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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHSTAR SOURCING, LLC,

Plaintiff,

v.

ROCKET DOG BRANDS, LLC,

Defendant.

CASE NO. C16-0405RAJ

ORDER GRANTING
PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on Plaintiff Northstar Sourcing, LLC’s (“Northstar”) Motion for Summary Judgment. Dkt. # 16. Defendant Rocket Dog Brands, LLC (“Rocket Dog”) opposes the motion. Dkt. # 19. For the reasons stated below the Court GRANTS the motion.

II. BACKGROUND

Plaintiff Northstar is a company headquartered in Bellevue, Washington that contracts with Chinese factories to manufacture shoes, sometimes also designing and

1 selling shoes directly to retailers. Mot. at 1; Guess Decl. (Dkt. # 20) ¶ 3, Ex. B (“Perkins
2 Dep.”) at 16:18; 21:2-10. Defendant Rocket Dog is a Delaware Limited Liability
3 Company doing business in California and Washington that wholesales and sometimes
4 designs shoes. Answer ¶3; Resp. at 3 (citing Guess Decl., Ex. A (“Taylor Dep.”) at
5 9:16-20).

6 In 2009, Northstar and Rocket Dog began working together. Compl. ¶ 9; Answer
7 ¶ 9. Pursuant to their arrangement, Northstar manufactured shoes for Rocket Dog in
8 China and then shipped them to the various ports identified in Rocket Dog’s purchase
9 orders. Compl. ¶9-10; Answer ¶9-10. Northstar then issued invoices to Rocket Dog for
10 the fulfilled purchase orders. Compl. ¶10; Answer ¶10.

11 Northstar alleges that in 2015, Rocket Dog fell behind on its payments. Compl.
12 ¶11-15. Nevertheless, Northstar continued to accept purchase orders from Rocket Dog
13 while Rocket Dog committed to paying down its debt. Perkins Decl. ¶ 5; Guess Decl. ¶4,
14 Ex. C (“Briskie Dep.”) at 17:22-18:7. According to Northstar, despite efforts to negotiate
15 Rocket Dog’s debt, Rocket Dog made little effort to pay down the outstanding balance.
16 Mot. at 2. In September, 2015, Northstar’s CEO, Robert Perkins, warned Rocket Dog
17 that Northstar would withhold future shipments if Rocket Dog did not start paying its
18 past-due invoices. Perkins Decl., Ex. 4. In January, 2016, after Rocket Dog promised
19 and then failed to make a \$150,000.00 payment on its debt, Northstar declared Rocket
20 Dog in default and took possession of all goods that had been produced by Northstar but
21 not yet received by Rocket Dog. Perkins Decl., Ex. 5-6.

1 In particular, Northstar retained possession of shoes that Northstar had
2 manufactured for Rocket Dog in fulfillment of an order from Rocket Dog’s customer,
3 Payless Shoes. Perkins Decl. ¶15. In order to mitigate damages, Rocket Dog agreed to
4 transfer ownership of the existing orders from Payless to Northstar, with the effect that
5 Northstar was paid directly by Payless Shoes for the order originally arranged by Rocket
6 Dog. Bay Decl., (Dkt. # 17) ¶ 2, Taylor Dep. at 43:14-17; 44:12-45:3; Resp. at 6.

7 While the parties were negotiating the logistics of the Payless order, Mr. Perkins
8 called several Payless representatives. *See* Guess Decl., Exs. E-G; *id.*, Perkins Dep. at
9 70:12-75:23. The parties disagree about the content and effect of Mr. Perkins’ calls. *See*
10 *id.*, Perkins Dep. at 72:18-73:12; Resp. at 9-16. Mr. Perkins testified that his
11 conversations with the Payless representatives were solely about the logistics of
12 transferring the Payless shipment, and that he did not discuss Rocket Dog’s financial
13 status during these calls. Guess Decl., Perkins Dep. at 72:18-73:6. In contrast, one
14 Payless employee testified that Mr. Perkins told him Rocket Dog “potentially . . . [was]
15 bought out by a different company in the prior summer.” Guess Decl., Ex. E (“Steinhardt
16 Dep.”) at 13:6-8. Another Payless employee testified that Mr. Perkins told him Rocket
17 Dog was in “financial distress.” *Id.*, Ex. F (“Underhill Dep.”) at 19:10-13. A third
18 Payless employee, who did not talk to Mr. Perkins but was told about Mr. Perkins’ calls,
19 characterized Mr. Perkins’ behavior as “unprofessional” and “unusual” and characterized
20 Mr. Perkins’ comments about Rocket Dog as “derogatory,” although this employee was
21 unable to recall anything specific he was told about Mr. Perkins’ calls. *Id.* Ex. D
22 (“Kapcar Dep.”) at 10:14-25.

