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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ANTHONY R. TURNER,  
Plaintiff,

No. CIV S-09-3040-CMK-P

vs.

ORDER

CALIFORNIA FORENSIC MEDICAL  
GROUP, et al.,  
Defendants.

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Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172,

1 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the  
2 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it  
3 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege  
4 with at least some degree of particularity overt acts by specific defendants which support the  
5 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
6 impossible for the court to conduct the screening required by law when the allegations are vague  
7 and conclusory.

### 8 **I. PLAINTIFF'S ALLEGATIONS**

9 Plaintiff's claims are unclear. The individuals he names in his caption all appear  
10 to be medical personnel. To that extent, he appears to be claiming that he has been denied  
11 adequate medical treatment for injuries he received during his arrest. He also appears to be  
12 alleging some officers used excessive force during his arrest, resulting in the injuries for which  
13 he was not treated. He further appears to be alleging that he was placed in administrative  
14 segregation without a proper hearing in violation of his Due Process rights. Finally, he appears  
15 to claim he was retaliated against for filing an inmate grievance regarding his treatment, resulting  
16 in denial of adequate shelter, food, and protection. His claims seem to fall within four  
17 categories: inadequate medical treatment; excessive force; due process; and retaliation.

### 18 **II. DISCUSSION**

#### 19 **A. MEDICAL TREATMENT**

20 The treatment a prisoner receives in prison and the conditions under which the  
21 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel  
22 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,  
23 511 U.S. 825, 832 (1994). The Eighth Amendment "embodies broad and idealistic concepts of  
24 dignity, civilized standards, humanity, and decency." Estelle v. Gamble, 429 U.S. 97, 102  
25 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.  
26 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with

1 “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint v. McCarthy,  
2 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only  
3 when two requirements are met: (1) objectively, the official’s act or omission must be so serious  
4 such that it results in the denial of the minimal civilized measure of life’s necessities; and (2)  
5 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of  
6 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison  
7 official must have a “sufficiently culpable mind.” See id.

8 Deliberate indifference to a prisoner’s serious illness or injury, or risks of serious  
9 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at  
10 105; see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental  
11 health needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is  
12 sufficiently serious if the failure to treat a prisoner’s condition could result in further significant  
13 injury or the “. . . unnecessary and wanton infliction of pain.” McGuckin v. Smith, 974 F.2d  
14 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).  
15 Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition  
16 is worthy of comment; (2) whether the condition significantly impacts the prisoner’s daily  
17 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See  
18 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

19 The requirement of deliberate indifference is less stringent in medical needs cases  
20 than in other Eighth Amendment contexts because the responsibility to provide inmates with  
21 medical care does not generally conflict with competing penological concerns. See McGuckin,  
22 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to  
23 decisions concerning medical needs. See Hunt v. Dental Dep’t, 865 F.2d 198, 200 (9th Cir.  
24 1989). The complete denial of medical attention may constitute deliberate indifference. See  
25 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical  
26 treatment, or interference with medical treatment, may also constitute deliberate indifference.

1 See Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also  
2 demonstrate that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

3           Negligence in diagnosing or treating a medical condition does not, however, give  
4 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a  
5 difference of opinion between the prisoner and medical providers concerning the appropriate  
6 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,  
7 90 F.3d 330, 332 (9th Cir. 1996).

8           Here, Plaintiff alleges he was denied medical treatment for the injuries he  
9 sustained during his arrest. His allegations, however, are vague and lack sufficient detail for the  
10 court to determine who he is claiming failed to provide necessary treatment. Plaintiff's only  
11 specific allegations relate to "Nurse Tammy" refusing to file an injury report, which the court  
12 notes is not the same as refusing treatment. He then refers to some treatment he did receive, but  
13 that "Nurse Genine" and "Nurse Carolyn" obstructed and interfered with the course of plaintiff's  
14 pain medications and prescribed treatment by refusing to give him his medication, but noting in  
15 his chart that he did receive it, which prevented "Nurse Lisa" from giving him additional  
16 medication. He also claims Jodell Jenks refused to allow him to review his medical records.

