BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARBELLA GARCIA, Claimant, v. SORRENTO LACTALIS, INC., Employer, and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, Surety, Defendants.	**IC 2015-006889** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** Filed April 3, 2018

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee John C. Hummel, who conducted a hearing in Twin Falls on February 3, 2017. J. Brent Gunnell represented Claimant, Marbella Garcia. W. Scott Wigle represented Employer, Sorrento Lactalis, and Surety, Travelers Property Casualty Company of America, collectively "Defendants." The parties presented oral and documentary evidence at hearing and took post-hearing depositions. The matter came under advisement on July 14, 2017.

ISSUES

By agreement of the parties and at hearing, the issues are as follows:

1. Whether and to what extent Claimant is entitled to the following benefits:
    a. Medical care;
    b. Permanent partial impairment (PPI); and

c. Permanent partial disability;

2. Whether apportionment for a preexisting condition pursuant to Idaho Code § 72-406 is appropriate.[1]

CONTENTIONS OF THE PARTIES

Claimant suffered a laceration to the back of her right hand while working for Employer on March 7, 2015. Defendants accepted the claim and provided medical and temporary disability benefits to Claimant, which included coverage of trigger release surgeries for her right middle and ring fingers.

Claimant alleges that her right index finger triggering condition was also related to the accident. She claims medical coverage for her September 6, 2016 right index trigger release surgery performed by T. Clark Robinson, M.D. She further alleges entitlement to the combined 6% PPI rating for her right upper extremity, assigned by Mark S. William, D.O., for impairments to her right three fingers and right extensor tendon laceration.

Defendants argue that they have appropriately paid all benefits due to Claimant. They allege that Claimant's index finger triggering condition developed too late to be causally related to her industrial accident. Defendants covered Claimant's middle and adjacent ring finger trigger release procedures despite doubts of an industrial cause, which the opinion of Rodde Cox, M.D. confirmed. They contend that the PPI rating of Dr. Williams overstated the impairment in Claimant's right hand, that Claimant is entitled to no impairment for her three triggering fingers, and that she is entitled to, at most, only a 3% upper extremity PPI for her right hand injury.

[1] Claimant raised the additional medical conditions of her right elbow and right shoulder in the record and at hearing. Her briefing, however, addressed only entitlement to additional medical benefits for her right index finger and permanent partial impairment benefits for her right hand. Furthermore, Claimant did not argue in her brief that she had permanent partial disability as a result of the accident. In their brief, Defendants noted Claimant's failure to address these issues. Claimant did not file a reply. Therefore, although at issue, Claimant's failure to make any arguments in support of claims for other right upper extremity injuries or for disability leads to the conclusion that Claimant conceded theses aspects of her claim.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Claimant's Exhibits A through T, admitted at hearing;

2. Defendants' Exhibits 1 through 5, admitted at hearing;

3. The testimony of Claimant, taken at hearing and her deposition of September 29, 2016;

4. The testimony of Eduardo Lopez, taken at hearing; and

5. The post-hearing deposition testimony of the following expert witnesses: Mark. S. Williams, D.O., taken on March 10, 2017; and Rodde Cox, M.D., taken on April 12, 2017.

Having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. **Claimant's Background; Education**. Claimant was 52 years old and resided in Nampa at the time of hearing. Claimant was born in Tijuana, Mexico, and immigrated to the United States when she was eleven or twelve years old. She attended high school in Morgan Hill, California; she completed the eleventh grade but did not graduate. Tr., 19:1-20:1.

2. **Employment History**. Claimant worked summers during high school cleaning and painting schools. After she left school, she performed field agricultural labor prior to working for Employer. *Id*. at 22:2-11.

3. Claimant began working for Employer, a cheese manufacturer, in San Jose, California, in or about March 1995. Initially, Claimant was an assembly line worker in Employer's San Jose facility. She received successive promotions to the positions of operator, lead worker, and ultimately supervisor. In 2002, Employer closed its San Jose facility and moved

the plant to Nampa, Idaho. Claimant and her boyfriend, Eduardo Lopez, who also worked for Employer, moved to Idaho to continue working for the company. At the Nampa facility, Claimant worked as a supervisor of line workers in the string cheese department. Claimant Dep., 9:19-12:2; Tr., 22:8-23:25.

4. Claimant continued working for Employer as a supervisor for two years until approximately 2004, when she left to begin a child care business, which was ultimately unsuccessful and lasted approximately two years. She then worked for four to five months as a cashier at a gas station in Meridian before Employer rehired her as a sanitation worker. She worked in this position for six months and then received a transfer to a line worker position in which she performed "palletizing;" her function was to take boxes of packaged cheese off of the assembly line and place them on pallets for shipping. She performed in this position for six months. She then moved on to the positions of operator I and operator II, in which she operated various line machines involved in the packaging of cheese products. Claimant held the position of operator II at the time of the industrial accident. *Id*. at 24:3-45:17.

5. **Prior Injuries and Medical History**. Claimant injured her left index finger while changing plastic film at Employer's facility in San Jose. Her treatment included an unspecified surgery. The injury left her left index finger somewhat disfigured but not otherwise impaired. Claimant Dep., 43:16-45:15.

6. On April 11, 2014, Claimant reported feeling a "click" and knee pain that occurred while she was palletizing big boxes. She did not have surgery and could not recall which knee was injured. *Id*. at 42:17-43:14. Surety denied her claim. Ex. 1:3.

7. Prior to the industrial accident, Claimant had sustained no injuries to her upper right extremity, nor did she suffer from any other conditions that impaired it. Tr., 56:1-8.

8. **Industrial Accident**. On March 7, 2015, Claimant was changing the film for the string cheese wrapping machines when the cutting blades of a machine sliced into the back of her right hand. At first, Claimant did not notice that she had been injured, but when she looked down at the back of her hand, she observed that it had "just opened like popcorn." She grabbed paper towels to cover bleeding from the wound and informed her supervisor, Patrick Robinson, of the accident. Tr., 60:18-23.