1 The Payless employees also testified that Mr. Perkins' phone calls did not affect
2 Payless' ongoing decisions about doing business with Rocket Dog. *See* Bay Decl., Ex. B
3 (“Hitch Dep.”) at 17:19-18:11; 35:17-19 (testifying that the “style sensibility of Rocket
4 Dog wasn't really aligned with where [Payless] was headed”); *id.*, Steinhardt Dep. at
5 17:7-12 (testifying that Mr. Perkins' phone call and alleged disclosure of information
6 about Rocket Dog did not affect Rocket Dog's relationship with Payless); *id.*, Kapcar
7 Dep. at 18:1-4 (same); Underhill Dep. at 15:14-18 (testifying that Payless remains open
8 to doing business with Rocket Dog, assuming Rocket Dog addresses issues with vendor
9 performance and product assortment). In contrast, Rocket Dog claims that Mr. Perkins'
10 phone calls harmed Rocket Dog's relationship with Payless and resulted in a substantial
11 loss of business. *Resp.* at 9-16.

12 In addition to the Payless order, Northstar also claims that Rocket Dog owes an
13 outstanding debt of \$2,094,326.00 from orders that Northstar had already produced and
14 shipped on behalf of Rocket Dog. Perkins Decl. ¶ 15; Hofmann Decl., Exs. 1-3. The
15 parties briefly attempted to negotiate a payment plan for this amount, but ultimately did
16 not reach an agreement. Perkins Decl. ¶ 19, Ex. 3 at 14; *id.*, Taylor Dep. at 29:11-12.

17 On March 18, 2016, Northstar filed suit against Rocket Dog, alleging causes of
18 action for breach of contract and unjust enrichment, seeking “no less than
19 \$2,185,947.93.” Compl. (Dkt. # 1). Rocket Dog asserted counterclaims for breach of
20 contract and for tortious interference with contract/business expectancy. Answer (Dkt.
21 # 5). Northstar now moves for summary judgment on its affirmative claims and on
22 Rocket Dog's counterclaims. *See* Mot.

1 present significant and probative evidence to support its claim or defense. *Intel Corp. v.*
2 *Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir.1991). When confronted
3 with purely legal questions, the Court does not defer to the non-moving party.

4 **A. Northstar’s Affirmative Claims**

5 Northstar moves for summary judgment on its breach of contract claim. *See Mot.*
6 at 6-8. Specifically, Northstar contends that it fulfilled purchase orders from Rocket Dog
7 by manufacturing and delivering shoes for which Rocket Dog now owes Northstar
8 \$2,094,326.00 in principal and another \$374,241.66 in interest. *Id.* at 6; Bay Supp. Decl.
9 at 2. Rocket Dog counters that Northstar’s records regarding the amount owed do not
10 match Rocket Dog’s. Resp. at 17; Briskie Supp. Decl. ¶¶ 3-5. Rocket Dog claims that it
11 “made a payment at some point in December/January to that balance.” Resp. at 17
12 (citing Taylor Dep. at 42:19-25). Rocket Dog also argues that, even if it is liable for the
13 amount at issue, its damages based on Northstar’s alleged tortious interference with
14 Rocket Dog’s Payless relationship “vastly outweigh Northstar’s” damages, and therefore,
15 Rocket Dog contends that it owes Northstar nothing. *Id.* at 16. Finally, for the first time
16 in its supplemental submissions, Rocket Dog argues that it was owed a 10% commission
17 on the Payless order and cancelled several orders at issue, which offsets Northstar’s
18 claimed damages. Briskie Supp. Decl. ¶¶ 3-5, 9-11, Ex. D-F.

