

16CV005628

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: _____

STATE OF NORTH CAROLINA, *ex rel.*
ROY COOPER, Attorney General,

2016 APR 26 A 11:11
WAKE CO., C.S.C.

Plaintiff

BY RC

v.

KINSTON CHARTER ACADEMY, a North-Carolina non-profit corporation; OZIE L. HALL, JR., individually and as Chief Executive Officer of Kinston Charter Academy; and DEMYRA MCDONALD-HALL, individually and as Board Chair of Kinston Charter Academy,

Defendants.

**COMPLAINT
AND
REQUEST FOR
PRELIMINARY INJUNCTION**

INTRODUCTION

1. The State of North Carolina, by and through Attorney General Roy Cooper (“State”), brings this action against Kinston Charter Academy (“KCA”), a North Carolina non-profit corporation directed by Chief Executive Officer Ozie L. Hall, Jr. and Board Chair Demyra McDonald-Hall for illegally procuring and misusing State educational funds. Specifically, defendants: (a) made claims for State educational funds based on student enrollment estimates they knew or should have known were unattainable; (b) made claims for State educational funds despite knowing KCA likely would not survive the 2013-14 school year; (c) misled prospective students to convince them to enroll in KCA for the 2013-14 school year; and (d) made imprudent or self-interested business transactions in violation of their duties as fiduciaries of a non-profit entity. This is an action to recover funds that defendants received in violation of North Carolina law and to hold them accountable for their unfair and deceptive trade practices in violation of

N.C. Gen. Stat. § 75-1.1, *et seq.* The State seeks civil penalties, restitution, treble damages, attorneys' fees, and other costs.

2. North Carolina law imposes relatively fewer obligations on charter schools than traditional public schools. In the case of KCA, defendants seem to have exploited this regulatory framework for their own gain at the expense of students, teachers, and the North Carolina taxpayer.

3. KCA closed just 10 days into the new 2013-14 school year due to defendants' malfeasance. KCA's closure displaced hundreds of children, left numerous teachers unemployed, and wasted hundreds of thousands of state dollars. As the school failed around them, and owing over \$370,000 in employee salaries and benefits, defendants made several self-interested transactions – including paying themselves \$11,000 for unused vacation days. KCA's failure forced the State to pay twice to educate KCA's students. As shown below, defendants could have avoided these injuries had they fulfilled their non-profit fiduciary duties. Defendants' actions, especially overstating enrollment for an infusion of cash and in opening KCA for the 2013-14 school year despite knowing that KCA likely would not survive, extend beyond mere mismanagement. They were illegal.

PARTIES

4. Plaintiff is the State of North Carolina, by and through its Attorney General, Roy Cooper, who brings this action pursuant to authority granted by Chapters 1, 55A, and 75 of the North Carolina General Statutes.

5. Defendant Kinston Charter Academy ("KCA") is a North Carolina non-profit corporation formed February 1, 2003, with its principal place of business at 2000 Dr. Martin Luther King, Jr. Blvd., Kinston, NC 28501. From January 2004 to September 2013, KCA held a

charter from the North Carolina State Board of Education to operate a public charter school pursuant to N.C. Gen. Stat. §§ 115C-218, *et. seq.* The school operated under the same name.

6. Defendant Ozie L. Hall, Jr. is sued individually and in his capacity as Chief Executive Officer of KCA. Defendant Hall took over as CEO in 2007 after serving as a temporary consultant for the school. Defendant Hall is a resident of Pitt County.

7. Defendant Demyra McDonald-Hall is sued individually and in her capacity as Chair of the KCA Board of Directors. Defendant McDonald-Hall, who served on the KCA board since its inception, is married to defendant Hall and also a resident of Pitt County.

FACTUAL ALLEGATIONS

8. In February 2003, KCA submitted an application for a charter to open a school in the Kinston area. As detailed in its application, KCA intended to serve an at-risk population of students in Lenoir and surrounding counties. KCA promised its students “a high quality program focused on math, science and Spanish as a foreign language.”

9. Under North Carolina law, a charter functions as a license to operate and, *inter alia*, receive State funds. N.C. Gen. Stat. §§ 115C-218, *et. seq.* State funds are allocated to charter schools on a per pupil basis. Charter schools are public schools that fall under the jurisdiction of the State Board of Education. *Id.* The North Carolina Charter School Advisory Board is the entity within the Department of Public Instruction (“DPI”) charged with monitoring and making recommendations about charter schools. N.C. Gen. Stat. § 115C-218(b). The Office of Charter Schools (“OCS”) is the administrative unit within DPI that works with charter schools on a daily basis.

10. KCA was granted its charter on January 8, 2004 and opened its doors to students that fall. *See* North Carolina State Board of Education Charter to The Greater Kinston Community Development Corporation to Operate Kinston Charter Academy (January 8, 2004).

11. Prior to the individual defendants taking over KCA, KCA ran deficits and had some management turnover - going through two CEOs and several board members. In 2007, five of eight KCA board members took out personal loans to keep KCA going. *See* Office of the State Auditor Kinston Charter Academy Investigative Report (January 2015), attached as Ex. 20 at p 2. (Hereinafter “State Audit”.)

Defendants Take Over KCA, Financial Problems Continue

12. Defendant Hall took over as CEO of KCA in 2007 after serving as a temporary consultant. Around that same time, defendant McDonald-Hall became chairwoman of the KCA Board of Directors.

13. After defendants took over, KCA continued to run deficits for five out of six years. In March 2010, the Department of Public Instruction (“DPI”) put KCA on Financial Disciplinary¹ status for running five (5) straight years of deficits and having negative net equity. *See* Letter from Paul LeSieur, Director, Office of Financial and Business Services, Division of School Business, Department of Public Instruction, Public Schools of North Carolina, to Ozie Hall, Administrator, Kinston Charter School (Mar. 24, 2010), attached as Ex. 4. In this warning, DPI directed KCA to respond with a financial plan. DPI also specifically warned KCA to stop budgeting for a yearly donation of \$100,000, when the contributor had not made the donation for over three years.

