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CAUSE NO. DC-25-09345-D

BRIAN MORROW, et al.,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
v.	§	95TH JUDICIAL DISTRICT
	§	
RANDY SCHACKMANN, et al.,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR TRADITIONAL AND NO-EVIDENCE SUMMARY JUDGMENT, PLEA TO THE JURISDICTION, AND MOTION TO DISMISS:

Plaintiffs Brian Morrow, Amanda Nauert, Nelly Shankle, Tierney Gonzalez, and their co-Plaintiffs (collectively, "Plaintiffs"), by and through counsel of record, R. Kent Piacenti of the Law Office of R. Kent Piacenti, PLLC, file this Brief in Opposition to Defendants' Motion for Traditional and No-Evidence Summary Judgment, Plea to the Jurisdiction, and Motion to Dismiss (the "Motion" or "MSJ"), and would respectfully show the Court as follows.

I. INTRODUCTION AND SUMMARY OF THE RESPONSE

This case is about a school board that decided, months in advance and outside public view, which four campuses it would close — and then told the public almost nothing about it until the decision was, for all practical purposes, already made. The Carrollton-Farmers Branch Independent School District's Board of Trustees did not merely fail to communicate well. It structured its process, meeting by meeting, to keep a quorum from ever forming in public while the real work of deciding which schools would close happened in private, sequential briefings — and it captioned the agenda that finally disclosed the closure recommendation to the public with four words that could have meant anything: "Facilities master plan update." Defendants now ask this Court to end the case on paper, without a trial, even though their own witnesses have admitted the very facts Plaintiffs must prove.

Defendants cannot obtain traditional summary judgment because the summary-judgment record — built substantially from Defendants' own trustees, their Superintendent, and their Assistant Superintendent of Operations — establishes fact issues on every element of both of Plaintiffs' Texas Open Meetings Act ("TOMA") theories. On the notice claim, trustee Kim Brady confirms the four target campuses were named to a private, sub-quorum group of officers in February 2024 — a full year before the public ever heard the words "Central," "Furneaux," "McCoy," or "Long" in connection with closure Ex. 36 (Brady Dep. 29:13–25). Trustee Cassandra Hatfield concedes that a more specific agenda caption "could have" been used and "might have been more informative to some families" Ex. 39 (Hatfield Dep. 72:16–22), and that the public "couldn't shape" the administration's recommendation once it issued on February 6, 2025. Ex. 39 (Hatfield Dep. 74:18–75:15) Superintendent Wendy Eldredge — walked through every attachment linked to the February 6 agenda — admitted that nothing in any of them "would have alerted the public" that specific school closures would be discussed (Eldredge Dep. 43:7–12). And trustee Ilena Garza-Rojas, when asked point-blank whether "Facilities master plan update" would tell a parent that "their child's specific school was on the chopping block," answered simply: "No" Ex. 38 (Garza-Rojas Dep. 17:21–18:1).

On the serial-deliberation claim, the record is, if anything, stronger. Trustee Brady testified without equivocation that the Board split itself into "two by two" and "three by two" briefing groups specifically "to prevent a quorum" Ex. 36 (Brady Dep. 25:5–7), that this was done "so it would not be misperceived as ... getting a vote prior to an open meeting" Ex. 36 (Brady Dep. 32:12–16), and that the Board maintained a formal protocol under which a trustee would "dismiss" herself if a fourth trustee wandered into an informal briefing Ex. 36 (Brady Dep. 25:10–21). Trustee Garza-Rojas corroborated this from a second, independent vantage point, testifying that

briefings were kept below quorum "[b]ecause we didn't want to get into a quorum" and that doing otherwise would be "a violation of a open meetings act" Ex. 38 (Garza-Rojas Dep. 22:24–23:9). Former Board President Randy Schackmann — the named Defendant who presided over both challenged meetings — conceded that the small-group structure existed "so that it would not constitute a formal meeting" (Schackmann Dep. 12:3–6), and the record includes his own March 5, 2025 email soliciting a trustee to pre-commit to seconding the closure motion the night before the vote in order to give "maximum cover" to incumbents (Schackmann Dep. 32:8–21) — an email he does not deny sending, only that he does not "recall" it.

Defendants' no-evidence motion fails for the same reason: Plaintiffs do not offer a scintilla of evidence on any challenged element — they offer an avalanche of it, much of it in the form of direct admissions by Defendants' own trustees and administrators. And Defendants' plea to the jurisdiction and Rule 91a motion to dismiss cannot substitute for a trial on a record this developed. Under *Texas Department of Parks & Wildlife v. Miranda*, 133 S.W.3d 217 (Tex. 2004), where — as here — the jurisdictional question is bound up with the merits of whether a TOMA violation occurred, the plea must be resolved under the same standard as a traditional summary judgment motion, and any fact issue defeats it. Plaintiffs are "interested persons" under Tex. Gov't Code § 551.142 without the need to show any injury beyond that shared by the general public, and TOMA's immunity waiver reaches the mandamus, injunctive, and voidability relief Plaintiffs seek. Rule 91a does not permit this Court to weigh any of this evidence at all; it tests the pleadings alone, and Plaintiffs' live petition states viable claims on its face.

For these reasons, and as set forth more fully below, the Court should deny Defendants' Motion in its entirety and permit this case to proceed to trial.[1]

[1] Based on the evidence uncovered during discovery, Plaintiffs hereby withdraw their Third Cause of Action (Violation of TOMA Requirements for Online Messaging Boards or Similar Application). Defendants' arguments with respect

II. SUMMARY JUDGMENT EVIDENCE

Plaintiffs rely on the evidence attached to Defendants' MSJ, which Plaintiffs hereby incorporate by reference, because it conclusively demonstrates that Defendants are not entitled to summary judgment. MSJ at 4–7 & Exs. 1–57. Citations to "MSJ" refer to Defendant's MSJ, and citations to "Ex." or "Exs." refer to the exhibits thereto.

