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7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN MATEO**

10  
11 *In the matter of:*

12 TRUST A UNDER THE JAMES F. HO  
AND GRACE C. HO DECLARATION  
13 OF TRUST DATED SEPTEMBER 11,  
1992, as amended.

14  
15 PETER C. HO, TRUSTEE OF TRUST A  
OF THE JAMES F. HO AND GRACE C.  
16 HO DECLARATION OF TRUST  
DATED SEPTEMBER 11, 1992, as  
17 amended,

18 Petitioner,

19 v.

20 DEBBY CHANG, and DOES 1 through  
21 20, inclusive,

22 Respondents.  
23  
24  
25  
26  
27  
28

CASE NO. 17PRO00973

DEBBY CHANG'S MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN REPLY TO PETER C. HO'S  
OPPOSITION TO MOTION TO  
EXPUNGE NOTICES OF  
PENDING ACTION

Date: January 14, 2020  
Time: 9:00 a.m.  
Dept.: 28  
Judge: George A. Miram

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1 I. INTRODUCTION

2 Nothing in Peter’s opposition warrants denial of Debby’s motion to expunge. First,  
3 Peter fails to make the threshold showing that his Petition states any real property claim  
4 as to either the Redwood City or LA Properties. The only question is whether his cause of  
5 action for a constructive trust constitutes a real property claim. Peter ignores the binding  
6 appellate opinions addressing this question issued after the Legislature enacted the  
7 current lis pendens statutes. One holds that the plaintiff may not maintain a lis pendens  
8 when a complaint combines theories of liability for monetary damages and for a  
9 constructive trust. Peter’s petition does exactly that. Another flatly holds that a  
10 *constructive trust claim does not support a lis pendens.*

11 Peter cites *Coppinger v. Superior Court* (1982) 134 Cal.App.3d 883 (“*Coppinger*”) as  
12 authority for his contention that his cause of action for a constructive trust states a real  
13 property claim. *Coppinger* is of no avail. It was decided *before* the current statutes took  
14 effect and numerous opinions subsequent to *Coppinger* repudiate it. Among them are the  
15 only two other cases Peter cites in supposed support of his contention that his Petition  
16 contains a real property claim.

17 Whether the Petition states a real property claim entails a “demurrer-like” analysis,  
18 so Peter’s declaration is irrelevant. But even if the Court were permitted to consider the  
19 “facts” in Peter’s declaration, they too would be unavailing. They cannot reverse the  
20 binding precedent holding that a plaintiff may not record a lis pendens in a suit that  
21 combines claims for damages and a constructive trust. And even if the Court could read  
22 Peter’s new facts into the Petition, they would not establish the wrongdoing necessary to  
23 obtain a constructive trust as they must to for him to maintain his lis pendens.

24 As regards the LA Property, Peter states that his father “was induced” to execute a  
25 deed transferring his interest in the LA Property to Debby – without saying who induced  
26 James to do so – and that by unspecified means Debby caused James to transfer the LA  
27 Property to her in 2006 with the help of her lawyer when James was not represented. This  
28 adds nothing to make actionable the Petition’s allegations that James transferred title to

1 Debby to help her build her credit, the intention of someone Peter never identifies was for  
2 James to retain an equitable interest, and James contributed to the LA Property's  
3 purchase and expenses.

4 Likewise, Peter fails to demonstrate that his Petition contains any real property claim  
5 as to the Redwood City Property. The Petition specifically alleges that he seeks a  
6 constructive trust on that Property on the ground that Debby wrongfully obtained funds  
7 from James to purchase it. Case law confirms that this kind of claim does *not* entitle the  
8 plaintiff to a lis pendens. The Petition also alleges that "Debby engineered the  
9 transaction" so that only she purchased the Property. Peter's declaration now adds that  
10 "Debby had an addendum drawn up" removing James from the contract. Neither  
11 constitutes wrongdoing by Debby as necessary to obtain a constructive trust.

