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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOHN YOUNG,	)	CV 07-03190 RSWL-AJWx
	)	
Plaintiff,	)	<b>ORDER Re: DEFENDANT</b>
	)	<b>WOLFE'S MOTION FOR</b>
v.	)	<b>QUALIFIED IMMUNITY OR</b>
	)	<b>NEW TRIAL [411]</b>
ARON WOLFE and ROBERTO	)	
OCHOA	)	
	)	
Defendants.	)	

**I. INTRODUCTION**

Currently before the Court is Defendant Aron Wolfe's ("Defendant Wolfe") Motion for Qualified Immunity and to Alter or Amend the Judgment, or in the alternative, a Motion for a New Trial ("Motion") [411]. Def. Wolfe's Mot. for Qualified Immunity or Mot. for New Trial ("Mot."), ECF No. 411. The Court, having reviewed all papers and arguments submitted pertaining to this Motion, **NOW FINDS AND RULES AS FOLLOWS:** the Court **DENIES** Defendant Wolfe's Motion in its entirety.

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1 **II. BACKGROUND**

2 **A. Factual Background**

3 This case arises from a May 15, 2004 incident.  
4 Pl.'s Opposition to Def.'s Mot. for Qualified Immunity  
5 or Mot. for New Trial ("Opp'n") 3:4-5. Plaintiff John  
6 Young ("Plaintiff") was a pretrial detainee in the  
7 Men's Central Jail ("MCJ") Discipline Module in Los  
8 Angeles, California. Mot. 3:13-14. Defendant Wolfe  
9 was supervising the shower area in the discipline  
10 module when he saw Plaintiff leaving the area with  
11 three lacerations on his back. Id. at 17:23-27; 18:9-  
12 11. Because detainees are not allowed to roam the  
13 module free, Defendant Wolfe followed Plaintiff;  
14 however, the two engaged in a physical altercation that  
15 included a number of other deputies. Id. at 3:14-16.  
16 Defendant Wolfe punched Plaintiff numerous times in the  
17 face, and Plaintiff flailed, punched, kicked Defendant  
18 Wolfe along with the other responding deputies. Id. at  
19 13:25-26; 19:23-24. As a result, Plaintiff alleged he  
20 suffered a broken tooth, lacerations and contusions,  
21 and an injury to his neck. Opp'n 3:7-8.

22 **B. Procedural Background**

23 After a long procedural history, including two jury  
24 trials in 2009 and 2013 with verdicts that were  
25 overturned, a jury trial commenced on March 21, 2017 on  
26 Plaintiff's malicious prosecution and excessive force  
27 claims against Defendant Wolfe and Defendant Roberto  
28 Ochoa ("Defendant Ochoa") (collectively "Defendants").

1 Id. at 3:23-25. At the close of Plaintiff's case in  
2 chief, Defendants made a motion pursuant to Federal  
3 Rules of Civil Procedure ("FRCP" or "Rule") 50(a) for  
4 judgment as a matter of law as to Plaintiff's malicious  
5 prosecution claim, which this Court granted. Mot.  
6 3:25-27; Minutes of Jury Trial, ECF No. 380. On March  
7 24, 2017, the jury rendered a verdict in favor of  
8 Plaintiff against Defendant Wolfe as to Plaintiff's  
9 excessive force claim and against Plaintiff and for  
10 Defendant Ochoa as to Plaintiff's excessive force  
11 claim. Id. at 3:27-4:1; Minutes of Jury Trial, ECF No.  
12 381. The jury awarded Plaintiff \$350,000 in damages.  
13 Id. at 4:1-2. On March 24, 2017, Defendants brought a  
14 FRCP 50(a) motion for judgment as a matter of law as to  
15 Plaintiff's claim for punitive damages, which this  
16 Court granted. Id. at 4:2-3. On May 15, 2017,  
17 Plaintiff brought a motion for attorney's fees which is  
18 currently pending with this Court [409]. On May 23,  
19 2017, Defendant Wolfe filed the instant Motion for  
20 Qualified Immunity and to Alter or Amend the Judgment,  
21 or in the Alternative a Motion for a New Trial [411].  
22 Plaintiff filed his Opposition to this Motion on June  
23 2, 2017 [413], and Defendant Wolfe's Reply followed on  
24 June 6, 2017 [414].

