

Hon. Thomas S. Zilly

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

COLIN MAYCOCK, as a member of Local 1849, as President of Local 1849, as a member of the Executive Board of Council 2, Washington State Council of County & City Employees, and as a member of the American Federation of State, County & Municipal Employees, AFL-CIO; LOCAL 1849, an affiliate of Council 2, Washington State Council of County & City Employees, and a labor union operating in the State of Washington; JAEL KOMAC, as a member of Local 114, as President of Local 114, and as a member of the American Federation of State, County, & Municipal Employees, AFL-CIO; and, LOCAL 114, an affiliate of Council 2, Washington State Council of County & City Employees, and a labor union operating in the State of Washington;

Plaintiffs,

v.

CHRISTOPHER DUGOVICH, President and Executive Director of Council 2, Washington State Council of County & City Municipal Employees; COUNCIL 2, WASHINGTON STATE COUNCIL OF COUNTY & CITY EMPLOYEES, a legal entity operating in the State of Washington; AMERICAN

NO. 2:19-cv-00562 SEA

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

**Note for Motion Calendar:
June 14, 2018**

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FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, AFL-CIO, a labor
union operating in the State of Washington,

Defendants.

Plaintiffs COLIN MAYCOCK, (“Maycock”); LOCAL 1849, (“Local 1849”); Jael Komac, (“Komac”); and, LOCAL 114, (“Local 114”); each in all of their respective capacities move the Court for an order for summary judgment under Rule 56, Federal Rules of Civil Procedure. In accordance to Local Civil Rule 7, this Motion is noted for consideration on June 14, 2018. Oral argument is not requested. This Motion is based on the Complaint, the Memorandum below, and the accompanying declarations and exhibits filed concurrently herewith.

I. INTRODUCTION

This dispute concerns the right of union members to obtain financial information about their union. Plaintiffs contend that they are entitled to certain financial information pursuant to Item No. 6 of the American Federation of State, County and Municipal Employee’s (“AFSCME”) Bill of Rights for Union Members, which provides:

“Members shall have the right to a full and clear accounting of all union funds at all levels.”

Plaintiffs have each made specific repeated requests for information concerning the financial activities of its governing regional affiliation, Defendant Council 2 Washington State Council of County & City Employees (“Council 2”). Council 2 refused to provide the financial information requested by Plaintiffs, a decision that was upheld by AFSCME’s full judicial panel. Because federal law requires unions to honor its obligations enumerated in its constitution, Plaintiffs pray for a declaration that they are entitled to the requested information and an order directing Defendants to

1 produce said information to Plaintiffs as well as for fees and costs pursuant to the common interest
2 doctrine.

3 II. FACTS

4 On June 21, 2018, Plaintiff Maycock sent a letter to President and Director of Council 2, Chris
5 Dugovich explaining that a constituent of his¹ had questioned him about Council 2's expenditures.
6 Maycock Decl., ¶1.3. Specifically, Maycock informed Dugovich:

7 Responding to a member's enquiry, I found myself scrolling through the Freedom
8 Foundation's 'Opt Out Today' website and came upon a report stating that your
9 [Dugovich's] compensation package in 2016 came to \$373,919. Initially I was
10 skeptical, given the source, however, also intrigued. I'm a researcher by nature, so I
11 backtracked through the U.S. Department of Labor and found some older LM2 files²
as well as the IRS 990 file cited by the Freedom Foundation. Given that these numbers
are submitted to the federal government I'm inclined to trust them. (Granted that if
anything, they are like [sic] to be low balled rather than artificially inflated.)

12 I did a little further digging and found a portal for further information. In 2017, the
13 Executive Director of Council 28 received a total compensation package of \$176,632.
The disparity between the two compensation packages is significant, particularly as
both would appear to be very similar jobs.

14 Article VIII, Section 3(c) of Council 2's Constitution states, "the executive board shall
15 authorize and approve all expenditures of the funds of the state council." Currently the
16 budget documents regularly presented to executive board members do not provide the
17 board members with sufficient information to make an informed decision. These
documents should clearly outline the total compensation of the members of the
executive board as well as the duties and compensation for senior employees whose
tasks are not identified in the Constitution.