III. GROUNDS FOR DENIAL OF SUMMARY JUDGMENT

Walking-Quorum Claim: Plaintiffs are not required to show a private vote, informal polling, vote-counting, or consensus building. *See* MSJ at 2–3. Those activities may occur at a meeting in violation of TOMA, but Defendants haven't cited any legal authority (and Plaintiffs are aware of none) that requires Plaintiffs to show those specific activities to prove a TOMA violation. Rather, the evidence shows that in both February 2024 and January 2025 the Trustees knowingly met in a series of consecutive meetings on the same topics for deliberation on matters within the school board's jurisdiction in small groups for the express purpose of avoiding a quorum. Ex. 40 (Moore Dep. 37:5–8; 37:23–25; 38:19–40:19); Ex. 36 (Brady Dep. 29:17–25); Ex. 37 (Eldredge Dep. 21:17–22:1; 32:12–33:1); Ex. 38 (Garza-Rojas Dep. 21:24–22:8; 22:24–23:9; 23:23–24); Ex. 41 (Schackmann Dep. 11:20–12:6; 37:3–13); (Brady Dep. 25:10–21; 31:25–32:16); Ex. 39 (Hatfield Dep. 25:19–26:7). The Texas Attorney General's Office has repeatedly explained that "physical presence of a quorum in a single place at the same time is not always necessary for a violation of [the Act] to occur." Tex. Att'y Gen. Op. No. KP-0254 (2019); *accord* Tex. Att'y Gen. Op. No. JC-0307 (2000) at 5; Tex. Att'y Gen. Op. No. DM-95 (1992) at 5. Additionally, the record also shows the board continues to engage in such improper meetings. *See*

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to the "Google Q&A document" are, therefore moot, and the MSJ should be denied as moot to the extent it seeks summary judgment on Plaintiffs' third cause of action.

Ex. 36 (Brady Dep. 55:19–24; Ex. 39 (Hatfield Dep. 26:19–27:11); Ex. 41 (Schackmann Dep. 38:15–43:6); Ex. 38 (Garza-Rojas Dep. 26:24–28:12).

Insufficient Notice/Agenda Claim: There is ample evidence that the notice and agenda description for the February 2025 meeting was insufficient. Plaintiffs hereby incorporate by reference the arguments and factual citations in Section V.B.

IV. STATEMENT OF FACTS

A. The Facilities Planning Process and the Retention of Woolpert and PASA

Beginning no later than fall 2023, CFBISD's administration — not its Board of Trustees — engaged Woolpert (then doing business as Cooperative Strategies) to conduct a facilities capacity study, and separately engaged the demographic firm identified by trustees as "PASA" to project future enrollment Ex. 36 (Brady Dep. 18:17–19:7 (Woolpert engaged by "the district," "[a]s distinct from the trustees"); Ex. 39 (Hatfield Dep. 14:12–22) (identifying PASA as "the demographer")). Superintendent Eldredge confirmed that Woolpert was hired after the District "passed a $9 million deficit" and that "there was no facility master plan that we could find" (Eldredge Dep. 16:11–22). CFBISD has seven trustees; four constitute a quorum Ex. 36 (Brady Dep. 7:23–8:7; Ex. 37 (Eldredge Dep. 22:21–23); Ex. 40 (Moore Dep. 34:24–35:2).

B. The Serial Sub-Quorum Briefings

In February 2024, Woolpert conducted three separate small-group briefings with CFBISD trustees rather than a single briefing to the full Board. Assistant Superintendent of Operations Chris Moore confirmed these occurred on February 5, 7, and 8, 2024, arranged by Woolpert representative Susan Miller, and that "the same presentation from Woolpert was made at each of the three meetings" Ex. 40 (Moore Dep. 37:5–8; 37:23–25; 38:19–40:19). Trustee Brady — one of the three officers invited to the February 2024 session — testified that Woolpert "recommended

that we consider consolidating" and specifically "identif[ied] Furneaux, McCoy, Central, and Long" by name at that private session Ex. 36 (Brady Dep. 29:17–25). Superintendent Eldredge separately confirmed a structured "two-by-two" rollout in which trustees received the "same presentation" "one or two per Zoom meeting with the consultant" Ex. 37 (Eldredge Dep. 21:17–22:1; 32:12–33:1). Trustee Garza-Rojas confirmed the format directly: "two board members and two administration people" per session, delivered "via Zoom," with no members of the public present Ex. 38 (Garza-Rojas Dep. 21:24–22:8; 23:23–24). Former Board President Schackmann confirmed the "two-by-two" structure — "two trustees; a second one with two trustees ... and ... the third one would have three trustees, because two, plus two, plus three, equals seven" — matching Brady's account Ex. 41 (Schackmann Dep. 37:3–13).

Multiple witnesses testified, without contradiction, that this arrangement was designed to avoid convening a quorum. Trustee Brady testified: "the purpose of only having two people in the room is to avoid a quorum" Ex. 36 (Brady Dep. 31:25–32:3), that the reason was "to avoid the perception of creating a quorum" Ex. 36 (Brady Dep. 32:4–10), and that "it would not be misperceived as having ... getting a vote prior to an open meeting" Ex. 36 (Brady Dep. 32:12–16). She confirmed the Board maintained an institutional practice under which, "[i]f there were four of us in a room listening to a presentation that was not on the posted agenda ... we all know well enough not to be in that same room," such that "one of us would've dismissed ourselves" Ex. 36 (Brady Dep. 25:10–21). Trustee Garza-Rojas testified to the same purpose in even more direct terms: asked why the full Board did not meet together, she answered, "Because we didn't want to get into a quorum," and when asked why that mattered, she answered that meeting as a quorum outside a posted session "is a violation of a open meetings act" Ex. 38 (Garza-Rojas Dep. 22:24–

23:9). Schackmann agreed the small-group format existed "so that it would not constitute a formal meeting" Ex. 41 (Schackmann Dep. 11:20–12:6).