9. **Medical Care**. Robinson drove Claimant to the emergency department of Saint Luke's Regional Medical Center in Meridian. Employer's on-site nurse Ann Mexicano, however, called Mr. Robinson before Claimant was evaluated and told him to bring Claimant back to the worksite for examination of the wound, which he did. Claimant would not allow Ms. Mexicano to tape up the wound due to her pain. A receptionist from Employer's office then drove Claimant back to Saint Luke's. *Id*. at 57:14-58:17; 60:24-61:8.

10. At Saint Luke's, Christoph Gnadinger, M.D., examined Claimant's right hand and diagnosed a "3 cm S-shaped laceration across the dorsum of the hand. Wound exploration reveals an oblique laceration to the extensor tendon. No other deep structures are noted. The extensor tendon laceration is incomplete. It is approximately 50-75% lacerated." Ex. D:3. Dr. Gnadinger cleaned the wound, closed with it with stitches, and administered antibiotics. He then referred Claimant to an orthopedic surgeon Dominic Gross, M.D., for surgical evaluation. *Id*. at 4.

11. Dr. Gross first examined Claimant on March 9, 2015. Ex. E:2. He performed an extensor tendon surgical repair on her right hand on March 10, 2015. *Id*. at 4. At a follow-up appointment on March 12, 2015, Dr. Gross placed Claimant's right hand in a short arm cast and released her to light duty work with temporary restrictions of no use of the right hand. *Id*. at 6-7.

12. At her two-week follow-up appointment on March 25, 2015, Dr. Gross noted that Claimant's wound looked good, placed her in a short arm cast for another two weeks, and continued her light duty/no right hand use restrictions. Ex. E:8-9.

13. On April 15, 2015, Dr. Gross continued Claimant's light duty work release but modified her restrictions to limit lifting to five pounds with the right upper extremity and no gripping, twisting, pinching or forceful turning with the right hand. *Id*. at 10. Claimant began occupational therapy with Nancy McCullough, O.T./C.H.T., that same day; Ms. McCullough fitted Claimant for a custom hand-based orthosis (orthotic brace) at that time. Ex. H:1-2.

14. On April 30, 2015, Dr. Gross continued Claimant's previous restrictions but indicated that she could return to modified and light duty work. Ex. E:11.

15. Claimant continued to make progress in therapy through May 2015. Ex. H:3-33. She demonstrated improved fist formation and strength, pinch strength, gains in range of motion, and diligence in her home exercises. *Id*. at 33. On May 21, 2015, Ms. McCullough noted that Claimant's right index finger was stiff and painful and that she felt "tightness in #2 and 3 digits during fist formation." *Id*. at 33-34.

16. On May 21, 2015, Dr. Gross noted that Claimant was "getting better every day," had returned to work under his restrictions, was almost able to make a full fist, and had mild edema throughout all the MP joints. He continued Claimant's modified light duty return to work, continued her restrictions of no gripping, twisting, pinching, or forceful turning with the right hand, and increased her lifting capacity to ten pounds with the right upper extremity. Ex. E:12-13.

17. On June 2, 2015, Ms. McCullough noted that Claimant's right #3 digit continued to trigger. She provided Claimant with a digital orthosis to prevent triggering. Ex. H:40.

18. On June 11, 2015, Mark Clawson, M.D. evaluated Claimant on referral from Dr. Gross. He noted that Claimant's right middle finger A1 pulley was swollen, but not tender, with active trigger and locking. He diagnosed right middle finger trigger secondary to post repair right middle finger extensor tendon laceration and recommended a right middle finger trigger release. Pending Surety's approval, he recommended right middle finger trigger release outpatient surgery. Dr. Clawson released Claimant to work with the restriction that she must be allowed to wear a splint or cast. Ex. F:1.

19. On June 16, 2015, Ms. McCullough noted that Claimant's right #3 digit continued to trigger and that "#4 is triggering, too." Ex. H:40.

20. On June 18, 2015, Ms. McCullough recorded that Claimant's hand continued to feel stiff, with the #4 finger triggering during functional activities. She noted as follows: "Ring finger continues to trigger -- we have been using buddy strap for middle and ring digits (while middle finger is also wearing a digital orthosis to hold joint at 25 deg flexion)." *Id*. at 42. Ms. McCullough's June 24, 2015 note anticipated the right middle finger trigger release with Dr. Clawson. *Id*. at 43.

21. On June 26, 2015, Dr. Clawson performed an outpatient right middle finger trigger release. Claimant received a temporary no-work restriction. Ex. F:4-6.

22. On July 16, 2015, Claimant followed-up with Dr. Clawson. He noted continued hand pain, extensor forearm discomfort with use, ulnar-sided wrist discomfort, and right ring finger triggering and locking. He recorded that the "right ring finger has a swollen tendon A1 pulley with an active trigger." Dr. Clawson recommended conservative treatment, gave Claimant a right ring finger trigger corticosteroid injection, and recommended that she begin nighttime PIP joint splinting. *Id*. at 9-10.

23. On July 23, 2015, Ms. McCullough recorded that Claimant "has not been heard from since just prior to her trigger finger release surgery in June 2015 and is being discharged due to no contact." Ex. H:47.

24. On August 3, 2015 Dr. Clawson noted that Claimant's right middle finger range of motion was near full without triggering. He prescribed Prednisone for her right ring finger, which had continued swelling with mild active triggering. He continued her no work restriction. Ex. F:11-12.

25. On August 17, 2015, Dr. Clawson recommended a right ring finger trigger release. Ex. F:14.

26. Concerned whether the proposed surgery was causally related to the extensor tendon injury, Surety's claims adjuster contacted Dr. Clawson on August 30, 2015 with the following inquiry: "We have received your request for the trigger finger release. At this time we need some clarification on the connection between the laceration of the back of her hand and the trigger finger release." Ex. S:17. Dr. Clawson responded by telephone on September 4, 2015. Surety's adjusting notes reflect that he connected the original injury to both Claimant's middle and ring fingers flexor tendon triggering, as follows:

> "Dr. Clawson (208) 342-4263 - called me about this case - he indicated that the ring trigger finger is more likely than not related to all the swelling she had from the middle finger. He states that when the IW [injured worker] came over to him from Dr. Gross, she could not move her fingers very well. As a result, this is what caused the triggering on the ring finger. The IW had full relief from the middle finger trigger release. He will be doing this in the office. I did approve. They will contact the IW."

