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US DISTRICT COURT E.D.N.Y.

★ MAY 23 2018 ★

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**BROOKLYN OFFICE**

SHIVA STEIN,

Plaintiff,

- against -

LIVE NATION ENTERTAINMENT, INC.,  
ROBERT TED ENLOE, III, MARK S. SHAPIRO,  
MICHAEL RAPINO, JOE BERCHTOLD, BRIAN  
CAPO, MICHAEL ROWLES, and KATHY  
WILLARD,

Defendants.

CIVIL ACTION NO. \_\_\_\_\_

**CV18 - 3030**

**VITALIANO, J.**

**POLLAK, M.J.**

**COMPLAINT**

Plaintiff, Shiva Stein, alleges, upon information and belief based upon, *inter alia*, the investigation made by and through her attorneys, except as to those allegations that pertain to the plaintiff herself, which are alleged upon knowledge, as follows:

**NATURE OF THE ACTION**

1. This is a stockholder's direct action under Section 14(a) of the Securities Exchange Act of 1934, as amended (the Exchange Act), 15 U.S.C. § 78n(a), and the rules and regulations of the United States Securities and Exchange Commission (the SEC).

2. Plaintiff, a shareholder in Defendant Live Nation Entertainment, Inc. ("Live Nation" or the "Company"), seeks an injunction to prevent a vote by its shareholders on Ted Enloe and Mark Shapiro, who are the members of the Company's Compensation Committee, because of the false and misleading statements in the Compensation Discussion & Analysis (CD&A) section of the 2018 Proxy Statement for the annual meeting of Live Nation shareholders scheduled for June 6, 2018.

3. The CD&A contains false and misleading statements concerning the cash performance bonuses paid to the Company's named executive officers and the restricted stock awards that vested for these same officers. The CD&A represents that these bonuses and restricted stock awards were contingent on the achievement of at least 90% of an Adjusted Operating Income ("AOI") of \$700 million for the year 2017.

4. The CD&A also falsely states in several places that the Company "achieved 104% of its Adjusted Operating Income performance target." Although the 2018 Proxy Statement does not report the AOI achieved, 104% of \$700 million is approximately \$728 million.

5. The CD&A then tells stockholders that "For a reconciliation of Adjusted Operating Income to operating income, as well as a complete definition and other information, see pages 30-31 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2017."

6. Page 31 of the Company's 2017 Form 10-K lists the 2017 AOI, but *the 2017 AOI is only \$625,142,000*. \$625 million is less than 90% of \$700 million, so none of the named executive officers should have received a cash incentive award or had their restricted stock awards vest for 2017.

7. The total cash bonuses awarded to the named executive officers based on the false Adjusted Net Income target was \$9,600,667.

8. The total restricted stock awards that vested to the named executive officers based on the false Adjusted Net Income target was \$1,254,327.

9. The false and misleading proxy statement thus reveals three possibilities: either (1) the 2018 Proxy Statement is false because it misreports the target of \$700 million where – in fact – a lower target applied; (2) the Form 10-K is false (and by extension the 2018 Proxy

Statement that directs stockholders to it) because it underreports the AOI of \$625 million; or (3) the 2018 Proxy Statement is false because the Company did not achieve its target AOI and the named executive officers have been awarded bonuses and restricted stock awards they do not deserve. Under all of these scenarios, the 2018 Proxy Statement is false and misleading.

10. According to the 2018 Proxy Statement, the board's Compensation Committee members – Ted Enloe and Mark Shapiro – are responsible for the certifying the cash bonus and restrict stock awards discussed above and for reviewing “the CD&A with management, and based on the review and discussions, recommend[ing] to the board of directors that the Compensation Discussion and Analysis be included in this proxy statement.” The Company submitted a proposal that shareholders vote on each individual director, including CEO Mark S. Shapiro (“Shapiro”), Robert Ted Enloe (“Enloe”), and Michael Rapino at the 2018 annual meeting.

11. The 2018 Proxy Statement must be corrected so that stockholders are able to vote on these directors with full and accurate information concerning the cash bonuses paid and restricted stock awards vested to the named executive officers.

#### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over the subject matter of this action pursuant to Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a).

