



FORCE FILED

No. S-250121
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND

LUMINA ECLIPSE LIMITED PARTNERSHIP

BETA VIEW HOMES LTD.

LUMINA ECLIPSE GP LTD.

and

D-THIND DEVELOPMENT BETA LTD.

RESPONDENTS

NOTICE OF APPLICATION

NAME OF APPLICANT: KSV Restructuring Inc., in its capacity as the Court-appointed monitor (in such capacity, the “**Monitor**” or the “**Applicant**”) of Beta View Homes Ltd. (“**Beta View**”), Lumina Eclipse GP Ltd. (“**Lumina GP**”), Lumina Eclipse Limited Partnership (“**Lumina LP**”) and D-Thind Development Beta Ltd. (“**D-Thind Beta**” and collectively with Beta View, Lumina GP and Lumina LP, the “**Debtors**”).

TO: The Service List.

TAKE NOTICE that an application will be made by the Applicant to the Honourable Justice Masuhara at the courthouse at 800 Smithe Street, Vancouver, BC on July 15, 2025, at 9:15 a.m. for the order set out in Part 1 below.

The Applicant estimates that the application will take 60 minutes.

- ☐ This matter is within the jurisdiction of an associate judge.
- ☒ This matter is not within the jurisdiction of an associate judge.

Part 1: ORDER SOUGHT

1. An order (the “**Stay Extension Order**”), substantially in the form attached hereto as Schedule “B,” among other things:

- (a) abridging the time for service of the within application;
- (b) extending the Stay of Proceedings (as defined below) to and including January 23, 2026;
- (c) declaring that, pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1, as amended (“**WEPPA**”, and such declaration being, the “**WEPPA Declaration**”), D-Third Development Beta Ltd. meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222, as amended (the “**WEPP Regulations**”); and
- (d) approving the activities of the Monitor, as set out in the First Report of the Monitor dated January 14, 2025 (the “**First Report**”), the Second Report of the Monitor dated April 8, 2025 (the “**Second Report**”), the Supplement to the Second Report of the Monitor dated April 15, 2025 (the “**Supplemental Report**”), and the Third Report of the Monitor dated July 9, 2025 (the “**Third Report**” and collectively with the First Report, the Second Report and the Supplemental Report, the “**Reports**”).

2. Such other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

Background

3. The Debtors consist of Beta View, Lumina GP, Lumina LP and D-Third Beta, each of which is a single purpose entity. The Debtors share common ownership and management.

4. Beta View, Lumina GP and D-Third Beta are corporations incorporated pursuant to the *Business Corporations Act*, S.B.C. 2002, c. 57, as amended. Lumina LP is a limited partnership formed under the *Partnership Act*, R.S.B.C. 1996, c. 348, as amended, of which Lumina GP is the general partner.

5. Lumina LP and Beta View (together, the “**Initial Debtors**”) are the beneficial and registered owners, respectively, of a 34-story development located at 2381 Beta Ave, Burnaby, BC, intended to comprise 329 units (the “**Eclipse Project**”). At the commencement of these proceedings, construction of the Eclipse Project was approximately 95% complete.

6. In connection with the Eclipse Project, the Initial Debtors entered into the following commitment letters:

- (a) a commitment letter dated April 28, 2021 (as amended by a first amending agreement dated June 22, 2021, second amending agreement dated July 5, 2022, third amending agreement dated May 23, 2023, fourth amending agreement dated June 22, 2023, and a fifth amending agreement dated March 5, 2024) among, *inter alios*, Lumina GP, in its capacity as the general partner for and on behalf of Lumina LP, as borrower, Beta View, as nominee, and KingSett Mortgage Corporation (“**KingSett**”), as lender, pursuant to which KingSett provided a first mortgage loan in the principal amount of \$124,000,000 (the “**First KingSett Loan**”); and
- (b) a commitment letter dated April 28, 2021 (as amended by a first amending agreement dated June 22, 2021, second amending agreement dated July 5, 2022, third amending agreement dated May 23, 2023, fourth amending agreement dated June 22, 2023, fifth amending agreement dated March 5, 2024, and a sixth amending agreement dated July 5, 2024) among, *inter alios*, Lumina GP, in its capacity as the general partner for and on behalf of Lumina LP, as borrower, Beta View, as nominee, and KingSett, as lender, pursuant to which KingSett provided a second mortgage loan comprising two facilities in the aggregate principal amount of \$65,400,000 (the “**Second KingSett Loan**”).

