

DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO

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QUINTER FIKE, individually and on behalf of all others similarly situated,
Plaintiffs,

v.

AUTO-OWNERS INSURANCE COMPANY, a
Michigan insurance company,
Defendant.

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Avi S. Rocklin
Hill & Robbins, P.C.
1441 18th Street, Suite 100
Denver, CO 80202

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▲ COURT USE ONLY ▲

Case Number: 06CV333
Div.: 3

SETTLEMENT AGREEMENT BETWEEN PLAINTIFF, INDIVIDUALLY AND ON BEHALF OF A CLASS, AND DEFENDANT AUTO OWNERS INSURANCE COMPANY AND AFFILIATES

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**SETTLEMENT AGREEMENT BETWEEN PLAINTIFF, INDIVIDUALLY
AND ON BEHALF OF A CLASS, AND DEFENDANT AUTO-OWNERS
INSURANCE COMPANY AND OWNERS INSURANCE COMPANY**

Plaintiff Quinter Fike, on behalf of himself and the Settlement Class he seeks to represent, by his undersigned counsel of record, and Defendant Auto-Owners Insurance Company (hereinafter “Defendant”) and Owners Insurance Company, by their undersigned counsel of record, hereby stipulate and agree that, subject to Court approval under Colo. R.Civ. P. 23, Plaintiff’s claims in this Litigation against the Settling Defendants will be settled and dismissed on the terms and conditions set forth in this Settlement Agreement (“Settlement Agreement”).

I. DEFINITIONS

The following words and phrases shall have the following meanings throughout this Settlement Agreement:

1. The word and phrase “Plaintiff”, “Plaintiffs” or “Class Representative” means Quinter Fike.
2. The phrase “Settling Defendants” means Auto-Owners Insurance Company and Owners Insurance Company.
3. The phrase “New Defendant” means Owners Insurance Company, which will be added as a Defendant to the Litigation solely for settlement purposes pursuant to Exhibit B, as described in Article III, paragraph 1.1.
4. The phrase “Settlement Class” or “Settlement Class Members” means all persons or entities assessed premiums by Settling Defendants for uninsured/underinsured motorist insurance (“UM/UIM”) coverage on more than one motor vehicle at the same time in Colorado between April 30, 2001 and February 1, 2005, for new or renewal policies of personal lines

automobile insurance including any of their heirs, executors, administrators, personal representatives, successors and/or assigns, but excluding Settling Defendants and their officers, and directors.

5. The phrase “Class Period” means the time period from April 30, 2001 to February 1, 2005, inclusive of those dates.

6. The word “Litigation” means the above-captioned civil action filed in the District Court for Boulder County, Colorado insofar as it relates to the claims brought by Plaintiffs against Defendant Auto-Owners Insurance Company.

7. The phrase “Class Counsel” means the law firms of Hill & Robbins, P.C., 1441 18th Street, Denver, Colorado 80202, the McFarland Law Offices, 910 13th Street, Suite 200, Golden, Colorado 80401, Evans & McFarland, LLC, 910 13th St., Suite 200, Golden, Colorado 80401, and their predecessor and/or successor firms.

8. The phrase “Settling Defendants’ Counsel” means James K. Green, Esq. and David B. Bush, Esq., Markusson, Green & Jarvis, P.C., 999 18th St., Suite 3300, Denver, CO 80202 and Lori McAllister, Esq. and Theodore Seitz, Esq., Dykema Gossett, PLLC, 201 Townsend St., #900, Lansing, MI 48933.

9. The phrase “Final Judgment” means the entry by the District Court of the judgment attached hereto as Exhibit D without modification, except as may be approved by the Parties in writing.

10. The phrase “Final Approval” means the last date by which all of the following have occurred:

- (a) the District Court has entered the Final Judgment in the form attached hereto as Exhibit D, without modification, except as may be approved by the Parties in writing;

(b) 45 days have passed after entry of the Final Judgment and rehearing, reconsideration, or appellate review is not timely filed by any person, or if rehearing, reconsideration, or appellate review of the Final Judgment is timely filed by any person, when any and all avenues of rehearing, reconsideration, and appellate review have been exhausted and no further rehearing, reconsideration, or appellate review is permitted or the time for seeking such review has expired, provided that the Final Judgment has not been altered, modified, amended, vacated, or overturned.

