

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONTGOMERY

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ANTHONY VERTUCCI, AS ADMINISTRATOR
OF THE ESTATE OF ERIN MCGOWAN AND
COLIN MCGOWAN, AS ADMINISTRATOR OF
THE ESTATE OF SHANE MCGOWAN,

CLERK'S OFFICE
MONTGOMERY COUNTY, NEW YORK

Plaintiffs,

SUMMONS

-against-

Index No. 2019-676
Date Index No.
Purchased: 8/27/2019

SHAHED HUSSAIN D/B/A PRESTIGE LIMOUSINE
AND CHAUFFEUR SERVICES, NAUMAN HUSSAIN
AND MAVIS DISCOUNT TIRE, INC.,

Defendants.

To the above named Defendants:

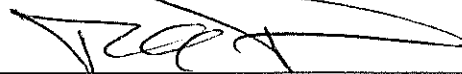
YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' attorney an answer to the complaint in this action within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: August 26, 2019

Trial is desired in the County of Montgomery.
The basis of venue designated above is that
Plaintiffs obtained their Letters of Administration
from the County of Montgomery.

Yours, etc.,

**LOMBARDI, WALSH, DAVENPORT
AND AMODEO, P.C.**



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THE ESTATE OF SHANE MCGOWAN,

Plaintiffs,

-against-

SHAHED HUSSAIN D/B/A PRESTIGE LIMOUSINE
AND CHAUFFEUR SERVICES, NAUMAN HUSSAIN
AND MAVIS DISCOUNT TIRE, INC.,

Defendants.

COMPLAINT

Index No. 2019-676
Date Index No.
Purchased: / / 2019

The Plaintiffs, Anthony Vertucci, as Administrator of the Estate of Erin McGowan and Colin McGowan, as Administrator of the Estate of Shane McGowan, by and through their attorneys, Lombardi, Walsh, Davenport and Amodeo, P.C., as and for their Complaint state as follows:

1. At all times herein relevant, the decedents, Erin and Shane McGowan were residents of the City of Amsterdam, County of Montgomery, State of New York.
2. Anthony Vertucci, by virtue of decree of the Montgomery County Surrogate's Court dated December 31, 2018 was issued Letters of Administration for the Estate of Erin McGowan.
3. At all times relevant, Anthony Vertucci, was a resident of the County of Saratoga, State of New York.

4. Colin McGowan by decree of the Montgomery County Surrogate's Court dated December 31, 2018 was issued Letters of Administration for the Estate of his brother, Shane McGowan.

5. At all times relevant, Colin McGowan was and is a resident of the borough of Staten Island, State of New York.

6. The Defendant, Shahed Hussain d/b/a Prestige Limousine and Chauffeur Service, was and is a resident of the County of Saratoga, State of New York.

7. The Defendant, Nauman Hussain, was at all times relevant a resident of the County of Albany, State of New York.

8. The Defendant, Mavis Discount Tire, is a domestic corporation authorized to do business and doing business in the State of New York with a principal place of business in the County of Saratoga, State of New York.

9. That the Defendant, Shahed Hussain, operated a limousine leasing and rental business at a business location at 776 Saratoga Road, Gansevoort, New York.

10. That the Defendant, Nauman Hussain, was an employee, agent or representative of the Defendant Shahed Hussain d/b/a Prestige Limousine and Chauffeur Service, each of which shared responsibility for the operation of the limousine business.

11. The Defendant, Shahed Hussain d/b/a Prestige Limousine and Chauffeur Service, owned and operated a certain 2001 Ford Excursion Limousine bearing NYS Registration No. TOGALUX1, VIN No. 1FNVU40S512099.

12. That said 2001 Ford Excursion Limousine bearing NYS Registration No. TOGALUX1, VIN No. 1FNVU40S512099 was a vehicle "for hire".

13. That the Defendants, Shahed Hussain d/b/a Prestige Limousine and Chauffeur Services and Nauman Hussain (collectively the "Hussain Defendants") jointly were responsible for the maintenance, repair, inspection and leasing of the aforementioned 2001 Ford Excursion Limousine, NYS Registration No. TOGALUX1, VIN No. 1FNVU40S512099.