This was not a one-time arrangement limited to the Woolpert rollout. Board President Hatfield confirmed a parallel practice of PASA demographic briefings delivered in the same small-group format Ex. 39 (Hatfield Dep. 25:19–26:7), and the record reflects a recurring subcommittee structure (governance, infrastructure, leadership, finance) of three trustees each — below quorum — that meets without public notice Ex. 36 (Brady Dep. 55:19–24; Hatfield Dep. 26:19–27:11), and an ongoing "finance work group" of three trustees that met as recently as the week before Schackmann's May 2026 deposition, again with no public notice, because, in Schackmann's words, "it's not a public meeting" (Schackmann Dep. 38:15–43:6). Garza-Rojas confirmed an identical finance-briefing practice, staggered by an email sign-up of "time slots," occurring roughly two weeks before her own May 2026 deposition Ex. 38 (Garza-Rojas Dep. 26:24–28:12).

Discovery also produced a November 4, 2024 email from Moore to Woolpert representatives David Sturtz and Susan Miller identifying the "End product" as "closed McCoy Furneaux, Central Elementaries," "Close Long Middle School" — three months before the Board's public February 6, 2025 presentation and six weeks before the District told parents on December 18, 2024 that "no decisions have been made" (Moore Dep. 65:23–25; 58:11–14; 69:15–20). Moore confirmed this was "a recommendation from" Woolpert as of November 4, 2024 (Moore Dep. 66:4–8). Moore further testified that the facilities planning advisory group — the only public-facing input mechanism — "had no role in actually deciding which campuses to recommend," and that the campus-selection decision "was made by [Moore], and Wendy Eldredge, and Corey Blackburn, and a number of other people within the administration" (Moore Dep. 76:16–23).

Separately, discovery produced a March 5, 2025 email in which then-Board-President Schackmann asked trustee Marjorie Barnes to pre-commit to seconding his anticipated closure motion the night before the vote, explaining that "[a] couple of trustees have suggested that we want to give 'maximum cover' for incumbents" (Schackmann Dep. 32:8–21). This email directly contradicts Schackmann's earlier, unqualified denial in the same deposition that he "discuss[ed] the vote with any trustees before the vote occurred" (Schackmann Dep. 24:2–4). When confronted with the email, Schackmann did not deny sending it — he testified only that he did not "recall" it and **did not "dispute[]" that it existed (Schackmann Dep. 32:23–33:2).**

C. The February 6, 2025 Meeting and Its Agenda

The agenda for the District's February 6, 2025 regular Board meeting listed item 3B as "Facilities Master Plan Update" Ex. 47 (Nauert Dep. 65:14–18; 73:5–16; Hatfield Dep. 39:24, 50:5–8). Nothing else on the agenda, and nothing in any of the documents linked to that agenda item, referenced school closures or named any campus. Superintendent Eldredge was walked through every attachment posted with that agenda — the 2023/2024 Annual Report, December 2024 financial and purchasing reports, vendor award documents, construction GMP documents, and prior meeting minutes — and confirmed as to each one that it would not "identify particular schools for potential closure" or otherwise "clue a member of the public into the fact that this closure of specific schools would be discussed at this meeting" (Eldredge Dep. 40:19–43:12). She ultimately conceded there was nowhere in the agenda that "identifies the specific campuses that would be discussed under facilities master plan update" (Eldredge Dep. 46:10–14).

At that meeting, the administration presented a proposal — introduced into evidence as an exhibit in the Hatfield deposition — stating that "the following schools are recommended for consolidation, Central Elementary, Furneaux Elementary, McCoy Elementary, and Long Middle Schools" Ex. 39 (Hatfield Dep. 57:5–12). Hatfield confirmed that, "[a]s of this date, February 6,

2025, administration identified the final recommendation and presented it to the board" Ex. 39 (Hatfield Dep. 66:6–11), and that the public "wasn't given that information until February 6, 2025" Ex. 39 (Hatfield Dep. 66:12–14). Assistant Superintendent Moore confirmed the same: "That was our ... recommendation in February to close those four schools to the board," and he "did not" believe there was "a reasonable chance" the recommendation would be rejected (Moore Dep. 71:3–7; 71:20–23). Moore further testified that February 6, 2025 was "the first time the public was informed that the recommendation was to close those four schools" (Moore Dep. 72:21–25).

The February 6 meeting was, by every percipient account, an overflow event that caught attendees by surprise. Plaintiff Amanda Nauert — whose son had attended McCoy Elementary — described "[t]he auditorium ... full of people who were clearly in a kind of a heightened panic state," with administrators "struggling to find seating" and turning people away as capacity was reached Ex. 47 (Nauert Dep. 65:21–66:9). She testified she had read the agenda beforehand and "did not know what a facilities master plan update ... meant" Ex. 47 (Nauert Dep. 73:5–16). Plaintiff Tierney Gonzalez, attending remotely, testified that she needed another parent to tell her which agenda line item referred to the closures, that the "Facilities Master Plan" caption was "[a]bsolutely not" informative of an impending recommendation to close McCoy and three other schools, and that she "would not have watched the meeting at all" but for warnings from other parents (Gonzalez Dep. 27:15–25; 53:4–14; 53:20–54:3). Lead Plaintiff Brian Morrow attended his first-ever CFBISD board meeting that night, having learned only "through word of mouth amongst parents" that consolidation might be discussed, and confirmed he did not learn McCoy specifically was at risk until that meeting (Morrow Dep. 10:19–12:4).

Once the recommendation issued, the public had no avenue to change which schools were named. Hatfield conceded that the public "couldn't" influence "the recommendation for the closure

of these four schools after February 6, 2025, when the proposal was made" — only the ultimate vote Ex. 39 (Hatfield Dep. 74:18–75:15). Trustee Garza-Rojas, who had been given the names of the four campuses "two weeks prior to the meeting" by administration Ex. 38 (Garza-Rojas Dep. 30:1–8), agreed that as of February 6, 2025 there was "[n]o[]" "viable pathway ... for the group of campuses that would face a closure vote to be changed" Ex. 38 (Garza-Rojas Dep. 36:20–37:6), and that affected parents were not "sufficiently involved in the decision-making process" Ex. 38 (Garza-Rojas Dep. 35:4–9). Moore confirmed that after February 6, parents "were not given an opportunity to express their opinion to the administration about which schools could be recommended" (Moore Dep. 74:21–75:4), and that subsequent "parent meetings" existed only "[t]o explain the process," not to solicit alternatives (Moore Dep. 74:13–20).