12 Finally, even had the Petition stated a real property claim as to the LA Property the  
13 Court should expunge the lis pendens because Peter fails to establish its probable validity  
14 for three independent reasons: (1) the Petition fails to state any cause of action to obtain  
15 a constructive trust on the LA Property; (2) Peter's opposition presented nothing to rebut  
16 Debby's showing that her statute of limitations and laches defenses bar any claim  
17 regarding the LA Property; and (3) even impermissibly reading Peter's declaration into  
18 the Petition, Peter fails to demonstrate that Debby engaged in any wrongdoing in  
19 connection with either James' transfer of his interest in the LA Property to her or any  
20 contribution he may have made to its purchase or expenses.

21 Accordingly, and for the reasons below, the Court should grant her Motion to  
22 Expunge in all respects and award her reasonable expenses in making the motion.

## 23 II. ARGUMENT

### 24 A. Peter's Opposition Fails to Demonstrate That His Petition Alleges Any Real 25 Property Claim.

#### 26 1. Overwhelming Authority Repudiates Peter's Argument that a Constructive 27 Trust Claim Affects Title to or the Right to Possession of Real Property.

28 Whether an action contains a real property claim poses only a legal question  
entailing a review of the pleading's adequacy that "normally should not involve evidence

1 from either side, other than possibly that which may be judicially noticed as on a  
2 demurrer.” (Comment 4 to Code Civ. Proc. § 405.30.)<sup>1</sup> Even so, the bulk of Peter’s  
3 opposition is a recitation of facts drawn from his mostly inadmissible declaration, replete  
4 with hearsay and statements of which he has no personal knowledge. (See accompanying  
5 Evidentiary Objections to Peter Ho’s Declaration and Exhibit B thereto, showing only his  
6 declaration’s admissible statements.) This is understandable: *the law* refutes Peter’s  
7 contention that he alleges a real property claim by seeking to impose a constructive trust  
8 on the Redwood City and the LA Properties.

9 Since the Legislature revised the lis pendens statutes effective January 1, 1993  
10 (see Stats 1992, ch. 883, §2 (AB 3620)), *not a single case has held that a claim for a*  
11 *constructive trust falls within the statutory definition of “real property claim.”* To the  
12 contrary, the year after C.C.P. § 405 et seq. took effect, *Lewis v. Superior Court* (1994) 30  
13 Cal. App. 4th 1850 (“*Lewis*”) flatly held that “[a] *constructive trust claim does not support*  
14 *a lis pendens.*” (*Id.*, at p. 1862, emp. orig.)

15 Attempting to evade *Lewis*, Peter argues that his Petition contains a real property  
16 claim relying exclusively on the reasoning in *Coppinger, supra*, 134 Cal.App.3d 883. (See  
17 Peter’s Brief, 9:26-10:17.) *Coppinger*, however, was decided *before* the governing statutes’  
18 enactment. Moreover, *at least nine subsequent cases have questioned, declined to follow,*  
19 *limited, or expressly rejected Coppinger’s holding or its reasoning:*

- 20 • *Burger v. Superior Court* (1984) 151 Cal.App.3d 1013, 1018 (questioning whether  
21 *Coppinger* is sound and distinguishing it)
- 22 • *Deane v. Superior Court* (1985) 164 Cal. App.3d 292, 296-297 (“A lis pendens is  
23 not a shortcut method of attachment for unsecured creditors.”)
- 24 • *Moseley v. Superior Court* (1986) 177 Cal. App.3d 672, 678 (history of lis pendens  
25 legislation indicates a legislative intent to restrict rather than broaden the  
26 remedy’s application)

27 <sup>1</sup> “The lis pendens statute was revised in 1992. The Real Property Law Section of the State Bar of  
28 California proposed the revision and submitted a report to the Legislature. The comments in the  
State Bar report were relied upon by the Legislature and indicate the legislative intent. These  
comments ... are reproduced under the applicable sections in both Deering’s and West’s Annotated  
California Codes.” (*BGJ Associates v. Superior Court* (1999) 75 Cal.App.4th 952, 955-956 (“*BGJ*  
*Associates*”); internal citations omitted.)