14. In January 2012, DPI extended KCA’s Financial Disciplinary status citing “serious financial problems.” DPI pointed out specific signs of financial insolvency, including:

¹ North Carolina State Board of Education policy provides for three escalating warning levels for both financial and governance noncompliance – cautionary, probationary, and disciplinary. *See* Policy TCS-U-006: Policy for Charter Schools on Financial and Governance Noncompliance. Financial Disciplinary is the most serious of the three financial noncompliance statuses and indicates a serious financial problem that needs immediate attention. *Id.* § I-Level 3.

a \$184,467 net asset deficit; a \$17,438 increase in KCA's negative fund balance from the previous year; general cash flow problems evidenced by two requests for cash advances; and a significant decrease in KCA's student enrollment. DPI noted that, since being put on Financial Disciplinary status in March 2010, KCA "lack[ed] significant improvement in the financial management of the school." DPI demanded a response and corrective action. *See* Letter from Alexis Schauss, Division of School Business, to Ozie Hall, Kinston Charter Academy (Jan. 30, 2012), attached as Ex. 5. After discussing the problems with defendants, DPI put the school on a monthly allotment for the remainder of the 2011-12 school year.² *See* Letter from Alexis Schauss, Division of School Business, to Ozie Hall, CEO/Principal, Kinston Charter Academy (Feb. 27, 2012), attached as Ex. 6

15. In August 2012, two of defendant Hall's relatives joined the KCA Board of Directors. At that point, three of the four KCA board members were related to defendant Hall.³

16. At that same board meeting, the KCA board approved the hiring of all of the school staff for the fall, including defendant McDonald-Hall as KCA's dean of students and defendant Hall's daughter as KCA's academic officer. The minutes from the August 2012 board meeting do not reflect any discussion of either's qualifications for their jobs or the reasonableness of their salaries. The two of them were paid salaries totaling \$90,000, which the

² Charter schools receive state funds in three allotments: the first 34 percent in July; the second 34 percent, adjusted for actual enrollment, after the first month of school; and the final 32 percent in February. *See* Allotment Policy Manual FY 2013-14 at 14-15. One consequence of Financial Disciplinary status is that DPI can switch the school to monthly allotments to monitor spending. *See* Policy TCS-U-006: Policy for Charter Schools on Financial and Governance Noncompliance.

³ At that meeting, the KCA board accepted the resignations of three previous board members. In November 2012, KCA would add a fifth board member who was unrelated to defendants.

State Auditor later concluded was “unnecessary and contributed to inadequate school administration” due to their lack of formal education training. State Audit at p 9.

17. On September 5, 2012, DPI’s Office of School Business sent a memo to all schools explaining that it would no longer provide *ad hoc* cash advances of state funds.

Behind on Obligations, Closure Becomes a Possibility for KCA

18. In October 2012, facing a revenue shortfall of \$500,000, KCA decided to lay off some employees and shorten the school day. *See* Kinston Charter Academy, Board of Directors Meeting Minutes (Oct. 16, 2012), attached as Ex. 14. Defendant Hall attributed the funding shortfall, in part, to falling 72 students short of the planned enrollment of 372 students. *Id.* Significantly over-estimating enrollment creates predictable budget problems. Schools have planned and made expenditures necessary to educate the higher number of students, but will only receive the funding for the lower number of students.

19. KCA had a history of missing required unemployment payments to the North Carolina Department of Commerce on behalf of its employees. Due to this history of delinquency, KCA had been paying under an arrangement for the last five months of 2012. *See* State Audit. In January 2013, KCA stopped making unemployment tax payments for good. *Id.* As of July 2014, KCA owed \$285,290 in unpaid unemployment taxes to the Department of Commerce. *Id.*

20. On January 8, 2013, DPI put KCA on Financial Disciplinary Status for the following: delinquent retirement reporting to the State Treasurer; delinquent premiums to the State Health Plan; a net asset deficit of \$66,604; and repeated cash flow problems. *See* Memo from Alexis Schauss, Director, Office of Financial and Business Services, DPI to Ozie Hall (Jan.

8, 2013), attached as Ex. 6. In the memo, the DPI Director of School Business noted that KCA showed “signs of financial insolvency or weakness.” *Id.*

21. Defendants responded to DPI on January 21, 2013. The response included a financial plan for finishing out the school year and a preliminary budget for the 2013-14 school year – based on an anticipated enrollment of 310 students. The school promised to bring all payments current before February 15, 2013. Defendant Hall also assured DPI that “we anticipate the school will be able to make it through the year and end the year without a deficit and improve its asset balances.” *See* Letter from Ozie Hall, Kinston Charter Academy to Alexis Schauss, Division of School Business (Jan. 21, 2013), attached as Ex. 7.

22. On February 19, 2013, KCA had its first board meeting of 2013 (the January meeting was cancelled). Five board members attended, two by phone. In his report to the Board, defendant Hall noted the school had made cuts to address budgetary problems, saying “staff reductions have been made, and measures are being taken to reduce expenses as much as possible.” Even in the face of budget troubles, the Board passed a resolution to buy an adjacent warehouse for \$4.2 million.

23. On February 20, 2013, defendant Hall had a call with DPI and the State Treasurer’s office about KCA’s delinquent health insurance and retirement contributions. Defendant Hall reassured state officials that all of KCA’s outstanding debts would be paid in full and that there would not be a problem going forward. The DPI Director of School Business questioned KCA’s ability to make future payments. Defendant Hall dismissed the concerns and instead focused on complaining about the DPI’s decision to end *ad hoc* cash advances.

24. On March 6, 2013, the State Board of Education discussed KCA's financial problems but did not recommend revocation because, though KCA had run a deficit, it had decreased that deficit over the previous three years. State Audit at p 20.

25. On March 7, 2013 – 15 days after dismissing DPI's concerns about KCA's fiscal health – defendant Hall called OCS to say that KCA was considering closing. Defendant Hall claimed that while he had had several meetings with a billionaire who committed to helping the school, the obstacle was a prior, erroneous statement on the renewal compliance data sheet about whether state funds could be used for lease payments.⁴

26. On a March 12th phone call to DPI, defendant Hall again mentioned “budgeting concerns” and “the possibility of closing.” State Audit at p 5.

Facing a Budget Crisis, KCA Pursues Risky Options to Remain Open

27. At this point in early 2013, KCA was in a budget crisis. The school had outstanding debts to the State and a questionable balance sheet, which caused DPI to inquire about KCA's financial health. The school needed a significant infusion of cash to continue to meet its obligations and stay open.

