IT IS ORDERED as set forth below:

Date: June 22, 2016

____

Barbara Ellis-Monro
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: RONALD EDWARD SCIORTINO, Debtor.	CASE NO. 14-71765-BEM CHAPTER 7
RONALD EDWARD SCIORTINO, Plaintiff, v. GWINNETT COUNTY DEPARTMENT OF WATER RESOURCES and GWINNETT COUNTY, Defendants.	ADVERSARY PROCEEDING NO. 15-5356-BEM

ORDER

Plaintiff, Debtor herein ("Debtor"), filed a Motion To Show Cause Why Barbara Ellis-Monro Has Not been Disqualified As Judge [Adv. Pro. Doc. No. 95][1] (the "Motion") in this adversary proceeding. Debtor cites 28 U.S.C. §§144, 455(a), the due process clauses and the equal protection clause of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution as the bases for recusal. [Doc. No. 95, p. 3, n. 1, 2; p. 4; p. 20; 28]. Debtor seeks reassignment of this proceeding, the main bankruptcy case (the "Main Case") and all associated cases.

In support of the Motion, Debtor included as Exhibit "A" to the Motion, an "Affidavit Of Fact/True Bill In Support Of Motion To Show Cause Why Barbara Ellis-Monro Is Not Disqualified As Judge" (hereinafter the "Affidavit") in which Debtor argues that this judge should be disqualified from this proceeding, because: (1) this judge signed notices of hearing that did not provide 14 days' notice between the date of issuance of the notice of hearing and the hearing being held [Affidavit ¶¶ 6, 26, 27, 28, 31]; (2) this judge has signed orders and notices of hearing that are vague [Affidavit ¶ 32]; (3) this judge has on more than one occasion failed to sustain Debtor's objection to counsel appearing for various parties in this proceeding and in the Main Case [Affidavit ¶¶ 10, 15, 22]; (4) this judge has signed orders that are incorrect [Affidavit n. 2, ¶¶ 6, 18-20, 22, 37, 23, 39, 43, 45]; (5) this judge has conspired with counsel for a creditor by re-setting a hearing on a motion for relief from stay [Affidavit ¶44]; (6) this judge "bribed" Debtor into withdrawing an objection to appearance by counsel for the County Defendants[2]

[1] References to docket entries in this proceeding are as follows: [Doc. No. __] while references to filings in the associated main case, case no. 14-71765 are [Main Case Doc. No. ___], references to prior cases filed by Debtor are [Case No. __-______Doc. No. ___], and references to adversary proceedings involving Debtor are [Adv. Pro. __-_____Doc. No. ___].

[2] The Court construes Debtor's reference to County Defendants to have the same meaning as the "County Defendants" in the March 18, 2016 order on the motion to dismiss of various defendants.

[Affidavit ¶ 10]; (7) this judge has failed to grant any relief requested [Affidavit ¶¶ 6, 16]; and (8) this judge has entered inconsistent orders [Affidavit ¶¶ 39, 41, 43].

I. The Recusal Motion

Debtor alleges the following facts, as opposed to conclusions, characterizations, and opinions, in the Affidavit: the Court ruled that the summons and complaint in this proceeding were served [¶ 4]; this judge signed an Order and Notice of Hearing on September 11, 2015 scheduling a status conference on September 22, 2015 [¶ 5] (hereinafter the "First Order and Notice" and the "September 22 Hearing"); the First Order and Notice did not provide 14 days' notice of the hearing [¶ 6]; Debtor assumed that the scheduling of the hearing was the result of his request for an emergency hearing [¶ 6]; no relief has been granted [¶ 7]; Defendants did not appear at the September 22 Hearing (scheduled in the First Order and Notice) [¶ 9]; Murray J. Weed and Brooke Savage made an oral entry of appearance (at the September 22 Hearing) [¶ 9]; Debtor objected to appearance by Murray Weed [¶ 10]; this judge failed to rule on the objection [¶ 10]; this judge's statements caused Debtor to believe the Court would grant relief requested so that he did not pursue his objection [¶ 11]; no summons was issued to the original defendants in this proceeding [¶ 14]; the First Order and Notice, because it gave less than 14 days' notice, "did confuse Debtor making Debtor believe the hearing could have possibly resulted in some form [of] (sic) relief that would result in immediate access to water currently being blocked by Gwinnett County defendants"[3] [¶ 15]; this judge's statements at the September 22 Hearing caused Debtor to believe that his claims had merit and that the Court should provide relief as requested; nevertheless five months later the judge entered an order denying relief [¶ 16]; Debtor filed an Amended Complaint on December 16, 2015 [¶ 17]; in the

[3] Debtor does not define this term, but the Court construes it to have the same meaning as the "County Defendants." *See supra* n.2.

Amended Complaint Debtor added defendants [¶ 17]; the Gwinnett County Defendants filed a motion to dismiss on January 8, 2016 [¶ 20]; Debtor filed a response to the motion to dismiss on January 22, 2016 [¶ 21]; the chapter 7 trustee (the "Trustee") did not personally appear at the hearing on the motion to dismiss or a hearing held on June 24, 2015 on the Trustee's proposed abandonment of property in the Main Case [¶ 22]; Debtor objected to the Trustee's counsel appearing and the judge overruled that objection [¶ 22]; the judge signed an Order and Notice that was entered on the docket on February 19, 2016 (the "Second Order and Notice") which provided less than 14 days' notice [¶¶ 27, 31]; the Second Order and Notice scheduled a hearing to be held on March 3, 2016 [¶ 25]; on February 22, 2016 this judge signed an Order and Notice of Hearing also scheduling a hearing for March 3, 2016 (the "Third Order and Notice" and with the First Order and Notice and the Second Order and Notice, the "O&Ns") providing less than 14 days' notice [¶¶ 26, 28]; a hearing was held on March 3, 2016 (the "March 3 Hearing") as provided in the Second and Third Orders and Notices [¶ 30]; the Second Order and Notice provided notice for five separate matters [¶ 31]; Debtor spent resources preparing for the hearing and the County withdrew its motion to strike at the hearing [¶ 31]; at the March 3 Hearing this judge said that she had read the entire record in this proceeding [¶ 34]; on May 19, 2015 Debtor filed adversary proceeding number 15-5238, Sciortino v NationStar Mortgage, LLC [¶ 38]; an order dismissing adversary proceeding number 15-5238 was entered on November 24, 2015 (the "Dismissal Order") [¶ 39]; an order signed on August 13, 2015 denying Debtor's motion for stay pending appeal as premature stated that "the stay has now expired by operation of law because the chapter 7 trustee has specifically abandoned the subject real property" [¶ 41]; the judge pointed out defects in NationStar Mortgage, LLC's ("NationStar") motion for relief from stay at a hearing held on June 23, 2015 [¶ 44].