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1 III. DISCUSSION

2 A. Legal Standard

3 1. Federal Rules of Civil Procedure 50(b) Post-  
4 Verdict Motion for Judgment as a Matter of Law

5 FRCP 50(a) requires a party seeking judgment as a  
6 matter of law to file a Rule 50(a) motion at any time  
7 before the case is submitted to the jury. Tortu v. Las  
8 Vegas Metro. Police Dept., 556 F.3d 1075, 1082 (9th  
9 Cir. 2009). If the jury returns a verdict against the  
10 moving party, that party may then file a Rule 50(b)  
11 motion for judgment as a matter of law no later than 28  
12 days after the entry of judgment. Fed. R. Civ. P.  
13 50(b).

14 However, a Rule 50(b) motion may be considered only  
15 if a Rule 50(a) motion has been previously made during  
16 trial, as the motion is considered a renewal of an  
17 earlier 50(a) motion. Tortu, 556 F.3d at 1082 (citing  
18 Fed. R. Civ. P. 50 advisory committee's notes). As  
19 required by the Federal Rules's 2006 amendment, the  
20 Ninth Circuit has construed this requirement strictly,  
21 and has found that substantial compliance is not  
22 enough. See Janes v. Wal-Mart Stores Inc., 279 F.3d  
23 883, 888 (9th Cir. 2002)(finding that a motion for  
24 summary judgment and a trial brief did not satisfy the  
25 requirement that a party moved for judgment as a matter  
26 of law before the close of evidence). The motion must  
27 specify the judgment sought and the law and facts that  
28 entitle the movant to the judgment. Id. at 1083

1 (citing Fed. R. Civ. P. 50(a)(2)).

2 2. Federal Rules of Civil Procedure 59(e) Motion  
3 to Alter or Amend the Judgment

4 FRCP 59(e) gives the district courts power to alter  
5 or amend a judgment by motion. Fed. R. Civ. P. 59(e).  
6 However, the motion to alter or amend must be filed no  
7 later than 28 days after the entry of the judgment.

8 Id. Courts enjoy “considerable discretion in granting  
9 or denying [a motion to amend or alter a judgment].”

10 Allstate Ins. v. Herron, 634 F.3d 1101, 1111 (9th Cir.  
11 2011)(internal quotation marks and citation omitted).

12 However, Rule 59(e) motions are not vehicles for  
13 bringing before the court theories or arguments not  
14 advanced earlier, nor may the motion present evidence  
15 which was available but not offered at the original

16 motion or trial. U.S. S.E.C. v. Edwin-Yoshihiro  
17 Fujinaga, No. 16-15623, 2017 WL 2465002, at \*1

18 (9th Cir. June 7, 2017)(unpublished). Rather, the  
19 motion must rely on one of the following grounds: (1)

20 an intervening change in controlling law; (2) the  
21 availability of new evidence; (3) the need to correct a  
22 clear error of law or fact upon which the judgment  
23 rests; or (4) the need to prevent manifest injustice.

24 Smith v. Clark County School Dist., 727 F.3d 950, 956  
25 (9th Cir. 2013). Clear error occurs when the

26 “reviewing court on the entire record is left with the  
27 definite and firm conviction that a mistake has been  
28 committed.” Smith, 727 F.3d at 956 (quoting United

1 States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948)).

2 3. Federal Rules of Civil Procedure 59(a) Motion  
3 for a New Trial

4 FRCP 59(a) states: "[t]he court may, on motion,  
5 grant a new trial on all or some of the issues--and to  
6 any party--after a jury trial, for any reason for which  
7 a new trial heretofore has been granted in an action at  
8 law in federal court." Fed. R. Civ. P. 59(a)(1)(A).

9 There are many such grounds, including but not limited  
10 to, "claims that the verdict is against the weight of  
11 the evidence, that the damages are excessive, or that,  
12 for other reasons, the trial was not fair to the moving  
13 party." Molski v. M.J. Cable, Inc., 481 F.3d 724, 730  
14 (9th Cir. 2007)(internal quotation marks and citation  
15 omitted). A motion for a new trial must be filed no  
16 later than 28 days after the entry of the judgment.  
17 Fed. R. Civ. P. 59(b).