28. On March 19, 2013, the KCA board approved a measure empowering defendant Hall to pursue “multiple options to keep Kinston Charter Academy open.” Kinston Charter Academy, Board of Directors Meeting Minutes, closed session notes. During that meeting, defendant Hall had presented the Board with four options: 1) purchase the adjacent warehouse

⁴ Two months prior, on January 2, 2013, defendant Hall had written a letter to DPI's Chief Financial Officer complaining about this erroneous finding. The next day, OCS Director Joel Medley emailed defendant Hall to clarify that KCA could in fact use state funds for lease payments. DPI officials clarified this point for defendant Hall several more times, including by email on February 26, 2013 and formal letter on March 8, 2013.

for \$1.5 million to secure an advance of \$200,000 in cash but carrying a large balloon payment⁵; 2) asking teachers to put off pay until July; 3) talking to the billionaire and other potential donors; and 4) closure. *Id.*

29. On March 22, 2013, at a meeting of only three board members⁶, the KCA board adopted a motion empowering defendant Hall to seek short-term loans of up to \$200,000 and to refinance the facility for operating funds.

30. On April 2, 2013, defendant Hall contracted with Structured Financial Services, LLC to broker loans for KCA in exchange for a \$30,000 fee. Agreement attached as Ex. 23. The contract personally obligated defendant Hall to pay the \$30,000 fee.

31. On an April 26, 2013 call with DPI, defendant Hall admitted that he had not physically been on the KCA campus much and that the person he left in charge was incompetent. Defendant Hall claimed that had changed in the 2012-13 school year. Defendant Hall admitted

⁵ Though defendant Hall pitched this option to the KCA board several times, it is unclear exactly how the deal would have worked or if it was a viable option at all. The minutes from the meeting describe the option as follows:

On Wednesday, March 20th, O. Hall will talk with Mr. D. Howard concerning the acquisition of the Hampton Warehouse for \$4 million, including payment of \$1.5 million to the owner and \$2.5 million as a donation to the school from the owner. The \$1.5 million would be owner financed at 4% with interest only payments beginning August 1, 2013. Of the \$2.5 million donation, the owner will advance the school \$200,000 in cash to resolve the school's short-term cash issues. At the end of the interest only period, a balloon payment for the total outstanding would become due. During this time, the school would work with USDA to meet the requirements for a loan guarantee during the interest only period and seek refinancing.

KCA Board Meeting Minutes, Closed Session, Mar. 19, 2013.

⁶ Defendant McDonald-Hall; KCA Treasurer Linda McKnight; and KCA board member Sylvester Bailey.

that KCA was in a tight budget situation and that they were trying to resolve issues with their mortgage.

32. On that same call, even as KCA's future was in question, defendant Hall increased the school's projected enrollment for the next year to 366 students. This was an increase of 56 students from the 310 estimated enrollment that KCA submitted with a draft budget three months earlier.

33. On May 31, 2013, KCA obtained the first of two \$100,000 loans. *See* State Audit at p 14; Promissory Note, Ex. 24. The loan was due to be repaid two months later on July 25, 2013. The loan carried a \$15,000 origination fee that was subtracted from the actual amount KCA received. Since the loan also carried a \$15,000 broker's fee owed to Structured Financial Services, KCA would end up paying back \$115,000 to borrow \$85,000 for 52 days. Defendant Hall was personally obligated as a guarantor on the loan. On information and belief, KCA did not inform DPI about this loan.

34. On June 5, 2013, OCS sent KCA a letter about the delinquent March-May retirement contributions and put the school on Government Cautionary Status – the second-highest disciplinary level for governance problems. *See* Letter from Joel E. Medley, Director, Office of Charter Schools, DPI to Ozzie [sic] Hall, Administrator, Kinston Charter Academy (Jun. 5, 2013), attached as Ex. 8. OCS also questioned KCA's practice of asking employees to defer pay. On June 17, defendant Hall responded to OCS that employee health insurance for November 2012 to March 2013 was paid, but employee claims were being held by the insurer because KCA had not paid the penalties. *See* Letter from Ozie L. Hall, Jr., CEO/Principal, Kinston Charter Academy to Joel E. Medley, Director, Office of Charter Schools, DPI (Jun. 17, 2013), attached as Ex. 9. Defendant Hall claimed that all KCA employees had signed

acknowledgments that their benefits would be delayed. Defendant Hall also argued that ending the *ad hoc* cash advance policy hurt KCA's cash flow.

35. On June 18, 2013, defendant Hall reported to the KCA board on his progress securing the short-term loans and refinancing the KCA facility. Defendant Hall told the KCA board that the school appraised for around \$4 million, claiming that meant KCA had about \$2 million in equity. Defendant Hall also told the Board that refinancing applications were being processed. *See* Kinston Charter Academy Board of Directors Meeting Minutes (Jun. 18, 2013) attached as Ex. 25.

36. On June 21, 2013, KCA took out a second \$100,000 loan with Glen Playa Inc., a Delaware corporation. The second loan also had a \$15,000 origination fee that was subtracted from the actual amount KCA received. Since the loan also carried a \$15,000 broker's fee owed to Structured Financial Services, KCA would end up paying back \$115,000 to borrow \$85,000 for 25 days. Defendant Hall was also personally obligated as a guarantor on that loan. Upon information and belief, KCA did not inform DPI about this loan.

37. On information and belief, at this point KCA did not have enough to pay off the \$230,000 it then owed on the loans unless it opened for the 2013-14 school year and received its initial allotments. Had KCA closed at that point, under the terms of those loans, defendant Hall would have been personally obligated to repay those loans.

38. On information and belief, during this period KCA also engaged in an advertising campaign to convince students to enroll in KCA.

Facing Questions About Its Future, KCA Prioritizes Paying Bridge Loans and Defendants

39. In July 2013, KCA received its first local allotments. Local school systems are required by statute to send this money to charter schools that educate students from their city/county.

40. On July 22, 2013, KCA paid \$230,000 to satisfy the two bridge loans it received. The State Auditor calculated that KCA paid effective interest rates of 247.74% and 515.29% to borrow the funds for a little over a month. State Audit at p 14.