7. As at December 27, 2024, the total indebtedness to KingSett was approximately \$189,000,000, plus interest and costs.

8. The payment and performance of the Initial Debtors’ obligations in respect of the First KingSett Loan are secured by, among other things:

- (a) a site-specific general security agreement dated June 30, 2021, granted by Beta View over its personal property in connection with the Eclipse Project;

- (b) a mortgage and assignment of rents dated June 23, 2021, in the principal amount of \$95,000,000, registered against the Eclipse Project; and
- (c) a beneficial owner's direction, acknowledgment, and security agreement dated June 30, 2021, granted by Beta View and Lumina LP, in favour of KingSett.

9. The payment and performance of the Initial Debtors' obligations in respect of the Second KingSett Loan are secured by, among other things:

- (a) a general security agreement dated June 30, 2021, granted by Beta View over its personal property in connection with the Eclipse Project;
- (b) a mortgage dated June 23, 2021, in the principal amount of \$62,500,000, granted by Beta View, registered against the Eclipse Project; and
- (c) a beneficial owner's direction, acknowledgment, and security agreement dated June 30, 2021, granted by Beta View and Lumina LP, in favour of KingSett.

The Monitor's Appointment

10. On January 8, 2025, KingSett obtained an initial order (the "**Initial Order**") of the Supreme Court of British Columbia (the "**Court**") in respect of the Initial Debtors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**").

11. Among other things, the Initial Order:

- (a) granted a stay of proceedings in favour of the Initial Debtors (the "**Stay of Proceedings**") to and including January 18, 2025 (the "**Initial Stay Period**");
- (b) approved the Interim Financing Term Sheet dated as of January 6, 2025 (as amended, the "**Interim Financing Term Sheet**"), between the Monitor, for and on behalf of the Initial Debtors, and KingSett;
- (c) relieved the Initial Debtors of any obligation to file a new disclosure statement under subsection 16(2) of the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41, as amended ("**REDMA**"), and stayed any rights and remedies of pre-sale purchasers to rescind their pre-sale contracts; and

- (d) granted the Monitor certain enhanced powers (the “**Initial Enhanced Powers**”) and oversight.

12. On January 16, 2025, KingSett obtained an amended and restated Initial Order (the “**ARIO**”), *inter alia*:

- (a) extending the Initial Stay Period to and including April 16, 2025;
- (b) adding Lumina GP as a respondent in these proceedings and extending to it the benefits of the protections and authorizations provided under the ARIO;
- (c) increasing the maximum principal amount that could be borrowed under the Interim Financing Term Sheet; and
- (d) expanding the Initial Enhanced Powers, including by authorizing the Monitor to:
 - (i) market, sell and/or dispose of the Property (as defined in the ARIO) in accordance with the ARIO or any subsequent order of this Court; and
 - (ii) perform or cause the Debtors to perform such functions, duties, and obligations, and enter into agreements as the Monitor deems necessary for the restructuring, including, but not limited to, the sale of the Property (including the Eclipse Project and associated parking stalls and storage lockers), collection and distribution of Proceeds (as defined in the ARIO), and the continuation of the Debtors’ business and development projects.

13. To facilitate the orderly completion of the Eclipse Project and the sale of the remaining units therein, the Monitor sought, and on April 16, 2025, obtained the following orders:

- (a) a second amended and restated Initial Order (the “**SARIO**”), among other things:
 - (i) extending the Stay of Proceedings to and including July 18, 2025; and
 - (ii) including D-Third Beta as a respondent in these proceedings and extending to it the benefits of the protections and authorizations provided under the SARIO; and

- (b) an order (the “**Sale Process Order**”), among other things:
- (i) authorizing and empowering the Monitor to enter into the Letter Agreement dated as of April 16, 2025, among the Monitor, Rennie Marketing Systems, by its partners Rennie Project Marketing Corporation and 541823 B.C. Ltd. (collectively, “**RMS**”), and Rennie & Associates Realty Ltd. (together with RMS, the “**Sales Agent**”) in the form attached as Appendix “B” to the Second Report;
 - (ii) approving the sale process, substantially as described in the Second Report (the “**Sale Process**”); and
 - (iii) subject to the filing of a disclosure statement amendment pursuant to REDMA, authorizing the Monitor and the Sales Agent to carry out the Sale Process in accordance with its terms and the terms of the Sale Process Order, and to take such steps as they consider necessary or desirable in carrying out each of their obligations thereunder, including, without limitation, to enter into sale agreements arising from the Sale Process that satisfy the Sale Conditions (as defined in the Second Report).