II. Filings and Procedural History

Much of Debtor's motion relates to proceedings in three matters: (1) NationStar's request for stay relief; (2) the chapter 7 trustee's abandonment of estate property; and (3) the above-captioned adversary proceeding to restore Debtor's water service. By way of background, Debtor has filed three bankruptcy cases in this Court. The first, case number 11-84809 was filed by counsel under chapter 7 on December 5, 2011 and was assigned to now retired, Judge James E. Massey. The case was dismissed on April 25, 2012 for failure to pay the filing fee. The second, case number 14-56502 was filed *pro se* under chapter 7 on March 31, 2014 and was assigned to this judge. The second case was dismissed on March 31, 2014 after Debtor failed to attend two scheduled 341 meetings. Prior to dismissal of the second case, NationStar filed a motion for relief from the automatic stay, which was granted after a hearing. [No. 14-56502, Doc. Nos. 14, 38]. In addition, on May 13, 2014, Debtor filed an adversary proceeding *pro se* against NationStar and its legal counsel, which alleged that the order modifying the automatic stay with respect to NationStar was improper [Adv. Pro. No. 14-5156, Doc. 1]. The defendants in that proceeding filed motions to dismiss. On August 22, 2014, the Court entered an order dismissing the proceeding because the main bankruptcy case had been dismissed and, consequently, in a chapter 7 case, no bankruptcy purpose would be served by adjudication of the adversary. [Adv. Pro. 14-5156, Doc. No. 12].

Debtor filed his third and current case *pro se* on November 3, 2014. [Main Case 14-71765, Doc. No. 1]. In accordance with local practice and consistent with BLR 1015-1(b), 1015-2, the Main Case was assigned to this judge. A creditor and the standing chapter 13 trustee filed objections to confirmation of Debtor's proposed plan. After hearing, the Court denied confirmation and ordered dismissal of the case, subject to Debtor converting the case to chapter 7

to allow a chapter 7 trustee to review and decide whether to pursue any of the claims Debtor had disclosed in his schedules.[4] [Main Case, Doc. Nos. 52, 54, 64]. The Court also entered, on January 29, 2015, an Order Denying Debtor's Motion Pursuant to Bankruptcy Code §§ 366 and 105(a) For Order Deeming Utility Companies Adequately Assured of Future Performance And Establishing Procedure For Determining Requests For Additional Adequate Assurances [Main Case, Doc. Nos. 63, 32, 35]. Thereafter, on February 9, 2015, Debtor filed a Motion To Convert, and the Main Case was converted to one under chapter 7 on February 10, 2015. The Main Case remains pending as a chapter 7 case.

Throughout May and June 2015, two matters proceeded within the Main Case—NationStar's request for stay relief and the trustee's abandonment of assets. On April 24, 2015, NationStar filed a Motion For Relief From Automatic Stay in which it sought to modify the stay with regard to Debtor's residence (the "Motion For Relief"). [Main Case Doc. No. 82; Adv. Pro. No. 1 ¶ 6, No. 29 ¶ 6]. Debtor filed a response to the Motion For Relief alleging that the documents attached to the Motion For Relief were forged and that the copies "contain clear and convincing prima facia [sic] evidence of forgery and have no probative value" and that NationStar's attorney should be sanctioned for an error contained in paragraph 8[5] of the Motion For Relief. [Main Case Doc. No. 97]. Debtor also argued that movant does not have standing to pursue relief from the automatic stay. [Main Case, Doc. No. 97; Adv. Pro. 15-5238, Doc. No. 1].

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[4] Debtor scheduled in excess of $17,000,000,000,000 in claims against Gwinnett County related to assessments and loss of parental rights on Schedule A filed in the Main Case and in excess of $18,000,000,000 in similar claims on Schedule B. [Main Case Doc. No. 21].

[5] Paragraph 8 states that the "Movant's [sic] declares the debt owed to be in excess of $1,717,986.14." It then itemizes the principal, interest, and escrow deficiencies that make up the debt for a total of $374,412.98. [Main Case Doc. 82 p.2]. The inconsistent debt figures appeared to be an error as the result of sloppy drafting. The error was repeated in NationStar's Amended Motion for Relief From Automatic Stay, which was filed to remove extraneous attachments included with the original motion. [Main Case Doc. No. 102]. A second hearing on the request for stay relief was held on June 23, 2015, at which time the Court stated that Counsel "might want to look at their motion and paragraph 8 in particular." [June 23, 2015 hearing tr. at 10:25:04 – 10:25:09].

The Court held a hearing on May 19, 2015, at which both NationStar and Debtor appeared. At that hearing, Debtor challenged the standing of NationStar's counsel to appear on behalf of NationStar and challenged the validity of the supporting documents filed with the Motion For Relief. Debtor also provided legal authorities on the standard for granting summary judgment. The Court explained at some length the standard for modification of the automatic stay in a chapter 7 case and that it did not implicate summary judgment. The Court further explained that any claims Debtor believed he had against NationStar would be unaffected by an order modifying the stay. [Hearing Recording at 10:40:52 – 10:43:41; 10:44:43 – 10:45:54]. The Court directed NationStar's counsel to upload an order granting the Motion for Relief.