11. The word “Parties” means Plaintiff and Settling Defendants, collectively.

12. The phrase “Class Administrator” means Class Action Administration, Inc., a firm retained by Class Counsel to administer the settlement.

13. The phrase “Preliminary Approval” means entry by the District Court of an order the same or similar in content to the attached Exhibit A, without modification except such as may be approved by the Parties in writing: (a) preliminarily approving the terms and conditions of this Settlement Agreement; (b) certifying the Settlement Class pursuant to Colo.R.Civ.P. 23; (c) authorizing notice of the Settlement Agreement to be provided to the Settlement Class Members; (d) approving the manner and form of notice to be provided to the Settlement Class Members, as provided in this Settlement Agreement; and (e) scheduling a fairness hearing at which the Court will determine whether this Settlement Agreement should be approved as fair, reasonable, and adequate.

14. The phrase “Settlement Fund” means the sum of Six Hundred Forty Two Thousand Dollars (\$642,000), inclusive of any interest, which includes Settlement Administration Costs and any costs and attorney fees approved by the Court, and is the limit of the Settling Defendants’ total liability to the Plaintiff and Settlement Class, and to any other

person to settle this Litigation.

15. The phrase “Released Parties” shall mean Settling Defendants, individually and collectively, and each and all of their parents, subsidiaries, divisions, joint ventures, joint venturers, and related and affiliated entities, and all of their respective past and present predecessors, successors, assigns, attorneys, accountants, representatives, officers, directors, employees, agents, and independent contractors.

16. The phrase “Plan of Distribution” means the methodology for calculating and procedure for distributing the Settlement Funds set forth in Article III, Sections 5 and 6 of this Settlement Agreement.

II. DESCRIPTION OF LITIGATION

Plaintiff alleges that the Settling Defendants failed to provide the requisite information to their Colorado policyholders in connection with their sale of UM/UIM coverage to permit their insureds to make an informed decision as to whether to purchase UM/UIM coverage on more than one vehicle. Plaintiff brought this action on behalf of himself and a Class to recover the amounts paid for UM/UIM coverage on more than one vehicle at the same time. Plaintiff’s claims address only Defendant’s conduct in Colorado with respect to Colorado policyholders under Colorado law.

The Court’s Ruling and Order of January 26, 2005 dismissed Plaintiff’s claims concerning Defendant’s disclosures to policyholders concerning UM/UIM coverage prior to the decision of the Colorado Supreme Court in *DeHerrera v. Sentry Ins. Co.*, 30 P.3d 107, on April 30, 2001. Plaintiff’s claims concerning disclosures to policyholders about UM/UIM coverage on and after April 30, 2001 remained pending. The Court has not yet ruled on Plaintiff’s motion for class certification.

The Colorado Department of Insurance approved a request by Settling Defendants to change the method by which Settling Defendants charged premiums for personal lines UM/UIM coverage effective January 31, 2005.

Defendant has denied and continues to deny the allegations of wrongdoing and has vigorously litigated the issues that have arisen to date in the Litigation. Settling Defendants also deny any wrongful conduct toward Colorado policyholders concerning the sale of UM/UIM coverage. This settlement is a compromise of disputed claims, and Settling Defendants do not admit liability to Plaintiff or the Settlement Class. Nevertheless, without admitting or conceding any liability or damages and in order to avoid the uncertainty, risks, and costs of the Litigation, the Parties have agreed to settle the claims of the Plaintiff and the Settlement Class in the manner and upon the terms and conditions set forth in this Settlement Agreement.