14. That the 2001 Ford Excursion Limousine bearing NYS Registration No. TOGALUX1, VIN No. 1FNVU40S512099, was an 18 passenger limousine vehicle, and subject to the regulations promulgated by the New York State Department of Transportation under 12 NYCRR Part 720.

15. Due to its 18 passenger capacity, the aforementioned 2001 Ford Excursion Limousine was required to be registered as an 18 passenger vehicle, obtain operating authority and undergo periodic inspections by the NYS Department of Transportation (herein referred to as "NYS DOT").

16. That the Defendant, Shahed Hussain d/b/a Prestige Limousine and Chauffeur Service, purchased the aforementioned 2001 Ford Excursion Limousine in or around July, 2016.

17. Prior to its transfer and purchase by Defendant, Shahed Hussain d/b/a Prestige Limousine and Chauffeur Service, its prior owner had registered the limousine as an 18 passenger vehicle, and had operating authority and had the 2001 Ford Excursion Limousine undergo various inspections by the NYS DOT, as required.

18. Upon its purchase by Shahed Hussain d/b/a Prestige Limousine and Chauffeur Service and/or Nauman Hussain, had the 18 passenger 2001 Ford Excursion Limousine registered as an 11 passenger vehicle.

19. The effect of registering the 2001 Ford Excursion Limousine as an 11 passenger vehicle rather than an 18 passenger vehicle is that it would not be required to be inspected by the NYS DOT, under its more rigorous bus inspection procedures.

20. At all times relevant herein, the Defendant, Shahed Hussain d/b/a Prestige Limousine and Chauffeur Service, and the Defendant, Nauman Hussain, knew they were operating the 2001 Ford Excursion Limousine under an 11 passenger registration rather than the required 18 passenger bus registration, that allowed them to avoid the rigorous NYS DOT inspection procedures.

21. That despite the improper registration, on March 21, 2018, the New York State Department of Transportation conducted a roadside inspection of the 2001 Ford Excursion Limousine.

22. That the March 21, 2018 roadside inspection found the 2001 Ford Excursion Limousine in such poor operating condition due to mechanical defects, that the NYS DOT issued an "out of service" sticker on the 2001 Ford Excursion Limousine.

23. That among the defects found in the March 21, 2018 inspection of the 2001 Ford Excursion Limousine, was the determination that at least 25% of the brakes were defective, and that a hydraulic brake line was constricted.

24. Additionally, the inspection found that the 2001 Ford Excursion Limousine had a seating capacity of more than 15 passengers.

25. Due to the "out of service" order, the 2001 Ford Excursion Limousine was not to be operated with passengers until the mechanical defects were repaired and the vehicle was inspected by a NYS DOT inspector.

26. The "out of service" sticker is only to be removed by the NYS DOT inspector

certifying that the vehicle is safe and upon the issuance of a valid NYS DOT certification of inspection.

27. Upon information belief, the NYS DOT never received notice that the defects found at the March 21, 2018 inspection were repaired, and never issued a valid certificate of inspection or provide the Hussain Defendants with operating authority.

28. Upon information and belief, on May 11, 2018 the 2001 Ford Excursion Limousine was delivered to the Mavis Discount Tire facility in Saratoga Springs, New York, for a regular DMV inspection.

29. That the Defendant, Mavis Discount Tire, Inc. by and through its agents, representatives or employees should have known that it was not authorized to inspect the 2001 Ford Excursion Limousine, as its passenger capacity exceeded 15.

30. That upon information and belief, the Defendant, Mavis Discount Tire, Inc. undertook a DMV inspection of the 2001 Ford Excursion Limousine, even though it lacked the authority to do so.

31. That upon information and belief, in addition to not having the authority to inspect the 2001 Ford Excursion Limousine, the Defendant, Mavis Discount Tire, Inc., none of its employees had the requisite training and certification to inspect a vehicle that had a passenger capacity in excess of 15.

32. That upon information and belief, the Defendant, Mavis Discount Tire, issued a DMV inspection sticker for the 2001 Ford Excursion Limousine, despite the existence at the time of the inspection of numerous defects that were open and obvious, and progressive in nature.