41. On July 24, 2013, at defendant Ozie Hall's direction, the USDA called OCS about the possible renewal of KCA's charter. OCS Director Joel Medley told Jennifer Schwartz of the USDA that, by statute, KCA's charter would be up for renewal the following year and that the State Board of Education would consider KCA's history of financial problems and falling achievement.⁷

42. On July 29, 2013, defendant Hall responded to OCS's questions about how employees had been informed about their unpaid benefits. *See* Letter from Ozie Lee Hall, Jr., CEO, Kinston Charter Academy to Joel E. Medley, Ph.D., Director, Office of Charter Schools, DPI (Jul. 29, 2013), attached as Ex. 10. Defendant Hall stated that most employees were informed of the delayed benefits verbally – rather than in writing as he had originally said. Defendant Hall also informed OCS that KCA was attempting to refinance its facilities to continue operations. Defendant Hall noted that, if refinancing efforts were unsuccessful, he would recommend to the board that KCA close. Defendant Hall promised a decision on KCA's future within 15 days.

⁷ KCA's performance composite (which represents the number of students scoring at or above grade level in reading or math) fell 40 percentage points to 11.4% in 2012-13 from a high of 51.8% in 2010-11. State Audit at p 16.

43. On August 2, 2013, OCS responded to KCA, asking for an update on KCA's continued operating status by no later than August 15th. See Letter from Joel E. Medley, Director, Office of Charter Schools, DPI to Ozzie [sic] Hall, Administrator, Kinston Charter Academy (Aug. 2, 2013), attached as Ex. 11. OCS also noted that KCA would be up for renewal after the school year and its academic status would be assessed after testing. OCS confirmed that KCA would remain on "Governance Cautionary Status" for failure to make all payments and reports to the State Treasurer's Office.

44. On August 6, 2013, KCA received its first allotment of state funds for the 2013-14 school year, a payment of \$666,818, that was supposed to last through October. The allotted amount was based on the projected enrollment of 366 students.

45. As KCA faced insolvency and an uncertain future, defendants made some unusual and inappropriate payments to themselves. On August 6, 2013 – the same day KCA received its first state allotment – KCA paid defendant Hall \$5,000 for unused vacation time. A few days later, on August 12, 2013, KCA paid Raneith Hall - defendant Hall's daughter - \$2,500 for a website redesign that the State Auditor later found never went operational. Then, on August 16, 2013, defendant McDonald-Hall was paid \$1,154.94 as an advance on her unused annual leave. On information and belief, these payments were made via check, signed by Board Treasurer Linda McKnight, at the request of one or both defendant Hall and McDonald-Hall.

Defendants Send Conflicting Messages About KCA, School Opens for Students Amid Turmoil

46. On August 15, 2013, defendant Hall emailed OCS that KCA had decided to stay open.

47. On August 16, 2013, OCS put KCA on "Governance Noncompliance Status" and notified the school of its intent to recommend to the State Board of Education to revoke KCA's

charter at the September 4 meeting due to KCA's failure to address the issues raised in OCS's June 5th letter. *See* Letter from Joel E. Medley, Director, Office of Charter Schools to Demyra McDonald-Hall, Board Chair and Ozie Hall, Principal, Kinston Charter School (Aug. 16, 2013), attached as Ex. 12. On August 22, 2013, OCS sent KCA an additional letter outlining further concerns with reporting on federal programs that would also be presented to the State Board of Education. *See* Letter from Alexis Schauss, Division of School Business, to Ozie Hall, Kinston Charter Academy School (Aug. 22, 2013), attached as Ex. 13.

48. On August 22, 2013, a day after receiving notice of OCS's intent to revoke KCA's charter, defendant Hall was paid another \$1,500 from KCA for unused annual leave. On information and belief, this payment was made via check, signed by Board Treasurer Linda McKnight. It is unclear if the entire board was consulted prior to making this payment.

49. On August 23, 2013, defendant Hall emailed OCS Director Medley that "I have made the recommendation to the KCA board to close the school and surrender the charter to the State Board of Education." Defendant Hall said there was an emergency board meeting set for three days later on August 26 – KCA's first day of school.

50. On August 26, 2013, KCA opened for its first day of school welcoming 189 students.

51. That night at the KCA board meeting, defendant Hall began by discussing ways to protect the financial interests of certain current and former board members who had lent KCA money "in the event the school closed." *See* Kinston Charter Academy Board of Directors Emergency Meeting Minutes, Closed Session (Aug. 26, 2013), attached as Ex. 27. The KCA board then discussed potentially surrendering its charter. The minutes mention an "on-going commitment for two loans" to help the cash situation – one a short-term \$300,000 loan and the

second a \$3 million refinancing that would net KCA \$850,000 in cash (after a \$150,000 loan fee). *Id.*

52. At that meeting, the Board also for the first time discussed changing school leadership. Defendant Hall proposed that the Board retain a management company to take over KCA's daily activities and add new board members. Defendant Hall told the KCA board he would "leave the school within 10 business days after the new Management Contract is completed."⁸ Based on defendant Hall's presentation, the KCA board decided to defer any decision on surrendering the charter pending the presentation of the corrective action plan to the State Board of Education and negotiation of the refinancing and management company contracts.

53. Following the meeting, on August 27, 2013, defendants Hall and McDonald-Hall sent DPI a letter requesting that the SBOE defer action on KCA until the November meeting to allow KCA to implement what they termed a "corrective action plan." *See* Letter from Demyra R. McDonald-Hall, chairman of the Board, Ozie Lee Hall, Jr., Chief Executive Director, Kinston Charter Academy to Dr. Joel E. Medley, Director, Office of Charter Schools, Finance and Business Division, DPI (Aug. 27, 2013), attached as Ex. 14. As described in the letter, this plan included: a \$3 million refinancing; another \$300,000 bridge loan; bringing outstanding employee payments current within 10 business days; correcting programmatic compliance issues;⁹ hiring a management company; and defendant Hall's departure from the school.

⁸ As explained *infra*, this was not completely true. *See* para. 59. Defendant Hall was deeply involved with the proposed management company. So though he would no longer be the CEO of KCA, the management company would not be a complete change of management.

⁹ On information and belief, KCA had been deficient in reporting on a number of government programs including: Race to the Top; Title I; and Exceptional Children.

54. Defendant Hall followed up the next day, August 28th, with a call to OCS to ask about KCA's standing and to inform it that the school had been approved for a \$3 million refinancing.