18 Council 2 has approximately 30 staff. It is an organization whose sole purpose is to
19 provide services to its members. If your job duties are similar to those of other
20 AFSCME Council executives, the members deserve an explanation of your
compensation package of close to \$400,000 of the member's money and why your
remuneration is considerably large than anyone else in a similar position in AFSCME.
21 It is striking that Lee Saunders, President of the International claimed a compensation

22 ¹ Maycock is an elected member of the Executive Board of Council 2 which pursuant to Council
23 2's constitution is responsible for authorizing and approving all expenditures of Council 2's
funds.

24 ² A "LM-2" is federal form that unions file with the Office of Labor-Management Standards with
the U.S. Department of Labor that details certain financial expenditures and transactions.

of \$351,939 in 2015. Please be prepared to provide the executive board and the members an account and justification for what appears to be an unusual compensation package.

As an executive board member who is empowered by the Council 2 Constitution to exercise “supervisory authority over the acts and doings of all officers ...to the extent that it may be ascertained that the duties of those positions are being properly and faithfully performed.: Article VII, Section 3, (Functions of the executive board) (D), I am requesting the following information for each of the named individuals:

Chris Dugovich, Executive Director;

J. Pat Thompson, Deputy Director;

Audrey Eide, Legal Counsel;

Barbara Corcoran, Business Manager;

1. The gross wages paid in 2017;
2. The 2017 monthly employer medical contribution;
3. The 2017 annual employer-paid amount of H.R.A or H.S.A plans;
4. The 2017 annual value of employer-paid per diem;
5. The 2017 annual amount of employer-paid car allowance;
6. The 2017 annual amount of employer-paid pension contributions;
7. The 2017 annual amount of employer paid contributions to deferred comp plan
8. The 2017 annual amount of employer-paid contributions to 401-k (or equivalent) plan;
9. The 2017 annual amount of employer-paid post-retirement health plans,

In addition, I am requesting a list of all employees of Council 2 and their job titles.

Maycock Decl., Ex. 1.

Maycock received no written response to his request but was told that the information would not be provided by Council 2. Maycock Decl., ¶ 1.8. On August 8, 2018 pursuant Article X of the AFSCME Constitution, Maycock filed an internal appeal to have the denial reviewed (among other charges). Maycock Decl. ¶ 1.9, Ex. 4. The appeal was assigned to Judicial Panel Member Theodora McKenna to serve as the trial officer presiding over the appeal. A hearing was scheduled for November 13, 2018. Maycock Decl. ¶1.11. However, between the time that Maycock filed his appeal and before the hearing on his appeal and *in response* to his appeal, the Dugovich drafted and the

1 Executive Board purportedly approved a “Confidential Financial Information Policy” dated “Oct 5-6
2 2018”. Maycock Decl. ¶1.12, Ex. 5. In addition, at the October 5-6 Council 2 Executive Board
3 meeting, a motion was passed requesting that Maycock to step-down from his position on the
4 Executive Board and to ban Maycock and Local 1849 from attending the President’s Conference
5 scheduled for October 15, 2018. Maycock Decl. ¶1.12. The President’s Conference is an annual
6 convention that allows local officers opportunities for networking and training. Maycock Decl., ¶
7 1.13. Maycock then asked Dugovich whether he could attend the President’s Conference and on
8 October 11, 2018, Dugovich sent an email to Maycock confirming that he and members of Local 1849
9 were not allowed to attend or participate, and any attempts to do so would be met with a request for
10 them to leave. Maycock Decl. ¶1.13, Ex. 6.

