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6 Attorneys for Plaintiffs,  
BARBARA JOHNSON-PALOMO,  
7 LUIS PALOMO

8 **U.S. DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 BARBARA JOHNSON-PALOMO, an  
individual, and LUIS PALOMO, an  
11 individual

12 Plaintiff,

13 v.

14 BANK OF AMERICA, N.A.;  
NATIONSTAR MORTGAGE, LLC

15 Defendants.  
16  
17

Case No.:

**COMPLAINT AND DEMAND FOR  
JURY TRIAL FOR VIOLATIONS  
OF:**

1. **FEDERAL FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692, et seq.;**
2. **STATE OF CALIFORNIA ROSENTHAL ACT, CALIF. CIV. CODE § 1788, et seq.;**
3. **CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES ACT, CALIF. CIV. CODE 1785.25(a)**

18 Plaintiffs, BARBARA JOHNSON-PALOMO and LUIS PALOMO, both  
19 Individuals, by and through their attorneys of record, hereby complains and alleges as  
20 follows:

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1 **INTRODUCTION**

2 1. Plaintiffs, by and through their attorneys of record, bring this action to  
3 secure redress from unlawful debt collection practices engaged in by Defendant BANK  
4 OF AMERICA, N.A. (hereinafter “Defendant Bank of America”) and Defendant  
5 NATIONSTAR MORTGAGE, LLC (hereinafter “Defendant NATIONSTAR”) in  
6 violation of the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692-1692p  
7 (hereinafter “FDCPA”); the State of California Rosenthal Act, California Civil Code §  
8 1788-1788.32 (hereinafter “Rosenthal” or “Rosenthal Act”); and the State of California  
9 Consumer Credit Reporting Agencies Act, California Civil Code § 1785.25(a)  
10 (hereinafter “CCRAA”).

11 2. Plaintiffs make the allegations below on information and belief, with the  
12 exception of those allegations that pertain to Plaintiff personally, or to Plaintiffs’  
13 counsel, which Plaintiff alleges on personal knowledge.

14 3. While many violations are described below with specificity, this  
15 Complaint alleges violations of the statutes cited in their entirety.

16 4. In 15 U.S.C. § 1692(a)-(e), the U.S. Legislature made the following  
17 findings and purpose in creating the FDCPA:

18 Abusive practices. There is abundant evidence of the use of  
19 abusive, deceptive, and unfair debt collection practices by many  
20 debt collectors. Abusive debt collection practices contribute to the  
number of personal bankruptcies, to marital instability, to the loss  
of jobs, and to invasions of individual privacy.

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1 Inadequacy of laws. Existing laws and procedures for redressing  
2 these injuries are inadequate to protect consumers.

3 Available non-abusive collection methods. Means other than  
4 misrepresentation or other abusive debt collection practices are  
5 available for the effective collection of debts.

6 Interstate commerce. Abusive debt collection practices are carried  
7 on to a substantial extent in interstate commerce and through  
8 means and instrumentalities of such commerce. Even where  
9 abusive debt collection practices are purely intrastate in character,  
10 they nevertheless directly affect interstate commerce.

11 Purposes. It is the purpose of this title [15 USCS §§ 1692 et seq.]  
12 to eliminate abusive debt collection practices by debt collectors, to  
13 insure that those debt collectors who refrain from using abusive  
14 debt collection practices are not competitively disadvantaged, and  
15 to promote consistent State action to protect consumers against  
16 debt collection abuses.

17 5. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature made the  
18 following findings and purpose in creating the Rosenthal Act:

19 (a)(1) The banking and credit system and grantors of credit to  
20 consumers are dependent upon the collection of just and owing  
21 debts. Unfair or deceptive collection practices undermine the  
public confidence which is essential to the continued functioning  
of the banking and credit system and sound extensions of credit to  
consumers.

(2) There is need to ensure that debt collectors and debtors exercise  
their responsibilities to another with fairness and honesty and due  
regard for the rights of the other.

(b) It is the purpose of this title to prohibit debt collectors from  
engaging in unfair or deceptive acts of practices in the collection of  
consumer debts and to require debtors to act fairly in entering into  
and honoring such debts, as specified in this title.