18 The Ninth Circuit has held that the trial court  
19 "may grant a new trial only if the verdict is contrary  
20 to the clear weight of the evidence, is based upon  
21 false or perjurious evidence, or to prevent a  
22 miscarriage of justice." Molski, 481 F.3d at 730  
23 (quoting Passantino v. Johnson & Johnson Consumer  
24 Prods., 212 F.3d 493, 510 n.15 (9th Cir. 2000)).

25 Additionally, when the motion is based on a trial error  
26 or other irregularity in the proceedings, the movant  
27 must show he or she was prejudiced by the error.

28 Anglo-American General Agents v. Jackson Nat. Life Ins.

1 Co., 83 F.R.D. 41, 43-44 (N.D. Cal. 1979).

2       However, Rule 59 has been interpreted to give the  
3 district courts considerable discretion in granting  
4 a new trial to prevent any perceived miscarriage of  
5 justice, and the standard for granting a new trial is  
6 not as strict as that for granting judgment as a matter  
7 of law under Rule 50(b). Id. at 43. While a court  
8 should not "lightly disturb a plausible jury verdict. .  
9 . having given full respect to the jury's findings, if  
10 the judge on the entire evidence is left with the  
11 definite and firm conviction that a mistake has been  
12 committed, it is to be expected that he will grant a  
13 new trial." Id. (quoting 11 Wright and Miller, Federal  
14 Practice and Procedure: Civil s 2806 at 49).

15 Similarly, the Ninth Circuit has found that the  
16 district judge "ha[s] the right, and indeed the duty,  
17 to weigh the evidence as he s[ees] it, and to set aside  
18 the verdict of the jury, even though supported by  
19 substantial evidence, where, in his conscientious  
20 opinion, the verdict is contrary to the clear weight of  
21 the evidence. . . to prevent. . . a miscarriage of  
22 justice." Murphy v. City of Long Beach, 914 F.2d 183,  
23 188 (9th Cir. 1990)(internal citation omitted).

#### 24       4. Qualified Immunity

25       Courts use a two-part inquiry to determine whether  
26 an officer is entitled to qualified immunity. Saucier  
27 v. Katz, 533 U.S. 194, 200 (2001). In the first prong,  
28 courts look to when resolving all disputes of fact and

1 credibility in favor of the party asserting the injury,  
2 whether a constitutional right has been violated.  
3 Kennedy v. City of Ridgefield, 439 F.3d 1055, 1061 (9th  
4 Cir. 2006). The second prong prompts the court to  
5 determine if the right was clearly established at the  
6 time of the violation. Id. A right is clearly  
7 established if its "contours" are "sufficiently clear  
8 that a reasonable official would understand that what  
9 he is doing violates that right." Saucier, 533 U.S. at  
10 202 (citing Anderson v. Creighton, 483 U.S. 635, 640  
11 (1987)). However, if an officer makes a mistake in  
12 applying the relevant legal doctrine, and if "the  
13 officer's mistake as to what the law requires is  
14 reasonable, . . . the officer is entitled to the  
15 immunity defense." Kennedy, 439 F.3d at 1062 (internal  
16 quotation marks and citation omitted). Courts may  
17 exercise sound discretion in deciding which of the two  
18 prongs of the Saucier inquiry should be addressed first  
19 in light of the circumstances in the particular case at  
20 hand. Pearson v. Callahan, 555 U.S. 223, 237 (2009).

## 21 **B. Analysis**

### 22 1. The Court DENIES Defendant Wolfe's Motion for 23 Judgment as a Matter of Law

24 Defendant Wolfe argues he is entitled to qualified  
25 immunity and judgment as a matter of law as to  
26 Plaintiff's excessive force claim because the law  
27 regarding the standard for an excessive force claim was  
28 not clearly established in 2004 when this incident

1 occurred. Mot. 5:25-27. Plaintiff argues that  
2 Defendant Wolfe is not entitled to qualified immunity  
3 pursuant to Rule 50(b) because he failed to bring a  
4 Rule 50(a) motion before the case was submitted to the  
5 jury. Opp'n 5:22-6:16.