33. That on September 4, 2018, the 2001 Ford Excursion Limousine was inspected again by a representative of the NYS DOT.

34. Said inspection found that previous defects were not repaired, and once again issued an "out of service" order was issued, prohibiting the 2001 Ford Excursion Limousine from being operated until the defects were remedied.

35. Upon information and belief, at some point between March 21, 2018 and October 6, 2018, the Defendant, Mavis Discount Tire, Inc., performed certain repairs to the 2001 Ford Excursion Limousine, that it knew were temporary and insufficient to remedy the defects existing on the limousine, including in the brake system.

36. Despite the foregoing, on October 6, 2018, the Defendants, Hussain, rented the 2001 Ford Excursion Limousine to Axel Steenburg, knowing that he and 16 other passengers were to utilize the vehicle for an outing to Cooperstown, New York.

37. That on October 6, 2018, the Defendants, Hussain, hired Scott Lisinichia to operate the 2001 Ford Excursion Limousine, knowing he did not possess the proper operating license to drive the vehicle.

38. On October 6, 2018, while the 2001 Ford Excursion Limousine was being operated in a steep decline on State Route 30 in the Town of Schoharie, County of Schoharie, the vehicle experienced mechanical failures, including brake failure, due to the defects that existed unremedied from March 21, 2018 to October 6, 2018.

39. As a result of the mechanical failure, the 2001 Ford Excursion Limousine hurtled down the steep incline on State Route 30, increasing in speed as it traveled, without any ability to slow or stop the vehicle and sending passengers into great fear for their lives.

40. The 2001 Ford Excursion Limousine then was unable to stop at a stop sign at the intersection of Route 30 and Route 30A, and went through that intersection at an excessive rate of speed.

41. That the 2001 Ford Excursion Limousine then entered the parking lot of the Apple Barrel Country Store striking a parked 2015 Toyota Highlander, and killing two (2) pedestrians.

42. The 2001 Ford Excursion Limousine then veered into a ravine, coming to a sudden and violent stop upon striking an embankment and other obstacles in said ravine.

43. Upon information and belief, due to the violent and sudden impact of the 2001 Ford Excursion Limousine, the decedents, Erin and Shane McGowan, who were passengers in said Limousine, suffered physical, mental and emotional injuries, including death.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST THE
HUSSAIN DEFENDANTS, THE PLAINTIFFS ALLEGE AS FOLLOWS:**

44. Plaintiffs repeat and reiterate each and every allegation contained in paragraphs "1" through "43" as if each were fully set forth separate and at length herein.

45. That the Hussain Defendants, as common carriers, had a duty to exercise reasonable care in the operation, maintenance, and repair of the 2001 Ford Excursion Limousine.

46. That the Hussain Defendants knew or should have known that the 2001 Ford Excursion Limousine was not in a reasonably safe condition, as it was not in a safe operating condition due to the existence of numerous mechanical defects.

47. That due to the numerous mechanical defects existing on the 2001 Ford

Excursion Limousine, the Defendants knew or should have known it was unsafe for operation as carrier of passengers.

48. Additionally, the Defendants knew that it had placed in operation as a common carrier a vehicle that was not properly registered, inspected and upon information and belief, had inadequate repairs performed that failed to remedy any of the defective mechanical conditions existing on the 2001 Ford Excursion Limousine prior to October 6, 2018.

49. By virtue of the foregoing, the Hussain Defendants breached their duty of care in the maintenance, repair and operation of the 2001 Ford Excursion Limousine.

50. That as a result of the negligence of the Hussain Defendants as described above, the decedents, Erin and Shane McGowan suffered physical, emotional and mental pain, including pain and suffering and significant pre-impact trauma and death.

51. The said pre-impact trauma included but not limited to, being aware of the 2001 Ford Excursion Limousine, traveling down Route 30 at break-neck speed without any ability to slow, during the speeding limousine's crossing Route 30 and Route 30-A without stopping, its crashing into the motor vehicles in the Apple Barrel parking lot killing two (2) pedestrians, and veering into the ravine striking an embankment and other obstacles, causing its sudden and violent stop.