11 A hearing on Maycock’s August 28, 2018 appeal was held on November 13, 2018.
12 Maycock Decl., ¶ 1.14. Then, on December 21, 2018, Plaintiffs Jael Komac and Local 114, caused to
13 be sent a substantially similar request for information as that requested by Maycock. Komac Decl. ¶
14 1.3, Ex. 1. On January 8, 2019, at a meeting of Local 114, the Staff Representative for Council 2, J.
15 Pat Thompson, explicitly rejected Local 114’s request for information. Komac Decl. ¶ 1.4. On
16 February 25, 2019, Komac and Local 114 asked Chairperson Abelson, Dugovich, and Maycock, to be
17 allowed to intervene in the Maycock appeal. Komac Decl. ¶1.5, Ex. 2. Chairperson Abelson denied
18 Komac’s and Local 114’s request to intervene. Komac Decl. ¶1.6, Ex. 6. Komac, on behalf of herself
19 and Local 114, requested authority for the denial of the request to intervene, but none was, or has since
20 been, provided. Id.

21 On January 4, 2019, Judicial Panel Member and Trial Officer McKenna issued her decision on
22 Maycock’s appeal. Maycock Decl. ¶1.15, Ex. 7. Maycock then appealed judicial panel member
23 McKenna’s decision to the AFSCME full judicial panel on February 1, 2019. Maycock Decl. ¶1.16,
24

Ex. 8. Judicial Panel Chairperson Abelson set the matter for hearing on March 26, 2019, in New York City. Maycock Decl. ¶1.17, Ex. 9. Through his counsel, Maycock requested to appear telephonically, but he was told that there was no precedent for allowing such participation, and that the hearing room amenities could not accommodate this request. Maycock Decl., ¶ 1.17. On April 1, 2019, - *without any explanation or analysis whatsoever* - the Full Judicial Panel unanimously upheld trial officer McKenna's decision. Maycock Decl. 1.18, Ex. 9.

On April 15, 2019, Maycock appealed the decision of the Full Judicial Panel to the International Convention that is scheduled to be held in the summer of 2020. Maycock Decl. ¶ 1.19. Plaintiffs filed the above-captioned action on April 16, 2019. Dkt. #2. Then, on May 10, 2019, President of AFSCME, Lee Saunders, directed the Full Judicial Panel to transform Maycock's appeal to the International Convention into a motion for reconsideration, writing as follows:

I am concerned that the decision of the Judicial Panel as it relates to the right of members to inspect certain financial information does not comport with my interpretation of the International Constitution or with earlier Judicial Panel precedent. I am therefore requesting that you treat the appeal to the Convention as a request for reconsideration of the Full Panel's decision regarding this issue.

Maycock Decl. ¶ 1.20, Ex. 10. Counsel for Maycock then wrote to counsel for AFSCME on May 13, 2019, appreciating Mr. Saunders' interpretation of the AFSCME Constitution but objecting to the irregular procedural avenue that Mr. Saunders proposed. Maycock Decl. ¶1.21, Ex. 11.

Because Plaintiffs are entitled to a judicial declaration that identifies the rights of membership to review and monitor the income and expenditures of their union, the instant motion follows.

III. ARGUMENT

A. Standard of Review.

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party meets its initial burden, however, the opposing party must then set forth specific facts showing that there is some genuine issue for trial in order to defeat the motion. *Anderson v. Liberty Lobby*, 477 U.S. 242, 250 (1986).

Plaintiffs are further entitled to declaratory relief pursuant to 28 U.S.C. §2201 and Fed. R. Civ. P. 57.

B. Plaintiffs are Entitled to the Information Requested Pursuant to the Express terms of the AFSCME Constitution.

The central issue in the present appeal is what is meant by Item No. 6 of AFSCME's Bill of Rights for Union Members, which states with specificity:

Members shall have the right to a full and clear accounting of all union funds at all levels. Such accounting shall include, but not be limited to, periodic reports to the membership by the appropriate fiscal officers and periodic audits by officers elected for that purpose or by independent auditors not otherwise connected with the union.

AFSCME Bill of Rights, Item No. 6. Maycock Decl., Ex. 2. (Emphasis supplied.).

It has long been the law that a Union's Constitutions are a form of contract between an individual member and the Union. *Wooddell v. International Brotherhood of Electrical Workers*, 502 U.S. 93 (1991). The *Wooddell* Court held the subject matter jurisdiction conferred on the district courts by §301(a) extends to suits on union constitutions brought by individual union members. *Wooddell* at 98-102.