6 A motion made under FRCP 50(b) is a renewed motion  
7 for judgment as a matter of law, and it must be  
8 preceded by a Rule 50(a) motion made before the case is  
9 submitted to the jury. E.E.O.C. v. Go Daddy Software,  
10 Inc., 581 F.3d 951, 961 (9th Cir. 2009). Failure to  
11 make a Rule 50(a) motion procedurally forecloses the  
12 consideration of a Rule 50(b) motion. See Tortu, 556  
13 F.3d at 1084 (reversing the district court's grant of  
14 the defendant's Rule 50(b) motion on an excessive force  
15 claim because the defendant had not made a Rule 50(a)  
16 motion during trial).

17 As in Tortu, Defendant Wolfe failed to make a Rule  
18 50(a) motion as to Plaintiff's excessive force claim  
19 during trial before the case was submitted to the jury.  
20 This procedural defect precludes this Court from even  
21 going into the merits of Defendant Wolfe's claim of  
22 qualified immunity. Defendant Wolfe claims to have  
23 preserved his right to bring the instant Motion through  
24 his Memorandum of Contentions of Fact and Law, the  
25 Final Pretrial Conference Order, and discussions during  
26 trial regarding special interrogatories Defendants  
27 proposed as to the issue of qualified immunity. Mot.  
28 4:12-20. Defendant Wolfe also argues that the trial

1 shows that there was a record of his intent to bring  
2 the instant Motion, Plaintiff and the Court were aware  
3 of it, and Plaintiff does not argue he was prejudiced  
4 in any way by Defendant Wolfe's failure to bring the  
5 Rule 50(a) motion. Reply 6:21-27.

6 The Ninth Circuit has held that substantial  
7 compliance is not enough. Janes, 279 F.3d at 887  
8 (holding that the defendant's motion for summary  
9 judgment and its trial brief was not sufficient to  
10 satisfy the Rule 50(a) requirement). Defendant Wolfe's  
11 argument that judgment as a matter of law as to  
12 Plaintiff's excessive force claim would likely not have  
13 been granted before the case was submitted to the jury  
14 is without merit. Even if it is true that a qualified  
15 immunity claim would not have been resolved because of  
16 a factual dispute, this does not relinquish Defendant  
17 Wolfe's obligation to make a Rule 50(a) motion to  
18 preserve the issue for the Court to review on a Rule  
19 50(b) motion post-trial. A.D. v. California Highway  
20 Patrol, 712 F.3d 446, 452 n.2 (9th Cir. 2013).

21 Defendant Wolfe fails to, through any precedent, refute  
22 the Ninth Circuit's strict adherence to the procedural  
23 requirement of making a Rule 50(a) motion as a  
24 requisite to making a Rule 50(b) motion. See Janes,  
25 279 F.3d at 887.

26 For these reasons, the Court must **DENY** Defendant  
27 Wolfe's Rule 50(b) Motion for Judgment as a Matter of  
28 Law as to his claim of qualified immunity.

1           2.   The Court **DENIES** Defendant Wolfe's Rule 59(e)  
2                   Motion to Alter or Amend the Judgment

3           Defendant Wolfe argues that the judgment should be  
4 altered or amended pursuant to FRCP 59(e) because he is  
5 entitled to qualified immunity. Mot. 2:4-7. Plaintiff  
6 argues Defendant Wolfe's request to alter or amend the  
7 judgment should be denied because Defendant Wolfe  
8 failed to submit points and authorities supporting his  
9 request. Opp'n 6:22-23.

10           A Rule 59(e) motion is an "extraordinary remedy  
11 which should be used sparingly." Allstate Ins., 634  
12 F.3d at 1111 (internal quotation marks and citation  
13 omitted). A Rule 59(e) motion must rely on one of  
14 three grounds: an intervening change in controlling  
15 law, the availability of new evidence, or the need to  
16 correct a clear error of law or manifest injustice.  
17 Smith, 727 F.3d at 956. Defendant Wolfe fails to cite  
18 to any case law to support the request that this Court  
19 should alter or amend the judgment. See generally Mot.