52. That as a result, the decedents, Erin and Shane suffered a "serious injury" as that term is defined in Sections 5102 and 5104 of the New York State Insurance Law, to wit: death.

53. That all the injuries and damages suffered by the decedent, Erin and Shane McGowan, were caused by the negligence of the Hussain Defendants without any

negligence of the decedents contribution thereto.

54. By reason of the negligence of the Hussain Defendants, the decedents, Erin and Shane McGowan suffered damages in amount that exceeds the jurisdictional limits of all courts other than this court.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST THE HUSSAIN DEFENDANTS, THE PLAINTIFFS ALLEGE AS FOLLOWS:

55. Plaintiffs repeat and reiterate each and every allegation contained in paragraphs "1" through "54" as if each were fully set forth separate and at length herein.

56. That the Hussain Defendants knowingly and willfully registered the 2001 Ford Excursion Limousine improperly so as to avoid the stringent NYS DOT regulations and inspection requirements; knowingly and willfully failed to comply with the direction of the NYS DOT to properly register, inspect and repair the 2001 Ford Excursion Limousine as ordered on March 21, 2018 and September 4, 2018; operating the 2001 Ford Excursion Limousine without such registration, inspection and repairs; allowing the 2001 Ford Excursion Limousine to be placed and operated on public roadways with passengers in an unsafe and defective condition; and allowing the 2001 Ford Excursion Limousine to be operated on October 6, 2018 by a driver without the required license and training.

57. That these knowing and willful acts reveal that the Hussain Defendants engaged in conduct so as to show complete disregard for the rights and safety of the decedents and others, and constitutes gross negligence.

58. Additionally, the aforesaid such acts and conduct of the Hussain Defendants, constitute reckless disregard and the consequences of these actions to constitute willful misconduct.

59. As a result of the gross negligence and wilful misconduct of the Hussain Defendants, the decedent's injuries and damages, that constitute a serious injury as defined in Sections 5102 and 5104 of the Insurance Law of New York, to wit: death.

60. That said injuries and damages include pain and suffering and significant pre-impact trauma as described above.

61. As a result of the gross negligence and wilful misconduct of the Hussain Defendants, in addition to compensatory damages, warrants an award of punitive and exemplary damages to the Plaintiffs.

62. As a result of the foregoing, the Plaintiffs have been damaged in an amount that exceeds the jurisdiction of all courts except this court.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST THE HUSSAIN DEFENDANTS, THE PLAINTIFFS ALLEGE AS FOLLOWS:

63. Plaintiffs repeat and reiterate each and every allegation contained in paragraphs "1" through "62" as if each were fully set forth separate and at length herein.

64. That Erin McGowan and Shane McGowan both died as a result of the injuries sustained in the October 6, 2018 accident.

65. That at the time of their deaths, Erin McGowan and Shane McGowan left surviving family and heirs at law for whose benefit this claim is commenced.

66. That prior to their deaths, Erin and Shane McGowan were healthy and employed and both contributed to the support of their families and as a result of their deaths, their distributees have been pecuniarily damaged.

67. As a result of the foregoing, the Plaintiffs have been damaged in an amount of money which exceeds the jurisdictional limits of all courts, except this court.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST THE DEFENDANT,
MAVIS DISCOUNT TIRE, INC., THE PLAINTIFFS ALLEGE AS FOLLOWS:**

68. Plaintiffs repeat and reiterate each and every allegation contained in paragraphs "1" through "67" as if each were fully set forth separate and at length herein.

69. That on or about May 11, 2018, the Defendant, Mavis Discount Tire, Inc. was presented with the 2001 Ford Excursion Limousine for a regular DMV inspection.

70. That the Defendant, Mavis Discount Tire, did not have the authority to inspect an 18 passenger common carrier vehicle nor have any employee trained to inspect said vehicle.

71. That the Defendant, Mavis Discount Tire, Inc., knew or should have known that it lacked authority to inspect the 2001 Ford Excursion Limousine.

72. That despite knowing that it did not have the authority to inspect the 2001 Ford Excursion Limousine, the Defendant, Mavis Discount Tire, Inc. agreed to inspect the vehicle, and undertook the inspection of said vehicle.