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1 **JURISDICTION AND VENUE**

2 4. This action arises out of Defendant NATIONSTAR’s violations of the  
3 Federal FDCPA, over which the U.S. District Court has original subject matter  
4 jurisdiction pursuant to 15 U.S.C. § 1681p. The U.S. District Court has supplemental  
5 jurisdiction over all state law causes of action pursuant to 28 U.S.C. § 1367(a).

6 5. Because Defendant BANK OF AMERICA regularly conducts business  
7 within the State of California and maintains an agent for service of process at CT  
8 CORPORATION SYSTEM, 818 West Seventh Street, 2<sup>nd</sup> Floor, City of Los Angeles,  
9 State of California, personal jurisdiction is established.

10 6. Because Defendant NATIONSTAR regularly conducts business within the  
11 State of California and maintains an agent for service of process at CSC LAWYERS  
12 INCORPORATING SERVICE, 2730 Gateway Oaks Drive, City of Sacramento, State  
13 of California, personal jurisdiction is established.

14 7. Venue in this District is proper pursuant for the following reasons: (i)  
15 Plaintiffs both reside in the County of Riverside, State of California, which is within  
16 this judicial district; (ii) the conduct complained of herein occurred within this judicial  
17 district; and, (iii) Defendant has conducted business within this judicial district at all  
18 times relevant.

19 **PARTIES & DEFINITIONS**

20 8. Plaintiffs are both natural persons whose permanent residences are in the  
21 County of Riverside, State of California, and are therefore both “persons” as that term is

1 defined by California Civil Code § 1788.2(g) of the Rosenthal Act.

2 9. Plaintiffs, as natural persons allegedly obligated to pay a consumer debt to  
3 Defendants, alleged to have been due and owing, are therefore both “consumers” as that  
4 term is defined by 15 U.S.C. § 1692a(3) of the FDCPA, and are also therefore “debtors”  
5 as that term is defined by California Civil Code § 1788.2(h) of the Rosenthal Act.

6 10. As a partnership, corporation, limited liability company, or other similar  
7 entity, Defendants are both therefore a “person” within the meaning of California Civil  
8 Code § 1788.2(g) of the Rosenthal Act.

9 11. Defendant NATIONSTAR alleged that they were servicing and collecting  
10 upon a defaulted mortgage loan that Plaintiffs initially owed to Defendant BANK OF  
11 AMERICA, which originated as a home mortgage loan whereby financial monies were  
12 provided to Plaintiffs by Defendant BANK OF AMERICA with an agreement that the  
13 monies would be repaid in the future with the real estate being secured as collateral  
14 upon the loan note. Therefore, Plaintiffs are informed and believe that the money  
15 alleged to have been owed to Defendants originated from monetary credit that was  
16 extended primarily for personal, family, or household purposes, and is therefore a  
17 “debt” as that term is defined by 15 U.S.C. § 1692a(5) of the FDCPA and California  
18 Civil Code § 1788.2(d) of the Rosenthal Act.

19 12. Defendant NATIONSTAR alleged that they were servicing and collecting  
20 upon a defaulted mortgage loan that Plaintiffs initially owed to Defendant BANK OF  
21 AMERICA, which originated as a home mortgage loan whereby financial monies were

1 provided to Plaintiffs by Defendant BANK OF AMERICA with an agreement that the  
2 monies would be repaid in the future with the real estate being secured as collateral  
3 upon the loan note. Therefore, the money that Defendants were attempting to collect  
4 was a “consumer credit transaction” within the meaning of California Civil Code §  
5 1788.2(e) of the Rosenthal Act.

6 13. Because Plaintiffs, natural persons allegedly obligated to pay money  
7 arising from what Plaintiffs are informed and believe was a consumer credit transaction,  
8 the money allegedly owed was a “consumer debt” within the meaning of California  
9 Civil Code § 1788.2(f) of the Rosenthal Act.