14. The Monitor now brings the within application to provide the time necessary to advance the completion of, and monetize, the Eclipse Project.

The Stay Period

15. The Stay of Proceedings under the SARIO will expire on July 18, 2025. Pursuant to the proposed Stay Extension Order, the Monitor is seeking to extend the Stay of Proceedings to and including January 23, 2026 (the “**Stay Extension**”).

16. The proposed Stay Extension will enable the Monitor to advance the construction of the Eclipse Project. Additionally, and considering the termination of the Sales Agent’s engagement, it will allow the Monitor to identify an alternative agent (the “**Alternative Agent**”) and thereafter, implement the Sale Process, or if determined necessary or appropriate by the Monitor, obtain approval of the Alternative Agent’s retention and an amended or amended and restated Sale Process Order and Sale Process.

17. The cash flow forecast included in the Third Report demonstrates that the Debtors will have sufficient liquidity throughout the proposed Stay Extension. Such liquidity will be provided under the Interim Financing Term Sheet, the maturity date under which will be extended to and including January 23, 2026, pursuant to Amendment No. 3 to the DIP Agreement to be executed.

The WEPPA Declaration

18. Following its appointment in respect of D-Third Beta pursuant to the SARIO, the Monitor was advised, and has since confirmed, that all of D-Third Beta's employees were terminated between October 31 and November 10, 2024 (collectively, the "**Former Employees**"), as a result of the Debtors' liquidity issues. The Monitor understands that certain of the Former Employees were, as the date of their termination, and remain, owed eligible wages under WEPPA.

19. To facilitate the Former Employees' timely access to the Wage Earner Protection Program in respect of their eligible wages, the Monitor seeks the WEPPA Declaration pursuant to the proposed Stay Extension Order.

Approval of the Monitor's Activities

20. Since the granting of the Initial Order, the Monitor, with the assistance of its counsel, has diligently advanced these proceedings honestly and in good faith, pursued value-maximizing means of monetizing the Debtors' assets and complied with its duties. Pursuant to the proposed Stay Extension Order, the Monitor is now seeking approval of such activities, as described in the Reports.

Part 3: LEGAL BASIS

21. The Monitor relies on:

- (a) the CCAA, WEPPA, the WEPP Regulations and the *Supreme Court Civil Rules*, BC Reg. 241/2010;
- (b) the inherent and equitable jurisdiction of this Court; and
- (c) such further and other legal basis as counsel may advise and this Court may allow.

The Stay of Proceedings Should be Extended

22. Subsection 11.02(2) of the CCAA expressly authorizes this Court to grant an extension of the Stay of Proceedings for “any period the court considers necessary”. To grant such an extension in proceedings in which a “super-Monitor” has been appointed, this Court must be satisfied that circumstances exist that make the order appropriate and that the Monitor has acted, and is acting, in good faith and with due diligence.

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended s 11.02(2)-(3) [CCAA].

1057863 B.C. Ltd. (Re), 2020 BCSC 1359 at para 117 [105]

North American Tungsten Corp. (Re), 2015 BCSC 1376 at paras 24-25 [*North American Tungsten*].

In the Matter of a Compromise or Arrangement of Balboa Inc. et. al (July 31, 2024), Toronto, CV-2400713245-00CL (Endorsement) (ONSC) at para 4.

23. The jurisdiction of Courts to stay proceedings under section 11.02 “should be construed broadly to accomplish the legislative purposes of the CCAA”. These purposes include, among others, enabling the continuation of the debtors’ business and facilitating a value maximizing restructuring. Accordingly, a stay of proceedings will be appropriate where it maintains the *status quo* and provides a debtor with breathing room while it seeks to restore solvency and arrange a “sale of assets in order to maximize recovery for stakeholders.”