Id. at 18.

27. Having received approval from Surety, Dr. Clawson performed Claimant's outpatient right ring finger trigger release on September 10, 2015. Ex. G:1-2. Claimant presented

without active triggering in either the middle or ring fingers at follow-up appointments on September 17, October 1, October 22, and November 17, 2015. At the November 17, 2015 visit, however, Claimant's right index finger was still swollen with a tender A1 pulley. Dr. Clawson injected a corticosteroid into her right index finger to reduce swelling. Ex. G:4-9.

28. On October 29, 2015, Claimant commenced physical therapy with Stacy Harmon, O.T., at St. Alphonsus Rehabilitation Services ("STARS"). Ms. Harmon noted Claimant had diagnoses of lateral epicondylitis and right middle and ring finger trigger release procedures. The plan of care was for Claimant to receive therapy twice weekly for four weeks. Ex. I:5-8.

29. Occupational therapists notes during sessions on November 2, 5, 9, and 12, 2015 indicated that Claimant's complaints of a burning sensation in her right hand palm were constant, worsened during the night, and her symptoms alleviated with a compression glove. *Id*. at 15-26.

30. On November 16, 2015, Claimant reported to Ms. Harmon that she had asked a supervisor if she could switch stations due to pain, which had transitioned away from the previous burning sensation. She also noted that Claimant "[r]eports that she is unable to open a bottle with her (R) hand, has to use the (L) hand which is starting to hurt more from being used so much." She also recorded that Claimant's digits were visibly swollen. *Id*. at 27-29.

31. On November 17, 2015, Dr. Clawson noted that Claimant's right index A1 pulley was swollen and tender without an active trigger. He administered a corticosteroid injection into the flexor tendon sheath of her right index finger. Ex. G:9.

32. Claimant continued occupational therapy into December 2015 with self-reported pain levels of zero to seven out of ten in her right hand and digits. She also reported limitations in performing activities of daily living with her right hand, such as washing dishes, doing laundry, and house cleaning. Ex. I:34-51. On December 10, 2015, Occupational Therapist Charee

VanOrder recorded that Claimant "has made minimal to no gains toward her therapy goals of increased range of motion, decreased pain and increased tolerance for work activities." Claimant continued to report increased pain on working days and less on her days off. Ex. I:54.

33. On December 15, 2015, Dr. Clawson recorded that Claimant's right middle and ring fingers had no triggering and full range of motion, while her right index finger A1 pulley was "mildly swollen and tender with a mild active trigger." He noted that he would refer Claimant to a physiatrist for ongoing management. Ex. G:10.

34. On January 26, 2016, Dr. Clawson recorded Claimant's reports of right index and small finger soreness and stiffness without triggering. On exam, he observed that the "right index and small finger A1 pulleys are swollen and tender. There are not [sic] active triggers." He opined that Claimant was medically stable, she could use her hand normally, and she had sustained no permanent partial impairment as a consequence of the right middle and ring finger problems. *Id*. at 12.

35. Rodde Cox, M.D., a specialist in physical medicine and rehabilitation, evaluated Claimant on January 27, 2016. His initial impression was that Claimant did not have evidence of active ongoing triggering, with some findings suggestive of possible carpal tunnel syndrome, which he recommended exploring with electrodiagnostic testing. Dr. Cox included in his history that Claimant was noted to have some triggering in her right index finger. Ex. K:7-8.

36. Dr. Cox performed an electrodiagnostic evaluation on February 12, 2016. Results showed no evidence of carpal tunnel in Claimant's right upper extremity. Dr. Cox then opined that he had nothing to offer Claimant beyond a recommendation to use her right upper extremity more frequently, pushing through pain, to recondition it. He reiterated that Claimant did not

appear to have any active triggering. Ex. K:9-11. He reinforced this opinion during his deposition, as follows:

> Q: (by Mr. Wigle) So the reference there was to something that you would have read in a chart note -- yes, it says "She was noted to have some triggering in her right index finger." Is it safe to assume that's something you read in her history?
>
> A: Yes.
>
> Q: But you didn't see it clinically?
>
> A: Correct.

Cox Dep., 13:23-14:6.

37. Dr. Cox opined that Claimant had reached MMI and rated her impairment as an 8% digit impairment for the tendon laceration, which translated into a 1% upper extremity or whole person impairment. Ex. K:9. No apportionment for any preexisting condition was indicated. *Id*. at 10. Dr. Cox indicated that this was the highest impairment that could he could give for this condition under the 6th edition of the AMA *Guides to the Evaluation of Permanent Impairment* (hereinafter, *Guides*). Cox Dep., 17:1-3.

38. Dr. Cox also rated Claimant's trigger finger conditions at 0% impairment due to lack of active or ongoing triggering. Ex. K:9. If Claimant had demonstrated active triggering on exam, he would have followed the process in the *Guides* for rating it accordingly. *Id*. at 18:15-17.

39. Dr. Clawson did not refer Claimant for further occupational therapy, thus Ms. Harmon discharged Claimant from STARS on February 15, 2016. Ms. Harmon noted that Claimant continued to complain of pain and difficulties with her right hand in lifting at work and performing activities of daily living at home. Claimant had made minimal to no gains during therapy. Ex. I:58-60.