D. The March 6, 2025 Vote

The agenda for the March 6, 2025 meeting, by contrast, listed item 6B as: "Consider/approve proposed consolidation of Central Elementary, Furneaux Elementary, McCoy Elementary, and Long Middle School and corresponding proposed changes to elementary, middle and high school attendance zones" Ex. 47 (Nauert Dep. 71:20–72:13; Brady Dep. 48:13–18). Hatfield confirmed the four schools "were identified in the agenda" for that meeting Ex. 39 (Hatfield Dep. 72:24–73:3), and Garza-Rojas confirmed the same Ex. 38 (Garza-Rojas Dep. 18:3–10). The Board voted 6–1 to approve the closures, with trustee Carolyn Benavidez the sole dissenting vote (Schackmann Dep. 23:1–4; Brady Dep. 56:24–57:3). Schackmann made the closure motion himself, and Hatfield — not Marjorie Barnes, the trustee he had solicited by email the night before — seconded it (Schackmann Dep. 47:19–48:4).

Public turnout at the March 6 meeting was markedly higher than at the February 6 meeting or at typical Board meetings. Brady testified she "remember[ed] the boardroom being full," which

was "[n]o[t]" typical Ex. 36 (Brady Dep. 49:2–5). Garza-Rojas described the public reaction as widespread and negative — "[q]uite a bit" of participation, and the public was "upset" Ex. 38 (Garza-Rojas Dep. 18:11–16; 34:16–35:2). Lead Plaintiff Morrow attended, reviewed the agenda in advance, and personally spoke in opposition, along with "[n]early every parent who spoke" (Morrow Dep. 15:6–24).

E. The District's Continuing Practices

The sub-quorum small-group briefing structure did not end with the 2024–2025 facilities episode. Trustee Brady testified the practice would continue "if necessary" Ex. 36 (Brady Dep. 53:24–54:3) and confirmed the subcommittee structure — three trustees per subcommittee, no quorum, no public notice — remains standing Board practice Ex. 36 (Brady Dep. 55:10–24). Schackmann confirmed an ongoing "finance work group" of three trustees, including himself, that met without public notice the week before his May 2026 deposition, on the stated rationale that "it's not a public meeting" (Schackmann Dep. 38:15–43:6). Garza-Rojas independently confirmed an identical, contemporaneous finance-briefing practice — divided into three sub-quorum sessions staggered by an email sign-up — occurring approximately two weeks before her own May 2026 deposition Ex. 38 (Garza-Rojas Dep. 26:24–28:12).

V. ARGUMENT AND AUTHORITIES

A. Standard of Review

1. Traditional summary judgment. Under Tex. R. Civ. P. 166a(c), Defendants, as movants, bear the burden of establishing that no genuine issue of material fact exists and that they are entitled to judgment as a matter of law. *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546 (Tex. 1985). The Court views the evidence in the light most favorable to Plaintiffs as nonmovants, crediting favorable evidence if reasonable jurors could, and disregarding contrary

evidence unless reasonable jurors could not. *City of Keller v. Wilson*, 168 S.W.3d 802 (Tex. 2005). Review is de novo, and the Court must take as true all evidence favorable to Plaintiffs, indulge every reasonable inference in their favor, and resolve any doubts in their favor. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656 (Tex. 2005); *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211 (Tex. 2003).

2. No-evidence summary judgment. Under Tex. R. Civ. P. 166a(i), Plaintiffs need only produce more than a scintilla of probative evidence on each challenged element to defeat the motion. *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598 (Tex. 2004). The motion functions as a pretrial directed verdict, subject to the same legal-sufficiency review, crediting evidence favorable to the nonmovant and disregarding contrary evidence. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742 (Tex. 2003). More than a scintilla exists where the evidence would allow reasonable and fair-minded people to differ in their conclusions; evidence is no more than a scintilla only when it is so weak as to create a mere surmise or suspicion. *Merrell Dow Pharmaceuticals, Inc. v. Havner*, 953 S.W.2d 706 (Tex. 1997).

3. Plea to the jurisdiction. Where a plea to the jurisdiction challenges jurisdictional facts that implicate the merits, the Court applies a standard mirroring traditional summary judgment; if the evidence raises a fact issue on jurisdiction, the plea must be denied and the issue resolved by the factfinder. *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217 (Tex. 2004). Because TOMA's immunity waiver is conditioned on whether a violation occurred, the jurisdictional and merits inquiries are intertwined here, and the *Miranda* evidentiary standard governs. *Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755 (Tex. 2018). Standing is a component of subject-matter jurisdiction, and where a plea challenges the pleadings, the Court must consider

evidence necessary to resolve the jurisdictional dispute, including evidence that also bears on the merits. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547 (Tex. 2000).

4. **Rule 91a.** Rule 91a permits dismissal only where a cause of action has "no basis in law" — meaning the pleaded facts, taken as true, do not entitle the claimant to relief — or "no basis in fact," meaning no reasonable person could believe the pleaded facts. Tex. R. Civ. P. 91a.1. Critically, Rule 91a.6 forbids the Court from considering evidence in ruling on the motion; the Court is confined to the pleadings and any permitted exhibits. *City of Dallas v. Sanchez*, 494 S.W.3d 722 (Tex. 2016) (per curiam); *In re Farmers Texas Cnty. Mut. Ins. Co.*, 621 S.W.3d 261 (Tex. 2021).

B. Defendants Are Not Entitled to Traditional Summary Judgment on the Notice Claim

TOMA requires that a governmental body "give written notice of the date, hour, place, and subject of each meeting." Tex. Gov't Code § 551.041. That notice must be posted at least 72 hours in advance. Tex. Gov't Code § 551.043. The Texas Supreme Court has long held that the Act requires "full disclosure" of the subject matter of a meeting, and that generic, catch-all captions do not satisfy the statute — particularly where the subject is one of special interest to the public. *Cox Enterprises, Inc. v. Bd. of Trs. of Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 961 (Tex. 1986). Notice must be reasonably specific enough "to alert a reader of ordinary intelligence that a particular subject will be considered," and must be "reasonably calculated" to inform the "members of the interested public" who are the Act's intended beneficiaries — not merely those directly and individually affected. *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 765 (Tex. 1991).

