

Superior Court
(Commercial Division)

Canada
Province of Québec
District of Montréal
No: 500-11-057679-199

In the matter of the *Companies' Creditors Arrangement Act* of:

**INVESTISSEMENT QUÉBEC
FIERA PRIVATE DEBT INC.**
Secured Creditors

- and -

**FORTRESS GLOBAL ENTERPRISES INC.
FORTRESS SPECIALTY CELLULOSE INC.
FORTRESS BIOENERGY LTD.
FORTRESS XYLITOL INC.
9217-6536 QUÉBEC INC.**
Debtors

- and -

DELOITTE RESTRUCTURING INC.
Applicant/Monitor

- and -

GOULDS PUMPS CANADA INC., a legal person duly incorporated, domiciled at 201-498 Eagle Street, North Cambridge, Ontario N3H 1C2, Canada
GOULDS PUMPS INC., a legal person duly incorporated, having its registered office at 240 Fall Street, Seneca Falls, New York, 13148, USA
ITT GOULDS PUMPS INC., a legal person duly incorporated, acting in the rights of Goulds Pumps LLC, a limited liability company, formally foing business as Goulds Pumps Inc., having its registered office at 240 Fall Street, Seneca Falls, New York, 13148, USA
Mis-en-cause

Application for the Issuance of an Order Approving: (i) a Litigation Funding Agreement; (ii) a Litigation Financing Charge; (iii) the Transfer of Certain Litigation Proceedings before the Superior Court (Commercial Division); and (iv) an Agreement in Principle to Settle Certain Penal Proceedings
(*Companies' Creditors Arrangement Act*, ss 11 and 11.2)

To one of the Honourable Judges of the Superior Court, sitting in the Commercial Division for the District of Montréal, the Applicant respectfully submits:

I. Introduction

1. By the present application (this “**Application**”), Deloitte Restructuring Inc., in its capacity as court-appointed monitor of Fortress (as defined hereinafter) (“**Deloitte**” or the “**Monitor**”) seeks the issuance of an order substantially in the form of the proposed order communicated herewith as **Exhibit A-1**:
 - (a) approving a Litigation Funding Agreement entered into between Omni Bridgeway (Fund 5) Canada Investments Limited (the “**Litigation Funder**”), the Monitor, in its capacity as Monitor of Fortress Specialty Cellulose Inc. (“**Fortress Specialty**”) and Cain Lamarre LLP (the “**Lawyers**”) (the “**Litigation Funding Agreement**”) to finance the resumption of the litigation proceedings between Fortress Specialty and Goulds Pumps Canada Inc. and Goulds Pumps Inc. (collectively, “**Goulds Pumps**”) originally commenced before the Superior Court of Quebec (Civil Division) under court file numbers 500-17-082483-143 and 500-17-094108-167 and the pursuit of the parties’ claims thereunder;
 - (b) approving a priority charge in the amount of \$6,000,000 on the Litigation Proceeds (as defined in the Litigation Funding Agreement) in favour of the Litigation Funder (ranking in first position) and the Lawyers (ranking in second position) in order to secure the amounts which may become owing to them pursuant to the Litigation Funding Agreement;
 - (c) ordering the transfer of the Litigation Proceedings (as defined hereinafter) before the Superior Court of Quebec (Commercial Division) so that such proceedings may be heard by this Court in the context of Fortress’s present proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCA**”) and the “**CCA Proceedings**”); and
 - (d) authorizing the Monitor to approve an agreement in principle to be entered into between the Monitor and the *Director of Criminal and Penal Prosecutions* (the “**DCPP**”) with respect to certain penal proceedings (the “**Penal Proceedings**”) commenced by the DCPP against Fortress Specialty in connection with certain infractions to the *Environmental Quality Act*, chapter Q-2 (the “**EQA**”) and the *Regulation respecting pulp and paper mills*, chapter Q-2, r. 27.