10 14. Plaintiffs are informed and believe that Defendant NATIONSTAR utilizes  
11 the instrumentalities of interstate commerce and the mails in a business for which the  
12 principal purpose is the collection of any debts, is one who regularly collects or  
13 attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or  
14 due another or themselves, and is therefore a “debt collector” within the meaning of 15  
15 U.S.C. § 1692a(6) of the FDCPA and California Civil Code § 1788.2(c) of the  
16 Rosenthal Act, and thereby engages in “debt collection” within the meaning of  
17 California Civil Code § 1788.2(b) of the Rosenthal Act.

18 15. Plaintiff is informed and believes that Defendant BANK OF AMERICA is  
19 one who regularly collects or attempts to collect debts owed or due or asserted to be  
20 owed or due on behalf of themselves, and is therefore a “debt collector” within the  
21 meaning of California Civil Code § 1788.2(c) of the Rosenthal Act, and thereby

1 engages in “debt collection” within the meaning of California Civil Code § 1788.2(b) of  
2 the Rosenthal Act.

3 16. As it pertains to the California CCRAA, Plaintiffs are natural persons, and  
4 are therefore “consumers” as that term is defined by Calif. Civ. Code § 1785.3(b) of the  
5 California CCRAA.

6 17. As it pertains to the California CCRAA, the causes of action herein pertain  
7 to Plaintiffs’ “consumer credit reports”, as that term is defined by Calif. Civ. Code §  
8 1785.3(c) of the California CCRAA, in that inaccurate misrepresentations of Plaintiffs’  
9 creditworthiness, credit standing, and credit capacity were made via written, oral, or  
10 other communication of information by a consumer credit reporting agency, which is  
11 used or is expected to be used, or collected in whole or in part, for the purpose of  
12 serving as a factor in establishing Plaintiffs’ eligibility for, among other things, credit to  
13 be used primarily for personal, family, or household purposes, and employment  
14 purposes.

15 18. Defendants are both a partnership, corporation, association, or other entity,  
16 and are therefore each a “person” as that term is defined by Calif. Civ. Code § 1785.3(j)  
17 of the California CCRAA.

18 **FACTUAL ALLEGATIONS**

19 19. Sometime in the year 2007, Plaintiffs obtained a mortgage loan from  
20 Defendant BANK OF AMERICA, which involved Defendant BANK OF AMERICA  
21 providing funds to Plaintiffs in exchange for Plaintiffs to re-pay the funds in the future

1 with interest and also securing the loan note with their real estate as collateral.

2 20. The account number for this loan account with Defendant BANK OF  
3 AMERICA is 0157177171.

4 21. Sometime in the year 2010, Plaintiffs defaulted upon the monthly  
5 payments upon the mortgage loan.

6 22. In March of 2012, Plaintiffs executed a “short-sale” of the real property,  
7 whereby Plaintiffs sold the real property to a third-party for less than the amount that  
8 was owed by them to Defendant BANK OF AMERICA, and Defendant BANK OF  
9 AMERICA agreed to accept the purchase money paid by the third-party as satisfaction  
10 of the full balance of the outstanding amount owed by Plaintiffs.

11 23. Plaintiffs are in possession of written correspondence from Defendant  
12 BANK OF AMERICA, dated March 5, 2012, accepting the short-sale purchase money  
13 as full satisfaction of the amount owed by Plaintiffs upon account number 0157177171.

14 24. Closing of the short-sale occurred on or before April 20, 2012 as required  
15 by Defendant BANK OF AMERICA.

16 25. Sometime thereafter, Plaintiffs divorced and went their separate ways in  
17 life.

18 26. However, in July of 2013, Plaintiff BARBARA received correspondence  
19 from Defendant NATIONSTAR, addressed to both Plaintiffs, that indicated that  
20 Defendant NATIONSTAR is now the servicer of the loan owed to Defendant BANK  
21 OF AMERICA under account number 0157177171, and this letter indicates that



1 Plaintiffs owe Defendant NATIONSTAR a total of \$18,064.80 as the outstanding  
2 amount in default with Defendant BANK OF AMERICA.