55. On August 29, 2013, KCA paid the State Health Plan the outstanding balance except for the interest that had accrued. That same day, DPI sent KCA a letter indicating that it intended to proceed with revocation. *See* Letter from Joel E. Medley, Director, Office of Charter Schools to Demyra McDonald-Hall, Board Chair and Ozie Hall, Principal, Kinston Charter Academy (Aug. 29, 2013), attached as Ex. 15.

56. On August 30, 2013, defendant Hall received an additional \$6,500 from KCA for unspecified expenditures.

57. On September 3, 2013, KCA had 189 students, far short of the 366 it projected. Defendant Hall emailed OCS that the "KCA Board has another emergency board meeting later today. I am pushing for the voluntary surrender of the KCA charter but it is the board's final decision. If I can get a resolution by this evening is it too late for the voluntary surrender to be placed before the State Board during the upcoming meeting?"

58. At that emergency meeting, Don McQueen, a representative of the proposed management company made a presentation about taking over the management of KCA. Board member Michael Mack voiced concerns about the proposed management company being unincorporated.

59. Despite defendant Hall's assertions to both the KCA board and OCS, on information and belief, the proposed management company did not represent an actual change in school administration. Defendant Hall was a central figure in the proposed management company. The company, which was not formally constituted at the time it was proposed, was to

be comprised of defendant Hall and several other North Carolina charter school administrators. Based on the meeting minutes, the KCA board was not informed of defendant Hall's involvement with the management company.¹⁰

60. Contrary to his assertions on the day before that KCA would be closing, on September 4, 2013, defendant Hall emailed OCS Director Joel Medley in an attempt to postpone revocation, promising changes, saying:

KCA Board of Directors held a special session last evening and has deferred a final decision on voluntary surrender of the charter. The board took further steps toward management changes and board changes to place the school under new management. The school also has financing that is being delayed by this proposed revocation. We hereby request that it be withdrawn and all parties have a meeting to work this situation out.

Email from O. Hall attached as Ex. 16.

61. Later that day, facing revocation, KCA surrendered its charter. The State Board of Education accepted KCA's surrendered charter at its meeting that same day.

62. On September 4th, defendant Hall also sent a letter to State Board of Education Member Rebecca Taylor, making the case for KCA to remain open. *See* Letter from Ozie Lee Hall, Jr., CEO/Principal, Kinston Charter Academy to Rebecca Taylor, Chair, Leadership for Innovation Committee, State Board of Education (Sep. 4, 2013), attached as Ex. 17.

KCA Closes, Displacing Students and Teachers; Defendants Protect Their Own Interests

63. On September 5, 2013, DPI sent defendant Hall a letter acknowledging acceptance of the relinquished charter and advising KCA of the wind-down policies and outlining proper types of expenditures for the period. The letter notified KCA that expenditures

¹⁰ The August 26, 2013 board meeting minutes indicate that defendant Hall "discussed with the Board the need for the Management Company with experienced charter school managers to take over the day-to-day operations of the school..." Minutes attached as Ex. 27 at p 2.

made after September 6, 2013 would be on a reimbursement basis. *See* Letter from Joel E. Medley, Director, Office of Charter Schools to Demyra McDonald-Hall, Board Chair and Ozie Hall, Principal, Kinston Charter Academy (Sept. 5, 2013), attached as Ex. 18.

64. On September 6, 2013, KCA closed its doors to students.

65. The 189 students displaced from KCA were forced to find other schools. DPI worked out an arrangement with schools that received KCA students to pay a second per pupil allotment in addition to what had already been paid to KCA. In effect, DPI paid twice to educate KCA's students for the first third of the school year.

66. On September 10, 2013, there was a contentious meeting between defendant Hall, defendant McDonald-Hall, and DPI officials. State education officials explained to defendants that they expected to be repaid the money for the extra 100+ students. DPI officials were denied access to a number of KCA records.

67. Following that meeting, defendant Hall wrote North Carolina Secretary of Education June Atkinson to complain of the Office of School Business's "illegal search and seizure" of school records.

68. The next day, September 12, 2013, the KCA board met with a quorum of three members.¹¹ The Board gave approval (after the fact) to the following expenditures:

- a. Vacation payouts of an undetermined amount to defendant Hall for unused annual leave;
- b. \$1,154.94 in payments to defendant McDonald-Hall for "an advance from her annual leave;"

¹¹ Defendant McDonald-Hall, Treasurer Linda McKnight, and Board Member S. Bailey (via telephone).

- c. A laptop computer for defendant Hall to replace his personal computer; and
- d. un-itemized reimbursements to defendant Hall totaling \$3,250 from April 8th, May 20th, June 15th, June 27th, and July 13th.

69. A small group of former KCA employees wound up the business of the school, including disposing of some of the instructional equipment to other charter schools and forwarding student records.

70. Seven months later, on April 28, 2014, OCS visited the KCA campus at the request of KCA's mortgage lender. There, OCS discovered about 50 student files, which included sensitive records such as copies of birth certificates; test records; immunization records; social security cards; and court orders.

71. In January 2015, the State Auditor's Office issued its investigative report on the KCA collapse. The State Auditor's principal findings about KCA's failure were:

- a. KCA was cited multiple times for financial mismanagement;
- b. KCA overstated enrollment which inflated state funds by more than \$300,000;
- c. KCA had inadequate board and administrative oversight;
- d. KCA employed defendants Hall and McDonald-Hall's unqualified relatives at a cost to the school \$92,500 in the final year;
- e. defendants Hall and McDonald-Hall accepted over \$11,000 in questionable payments despite owing more than \$370,000 in payroll obligations; and
- f. decreasing enrollment and private donations along with high operating costs contributed to KCA's insolvency.

State Audit, attached as Ex. 20.

DEFENDANTS' ILLEGAL FALSE CLAIMS

72. As alleged above, and further alleged and explained below, in 2013 defendants made claims for and accepted State funds based on assertions that they knew or should have known were false. Specifically, defendants unreasonably overstated enrollment to increase cash on hand; and defendants also made claims for State money knowing that KCA would likely not survive the entire 2013-14 school year.

Overstating Enrollment to Increase Revenue

73. Defendants unreasonably overstated their anticipated enrollment to get a temporary infusion of cash. As a result of defendants' misstatements, the State lost money that KCA would not even have been entitled to had the school stayed open.