19 Article 2 of the Washington Uniform Commercial Code governs this dispute
20 because the parties are merchants and the shoes Northstar delivered are “goods.” RCW
21 62A.2-102, 104-05; *see also Alpacas of Am., LLC v. Groome*, 317 P.3d 1103, 1105
22 (Wash. App. Ct. 2014). The parties do not dispute the existence of a contract, or that

1 Northstar performed under the contract and Rocket Dog accepted the shoes as
2 conforming goods. *See* Perkins Decl. ¶ 20; Answer (Dkt. #5) at ¶¶ 12, 13, 15; RCW
3 62A.2-301, 507, 607. Rather, the parties' dispute is limited to the issue of damages.

4 1. Principal

5 Northstar claims Rocket Dog owes \$2,094,326.00 in principal, supporting its
6 claim with its responses to Rocket Dog's interrogatories and corresponding business
7 records. Perkins Decl., Ex. 7 at 27-31; Hoffman Decl., Exs. 1-3. The business records
8 and accompanying spreadsheets include order numbers, associated purchase orders, dates
9 of invoices, and the balance owed for the outstanding shipments of shoes totaling
10 \$2,094,326.00. *Id.* Northstar also cites the testimony of Rocket Dog's CFO, Scott
11 Briskie, who testified that he has "no reason to dispute" "that [Rocket Dog] owed
12 Northstar about \$2 million in March of 2015." Guess Decl., Briskie Dep. at 15:4-8.

13 Rocket Dog raises several arguments in opposition, contending that (1) it does not
14 owe Northstar damages for breach of contract because Rocket Dog's damages from its
15 tortious interference claim dwarf Northstar's damages, Resp. at 16-17; (2) Northstar owes
16 Rocket Dog a commission on the Payless order that offsets Northstar's damages, Briskie
17 Supp. Decl. ¶¶ 5-8, Ex. C-E; (3) Rocket Dog cancelled some of the invoices that make up
18 Northstar's damages calculation, *id.* ¶¶ 9-10, Ex. E-F, and; (4) Northstar's damages
19 figure fails to subtract \$900 worth of shoes that had factory errors and a further \$5,227.00
20 that Rocket Dog cannot account for in its own records, *id.* ¶¶ 12-13. During oral
21 argument, Northstar conceded the last category, and the Court will therefore subtract
22 \$6,127.00 from Northstar's total damages award.

1 First, Rocket Dog contends that it does not owe Northstar the principal or interest
2 for the shoes because Rocket Dog is entitled to damages from its tortious interference
3 with contract/business expectancies counterclaim that outweigh Northstar's damages
4 claim. Resp. at 16-17. Because Rocket Dog's tortious interference claim is dismissed for
5 the reasons explained below, Rocket Dog's first argument is moot. See Section III.B.

6 Second, Rocket Dog argues that its business records do not match Northstar's,
7 creating an issue of material fact. Resp. at 17. In support of its argument, Rocket Dog
8 cites the testimony of Ms. Taylor: "[I]t's my understanding . . . you have to check with
9 the CFO, Scott Briskie, we made a payment at some point in December/January to that
10 balance. I don't know—I can't remember what it was." Guess Decl., Taylor Dep. at
11 42:19-25. No more certain, Mr. Briskie testified: "I believe that there is about a \$300,000
12 discrepancy, today between [Northstar's] \$2 million rough number and [Rocket Dog's]
13 \$1.8 million number, on paper, of what the difference is." *Id.*, Briskie Dep. at 48:7-13.
14 Mr. Briskie then testified that he has not investigated the discrepancy himself. *Id.* at
15 48:14-18. The ambivalent and apparently uninformed testimony of Rocket Dog's CEO
16 and CFO is not significant and probative evidence capable of combatting Northstar's
17 evidence or establishing a genuine issue of material fact. *Intel Corp.*, 952 F.2d at 1558.

18 While Rocket Dog's CEO and CFO initially testified that the potential \$300,000
19 discrepancy was from a payment Rocket Dog made to the balance, in its supplemental
20 submission ahead of oral argument, Rocket Dog raised a new argument, claiming it was
21 owed commission on the shoes Northstar sold to Payless. Briskie Supp. Decl. ¶¶ 3-5. In
22 support of this argument, Rocket Dog has provided invoices it claims that it sent to

1 Northstar demanding payment for the commission; invoices allegedly sent on June 28,
2 2016—three months after Northstar filed the current action. *Id.* ¶ 6, Ex. C.