Prior to an order being entered on the Motion For Relief Debtor filed a Motion for Stay pending appeal (the "Stay Motion") [Main Case, Doc. No. 109]. The Court entered an Order denying the Stay Motion as premature because no order on the Motion for Relief had been entered. [Main Case, Doc. No. 123]. In addition to ruling that the Stay Motion was premature, the order provides that the "stay has now expired by operation of law because the Chapter 7 Trustee has specifically abandoned the subject real property" and cited to the Trustee's Notice of Proposed Abandonment or Disposition of Property (the "Notice of Abandonment") and the Court's order thereon. *Id.*; [Main Case Doc. Nos. 87, 115].

The chapter 7 trustee (the "Trustee") filed a report of no distribution on April 28, 2015, thereby advising that he had not located any assets with value to be liquidated for the benefit of Debtor's creditors. At the same time, the Trustee filed his Notice of Abandonment, which provided in part that the Trustee "intends to abandon the property listed below which is either burdensome or of inconsequential value to the bankruptcy estate" and listed "any and all scheduled real and personal property of the debtor that remains unliquidated." [Main Case, Doc.

No. 87]. Debtor filed an Objection To Trustees Proposed Abandonment Or Disposition Of Property in which he objected to the proposed abandonment because the Bankruptcy Code provides that a notice and hearing be provided. [Main Case, Doc. No. 98]. On May 18, 2015, Debtor filed a further response to the proposed abandonment. [Main Case, Doc. No. 97]. The Trustee's Notice of Abandonment and Debtor's responses were set for hearing on June 24, 2015.

NationStar did not submit an order granting its Motion For Relief. Instead, NationStar filed an amended motion for relief on May 21, 2015 (the "Amended MRFS") [Main Case, Doc. No. 102]. The Court heard the Amended MRFS on June 23, 2015. At that hearing Debtor again raised the issue of whether counsel appearing for NationStar was authorized to appear since he had not filed a power of attorney and again sought to argue that the documents attached to the Amended MRFS were invalid. Counsel for NationStar, Chad R. Simon, acknowledged that he not filed any pleadings on the docket but was acting as appearance counsel for NationStar. At that point, the Court inquired if there was any reason counsel could not provide a copy of the appearance counsel agreement to Debtor in response to his request for the same and further that, the hearing on the Notice of Abandonment was scheduled for the next day which to the extent it was granted would moot the Amended MRFS. [Hearing Recording 10:23:09-10:24-20]. Thus, the hearing was continued to the following day to be heard with the abandonment.

At the June 24, 2015 hearing, Debtor and counsel for the Trustee were present. Debtor objected to appearance of counsel for the Trustee, which the Court overruled. Counsel for NationStar did not appear and NationStar later withdrew its Amended MRFS. [Main Case Doc. No. 122]. After the hearing, the Court entered an order overruling Debtor's objection to the

Notice of Abandonment and gave effect to the abandonment of property identified in the Notice of Abandonment. [Main Case Doc. No. 115].

Debtor filed the instant adversary proceeding on September 10, 2015. [Doc. 1]. In general, Debtor sought immediate injunctive relief because his access to municipal water service had been terminated by Gwinnett County and/or Gwinnett County Water Resources. [Doc. ¶¶ 30, 20a (p. 21); Doc. 57 p. 3]. The details of the Complaint and the Amended Complaint are set forth at length in the February 12, 2016 Order Denying Request For Emergency Hearing And Regarding Jurisdiction (the "Jurisdiction Order") and will not be restated here. [Doc. 57]. As set forth in the Jurisdiction Order, the Court held two status conferences on the Complaint on September 22, 2015 and October 1, 2015 (the "October 1 Hearing"). *Id.* at p. 4-5. At the September 22 and October 1 Hearings, the Court advised Debtor that the record did not reflect service on the Original Defendants[6] in accordance with Bankruptcy Rule 7004 and that Debtor needed to perfect service of the complaint.

At the September 22 Hearing, the Court asked Debtor to explain what had happened and what he sought from the Court. After hearing from Debtor, the Court indicated that it appeared that there was a factual issue regarding the amount Debtor owed to the County and/or the Water Department. The Court encouraged the parties to exchange information to determine the post-conversion amount in dispute and whether any billing issues could be resolved consensually. [Doc. 98, p. 7, 12, 17-19]. The Court also advised Debtor that its jurisdiction is very limited and does not extend to postpetition debts and the reasonableness of the interest rate on postpetition debts. Finally, the Court advised Debtor that once he perfected service, he could contact the courtroom deputy for a further hearing date. [Doc. 98, p. 25].

[6] The Court construes this term to have the meaning ascribed to it in the Jurisdiction Order. [Doc. No. 57, p. 3].

At the October 1 Hearing, the Court again addressed its limited jurisdiction, stating without deciding, that it seemed unlikely the Court had jurisdiction to order the County and/or the Water Department to provide Debtor with municipal water service. [Doc. 57, p. 5, October 1, 2015 tr. at 11:07:31 – 11:14:33]. The Court also noted that it believed that the only claim for which the Court has jurisdiction is the alleged stay violation because the other claims did not arise in the Main Case, were not administrative matters in the Main Case, and did not appear to have a nexus with the bankruptcy estate. The Court noted further that it did not appear that service of process had been perfected on the Original Defendants. Thereafter, and in an apparent response to the statements about jurisdiction, on December 16, 2015 Debtor filed an Amended Complaint.[7] [Doc. No. 29; No. 57 at 7]. Debtor filed a Certificate of Service certifying that service of the Summons and the Amended Complaint was made on Defendants on December 17, 2015. [Doc. Nos. 31, 39].

In the Jurisdiction Order, which was entered on February 12, 2016, the Court determined that it was without subject matter jurisdiction over claims for an injunction directing the Water Department to provide service to Debtor, for contempt (separate and apart from that contemplated by 11 U.S.C. § 362(k)), and for creditor misconduct. [Doc. No. 57 at 10-12]. In addition, because Debtor sought a mandatory injunction the Court concluded that injunctive relief under 11 U.S.C. § 105 was not appropriate and denied Debtor's request for emergency hearing. [Doc. 57. p. 12-13].