II. Procedural background¹

2. On December 13, 2019, Investissement Québec (“**IQ**”) and Fiera Private Debt Inc. (“**Fiera**”), in their capacity as principal secured creditors of Fortress Global Enterprises Inc., Fortress Specialty, Fortress Bioenergy Ltd., Fortress Xylitol Inc. and 9217-6536 Québec Inc. (collectively, “**Fortress**”), filed an application in respect of Fortress pursuant to the CCA, entitled *Application for the Issuance of a First Day Initial Order, an Amended and Restated Initial Order, a Receivership Order and a Claims Procedure Order* (the “**Initial Application**”).

¹ All capitalized terms not otherwise defined shall have the meanings ascribed to them in the Amended and Restated Initial Order.

3. On December 16, 2019, the Initial Application was partially granted by the Honourable Marie-Anne Paquette, j.c.s., who rendered on the same day:
 - (a) a first day initial order (the “**First Day Order**”) which, *inter alia*, provided for a stay of proceedings against Fortress, the appointment of Deloitte as Monitor and the approval of an Interim Facility to be advanced by IQ to Fortress, as well as a corresponding and created the Interim Lender Charge in favour of IQ (as defined in the First Day Order); and
 - (b) an order appointing Deloitte as receiver to Fortress for the sole purpose of allowing its employees from benefiting from those payments provided under the *Wage Earner Protection Program Act* (S.C. 2005, c. 47, s. 1).
4. Pursuant to the First Day Order, the Court ordered, *inter alia*, that all claims against Fortress, Fortress’ Property and Fortress’ D&Os were stayed (the “**Stay**”) until December 26, 2019 (the “**Stay Period**”).
5. On December 26, 2019, the Court rendered an amended first day order extending the Stay Period up to and including January 10, 2020, and increasing the Interim Facility to \$1,500,000 and the Interim Lender Charge to \$1,800,000.
6. On January 10, 2020, the Court granted the Initial Application in its entirety, and rendered:
 - (a) an amended and restated initial order (the “**Amended and Restated Initial Order**”) which, *inter alia*:
 - (i) extended the Stay Period until May 2, 2020;
 - (ii) increased the Interim Facility to a maximum amount of \$6,000,000 and the Interim Lender Charge to \$7,200,000;
 - (iii) approved the KERP and created the KERP Charge in the amount of \$610,000;
 - (iv) created the D&O Charge in the amount of \$500,000;
 - (v) created the Intercompany Advance Charge in the amount of \$3,000,000;
 - (vi) created the Administration Charge in the amount of \$600,000; and
 - (vii) expanded the powers of the Monitor to namely include the power to conduct and control the financial affairs and operations of Fortress, and carry on the business of Fortress;
 - (b) a Claims Procedure Order which established a “Claims Bar Date” of March 16, 2020 (except for restructuring claims).

7. On March 23, 2020, at the request of the Monitor, the Court rendered an order, essentially clarifying that the Stay Period applied to the proceedings involving regulatory bodies and commenced before the *Tribunal Administratif du Québec* and suspending the proceedings commenced before the Court of Québec, criminal and penal division, district of Gatineau, in connection with the notices of infraction bearing numbers 100400-1116574361, 1004400-1116574353, 100400-1116574346, 100400-1116574338 and 100400-1116574312 (i.e. the Penal Proceedings) until May 2, 2020 (the “**Stay Order Regarding Regulatory Bodies**”).
8. On May 1, 2020, the Court rendered an order (which was rectified on the same day) extending the Stay Period (including vis-à-vis the aforementioned regulatory bodies) up to and including August 11, 2020.
9. On August 10, 2020, the Court rendered an order extending the Stay Period up to and including October 23, 2020, and increasing the Interim Facility to \$8,000,000 and the Interim Lender Charge to \$9,600,000.
10. On that same day, instead of extending the Stay Order Regarding Regulatory Bodies, the Court reserved the parties’ rights to make representations on the applicability or not of the Stay Period to the Penal Proceedings.
11. On October 23, 2020, the Court rendered an order extending the Stay Period up to and including September 30, 2021, and increasing the Interim Financing to \$17,000,000 and the Interim Lender Charge to \$20,400,000.
12. On December 18, 2020, the Court rendered:
 - (a) an order creating a charge in favour of Hydro-Québec in the amount of \$840,000 (the “**HQ Charge**”), which charge is only subject to the Administration Charge; and
 - (b) a distribution and assignment order, essentially allowing the Monitor to distribute funds that were held in trust to Fortress’s employees for their unpaid claims.
13. As at the date hereof, Fortress’s Property is subject to the following charges:
 - (a) first, the Administration Charge in the amount of \$600,000;
 - (b) second, the HQ Charge in the amount of \$840,000;
 - (c) third, the Interim Lender Charge in the amount of \$20,400,000;
 - (d) fourth, the Intercompany Advance Charge in the amount of \$3,000,000;
 - (e) fifth, the KERP Charge in the amount of \$610,000; and
 - (f) sixth, the D&O Charge in the amount of \$500,000.