73. In agreeing to inspect the 2001 Ford Excursion Limousine, the Defendant, Mavis Discount Tire, Inc., knew it was for hire and created a contractual relation with the passengers of said vehicle, as intended beneficiaries of its agreement to inspect, including with the decedents, Erin and Shane McGowan.

74. That in undertaking the inspection, the Defendant, Mavis Discount Tire, Inc. failed to observe, identify and correct several mechanical defects existing at the time of said inspection.

75. That the defects that the Defendant, Mavis Discount Tire, Inc. negligently failed to observe, were open, obvious and existing at the time of said inspection, and were

progressive in nature.

76. That the mechanical defects that the Defendant, Mavis Discount Tire, Inc. failed to observe and identify and which were open, obvious and existing at the time of the inspection and progressive in nature were the cause of the accident on October 6, 2018.

77. That as a result of the Defendant, Mavis Discount Tire, Inc.'s, negligent failure to observe the aforesaid mechanical defects, it:

- (a) launched a force or instrument of harm; and
- (b) its negligence caused the decedent, Erin and Shane McGowan to detrimentally rely on the Defendant's proper performance of its duty to inspect.

78. That as a result of the negligence of the Defendant, Mavis Discount Tire, Inc. as described above, the decedents, Erin and Shane McGowan, suffered physical, emotional and mental pain, including pain and suffering and significant pre-impact trauma and death.

79. The said pre-impact trauma included but not limited to, being aware of the 2001 Ford Excursion Limousine traveling down Route 30 at break-neck speed without any ability to slow, during its crossing Route 30 and Route 30-A without stopping, its crashing into the motor vehicles in the Apple Barrel parking lot killing two (2) pedestrians, and veering into the ravine striking an embankment and other obstacles causing its sudden and violent stop.

80. That as a result, the decedents, Erin and Shane, suffered a "serious injury" as that term is defined in Sections 5102 and 5104 of the New York State Insurance Law, to wit: death.

81. That all the injuries and damages suffered by the decedent, Erin and Shane McGowan, were caused or contributed by the negligence of the Mavis Discount Tire, Inc. Defendant without any negligence of the decedent's contribution thereto.

82. By reason of the negligence of the Defendant, Mavis Discount Tire, Inc., the decedents, Erin and Shane McGowan suffered damages in amount that exceeds the jurisdictional limits of all courts other than this court.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST THE DEFENDANT,
MAVIS DISCOUNT TIRE, INC., THE PLAINTIFFS ALLEGE AS FOLLOWS:**

83. Plaintiffs repeat and reiterate each and every allegation contained in paragraphs "1" through "82" as if each were fully set forth separate and at length herein.

84. That Erin McGowan and Shane McGowan both died as a result of the injuries sustained in the October 6, 2018 accident.

85. That at the time of their deaths, Erin McGowan and Shane McGowan left surviving family and heirs at law for whose benefit this claim is commenced.

86. That prior to their deaths, Erin and Shane McGowan were healthy and employed and both contributed to the support of their families and as a result of their deaths, their distributees have been pecuniarily damaged.

87. As a result of the foregoing, the Plaintiffs have been damaged in an amount of money which exceeds the jurisdictional limits of all courts, except this court.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST THE DEFENDANT,
MAVIS DISCOUNT TIRE, INC., THE PLAINTIFFS ALLEGE AS FOLLOWS:**

88. Plaintiffs repeat and reiterate each and every allegation contained in paragraphs "1" through "87" as if each were fully set forth separate and at length herein.

89. That upon information and belief, the Defendant, Mavis Discount Tire, Inc., undertook certain repairs to the 2001 Ford Excursion Limousine.

90. Upon information and belief, said repairs included to the brake system of the 2001 Ford Excursion Limousine.

91. Upon information and belief, the Defendant, Mavis Discount Tire, Inc. knew that said repairs were inadequate and temporary, and would not remedy the defects in the braking system.