Prior to entry of the Jurisdiction Order, on January 8, 2016 and on January 19, 2016, respectively, the County and the Trustee each filed a motion to dismiss this proceeding. (the "County MTD" and the "Trustee MTD"; collectively, the "MTDs") [Doc. Nos. 40, 43]. Debtor filed a response in opposition to each of the MTDs, and the County filed a reply to the

[7] Affidavit at ¶17.

Debtor's Response. [Doc. Nos. 46, 47 and 51]. Debtor also filed a Motion to Deny Defendants Motion to Dismiss & Memo and to Deny Gwinnett County Defendants Response. [Doc. Nos. 67, 68]. The last of these pleadings was filed on February 19, 2016, the same day the Second Order and Notice was entered on the docket. [Doc. No. 64]. The Second Order and Notice set for hearing both of the MTDs and Debtor's responses filed at the time the Second Order and Notice was issued.

After the March 3 Hearing, at which counsel for the County, the Trustee and the *pro se* Debtor appeared and argued, the Court entered an Order on March 18, 2016 (the "MTD Order"), in which the Court dismissed all the defendants except the County and the Water Department and dismissed the majority of Debtor's claims. The Court did not dismiss Debtor's claim for violation of the automatic stay related to an invoice issued for the period October 14, 2014 through November 3, 2014. [Doc. No. 79, p. 14]. In dismissing the majority of Debtor's claims, the Court held, as a matter of law, that the automatic stay was not in effect after December 4, 2014 pursuant to 11 U.S.C. § 362(c)(3), which provides that when a debtor had a previous case pending and dismissed within one year of the current case, the automatic stay terminates after 30 days unless extended by the court. *Id.* at p. 11.

Debtor filed a motion to reconsider the Jurisdiction Order on March 2, 2016 to which the County has responded. [Doc. Nos. 73, 75]. Debtor filed an "Objection to Order Dismissing Niel (sic) C. Gordon et al. Defendants in March 3, 2016 Oral Rendering of Order; Objection to Order Dismissing Plaintiff's Other Claims as Ordered; Motion for Rehearing …" to which the County also responded. [Doc. Nos. 83, 85]. On April 4, 2016, Debtor filed a Motion for Reconsideration of the MTD Order as well as a Motion to Deny Answer And Affirmative Defense Filed by the Gwinnett County Defendants in response to the Answer filed by the County

after entry of the MTD Order. [Doc. Nos. 86, 87]. The County responded to each of these Motions. [Doc. Nos. 90, 91]. Then, on April 21, 2016, Debtor filed the motion presently before the Court. [Doc. Nos. 95, 97].

III. Legal Analysis

A. Statutory Standards For Recusal

Debtor has identified the statutes that address recusal in a federal case, that is 28 U.S.C. § 144 and 28 U.S.C. § 455.

Section 144 provides:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.
>
> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

28 U.S.C. § 144.

And, § 455 provides in relevant part:

> (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding[.]

28 U.S.C. § 455.

To establish a basis for recusal under § 144, "the moving party must allege facts that would convince a reasonable person that bias actually exists," and "[p]roperly pleaded facts in a

§ 144 affidavit must be considered as true." *Christo v. Padgett,* 223 F.3d 1324, 1333 (11th Cir. 2000) (citing, *Phillips v. Joint Legislative Comm. on Performance & Expenditure Rev.,* 637 F.2d 1014, 1019 n. 6 (5th Cir. Feb. 1981)[8]). "[F]actual allegations must fairly support the charge of bias or impartiality and must be specific--including definite times, places, persons and circumstances." *Hoffman v. Caterpillar, Inc.*, 368 F.3d 709, 718 (7th Cir. 2004); *see also Patterson v. Mobil Oil Corp*., 335 F.3d 476, 483 (5th Cir. 2003) ("[a] legally sufficient affidavit must: (1) state material facts with particularity; ….").

Some courts have held that § 144 does not apply in bankruptcy because Federal Rule of Bankruptcy Procedure 5004(a) states that a "bankruptcy judge shall be governed by 28 U.S.C. § 455" and does not reference § 144. *In re Celotex Corp.,* 137 B.R. 868, 874 (Bankr. M.D. Fla. 1992) (citing, *Hepperle v. Johnston,* 590 F.2d. 609, 613 (5th Cir 1979) (ruling that § 144 does not apply to disqualification of circuit court judges because by its terms it only applies to district judges)); *see also*, *Barna v. Haas (In re Haas),* 292 B.R. 167, 175 (Bankr. S.D. Ohio 2003) (collecting cases). Whether § 144 applies is of no import since the standard under §455(b)(1) is the same as under § 144. As the Supreme Court explained,

> paragraph (b)(1) [of § 455] entirely duplicated the grounds for recusal set forth in § 144 ("bias or prejudice"), but (1) made them applicable to *all* justices, judges, and magistrates (and not just district judges), and (2) placed the obligation to identify the existence of those grounds upon the judge himself, rather than requiring recusal only in response to a party affidavit.

Liteky v. U.S., 510 U.S. 540, 548, 114 S. Ct. 1147, 1153 (1994). Because § 144 and § 455(b)(1) both focus on actual bias or prejudice, they apply only to a "disposition or opinion that is somehow *wrongful* or *inappropriate*, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess … or because it is excessive in degree …." *Id.* at

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[8] Decisions of the former Fifth Circuit Court of Appeals issued prior to October 1, 1981 are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

550, 114 S. Ct. at 1155. A judge is not "recusable for bias or prejudice [when] his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings …." unless "it is so extreme as to display clear inability to render fair judgment." *Id.* at 551, 114 S. Ct. 1155.