17           The allegations set forth in the complaint are vague and conclusory and therefore  
18 fail to state a claim. However, it is possible that Plaintiff can cure these defects, and he will be  
19 provided an opportunity to do so. As discussed below, Plaintiff is required to set forth sufficient  
20 facts which identify what the individual defendants did that violated his constitutional rights.  
21 Vague and conclusory allegations are insufficient.

## 22           B.       EXCESSIVE FORCE

23           As stated above, the treatment a prisoner receives in prison and the conditions  
24 under which the prisoner is confined are subject to scrutiny under the Eighth Amendment. When  
25 prison officials stand accused of using excessive force, the core judicial inquiry is "whether force  
26 was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically

1 to cause harm.” Hudson v. McMillian, 503 U.S. 1, 6-7 (1992); Whitley v. Albers, 475 U.S. 312,  
2 320-21 (1986). The “malicious and sadistic” standard, as opposed to the “deliberate  
3 indifference” standard applicable to most Eighth Amendment claims, is applied to excessive  
4 force claims because prison officials generally do not have time to reflect on their actions in the  
5 face of risk of injury to inmates or prison employees. See Whitley, 475 U.S. at 320-21. In  
6 determining whether force was excessive, the court considers the following factors: (1) the need  
7 for application of force; (2) the extent of injuries; (3) the relationship between the need for force  
8 and the amount of force used; (4) the nature of the threat reasonably perceived by prison officers;  
9 and (5) efforts made to temper the severity of a forceful response. See Hudson, 503 U.S. at 7.  
10 The absence of an emergency situation is probative of whether force was applied maliciously or  
11 sadistically. See Jordan v. Gardner, 986 F.2d 1521, 1528 (9th Cir. 1993) (en banc). The lack of  
12 injuries is also probative. See Hudson, 503 U.S. at 7-9. Finally, because the use of force relates  
13 to the prison’s legitimate penological interest in maintaining security and order, the court must be  
14 deferential to the conduct of prison officials. See Whitley, 475 U.S. at 321-22.

15           Plaintiff appears to be alleging that he was mistreated during his arrest. He has  
16 not, however, named any of the arresting officers as defendants to this action. If his intention is  
17 to raise a claim for excessive force used during his arrest, he is required to identify who used the  
18 excessive force, what force was used, and why. In addition, Plaintiff makes some allegations that  
19 he has been mistreated while in custody. He states he was placed in a freezing cell without  
20 blankets or a mattress, was denied adequate food and what food was provided was rotten, and he  
21 was placed with other inmates in disregard of his safety. Plaintiff, however, fails to identify  
22 who mistreated him, such as who denied him proper food and shelter. He does identify some  
23 individuals whom he alleges mistreated him, however they are not identified as defendants. He  
24 claims Sgt. Malagoney ordered Plaintiff forcibly placed in a housing unit, and two deputies,  
25 Hundl and Deneau, “inflicted serious injuries of pain” while handling him. If Plaintiff intends to  
26 proceed on an excessive force claim in this action, he needs to properly identify the individuals

1 who were personally responsible for the excessive force, and identify them as defendants. He is  
2 also required to set forth sufficient facts specifically identifying what the defendants did that  
3 violated his constitutional rights. Vague and conclusory allegations are insufficient.

#### 4 C. DUE PROCESS

5 The Due Process Clause protects prisoners from being deprived of life, liberty, or  
6 property without due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to  
7 state a claim of deprivation of due process, a plaintiff must allege the existence of a liberty or  
8 property interest for which the protection is sought. See Ingraham v. Wright, 430 U.S. 651, 672  
9 (1977); Bd. of Regents v. Roth, 408 U.S. 564, 569 (1972). Due process protects against the  
10 deprivation of property where there is a legitimate claim of entitlement to the property. See Bd.  
11 of Regents, 408 U.S. at 577. Protected property interests are created, and their dimensions are  
12 defined, by existing rules that stem from an independent source – such as state law – and which  
13 secure certain benefits and support claims of entitlement to those benefits. See id.