Texas courts of appeals have applied this "full and adequate notice" standard with particular force where the item at issue carries heightened public interest. In *Point Isabel*

Independent School District v. Hinojosa, 797 S.W.2d 176 (Tex. App.—Corpus Christi 1990, writ denied), a caption reading merely "employment of personnel" was held insufficient notice of the hiring of school principals — a position of special public interest — even though the identical language sufficed for lower-profile positions. In *Mayes v. City of De Leon*, 922 S.W.2d 200, 203–04 (Tex. App.—Eastland 1996, writ denied), a caption of "personnel" was insufficient notice of the termination of a police chief for the same reason. If the hiring of a single principal, or the termination of a single police chief, triggers heightened notice obligations, the closure of four named public schools — Central Elementary, Furneaux Elementary, McCoy Elementary, and Long Middle School — does so a fortiori. No decision a school district makes touches more families, more directly and more permanently, than which schools will close.

The agenda item at issue here read only "Facilities Master Plan Update." That caption said nothing about a vote, a recommendation, a consolidation, or a closure — let alone which campuses. This is precisely the deficiency *Cox Enterprises* and *City of San Antonio* condemn. Defendants' own witnesses confirm it. Superintendent Eldredge, walked through every document linked to the February 6 agenda, could not identify anything that would have "clue[d] a member of the public into the fact that this closure of specific schools would be discussed" (Eldredge Dep. 43:7–12), and ultimately admitted there was "[n]o[]" reference anywhere in the agenda to "the specific campuses that would be discussed" (Eldredge Dep. 46:10–14). Assistant Superintendent Moore — the administrator responsible for posting agenda items within his purview — testified directly that "Facilities master plan update" is "broad and would not likely inform people that school closures were on the table," while conceding that a caption reading "campus consolidation plan update," or one that actually named the campuses, would have been sufficient (Moore Dep. 21:10–23:10). Trustee Garza-Rojas agreed that the caption would not tell a parent "that their child's specific

school was on the chopping block" Ex. 38 (Garza-Rojas Dep. 17:13–18:1). And Board President Hatfield — while defending the caption generally — conceded on cross-examination that the agenda "could have" named the four schools and that doing so "might have been more informative to some families" Ex. 39 (Hatfield Dep. 72:11–22).

The contrast with the March 6, 2025 agenda proves the point. That agenda read: "Consider/approve proposed consolidation of Central Elementary, Furneaux Elementary, McCoy Elementary, and Long Middle School and corresponding proposed changes to elementary, middle and high school attendance zones" Ex. 47 (Nauert Dep. 71:20–72:13). Public turnout and engagement rose sharply once the District actually said what it meant. Even lead Plaintiff Morrow — an adverse witness on this point — agreed the March 6 agenda was "the shining example that the board could do what was necessary to communicate the specificity of their action" (Morrow Dep. 58:4–9). The District plainly knew how to draft an adequate agenda item. It simply did not do so on February 6, 2025 — the one meeting at which the actual, named recommendation to close four specific schools was first unveiled to the public, after having been disclosed to a private sub-quorum group of trustees a full year earlier Ex. 36 (Brady Dep. 29:13–25).

Defendants will point to Hatfield's testimony that the February 6 item was a "non-action," "information-only" item, and that the operative vote occurred only in March Ex. 39 (Hatfield Dep. 9:11–14; 50:5–8). That argument misapprehends the notice inquiry. TOMA's notice requirement attaches to the *subject* of the meeting, not merely to whether a vote will occur at it. Tex. Gov't Code § 551.041 requires notice of "the subject" of "each meeting," without qualification for information-only items. If a matter of special public interest — the disclosure of a fully-formed administrative recommendation to close four named schools — is going to be presented and discussed, the public is entitled to know that in advance so that it can decide whether to attend,

exactly as *City of San Antonio* contemplates. The evidence here shows the February 6 disclosure was the operative event for public purposes: it was the first and only time before the vote that the public could have organized, spoken to trustees, or otherwise attempted to influence which schools were recommended Ex. 39 (Hatfield Dep. 74:18–75:15; Garza-Rojas Dep. 36:20–37:6). Defendants cannot immunize a matter of extraordinary public concern from adequate notice merely by labeling it "informational."

Defendants will also point to Brady's testimony that the "facilities master plan" caption had been used on roughly ten prior agendas and that she considered it adequate Ex. 36 (Brady Dep. 41:22–42:24), and to Hatfield's analogy to other generic captions such as "Student achievement update" Ex. 39 (Hatfield Dep. 69:19–24). Repetition of a deficient practice does not cure it; if anything, it shows a pattern. And the analogy fails on its own terms: nothing in a "Student achievement update" carries the same magnitude of consequence, to the same identifiable families, as the closure of their children's schools — precisely the *Point Isabel/Mayes* distinction between routine and special-interest matters.

B. Defendants Are Not Entitled to Traditional Summary Judgment on the Serial-Deliberation Claim

TOMA requires that "[e]very regular, special, or called meeting of a governmental body shall be open to the public, except as provided by [the Act]." Tex. Gov't Code § 551.002. Under the Act, a "meeting" includes "a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action." *Id.* § 551.001(4)(A). In turn, "deliberation" "means a verbal or written exchange between a quorum of a governmental

body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body." *Id.* § 551.004(2).