In contrast to the actual bias standard of § 144 and § 455(b)(1), § 455(a) addresses "both 'interest or relationship' and 'bias or prejudice' grounds … but requiring them *all* to be evaluated on an *objective* basis, so that what matters is not the reality of bias or prejudice but its appearance." *Liteky*, 510 U.S. at 548, 114 S. Ct. at 1153-54 (citing *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 108 S. Ct. 2194 (1988)). Notwithstanding the differences between § 455(b)(1) and § 455(a), the same factors apply to both subsections when analyzing whether recusal is necessary. The Supreme Court explained the analysis as follows:

> [J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion. . . . Almost invariably, they are proper grounds for appeal, not for recusal…. [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.… Not establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune.

Liteky, 510 U.S. at 555-556, 114 S. Ct. at 1157 (emphasis in original) (internal quotation omitted); *Byrne v. Nezhat*, 261 F.3d 1075, 1103 (11th Cir. 2001) (stating that "[a]dverse rulings alone do not provide a party with a basis for holding that the court's impartiality is in doubt.") (abrogated on other grounds by *Douglas Asphalt Co. v. QORE, Inc.*, 657 F.3d 1146, 1151 (11th Cir. 2011); *see also Loranger v. Stierheim,* 10 F.3d 776, 780 (11th Cir. 1994) (quoting, *David v. Board of Sch.* Comm'rs, 517 F.2d 1044, 1056 (5th Cir. 1975) and stating "[i]n rare cases, we have

required recusal when 'such pervasive bias and prejudice is shown by otherwise judicial conduct as would constitute bias against a party.'" (footnote omitted)).

In addition, due process requires a fair trial in a fair tribunal. *Caperton v. A. T. Massey Coal Co., Inc.,* 556 U.S. 868, 876, 129 S. Ct. 2252, 2259 (2009) (citing, *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 625 (1955)). "[H]owever, 'most matters relating to judicial disqualification [do] not rise to a constitutional level.'" *Id.* (citing *FTC v Cement Institute,* 333 U.S. 683, 702, 68 S. Ct. 793, 804 (1948)). This is so because "section 455 establishes a statutory disqualification standard more demanding than that required by the Due Process Clause [of the fifth amendment]." *U.S. v. Couch*, 896 F.2d 78, 81 (5th Cir. 1990). "The inquiry commanded by section 455 and that commanded by the Due Process Clause are not the same." *Id.* at 82. The Due Process Clause is implicated when the judge "has a direct, personal, substantial, pecuniary interest in reaching a conclusion against" a party. *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 822, 106 S. Ct. 1580, 1585 (1986). Whether the interest is of a sufficient degree to warrant recusal depends on "whether the situation is one which would offer a possible temptation to the average … judge to … lead him not to hold the balance nice, clear and true." *Id.* (citations and quotation marks omitted). In *Couch*, the court distinguished the § 455 and Due Process inquiries as follows: "The Due Process Clause requires a judge to step aside when a reasonable judge would find it necessary to do so. Section 455 requires disqualification when others would have reasonable cause to question the judge's impartiality." 896 F.2d at 82.

Here, Debtor has made no allegations that this judge has a pecuniary interest in the outcome of this proceeding, either remote or substantial, and this judge is unaware of any such interest. Rather, all of the events Debtor identifies in the Affidavit as indicative of bias are contained in orders of the Court or occurred at hearings such that the appropriate inquiry is under

§ 455(a). [Affidavit n. 2, ¶¶ 10-13, 21, 29, 30- 31, 37].[9] Debtor's motion demonstrates that Debtor believes this Court is biased against him. However, the question is not whether Debtor so believes, but whether "'an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality.'" *Mantiply v. Horne (In re Horne)*, 630 Fed. Appx. 908, 909 (11th Cir. 2015), *petition for cert. filed* (U.S. March 30, 2016) (No. 15-1229) (quoting, *United States v. Amedeo*, 487 F.2d 823, 828 (11th Cir. 2007)). The Court will "not consider the perceptions of idiosyncratic, hypersensitive, and cynical observers." *Id.* (quoting, *Sensley v. Albritton,* 385 F.2d 591, 599 (5th Cir. 2004)). And, "'the judge need not recuse himself based on the "subjective view of a party" no matter how strongly that view is held.'" *Haas*, 292 B.R. at 177 (quoting *United States v. Sammons*, 918 F.2d 592, 599 (6th Cir. 1990)).

Additionally, it is important to recognize that this judge has as much of an obligation not to recuse herself if it is not necessary as if it is. *United States v. Greenough*, 782 F.2d. 1556, 1558 (11th Cir. 1986) ("[A] judge, having been assigned to a case, should not recuse himself on unsupported, irrational, or highly tenuous speculation"); *see also Haas*, 292 B.R. at 175 (collecting cases). And, "courts must exercise great care in considering motions for recusal so as to discourage their use for purposes of judge shopping or delay[.]" *Id.* (citing *In re Allied-Signal, Inc.*, 891 F.2d 967, 970 (1st Cir. 1989)). With the appropriate standards in mind, this judge will now consider the allegations contained in the Motion, inclusive of the Affidavit[10].

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[9] The copy of the Motion filed by Debtor did not include a page 6 and thus, paragraphs 11-14 were not included in the pleading Debtor filed. Debtor sent a copy of what purports to be the same motion to chambers which included a page 6. At this judge's direction, the clerk docketed the mail copy of the Motion received by the United States Marshall's Office on April 25, 2015. [Adv. Pro. Doc. No. 97]. It is assumed that Debtor intended page 6 to be included in the Affidavit and thus, it is included in consideration of the Motion and addressed in this order.

[10] The judge that is subject to a recusal motion is the appropriate judge to consider the same. *In re United States,* 158 F.3d 26, 34 (1st Cir. 1998); *Schurz Communications, Inc. v. FCC*, 982 F.2d 1057, 1059 (7th Cir. 1992).