NOW THEREFORE, it is stipulated and agreed by and between the Parties that the Litigation be settled, terminated, and dismissed, based on the following terms and conditions:

III. TERMS OF THE SETTLEMENT

1. Addition of New Defendant for Settlement Purposes

1.1 For settlement purposes only, the Parties hereby agree, subject to the approval of the Court and at the same time as the Court's Preliminary Approval, to add the New Defendant as a Defendant to the third amended complaint in the Litigation, which is not now a party to the Litigation, by agreed order in the same form and content as Exhibit B. Upon entry of such order, the New Defendant will be deemed to be one of the "Settling Defendants" for all purposes as defined herein.

1.2 In the event Settling Defendants or Plaintiff withdraw from this Settlement Agreement, pursuant to paragraphs 3.5 or 4.3, or Final Approval is not obtained, the order adding the New Defendant as a party shall be void as of the date of entry, so that the New Defendant

will be as if it was never added as a defendant to this action and as if no action had been initiated against the New Defendant, and the Parties shall be restored without prejudice to their respective litigation positions prior to entry of such order and the date of this Settlement Agreement.

2. **Certification of Settlement Class for Settlement Purposes**

2.1 The Parties hereby agree, subject to the approval of the Court pursuant to Rule 23 of the Colorado Rules of Civil Procedure, that Plaintiff will file a motion for certification of the Settlement Class contemporaneous with the filing of a motion for Preliminary Approval, seeking certification of the Settlement Class pursuant to Colo.R.Civ.P. 23 solely for the purpose of this settlement. Settling Defendants will stipulate to that certification solely for the purpose of this settlement.

3. **Class Notice**

3.1 Settling Defendants agree to use their best efforts to create, at their expense, a list of the names and last known addresses of Settlement Class Members, as reflected by Settling Defendants' records. Settling Defendants shall deliver such list of Class members to the Class Administrator, with a copy to Class Counsel, within 5 days after Preliminary Approval. The list of Class members will be treated as "Confidential" and will not be disclosed to any person or entity unless necessary to the administration process.

3.2 No later than 30 days after Preliminary Approval, the Class Administrator shall cause notice to be mailed to each Class member, to the last known address of each Class member as reflected in Settling Defendants' records. The notice shall be in substantially the same content and form as Exhibit C attached hereto. Any mailed notice returned to the Settlement Administrator by the U.S. Postal Service as not deliverable or not forwarded shall be checked against the National Change of Address database one time and re-mailed by the Settlement Administrator if a different address is obtained.

3.3 Any Settlement Class Member individually may elect to opt out of the Settlement Class, within the time and in the manner specified in the class notice and in the Preliminary Approval, with the effect that the rights of any Settlement Class Member who timely opts out shall not be affected by this Settlement Agreement. The right to opt out of the Settlement Class may only be exercised individually by a Settlement Class Member, and not by any other person in a representative capacity. Any Settlement Class Member seeking to be excluded from the Settlement Class must send a written request for exclusion to the Class Administrator, at an address to be designated in the class notice and postmarked by the date that appears in the notice to request exclusion from the Settlement Class.

3.4 Within 14 days after the deadline for Settlement Class Members to mail their elections to exclude themselves from the Class, the Class Administrator shall submit a report to Class Counsel and Settling Defendants' Counsel of the names and addresses of all Settlement Class Members who have timely and properly excluded themselves from the Class. Upon the reasonable request of either party, the Class Administrator shall make available for inspection and copying any opt out requests received by the Class Administrator.

3.5 Settling Defendants shall have the right to withdraw from this Settlement Agreement if the number of Settlement Class Members who timely elect to be excluded from the Settlement Class exceeds 5% of the total of all Settlement Class Members. Settling Defendants must exercise such right to withdraw, in writing to Class Counsel, within 10 days after receipt of the report of opt outs from the Class Administrator. If Settling Defendants timely exercise the right to withdraw described herein, this Settlement Agreement shall be null and void for all purposes and the Parties shall be restored without prejudice to their respective pre-settlement litigation positions (except for the payment of certain Class Administration Costs as provided in

Section 7) including the dismissal without prejudice of the New Defendant and decertification of the Settlement Class as certified by the Preliminary Approval.