- 1 • *Urez Corp. v. Superior Court* (1987) 190 Cal.App.3d 1141, 1148-1149 “*Urez*”  
(rejecting *Coppinger’s* “broad definition of actions which affect title or possession  
2 of real property”)
- 3 • *La Paglia v. Superior Court* (1989) 215 Cal.App.3d 1322, 1326 (concluding  
“*Coppinger* was wrongly decided”)
- 4 • *Pac. Lumber Co. v. Superior Court* (1990) 226 Cal.App.3d 371, 376 (questioning  
5 whether *Coppinger* survives)
- 6 • *BGJ Associates, supra*, 75 Cal.App.4th at p. 968 (cases subsequent to *Coppinger*  
7 have distinguished, limited, or expressly rejected its *reasoning* “and concluded  
that the allegation of a constructive trust *should not be construed as a real*  
8 *property claim within the meaning of the lis pendens statute.*”) (Emp. added.)

9 Peter cites only two other cases addressing whether a constructive trust claim  
10 supports a lis pendens — *Wardley Development Inc. v. Superior Court* (1989) 213  
11 Cal.App.3d 391 and *Lewis, supra*, 30 Cal.App.4th at p. 1850 – the eighth and ninth  
12 opinions repudiating *Coppinger*. (See *Wardley, supra*, 213 Cal.App.3d 391, 394, fn. 3  
13 (noting that other decisions have criticized *Coppinger’s* holding and that *Elder v. Carlisle*  
14 *Ins. Co.* (1987) 193 Cal.App.3d 1313, 1320, fn. 8 disapproved *Coppinger*) and *Lewis, supra*,  
15 30 Cal.App.4th at p. 1864 (allowing a lis pendens’ use in a constructive trust case  
16 “transforms it into a money-collection remedy without any of the protections of the  
attachment statutes, a tactic for which the courts have consistently eschewed its use.”)

17 The parties agree that the enactment of C.C.P. § 405 et seq. in 1992 did not itself  
18 determine whether the term “real property claim” includes or excludes a claim for a  
19 constructive trust. That this issue was left for judicial development (see Comment 5 to  
20 C.C.P. § 405.4) does not entitle Peter to evade the case law *since then*, including *Lewis*.

## 21 **2. Peter’s Opposition Fails to Show That His Petition Alleges Any Real** 22 **Property Claim as to the Redwood City Property.**

23 Peter mistakenly argues that the Petition alleges a real property claim because  
24 James was originally a party to the contract to purchase the Redwood City Property. (See  
25 Opposition Brief, 11:2-12.) His argument not only ignores *Lewis*, but also ignores the  
26 holding in *BGJ Associates, supra*, 75 Cal.App.4th at p. 968 that the plaintiff may not  
27 maintain a lis pendens when the complaint combines theories of liability for monetary  
28 damages and for a constructive trust. (*Id.*, at p. 972.) The only case contrary to *BGJ*

1 *Associates* that Peter cites is *Coppinger*. Predating the current lis pendens statutes,  
2 *Coppinger* is no longer good law. Rather, since the *Lewis* and *BGJ Associates* postdate  
3 those statutes, they control.

4 Moreover, the Petition's scant allegations concerning the purchase contract do not  
5 allow Peter to continue use his lis pendens to tie up the Redwood City Property because  
6 they fail to state a claim for a constructive trust. "[A] plaintiff may not file a lis pendens  
7 on the basis of a complaint that seeks the imposition of a constructive trust on the  
8 defendant's property where the plaintiff has failed to adequately plead facts in the  
9 underlying complaint that would entitle the plaintiff to such a remedy." (*Campbell v.*  
10 *Superior Court* (2005) 132 Cal.App.4th 904, 921.)

11 Paragraph 48 of the Petition alleges that "Debby engineered the transaction so that  
12 only she appeared on title." (Emp. omitted.) Paragraph 57 alleges that James believed  
13 that he was an owner of the Property when he spoke to attorney John Martin in August  
14 2017. Reading Peter's declaration into the Petition, which is impermissible in determining  
15 whether it states any real property claim, would make no difference. All Peter says in his  
16 declaration is that "Debby had an addendum drawn up on March 6, 2017 removing my  
17 father from the purchase contract." (Peter's Dec., ¶34.) Even treating the Petition as  
18 including Peter's declaration, he still states no claim for fraud, undue influence,  
19 conversion, elder abuse, or any other wrongful acquisition or detention of the Redwood  
20 City Property arising from the addendum as necessary to entitle Peter to a constructive  
21 trust.