III. The Litigation Proceedings

14. On or about February 14, 2014, Fortress Specialty filed an originating application before the Québec Superior Court (Civil Division) under court file number 500-17-082483-143 against Goulds Pumps Canada Inc. claiming an amount of \$17,363,683.38, which was amended on June 25, 2014, to add Goulds Pump Inc. as defendant, for restitution of the purchase price and for damages in relation to the defect of two boiler feedwater pumps manufactured and sold to Fortress Specialty by Goulds Pumps (the “**Claim**”).
15. Rather than filing a counterclaim in response to Fortress Specialty’s originating application, Goulds Pumps Canada Inc. and ITT Goulds Pumps Inc. filed an originating demand against Fortress Specialty before the Québec Superior Court (Civil Division) under court file number 500-17-094108-167 claiming an amount of \$508,717.09 in connection with allegedly unpaid invoices (the “**Goulds Pumps’ Claim**” and together with the Claim, the “**Litigation Proceedings**”). Both claims have since been consolidated and are to be heard together in the same trial.
16. In January 2020, a settlement conference between Fortress and Goulds Pumps was scheduled to take place; however, given the CCAA Proceedings, Goulds Pumps advised Fortress that it would not attend such settlement conference, and since then, the litigation proceedings between Fortress and Goulds Pumps have been suspended.
17. On June 29, 2020, in an attempt to resolve the Litigation Proceedings and potentially settle such matters, a virtual meeting was held between the Monitor, and the respective counsels to each of Goulds Pumps and IQ, on a without prejudice basis.
18. This Court was advised of such discussions between the parties as part of Monitor’s Sixth Report to the Court dated August 6, 2020.
19. While discussions with a view to settling the Litigation Proceedings continued, ultimately no settlement agreement was reached between the parties.
20. In accordance with its duties set out in the Amended and Restated Initial Order, the Monitor, in consultation with IQ, began considering financing alternatives which would allow Fortress to move forward with the Litigation Proceedings and realize on a significant asset potentially worth millions of dollars, all to the benefit of its creditors. This Court was informed of the Monitor’s efforts in this regard in its Seventh Report to the Court dated October 21, 2020.
21. Given that Fortress Specialty’s Claim against Goulds Pumps represents a significant asset which should be realized for the benefit of Fortress, its creditors and other stakeholders, the Monitor is of the view that the Litigation Proceedings should be resumed.

IV. The Litigation Funding Agreement should be approved

22. Given Fortress’ limited liquidities, in order to move forward with the Litigation Proceedings, it became apparent that the only avenue available to Fortress to potentially realize on its Claim against Gould Pumps was to obtain additional financing from a new source.