13. In connection with the acts, omissions, conduct and wrongs alleged herein, Defendant used the mails and the means or instrumentalities of interstate commerce.

14. Venue is proper in this district because, as allowed under Section 27(a) of the Exchange Act, this district is where the violation at issue in this case occurred because the Plaintiff is a resident of this district.

**PARTIES**

15. Plaintiff is, and has been continuously since June 2014, a holder of Live Nation common stock.

16. Defendant Live Nation is a corporation organized under the laws of the State of Delaware. The Company's last fiscal year ended December 31, 2017. As of April 10, 2018, it had 208,875,754 shares of common stock outstanding. Live Nation's stock is traded on the NYSE under the symbol LYV. Live Nation represents that it is the largest live entertainment company in the world, the largest producer of live music concerts in the world, the largest music advertising network for corporate brands, and the world's leading live entertainment ticketing sales and marketing company. According to its 2017 Form 10-K, Live Nation had an AOI of \$625,142,000 for 2017.

17. Defendant Shapiro has been a director of Live Nation since 2008 and is chair of its Compensation Committee.

18. Defendant Enloe has been a director of Live Nation since 2006 and is the other member of its Compensation Committee.

19. Defendant Rapino is President, CEO, and a director of Live Nation. He received \$70,615,760 in compensation for 2017. He was awarded \$6,766,667 as a cash bonus based on an AOI of 104% of \$700 million when in fact the Company only had an AOI of \$625 million. He had 19,876 restricted stock awards, valued at \$577,000, vest based on an AOI of 104% of \$700 million when in fact the Company only had an AOI of \$625 million.

20. Defendant Joe Berchtold ("Berchtold") is President of Live Nation. He received \$28,794,489 in compensation for 2017. He was awarded \$1,100,000 as a cash bonus based on an AOI of 104% of \$700 million when in fact the Company only had an AOI of \$625 million.

He had 9,506 restricted stock awards, valued at \$275,959, vest based on an AOI of 104% of \$700 million when in fact the Company only had an AOI of \$625 million.

21. Defendant Brian Capo (“Capo”) is Chief Accounting Officer of Live Nation. He received \$541,575 in compensation for 2017. He was awarded \$134,000 as a cash bonus based on an AOI of 104% of \$700 million when in fact the Company only had an AOI of \$625 million.

22. Defendant Michael Rowles (“Rowles”) is General Counsel and Secretary of Live Nation. He received \$3,366,022 in compensation for 2017. He was awarded \$750,000 as a cash bonus based on an AOI of 104% of \$700 million when in fact the Company only had an AOI of \$625 million. He had 6,481 restricted stock awards, valued at \$188,143, vest based on an AOI of 104% of \$700 million when in fact the Company only had an AOI of \$625 million.

23. Defendant Kathy Willard (“Willard”) is Chief Financial Officer of Live Nation. She received \$5,490,583 in compensation for 2017. She was awarded \$850,000 as a cash bonus based on an AOI of 104% of \$700 million when in fact the Company only had an AOI of \$625 million. She had 7,345 restricted stock awards, valued at \$213,225, vest based bonus based on an AOI of 104% of \$700 million when in fact the Company only had an AOI of \$625 million.

24. Defendants Rapino, Berchtold, Capo, Rowles, and Willard are the Company’s “named executive officers.”

## WRONGFUL ACTS AND OMISSIONS

25. Live Nation has scheduled the annual shareholders' meeting for June 6, 2018. On April 20, 2018, it furnished its shareholders with the 2018 Proxy Statement to solicit their proxies for two management proposals and to transact other business that may properly come before the annual meeting.

26. Management Proposal 1 requests that the shareholders vote to individually elect twelve directors. As part of such a proposal, the SEC requires Live Nation – and all other public companies – to provide a CD&A that “describes the following” among other things:

- (i) The objectives of the registrant's compensation programs;
- (ii) What the compensation program is designed to reward;
- (iii) Each element of compensation;
- (iv) Why the registrant chooses to pay each element;
- (v) How the registrant determines the amount (and, where applicable, the formula) for each element to pay;
- (vi) How each compensation element and the registrant's decisions regarding that element fit into the registrant's overall compensation objectives and affect decisions regarding other elements;