4. **Class Settlement Procedures**

4.1 The parties shall jointly move the Court to enter a Preliminary Approval order in the form of Exhibit A.

4.2 Prior to the Fairness Hearing, Plaintiff's Counsel shall move the Court to approve and enter Final Judgment, substantially in the form of Exhibit D hereto, granting final approval of this Settlement Agreement as fair, reasonable, adequate and binding on all Settlement Class Members who have not timely and properly excluded themselves, approving the Plan of Distribution, and effecting the releases as set forth in Section 9.

4.3 If the District Court fails to enter the Final Judgment substantially in the form of Exhibit D hereto, or the Final Judgment does not receive Final Approval, or the Final Judgment materially alters the terms of this Settlement Agreement, each of the Parties have the right to declare the Settlement Agreement null and void, and the Litigation will resume without prejudice to the rights of any Party (except for the payment of certain Class Administration Costs as provided in Section 7) including decertification of the Settlement Class and restoration of the positions of the Parties as of the date this Settlement Agreement was executed, unless the Final Judgment and Final Approval in accordance with this Settlement Agreement are successfully obtained on appeal, or unless the Parties agree to amend the Settlement Agreement and obtain Final Approval of the amended Settlement Agreement.

5. **Disbursements to Settlement Class Members**

5.1 Within ten days after Final Approval, Settling Defendants shall establish the Settlement Fund by depositing the total sum of Six Hundred Forty-Two Thousand dollars (\$642,000), less the amount they have previously paid for Class Administration Costs as

provided in Section 7, without interest, in trust with the Class Administrator, with written confirmation of such deposit provided to Class Counsel.

5.2 Within 30 days after Final Approval, the Settlement Fund shall be distributed to the Settlement Class Members based on their pro rata share of the Settlement Fund, without interest, less all sums approved by the Court and distributed as compensation, attorneys' fees, or expenses pursuant to paragraphs 6.1 and 6.3 or otherwise. Each Settlement Class Members' pro rata share shall be determined based upon the business records provided by Settling Defendants, demonstrating the amount of UM/UIM premiums assessed to Settlement Class Members on more than one motor vehicle at the same time between April 30, 2001 and February 1, 2005, on personal lines automobile insurance.

5.3 The Class Administrator shall notify Class Counsel and Settling Defendants Counsel at least three (3) days business days before distributions to Settlement Class Members commence.

5.4 Disbursements to Settlement Class Members shall be issued via checks whose terms require negotiation within 60 days of the instrument's date. Checks shall be mailed by the Class Administrator to Settlement Class Members to their last known address, or to a more current address from the National Change of Address database.

5.5 Funds represented by checks distributed to Class Members that are not negotiated within 60 days of the date of the check, or that are represented by checks that the Class Administrator cannot deliver to Class Members in accord with the procedures set forth in Article III, paragraph 5.4, shall be returned to the Settling Defendants within 160 days after completing disbursements to Settlement Class Members.

5.6 Within 150 days after completing disbursements to Settlement Class Members,

the Class Administrator shall report in writing to Class Counsel and Settling Defendants Counsel the total amount of disbursements to Settlement Class Members and the disposition of any unclaimed funds, in accord with paragraph 5.5. Within 10 days after receipt of the report of the Class Administrator, the Parties shall submit an agreed order to the Court in the form of Exhibit E, finally terminating and dismissing the Litigation.

6. **Attorneys' Fees and Costs and Payment To Class Representative**

6.1 Neither Settling Defendants nor Settling Defendants' Counsel will oppose nor object to Class Counsel's request for an award of attorneys' fees up to 30% of the Settlement Fund, plus reimbursement of expenses and costs in connection with the representation of the Class in this Litigation. Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid by the Class Administrator from the Settlement Fund within 30 days after Final Approval.

6.2 Settling Defendants shall have no responsibility for and shall have no liability whatsoever with respect to the allocation among Class Counsel and/or any other person who may assert a claim thereto of any attorneys' fees or expenses that the Court may award.