23. Accordingly and as outlined previously, the Monitor, in consultation with IQ, began examining the potential alternatives available to Fortress to fund the Litigation Proceedings, including the possibility to use litigation funding.
24. Over the past months, numerous discussions and negotiations were held between the Litigation Funder, the Lawyers and the Monitor regarding the potential terms upon which the Litigation Funder would be willing to finance the Litigation Proceedings.
25. An agreement (i.e. the Litigation Funding Agreement) was finally reached between the Litigation Funder, the Lawyers and the Monitor pursuant to which the Litigation Funder have agreed to finance the Litigation Proceedings, subject to this Court's approval thereof.
26. The facility provided pursuant to the Litigation Funding Agreement, if approved, will provide the necessary financing to Fortress to fund its legal fees and disbursements associated with the resumption of the Litigation Proceedings and the pursuit of the Claim.
27. It is anticipated that the funds provided to Fortress pursuant to the Litigation Funding Agreement, should it be approved by this Court, will be sufficient to finance the pursuit of the Claim and the resumption of the Litigation Proceedings.
28. The Litigation Funding Agreement, *inter alia*:
 - (a) provides for funds on a non-recourse basis to finance the legal fees and disbursements of Fortress in respect of the Litigation Proceedings and any appeal;
 - (b) provides for the payment of a success fee to the Litigation Funder and the Lawyers which is based on a multiple of the committed capital or a percentage of the proceeds to be received as a result of a judgment or a settlement in respect of the Claim or the Litigation Proceedings (the "**Litigation Proceeds**");
 - (c) provides that the advances under the Litigation Funding Agreement are without interest;
 - (d) is conditional upon this Court's approval; and
 - (e) is conditional upon the creation of a first ranking charge in favour of the Litigation Funder and thereafter of the Lawyers in the amount of \$6,000,000 over only the Litigation Proceeds, to secure their respective rights vis-à-vis the Litigation Proceeds or any portion thereof in accordance with the Litigation Funding Agreement (the "**Litigation Financing Charge**").

A copy of the Litigation Funding Agreement communicated herewith, under seal, as **Exhibit A-2**.

29. The Monitor is of the view that the terms and conditions of the Litigation Funding Agreement are reasonable in the circumstances and that the approval of the relief sought pursuant to this Application is the only alternative available in order to ensure the resumption of the Litigation Proceedings and the pursuit of the Claim for the benefit of Fortress's stakeholders.

30. The Monitor has also been advised that IQ is supportive of the approval of the Litigation Funding Agreement and of the Litigation Financing Charge.
31. Given that the Litigation Funding Agreement (Exhibit A-2) contains certain sensitive and privileged information regarding the financing and the conduct of the Litigation Proceedings which, if disclosed, could affect the Litigation Proceedings, the Monitor asks this Court to order that the Litigation Funding Agreement is confidential and filed under seal.

V. The Litigation Proceedings should be transferred into the CCAA Proceedings

32. The Litigation Proceedings were commenced before the Québec Superior Court (Civil division) in court file numbers 500-17-082483-143 and 500-17-094108-167, which proceedings were subsequently consolidated in court file number 500-17-082483-143, namely given that Goulds Pumps' Claim was filed in lieu of a cross-demand.
33. As at the date hereof, all relevant proceedings have been filed in the Court record and the parties have communicated their undertakings as well as their expert reports. The only remaining step before the case can be set down for trial and judgment is the filing of the joint declaration, including the preparation of the list of witnesses and exhibits, which Fortress Specialty's lawyers believe could be finalized and filed at the earliest by September 30, 2021.
34. For administrative and practical purposes, the Monitor asks this Court to transfer the Litigation Proceedings to the CCAA Proceedings in order to ensure an efficient management of the Litigation Proceedings in the context of the CCAA Proceedings.
35. As previously mentioned, Fortress's Claim represents a significant asset which should be realized for the benefit of Fortress and its stakeholders. As such, it is necessary to ensure a prompt adjudication of the Litigation Proceedings, given that the proceeds will ultimately be distributed to Fortress's creditors. Absent the transfer requested, it could be years before the Litigation Proceedings are adjudicated and the CCAA Proceedings can be terminated.
36. Goulds Pumps is not a "stranger" to the CCAA Proceeding. In fact, Goulds Pumps considers itself a creditor and has filed a proof of claim in the amount of \$594,047.33, which proof of claim is in connection with Goulds Pumps' Claim, as appears from Goulds Pumps' Proof of Claim dated February 27, 2020, communicated herewith as **Exhibit A-4**.
37. The Commercial Division of the Québec Superior Court has the power to award the remedies sought by Fortress and Goulds Pumps, which remedies consist in the resolution of the contract between the parties pertaining to the two boiler feedwater pumps manufactured and sold to Fortress Specialty by Goulds Pumps and damages.
38. In light of the foregoing, it is respectfully submitted that it is appropriate to transfer the proceedings before the Québec Superior Court (Civil Division) in court file numbers 500-17-082483-143 and 500-17-094108-167 (i.e. the Litigation Proceedings) into court file number 500-11-057679-199 (i.e. the CCAA Proceedings) of the Québec Superior Court (Commercial Division), dealing with the restructuring of Fortress, to be adjudicated by the supervising judge on an expedited basis.