17 C.F.R. § 229.402 (Item 402).

27. The 2018 Proxy Statement's CD&A begins at page 26.

28. On page 30, the CD&A states:

Currently, we are primarily emphasizing, and the executive compensation program is designed primarily to reward, achievement of targeted Adjusted Operating Income, evaluated on a pro-forma, constant-currency basis and adjusted for certain legal settlements and judgments. Adjusted Operating Income is a non-GAAP financial measure that we define as operating income before certain unusual and/or non-cash charges, acquisition expenses, depreciation and amortization (including goodwill impairments), loss or gain on sale of operating assets and non-cash and certain stock-based compensation expense. *For a reconciliation of Adjusted Operating Income to operating income, as well as a complete definition and other information, see pages 30-31 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2017.*

(Emphasis added.)

29. Looking at “pages 30-31 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2017,” the Form 10-K reports a “Total” AOI of \$625,142,000 for the year 2017. Notwithstanding that, the 2018 Proxy Statement inexplicably reports that the Company achieved an AOI of 104% of \$700 million and it awarded cash bonuses and vested restricted stock awards for the Company’s named executive officers based on this false number.

30. On page 28, the CD&A states:

[W]e achieved 104% of our targeted company Adjusted Operating Income (as defined below) for the year on a constant-currency and pro-forma basis and adjusted for legal settlements. All of our named executive officers had their cash performance bonuses tied to that target, and as a result, all of them received at least 100% of their targeted cash performance bonuses. Additionally, vesting of discretionary annual restricted stock awards to named executive officers in 2017 was tied to achievement of targeted Adjusted Operating Income. We believe that Adjusted Operating Income is one of the primary metrics on which the company’s performance is judged by analysts and the investment community, and is thus tied to the creation of stockholder value.

31. Concerning Defendant Rapino’s cash bonus, the CD&A states on pages 33-34:

Mr. Rapino’s performance bonus eligibility and exceptional performance bonus eligibility for 2017 were each based on the achievement of a company Adjusted Operating Income target. In March 2017, the Compensation Committee set for Mr. Rapino (a) a target cash performance bonus of \$2.3 million, based on the achievement of \$700.0 million of company Adjusted Operating Income for the year, with the actual bonus to range (i) between \$1.725 million and \$2.3 million for achievement of between 90% and 100% of such performance target and (ii) between \$2.3 million and \$4.6 million for achievement of between 100% and 110% of such performance target, in each case scaled based on straight-line interpolation, and (b) a target cash exceptional performance bonus of an additional \$2.3 million, based on the achievement of \$700.0 million of company Adjusted Operating Income for the

In March 2018, the Compensation Committee determined that the company had achieved 104% of its Adjusted Operating Income performance target on a pro-forma, constant-currency basis, adjusted for legal settlements. Accordingly, the Compensation Committee awarded Mr. Rapino (i) a cash performance bonus of \$3,383,333.50, representing 104% of his targeted cash performance bonus for 2017, (ii) a cash exceptional performance bonus of \$3,383,333.50, representing 104% of his targeted cash exceptional performance bonus for 2017 (with such amounts in clauses (i) and (ii) calculated using the split between Mr. Rapino’s

base salary under the Rapino 2009 Agreement and the Rapino 2017 Agreement, as explained above), for an aggregate cash performance bonus for 2017 of \$6,766,667. Mr. Rapino was also paid an additional bonus of \$1,000,000 per the terms of the Rapino 2017 Agreement.

32. Concerning Defendant Bertchold's cash bonus, the CD&A states on page 34:

Under the terms of his employment agreement as in effect during 2017, Mr. Bertchold is eligible to receive an annual cash performance bonus with a target equal to 100% of his base salary based on the achievement of performance targets established by the Compensation Committee. Pursuant to his new employment agreement, effective January 1, 2018, Mr. Bertchold's annual cash performance bonus has a target amount equal to 200% of his base salary, but such change does not impact his annual cash performance bonus for 2017. Mr. Bertchold's cash bonus eligibility for 2017 was based on the achievement of company Adjusted Operating Income. In March 2017, the Compensation Committee set a target bonus of \$1,100,000 for Mr. Bertchold based on the achievement of \$700.0 million of company Adjusted Operating Income for the year, with the actual bonus to range between \$990,000 and \$1,100,000 for achievement of between 90% and 100% of such performance target, scaled based on straight-line interpolation.