Specifically, in *Wooddell*, the union member brought suit in federal court for violation of the union constitution alleging breach of contract redressable pursuant to §301 or the LMRA. The Court reasoned that union constitutions are an important form of contract between labor organizations,

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1 *Wooddell* at 101, and found that a member may bring suit in federal court to interpret and enforce a
 2 provision in a union's constitution under §301(a), *id.* at 101-103. *Wooddell* further advised, the
 3 meaning of contractual terms in a union constitution must be consistently interpreted to minimize
 4 jurisdictional inconsistencies, *id.* at 101-102, and recognized its prior decision in *Plumbers and*
 5 *Pipefitters v. Plumbers and Pipefitters*, 452 U.S. 615, (1981) that federal law applies, *id.*, 626; see
 6 also, *Tisdale v. Local 704*, 25 F.3d 1308, 1310 (6th Cir. 1994) ("[W]e think it fair to say that intra-
 7 union matters are now preempted on the same terms as are labor-management
 8 matters."); *Panczykowski v. Laborers*, 166 L.R.R.M. 2110, 2115 (W.D.N.Y. 1998), *aff'd* 2 Fed. App'x
 9 157 (2d Cir. 2001) (since a union constitution is a "labor contract" within the meaning of section 301,
 10 if resolution of plaintiff's claim requires interpretation of a union constitution, it is completely
 11 preempted); *Martin v. Dist. No. 1 — Marine Eng'rs' Beneficial Ass'n*, Civ. A. No. 93-2953, 1994 WL
 12 34044, at *4 (E.D. La. Feb. 2, 1994) (dependence upon interpretation of "labor contracts" — including
 13 union constitutions — gives rise to complete preemption).

14 The Ninth Circuit stated that "federal common law . . . looks to 'general principles for
 15 interpreting contracts.' Those general principles are found in the Restatement (Second) of Contracts."
 16 *Casa Del Caffè Vergnano S.P.A. v. ItalFlavors, LLC*, 816 F.3d 1208, 1211-1212 (9th Cir. 2016).³

17 **1. Item No. 6 of the Bill of Rights Says What It Means and Means What It Says.**

18
 19
 20 ³ See also, *Curtin v. United Airlines, Inc.*, 275 F.3d 88, 93 n.6 (D.C. Cir. 2001). Similarly, the Federal Circuit
 21 has said that "[t]he Restatement of Contracts reflects many of the contract principles of federal common law," *U.S. ex*
 22 *rel. Ubl v. IIF Data Sols.*, 650 F.3d 445, 451 (4th Cir. 2011) ("When applying federal common law to contract issues,
 23 courts generally look to the Restatement for guidance."), and the Fourth, *U.S. ex rel. Ubl v. IIF Data Sols.*, 650 F.3d
 24 445, 451 (4th Cir. 2011) ("When applying federal common law to contract issues, courts generally look to the
 Restatement for guidance."). *Sixth, Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1481 (6th Cir. 1989) ("We hold that
 the federal common law of release, although largely undeveloped in the cases, at a minimum adopts the standards of
 the Restatement of Contracts 2d § 173 concerning contracts between parties having a fiduciary relationship."). and
Eleventh Turner v. Am. Fed'n of Teachers Local 1565, 138 F.3d 878, 882 (11th Cir. 1998) Circuits have all explicitly
 looked to the Restatement as a source for the federal common law of contracts.

Item No. 6 of the Bill of Rights of the AFSCME Constitution states:

Members shall have the right to a full and clear accounting of all union funds at all level. Such accounting shall include, but not be limited to, periodic reports to the membership by the appropriate fiscal officers and periodic audits by officers elected for that purpose or by independent auditors not otherwise connected with the union.

a. “Shall” is Mandatory, Not Permissive.

Words are to be construed and understood in their ordinary and everyday meanings, unless the context indicates otherwise. A primary rule of interpretation is that “[t]he common or normal meaning of language will be given to the words of a contract unless circumstances show that in a particular case a special meaning should be attached to it.” *Hunt Wesson Foods v. Supreme Oil Co.*, 817 F. 2d 75 (9th Cir. 1987) (quoting 4 S. Williston, *A Treatise on the Law of Contracts* § 618 (W. Jaeger 3d ed. 1961)). Thus, the plain and ordinary language of AFSCME’s Constitution prevails unless there is a compelling reason indicating that it does not.