3 27. The amount of \$18,064.80 is the difference between the amount that was  
4 initially owed to Defendant BANK OF AMERICA upon account number 0157177171  
5 and the amount that Defendant BANK OF AMERICA accepted as satisfaction of the  
6 outstanding amount at the time of short-sale in March of 2012.

7 28. On or about August 9, 2013, Plaintiff BARBARA JOHNSON-PALOMO  
8 spoke to Defendant NATIONSTAR's agent "Robert" to inform him that their attempt to  
9 collect the difference between the amount initially owed to Defendant BANK OF  
10 AMERICA and the amount of the short-sale was not proper, as Defendant BANK OF  
11 AMERICA had accepted the short-sale as satisfaction of the outstanding amount.

12 29. "Robert" informed Plaintiff BARBARA to disregard the paperwork and  
13 promised that he would take care of the mistaken in paperwork.

14 30. However, by letter dated October 21, 2014, Defendant NATIONSTAR  
15 informed Plaintiffs that they now owe Defendant NATIONSTAR a total of \$26,198.62  
16 upon the account, and threatened that if Plaintiffs did not pay the full amount to  
17 Defendant NATIONSTAR by January 28, 2015 then Defendant NATIONSTAR would  
18 foreclose upon the real property.

19 31. Plaintiff BARBARA contacted Defendant NATIONSTAR's agent Andrew  
20 Harrison and informed him as well that their attempt to collect the difference between  
21 the amount initially owed to Defendant BANK OF AMERICA and the amount of the

1 short-sale was not proper, as Defendant BANK OF AMERICA had accepted the short-  
2 sale as satisfaction of the outstanding amount.

3 32. However, Andrew has failed to provide any response to Plaintiff  
4 BARBARA that Defendant NATIONSTAR has resolved the matter.

5 33. On or about April 20, 2015, Plaintiff LUIS was denied an increase on his  
6 credit card application, and was told that his consumer credit score is too low as a result  
7 of multiple accounts on his credit report reflecting a defaulted mortgage loan.

8 34. This prompted Plaintiffs to look at their credit reports and discover that in  
9 December of 2014 Defendant NATIONSTAR reported upon both Plaintiffs' consumer  
10 credit reports that they are in default upon the Bank of America home mortgage loan  
11 and the amount alleged to be in default varies between the reports.

12 35. Defendant NATIONSTAR's attempts to collect the allegedly outstanding  
13 amount arise to false statements and misrepresentations as to the nature and character of  
14 the alleged debt, because the alleged debt was settled with Defendant BANK OF  
15 AMERICA in March of 2012.

16 36. Defendant NATIONSTAR's reporting upon Plaintiffs' consumer credit  
17 reports amount to false reports, because Plaintiffs are not in default upon the alleged  
18 debt since the alleged debt was settled with Defendant BANK OF AMERICA in March  
19 of 2012.

20 37. Because Defendant NATIONSTAR is a servicer of this account for  
21 Defendant BANK OF AMERICA, Defendant NATIONSTAR has therefore been acting

1 at all times relevant as an agent of Defendant BANK OF AMERICA, and has therefore  
2 been acting in association with, and at the direction of, Defendant BANK OF  
3 AMERICA.

4 38. As such, Defendant NATIONSTAR's violations flow through as liability  
5 to Defendant BANK OF AMERICA under agency theories.

6 39. Plaintiffs have suffered mental anguish as a result of Defendants' conduct,  
7 in that they have suffered anxiety, fear, feelings of hopelessness and despair, and  
8 embarrassment over the thought of still owing upwards of \$26,198.62 upon an alleged  
9 debt that was closed in March of 2012.

10 40. Plaintiffs have suffered mental anguish as a result of Defendants' conduct,  
11 in that they have been forced to relive their divorce by having to discuss the short-sale  
12 circumstances from the year 2012 to ensure they each did nothing wrong, as well as  
13 having to discuss Defendant NATIONSTAR's credit reporting and attempts to collect  
14 \$26,198.62 from them.

15 41. Plaintiffs have also suffered actual damages by way of significant  
16 reduction in their respective credit scores as a result of having multiple mortgage loan  
17 accounts being reported as in default, when in reality Defendant NATIONSTAR's  
18 reporting should not even exist.