92. In addition, upon information and belief, that the Defendant, Mavis Discount Tire, Inc., during the course of said repairs, failed to observe and remedy the open, obvious and progressive mechanical defects existing on the 2001 Ford Excursion Limousine, including in its braking system.

93. That the failure of the Defendant, Mavis Discount Tire, Inc. to properly observe and repair the 2001 Ford Excursion Limousine constitutes negligence.

94. That the afore-described negligence of the Defendant, Mavis Discount Tire, Inc., caused or contributed to the accident and the injuries and damages to the decedents that occurred on October 6, 2018.

95. That as a result of the negligence of the Defendant, Mavis Discount Tire, Inc., as described above, the decedents, Erin and Shane McGowan suffered physical, emotional and mental pain, including pain and suffering and significant pre-impact trauma and death.

96. The said pre-impact trauma included being aware of the 2001 Ford Excursion Limousine traveling down Route 30 at break-neck speed without any ability to slow, during its crossing of Route 30 and Route 30-A without stopping, its crashing into the

motor vehicles in the Apple Barrel parking lot killing two (2) pedestrians, and veering into the ravine striking an embankment and other obstacles causing its sudden and violent stop.

97. That as a result, the decedents, Erin and Shane suffered a "serious injury" as that term is defined in Sections 5102 and 5104 of the New York State Insurance Law, to wit: death.

98. That all the injuries and damages suffered by the decedent, Erin and Shane McGowan, were caused or contributed to by the negligence of the Defendant, Mavis Discount Tire, Inc., without any negligence of the decedents contribution thereto.

99. By reason of the negligence of the Defendant, Mavis Discount Tire, Inc., the decedents, Erin and Shane McGowan suffered damages in amount that exceeds the jurisdictional limits of all courts other than this court.

**AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST THE DEFENDANT,
MAVIS DISCOUNT TIRE, INC., THE PLAINTIFFS ALLEGE AS FOLLOWS:**

100. Plaintiffs repeat and reiterate each and every allegation contained in paragraphs "1" through "99" as if each were fully set forth separate and at length herein

101. That the Defendant, Mavis Discount Tire, Inc., knowingly and willfully inspected the 2001 Ford Excursion Limousine without the authority to do so, and without a trained inspector to properly inspect the 2001 Ford Excursion Limousine to comply with the NYS DOT requirements, and failed to repair all existing mechanical defects in the 2001 Ford Excursion Limousine, although they were open and obvious, and with the knowledge that any repairs performed were temporary and inadequate to remedy the defects that caused or contributed to the accident on October 6, 2018.

102. That these knowing and willful acts reveal that the Defendant, Mavis Discount Tire, Inc., engaged in conduct so as to show complete disregard for the rights and safety of the decedents and others, and constitutes gross negligence.

103. Additionally, the aforesaid such acts and conduct of the Defendant, Mavis Discount Tire, Inc., constitutes reckless disregard and the consequences of these actions to constitute willful misconduct.

104. As a result of the gross negligence and wilful misconduct of the Defendant, Mavis Discount Tire, Inc., the decedent's injuries and damages, that constitute a serious injury as defined in Sections 5102 and 5104 of the Insurance Law of New York, to wit: death.

105. That said injuries and damages include pain and suffering and significant pre-impact trauma as described above.

106. As a result of the gross negligence and wilful misconduct of the Defendant, Mavis Discount Tire, Inc., in addition to compensatory damages, warrants an award of punitive and exemplary damages to the Plaintiffs.

107. As a result of the foregoing, the Plaintiffs have been damaged in an amount that exceeds the jurisdiction of all courts except this court.

Wherefore, the Plaintiffs demand judgment against the Defendants as follows:

1. In an amount of money that fairly and justly compensate the Plaintiffs for the injuries and damages suffered by the decedents, and their beneficiaries and heirs at law;
2. Punitive and exemplary damages by reason of the Defendants' gross negligence and willful misconduct;

3. The cost and disbursements of this action; and
4. For such other, further and different relief as this Court deems just and proper.

Dated: August 26, 2019

Yours, etc.

**LOMBARDI, WALSH, DAVENPORT AND
AMODEO, P.C.**

By: _____



PAUL E. DAVENPORT., ESQ.

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