74. In the spring of each year, all schools give DPI an estimate of how many students they anticipate having for the coming school year. This estimate is comprised of the Planning ADM¹² plus or minus any expected student losses or gains. The "Planning ADM" is the higher of the ADMs for the first two months of the current school year. If a charter school budgets for an increase in ADM for the upcoming year that does not exceed 20 percent, it does not have to obtain prior, specific approval from the SBOE. N.C. Gen. Stat. § 115C-238.29D(e), (f). Any increase over 20 percent requires SBOE approval. *Id.* DPI relies on these estimates to allocate the first allotment of state money on a per-pupil basis. DPI has no way of evaluating or challenging the validity of this number and distributes money solely on the school's good faith representation.

75. Once a new school year begins, schools take their enrollment from the first and twentieth days of school and average them. This number, called Funded ADM, is the number of

¹² ADM stands for "average daily membership."

pupils that a school is funded at for the school year. The school's second allotment, which comes in October, is adjusted to reflect the actual ADM. If a school initially overestimated, then the second allotment would be smaller, not only to reflect fewer students, but also to recapture the excess funding that the school was paid in the first allotment.

76. On January 21, 2013, in response to an inquiry from DPI, defendants submitted a preliminary budget for the 2013-14 school year based on a projected enrollment of only 310 students.

77. In late Spring 2013, defendants reported to DPI that they expected 366 students to attend KCA for the 2013-14 school year. This was the maximum number of students that KCA could request without having to seek approval from the State Board of Education. This estimate included a 20 percent increase over the Planning ADM (*i.e.*, the maximum percentage that did not require specific, prior approval from SBOE) of 305 students.

78. Defendants' new 366-student estimate represented an increase in enrollment of 92 students over the 274 students that attended KCA at the end of the previous year. This expected enrollment was 56 students higher than KCA had been expecting in January, just a few months prior. On information and belief, defendants did not provide any basis for increasing their expectations at that time.

79. The estimated enrollment would require a substantial increase in attendance. Defendants' 366-student enrollment estimate came in the face of three straight years of declining enrollment. During that period, KCA had never achieved its estimated enrollment or increased actual enrollment over the previous year. KCA also was facing the loss of approximately 10 percent of its enrollment due to its 8th grade class aging out. To meet its expected enrollment expansion of 20 percent, KCA would first have to replace these students.

80. The State Auditor noted that “The School provided no evidence supporting an estimated student attendance increase.” State Audit at p 6.

81. Defendant Hall admitted to the State Auditor that KCA was facing increased competition from other schools in the area.

82. During the two weeks KCA was open in the 2013-14 school year, it had an ADM of 189 students - falling short of its estimate by 177 students. State Audit at p 7. Rather than gaining 92 students, KCA had lost 85.

83. Since KCA closed before the adjustment that comes with the second allotment in October, the State Auditor concluded that KCA had received \$344,340.44 in excess funds solely due to overstated enrollment. State Audit at p 6.

84. Defendants knew, or should have known, that their enrollment projections were unattainable. In light of KCA’s already tenuous financial position and high likelihood of failure, requesting the maximum allotment merely to temporarily increase KCA’s cash flow was unreasonable and reckless.

85. Defendants’ unreasonable requests directly caused DPI to expend and lose funds it otherwise would not have.

Defendants Opened for the 2013-14 School Year When They Knew KCA Would Not Last

86. Due to KCA’s cash flow situation and declining enrollment, defendants knew or should have known that KCA would not have made it through the 2013-14 school year. As such, defendants’ claims for State funds were false.

87. Defendants were aware of KCA’s unsustainable cash flow problems and yet they continued to draw down on State funds. In October 2012, KCA had fallen 72 students short of

projected enrollment creating a shortfall of \$500,000 that had to be addressed by cuts in staff and the services the school offered.

88. As detailed above, KCA fell behind on numerous critical employee benefit payments. At a meeting with DPI officials in February 2013 about those delinquent benefit payments, the Director of School Business questioned KCA's continued ability to pay its obligations. Defendant Hall reassured DPI that KCA would remain viable.

89. Throughout late 2012 and the first half of 2013, defendants reportedly approached numerous lenders about securing a loan. This included seeking to refinance its mortgage with Self-Help and the USDA. On information and belief, KCA was repeatedly turned down. This should have been, and was, a warning to defendants about KCA's continued financial viability. Having been turned down by traditional lenders, KCA turned to seeking bridge loans – that defendant Hall was personally obligated on – at high interest rates. At that point, KCA had to open in 2013-14 just to get the funds to be able to repay those loans.

90. Defendants knew or should have known that KCA's cash problem would get worse if they did not hit their projected 366 student enrollment. Had KCA stayed open long enough, its second installment of state funds would have been adjusted to recoup the \$344,340.44 overpayment from the first installment. This would once again leave KCA in search of operating funds on a credit market that had already proven barren for them.

91. Defendants either failed to consider, or disregarded, KCA's dangerous cash flow to begin the 2013 school year. Defendants knew that in July they had to pay back \$230,000 to cover the bridge loans. Defendants knew that KCA likely would not hit the 366 student enrollment projection, meaning their second allotment would be small. It was obvious that KCA would run out of money during the upcoming school year – so obvious that KCA repeatedly

mentioned potential closure. Defendants' decision to willfully ignore KCA's funding status, and open for the 2013-14 year knowing KCA would fail cost the State hundreds of thousands of dollars.

DEFENDANTS' DISREGARD FOR NORTH CAROLINA NON-PROFIT LAW

92. North Carolina's charter school law requires charter schools to be run by non-profit corporations in accordance with, *inter alia*, Chapter 55A of the North Carolina General Statutes. Defendants repeatedly failed to operate the non-profit that held KCA's charter in accordance with North Carolina's well-established non-profit laws.

93. North Carolina law requires non-profit officers and directors to exercise their power: 1) in good faith; 2) with ordinary care; and 3) in a manner reasonably believed to be in KCA's best interest. N.C. Gen. Stat. §§ 55A-8-30 and 55A-8-42.

94. As a part of these duties, non-profit boards of directors are required to exercise actual oversight and control over the corporation's affairs. On information and belief, defendant McDonald-Hall, as the board chair rarely challenged her husband's actions.

95. As alleged above, and further alleged and explained below, defendants violated their duties to KCA under North Carolina non-profit law. Continuously, defendants put their own self-interest above KCA's, the charter school it ran, the teachers who worked there, and the children KCA served. Individual defendants also failed to fulfill their fiduciary duties to the corporation by not exercising ordinary care or acting in KCA's best interest. Defendants' actions, as a whole, constitute an abuse of KCA's corporate authority as a non-profit corporation formed under North Carolina law to run a charter school.