19 42. The reduction in credit scores has caused Plaintiff LUIS to live with his 80  
20 year old mother and sleep on her couch and Plaintiff BARBARA to live with her son,  
21 because neither of them has a credit score high enough to be able to obtain a new home

1 loan.

2 43. Moreover, the divorce decree requires Plaintiff LUIS to refinance the  
3 recreational vehicle that the couple shared during their marriage, but LUIS has been  
4 unable to so comply with the divorce decree because his credit score is too low as a  
5 result of Defendant NATIONSTAR's derogatory reporting that should not even exist.

6 44. LUIS' inability to refinance the recreational vehicle causes further mental  
7 anguish to BARBARA in that she fears she will be financially responsible for the  
8 vehicle should anything happen to where LUIS is unable to continue paying for the  
9 vehicle, even though she is supposed to be removed from such liability.

10 **FIRST CAUSE OF ACTION**  
11 **AS AGAINST DEFENDANT NATIONSTAR ONLY**  
12 **(VIOLATIONS OF FDCPA)**  
13 **15 U.S.C. §§ 1692-1692p**

14 45. Plaintiffs re-allege and incorporate by reference the above paragraphs, as  
15 though set forth fully herein.

16 46. Because Defendant NATIONSTAR began servicing the account at a time  
17 that Defendant NATIONSTAR alleges the account was in default, Defendant  
18 NATIONSTAR is therefore a debt collector for purposes of the Federal FDCPA.

19 47. By reporting upon Plaintiffs' consumer credit reports in December of 2014  
20 the false information that Plaintiffs are in default for an account that Plaintiffs had  
21 actually settled with Defendant BANK OF AMERICA in March of 2012, Defendant  
NATIONSTAR has therefore committed the following violations of the federal  
FDCPA:

- 1 a. Engaged in false, deceptive, or misleading representation or means in
- 2 connection with the collection of a debt in violation of 15 U.S.C. § 1692e,
- 3 b. Has falsely represented the character and legal status of the debt in
- 4 violation of 15 U.S.C. § 1692e(2)(A),
- 5 c. Has communicated to the credit reporting agencies information that is
- 6 known or should be known to be false in violation of 15 U.S.C. §
- 7 1692e(8),
- 8 d. Has used false representations and deceptive means to collect or attempt to
- 9 collect a debt in violation of 15 U.S.C. § 1692e(10), and
- 10 e. Engaged in unfair or unconscionable means to collect or attempt to collect
- 11 any debt in violation of 15 U.S.C. § 1692f.

12 48. By sending a letter to Plaintiffs in December of 2014 demanding that  
13 Plaintiffs pay in full the amount of \$26,198.62 or else face foreclosure, upon an account  
14 that had been settled with Defendant BANK OF AMERICA in March of 2012,  
15 Defendant NATIONSTAR has therefore committed the following violations:

- 16 a. Engaged in false, deceptive, or misleading representation or means in
- 17 connection with the collection of a debt in violation of 15 U.S.C. § 1692e,
- 18 b. Has falsely represented the character and legal status of the debt in
- 19 violation of 15 U.S.C. § 1692e(2)(A),
- 20 c. Has used false representations and deceptive means to collect or attempt to
- 21 collect a debt in violation of 15 U.S.C. § 1692e(10), and

1 d. Engaged in unfair or unconscionable means to collect or attempt to collect  
2 any debt in violation of 15 U.S.C. § 1692f of the FDCPA

3 49. Plaintiffs are informed and believes that these violations were willful, in  
4 that Plaintiff BARBARA informed Defendant NATIONSTAR's agent in August of  
5 2013 that the account had been settled in March of 2012.

6 **SECOND CAUSE OF ACTION**  
7 **(AS AGAINST BOTH DEFENDANTS JOINTLY AND SEVERALLY)**  
8 **(VIOLATIONS OF ROSENTHAL ACT)**  
9 **CAL. CIV. CODE §§ 1788-1788.32**

10 50. Plaintiffs re-allege and incorporate by reference the above paragraphs, as  
11 though set forth fully herein.