3 At oral argument, the parties informed the Court that they had come to an
4 agreement regarding a portion of the commission. Northstar has agreed to pay Rocket
5 Dog a 10% commission on the Payless orders. *Id.*; Briskie Supp. Decl. ¶ 5, Ex. C-E.

6 There is no apparent disagreement that Northstar owes Rocket Dog commission on the
7 Payless order, but the parties disagree on the scope of the order, and therefore disagree on
8 the total commission. Rocket Dog has submitted evidence demonstrating the scope of the
9 commission: (1) Mr. Briskie’s Supplemental Declaration, Briskie Supp. Decl. ¶ (2) the
10 Master Purchase Agreement between Northstar and Payless, *id.*, Ex. D, (3) a spreadsheet
11 allegedly showing the orders for which Rocket Dog is owed commission, and (4)
12 invoices Rocket Dog Sent to Northstar for the commission on the orders, *id.*, Ex. C.

13 Northstar contends that Rocket Dog’s evidence demonstrates that the total
14 commission is approximately \$138,000.00, or 10% of the orders listed in the Master
15 Purchase Agreement between Northstar and Payless. *Id.*, Ex. D at 16-17. The Court
16 agrees. None of Rocket Dog’s additional evidence demonstrates an agreement that
17 Northstar would pay commission on any orders beyond those listed. *See Id.* ¶ 5 (stating
18 that as part of the Payless order negotiated in January 2016, Northstar owed Rocket Dog
19 a 10% commission); *id.*, Ex. D at 16-17 (listing the total orders from the agreement). The
20 Court therefore finds that Rocket Dog is entitled to \$138,000.00 in commission on the
21 Payless order, which offsets Northstar’s total damages claim.

1 Finally, Rocket Dog claims that Northstar’s records do not account for \$23,036.00
2 in cancelled invoices. *Id.* ¶10, Ex. D-F. As evidence, Rocket Dog has submitted
3 cancelled purchase orders dated January 11, 2016. *Id.*, Ex. F. As Northstar noted in the
4 oral argument, these cancelled invoices are all dated one week after the orders were
5 shipped. *See* Bay Supp. Decl., Ex. 3 (part 1 of 4) at 189-90 (freight forwarder’s cargo
6 receipts listing a January 4, 2016 shipment date for these orders). Under the Washington
7 UCC, unless the goods are nonconforming—which Rocket Dog does not allege here—
8 tender “entitles the seller to acceptance of the goods and to payment according to the
9 contract.” RCW 62A.2-507(1). Accordingly, Rocket Dog’s evidence merely shows that
10 it cancelled the purchase orders after they were delivered. Even granting Rocket Dog all
11 inferences in the most favorable light, its evidence does not demonstrate a material issue
12 of fact regarding these orders. *Addisu*, 198 F.3d at 1134.

13 2. Interest

14 Northstar also seeks interest on the unpaid invoices, alleging that this amount was
15 agreed to by the parties. Mot. at 8. In the alternative, Northstar argues that it is entitled
16 to 12% prejudgment interest because its claim is liquidated.¹ *Id.* Northstar has produced

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18 ¹ “Prejudgment interest may be awarded on liquidated claims or readily determinable
19 claims.” *King Aircraft Sales, Inc. v. Lane*, 68 Wn. App. 706, 720, 846 P.2d 550, 558 (1993).
20 “A claim is liquidated if it may be readily determined by a fixed standard without the exercise of
21 discretion or reliance on expert opinion.” *Id.* “The fact that a claim is disputed does not render
22 the claim unliquidated, so long as it may be determined by reference to an objective source.” *Id.*
“This rule governs claims for prejudgment interest under the UCC as well.” *Id.* “Prejudgment
interest is favored in the law because it promotes justice.” David K. DeWolf & Keller W. Allen,
16 Wash. Practice Series, *Prejudgment Interest* § 6:13 (4th ed. 2016). In Washington, the rate of
prejudgment interest is 12% in the absence of a written agreement specifying a different rate.
RCW 4.56.110; 19.52.020.