B. Analysis

As has been previously noted, Debtor points to orders, statements and rulings made in court to argue this judge is biased and that Debtor has been denied due process and equal protection. [Affidavit n. 2, ¶¶ 10-13, 21, 29, 30- 31, 37]. Debtor's complaints generally fall into four categories: (i) dissatisfaction with the amount of notice provided or the way notice was provided, (ii) dissatisfaction with the Court's failure to direct the County Defendants to restore Debtor's water service at the September 22 Hearing; (iii) dissatisfaction with the Court's orders on its jurisdiction, the MTDs, and the Trustee's notice of abandonment; and (iv) dissatisfaction with the Court's orders related to NationStar's Motion For Relief and Amended MRFS in the Main Case and in Debtor's related adversary proceeding against NationStar.

1. Notice

Debtor argues that the fact that the O&Ns provided less than 14 days' notice of the hearings to be held violates the Federal Rules of Civil Procedure and violates due process (hereinafter, the "Rules"). [Affidavit ¶ 6 n. 2]. In so arguing, Debtor cites to Federal Rule of Civil Procedure 6(c) ("Rule 6"). However, Rule 6 does not apply in bankruptcy. The applicable rule is Federal Rule of Bankruptcy Procedure 9006 (Federal Rules of Bankruptcy Procedure are hereinafter referred to as the "Bankruptcy Rules"). Bankruptcy Rule 9006(d) states, "[a] written motion, other than one that may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court." The hearings set by the O&Ns are not governed by any other notice period in the Bankruptcy Rules. Thus, the notice provided in each of the O&Ns was within the parameters provided by Rule 9006.

Debtor requested that the Court hold an emergency hearing when he initiated this proceeding, which the Court did on September 22, 2015. Similarly, the October 1 Hearing was scheduled at Debtor's request. Although the March 3 Hearing was not scheduled at Debtor's request, it was scheduled after the MTDs and responses to the MTDs were filed and was scheduled within the time periods provided in Bankruptcy Rule 9006(d).

Debtor argues that scheduling five items in the Second Order and Notice "evidence[s] a plot that involves the judge to overwhelm debtor and prevent justice being served." [Affidavit ¶ 31]. Additionally, Debtor perceives that the number of orders entered between the period of February 11, 2015[11] and February 22, 2016 were issued to cause confusion and to "provide a haven for the Individual Defendants."[12] [Affidavit ¶¶ 27, 28]. Finally, Debtor states that the Second Order and Notice does not adequately identify the matters being heard, refers to responses and a reply which is vague, and that the insufficient notice time and vagueness "amount to trial by ambush and did not give sufficient time for debtor to prepare and cost debtor additional resources." [Affidavit ¶ 32].

The "rash of orders" Debtor alleges were intended to confuse and overwhelm him are comprised of: (i) the Jurisdiction Order entered on February 12, 2016; (ii) a judgment on the Jurisdictional Order entered February 16, 2016; (iii) an amended judgment correcting the date of entry of the Jurisdictional Order entered February 18, 2016; (iv) the Third Order and Notice issued on February 19, 2016; (v) an Order Denying Motion to Set Hearing (denying a request for hearing made by Debtor based on the Jurisdictional Order); and, (vi) an Order Granting Debtor's Motion To Accept Debtors Response In Opposition to Defendants Motion To Dismiss. These

[11] The Court believes this is a typographical error and that Debtor intended to reference February 11, 2016 since this proceeding was not filed until after February 2015 and with the exception of the First Order and Notice, no orders were entered in this proceeding until February 12, 2016.
[12] The Court construes this term to have the meaning ascribed to it in the MTD Order. [Doc. No. 79 at p. 4].

orders relate to two matters: the Jurisdiction Order and the scheduling of the MTDs. More importantly, Debtor sought emergency relief in this Court. The Court concluded that the specific relief Debtor sought was not available, and thus, informed Debtor by way of the Jurisdiction Order as expeditiously as possible so that, to the extent it is appropriate, Debtor could seek recourse in another venue. *See also,* Doc. 98, p. 20, li. 11-17.

The Second Order and Notice states that a hearing will be held on the following matters: (i) the County MTD and the docket number associated with the County MTD, (ii) the Trustee MTD and the docket number associated with the Trustee MTD, and (iii) the Motion to Strike filed by Gwinnett County and the docket number associated with that motion. The Second Order and Notice then states that "Responses to items 40 and 43" which were associated with the MTDs in the Second Order and Notice and a Reply with a corresponding docket number will also be heard. All of the information to understand what will be heard is contained on the face of the Second Order and Notice such that the Court cannot agree that it was so vague as to fail to provide notice. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.") Further, Debtor appeared at each of the September 22, October 1, and March 3 Hearings, argued at each of these hearings and at no time requested a continuance or advised the Court that he felt he had had inadequate notice or inadequate time to prepare for the hearing.

1. September 22 Hearing

Debtor states that he believed that relief would be granted at the September 22, Hearing because the hearing was scheduled with less than 14 days' notice, he believed the Court

indicated that the claims were valid, and that he was entitled to have his water restored by operation of law. [Affidavit ¶ ¶ 6 n. 2,15, 16]. Debtor also points to a discussion with this judge regarding Debtor's objection to counsel for the County Defendants appearing at the September 22 Hearing as the Court's "bribing" Debtor to withdraw his objection.

The discussion Debtor references in arguing that this judge bribed him away from objecting occurred after hearing at some length from Debtor regarding his disputes with the County. I asked the attorneys for the County if they knew anything about the Debtor's account history with the Water Department after conversion of the Main Case to chapter 7. [Doc. No. 98, p. 13]. Mr. Weed began to speak at which point Debtor interjected as follows:

> Debtor: "…I don't know if it's appropriate, but I haven't seen any entry of appearance by Mr. Weed. I know the argument is…"
>
> Court: "Well, sir, look. We can handle this a couple of ways, Mr. Sciortino. I sat [sic] this for a hearing because you filed the request for an emergency hearing. You haven't served the papers appropriately. My office served this order of notice and happily you've got representatives of the legal department of the County here to answer my questions and hopefully move this matter forward. Now if you want to object on procedural grounds and require that they file something that's fine. We'll do that. We'll continue this hearing. You can serve your complaint and we'll do this in the ordinary course, but nothing will happen today. So go ahead tell me if you object to Mr. Weed speaking to not?"
>
> Debtor: I'll withdraw my objection.