22 As a result, Peter's attempt to impose a constructive trust on the Redwood City  
23 Property rests solely on his claim that Debby wrongfully obtained \$1,167,050 from  
24 James to purchase that Property, not that he holds or ever held legal title. (See Petition,  
25 ¶¶ 79 and 90, alleging "... title to the Redwood City property should be modified to  
26 reflect its ownership by Petitioner as trustee, as the property was acquired using the  
27 Stolen Funds.") Under *Lewis*, *BGJ Associates* and numerous other cases cited above, a  
28 constructive trust claim of that nature – "essentially a fraud action seeking money

1 damages with additional allegations urged to support... a constructive trust” – does not  
2 allow the plaintiff to record a lis pendens. (*Urez, supra*, 190 Cal.App.3d at p. 1149). The  
3 Court should therefore expunge the lis pendens.

4 **3. Peter’s Opposition Fails to Show That His Petition Alleges Any Real**  
5 **Property Claim as to the LA Property.**

6 Peter’s Reply fails to demonstrate that his Petition alleges any real property claim  
7 as to the LA Property for the same reasons: he ignores the controlling authority – *Lewis*  
8 and *BGJ Associates* – and fails to state any cause of action to impose a constructive trust  
9 on the LA Property.

10 The only basis on which Peter disputes this is that James originally held title to  
11 the LA Property and “Debby caused him to transfer it to Debby’s trust with the help of  
12 her personal lawyer.” (See Opposition Brief, 11:13-16.) The Petition, however, nowhere  
13 alleges this. Even if it did that too would make no difference. Without more, causing a  
14 person to transfer title with the help of one’s lawyer is not wrongful, much less actionable.  
15 There is no more. All the Petition alleges is that James transferred title to the LA Property  
16 to Debby’s trust “apparently to help Debby build her credit” and “[t]he intention was  
17 always that he retain an equitable interest.” (*Id.*, ¶26.) Peter alleges neither wrongful  
18 conduct nor even who intended that James retain an equitable interest. For the reasons  
19 above, the Court should expunge the lis pendens on the LA Property too.

20 **B. Peter’s Opposition Fails to Demonstrate the Probable Validity of His Claim**  
21 **Regarding the LA Property.**

22 Peter’s opposition makes no attempt to refute Debby’s showing that her statute of  
23 limitations and laches defenses bar Peter’s Los Angeles Property claim, which arose  
24 eleven years before he filed suit when James transferred his interest in the Property to  
25 Debby in 2006. (See Debby’s Moving Brief, 12:15-15:8.) For this reason alone, Peter fails  
26 to carry his burden of proof to show it is more likely than not that he will obtain a  
27 judgment against Debby on his LA Property claim. (See Code Civ. Proc § 405.3, defining  
28 “probable validity.”)

1 Peter's also fails to establish the probable validity of his LA Property claim because  
2 his Petition's sole cause of action concerning that Property – the last cause of action for a  
3 constructive trust – states no cognizable legal claim. Peter's declaration does not amend  
4 his Petition. But even if it did the Petition would still not allege facts sufficient to state a  
5 cause of action for a constructive trust.

6 Using the passive voice, Peter states that his father "*was induced* to execute a deed  
7 transferring his interest in the LA Property to Debby Chang..." (Peter's Decl., ¶27, 4:27-  
8 5:1; emp added.) But Peter neither claims that Debby was the one who "induced" his  
9 father to sign the deed nor states how Debby or anyone else "induced" James to do so.  
10 Peter's declaration also states that Debby's attorney Paul Malone prepared and recorded  
11 the deed, James was not represented by counsel in the transaction, and Debby and Mr.  
12 Malone both assert the transaction was a gift. (*Id.*, ¶¶ 26-27.) So what? Those facts also  
13 fail to state any claim affecting title to the LA Property, let alone establish the probable  
14 validity of such a claim.