12 51. By violating the FDCPA, as identified the First Cause of Action above,  
13 Defendant NATIONSTAR has also necessarily violated the Rosenthal Act via Calif.  
14 Civil Code § 1788.17, as the Rosenthal Act has incorporated each of those provisions of  
15 the FDCPA.

16 52. Because Defendant NATIONSTAR is a servicer of the account for  
17 Defendant BANK OF AMERICA, Defendant NATIONSTAR has therefore been acting  
18 at all times relevant as an agent of Defendant BANK OF AMERICA, and has therefore  
19 been acting in association with, and at the direction of, Defendant BANK OF  
20 AMERICA.

21 53. As such, Defendant NATIONSTAR's violations of the Rosenthal Act flow  
through as liability to Defendant BANK OF AMERICA under agency theories.

54. Plaintiffs are informed and believes that these violations were willful, in

1 that Plaintiff BARBARA informed Defendant NATIONSTAR's agent in August of  
2 2013 that the account had been settled in March of 2012.

3 **THIRD CAUSE OF ACTION**  
4 **(AS AGAINST DEFENDANT NATIONSTAR ONLY)**  
5 **(VIOLATIONS OF CALIF. CCRAA)**  
6 **CAL. CIV. CODE § 1785.25(a)**

7 55. Plaintiff repeats, re-alleges, and incorporates by reference, all other  
8 paragraphs as if fully stated herein.

9 56. As the furnisher of information to credit reporting agencies, Defendant  
10 NATIONSTAR is and always was obligated to not furnish information on a specific  
11 transaction or experience to any consumer credit reporting agency if it knew or should  
12 have known the information was incomplete or inaccurate, as required by Calif. Civ.  
13 Code § 1785.25(a) of the California CCRA.

14 57. Because Defendant NATIONSTAR reported upon Plaintiffs' consumer  
15 credit reports in December of 2014 the false information that they are in default on a  
16 line of credit that they actually settled with Defendant BANK OF AMERICA in March  
17 of 2012, Defendant NATIONSTAR has thereby repeatedly violated its obligations  
18 under Calif. Civ. Code § 1785.25(a).

19 58. Plaintiffs are informed and believes that these violations were willful, in  
20 that Plaintiff BARBARA informed Defendant NATIONSTAR's agent in August of  
21 2013 that the account had been settled in March of 2012.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that judgment be entered against each Defendant, and Plaintiffs be awarded damages from each Defendant, jointly and severally, as follows:

- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of costs of litigation and reasonable attorney’s fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of statutory damages of \$1,000.00 from each Defendant individually pursuant to Cal. Civ. Code § 1788.30(b);
- An award of actual damages from each Defendant jointly and severally pursuant to California Civil Code § 1788.30(a);
- An award of costs of litigation and reasonable attorney’s fees from each Defendant jointly and severally pursuant to Cal. Civ. Code § 1788.30(c);
- Actual damages, for Defendant NATIONSTAR’s negligent violations of Calif. Civ. Code § 1785.25(a), pursuant to Calif. Civ. Code § 1785.31(a)(1);
- Actual damages plus punitive damages of \$100.00-\$5,000.00 from Defendant NATIONSTAR for every willful violation of Calif. Civ. Code § 1785.25(a), pursuant to Calif. Civ. Code § 1785.31(a)(2)(A)-(C);
- Injunctive relief pursuant to Calif. Civ. Code § 1785.31(b); and



- 1           • Any reasonable attorney’s fees and costs to maintain the instant action from  
2           Defendant NATIONSTAR’s, pursuant to Calif. Civ. Code § 1785.31(d).

3           Pursuant to the seventh amendment to the Constitution of the United States of  
4 America, Plaintiffs are entitled to, and hereby demand, a trial by jury.

5 Dated: April 28, 2015

Respectfully submitted,  
SEMNAR & HARTMAN, LLP

By: /s/ Jared M. Hartman  
Jared M. Hartman, Esq.  
Attorney for Plaintiff

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