Id. at p. 13-14. The attorney for the County recited the County's position with respect to treatment of Debtor's account and amounts owed. *Id.* at 14-15.

Based on this discussion, Debtor alleges that this judge's failure to rule on his objection and the statement that the hearing would not continue if Debtor pressed the objection to counsel being heard amounts to a bribe by the Court and a denial of due process and equal

protection. [Affidavit ¶ 10]. Admittedly, the Court was expressing frustration over Debtor's raising an objection that had been overruled in several previous hearings in a situation where Debtor asked for an expedited hearing. The Court sought, on an expedited basis, to understand the issues Debtor attempted to raise in his voluminous complaint, to narrow the issues so that the parties could potentially reach a negotiated resolution while making clear to Debtor that he would have to provide notice to the Defendants of the relief he was seeking, which had not yet occurred, and moreover that there were factual and legal issues that affected any right to relief. *Id.* at p. 4, 15-20, 23.

After reviewing the transcript of the September 22 Hearing the Court cannot conclude that it would lead an objective, fully informed individual to doubt this judge's impartiality. Rather, the transcript shows that Debtor does not understand the procedure for seeking the relief he was hoping to obtain and that the Court was doing nothing more than narrowing the issues and encouraging the parties to engage in discussion to determine if a consensual resolution could be reached. The proceedings on September 22 were well within the normal judicial functions of the Court and do not provide any basis to conclude this judge is biased against Debtor or in favor of the County Defendants.

2. Jurisdiction Order, MTD Order, and Notice of Abandonment

Debtor alleges that all of the orders this judge has entered in this proceeding are wrong because (i) Debtor was confused by the September 22 Hearing and filed the Amended Complaint to correct perceived deficiencies in the original complaint and did not abandon authorities in the original complaint that were not included in the Amended Complaint such that any orders based on the Amended Complaint alone are an abuse of discretion [Affidavit ¶ ¶ 17-19]; (ii) the MTDs were untimely filed and should have been denied on that basis [Affidavit ¶ 20]; (iii) the MTD

Order is void because it was entered without first holding a hearing [Affidavit ¶ ¶ 21, 22]; (iv) the MTD Order is incorrect because the Trustee did not appear and failed to rebut Debtor's responses to the Trustee's MTD, *Id.*; (v) the MTD Order is incorrect because the Trustee's Notice of Abandonment does not state that the Trustee is abandoning property of the bankruptcy estate [Affidavit ¶ 39]; and (vi) the MTD Order is incorrect because other orders entered conclude that the automatic stay is in place [Affidavit ¶ 41, 42, 43]

The MTDs were in fact timely filed because they were filed within the time to respond or answer based on service being perfected on December 17, 2015. [Doc. Nos. 31, 39, 79]. The Court did in fact hold a hearing on the MTDs on March 3, 2016, but even if it did not, whether to hold a hearing on a motion to dismiss in an adversary proceeding is within the discretion of the Court. BLR 7007-1(f).

As was the case with the conclusions Debtor draws from the September 22 Hearing, his objections regarding the Notice of Abandonment evidence a lack of understanding of bankruptcy law, not bias by the Court. The Notice of Abandonment provides notice of abandonment of "any and all scheduled real and personal property of the debtor that remains unliquidated." [Main Case Doc. No. 87]. Because all of Debtor's interests in property became property of the bankruptcy estate upon filing the Main Case all property identified in Schedules A and B constitutes property of the bankruptcy estate until it is abandoned. 11 U.S.C. § §541(a)(1), 554(c) and (d). Thus, the Notice of Abandonment necessarily addressed property of the bankruptcy estate.

The Court understands that whether NationStar was able to exercise its state law rights and remedies (whatever they may be) is likely more important to Debtor than whether the Trustee abandoned property of the bankruptcy estate. However, the purpose of a chapter 7

bankruptcy case is for a trustee to liquidate any property with sufficient equity to provide a return to creditors. An abandonment is a determination by the trustee that the property abandoned is of inconsequential value or burdensome to the estate. Thus, the abandonment necessarily addresses the primary purpose of a chapter 7 case while a motion to modify the automatic stay that provides no benefit to the bankruptcy estate and its creditors does not.

Debtor also points to the Court's order on the Stay Motion and the Dismissal Order to argue that the MTD Order is not only incorrect, but evidences bias by this judge because the automatic stay was recognized as in effect in these orders. [Affidavit ¶ ¶ 39, 41-43]. In the MTD Order I concluded that the automatic stay in the Main Case was limited to 30 days by virtue of 11 U.S.C. §362(c)(3) such that the majority of the events Debtor raised in this proceeding could not violate the automatic stay because the stay had terminated by operation of law.

The order on the Stay Motion does state that the stay terminated because the Trustee had abandoned the estate's interest in Debtor's property.[13] In general this is true because the automatic stay remains in effect with respect to an act against property of the estate until the property is no longer property of the estate while the stay remains in place for actions against the debtor until the earlier of the time the case is closed, dismissed, or the debtor either receives a discharge or discharge is denied. 11 U.S.C. §362(c)(1), (2). An exception to this general rule occurs when a debtor has had more than one case pending within a one year period which was dismissed other than under § 707(b) and no extension of the stay has been granted. 11 U.S.C. §362(c)(3). It is this exception that applies in the Main Case and resulted in the majority of Debtor's claims in this proceeding being without legal basis. [Doc. No. 79, p. 11]. NationStar did

[13] The Dismissal Order addressed the sufficiency of Debtor's complaint and its failure to state a claim for relief and not when the stay terminated. The Dismissal Order does, however, include the standard for relief from the automatic stay in a chapter 7 case which could imply that the stay had not terminated at the time of the hearings on the Motion for Relief and Amended MRFS.

not raise Debtor's previous cases in the Motion for Relief or Amended MFRS while the County Defendants did. [Doc. No. 41, p. 3-4]. The County Defendants did not argue that the stay had expired; nevertheless, because the County Defendants brought the cases to the Court's attention, the Court realized that § 362(c)(3) applied.