The parties agree that, by definition, "deliberation" requires a quorum—here, four of seven Trustees. MSJ at 24. But Defendants fail to acknowledge that "the physical presence of a quorum in a single place at the same time is not always necessary for violation of [the OMA] to occur." Tex. Att'y Gen. Op. No. MC-95 (1992) at 5. Although Defendants two-by-two and two-by-three meetings [a]void[] the technical definition of 'meeting' or 'deliberation",' Although The Texas Attorney General and state and federal courts the definition of "deliberation" requires a "quorum" Texas Attorney General Opinion GA-0326 (2005) coined the term "walking quorum" to describe members who "gather in numbers that do not physically constitute a quorum at any one time but who, through successive gatherings, secretly discuss a public matter with a quorum of that body" — a "daisy chain" whose sum constitutes a quorum. Texas Attorney General Opinion KP-0254 (2019), issued after *State v. Doyal*, 589 S.W.3d 136 (Tex. Crim. App. 2019) struck the prior criminal "conspires to circumvent" language as unconstitutionally vague, confirmed that the civil violation persists regardless: "[i]f a quorum of a governmental body deliberates about public business ... outside of a meeting authorized by [TOMA], through multiple communications each involving fewer than a quorum, the governmental body violates the Act," and nothing requires the deliberation to be simultaneous or co-located. The Legislature's 2019 response to *Doyal*, Senate Bill 1640, rewrote Tex. Gov't Code § 551.143 to prohibit a member's knowing participation in "at least one communication among a series of communications" that, cumulatively, involves a quorum deliberating a matter within the body's jurisdiction. The civil remedies under §§ 551.141–.142 were never disturbed by *Doyal* and remain fully available regardless of the current viability of any criminal charge. A federal court applying Texas law reached the same conclusion on similar

facts, finding a TOMA violation where a mayor, city manager, and council members held informal pre-meeting deliberations the evening before a public vote and then ratified the decision at a "sham" public meeting the next day. *Esperanza Peace & Just. Ctr. v. City of San Antonio*, 316 F.Supp.2d 433, 474–76 (W.D. Tex. 2001).

The record here is a textbook "daisy chain." Woolpert delivered the identical presentation, containing the identical recommendation to close Central, Furneaux, McCoy, and Long, to three sequential sub-quorum groups of trustees in February 2024 — confirmed independently by trustee Brady Ex. 36 (Brady Dep. 29:13–25), Assistant Superintendent Moore (Moore Dep. 31:4–40:19), and former Board President Schackmann (Schackmann Dep. 37:3–13). Superintendent Eldredge corroborated the same "two-by-two" structure from the administration's vantage point, describing "one or two [trustees] per Zoom meeting with the consultant" receiving "substantively the same" presentation (Eldredge Dep. 21:17–22:1; 32:12–33:1). No witness has offered a different account. This is precisely the conduct § 551.143 and the walking-quorum doctrine target: sequential sub-quorum communications on the same public matter, structured so that a quorum's worth of trustees ultimately receives — and can react and respond to — the same substantive information outside any posted meeting.

The intent element is not left to inference; Defendants' own trustees admit it directly. Trustee Brady testified, without qualification, that "the purpose of only having two people in the room is to avoid a quorum" Ex. 36 (Brady Dep. 31:25–32:3), that this was done "to avoid the perception of creating a quorum" Ex. 36 (Brady Dep. 32:4–10), and that convening as a quorum would have required an open meeting, which the District specifically avoided: "Q ... these were not open meetings? A. Correct." Ex. 36 (Brady Dep. 32:17–22). She confirmed the Board's formal "dismiss yourself" protocol — an institutionalized mechanism for preventing four trustees from

ever being in the same room for a substantive, non-agendized presentation Ex. 36 (Brady Dep. 25:10–21). Trustee Garza-Rojas corroborated this from an entirely independent vantage point and used the word "violation" herself:

> "Q And the reason that it was done that way was to avoid having a quorum?
> A Yes.
> Q And why was there a desire to avoid having a quorum?
> A Because that's something we shouldn't be doing. ...
> Q ... Why is this something you shouldn't be doing?
> A Oh. Because that's a violation of a open meetings act." Ex. 38 (Garza-Rojas Dep. 22:24–23:9.)

Schackmann, the presiding Board President for both challenged meetings, agreed the format existed "so that it would not constitute a formal meeting" (Schackmann Dep. 12:3–6). This is not a case in which Plaintiffs are asking the factfinder to infer improper purpose from ambiguous circumstantial evidence. Three separate trustees — two of them still sitting Board members — have testified in their own words that avoiding a quorum was the point.

The record also shows this was not confined to a single 2024 episode. Discovery produced Moore's November 4, 2024 email identifying the four-campus closure as Woolpert's "end product" (Moore Dep. 65:23–69:20) — evidence that the substantive outcome was fixed at the administrative level months before any public process concluded, and that the facilities advisory group Defendants will point to as evidence of "community engagement" never had any role in selecting the campuses at all, Ex. 40 (Moore Dep. 76:9–23). Discovery also produced Schackmann's March 5, 2025 "maximum cover" email soliciting a pre-committed second to his closure motion the night before the public vote (Ex. 41, Schackmann Dep. 32:8–21) — evidence of pre-meeting coordination of the vote's choreography, flatly inconsistent with Schackmann's own sworn denial, in the same deposition, that he "discuss[ed] the vote with any trustees before the vote occurred" (Schackmann Dep. 24:2–4). And the practice continues: Schackmann's ongoing,

unposted "finance work group" of three trustees (Schackmann Dep. 38:15–43:6) and Garza-Rojas's corroborating account of an identical, contemporaneous finance-briefing rotation, Ex. 38 (Garza-Rojas Dep. 26:24–28:12) show that, as of the depositions taken in May 2026, the District was still dividing trustees into sub-quorum groups to receive substantive briefings outside public notice.

Defendants will argue, as Superintendent Eldredge and Hatfield did in their depositions, that these sessions were merely "informational," "fact-finding," and involved no "decision." Exs. 37, 39 (Eldredge Dep. 27:22–29:10; Hatfield Dep. 9:19–23; 46:22–47:14.) That theory does not survive the statutory text, and — tellingly — the District's own chief administrator could not defend it when pressed. Confronted with the statutory definition of "deliberation," which reaches any "verbal or written exchange" concerning District business, and asked whether the disjunctive structure of the definition meant that discussion alone (without a vote) could qualify, Superintendent Eldredge refused to answer: "I'm not going to answer." "I -- I don't know the answer." Ex 37 (Eldredge Dep. 35:11–36:16.) A superintendent who mandates TOMA training for her trustees but cannot articulate the legal basis for her own office's central compliance theory has conceded the point. Nor is the "informational" label a defense as a matter of law: § 551.001(2) does not exempt exchanges from the definition of "deliberation" merely because no vote occurs at the exchange itself, and lead Plaintiff Morrow's unrebutted position — that "[d]eliberation is action" (Ex. 45, Morrow Dep. 35:11–15) — tracks the statute's plain language.