40. Claimant's attorney arranged for an independent medical exam with Mark Williams, D.O., who issued a report on March 9, 2016. Dr. Williams is a primary care sports medicine physician. He examined Claimant, took her personal history, and reviewed records and radiographs from St. Luke's ER and Occupational Therapy, Dr. Gross, Dr. Clawson, and Dr. Cox. His impression was as follows: "Work-related injury to the extensor tendon of the middle finger right hand followed by work-related trigger fingers to middle, ring and index fingers." He opined that Claimant's right middle extensor tendon and right middle and ring trigger fingers had reached MMI. He observed that while Claimant did not have active triggering in her middle and ring fingers, she still had pain. He opined that she was entitled to a 6% digit impairment for the tendon laceration and her middle and ring fingers were each entitled to a 4% digit impairment. He combined these into a 5% upper extremity impairment, which he opined was a 3% whole person impairment. Ex. L:2-5.

41. Dr. Williams noted a "Palmar mass that moves with index finger consistent with trigger finger," but that it did not have significant triggering. *Id*. at 4. He opined that Claimant's index finger was only at MMI if she chose not to proceed with a trigger finger release procedure. *Id*. at 5.

42. Dr. Williams further opined that Claimant may have complex regional pain syndrome ("CRPS"), but noted that two physicians and a year of documented symptoms were required for such diagnosis. *Id*. He deferred temporary restrictions to Claimant's treating physicians, but indicated that she may benefit from wrist immobilization during work hours and exercises while at home. *Id*.

43. On April 8, 2016, in responding to an inquiry from Defendants, Dr. Cox stated that he disagreed with the report of Dr. Williams. His conclusions that Claimant was at MMI and that her condition warranted no additional treatment remained unchanged. Ex. 5:10.[2]

44. On May 11, 2016, Claimant presented to Daryn Barnes, PA-C, at Primary Health for continued pain in her right hand. Ex. J:46. Mr. Barnes requested X-rays of the hand, which showed negative results for soft tissue swelling, no significant arthropathy and no acute abnormality. Ex. J:53.

45. Mr. Barnes referred Claimant to Mountain Land Rehabilitation for physical therapy. *Id*. at 47. Claimant first visited with Kyle Hadley, P.T., D.P.T., on May 31, 2016 for right hand pain, stiffness, muscle wasting and atrophy. She reported to Mr. Hadley that she was "returning to care because her hand feels numb and she is unable to grip things." Ex. Q:2. Mr. Hadley anticipated six weeks of biweekly therapy with home exercises. The last date of therapy in the record was July 29, 2016; at that time Claimant was still reporting problematic function of her right hand due to pain with weakness and stated that she was requesting her doctor to refer her to a medical hand specialist. *Id*. at 20.

46. On June 1, 2016, Claimant returned to Mr. Barnes for follow-up. She had attended one session of physical therapy but believed that it was not helping. Claimant reported continued pain and decreased strength in her right hand. Mr. Barnes diagnosed right hand sprain and recommended continued physical therapy. Ex. J:54-55.

47. On August 18, 2016, Claimant first visited T. Clark Robinson, M.D., for right hand pain and right index triggering. Claimant reported to Dr. Robinson that all three fingers

[2] While it does not appear explicitly in the record because the parties omitted the relevant documentation, it appears from context that Defendants ceased covering medical benefits after Dr. Cox reinforced his opinion that Claimant was at MMI and required no further treatment on April 8, 2016. Thereafter, Claimant paid for her right upper extremity medical treatment through her employer-provided health insurance.

began triggering at the same time, and that while she had the ring and middle fingers fixed, her surgeon told her that the index finger would resolve on its own. Dr. Robinson noted that conservative treatment via cortisone injections had not resolved Claimant's index finger triggering. Dr. Robinson recommended a right index trigger finger release, which he performed on September 6, 2016. He referred Claimant to physical therapy after a follow-up appointment on September 19, 2016. He opined on November 3, 2016 that Claimant may be developing bilateral carpal tunnel syndrome and recommended a nerve conduction study from Lawrence Green. Ex. M:1-7.

48. Claimant attended therapy at STARS on September 20, 28, October 6, 13, and 20, 2016. Ms. Harmon recorded that Claimant returned to work September 21, 2016. Noting that Dr. Robinson wanted to have additional electrodiagnostic studies performed, Ms. Harmon discharged Claimant from therapy on November 27, 2016. Ex. I:77-92.

49. Dr. Williams performed an Independent Medical Examination Re-evaluation on January 27, 2017 upon request of Claimant's attorney, who attended the exam. Ex. O:1-6. Dr. Williams diagnosed the following conditions: extensor tendon injury with subsequent repair; trigger fingers at middle, ring, and index fingers with surgical repair; overuse injury of the right wrist with subsequent decreased range of motion and chronic pain; medial epicondylitis of the right elbow; and right shoulder pain with impingement syndrome/tendinitis. He opined that Claimant's condition was medically stable and withdrew his earlier opinion regarding the possibility of CRPS because current exams from hand specialists did not support that diagnosis. *Id*. at 5.

50. Under the *Guides*, Dr. Williams rated Claimant's "previous impairment for the tendon laceration and the 2 digits trigger fingers was 5% upper extremity impairment and 3%

whole person impairment. With this we would add the index trigger finger, which is 4% digit impairment, 2% hand, and 1% whole person. This would give her a total of 6% upper extremity impairment for the hand." Ex. O:5.[3]

51. **Claimant's Condition at Hearing**. Claimant's counsel stipulated at hearing that she was at medical stability from her hand laceration and from all three trigger finger release procedures. Tr., 12:22-23. She was not seeking additional active medical treatment beyond palliative care. *Id*. at 12:24-13:1.

52. After her condition stabilized following her final surgery, the clicking went away in Claimant's fingers that she had experienced when they triggered, but they remained stiff, swollen, and sometimes had numbness and tingling. *Id*. at 79:15-20. She could not make a fist with her right hand because the index and middle finger would not squeeze into her palm. *Id*. at 80:13-20. When she awoke at night feeling pain, Claimant would warm a towel up in the microwave to relax her right hand; she also used shoulder patches on her wrist and shoulder for pain. *Id*. at 81:5-19.