In March 2018, the Compensation Committee determined that the company had achieved 104% of its Adjusted Operating Income performance target on a pro-forma, constant-currency basis, adjusted for legal settlements. As a result, the Compensation Committee awarded Mr. Bertchold a cash performance bonus of \$1,100,000 for 2017, representing 100% of his targeted cash bonus.

33. Concerning Defendant Capo's cash bonus, the CD&A states on page 34:

Under the terms of his employment agreement, Mr. Capo is eligible to receive an annual cash performance bonus with a target equal to 40% of his base salary based on the achievement of performance targets established by the Compensation Committee. Mr. Capo's cash bonus eligibility for 2017 was based on the achievement of company Adjusted Operating Income. In March 2017, the Compensation Committee set a target bonus of \$134,000 for Mr. Capo based on the achievement of \$700.0 million of company Adjusted Operating Income for the year, with the actual bonus to range between \$120,600 and \$134,000 for achievement of between 90% and 100% of such performance target, scaled based on straight-line interpolation.

In March 2018, the Compensation Committee determined that the company had achieved 104% of its Adjusted Operating Income performance target on a pro-forma, constant-currency basis, adjusted for legal settlements. As a result, the Compensation Committee awarded Mr. Capo a cash performance bonus of \$134,000 for 2017, representing 100% of his targeted cash bonus.



34. Concerning Defendant Rowles's cash bonus, the CD&A states on page 34:

Under the terms of his employment agreement, Mr. Rowles is eligible to receive an annual cash performance bonus with a target equal to 100% of his base salary based on the achievement of performance targets established by the Compensation Committee. Mr. Rowles' cash bonus eligibility for 2017 was based on the achievement of company Adjusted Operating Income. In March 2017, the Compensation Committee set a target bonus of \$750,000 for Mr. Rowles, based on the achievement of \$700.0 million of company Adjusted Operating Income for the year, with the actual bonus to range between \$675,000 and \$750,000 for achievement of between 90% and 100% of such performance target, scaled based on straight-line interpolation.

In March 2018, the Compensation Committee determined that the company had achieved 104% of its Adjusted Operating Income performance target on a pro-forma, constant-currency basis, adjusted for legal settlements. As a result, the Compensation Committee awarded Mr. Rowles a cash performance bonus of \$750,000 for 2017, representing 100% of his targeted cash bonus.

35. Concerning Defendant Willard's cash bonus, the CD&A states on pages 34-35:

Under the terms of her employment agreement, Ms. Willard is eligible to receive an annual cash performance bonus with a target equal to 100% of her base salary based on the achievement of performance targets established by the Compensation Committee. Ms. Willard's cash bonus eligibility for 2017 was based on the achievement of company Adjusted Operating Income. In March 2017, the Compensation Committee set a target bonus of \$850,000 for Ms. Willard based on the achievement of \$700.0 million of company Adjusted Operating Income for the year, with the actual bonus to range between \$765,000 and \$850,000 for achievement of between 90% and 100% of such performance target, scaled based on straight-line interpolation.

In March 2018, the Compensation Committee determined that the company had achieved 104% of its Adjusted Operating Income performance target on a pro-forma, constant-currency basis, adjusted for legal settlements. As a result, the Compensation Committee awarded Ms. Willard a cash performance bonus of \$850,000 for 2017, representing 100% of her targeted cash bonus.

36. Concerning Defendant Rapino's restricted stock awards, the CD&A states on pages 35-36:

On March 16, 2017, as part of a broader set of grants made to certain of our executive officers and other key employees, Mr. Rapino was granted ... 19,876 shares of restricted common stock.... The shares of restricted stock have vesting

as follows: (i) if the company achieved \$700.0 million or more of Adjusted Operating Income in 2017, then 50% of such shares would vest on each of March 31, 2018 and March 31, 2019, (ii) if the company achieved less than \$630.0 million in Adjusted Operating Income in 2017, then all of such shares would be forfeited, and (iii) if the company achieved at least \$630.0 million but less than \$700.0 million in Adjusted Operating Income in 2017, then a percentage of such shares would vest in accordance with a straight-line scale, with one-half vesting on each of March 31, 2018 and March 31, 2019 (with any remaining portion of the shares forfeited). The vesting of the stock options and shares of restricted stock are subject to Mr. Rapino's continued employment with the company.

