Neither did they tell him that sales projections for the RM business were overinflated because they were based on prior illegal conduct by ABH sales personnel, many of whom had also left. Finally, they did not tell him that there were product approval process issues and ethical issues associated with prior efforts to obtain government approvals to sell key RM products.

17. Based on those representations and omissions by RUSSELL and other senior leaders at SHIRE, JONAS indicated that he would accept the offer.

18. Shortly thereafter, JONAS learned that RUSSELL was to be replaced as SHIRE's CEO by ORNSKOV. Concerned about the potential effect on his new position and on the RM division generally, JONAS reached out to SHIRE senior management to explore the implications of the company's appointment of a new CEO and to determine if the offer from SHIRE was still as promising as RUSSELL and others had previously represented.

19. The day after he learned that SHIRE would have a new CEO, JONAS again met with RUSSELL via videoconference. RUSSELL assured JONAS that the leadership change would not affect his position as RM President or diminish any of RUSSELL's prior representations and assured JONAS that the Board fully supported growth of the RM business. RUSSELL again encouraged JONAS to take the position of President of RM, rather than take an offer from any other interested company, stating again that the position was right for both JONAS and SHIRE. RUSSELL reiterated that the RM business urgently needed JONAS'

creativity and leadership skills. Other senior managers at SHIRE made similar representations. Based on those representations, JONAS again decided to accept the offer and to turn away from other offers and interest.

20. In mid-November, 2012, in reliance on these and other representations, JONAS entered into an Executive Employment Agreement (the "Employment Agreement") with SHIRE to become the President of RM, rather than accept offers for similar employment from other companies who had shown interest in JONAS.

21. In reliance on these and other representations, JONAS listed his Philadelphia home for sale in a down housing market and purchased a home in San Diego along with new furniture and other items necessary to establish himself in California. Thereafter, JONAS moved from his home in Philadelphia to his newly-purchased home in San Diego to assume the position of President of RM. JONAS would not have accepted the RM presidency, signed the Employment Agreement, listed his Philadelphia home for sale, purchased a new home and accessories or moved to San Diego had he not received the previously discussed representations and assurances from SHIRE's senior management beforehand.

22. After assuming the presidency of RM, JONAS learned that there were serious problems within the RM business, many of which were the subject of a wide-ranging investigation by the United States Department of Justice (DOJ), related in particular to illegal sales and marketing practices of SHIRE following its acquisition of ABH. SHIRE's senior management had known the nature and extent of these problems, but they had failed to disclose them to JONAS when he was offered the Presidency of the RM business, telling JONAS instead only that his creativity and leadership were needed to build the RM division. As a number of significant employees left the RM business in the course of the DOJ investigation, it became clear to JONAS that he had been promoted to be President of RM to put a good face on a messy, problematic situation in the RM business,

rather than to use his skills to build the division, as senior management had previously represented.

23. JONAS' suspicions were heightened when the new CEO, ORNSKOV, began to take control of the SHIRE organization in early 2013 and to block any efforts by JONAS to exercise his leadership and creativity. ORNSKOV in particular stated that SHIRE needed to make way for younger people to be given the opportunity to fill senior management positions. As a result, numerous senior managers over the age of 40 left the company. Other over-40 managers seeking promotion were told they did not "have enough runway" to be promoted within the company. JONAS began hearing rumors that he was being replaced and/or having his role in the company diminished as a result of this discriminatory attitude.

24. By late April 2013, a mere five months after its prior representations and assurances, SHIRE: (a) had stripped JONAS of responsibility for manufacturing, research and development, and thus for full P&L responsibility for the RM business; (b) had removed JONAS from the position of President of the RM business; c) had removed JONAS from the Executive Leadership Team; (d) had specifically instructed JONAS not to use his creativity in his work for RM, i.e. not to focus on science, compliance or business development, but to focus only on sales; (e) had refused to give JONAS a salary increase, as previously promised; and (f) had refused to fully reimburse JONAS for his relocation expenses, as promised. Each of the actions was taken without first consulting or informing JONAS.