53. Claimant believed that her right wrist and fingers were "still the same," meaning that she still experienced daily pain and discomfort in them. *Id*. at 88:12-13. Claimant struggled with activities of daily living at home, such as cutting food, washing dishes, doing laundry, and cleaning the home that she shares with her boyfriend. Her boyfriend, Eduardo Lopez, assisted her with these tasks. *Id*. at 88:17-18; 109:2-111:3. Mr. Lopez confirmed that he had to help her with home tasks that she used to be able to do alone prior to the industrial accident. *Id*. at 116:19-120:9.

[3] Dr. Williams also rated Claimant's elbow and shoulder, however those conditions are not at issue here.

54. Aside from the various periods of recovery from her surgeries for which her physicians took her off work, Claimant continued in her same, full-time position as an operator II for Employer through the date of hearing. Tr., 77:12-19; 95:9-23; 105:16-19. At the time of hearing, her rate of pay with Employer had increased to $17.85 per hour from the slightly less than $17.00 per hour she had earned at the time of the industrial accident. *Id*. at 97:13-22. She also occasionally earned overtime pay. *Id*. at 97:23-24. Claimant performed all of the same duties as operator II that she performed prior to the industrial accident. Her duties included any or all of the various jobs performed on the assembly line. She sought help for tasks like palletizing or shoveling that she felt taxed her ability, but if no other workers were available to assist her, she still performed those tasks. *Id*. at 111:4-112:24.

55. **Credibility**. The parties do not dispute Claimant's credibility, with the exception that Defendants observe that Claimant appeared to be overly focused on her pain, "but objectively, she has had a good recovery and has been able to successfully return to work." Defendants' Responsive Brief at 14. Nevertheless, they acknowledge that Claimant "suffered a significant laceration to her hand." *Id*.

56. At hearing, Claimant was a generally credible witness, however her answers were sometimes vague. Claimant often had to be prompted to answer questions correctly. *See, e.g.*, Tr., 93:23-94:17 (Claimant admitted that physicians told her to use her right upper extremity more after prompting). Claimant's occasional testimonial issues may have been due, at least in part, to the fact that English was a second language for her, which she spoke well but with an accent. Additionally, Claimant had a sad expression, winced frequently and shifted during the hearing, giving the appearance of being in pain.

57. Medical records from both physicians and physical therapists noted a disparity between Claimant's objective symptoms and subjective complaints of pain and limitations. *See, e.g.*. Ex. G:12 (Dr. Clawson); Ex. H:27 (OT McCullough). Physical therapists noted Claimant's guarding behaviors during sessions. *See, e.g.*, Ex. Q:17 (PT Hoyle). Claimant continued to wear a protective glove or brace on her right hand most days after her final surgery through the date of hearing. Tr., 65:1-5. She did so despite recommendations of treating physicians to use it less, especially for simple activities of daily living, and to use her right upper extremity more to avoid disuse atrophy. *See*, *e.g.*, Cox. Dep., 12:5-13:8.

58. Although Claimant did not demonstrate malingering, as noted above she appeared at hearing and in the record to be afraid of pain associated with recovery and normal use of her right hand. Nevertheless, Claimant's complaint of ongoing pain in her right hand was credible. She continued to work full time with occasional overtime at her time of injury position, which belies any potential concerns regarding secondary gain.

59. Mr. Lopez described Claimant's condition at home. His account mirrors Claimant's perceived limitations regarding activities of daily living. Mr. Lopez recounted Claimant's periodic crying episodes and depression related to the condition of her right hand. Tr., 121:14-23. This description was consistent with Claimant's presentation at hearing. His testimony was that of a concerned partner. Mr. Lopez testified credibly.

60. Due to Claimant's heightened awareness of her pain and the difficulty with which answers were extracted from her during the hearing, the medical records in evidence are afforded more weight than her testimony to the extent that they conflict.

DISCUSSION AND FURTHER FINDINGS

61. The provisions of the Idaho Workers' Compensation Law should be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990) (retraining benefits statute liberally construed to permit payment of travel-related retraining expenses rather than requiring claimant to pay them from his subsistence-level temporary disability benefits). Facts, however, need not be construed liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992) (substantial evidence supported Commission's finding that the industrial accidents did not cause claimant's breathing problems, where medical evidence was conflicting).

62. **Causation.** Claimant has the burden of proving that the condition for which compensation is sought is causally related to an industrial accident. *Callantine v Blue Ribbon Supply*, 103 Idaho 734, 734-735, 653 P.2d 455, 455-456 (1982) (alleged industrial accidents neither caused nor aggravated claimant's thoracic outlet syndrome). There must be evidence of a medical opinion, whether by physician's testimony or written medical record, supporting the claim for compensation to a reasonable degree of medical probability. No special formula is necessary when medical opinion evidence plainly and unequivocally conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *Paulson v. Idaho Forest Industries, Inc.*, 99 Idaho 896, 901 591 P.2d 143, 148 (1979) (physician's testimony supported finding that industrial accidents caused Claimant's hysterical neurosis). A claimant is required to establish a probable, not merely a possible, causal connection between an injury and a claimed condition. *Dean v. Dravo Corporation*, 95 Idaho 558, 561, 511 P.2d 1334, 1337 (1973) (physician's testimony raised an ambiguity whether there was a possibility rather than a probability of a causal connection, requiring remand for rehearing).

63. The parties agree that Defendants are liable for the tendon laceration suffered by Claimant from her industrial accident on March 7, 2015. Defendants contend that they were probably not liable for the right middle and ring trigger finger conditions, even though they originally authorized care for the same based on Dr. Clawson's causation opinion. The parties further agree that Claimant's right hand is medically stable. Claimant asserts that Defendants should have paid for the medical treatment she received for her right index trigger finger, including the trigger release surgery by Dr. Robinson and associated care, including physical therapy. Defendants aver that all benefits due to Claimant have already been paid; they assert that Claimant's index finger triggering was not casually related to the subject accident because its occurrence was too distant from the industrial accident.