15 Finally, Peter quibbles with Debby's showing that she was the source of funds to  
16 purchase the LA Property, disputing she repaid every penny of James' contributions to  
17 prior purchase of the Albany Property, the net sales proceeds of which were used to buy  
18 the LA property. (See Peter's Dec., ¶¶ 21-24.) Peter misses the point. Whatever  
19 contributions to the LA Property's acquisition James' may have made, they do not entitle  
20 him to a constructive trust on it absent any wrongful conduct by Debby in acquiring his  
21 interest. Peter, however, presents no proof that *anyone* did *anything* wrongful, merely  
22 contending that by unknown means an unknown person "induced" James to transfer his  
23 interest. Likewise, even assuming that James contributed to the LA Property's expenses  
24 after transferring his interest in 2006 <sup>2</sup>, the Petition and Peter's declaration present no  
25 evidence that Debby did anything wrong to procure those contributions as necessary to

26 \_\_\_\_\_  
27 <sup>2</sup> James's 2012-2015 tax returns show that he claimed a loss on the LA Property in each of those years.  
28 (See Baer Dec., ¶12, Ex. 10.) The returns evidence what James reported to the IRS, not what he actually  
paid. Understandably, James did not wish to report that he received any net income on the LA Property  
and there is no evidence that he did so after transferring his interest in 2006.

1 impose a constructive trust.

2 The Court should therefore expunge the lis pendens on the LA Property on the  
3 alternative ground that Peter fails to establish the probable validity of any real property  
4 claim thereto.

5 **C. The Court Should Not Allow Peter's Erroneous Arguments On the Merits of**  
6 **His Redwood City Property Claims Prejudice It.**

7 Debby chose not to dispute the probable validity of Peter's cause of action to  
8 obtain a constructive trust on the Redwood City Property because the Petition contains  
9 no real property claim on that property in the first place. In an apparent attempt to  
10 prejudice the Court, Peter nevertheless devotes most of his declaration and much of his  
11 brief to the merits of his Redwood City Property claim. Having done nothing wrong,  
12 Debby is compelled to respond.

13 This is anything but the typical elder abuse case in which a young caregiver swoops in  
14 as the victim nears death to seize his or her estate. Debby and James shared a loving,  
15 committed relationship for twenty-two years preceding James' generous gift to her. (See  
16 Debby's Reply Dec., ¶¶ 1, 5, 7, and 30.) Peter's declaration also establishes their pre-  
17 existing relationship (see ¶5), taking Debby outside the definition of "care custodian." (See  
18 Prob. Code § 21362(a).)

19 Citing the declaration of Sterling Bank's mortgage consultant Geoffrey Garcia, Peter  
20 wrongly accuses Debby of committing fraud in obtaining the loan on the Redwood City  
21 Property. At most, this is collateral impeachment: even if it goes to Debby's credibility, it  
22 has no logical bearing on any material, disputed issue in *this* case. (See, e.g., *People v.*  
23 *Dement* (2011) 53 Cal. 4th 1, 50-52 (overruled on other grounds in *People v. Rangel* (2016)  
24 62 Cal. 4th 1192, 116 [inmate who testified to seeing a murder could not be impeached  
25 with evidence he had lied in court about a murder he committed].) Out if anyone lacks  
26 credibility, it is Mr. Garcia.

27 The loan application Mr. Garcia prepared for Debby on February 22, 2017 shows  
28 *on its face* that she told him she was unmarried. (See Debby's Reply Dec., ¶15; Peter's

1 Dec, Ex. V, pp. 1 and 5.) Despite this, that very day Mr. Garcia prepared and signed a  
2 letter stating that Debby wanted to purchase the property for and her husband. (See  
3 Debby's Reply Dec., ¶16 and Ex. A to Garcia Dec., which is Ex. X to Peter's Dec.; see also  
4 Ex. 2 to Debby's Dec., [Deed of Trust showing Debby Chang, *an unmarried woman*, as the  
5 borrower].) It also appears that Mr. Garcia may have fabricated Debby's signature on  
6 documents he prepared. Three such documents Sterling Bank produced all bear the  
7 identical signature, suggesting that he copied and pasted Debby's signature into two or  
8 all three of them. (See Debby's Dec., ¶ 17-20 and Exs. 1-2; and Ex. A to Garcia Dec.)

9 Peter's brief improperly asserts without a shred of evidence that Debby changed  
10 the Redwood City Property purchase contract to remove him as a buyer "unilaterally and  
11 without his consent." (Peter's brief at p. 11:27-12-1.) Nothing in Peter's declaration  
12 substantiates that claim. In fact, Peter was present when James signed the addendum,  
13 gesturing to Debby – with good reason – to indicate that he did not want his father on  
14 title. (See Debby's Reply Dec., ¶22.) The fraudfeasor here is Peter.