25. The effect of these acts was to reduce JONAS' duties and responsibilities to those of a general manager, which was not only a marked diminution from his promised position as President of the RM business, but a lesser position than his previous position as head of R&D for SHIRE. At the same time JONAS continued to be saddled with the leadership responsibilities of a company facing serious charges by the Justice Department and significant public

scrutiny. Rather than heading a respectable business unit and serving on SHIRE's Executive Leadership Team, JONAS watched as his good name was sullied, both internally and externally, by association with the problematic business practices that plagued SHIRE's RM business. All of this was accompanied by insinuations that he was too old for the job.

26. When JONAS learned of these actions by SHIRE, he raised his concerns about misrepresentations, discrimination and mistreatment with SHIRE's leadership. In response, he was summarily placed on administrative leave. He was told that he had engaged in disruptive behavior that was harmful to the company. Other derogatory and baseless reasons for his being placed on administrative leave were published by SHIRE as well. The situation was humiliating, demoralizing and intolerable.

27. As a result of SHIRE's misrepresentations, concealment and willful discrimination, JONAS has suffered and will continue to suffer serious and irreparable harm, including, but not limited to: (a) lost compensation and unreimbursed moving expenses; (b) loss of the position and responsibilities promised by SHIRE's senior management; (c) lost employment opportunities; (d) real estate losses; and (e) reputational harm.

FIRST CLAIM FOR RELIEF:

FRAUD AND DECEIT

28. JONAS hereby restates the allegations set forth in paragraphs 1 through 27 and incorporates those allegations in this paragraph as if fully set forth herein.

29. SHIRE and RUSSELL made false representations and material omissions of material fact to JONAS regarding his promised position as the President of RM, regarding his membership on the Executive Leadership Team, regarding his responsibilities as President of RM, regarding the status of the RM business, and regarding a salary increase. SHIRE reiterated those false

representations and material omissions when JONAS questioned whether he should take the position offered, after it was announced that a new CEO, ORNSKOV, would replace RUSSELL.

30. SHIRE knew that all of those representations were false at the time of their making and that the omissions were material. SHIRE made all of those false representations and omitted all of that material information with the intent to induce JONAS to accept a new position and to move from Philadelphia to San Diego on the basis of the false representations and omissions.

31. JONAS reasonably and justifiably relied on SHIRE's false representations and omissions in accepting the new position and responsibilities and moving to San Diego and in declining other opportunities available to him. JONAS suffered damage and harm as a result of SHIRE's misrepresentations and omissions in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF:

FRAUDULENT CONCEALMENT

32. JONAS hereby restates the allegations set forth in paragraphs 1 through 31 and incorporates those allegations in this paragraph as if fully set forth herein.

33. SHIRE intentionally concealed from JONAS material facts, of which SHIRE had exclusively knowledge, regarding his promised position as the President of RM, regarding his membership on the Executive Leadership Team, regarding his responsibilities as President of RM, regarding the status of the RM business, and regarding an increase in his salary. SHIRE continued that concealment regarding JONAS's promised position as the President of RM, regarding his membership on the Executive Leadership Team, regarding his responsibilities as President of RM, regarding the status of the RM business, and regarding the promised increase in his salary when JONAS questioned whether he should take the position offered, after it was announced that a new CEO,

ORNSKOV, would replace RUSSELL.

34. SHIRE concealed and suppressed these material facts regarding JONAS' promised position as the President of RM, regarding his membership on the Executive Leadership Team, regarding his responsibilities as President of RM, regarding the status of the RM business, and regarding the promised increase in his salary, with the intent to induce JONAS to accept the new positions and responsibilities and to move from Philadelphia to San Diego on that basis and to decline other opportunities.

35. JONAS was unaware of the concealed and suppressed facts and relied on them to his detriment. JONAS would not have accepted the new position and/or moved to San Diego and/or declined other opportunities had he known of these facts. JONAS suffered damage and harm as a result of SHIRE's concealment in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF:

FRAUDULENT INDUCEMENT

36. JONAS hereby restates the allegations set forth in paragraphs 1 through 35 and incorporates those allegations in this paragraph as if fully set forth herein.

37. SHIRE misrepresented and concealed material facts regarding JONAS'S promised position as the President of RM, regarding his membership on the Executive Leadership Team, regarding his responsibilities as President of RM, regarding the status of the RM business, and regarding the promised increase in his salary during the process of hiring JONAS as President of RM. SHIRE repeated those false representations and omissions when JONAS questioned whether he should take the position offered, after it was announced that a new CEO, ORNSKOV, would replace RUSSELL.