Neither the Stay Order nor the Dismissal Order impose a stay or otherwise alter the effect of §362(c)(3). Thus they do not alter Debtor's or NationStar's rights, whatever they may be. The fact that no stay was in effect does provide an additional reason why NationStar was entitled to pursue its state law rights and remedies and does explain Debtor's confusion regarding the existence of the automatic stay. However, confusion is not the standard that must be considered to decide the present motion. Rather, the question is whether the order on the Stay Motion and the Dismissal Order considered in conjunction with the MTD Order and the record in this proceeding and the Main Case would cause an objective, fully informed lay observer to seriously question whether this judge is biased against Debtor. Given that the failure to recognize earlier that the automatic stay had terminated would not have changed the outcome in either of the orders[14] and considering the totality of the MTD Order and the record, the Court cannot conclude that this would cause such an observer to harbor serious doubt as to this judge's impartiality. [Doc. No. 79, p. 15].

Debtor further appears to argue that he has been denied due process because the Court never held an emergency hearing in this proceeding because no summons was issued and that it was error to enter either the Jurisdictional Order or the MTD Order without hearing the facts. [Affidavit ¶¶ 14, 21, 22]. The Court was following the dictates of Bankruptcy Rule 7012(h)(3) in entering the Jurisdictional Order as soon as it was clear, based on the facts alleged in the

[14] For this reason the court will not enter an order, sua sponte, claifying the order on the Stay Motion and the Dismissal Order.

Amended Complaint, that this Court was without jurisdiction over several of the claims Debtor sought to raise. And, as is the case for a hearing on the MTDs, it is within the Court's discretion to hold a hearing in an adversary. BLR 7007-1(f). Thus, there is no basis to find that an objective observer would conclude these proceedings indicate bias.

3. NationStar's Request for Stay Relief

In addition to orders in which this judge has ruled against Debtor[15] and referred to the automatic stay, including the order on the Stay Motion and the Dismissal Order, Debtor identifies several other events related to NationStar which he asserts are indicative of bias and a broader conspiracy against justice: (1) at the June 23, 2015 hearing, this judge provided assistance to counsel for NationStar regarding inconsistencies in its Motion For Relief as to the amount of its claim; (2) this judge failed to sustain Debtor's objection to counsel appearing on behalf of NationStar; (3) this judge failed to sanction counsel for the aforementioned error in the Motion For Relief, and (4) this judge failed to require NationStar to name the Trustee as a party to the Motion For Relief [Affidavit ¶ 44].[16] *See Supra* p. 7, n. 4.

The recording of the June 23, 2015 hearing shows that the conclusions Debtor draws from the discussion at the June 23, 2015 hearing are not reasonable. Counsel for NationStar appeared on behalf of NationStar on May 19, 2015 and June 23, 2015. At each of the hearings, he announced his name and who he was representing on the record. This is consistent with Bankruptcy Rule 9010(b), which requires an attorney to file a notice of appearance "unless the

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[15] This includes an order modifying the automatic stay entered in case number 14-56502. [Affidavit ¶45]. Prior to granting relief, the Court, at Debtor's request continued the original hearing to allow Debtor the opportunity to amend his schedules and for the chapter 7 trustee to conduct the meeting of creditors to review the estate's interest in the property at issue. Debtor did not amend his schedules and based on the values Debtor disclosed therein there was no equity in the property at issue. Further, Debtor was unable to provide a basis for a finding of equity at either of the two hearings on the motion for relief and failed to attend the meeting of creditors. Thus, this judge concluded there was no equity in the property and cause exited to grant the motion. [Case No. 14-56502, Doc. No. 37].

[16] Debtor cites to the Motion For Relief in paragraph 44 of the Affidavit, however, the Amended MRFS was heard on June 23.

attorney's appearance is otherwise noted in the record," and is consistent with local practice with respect to appearance attorneys. More importantly, the Court explained why stay relief was appropriately granted at the May 19 hearing, and Debtor's objection to counsel did not alter this analysis.

Similarly, Debtor's objection to the obvious error in paragraph 8 of the Amended MRFS could not be sustained since Bankruptcy Rule 9011 imposes a specific procedure for seeking sanctions which Debtor did not follow. Nor did NationStar assert at either the May 19 or June 23 hearing that the amount in error was owed, rather, NationStar argued that the debt was as set forth in the breakdown in paragraph 8. Moreover, whether sanctions are appropriate is within the discretion of the Court and given the obvious nature of the error this judge did not find an award of sanctions appropriate. Finally, counsel for the Trustee was present at the May 19 hearing and advised the Court the Trustee had no opposition to the Court's granting the Motion for Relief because the Trustee was seeking to abandon the estate's interest therein. For all of these reasons, the Court can only conclude that, at most, one could argue the ruling was wrong, not that it indicated any bias. If Debtor believed the ruling was legally incorrect, the appropriate recourse was to file an appeal, not to seek recusal.

IV. Conclusion

The standard for considering recusal under § 455 is objective, and asks whether a fully informed, objective, lay observer would entertain significant doubt about the judge's impartiality. The standard is not based upon a party's subjective view. The Court has considered the allegations Debtor made in the Affidavit and cannot conclude that the allegations are those that a reasonable and fully informed individual would draw from the proceedings in this adversary proceeding, the Main Case or Debtor's prior case assigned to this judge. Further,

consideration of the entire record in the two cases and associated adversaries assigned to this judge do not support such a conclusion.

Accordingly, it is

ORDERED that the Motion To Show Cause Why Barbara Ellis-Monro Has Not been Disqualified As Judge is DENIED. It is further

ORDERED that for avoidance of doubt, the Court certifies under Bankruptcy Rule 7054 that there is no just reason for delay in entry of this order which finally resolves this discrete issue in this proceeding and thus is a final order.

END OF ORDER

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