64. As noted, Surety originally authorized the middle and ring finger trigger releases on the strength of Dr. Clawson's opinion that these conditions were related to the extensor tendon laceration, communicated to Surety on September 4, 2015. Ex. S:18. It is unclear whether Dr. Clawson would hold the same opinion about the index finger triggering, the existence of which was first suggested by his note of December 15, 2015, entered approximately three months after his September 4, 2015 response to Surety. Ex. G:10.[4]

65. Dr. Williams observed that trigger fingers are usually regarded as a type of overuse injury. He proposed that because of Claimant's extensor tendon surgery, she changed the way she used her hand, therefore creating the conditions that caused development of trigger fingers. He explained at his deposition as follows:

[4] While Dr. Clawson first observed triggering of the right index finger on December 15, 2015, PT McCullough previously observed that Claimant's right index finger was painful and stiff on May 21, 2015. Ex. H:32-33. There were other instances of providers observing that Claimant's right index finger was painful and swollen, without triggering, prior to the triggering diagnosis. *See*, *e.g.*, Ex. G:9 (Dr. Clawson noted on November 17, 2015 that Claimant's right index finger pulley was swollen and tender, albeit without triggering.)

> Q: [By Mr. Gunnell]: Were you able to form an opinion as to the cause of that condition?
>
> A: Well in most trigger fingers -- and in her case, I feel, -- the cause is due to overuse-type injuries, repetitive grabbing, squeezing, any type of activity. With her, specifically, the type of work she does requires that type of motion.
>
> Q: Why was she more susceptible to developing a right index trigger finger?
>
> A: She had already had trigger fingers at the ring finger and the middle finger and had had a surgery, an injury, to the back of her hand. So her functional activity with her hand required her to squeeze more with the index finger and thumb, rather than the whole hand, while she was going through her mechanisms of work and the requirements there; thus, over time, it produced the nodule and the triggering.
>
> …
>
> Q: [By Mr. Gunnell]: Do you have an opinion about whether it was necessarily caused by her accident at work in March of 2015?
>
> A: As mentioned in my independent medical exam, I feel that the reason she developed the index finger triggering, just like she had developed the ring finger triggering and middle finger triggering, is because of the original injury. The function of her hand changed in her trying to provide the required movements and activities at work -- gripping, grasping, and moving objects. As she made those adjustments, it just kind of worked up the line and got each of those fingers; and it caused trigger finger.

Williams Dep., 6:1-18; 14:2-15.

66. Dr. Cox, also, testified that the incidence of trigger finger is probably higher in people who use their hands repetitively, although the condition can emerge insidiously as well. Cox Dep., 9:10-20. Nevertheless, he did not agree that a laceration of the extensor tendon on the back of Claimant's right hand bore any relationship to a dysfunction of the flexor tendons on the palmar side of Claimant's hand. He explained in his deposition as follows:

> Q: [By Mr. Wigle]: Hypothetically speaking, if she went on to have the need for a right-index-finger surgery to release the triggering of the index finger, how would that be related to the cut on the back of her hand that was repaired by Dr. Gross, or would it be?

A: I'm not sure how any of her trigger fingers were related to the cut on the back of her hand. I'm not sure how they would have been related to that.
…
Q: [By Mr. Wigle]: I had some questions about it for you. In particular, he [Dr. Williams] relates the trigger-finger issues to the initial industrial accident which led to the tendon repair on the back of her hand. And I'm assuming, from your testimony, that we've heard to this point that you don't agree with that casual connection that he's drawing?

A: I'm not sure how you would develop the trigger fingers from that extensor tendon laceration to the back of the hand. I'm not sure how that would be causally related.
…
Q:[By Mr. Gunnell]: So isn't it possible, Doctor, that somebody can receive surgery on the back of the hand to an extensor tendon and be immobilized for several weeks in a cast, and get out of cast and start using the fingers and developed injuries in the fingers surrounding the original laceration; isn't that possible, Doctor?

A: Boy, that seems like a stretch to me.

Q: Why is that?

A: Now, maybe in the opposite hand while she was immobilized. If her right hand was immobilized, you know, maybe you'd see something in the opposite hand. But you're going from a position where you're immobilizing someone. You're doing basically the exact opposite of repetitive overuse. And she would have really been compensating with her finger flexors for her extensor tendon laceration, so I don't think I could make that connection.

Q: If she were babying the middle finger, wouldn't she be overcompensating with her other fingers?

A: Well, the way the tendons work, you know, basically, these tendons all kind of move together. So if she's moving, her fingers are all moving together, so I don't think she would be overcompensating with that.

Cox Dep., 14:7-16; 20:18-21:3; 25:16-26:14.

67. Thus, Dr. Cox did not accept the theory that "babying" the middle finger could result in the ring and index finger being subjected to abnormal stresses sufficient to cause triggering of the flexor tendons.

68. Dr. Cox did not accept that an injury to the back of Claimant's hand could impact how she grasped objects or otherwise used her right hand following the extensor tendon repair.

He did not appear to recognize that Claimant had well-documented swelling following the extensor tendon repair, which was still evident when Dr. Clawson first examined her. The swelling of Claimant's hand, which was still ongoing at the time of Dr. Williams' exam, makes it easier to understand how the extensor tendon injury could impact the way Claimant grasped things or otherwise used her hand at home or at work. In this regard, Dr. Clawson's thought process, recorded by Surety in the September 4, 2015 adjusting note, is particularly persuasive. Dr. Clawson found that the triggering of Claimant's right middle and ring fingers was related to the swelling she had endured since the extensor tendon surgery. It is unclear whether Dr. Clawson was of the view that the swelling is important because it subjected the palm of Claimant's hand to different stresses when gripping things, or because the swelling alone did something to make Claimant more susceptible to flexor tendon triggering. The fact that Claimant's right hand swelling persisted for many months post-surgery supports the conclusions reached by both Dr. Clawson and Dr. Williams that her finger conditions were related to the industrial accident. Moreover, Dr. Cox's observation that the fingers work in unison when gripping, and that it is very difficult to consciously "baby" one finger when attempting to grip an object, is not supportable.

69. Based on the foregoing, Claimant has met her burden of establishing a causal relationship between the extensor tendon injury sustained in the industrial accident and her middle, ring, and index finger flexor tendon triggering.