6.3 Neither Settling Defendants nor Settling Defendants' Counsel will oppose a motion to the District Court seeking compensation to the Class Representative for his work in connection with the Litigation in an amount not to exceed a total of \$2,500 to the Class Representative. Any compensation to the Class Representative approved by the Court shall be paid from the Settlement Fund at the same time as distributions to Settlement Class Members as described in Article III, paragraph 5.2.

7. **Settlement Administration Costs**

7.1 All fees and costs of the Class Administrator, including but not limited to the fees and costs to determine current addresses for the Settlement Class Members as provided in paragraph 3.2, provide notice to the Settlement Class Members as provided in Section 3, and distribute the Settlement Fund in accord with the Plan of Distribution approved by the Court as provided in Sections 5 and 6, shall be paid from the Settlement Fund in accord with the Court's orders.

7.2 Settling Defendants agree to advance sufficient funds from the amount they are required to pay under the terms of this Settlement Agreement to timely compensate the Class Administrator for all Settlement Administration Costs incurred prior to Final Approval. All such advances shall be made to the Class Administrator within ten (10) of receipt of a statement from the Claims Administrator. All such cash advances shall be deducted from the total amount of sum of Six Hundred Forty Two Thousand Dollars (\$642,000) the Settling Defendants have agreed to pay under this Settlement Agreement. In the event this Settlement Agreement is not finalized because Settling Defendants withdraw from the Agreement as provided in Section 3.5, the Settling Defendants agree that the funds they have advanced under this paragraph are forfeited and they shall have no right to recover such funds. If the Settlement Agreement is not finalized for any other reason, the Parties agree to share 50/50 in the administrative costs incurred up to the date on which it is determined that the Settlement Agreement will not be finalized.

7.3 Class Counsel shall monitor the work of the Class Administrator and the Class Administrator shall report to the Parties and the Court, as requested, documenting its actions in connection with administration of the settlement pursuant to this Settlement Agreement. The Parties, Class Counsel, and Settling Defendants Counsel shall in good faith cooperate in the

implementation of the settlement and this Settlement Agreement.

8. **List of Class Members**

8.1 Class Counsel agree to treat the list of Settlement Class Members as “Confidential” and not to use the list of Settlement Class Members for any purpose other than the administration and implementation of this Settlement Agreement.

9. **Release and Covenant Not to Sue**

9.1 Upon Final Approval, Plaintiff and all Settlement Class Members who have not timely and properly excluded themselves, regardless of whether such Settlement Class Members have claimed or obtained benefits hereunder, on behalf of each of their successors and assigns, shall release and forever discharge the Released Parties from any and all claims, lawsuits, rights, counts, causes of action, damages, judgments, executions, attachments, debts, demands, liabilities, and obligations of every kind and nature, known and unknown, in law or equity, class or individual, suspected or unsuspected, concealed or unconcealed, tangible or intangible, whether sounding in contract, tort, unjust enrichment or any other theory, that were asserted or could have been asserted by Plaintiffs in this Litigation on behalf of the Class against the Released Parties, for any injury or damages relating to or arising out of: (a)(i) premiums or rates charged for UM/UIM in the state of Colorado on more than one vehicle at the same time at any time during the Class Period; (ii) the manner in which premiums for UM/UIM were described or not described to policyholders during the Class Period; (iii) disclosures or omissions to disclose in connection with the sale of UM/UIM coverage during the Class Period; including without limitation any claim that the Released Parties violated (with respect to the foregoing) any Unfair Claims Practices statute, any consumer fraud statute, or any other statutory or common law requirement or duty, any claims of negligence, bad faith, misrepresentation, breach of contract,

conversion, unjust enrichment, or any other claim; and (b) any and all claims to attorneys' fees and/or expenses in connection with the prosecution of this Litigation or the claims described in subparagraph 9.1(a), except for the amount set forth in and awarded pursuant to paragraph 6.1. It is specifically agreed that this paragraph 9.1 should not be interpreted to adversely impact any Settlement Class Member's claim for any personal injury compensable under UM/UIM coverage.

9.2 Upon Final Approval, all Settlement Class Members who have not timely and properly excluded themselves hereby covenant not to sue the Released Parties in respect to any or all of the Released Claims identified in paragraph 9.1.