North American Tungsten, supra at paras 25, 27-28.

105, supra at para 118.

Inca One Gold Corp. (Re), 2024 BCSC 1478 at para 66.

Canwest Global Communications Corp, 2011 ONSC 2215 at paras 24-25.

9354-9186 Quebec Inc. v. Callidus Corp., 2020 SCC 10 at para 40.

24. Having regard to the foregoing, the Monitor submits that the proposed Stay Extension is appropriate in the circumstances given that:

- (a) the Monitor has acted and continues to act in good faith and with due diligence, and has caused the Debtors to similarly act in good faith and with due diligence;
- (b) the proposed Stay Extension will enable the Monitor to advance the construction of the Eclipse Project, identify and retain the Alternative Agent and thereafter, implement the Sale Process, or if determined necessary or appropriate by the

Monitor, obtain approval of the Alternative Agent's retention and an amended or amended and restated Sale Process Order and Sale Process;

- (c) the cash flow forecast attached to the Third Report demonstrates that the Debtors will be able to fund their obligations and the costs of these proceedings through the proposed Stay Extension; and
- (d) the Monitor does not believe that the proposed Stay Extension will prejudice any creditor.

Third Report of the Monitor dated July 9, 2025, s 8.0 at para 1 [Third Report].

The WEPPA Declaration Should be Granted

25. Subsection 5(1) of WEPPA permits eligible former employees of a company subject to the CCAA to collect certain benefits, including termination and severance pay, provided the following criteria are satisfied:

- (a) the former employee's employment is ended for a reason prescribed by regulation;
- (b) the former employee is owed eligible wages by a former employer;
- (c) the former employer is subject to proceedings under the CCAA; and
- (d) a court determines under subsection 5(5) of WEPPA that the criteria prescribed by regulation are met.

Wage Earner Protection Program Act, S.C. 2005, c. 47, s. 1, s 5(1) [WEPPA].

26. Subsection 5(5) of WEPPA provides, in relevant part, that "a court may, in proceedings [...] under the *Companies' Creditors Arrangement Act*, determine that the former employer meets the criteria prescribed by regulation."

WEPPA, *ibid* s 5(5).

27. Section 3.2 of the WEPP Regulations sets out the "criteria prescribed by regulation" referred to in subsection 5(5) of WEPPA. It provides that "a court may determine whether the

former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.”

WEPPA, *ibid* s 5(5).
Wage Earner Protection Program Regulations, SOR/2008-222, s 3.2.

28. Applying subsection 5(5) of WEPPA and section 3.2 of the WEPP Regulations, Courts, including this Court, have previously granted declarations analogous to the proposed WEPPA Declaration in the context of CCAA proceedings.

Re Bron Media, 2023 BCSC 1906 at paras 15-18.
Re Hudson’s Bay Company, 2025 ONSC 3328 at paras 44-46.
DCL Corporation, 2023 ONSC 4475 at paras 2, 12-14.

29. Here, the Monitor submits that it is appropriate for this Court to grant the proposed WEPPA Declaration given that:

- (a) each of the requisite criteria enumerated under subsection 5(5) of WEPPA and section 3.2 of the WEPP Regulations are satisfied;
- (b) if granted, the proposed WEPPA Declaration will result in each of the Former Employees, becoming eligible to apply for the benefits conferred by WEPPA and the WEPP Regulations; and
- (c) the proposed WEPPA Declaration is in the best interests of the Former Employees.

Third Report, *supra* s 5.0 at para 5.

The Monitor’s Activities should be Approved

30. The Monitor has acted with good faith throughout these proceedings and has complied with the requirements of section 25 of the CCAA, and the orders issued by this Court from time to time.

31. Courts frequently approve the activities of Court-appointed monitors in CCAA proceedings pursuant to their jurisdiction under section 11 of the CCAA to make any order considered “appropriate in the circumstances”. Indeed, it is now well recognized that “there are good policy and practical reasons” for doing so, including that such approval:

- (a) allows the monitor to move forward with the next steps in the CCAA proceedings;
- (b) brings the monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the monitor's activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and disruption that would be caused by (i) the re-litigation of steps taken to date, and (ii) potential indemnity claims by the monitor.