38. SHIRE knew these misrepresentations to be false or lacked reasonable grounds to believe them to be true and knew the omissions were material. SHIRE

made those false representations and concealed those material facts with the intent to induce JONAS to accept a new position (including execution of the Employment Agreement) and responsibilities and to move from Philadelphia to San Diego and to decline other employment opportunities.

39. JONAS reasonably and justifiably relied on SHIRE's false representations and concealment regarding his promised position as the President of RM, regarding his membership on the Executive Leadership Team, regarding his responsibilities as President of RM, regarding the status of the RM business, and regarding the promised increase in his salary in accepting the new position and moving to San Diego and in declining other employment opportunities.

40. JONAS suffered damage and harm as a result of SHIRE's misrepresentations and concealment in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF:

NEGLIGENT MISREPRESENTATION

41. JONAS hereby restates the allegations set forth in paragraphs 1 through 40 and incorporates those allegations in this paragraph as if fully set forth herein.

42. SHIRE misrepresented material facts to JONAS regarding his promised position as the President of RM, regarding his membership on the Executive Leadership Team, regarding his responsibilities as President of RM, regarding the status of the RM business, and regarding an increase in his salary. SHIRE repeated those false representations and omissions regarding JONAS' promised position as the President of RM, regarding his membership on the Executive Leadership Team, regarding his responsibilities as President of RM, regarding the status of the RM business, and regarding the promised increase in his salary when JONAS questioned whether he should take the position offered, after it was announced that a new CEO, ORNSKOV, would replace RUSSELL.

43. SHIRE lacked reasonable grounds to believe such representations

regarding JONAS' promised position as the President of RM, regarding his membership on the Executive Leadership Team, regarding his responsibilities as President of RM, regarding the status of the RM business, and regarding the promised increase in his salary to be true.

44. SHIRE made such representations regarding JONAS' promised position as the President of RM, regarding his membership on the Executive Leadership Team, regarding his responsibilities as President of RM, regarding the status of the RM business, and regarding the promised increase in his salary with the intent to induce JONAS to accept a new position and to move from Philadelphia to San Diego on the basis of the false representations and to decline other employment opportunities.

45. JONAS reasonably and justifiably relied on SHIRE's representations in accepting the new position and moving to San Diego and declining other employment opportunities.

46. JONAS suffered damage and harm as a result of SHIRE's representations in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF:

AGE DISCRIMINATION (29 U.S.C. § 621 *et seq.* and CALIFORNIA GOVERNMENT CODE § 12900, *et seq.)*

47. JONAS hereby restates the allegations set forth in paragraphs 1 through 46 and incorporates those allegations in this paragraph as if fully set forth herein.

48. JONAS performed his duties in all positions he held with SHIRE in an exemplary and competent manner.

49. Because of JONAS' age, less than five months after promising him a position as President of the RM business, membership on the Executive Leadership Team, executive responsibility for P&L of the RM business and a salary increase, SHIRE demoted him from his position as President of SHIRE's RM business,

removed him from the Executive Leadership Team, curtailed his responsibilities for RM's P&L and refused to increase his salary.

50. These adverse actions were not based on poor performance, nor were they ever contended to be so, but were instead orchestrated by SHIRE's new CEO, ORNSKOV, and his management team. ORNSKOV and his team had repeatedly expressed a desire to make way for younger people to fill senior management positions and had told other over-40 managers that they did not "have enough runway" to be promoted in the company. When JONAS raised concerns regarding the adverse acts undertaken with respect to him and the ageist statements made, he was placed on administrative leave, and derogatory and baseless statements about the reasons for his leave were made by SHIRE to other employees, causing him shame, embarrassment and humiliation.

51. SHIRE's actions were willful and intentional, and they have created an intolerable working condition, such that JONAS reasonably feels compelled to resign.