14 Liberty interests can arise both from the Constitution and from state law. See  
15 Hewitt v. Helms, 459 U.S. 460, 466 (1983); Meachum v. Fano, 427 U.S. 215, 224-27 (1976);  
16 Smith v. Sumner, 994 F.2d 1401, 1405 (9th Cir. 1993). In determining whether the Constitution  
17 itself protects a liberty interest, the court should consider whether the practice in question “. . . is  
18 within the normal limits or range of custody which the conviction has authorized the State to  
19 impose.” Wolff, 418 U.S. at 557-58; Smith, 994 F.2d at 1405. Applying this standard, the  
20 Supreme Court has concluded that the Constitution itself provides no liberty interest in good-  
21 time credits, see Wolff, 418 U.S. at 557; in remaining in the general population, see Sandin v.  
22 Conner, 515 U.S. 472, 485-86 (1995); in not losing privileges, see Baxter v. Palmigiano, 425  
23 U.S. 308, 323 (1976); in staying at a particular institution, see Meachum, 427 U.S. at 225-27; or  
24 in remaining in a prison in a particular state, see Olim v. Wakinekona, 461 U.S. 238, 245-47  
25 (1983).

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1           In determining whether state law confers a liberty interest, the Supreme Court has  
2 adopted an approach in which the existence of a liberty interest is determined by focusing on the  
3 nature of the deprivation. See Sandin v. Connor, 515 U.S. 472, 481-84 (1995). In doing so, the  
4 Court has held that state law creates a liberty interest deserving of protection only where the  
5 deprivation in question: (1) restrains the inmate’s freedom in a manner not expected from the  
6 sentence; and (2) “imposes atypical and significant hardship on the inmate in relation to the  
7 ordinary incidents of prison life.” Id. at 483-84. Prisoners in California have a liberty interest in  
8 the procedures used in prison disciplinary hearings where a successful claim would not  
9 necessarily shorten the prisoner’s sentence. See Ramirez v. Galaza, 334 F.3d 850, 853, 859 (9th  
10 Cir. 2003) (concluding that a due process challenge to a prison disciplinary hearing which did not  
11 result in the loss of good-time credits was cognizable under § 1983); see also Wilkinson v.  
12 Dotson, 544 U.S. 74, 82 (2005) (concluding that claims which did not seek earlier or immediate  
13 release from prison were cognizable under § 1983).

14           Finally, with respect to prison disciplinary proceedings, due process requires  
15 prison officials to provide the inmate with: (1) a written statement at least 24 hours before the  
16 disciplinary hearing that includes the charges, a description of the evidence against the inmate,  
17 and an explanation for the disciplinary action taken; (2) an opportunity to present documentary  
18 evidence and call witnesses, unless calling witnesses would interfere with institutional security;  
19 and (3) legal assistance where the charges are complex or the inmate is illiterate. See Wolff, 418  
20 U.S. at 563-70. Due process is satisfied where these minimum requirements have been met, see  
21 Walker v. Sumner, 14 F.3d 1415, 1420 (9th Cir. 1994), and where there is “some evidence” in  
22 the record as a whole which supports the decision of the hearing officer, see Superintendent v.  
23 Hill, 472 U.S. 445, 455 (1985). The “some evidence” standard is not particularly stringent and is  
24 satisfied where “there is any evidence in the record that could support the conclusion reached.”  
25 Id. at 455-56. However, a due process claim challenging the loss of good-time credits as a result  
26 of an adverse prison disciplinary finding is not cognizable under § 1983 and must be raised by

1 way of habeas corpus. See Blueford v. Prunty, 108 F.3d 251, 255 (9th Cir. 1997).