CCAA, *supra* s 11.
Re Target Canada Co, 2015 ONSC 7574 at paras 1-2.
Laurentian University of Sudbury, 2022 ONSC 5850 at para 17.

32. Given the aforementioned benefits, the customary limitations imposed upon reliance on such approval under the proposed Stay Extension Order, and the Monitor's diligent and good faith performance of its activities in compliance with the CCAA and the orders of this Court, the Monitor submits that it is appropriate for this Court to approve its activities, as described in the Reports.

Part 4: MATERIAL TO BE RELIED ON

- 33. First Report of the Monitor dated January 14, 2025;
- 34. Second Report of the Monitor dated April 8, 2025;
- 35. Supplement to the Second Report of the Monitor dated April 15, 2025; and
- 36. Third Report of the Monitor dated July 9, 2025;
- 37. Such further and other material as counsel may advise and this Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the Applicant, 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: July 9, 2025



Signature of Joshua Foster
Lawyer for Monitor

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs _____ of Part 1 of this notice of application
- ☐ with the following variations and additional terms:

Dated: _____

Signature of ☐ Judge ☐ Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

SCHEDULE "A"
SERVICE LIST

See attached.

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

LUMINA ECLIPSE LIMITED PARTNERSHIP

BETA VIEW HOMES LTD.

LUMINA ECLIPSE GP LTD.

and

D-THIND DEVELOPMENT BETA LTD.

RESPONDENTS

SERVICE LIST
(As of July 9, 2025)

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<p>The Owners of Strata Plan EPS6882</p> <p>400 – 11950 80th Avenue Delta, BC V4C 1Y2</p> <p>With a copy to: Tribe Management Inc. 400 – 11950 80th Avenue Delta, BC V4C 1Y2</p>	<p>Counsel for The Owners, Strata Plan EPS6882</p> <p>Bleay Both Uppal LLP 700 – 1155 West Pender Street Vancouver, BC V6E 2P4</p> <p>Jamie A. Bleay Direct: 604.801.6029 Email: jbleay@bbulaw.ca</p>
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**SCHEDULE “B”
STAY EXTENSION ORDER**

See attached.

No. S-250121
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36**

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND

LUMINA ECLIPSE LIMITED PARTNERSHIP

BETA VIEW HOMES LTD.

LUMINA ECLIPSE GP LTD.

and

D-THIND DEVELOPMENT BETA LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

STAY EXTENSION ORDER

BEFORE THE HONOURABLE)	
)	15/July/2025
JUSTICE MASUHARA)	

ON THE APPLICATION of KSV Restructuring Inc., in its capacity as Court-appointed Monitor (in such capacity, the “**Monitor**”) of Lumina Eclipse Limited Partnership, Beta View Homes Ltd., Lumina Eclipse GP Ltd. and D-Thind Development Beta Ltd. (collectively, the “**Debtors**”), coming on for hearing at Vancouver, British Columbia, on the 15th day of July, 2025; **AND ON HEARING** Andrew Froh, counsel for the Monitor, and those other counsel listed on Schedule “A” hereto; **AND UPON READING** the materials filed, including the First Report of the Monitor dated January 14, 2025, the Second Report of the Monitor dated April 8, 2025, the Supplement to

the Second Report of the Monitor dated April 15, 2025, and the Third Report of the Monitor dated July 9, 2025 (collectively, the “**Reports**”);

THIS COURT ORDERS AND DECLARES THAT:

NOTICE

1. The time for service of the Notice of Application and supporting materials for this Order is hereby abridged such that this Application is properly returnable today and service thereof on any interested party is hereby dispensed with.

STAY EXTENSION

2. The Stay Period (as defined in the Second Amended and Restated Initial Order of this Court dated April 16, 2025) is hereby extended until and including January 23, 2026.

ACTIVITY APPROVAL

3. The activities of the Monitor, as set out in the Reports, are hereby approved; provided however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

WAGE EARNER PROTECTION PROGRAM

4. Pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1, as amended, D-Third Development Beta Ltd. meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222, as amended.

GENERAL

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

6. Endorsement of this Order by counsel appearing on this Application, other than counsel for the Monitor, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Andrew Froh

☐ Party ☒ Lawyer for the Monitor

BY THE COURT

REGISTRAR

Schedule “A” – List of Counsel

[illegible]

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