VI. The Monitor should be authorized to approve the agreement in principle to settle the Penal Proceedings

39. Further to several discussions, Fortress's legal counsel and the DCPD have reached an agreement in principle on the terms of a settlement regarding the Penal Proceedings, which is conditional on the Monitor obtaining this Court's authorization to approve the agreement in principle to settle the Penal Proceedings on behalf of Fortress.
40. The agreement in principle (the "**Agreement in Principle**") provides that, subject to the approval thereof by this Court:
- (a) Fortress Specialty will plead guilty to the notices of infraction in court file numbers 550-61-070874-215, 550-61-059649-182, 550-61-059651-188, and 550-61-059652-186 and agrees to pay the minimal fine and the contribution associated with same totalling \$127,542 (the "**Fine**");
 - (b) the Fine will be payable 36 months following the date on which Fortress Specialty enters its guilty plea;
 - (c) the DCPD will revoke the notices of infraction in court file numbers 550-61-059653-184, 550-61-059650-180, 550-61-070875-212 and 550-61-070876-210; and
 - (d) no order will be issued under paragraph 1 of section 115.43 of the EQA.

A copy of a letter from Me Julie Gaudreault-Martel to Jean-François Nadon dated May 31, 2021, summarizing the Agreement in Principle is communicated herewith as **Exhibit A-3**.

41. The Monitor is of the view that the terms of the Agreement in Principle are reasonable since they will allow Fortress to operate within its budget without harming the execution of its restructuring initiatives.
42. In light of the foregoing, the Monitor respectfully submits that it should be authorized by the Court to approve the Agreement in Principle to settle the Penal Proceedings on behalf of Fortress in accordance with the terms outlined above.
43. Given the need to advance the restructuring as quickly as possible, it is respectfully submitted that this Court order the provisional execution of the order sought pursuant hereto, notwithstanding any appeal.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for the Issuance of an Order Approving: (i) a Litigation Funding Agreement; (ii) a Litigation Financing Charge; (iii) the Transfer of Certain Litigation Proceedings before the Superior Court (Commercial Division); and (iv) an Agreement in Principle to Settle Certain Penal Proceedings* (the "**Application**");

RENDER an order substantially in the form of the order filed as Exhibit A-1 in support of the Application;

THE WHOLE without legal costs, save in case of contestation.

Montreal, June 16, 2021

McCarthy Tétrault LLP

McCarthy Tétrault LLP

Lawyers for the Debtors

M^{re} Alain N. Tardif

M^{re} François Alexandre Toupin

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- and -

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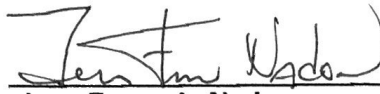
- and -

**GOULDS PUMPS CANADA INC.
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Sworn Declaration

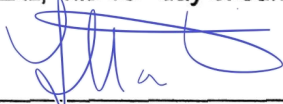
I, the undersigned, JEAN-FRANÇOIS NADON, authorized representative of the Monitor, domiciled for the purpose hereof at 1190, avenue des Canadiens-de-Montréal, Suite 500, in the city of Montréal, Province of Québec, H3B 0M7, solemnly affirm that all the facts alleged in the present *Application for the Issuance of an Order Approving: (i) a Litigation Funding Agreement; (ii) a Litigation Financing Charge; (iii) the Transfer of Certain Litigation Proceedings before the Superior Court (Commercial Division); and (iv) an Agreement in Principle to Settle Certain Penal Proceedings* are true.