2 Here, Plaintiff alleges he was denied notice, an opportunity to be heard, his right  
3 to call witnesses, and to prepare a defense in response the decision to place him in administrative  
4 segregation. He fails, however, to identify who allegedly deprived him of his due process, and  
5 how he was so deprived. Such conclusory allegations are insufficient to state a claim. If he  
6 chooses to continue on this claim in an amended complaint, Plaintiff must specify how his Due  
7 Process rights were violated, including what did happen, and who was responsible for the failure  
8 to provide the proper notice and hearing.

9 D. RETALIATION

10 In order to state a claim under 42 U.S.C. § 1983 for retaliation, the prisoner must  
11 establish that he was retaliated against for exercising a constitutional right, and that the  
12 retaliatory action was not related to a legitimate penological purpose, such as preserving  
13 institutional security. See Barnett v. Centoni, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curiam).  
14 In meeting this standard, the prisoner must demonstrate a specific link between the alleged  
15 retaliation and the exercise of a constitutional right. See Pratt v. Rowland, 65 F.3d 802, 807 (9th  
16 Cir. 1995); Valandingham v. Bojorquez, 866 F.2d 1135, 1138-39 (9th Cir. 1989). The prisoner  
17 must also show that the exercise of First Amendment rights was chilled, though not necessarily  
18 silenced, by the alleged retaliatory conduct. See Resnick v. Hayes, 213 F.3d 443, 449 (9th Cir.  
19 2000), see also Rhodes v. Robinson, 408 F.3d 559, 569 (9th Cir. 2005). Thus, the prisoner  
20 plaintiff must establish the following in order to state a claim for retaliation: (1) prison officials  
21 took adverse action against the inmate; (2) the adverse action was taken because the inmate  
22 engaged in protected conduct; (3) the adverse action chilled the inmate's First Amendment  
23 rights; and (4) the adverse action did not serve a legitimate penological purpose. See Rhodes,  
24 408 F.3d at 568.

25 As to the chilling effect, the Ninth Circuit in Rhodes observed: "If Rhodes had not  
26 alleged a chilling effect, perhaps his allegations that he suffered harm would suffice, since harm



1 that is more than minimal will almost always have a chilling effect.” Id. at n.11. By way of  
2 example, the court cited Pratt in which a retaliation claim had been decided without discussing  
3 chilling. See id. This citation is somewhat confusing in that the court in Pratt had no reason to  
4 discuss chilling because it concluded that the plaintiff could not prove the absence of legitimate  
5 penological interests. See Pratt, 65 F.3d at 808-09. Nonetheless, while the court has clearly  
6 stated that one of the “basic elements” of a First Amendment retaliation claim is that the adverse  
7 action “chilled the inmates exercise of his First Amendment rights,” id. at 567-68, see also  
8 Resnick, 213 F.3d at 449, the comment in Rhodes at footnote 11 suggests that adverse action  
9 which is more than minimal satisfies this element. Thus, if this reading of Rhodes is correct, the  
10 chilling effect element is essentially subsumed by adverse action.

11 Plaintiff seems to be claiming that he was retaliated against for wanting to file a  
12 complaint against the arresting deputies for using excessive force. However, his claims are  
13 unclear. If he chooses to continue with a relation claim in this action, he will have to make his  
14 allegations clear.

#### 15 E. PLEADING STANDARDS

16 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual  
17 connection or link between the actions of the named defendants and the alleged deprivations.  
18 See Monell v. Dep’t of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
19 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
20 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts, or  
21 omits to perform an act which he is legally required to do that causes the deprivation of which  
22 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and  
23 conclusory allegations concerning the involvement of official personnel in civil rights violations  
24 are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the  
25 plaintiff must set forth specific facts as to each individual defendant’s causal role in the alleged  
26 constitutional deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

1 As mentioned above, Plaintiff fails to allege sufficient facts identifying the  
2 individuals responsible for the constitutional violations he alleges. In addition, Plaintiff  
3 identifies defendants, such as Mr. Zil, against whom he does not allege any personal involvement  
4 in the alleged constitutional violations. Plaintiff is required to plead sufficient facts showing the  
5 personal involvement of each named defendant in the constitutional violations he is alleging. In  
6 addition, Plaintiff identifies several defendants by first name only. Plaintiff is cautioned that  
7 service by the United States Marshall is unlikely to be accomplished without the full identity of  
8 the individuals. It is Plaintiff's responsibility to identify the individuals he intends to proceed  
9 against, and failure to properly identify them will likely result in the failure to properly serve  
10 them.