D. The No-Evidence Motion Fails Because the Record Contains Far More Than a Scintilla — Element by Element

Whatever specific elements Defendants challenge in their no-evidence motion, the summary-judgment record defeats each of them:

Existence of a "governmental body" and "meeting." Undisputed: CFBISD's Board of Trustees is a governmental body under Tex. Gov't Code § 551.001(3), and a quorum is four of the Board's seven members, Ex. 36 (Brady Dep. 7:23–8:7).

Existence of a quorum-equivalent series of communications. Trustee Brady, trustee Garza-Rojas, Superintendent Eldredge, Assistant Superintendent Moore, and former President Schackmann all independently confirm that substantively identical presentations were delivered sequentially to sub-quorum groups whose combined membership equaled or exceeded a quorum Exs. 36, 38, 37, 40, 41 (Brady Dep. 26:19–27:5; 29:13–25; Garza-Rojas Dep. 21:24–26:20; Eldredge Dep. 21:17–22:1; 32:12–33:1; Moore Dep. 37:5–25; Schackmann Dep. 37:3–13). This is direct testimonial evidence, not speculation.

Deliberation "concerning an issue within the jurisdiction" of the Board. The subject of every one of these sessions — facilities capacity, demographic projections, and ultimately the recommendation to close four named campuses — is squarely within the Board's jurisdiction over school facilities and attendance zones. No witness disputes this.

Intent/purpose to avoid TOMA. Addressed at length in Section IV.C above: Brady and Garza-Rojas both testified in their own words that quorum avoidance was the specific purpose of the small-group structure Ex. 36, 38 (Brady Dep. 31:25–32:22; Garza-Rojas Dep. 22:24–23:9).

Inadequate notice of the February 6, 2025 agenda. Addressed at length in Section IV.B above: Eldredge, Moore, Garza-Rojas, and Hatfield all provide direct testimonial support, and the verbatim agenda language ("Facilities Master Plan Update") is independently established by Plaintiff Nauert's testimony Ex. 47 (Nauert Dep. 65:14–18; 73:5–16).

Causation/injury. Plaintiffs Nauert, Gonzalez, Shankle, and Morrow each testify to concrete, particularized facts: children or grandchildren displaced from McCoy Elementary Ex. 47

(Nauert Dep. 12:18–13:10; Gonzalez Dep. 15:18–24; Shankle Dep. 28:18–29:3; Morrow Dep. 9:14–10:7), residency and taxpayer status within CFBISD Ex. 47 (Nauert Dep. 11:5–20; Gonzalez Dep. 12:15–14:2; Shankle Dep. 24:15–25:2; Morrow Dep. 7:13–8:15), and specific, uncompensated efforts to influence a recommendation that could no longer be changed once made Ex. 47 (Nauert Dep. 18:16–23:11; Morrow Dep. 13:18–18:17). This is more than a scintilla; it is a mountain of admissible, largely unrebutted testimony from percipient witnesses on both sides of the case.

F. The Plea to the Jurisdiction Must Be Denied

Standing. Tex. Gov't Code § 551.142(a) authorizes "[a]n interested person, including a member of the news media" to bring an action for mandamus or injunction to stop, prevent, or reverse a TOMA violation. The Texas Supreme Court has confirmed that the Act's intended beneficiaries are "members of the interested public," and that § 551.142 standing does not require a particularized injury distinct from that of the general public. *City of San Antonio*, 820 S.W.2d at 765. Plaintiffs plainly qualify: each is a resident, homeowner, and taxpayer of CFBISD, and each — Nauert, Gonzalez, Shankle, and Morrow — has (or had, at the time relevant to the closures) a child or grandchild enrolled at or assigned to one of the four closed campuses, Ex. 47 (Nauert Dep. 11:5–13:10; Gonzalez Dep. 12:15–15:24; Shankle Dep. 24:15–29:11; Morrow Dep. 7:13–10:7). Even setting aside these individualized facts, *City of San Antonio* makes clear that Plaintiffs need not show them at all to qualify as "interested persons" under § 551.142.

Defendants will emphasize that Plaintiff Nauert repeatedly conceded she has no *personal, percipient* knowledge of any closed-door walking-quorum meeting, and that her knowledge of that theory rests on inferences from discovery documents Ex. 47 (Nauert Dep. 26:6–27:23; 32:14–33:14). That concession does not defeat standing; it goes, at most, to the weight of one Plaintiff's

testimony on one of two independent TOMA theories, and Nauert herself clarified on redirect that she has direct, personal knowledge of the notice violation because she personally read the deficient February 6 agenda and personally experienced its consequences Ex. 47 (Nauert Dep. 70:17–71:13). Standing under § 551.142 does not require every plaintiff to have witnessed the violation firsthand; it requires only that the plaintiff be an "interested person," a status readily established here independent of any one witness's personal-knowledge limitations.

Immunity. The Texas Supreme Court has held that TOMA's waiver of governmental immunity is limited to the relief the statute itself provides — mandamus and injunctive relief under § 551.142 — and does not extend to a freestanding declaratory-judgment claim under the UDJA. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019). Plaintiffs' operative pleading seeks mandamus and injunctive relief under § 551.142 and a declaration of voidability under § 551.141 — itself a substantive statutory remedy, not a UDJA claim — and Plaintiffs' claims against the individual trustees are for ultra vires conduct in their official capacities, which governmental immunity does not bar. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). *Swanson* is not a bar to this suit; it is the map Plaintiffs have followed in framing their requested relief, and counsel should ensure at the pleading and prayer stage that no relief is requested that falls outside the statutory waiver.

Jurisdictional facts intertwined with the merits. Because whether TOMA's immunity waiver applies depends on whether a violation occurred, the jurisdictional and merits questions are intertwined, and the Court must apply the *Miranda* evidentiary standard: if Plaintiffs' evidence raises a genuine fact issue on the underlying TOMA violation, the plea must be denied. *Miranda*, 133 S.W.3d at 217; *Alamo Heights*, 544 S.W.3d at 755. As detailed in Sections IV.B–D above, Plaintiffs' evidence does far more than raise a fact issue — it includes direct admissions from

sitting trustees that the conduct at issue was intentional and designed to avoid TOMA's reach. The plea must be denied and the case allowed to proceed to trial.