9.3 Effective upon entry by the Court of the Final Judgment, all claims of Plaintiff and of all Settlement Class Members, except for those who have timely and properly excluded themselves, shall be dismissed with prejudice and without costs.

9.4 Plaintiff agrees that Settling Defendants have offered consideration for the Released Claims by Settlement Class Members who do not opt out, regardless of whether Settlement Class Members receive or negotiate the checks described in Section 5.

9.5 Upon Final Approval, each of the Settling Defendants shall fully, finally and forever release the Class Representative, Settlement Class Members who have not opted out, and Class Counsel from any and all past, present, or future damages and/or request for equitable relief arising out of, relating to, or in connection with the institution, prosecution, or resolution of this Litigation, except for breach of this Settlement Agreement.

9.6 This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims, and neither the Settlement Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Settlement

Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, or of any point of fact or law (including but not limited to the propriety of class certification) on the part of any Party. Settling Defendants deny the allegations of the complaint and all amended complaints filed in the Litigation.

10. **Miscellaneous**

10.1 All proceedings with respect to the administration of this Settlement Agreement and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Boulder District Court.

10.2 The terms of this Settlement Agreement inure to the benefit of and are binding upon the Parties and their assigns and successors in interest.

10.3 This Settlement Agreement may be executed in counterparts and/or by facsimile. This Settlement Agreement shall become effective upon its execution by all of the undersigned.

10.4 Class Counsel and Settling Defendants' Counsel agree to cooperate in the timely submission of this Settlement Agreement to the Court, to recommend approval of the settlement in the form set forth in this Settlement Agreement, and to use their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may become reasonably necessary by order of the Court or otherwise, to effect the settlement provided for by this Settlement Agreement and to obtain Final Approval of the Final Judgment.

10.5 The terms and conditions set forth in this Settlement Agreement, including all attached exhibits, constitute the complete and exclusive agreement between the Parties relating to the subject matter of this Settlement Agreement, superseding all previous negotiations,

representations, and understandings, and may not be contradicted or supplemented by evidence of any prior or contemporaneous agreement. The Parties further intend that this Settlement Agreement and all attached exhibits constitute the complete and exclusive statement of its terms as between the Parties and that no extrinsic evidence may be introduced in any judicial proceeding involving this Settlement Agreement. Prior or contemporaneous representations not contained in this Settlement Agreement shall be of no force or effect. Any modification of this Settlement Agreement must be in writing signed by or on behalf of Class Counsel and Settling Defendants.

10.6 This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado.

10.7 Settling Defendants expressly reserve the right to communicate with and respond to inquiries from policyholders and Settlement Class Members orally and/or in writing, and it may do so through any appropriate agent or agencies. Settling Defendants will undertake to assure that such communications accurately reflect the pertinent terms, conditions and effects of this settlement.

10.8 This Agreement was entered into only for purposes of compromise and settlement and is not an admission of liability by Settling Defendants or an admission that a class should be certified. In the event that Final Approval, without modification, does not occur for any reason, then no term or condition of this Settlement Agreement shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Litigation or in any other proceeding.

10.9 The determination of the terms of and the drafting of this Settlement Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel.

10.10 As used herein, the plural of any defined term includes the singular thereof, and the singular of any defined term includes the plural thereof as the context may require.

10.11 In the event any date or deadline for actions set forth in this Settlement Agreement falls on a weekend or legal holiday, such date or deadline shall be on the first business day thereafter.

IN WITNESS HEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the date it has been executed on behalf of both Plaintiff and Defendants.

Dated: _____, 2006

Dated: _____, 2006

ATTORNEYS FOR SETTling
DEFENDANTS:
*signed original on file at Dykema Gossett
PLLC*

ATTORNEYS FOR PLAINTIFF AND
THE SETTLEMENT CLASS:
*signed original on file at Hill & Robbins,
P.C.*

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Theodore Seitz, Esq.
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PLAINTIFF, INDIVIDUALLY AND ON
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CLASS:

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