52. SHIRE's actions described in this complaint violated the federal and state age discrimination statutes, 28 U.S.C. § 621, *et seq.* and California Government Code § 12900 *et seq.*

53. But for SHIRE's age-biased adverse actions, JONAS would have enjoyed the full rights and responsibilities of his employment, as promised by SHIRE. JONAS has suffered damage and harm as a result of SHIRE's discrimination in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF:

WRONGFUL CONSTRUCTIVE DISCHARGE

54. JONAS hereby restates the allegations set forth in paragraphs 1 through 53 and incorporates those allegations in this paragraph as if fully set forth herein.

55. JONAS performed all jobs he held with SHIRE in an exemplary and

competent manner.

56. Defendants' fraudulent and discriminatory actions described above were willful and deliberate and were undertaken in a callous and insensitive way. Indeed, the fact that JONAS was stripped of all positions and entitlements that were previously promised to him in November 2012 a mere five months later, in April 2013, confirms the egregiousness of Defendants' conduct. Moreover, none of the acts undertaken by Defendants were based on poor performance by JONAS. They were based instead on fraudulent and discriminatory acts, as described above.

57. While these acts were being engineered by Defendants, numerous other SHIRE employees were informed of the plans to demote, remove and relieve JONAS of his positions and entitlements, but JONAS was deliberately excluded from those discussions, and that information was deliberately kept from him. Instead, he first began to learn of the adverse acts being taken against him by rumor and by sudden changes in his duties and responsibilities and/or sudden structural changes in the company made without warning. While JONAS' responsibilities were stripped without warning or explanation, those changes were announced for others to see, subjecting JONAS to shame, embarrassment and humiliation. This created an intolerable working environment.

58. JONAS complained to senior management about the adverse acts set forth in this complaint. Management's response was to immediately place him on administrative leave and to claim that he was being "disruptive and harmful to the business". After he was placed on leave, other SHIRE employees were told derogatory things about his administrative leave by SHIRE or were told nothing at all, further subjecting JONAS to shame, embarrassment and humiliation, and further creating an intolerable working environment.

59. SHIRE's actions were willful, intentional, and intolerable, such that JONAS reasonably feels compelled to resign. This conduct by SHIRE constitutes wrongful constructive discharge and violates California law.

60. But for SHIRE's activities, JONAS would have enjoyed the full rights and responsibilities of his employment, as promised by SHIRE. JONAS has suffered damage and harm as a result of SHIRE's discrimination in an amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF:

VIOLATION OF CAL. LABOR CODE § 970 *et seq.*

61. JONAS hereby restates the allegations set forth in paragraphs 1 through 60 and incorporates those allegations in this paragraph as if fully set forth herein.

62. SHIRE made knowingly false representations and omissions regarding the kind, character, and extent of JONAS' work as President of RM, as a member of the Executive Leadership Team, the length of time such work would last, and the compensation for such work, among other things.

63. SHIRE made such representations and omissions with the intent to influence, persuade, and engage JONAS to move from Philadelphia to San Diego, CA, yet such representations and omissions were false. Accordingly, SHIRE has violated California Labor Code § 970 *et seq.*.

64. JONAS suffered damage and harm as a result of SHIRE's misrepresentations in an amount to be proven at trial.

EIGHTH CLAIM FOR RELIEF:

PUNITIVE DAMAGES

65. JONAS hereby restates the allegations set forth in paragraphs 1 through 64 and incorporates those allegations in this paragraph as if fully set forth herein.

66. Defendants' conduct alleged herein was willful and wanton and was fraudulent, malicious and oppressive, entitling JONAS to recover punitive damages against Defendants under California Civil Code § 3294 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, JONAS prays for the following relief:

a. A declaratory judgment that the Employment Agreement was induced by fraud and is therefore voidable at the option of JONAS;

b. A preliminary and permanent injunction restraining and enjoining SHIRE's intolerable and discriminatory activities, as described herein and to be developed at trial;

c. Compensatory and punitive damages in an amount to be proven at trial;

d. Attorneys' fees and costs;

e. All damages, penalties, attorneys' fees, and costs available under the ADEA, including but not limited to liquidated damages;

f. All damages, penalties, attorneys' fees, and costs available under FEHA;

g. All damages, penalties, attorneys' fees, and costs available under Labor Code section 970 *et seq.*, including but not limited to, a civil penalty of double damages; and

h. Such other relief as the Court deems just and proper.

JONAS hereby demands a jury trial on all causes of action and issues contained herein.

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