The use of the term “shall” in two instances in Item No. 6 of the Bill of Rights of AFSCME’s Constitution further demonstrates that this provision is mandatory. The word “shall” is ordinarily “the language of command.” *Anderson v. Yungkau*, 329 U.S. 482 (1947). Merriam-Webster’s Dictionary defines the word “shall” when “used in laws, regulations, or directives to express what is mandatory.” <https://www.merriam-webster.com/dictionary/shall>. If the drafters of Item No. 6 of the Bill of Rights of AFSCME’s Constitution intended to provide AFSCME or Council 2 with discretion as to whether an “accounting of all union funds at all levels” needed to be provided to its members, the drafters would have used a permissive term such as “may;” but, they did not.

b. “All” means All.

The explicit use of the word “all” twice in the clause “**all** union funds at **all** levels,” means that the Plaintiffs are entitled to the information that they requested. The term “all” is commonly defined as: “the whole amount, quantity or extent of; as much as possible; every member or individual

1 component of; the whole number or sum of; and, every.” [https://www.merriam-](https://www.merriam-webster.com/dictionary/all)
2 webster.com/dictionary/all. Like “shall” the word “all” is a general, and not a technical, term. General
3 terms are to be given their general meaning unless otherwise explicitly manifested. *Klamath Water*
4 *Users Protective Ass’n v. Patterson*, 204 F.3d 1206, 1210 (9th Cir. 1999). A proper interpretation of a
5 contract generally assumes consistent usage of terms throughout an agreement, and there is a
6 presumption that the same words used in different parts of a writing have the same meaning. *Imation*
7 *Corp. v. Koninklijke Philips Elecs. N.V.*, 586 F.3d 980, 2009 U.S. App. LEXIS 24231 (Fed. Cir. 2009).
8 Therefore, the use of the word “shall” in both instances is indisputably mandatory. Likewise, the
9 second use of the term “all” in “all levels” mandates that its use in “an accounting of all union funds”
10 indicates there is no limitation as to the specificity of what members may request and/or review.
11 Absent any express limitation or restriction, Plaintiffs are entitled to the information they requested
12 pursuant to the plain language of the Bill of Rights of AFSCME’s Constitution.

13 Further illustrating the clear and unambiguous meaning of Item No. 6 of the Bill of Rights of
14 AFSCME’s Constitution’s expansive provision of the rights afforded to the AFSCME membership is
15 the inclusion of the explicit direction that the disclosure of information shall “not be limited to” the
16 items that are specifically enumerated in the provision. The Ninth Circuit Court of Appeals has
17 consistently held that “including but not limited to” specifically does not restrain a provision to the
18 examples that may follow. *Turtle Island Restoration v. National Marine Fisheries Serv.*, 340 F.3d
19 969, 975 (9th Cir. 2003).

20 Item No. 6 of the Bill of Rights of AFSCME’s Constitution, by its own clear and express terms,
21 ensures that every member of AFSCME not only has the right to review completed periodic reports
22 and audits, but also the right to the information used in creating those audits and reports. Item No. 6
23 of the Bill of Rights of AFSCME’s Constitution has been drafted to ensure that every member has the
24

1 right to receive granular information about how member dues are being spent, **and** the periodic reports
 2 and audits that are referred to in Item No. 6, which are work products derived from the more specific
 3 information; information that Plaintiffs have requested, and which Defendants have refused to provide.