Self-Interested Transactions

96. Defendants repeatedly put their own interests ahead of the non-profit they served and the school it ran. This was especially pernicious in 2013, when defendants worked to protect their own interests and enrich themselves as the school faced a cash shortage and closure.

97. In August 2013, despite the severe cash shortage that would eventually close the school and owing teachers and staff approximately \$340,000 in back benefits, defendants Hall and McDonald-Hall paid themselves \$11,000 for unused vacation time. The KCA board only ratified these payments after KCA had already closed. *See* September 12, 2013 Board of Directors Meeting Minutes, attached as Ex. 29. There were only three members of the KCA board at that September 12th meeting. After defendant McDonald-Hall recused herself, there were only two voting members who considered the ratification – one was the KCA treasurer who had signed the cashier's checks in the first place and the other was participating via telephone.

98. At that same September 12, 2013 meeting, the KCA board also ratified past reimbursements to defendant Hall of \$3,250 and the purchase of a laptop for him - dating as far back as five months prior.

99. The State Auditor's Office found that KCA employed defendant Hall's unqualified relatives (including defendant McDonald-Hall, defendant Hall's wife) during KCA's final year at a cost of \$92,500.

Unreasonable Decisions

100. In the face of KCA's financial problems, defendants took a number of wholly unreasonable actions – including requesting funding for an unattainable number of students that would force the school to be docked money in October, opening for 2013-14 when it was obvious KCA would not last, and taking out two large loans with exorbitant fees.

101. These decisions predictably plunged KCA deeper in debt and ultimately led to its demise. A reasonably prudent person acting in the best interest of the corporation would not have taken these actions and, instead, would have taken other actions appropriate under the circumstances, among other alternatives, scaling back KCA's operations or surrendering the charter after the 2013 school year.

102. As alleged above and incorporated herein, defendants' decision to request funds for a projected enrollment of 366 students was unreasonable. This decision favored a short-term infusion of cash ahead of the long-term well-being of the organization. Any reasonable investigation of KCA's cash situation would have found that overestimating enrollment would only create a worse shortage in October. The State would have recouped the over \$340,000 in overpayments by deducting it from KCA's second allotment. This would have cut KCA's allotment significantly.

103. As alleged above and incorporated herein, defendants also failed to exercise ordinary care in taking out short-term bridge loans with horribly unfavorable terms. Defendants paid \$230,000 to get \$170,000 for less than two months. The State Auditor calculated the real interest rates of the two loans at 247.74 and 515.29 percent. Though KCA was already in a dire cash situation, these loans were ultimately fatal. Defendant Hall told the State Auditor that these were the only loans that KCA could get after being turned down multiple times by conventional lenders. A reasonable person would have taken these denials of conventional credit as a sign of KCA's dire financial situation. Instead, defendants took out expensive loans that led to KCA's demise.

104. As alleged above and incorporated herein, by deciding to open for the 2013-14 school year, defendants failed to exercise their power on behalf of KCA with reasonable care and

for KCA's best interest. After the 2012-13 school year, KCA had already slashed its staff due to funding shortages. KCA faced declining enrollment and achievement – as well as outstanding debts to both the State and its employees. KCA had been turned down for loans from traditional lenders multiple times. Opening for the 2013-14 school year only exposed KCA to more debt and eventual ruin. There is no indication from the KCA board minutes that defendants seriously discussed the best interests of the students – including the potential negative effects of having to find new schools mid-year – before making the decision to open for the new year.

105. Defendants' aforesaid acts, practices, representations, and/or omissions have been knowing and willful.

106. On information and belief, defendants' aforesaid acts were committed by defendants themselves, or their actual or apparent agents or assigns operating with defendants' authority and/or at defendants' direction.

DEFENDANTS' UNFAIR AND DECEPTIVE TRADE PRACTICES

107. Defendants unfairly deceived potential students into enrolling for the 2013-14 school year despite knowing that it was highly unlikely that KCA would survive the year.

108. On information and belief, defendants failed to fully disclose KCA's financial struggles to potential students before they enrolled. Despite knowing closure was likely imminent, defendants undertook an advertising campaign for KCA to pump up enrollment.

109. When KCA closed, just a few days into the school year, these students and parents were left in search of a new school. As explained above, KCA's eventual failure should have been evident to defendants, and the disruption to KCA's students wholly predictable. It was only a question of when KCA would fail.

110. Had KCA fully disclosed its financial problems to parents and students, they might not have enrolled their children. Instead, by enrolling their students, KCA received state money allotted for each child, which KCA mostly used to pay past debts. When KCA closed, its former students were thrust upon other schools. At that point, DPI stepped in and took the extraordinary step of paying an additional allotment to those schools to cover the cost of educating the displaced children. DPI would not have expended these funds had KCA closed after the 2012-13 school year.

111. On information and belief, defendants' aforesaid acts were committed by defendants themselves, or their actual or apparent agents or assigns operating with defendants' authority and/or at defendants' direction.

112. Defendants' aforesaid acts, practices, representations, and/or omissions have been in or affecting commerce in North Carolina and have had a significant negative impact thereon.

113. Because defendants have misled or deceived the State, the State has suffered financial harm.

114. Because defendants have misled or deceived consumers, these consumers have suffered financial harm.

115. Because defendants have misled or deceived consumers, the marketplace has suffered financial harm.

FIRST CLAIM FOR RELIEF: VIOLATION OF THE NORTH CAROLINA FALSE CLAIMS ACT, N.C. GEN. STAT. §§ 1-607, et seq.

116. The preceding paragraphs are re-alleged and incorporated herein by reference.

117. Defendants have violated the North Carolina False Claims Act by making false or fraudulent statements in connection with receiving state funds, including:

- a. making a claim for state educational funds based on a projected enrollment of 366 students – a number that defendants knew or should have known they would not achieve;
- b. making a claim for state educational funds for the 2013-14 school year when defendants knew or should have known that KCA would not survive the year;
- c. making a false claim for state funds to be used for a non-profit educational purpose that were instead used to benefit defendants.