70. **Medical Benefits**. Idaho Code § 72-432(1) provides in pertinent part as follows: "The employer shall provide for an injured employee such reasonable … medicines … as may be reasonably required by the employee's physician … immediately after an injury … and for a reasonable time thereafter." Claimant bears the burden of proving that medical expenses are due

to an industrial injury and must produce medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State of Idaho, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995) (medical testimony failed to demonstrate an industrial cause of damage to claimant's knee). A physician, not the Commission, must determine whether medical treatment is required; the Commission's role is to determine whether, based upon the totality of the circumstances, the medical treatment determined required by a physician is reasonable. *Chavez v. Stokes*, 158 Idaho 793, 798, 353 P.3d 414, 419 (2015) (bill for medical helicopter transport of claimant following his finger injury was reasonable medical care). Reasonable medical treatment may include palliative measures even though they are not curative. *Poss v. Meeker Machine Shop*, 109 Idaho 920, 925, 712 P.2d 621, 624 (1985) (denial of pain medication and additional physical therapy was supported by the evidence). Reasonable medical treatment benefits may continue for life; there is no statute of limitation on the duration of medical benefits under Idaho Workers' Compensation Law. *See*, Idaho Code § 72-706(5) (right to medical benefits not affected by statute of limitations).

71. Defendants accepted liability for treatment of Claimant's laceration and middle and ring trigger finger conditions. They denied liability for Claimant's right index trigger finger, for which Claimant underwent an outpatient surgical release with Dr. Robinson on September 6, 2016. Dr. Robinson also ordered and Claimant participated in therapy after the procedure. Claimant seeks payment of these medical expenses.

72. Claimant has satisfied her burden of causally linking her right index trigger finger condition to the industrial accident of March 7, 2015. Based upon the totality of the circumstances, treatment for that condition was reasonable. She is therefore entitled to

reimbursement for her index trigger finger release procedure of September 6, 2016 by Dr. Robinson, related physical therapy, and palliative care.

73. In *Neel v. Western Construction, Inc.*, 147 Idaho 146, 206 P.3d 852 (2009), the Idaho Supreme Court held in pertinent part as follows: "Any medical bills incurred during the time from when the accident occurred to the time when the claim was deemed compensable fall outside the workers' compensation regulatory scheme and may not be reviewed for reasonableness and must be paid in full by the surety." *Neel*, 147 Idaho 149, 206 P.3d 855. Treatment for Claimant's right index finger, including the trigger finger release by Dr. Robinson, related physical therapy, and palliative care, for which Surety denied payment, is thus reimbursable at the full invoiced rate.

74. **Impairment.** Permanent impairment is defined in statute as "any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or nonprogressive at the time of evaluation." Idaho Code § 72-422. "'Evaluation (rating) of permanent impairment' is a medical appraisal of the nature and extent of the injury or disease as it affects an injured employee's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, elevation, traveling, and nonspecialized activities of bodily members." Idaho Code § 72-424.

75. The Idaho Supreme Court has held that it is a "fundamental principle that the Industrial Commission, rather than the claimant's treating physician, is the fact-finder and ultimate evaluator of impairment. The physician, as an expert witness, may provide information helpful to the Commission." *Urry v. Walker and Fox Masonry Contractors*, 115 Idaho 750, 755-756, 769 P.2d 1122, 1127-1128 (1989) (Industrial Commission applied improper legal standard

in finding that claimant's impairment had not changed following subsequent injury). The Court has also held as follows: "A doctor should take complaints of pain into account when reaching an opinion regarding impairment. But his opinion on these matters in not binding upon the Commission." *Urry*, 115 Idaho at 756, 769 P.2d at 1128.

76. While his report reflects that he utilized the *Guides* in arriving at his rating, it is difficult, if not impossible, to follow the thought process of Dr. Williams, owing to the somewhat fragmented and ungrammatical nature of his reports. As Defendants have conjectured, Dr. Williams appears to have used marginally calibrated voice recognition software in preparing his report but did not edit it appropriately. It is clear that he arrived at a 1% UE (upper extremity) rating for each finger. It is less clear how he arrived at a 6% of the digit, 2% UE rating, for the extensor tendon injury. Finally, it is unclear what combining methodology Dr. Williams used to obtain his overall 6% UE rating for Claimant's right hand. Ex. L:5; Ex O:5.

77. Dr. Cox found that Claimant was entitled to an 8% digit impairment for the extensor tendon injury, which translates to a 1% UE impairment per table 15-2 of the *Guides*. Because Claimant exhibited no triggering of any of her fingers, Dr. Cox assigned no other impairment for these conditions post-surgery. Of course, Dr. Cox did not see Claimant following the index finger release, but, presumably, because Claimant demonstrated no triggering in that finger after recovery from surgery, he would not make an award for the index finger either. Therefore, Dr. Cox gave Claimant a total hand impairment rating of 1% UE. Ex. K:9-10.

78. In their post-hearing brief, Defendants asserted that Dr. Williams probably made two blunders in calculating Claimant's impairment. First, he failed to use, or improperly used, the combined values table found in the *Guides*, which are intended to be utilized when combining impairment ratings for different body parts. Next, Defendants argued that

Dr. Williams erroneously derived ratings for each of Claimant's flexor tendon injuries by application of the provisions of Table 15-12 of the *Guides*; allegedly, he applied the table for thumb injuries to Claimant's index, middle and ring fingers. Per Defendants, this results in an exaggerated rating for Claimant's ring finger triggering and extensor tendon laceration. Defendants' Response Brief at 12-14.