15 The paper trail shows that shortly after James sold his long-time residence in 2014  
16 (Baer Reply Dec., ¶ 7, Ex. 5), Peter and his wife purchased a property in Milpitas, with  
17 James receiving title to a 1% interest. (*Id.*, ¶6, Ex. 7.) Although the purchase price was  
18 \$1,455,000 (*id*), the Santa Clara County Assessor's records show that the property's net  
19 assessed value is currently only about \$190,000 and since December 2016 the annual  
20 property taxes have been only about \$2500. (*Id.*, ¶10, Ex. 8.) Peter's discovery response  
21 confirms that he pays property taxes based on the assessed value of James residence at  
22 CSM Drive, San Mateo, which was transferred to Peter's residence even though James  
23 never lived there. (*Id.*, ¶11, Ex. 9.)

24 Peter tries to paint a picture that his father had serious cognitive impairments  
25 from 2006 on, but Peter *himself* engaged in real property transactions with James in 2013,  
26 2015, and even as late as May 31, 2017. (Baer Reply Dec., ¶ 5-9, Exs. 2-7.) Too, Peter  
27 grossly overstates any mental deficiencies James may have had. His medical records show  
28 that the only neuropsychological test he took was in October 2012 and *James scored a*

1 *perfect 30 out of 30. (Id., ¶3, Ex. 1, p. KH 000771.)* The neurologist reported “MCI [mild  
2 cognitive impairment] not clearly in excess of what might be expected in his age.” (*Id.*)

3 Finally, although it only provides a defense to Peter’s charges, he attacks the  
4 Certificate of Independent Review prepared by John Martin after ensuring he and James  
5 had total privacy for a meeting lasting about ninety minutes. (Baer Reply Dec., ¶13 and  
6 Ex. 11, pp. 103-104.) During the meeting James confirmed that Debby was not pressuring  
7 him to make gifts, he understood the money he gave to Debby would not go to his children,  
8 and that was “absolutely” what he wanted because they all had enough money and owned  
9 their houses. (*Id.*, pp. 128, 132.) James had also repeatedly told Peter that his \$1.16  
10 million down payment on the Redwood City Property was a gift to Debby. (Debby’s Dec.,  
11 ¶25.)

12 **D. In Addition to Granting Her Motion, The Court Should Award Debby Her**  
13 **Attorney’s Fees and Costs Because Peter Opposed the Motion Without**  
14 **Substantial Justification.**

15 The arguments above amply demonstrate that Peter had no substantial  
16 justification to oppose this motion. His position that the Petition states a real property  
17 claims rests on nothing more than that he seeks to obtain an interest in Redwood City  
18 and LA Properties through the imposition of a constructive trust. The case law makes it  
19 abundantly clear that “[a] lis pendens is not a shortcut method of attachment for  
20 unsecured creditors.” (*Urez, supra*, 190 Cal.App.3d at p. 1148.) That remedy was available  
21 to Peter, provided he made an appropriate showing. (See Welf. & Inst. Code § 15657.01.)  
22 He chose not to try. Accordingly, pursuant to Code of Civil Procedure section 405.38, the  
23 Court should award Debby her reasonable attorney’s fees and costs of making this motion.

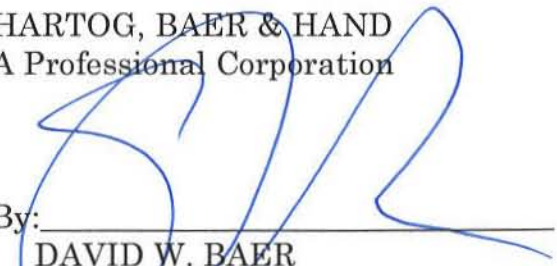
24 **III. CONCLUSION**

25 For all of the reasons stated in Debby’s moving and reply papers, she respectfully  
26 requests the Court to grant this motion and award her reasonable attorney’s fees and  
27 costs – \$74,554.50. (See Baer moving and reply Decls.)  
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DATED: January 7, 2020

HARTOG, BAER & HAND  
A Professional Corporation

By:   
\_\_\_\_\_  
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