G. The Case Is Not Moot

A defendant's voluntary cessation of, or completion of, challenged conduct does not moot a claim for prospective relief; the defendant "bears a formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Matthews v. Kountze Indep. Sch. Dist.*, 484 S.W.3d 416, 418 (Tex. 2016). Separately, the "capable of repetition, yet evading review" exception applies where the challenged conduct is too short in duration to be fully litigated before it ceases, and a reasonable expectation exists that the same party will be subjected to the same conduct again. *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001); *Texas A&M Univ.-Kingsville v. Yarbrough*, 347 S.W.3d 289, 290 (Tex. 2011).

Defendants cannot meet their "formidable burden" here. First, an action taken in violation of TOMA "is voidable" under § 551.141 regardless of whether the underlying conduct has since concluded; the completed closure vote does not extinguish the voidability remedy the statute affords, and Plaintiffs' pleading seeks that remedy. Second, and independently, the challenged sub-quorum briefing practice is not a one-time historical event confined to the 2024–2025 facilities cycle — it is the District's ongoing modus operandi. Trustee Brady testified the two-by-two practice would continue "if necessary" Ex. 36 (Brady Dep. 53:24–54:3) and that the subcommittee structure remains standing practice today Ex. 36 (Brady Dep. 55:10–24). Schackmann confirmed an active, unposted "finance work group" meeting as recently as the week before his own May 2026 deposition (Schackmann Dep. 38:15–43:6), and Garza-Rojas independently corroborated an identical, contemporaneous rotation of sub-quorum finance briefings roughly two weeks before her deposition. Ex. 38 (Garza-Rojas Dep. 26:24–28:12) These are not stale facts; they are current,

sworn admissions that the very structure Plaintiffs challenge — small groups sized specifically to avoid a quorum — continues to operate as this Motion is being briefed.

The notice practice fares no better for Defendants on mootness. Plaintiff Nauert testified that she reviewed other CFBISD agendas beyond the two at issue and found them "equal[ly]" vague Ex. 47 (Nauert Dep. 35:16–25), supporting an inference of an ongoing agenda-drafting pattern rather than an isolated drafting choice limited to February 6, 2025. Given that CFBISD will continue to face facilities, budget, and enrollment decisions of the kind that produced this dispute, the notice and serial-briefing practices challenged here are plainly "capable of repetition" in future decisions of comparable magnitude, and the compressed, closed-door nature of the conduct — deliberately structured to avoid triggering public notice in the first place — makes it inherently difficult to fully litigate before any given decision is finalized, satisfying the "evading review" prong of *Williams v. Lara*.

H. Rule 91a Dismissal Is Unavailable

Rule 91a.6 forbids this Court from considering any evidence in ruling on a Rule 91a motion; the Court is confined to the pleading and any permitted exhibits under Rule 59. Tex. R. Civ. P. 91a.6; *In re Farmers Texas County Mutual Insurance Co.*, 621 S.W.3d at 266, 272. Review is de novo, and dismissal is proper only if the pleaded facts, taken as true, do not entitle Plaintiffs to relief, or if no reasonable person could believe the pleaded facts. *City of Dallas*, 494 S.W.3d at 724 (per curiam).

Plaintiffs' live petition alleges, with particularity, the actual language of the February 6, 2025 agenda item, the sequence and content of the Woolpert and PASA sub-quorum briefings, and the specific mechanism by which the four target campuses were identified to trustees and staff before the public ever learned their names. Taking those factual allegations as true — as Rule 91a

requires — Plaintiffs state viable claims for relief under §§ 551.041, 551.043, 551.141, and 551.142. Whether the consultant briefings in fact constituted an unlawful serial deliberation, and whether the February 6 agenda caption in fact provided adequate notice given the undisclosed closure recommendation, are quintessential fact questions that Rule 91a does not permit this Court to resolve on the pleadings alone. Given that this same record independently defeats summary judgment under the far more permissive Rule 166a standards set out above, it follows a fortiori that Plaintiffs' pleadings — which this Court must credit in full on a Rule 91a motion — cannot be dismissed as having "no basis in law or fact." Dismissal under Rule 91a is unavailable as a matter of law.

VI. CONCLUSION AND PRAYER

Defendants' own trustees have admitted, under oath, that they structured briefings on the most consequential decision the Board made in a generation specifically to avoid convening a quorum in public. Defendants' own Superintendent could not identify anything in the February 6, 2025 agenda or its attachments that would have told the public what was actually about to happen. And Defendants' own Board President has conceded that a more specific agenda caption was available, and would have been more informative, but was not used. This record does not entitle Defendants to judgment as a matter of law under Rule 166a(c); it does not leave Plaintiffs without more than a scintilla of evidence under Rule 166a(i); it does not permit dismissal on the pleadings under Rule 91a; and it does not permit disposal of this case on jurisdictional grounds under *Miranda* and its progeny. Genuine, material, and repeatedly admitted fact issues pervade every element of both of Plaintiffs' TOMA claims.

For all of the foregoing reasons, Plaintiffs respectfully request that this Court:

1. Deny Defendants' Motion for Traditional Summary Judgment in its entirety;

2. Deny Defendants' Motion for No-Evidence Summary Judgment in its entirety;
3. Deny Defendants' Plea to the Jurisdiction in its entirety;
4. Deny Defendants' Motion to Dismiss under Rule 91a in its entirety;
5. Set this case for trial on the merits; and
6. Grant Plaintiffs such other and further relief, at law or in equity, to which they may show themselves justly entitled.

DATED: July 31, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2026, a true and correct copy of the foregoing Plaintiffs' Brief in Opposition to Defendants' Motion for Traditional and No-Evidence Summary Judgment, Plea to the Jurisdiction, and Motion to Dismiss was served on all counsel of record in accordance with the Texas Rules of Civil Procedure, via e-service/electronic filing.

/s/ *R. Kent Piacenti*
R. Kent Piacenti

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