79. These criticisms of Dr. Williams' methodology may well be valid. Nevertheless, neither he nor Dr. Cox was examined about these issues post-hearing. While the criticisms raised by Defendants might be obvious to anyone familiar with the relevant sections of the *Guides*, the Commission is not free to *sua sponte* rely on a learned treatise such as the *Guides* to formulate its own opinions concerning the extent and degree of Claimant's injuries. *See, Mazzone v. Texas Roadhouse, Inc.*, 154 Idaho 750, 758, 302 P.3d 718, 726 (2013) (Referee improperly relied upon DSM-IV Manual in reaching a medical opinion regarding claimant's condition). Accepting Defendants' invitation to properly evaluate Claimant's impairment by reference to the *Guides* would lead the Commission down that prohibited path. Moreover, while the Commission is free to consider learned treatises that support an expert's testimony, such works must first be offered and introduced as evidence. See *Pomerinke v. Excel Trucking Transportation, Inc.*, 124 Idaho 301, 306, 859 P.2d 337, 342 (1993) (Commission did not err in citing the *Guides* in finding that medical panel took pain into account); *Hite v. Kulhenak Building Contractor*, 96 Idaho 70, 72, 524 P.2d 531, 533 (1974) (Commission did not err in relying on *Guides* to determine impairment, where they were properly entered into evidence). Although the *Guides* are well known to the Commission, they were not introduced into evidence in this proceeding.

80. Dr. Cox rated Claimant's extensor tendon injury as a Class 1 extensor tendon laceration with a default rating of 6% of the digit. He explained that this default rating may be

increased or decreased by considering three modifying factors: functional history, physical exam, and clinical studies. In Claimant's case, Dr. Cox increased the default rating to 8% of the digit because of Claimant's functional history and physical examination adjustments. Cox Dep., 15:19-17:16.

81. Dr. Cox's opinion on the issue of whether Claimant was entitled to an impairment rating for her flexor tendon triggering was entirely binary; if Claimant's fingers no longer triggered then she was not entitled to an impairment rating under the *Guides*. If her fingers continued to trigger, then she was entitled to impairment. His opinion did not account for Claimant's complaints of ongoing pain/discomfort in the affected digits, despite the fact that they no longer triggered. Dr. Cox appears to have placed Claimant in class zero of the *Guides* table, i.e., an individual with no residual findings simply because Claimant's fingers were no longer triggering. He did not entertain the possibility that Claimant should be placed in Class I for the same reason. Class I patients are those with residual symptomatic trigger finger with or without surgery. It includes those with persistent triggering with normal motion. Since Claimant had no findings consistent with this classification, she was not entitled to be placed in Class I, which would have entitled her to a small impairment rating as endorsed by Dr. Williams.

82. Dr. Williams was, of course, aware that Claimant was no longer triggering in either her index, ring, or middle finger. Nevertheless, he thought it important to take into account Claimant's reported functional difficulties following the release surgeries, and for this reason, gave the smallest possible impairment rating for each finger. While his technical adherence to the *Guides* had merit, nevertheless Dr. Cox failed to take into account some of the real consequences of Claimant's injury, i.e., her persistent pain/discomfort. Dr. Williams' assessment that Claimant was entitled to a small impairment rating for each of her fingers was based not on

the presence of triggering, but rather, on Claimant's complaints of residual discomfort and swelling in the fingers of her right hand. Based upon the totality of the circumstances, this assessment was valid and is entitled to more weight than Dr. Cox's conclusion that Claimant's fingers warranted no impairment because she had received trigger release surgery repairing those conditions. Dr. Cox, however, correctly assessed Claimant's extensor tendon laceration at 1% upper extremity.

83. Based on credible evidence of ongoing pain and dysfunction, Claimant is entitled to a 3% upper extremity rating for the right hand, to include the extensor tendon injury and the index, middle, and ring flexor tendon injuries.

CONCLUSIONS OF LAW

1. Claimant has proven that the industrial accident of March 7, 2015, caused her right index trigger finger in the same manner that it caused her right middle and ring finger triggering conditions.

2. Claimant has proven her entitlement to the payment of her medical expenses incurred in relation to her right index trigger finger condition, including the September 6, 2016 surgical procedure by Dr. Robinson and related physical therapy and palliative care. Pursuant to *Neel*, 147 Idaho at 149, 206 P.3d at 855, these medical expenses shall be reimbursed at 100% of the invoiced amounts, to the extent that Defendants did not pay them prior to this decision.

3. Claimant is entitled to 3% UE impairment for her right hand. Defendants are entitled to credit for impairment paid to date.

4. Claimant has failed to prove entitlement to benefits for her right elbow and right shoulder.

5. Claimant has failed to prove that she suffered any partial disability over and above impairment.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this _27th___ day of March, 2018.

INDUSTRIAL COMMISSION

_/s/_____
John C. Hummel, Referee

Attest:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _3rd___ day of _April_____, 2018, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following persons:

JON BRENT GUNNELL
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W SCOTT WIGLE
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PO BOX 1007
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sjw

_/s/ _____

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARBELLA GARCIA, Claimant, v. SORRENTO LACTALIS, INC., Employer, and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, Surety, Defendants.	**IC 2015-006889** **ORDER** Filed April 3, 2018

Pursuant to Idaho Code § 72-717, Referee John C. Hummel submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has proven that the industrial accident of March 7, 2015, caused her right index trigger finger in the same manner that it caused her right middle and ring finger triggering conditions.

2. Claimant has proven her entitlement to the payment of her medical expenses incurred in relation to her right index trigger finger condition, including the September 6, 2016

surgical procedure by Dr. Robinson and related physical therapy and palliative care. Pursuant to *Neel*, 147 Idaho at 149, 206 P.3d at 855, these medical expenses shall be reimbursed at 100% of the invoiced amounts, to the extent that Defendants did not pay them prior to this decision.

3. Claimant is entitled to 3% UE impairment for her right hand. Defendants are entitled to credit for impairment paid to date.

4. Claimant has failed to prove entitlement to benefits for her right elbow and right shoulder.

5. Claimant has failed to prove that she suffered any partial disability over and above impairment.

6. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this _3rd_____ day of ____April_____, 2018.

INDUSTRIAL COMMISSION

__/s/_____
Thomas E. Limbaugh, Chairman

__/s/_____
Thomas P. Baskin, Commissioner

__/s/_____
Aaron White, Commissioner

ATTEST:

__/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _3rd__ day of ____April_____, 2018, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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