In March 2018, the Compensation Committee determined that the company had achieved 104% of its Adjusted Operating Income performance target on a pro-forma, constant-currency basis, adjusted for legal settlements. As a result, 9,938 of these shares vested on March 31, 2018 and the remaining 9,938 shares will vest on March 31, 2019, subject to Mr. Rapino's continued employment with the company.

37. Concerning Defendant Berchtold's restricted stock awards, the CD&A states on pages 36:

On March 16, 2017, as part of a broader set of grants made to certain of our executive officers and other key employees, Mr. Berchtold was granted ... 9,506 shares of restricted common stock. ... The shares of restricted stock have vesting as follows: (i) if the company achieved \$700.0 million or more of Adjusted Operating Income in 2017, then 50% of such shares would vest on each of March 31, 2018 and March 31, 2019, (ii) if the company achieved less than \$630.0 million in Adjusted Operating Income in 2017, then all of such shares would be forfeited, and (iii) if the company achieved at least \$630.0 million but less than \$700.0 million in Adjusted Operating Income in 2017, then a percentage of such shares would vest in accordance with a straight-line scale, with one-half vesting on each of March 31, 2018 and March 31, 2019 (with any remaining portion of the shares forfeited). The vesting of the stock options and shares of restricted stock are subject to Mr. Berchtold's continued employment with the company.

In March 2018, the Compensation Committee determined that the company had achieved 104% of its Adjusted Operating Income performance target on a pro-forma, constant-currency basis, adjusted for legal settlements. As a result, 4,753 of these shares vested on March 31, 2018 and the remaining 4,753 shares will vest on March 31, 2019, subject to Mr. Berchtold's continued employment with the company.

38. Concerning Defendant Rowles's restricted stock awards, the CD&A states on pages 36:

On March 16, 2017, as part of a broader set of grants made to certain of our executive officers and other key employees, Mr. Rowles was granted ... 6,481 shares of restricted common stock. ... The shares of restricted stock have vesting as follows: (i) if the company achieved \$700.0 or more of Adjusted Operating Income in 2017, then 50% of such shares would vest on each of March 31, 2018 and March 31, 2019, (ii) if the company achieved less than \$630.0 million in Adjusted Operating Income in 2017, then all of such shares would be forfeited, and (iii) if the company achieved at least \$630.0 million but less than \$700.0 million in Adjusted Operating Income in 2017, then a percentage of such shares would vest in accordance with a straight-line scale, with one-half vesting on each of March 31, 2018 and March 31, 2019 (with any remaining portion of the shares forfeited). The vesting of the stock options and shares of restricted stock are subject to Mr. Rowles' continued employment with the company.

In March 2018, the Compensation Committee determined that the company had achieved 104% of its Adjusted Operating Income performance target on a pro-forma, constant-currency basis, adjusted for legal settlements. As a result, 3,240 of these shares vested on March 31, 2018 and the remaining 3,241 shares will vest on March 31, 2019, subject to Mr. Rowles' continued employment with the company.

39. Concerning Defendant Willard's restricted stock awards, the CD&A states on page 37:

On March 16, 2017, as part of a broader set of grants made to certain of our executive officers and other key employees, Ms. Willard was granted ... 7,345 shares of restricted common stock. ... The shares of restricted stock have vesting as follows: (i) if the company achieved \$700.0 million or more of Adjusted Operating Income in 2017, then 50% of such shares would vest on each of March 31, 2018 and March 31, 2019, (ii) if the company achieved less than \$630.0 million in Adjusted Operating Income in 2017, then all of such shares would be forfeited, and (iii) if the company achieved at least \$630.0 million but less than \$700.0 million in Adjusted Operating Income in 2017, then a percentage of such shares would vest in accordance with a straight-line scale, with one-half vesting on each of March 31, 2018 and March 31, 2019 (with any remaining portion of the shares forfeited). The vesting of the stock options and shares of restricted stock are subject to Ms. Willard's continued employment with the company.