20           Defendant Wolfe's argument appears to assert that  
21 the controlling law regarding the rights of pretrial  
22 detainees to be free from excessive force has changed,  
23 and therefore, Defendant Wolfe must be entitled to  
24 qualified immunity. Mot. 5:25-27. As an initial  
25 matter, it appears that Defendant Wolfe makes a request  
26 to alter or amend the judgment in conjunction with his  
27 request for judgment as a matter of law. Id. at 2:4-6.  
28 As discussed above, Defendant Wolfe is not entitled to

1 judgment as a matter of law because of the procedural  
2 defects, and therefore there is also no basis on those  
3 grounds to alter or amend the judgment.

4 Secondly, this change of law Defendant Wolfe  
5 discusses occurred in 2015 when the Supreme Court  
6 issued its ruling in Kingsley v. Henderson, 135 S. Ct.  
7 2466 (2015). However, this change of law occurred in  
8 between the incident in 2004 and the third trial in  
9 2017, and therefore there was nothing preventing  
10 Defendant Wolfe from making this argument at trial,  
11 which he did not. To grant a Rule 59(e) motion now  
12 would go against the body of case law requiring that  
13 Rule 59(e) should not be used as a vehicle for bringing  
14 before the court theories or arguments not advanced  
15 earlier. See Kona Enterprises, Inc. v. Estate of  
16 Bishop, 229 F.3d 877, 890-91 (9th Cir. 2000)(denying  
17 the plaintiff's rule 59(e) motion because the plaintiff  
18 had numerous previous opportunities to raise the  
19 arguments made in the motion).

20 Defendant Wolfe's argument also implies that the  
21 jury verdict represented a clear error of law and  
22 constitutes manifest injustice. Mot. 13:16-18; 14:9-  
23 11; 15:17-19. Defendant Wolfe argues that he did not  
24 violate Plaintiff's constitutional right to be free  
25 from excessive force because his actions were  
26 objectively reasonable. Id. at 11:6-10.

27 Clear error or manifest injustice occurs when the  
28 "reviewing court on the entire record is left with the

1 definite and firm conviction that a mistake has been  
2 committed." Smith, 727 F.3d at 955 (internal quotation  
3 marks and citation omitted). In the case at bar, there  
4 is sufficient evidence to sustain a verdict for  
5 Plaintiff and there is no evidence of a clear error of  
6 law or manifest injustice, change in the controlling  
7 law, or availability of new evidence. Zamani v.  
8 Carnes, 491 F.3d 990, 998 (9th Cir. 2007)(finding the  
9 district court did not abuse its discretion in denying  
10 a motion to alter or amend the judgment where the  
11 defendant failed to show there was a basis to grant the  
12 motion). While Defendant Wolfe contends that two  
13 previous juries found for him, he has failed to provide  
14 this Court with any evidence of a clear error of law or  
15 manifest injustice that a reasonable jury could not  
16 find Defendant Wolfe's use of force was excessive.  
17 Defendant Wolfe hit Plaintiff numerous times, he was  
18 the first deputy to come into contact with Plaintiff on  
19 the day of the incident, and Plaintiff did incur some  
20 injury. Opp'n 8:22-23; 9:2-6; 3:19-21. There is  
21 sufficient evidence to support the jury's verdict and  
22 there is no evidence of a clear error of law or  
23 manifest injustice. Granting a request to alter or  
24 amend the judgment pursuant to FRCP 59(e) is an  
25 extraordinary remedy to be used sparingly, and the case  
26 at hand does not demand such. Therefore, Defendant  
27 Wolfe's request to alter or amend the judgment pursuant  
28 to FRCP 59(e) is **DENIED**.

1           3.    The Court **DENIES** Defendant Wolfe's Rule 59(a)  
2                    Motion for a New Trial

3           Defendant Wolfe argues that if the Court denies his  
4 Motion for Judgment as a Matter of Law, in the  
5 alternative, he requests the Court grant a Motion for a  
6 New Trial. Mot. 22:16-17. If the Court cannot  
7 determine if Defendant Wolfe is entitled to qualified  
8 immunity because there are outstanding factual disputes  
9 that need to be resolved by a jury, then the Court  
10 should grant a new trial because the Court declined to  
11 give Defendants' proposed special interrogatories. Id.  
12 at 23:10-15, 19-20; Reply 9:18-10:2. Plaintiff argues  
13 a new trial should not be granted because Defendant  
14 Wolfe failed to specify any error of law and he had  
15 every opportunity to submit revised interrogatories,  
16 however he did not. Opp'n 7:17-27.