118. Defendants' conduct was knowing within the definition of N.C. Gen. Stat. § 1-606(4).

119. Defendants' statements were false or fraudulent.

120. Defendants' statements were material to the State's provision of educational funds to defendants in that they had a natural tendency to influence the State's actions.

121. Defendants' statements caused the State financial injury, including, but not limited to the loss of state educational funds that were paid out for services that were not rendered.

122. Defendants' above-alleged practices entitle the State to the statutory relief prayed for below.

SECOND CLAIM FOR RELIEF: VIOLATIONS OF CHAPTER 55A OF THE NORTH CAROLINA GENERAL STATUTES

123. The preceding paragraphs are re-alleged and incorporated herein by reference, and the State further alleges that the aforesaid acts, practices, omissions, and/or representations by defendants constitute violations of Chapter 55A of the North Carolina General Statutes.

124. Kinston Charter Academy is a North Carolina Nonprofit Corporation pursuant to Chapter 55A of the North Carolina General Statutes.

125. Defendants have violated Chapter 55A by:
- a. Exceeding and/or abusing the authority confirmed upon them by law, in violation of N.C. Gen. Stat. § 55A-14-30(a)(1)(b);
 - b. Making unreasonable distributions to directors and officers in violation of N.C. Gen. Stat. §§ 55A-13-01,-13-02(a);
 - c. Failing to discharge their duties to the corporation in good faith; with ordinary care; and a manner in the best interest of the corporation, in violation of N.C. Gen. Stat. §§ 55A-8-30 and 55A-8-42;
 - d. Failing to comply with the conflict of interest requirements in N.C. Gen. Stat. § 55A-8-31; and
 - e. Failing to comply with N.C. Gen. Stat. § 55A-12-02 in disposing of all or substantially all of KCA's assets.

126. Defendant Hall, as an officer of the corporation, has failed to discharge his duties as an officer as required by N.C. Gen. Stat. § 55A-8-42:

- a. in good faith;
- b. with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- c. in a manner the officer reasonably believes to be in the best interests of the corporation.

127. Defendant McDonald-Hall, as a director of the corporation, has failed to discharge her duties as a director as required by N.C. Gen. Stat. § 55A-8-30:

- a. in good faith;

- b. with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- c. in a manner the director reasonably believes to be in the best interests of the corporation.

128. That, pursuant to N.C. Gen. Stat. § 55A-3-4, the validity of corporate acts may be challenged in an action brought pursuant to N.C. Gen. Stat. § 55A-14-30 on the grounds that the corporation took actions for which it lacks or lacked power to act.

129. Pursuant to N.C. Gen. Stat. § 55A-8-33(c), any director who votes for or assents to an unlawful distribution under Articles 13 or 14 of Chapter 55A is personally liable to the corporation.

130. Defendants' above-alleged practices entitle the State to the statutory relief prayed for below.

**THIRD CLAIM FOR RELIEF: VIOLATION OF THE UNFAIR AND DECEPTIVE
TRADE PRACTICES ACT, N.C. GEN. STAT. § 75-1.1, et seq.**

131. The preceding paragraphs are re-alleged and incorporated herein by reference, and the State further alleges that the aforesaid acts, practices, omissions, and/or representations by defendants constitute unfair and deceptive practices in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*

132. Defendants' unfair and deceptive practices included, but were not limited to, convincing prospective students to enroll for the 2013-14 school year despite knowing that it was unlikely KCA would make it through the year.

133. By their numerous misrepresentations, defendants have actually misled and deceived consumers.

134. Defendants' aforesaid acts, practices, representations, and/or omissions have been knowing and willful.

135. On information and belief, defendants' aforesaid acts were committed by defendants themselves, or their actual or apparent agents or assigns operating with defendants' authority and/or at defendants' direction.

136. Defendants' aforesaid acts, practices, representations, and/or omissions have been in or affecting commerce in North Carolina and have had a significant negative impact thereon.

137. Because defendants have misled or deceived consumers, these consumers (or the State on their behalf) have suffered financial harm.

138. Because defendants have misled or deceived consumers, the marketplace has suffered financial harm.

139. Defendants' above-alleged unfair and deceptive trade practices entitle the State to the statutory relief prayed for below.

REQUEST FOR A PRELIMINARY INJUNCTION
UNDER N.C. GEN. STAT. § 75-14

140. As shown by this Complaint and the accompanying Affidavits, defendants have misspent and mismanaged state and non-profit funds – often for their own personal benefit. The State of North Carolina therefore requests a Preliminary Injunction, pursuant to N.C. Gen. Stat. § 75-14, to prevent defendants from disposing of, transferring, or otherwise absconding with assets pending the resolution of this action.

PRAYER FOR RELIEF

WHEREFORE, the State prays the Court for the following relief:

141. That, upon proper notice to defendants, a hearing be conducted to determine whether a Preliminary Injunction is necessary to preserve the status quo pending the final adjudication of this cause, as allowed by N.C. Gen. Stat. § 75-14;

142. That, pursuant to N.C. Gen. Stat. § 1-607(a), defendants be required to pay an amount equal to three (3) times the damages caused to the State due to defendants' false claims, plus a civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than eleven thousand dollars (\$11,000) for each violation;

143. That this Court fashion equitable relief to cure defendants' deceptive practices and violations of Chapters 1, 55A, and 75 of the General Statutes;

144. That, pursuant to N.C. Gen. Stat. § 75-15.1, the Court cancel all contracts executed by defendants, their agents, employees, and corporate successors or assigns, and any persons acting in concert with them, in North Carolina in violation of N.C. Gen. Stat. § 75-1.1 and order defendants to make restitution of all amounts that consumers paid in reliance upon said contracts;

145. That, pursuant to N.C. Gen. Stat. § 75-14, a Permanent Injunction be entered upon final adjudication of this case to prevent defendants, their agents, employees, and corporate successors or assigns, and any person acting in concert with them, from resuming any unfair or deceptive practices in the State;

146. That, pursuant to N.C. Gen. Stat. § 75-15.2, defendants be required to pay civil penalties to the State of up to \$5,000 per violation of the Unfair and Deceptive Trade Practices Act, and that each week that the above-alleged practices persisted be deemed a separate violation, as allowed by N.C. Gen. Stat. § 75-8; and

147. That the Court award the State such other relief as may be just and proper.

This the 26th day of April, 2016.

STATE OF NORTH CAROLINA *ex rel.*
ROY COOPER, Attorney General

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