AND I HAVE SIGNED,



Jean-François Nadon

SOLEMNLY AFFIRMED BEFORE ME BY
TECHNOLOGICAL MEANS AT
MONTREAL, this 16th day of June, 2021



Line Cloutier, #202,986

COMMISSIONER OF OATHS
FOR THE PROVINCE OF QUÉBEC

Superior Court
(Commercial Division)

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**GOULDS PUMPS CANADA INC.
GOULDS PUMPS INC.
ITT GOULDS PUMPS INC.**
Mis-en-cause

**Notice of Presentation
Commercial**

TO: The Service List

1. PRESENTATION OF THE PROCEEDING

TAKE NOTICE that the present *Application for the Issuance of an Order Approving: (i) a Litigation Funding Agreement; (ii) a Litigation Financing Charge; (iii) the Transfer of Certain Litigation Proceedings before the Superior Court (Commercial Division); and (iv) an Agreement in Principle to Settle Certain Penal Proceedings* will be presented for adjudication before the

Superior Court of Québec, sitting in the commercial division for the district of Montréal, **in room 17.09 of the Montreal Courthouse, located at 1 Notre Dame Street East, Montréal, QC, H2Y 1B6, on June 22, 2021, at 14:15.**

2. HOW TO JOIN THE VIRTUAL PRACTICE ROLL CALL

The coordinates for joining the room 16.04 virtual roll call are the following:

- a) **With Teams Tool:** by clicking on the link available on the website <http://www.tribunaux.qc.ca>;

You need at that time to inscribe your name and click on “Joining now”. In order to facilitate the progress and the identification of the participants, we are inviting you to inscribe your name by this manner:

The lawyers: Mtre First name, Last Name (name of the represented party)

The syndics: First name, Last Name (syndic’s name)

The superintendent: First name, Last name (superintendent’s name)

The parties non-represented by lawyers: First name, Last name (precise: Plaintiff, Defendant, Petitioner, Respondent, Creditor, Opponent or other)

For people who are assisting to a public hearing: the mention may be limited to entering: (public)

- b) **By telephone:**

Canada, Québec (paid number): + 1 581-319-2194

Canada (toll-free number): (833) 450-1741

Conference ID: 516 211 860#

- c) **By videoconference:** teams@teams.justice.gouv.qc.ca

Conference VTC ID: 1149478699

- d) **In person:** If and only if you do not have access to one of these technological means above-identified. You can then go to room 16.04 of the Courthouse of Montreal, located at:

1 Notre-Dame Street East.

3. DEFAULT OF PARTICIPATING TO THE VIRTUAL ROLL CALL

TAKE NOTICE that if you wish to contest the proceeding you need to advise by written the instigator of the proceeding at the indicated coordinates in this Notice of Presentation at least 48 hours before the presentation date and participate to the virtual roll call. Failing that, a judgment could be rendered during the presentation of the proceeding, without any further notice or delay.

4. OBLIGATIONS

4.1 The Collaboration

TAKE NOTICE that you have the obligation to cooperate with the other party, in particular by informing each other, at all relevant times, of all facts and elements susceptible of promote a loyal debate and making sure you preserve the relevant evidence (*Civil Code of Procedure*, Art. 20).

4.2 Preventing and Resolving Disputes Method

TAKE NOTICE that you must, before going to the Tribunal, considerate the recourse of all preventing and resolving disputes methods which are, among others, negotiation, mediation or arbitration, for which the parties appeal a third-party assistance (*Civil Code of Procedure*, Art. 2).

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, June 16, 2021

McCarthy Tétrault LLP

McCarthy Tétrault LLP

Lawyers for the Monitor

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List of Exhibits

(Application for the Issuance of an Order Approving: (i) a Litigation Funding Agreement; (ii) a Litigation Financing Charge; (iii) the Transfer of Certain Litigation Proceedings before the Superior Court (Commercial Division); and (iv) an Agreement in Principle to Settle Certain Penal Proceedings)

Exhibit A-1	Draft Order Approving the Litigation Funding, the Transfer of the Litigation to the CCAA Proceedings and the Settlement of the Penal Proceedings
Exhibit A-2	Litigation Funding Agreement (Under seal)
Exhibit A-3	Letter from Me Julie Gaudreault-Martel to Jean-François Nadon dated May 31, 2021
Exhibit A-4	Goulds Pumps' Proof of Claim dated February 27, 2020

Montreal, June 16, 2021

McCarthy Tétrault LLP

McCarthy Tétrault LLP
Lawyers for the Monitor

SUPERIOR COURT
(COMMERCIAL DIVISION)

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DISTRICT OF MONTRÉAL
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