4 On June 21, 2018, Maycock sent a letter to President and Director of Council 2, requesting
 5 specific information. Maycock Decl. ¶1.3, Ex. 1. On December 21, 2018, Komac caused a virtually
 6 identical request for information to be sent to Council 2. Komac Decl. ¶ 1.3, Ex. 1. Both of these
 7 requests were denied by Dugovich and Council 2. Maycock Decl. ¶ 1.8,; Komac Decl., ¶1.4. The
 8 trial officer upheld Dugovich's and Council 2's interpretation that Item No. 6 of the Bill of Rights of
 9 the AFSCME Constitution does not require disclosure of the information Maycock requested.
 10 Maycock Decl. ¶1.15, Ex. 7. AFSCME's Full Judicial Panel then unanimously affirmed the trial
 11 officer's decision without explanation. Maycock Decl. ¶1.18, Ex.9. Plaintiffs have still not been
 12 provided with the information they requested. Despite having not provided Plaintiffs with the
 13 requested information, the President of AFSCME has since communicated that his interpretation of
 14 Item No. 6 of the Bill of Rights of the AFSCME Constitution aligns with that of the Plaintiffs' to this
 15 action, and not with the decisions that were reached by the trial officer and the Full Judicial Panel.
 16 Maycock Decl. ¶1.20, Ex. 10.

17 **C. Plaintiffs are Entitled to Recover Their Costs and Attorneys' Fees Incurred in this Matter**
 18 **Pursuant to the Common Benefit Doctrine.**

19 The Ninth Circuit has recognized that in cases brought under the LMRA and the LMRDA, successful
 20 plaintiffs may obtain fee recovery by operation of the common benefit doctrine. In *Kinney v. International*
 21 *Brotherhood of Electrical Workers, et. al*, 839 F.2d 680 (9th Cir. 1991), plaintiffs moved for an award of
 22 attorney's fees after prevailing on his claims, *inter alia*, pursuant to 29 U.S.C. 185. The Kinney Court
 23 reasoned:

24 In *Hall*, the Court held that attorney's fees may be awarded to the plaintiff in an action
 under Title I of LMRDA, 29 U.S.C. § 412, when "the plaintiff's successful litigation

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confers 'a substantial benefit on the members of an ascertainable class, and where the court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among them.'" *Id.* at 5, 93 S.Ct. at 1946 (quoting *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 393-94, 90 S.Ct. 616, 626, 24 L.Ed.2d 593 (1970)). We concluded that the criteria for awarding attorney's fees under the "common benefit" theory of *Hall* were present in this case.

We noted that Kinney's "successful challenge to an unlawfully imposed trusteeship benefits the union by rendering invalid all consequences of the trusteeship, and returning autonomy to the local," and that Kinney's "successful suit will deter the union from similar unlawful conduct in the future, even absent an award of damages, because the union now knows the action was illegal." We observed that "[f]ailure to award attorneys' fees in these circumstances would discourage individual members from challenging unlawfully imposed trusteeships, and an important check on the power of the international union would be lost." We concluded that Kinney's successful challenge to the imposition of the trusteeship on Local 396 "unquestionably" benefited the union and its membership.

Thus it is the law of this case that Kinney's suit satisfied the criteria established by the Supreme Court in *Hall* for an award of attorney's fees — it conferred a substantial benefit upon an ascertainable class, the members of the union, and the award would spread the cost of the fees proportionately among those members.

Kinney at 692-693.

Just as in *Kinney*, here Plaintiffs have brought suit seeking a declaration that will forever clarify how Item 6 of AFSCME's Constitution should be interpreted and defines the obligation of the union to its membership.

As these benefits are conferred to all members of AFSCME regardless of their local or regional affiliation, the costs for litigation should be borne by all members and not fall just on the shoulders of the named plaintiffs.

D. Conclusion and Prayer for Relief

RESPECTFULLY, Plaintiffs request that this honorable Court declare that Item No. 6 of the Bill of Rights of AFSCME's Constitution entitles them to the information Plaintiffs have respectively requested, and enter an Order directing Defendants to produce responsive records to each of the

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1 Plaintiffs' requests for information to Plaintiffs' counsel within thirty (30) days from the date of the
2 entry of the Court's Order, and enter an award of costs and attorney's fees in Plaintiffs' favor in an
3 amount to be determined at a later date. Plaintiffs further pray for such further relief as this Court may
4 deem equitable and just.
5

6 DATED Thursday, May 23, 2019.
7

8 The Law Office of Nicholas Power

9 s/ Nicholas Power

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