17           A court may grant a new trial for any reason for  
18 which historically a new trial has been granted,  
19 including if the verdict is against the weight of the  
20 evidence, the damages are excessive, or for other  
21 reasons that the trial was not fair to the moving  
22 party. Fed. R. Civ. P. 59(a); Molski, 481 F.3d at 730.  
23 Procedural errors may permit the granting of a new  
24 trial; however, they must be found to be prejudicial.  
25 Anglo-America General Agents, 83 F.R.D. at 43. The  
26 party seeking a new trial bears the burden of proof for  
27 a motion for a new trial and courts "should not lightly  
28 disturb a plausible jury verdict." Id.

1 Here, Defendant Wolfe argues for a new trial on the  
2 basis of a procedural error; the Court's failure to  
3 issue interrogatories to the jury that would provide  
4 the factual determinations necessary for the Court to  
5 grant qualified immunity. Reply 9:18-10:2. However,  
6 Defendant Wolfe offers no case law to support this  
7 assertion. Moreover, there is no indication that the  
8 Court's action was erroneous or that it was  
9 prejudicial.

10 A court's decision to decline to issue special  
11 interrogatories to the jury is a matter committed to  
12 the discretion of the trial court. See Acosta v. City  
13 and County of San Francisco, 83 F.3d 1143, 1149 (9th  
14 Cir. 1996) abrogation recognized by Randall v.  
15 Williamson, 211 F. App'x 565 (9th Cir. Nov. 22, 2006)  
16 (unpublished)(finding that the district court judge's  
17 decision to not issue special interrogatories to the  
18 jury was well within his discretion). In this case,  
19 the Court reviewed the interrogatories, and relayed its  
20 concerns to Defendants giving them a chance to revise  
21 and submit more appropriate questions to give to the  
22 jury. Ultimately, the Court determined that the  
23 interrogatories were not proper because they would not  
24 aid the Court in determining if Defendants would  
25 possibly be entitled to qualified immunity. Although  
26 this was not the outcome Defendant Wolfe wanted, the  
27 decision was well within the discretion of the Court,  
28 and it did not constitute procedural error.

1 Finally, the decision did not prejudice Defendant  
2 Wolfe. Qualified immunity is a question of law to be  
3 decided by the court. Torres v. City of Los Angeles,  
4 548 F. 3d 1197, 1210 (9th Cir. 2008). Courts have  
5 stressed the importance of resolving qualified immunity  
6 questions at the earliest possible stage in litigation.  
7 Tortu, 556 F.3d at 1081-83. However, where a qualified  
8 immunity claim cannot be resolved before trial due to a  
9 factual conflict, it is a party's responsibility to  
10 preserve the legal issue for determination with a Rule  
11 50(a) motion after the jury resolves the factual  
12 conflict. Id. at 1084. Here, regardless of the  
13 submission of interrogatories to the jury, it was  
14 Defendant Wolfe's duty to preserve the legal issue by  
15 making a Rule 50(a) motion. However, Defendant Wolfe  
16 did not. Even if the Court provided the  
17 interrogatories, this would not change this Court's  
18 ruling on Defendant Wolfe's inability to assert  
19 qualified immunity because of the lack of a Rule 50(a)  
20 motion. Therefore, denying the submission of  
21 interrogatories did not prejudice Defendant Wolfe, and  
22 because that is Defendant Wolfe's only basis to request  
23 a new trial, his request for a new trial is **DENIED**.

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1 **IV. Conclusion**

2 For the reasons set forth above, the Court **DENIES**  
3 Defendant Wolfe's Motion for Qualified Immunity as  
4 Judgment as a Matter of Law and to Alter or Amend the  
5 Judgment and Defendant Wolfe's Motion for a New Trial.

6 **IT IS SO ORDERED.**

7 DATED: June 27, 2017

s/ RONALD S.W. LEW

8 **HONORABLE RONALD S.W. LEW**  
9 Senior U.S. District Judge

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