11 Finally, Plaintiff names as a defendant the California Forensic Medical Group.  
12 This group is presumably the medical providers for the Yolo County Jail. As such, it is likely  
13 that it would be treated as a state agency for purposes of an action under § 1983. In addition to  
14 Plaintiff's failure to allege any specific facts related to the group itself, the group is likely to be  
15 immune from such an action under the Eleventh Amendment. The Eleventh Amendment  
16 prohibits federal courts from hearing suits brought against a state both by its own citizens, as well  
17 as by citizens of other states. See Brooks v. Sulphur Springs Valley Elec. Coop., 951 F.2d 1050,  
18 1053 (9th Cir. 1991). This prohibition extends to suits against states themselves, and to suits  
19 against state agencies. See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per  
20 curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). A state's agency responsible for  
21 incarceration and correction of prisoners is a state agency for purposes of the Eleventh  
22 Amendment. See Alabama v. Pugh, 438 U.S. 781, 782 (1978) (per curiam); Hale v. Arizona,  
23 993 F.2d 1387, 1398-99 (9th cir. 1993) (en banc). Therefore, Plaintiff has the choice of whether  
24 to try to proceed against the California Forensic Medical Group, in which case he will likely have  
25 to show that the group should not be considered a state agency for purposes of § 1983, or he can  
26 file his amended complaint without naming the group as a defendant and continue in this action

1 only against the individual defendants who are not immune.

2 F. PENDING MOTIONS

3 Plaintiff has also filed two separate motions requesting the court allow service of  
4 his complaint (Docs. 7,9). As discussed above, the court finds service of the complaint to be  
5 inappropriate at this time. Those motions will therefore be denied. If Plaintiff chooses to file an  
6 amended complaint, as addressed in this order, the court will review the amended complaint and  
7 issue appropriate orders in response thereto.

8 **III. CONCLUSION**

9 Because it is possible that the deficiencies identified in this order may be cured by  
10 amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the entire  
11 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is  
12 informed that, as a general rule, an amended complaint supersedes the original complaint. See  
13 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to  
14 amend, all claims alleged in the original complaint which are not alleged in the amended  
15 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if  
16 plaintiff amends the complaint, the court cannot refer to the prior pleading in order to make  
17 plaintiff's amended complaint complete. See Local Rule 15-220. An amended complaint must  
18 be complete in itself without reference to any prior pleading. See id.

19 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
20 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
21 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how  
22 each named defendant is involved, and must set forth some affirmative link or connection  
23 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d  
24 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

25 Plaintiff is warned that failure to file an amended complaint within the time  
26 provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at 1260-

1 61; see also Local Rule 11-110. Plaintiff is also warned that a complaint which fails to comply  
2 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).  
3 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981). Therefore, Plaintiff  
4 is cautioned against attaching excessive exhibits to his amended complaint. Rather, his  
5 compliant is to contain all necessary factual allegations to support his claims, stated simply and  
6 concisely. He is informed that at the pleading stage he is not required to offer documents in  
7 support his factual allegations.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's complaint is dismissed with leave to amend;
- 10 2. Plaintiff shall file an amended complaint within 30 days of the date of  
11 service of this order; and
- 12 3. Plaintiff's motions for service of the complaint (Docs. 7,9) are denied.

13  
14 DATED: May 6, 2010

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16 **CRAIG M. KELLISON**  
17 UNITED STATES MAGISTRATE JUDGE  
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