In March 2018, the Compensation Committee determined that the company had achieved 104% of its Adjusted Operating Income performance target on a pro-forma, constant-currency basis, adjusted for legal settlements. As a result, 3,673 of these shares vested on March 31, 2018 and the remaining 3,672 shares will vest on March 31, 2019, subject to Ms. Willard's continued employment with the company.

40. The following chart shows the type of award and its dollar value that was tied to the AOI of \$700 million and the named executive officer who received such awards:

<b>Named Executive Officer</b>	<b>Cash Bonus</b>	<b>Dollar Value of Restricted Stock Award</b>	<b>Total Dollar Value of Award</b>
Rapino	\$6,766,667	\$577,000	\$7,343,667
Berchtold	\$1,100,000	\$275,959	\$1,375,959
Capo	\$134,000	none	\$134,000
Rowles	\$750,000	\$188,143	\$938,143
Willard	\$850,000	\$213,225	\$1,063,225
<b>TOTAL:</b>			<b>\$10,854,994</b>

41. As a result of the above, it is entirely unclear from the 2018 Proxy Statement why these awards were granted or certified when the AOI was reported as only \$625 million.

42. This contravention of the SEC rules renders the 2017 Proxy Statement unlawful under § 14(a) of the Exchange Act.

43. As a result of these actions, plaintiff will be injured, and she has no adequate remedy at law. She will suffer irreparable harm on Management Proposal 3 if no action is taken to ameliorate this harm because, she is being forced to vote for directors based on this information. Unwinding the director elections and all of the actions taken by these directors will be nearly impossible after the vote has occurred.

44. To ameliorate the injury, injunctive relief is required in the form of an amended proxy statement that corrects the information noted above.

45. The preceding paragraphs state a direct claim for relief against Live Nation under § 14(a) of the Exchange Act for acting in contravention of the rules and regulations prescribed by the SEC. Consequently, Live Nation should be enjoined from presenting Proposal 3 for a stockholder vote at the October 9, 2017 annual meeting or certifying or otherwise accepting any vote cast, by proxy or in person, by or on behalf of any Live Nation shareholder in connection with Proposal 3 in the 2017 Proxy Statement.

46. In addition, to the extent any of the Defendants or any other employee of Live Nation has been unjustly enriched based on an AOI that Live Nation did not achieve, such awards should be rescinded.

#### **COUNT I**

47. Paragraphs 1 through 46 are reincorporated herein and state a direct claim for relief against the defendants under Section 14(a) of the Exchange Act for acting in contravention of the rules and regulations prescribed by the SEC in the 2018 Proxy Statement.

48. Because of this conduct, plaintiff has been and will be injured, and she has no adequate remedy at law. She will suffer harm from the result of uninformed votes on the directors.

49. To ameliorate the injury, relief is required in the form of an amended proxy statement that remedies the above-described false disclosure in the CD&A.

#### **COUNT II**

50. Paragraphs 1 through 46 are reincorporated herein and state a claim for waste and unjust enrichment.

51. To the extent any Defendant or employee of Live Nation has received compensation based on an AOI that Live Nation did not achieve in 2017, that compensation should be returned to the Company or declared forfeit.


**RELIEF REQUESTED**

**WHEREFORE**, Plaintiff requests the following relief:

- A. A preliminary and permanent injunction, enjoining Live Nation from
  - (i) certifying or otherwise accepting any vote cast, by proxy or in person, by or on behalf of any Live Nation shareholder in connection with Proposal 1 in the 2018 Proxy Statement;
  - (ii) presenting Proposal 1 for a shareholder vote at the June 6, 2018 annual meeting;
- B. A preliminary and permanent injunction requiring Live Nation to furnish an amended proxy statement that remedies the above-described false disclosure in the CD&A.
- C. A preliminary and permanent injunction requiring the Defendants and any other employees of Live Nation that have received compensation based on an AOI that Live Nation did not achieve in 2017 to return that compensation to Live Nation or forfeit it.
- D. Awarding such other and further relief, whether similar or different, as this Court deems just and proper.

Dated: New York, New York  
May 22, 2018

**BARRACK, RODOS & BACINE**

  
By: /s/ Michael A. Toomey  
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