1 ample evidence that Rocket Dog agreed to pay interest at a rate of one percent per month
2 on the outstanding balance, evidence Rocket Dog has not contested. *See* Perkins Decl.,
3 ¶¶ 8-9; *id.* Ex. 2-3; Bay Decl., Taylor Dep. at 43:21-44:11. This reflects an annual
4 interest rate of 12% and a daily rate of .03288%, resulting in a total interest sum of
5 \$374,241.66 on Northstar’s original damages claim. *See* Bay Supp. Decl. ¶ 1-7, Ex. 2.
6 Northstar has now agreed to reduce its damages by \$6,127.00 in factory errors and
7 missing purchase orders, and an additional \$138,000.00 to account for commission
8 payments, resulting in a total sum of \$144,127.00 that should be subtracted from the
9 principal damages award. The resultant total principal award is \$1,950,199.00.

10 Finding that there is no genuine issue of material fact as to Northstar’s damages
11 claim or the agreed upon interest rate, the Court awards Northstar interest in the amount
12 of \$348,487.22 on its principal damages of \$1,950,199.00.

13 **B. Rocket Dog’s Counterclaim for Tortious Interference**

14 Northstar next moves to dismiss Rocket Dog’s counterclaim for tortious
15 interference with contract and business expectancies.² Mot. at 13-17. Rocket Dog
16 contends that Mr. Perkins’ calls to Payless interfered with the Payless-Rocket Dog
17 relationship and led to a loss of more than eight million dollars in business. Resp. at
18 9-15.

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20 _____
21 ² Rocket Dog appears to have abandoned its counterclaim for breach of contract, which
22 was based on an alleged agreement between the parties that Rocket Dog would repay Northstar
over the course of a year, a period of time that has now ended. Resp. at 16 n. 9. Rocket Dog has
also withdrawn its counterclaim alleging that Northstar interfered with Rocket Dog’s relationship
with factories in China. *Id.* at 9 n. 5.

1 In order to demonstrate a claim for tortious interference with a business
2 expectancy, Rocket Dog must prove: “(1) the existence of a valid contractual relationship
3 or business expectancy, (2) that defendants had knowledge of that relationship, (3) an
4 intentional interference inducing or causing a breach or termination of the relationship or
5 expectancy, (4) that defendants interfered for an improper purpose or used improper
6 means, and (5) resultant damage.” *Manna Funding, LLC v. Kittitas Cty.*, 295 P.3d 1197,
7 1207 (Wash. App. Ct. 2013), *as amended on denial of reconsideration* (Apr. 9, 2013).
8 Here, the Court need not address each element of Rocket Dog’s tortious interference
9 claim because Rocket Dog has submitted no evidence to support causation; its claim
10 therefore fails as a matter of law.

11 Rocket Dog contends that its business relationship with Payless “changed
12 dramatically” after Mr. Perkins’ phone calls to Payless. Resp. at 10. However, four
13 Payless employees testified that Mr. Perkins’ phone calls did not affect Payless’ ongoing
14 decisions about doing business with Rocket Dog. *See* Bay Decl., Hitch Dep. at
15 17:19-18:11; 35:17-19; *id.*, Steinhardt Dep. at 17:7-12; *id.*, Kapcar Dep. at 18:1-4; *id.*,
16 Underhill Dep. at 15:14-18. Payless representatives also testified that Payless was not
17 doing additional business with Rocket Dog because Rocket Dog’s shoes no longer fit
18 Payless’ needs. *See* Bay Decl., Kapcar Dep. at 17:2-25 (testifying that either the style of
19 shoes Rocket Dog offered or the price point did not fit Payless’ needs); *id.*, Underhill
20 Dep. at 13:24-14:10 (“[Rocket Dog’s] product assortment [] which they showed us really
21 didn’t fit with the direction of the department . . . [a]nd then the second reason is just
22

1 based off of vendor performance. So for the past two years that I've been with the
2 company we've seen a decline in [Rocket Dog's] margin performance.”).

3 To counteract this testimony, Rocket Dog offers the testimony of its CEO, who
4 plans to testify at trial that “based on her experience, Payless had no choice but to ‘move
5 away . . . to protect one’s company and self.’” Resp. at 15 (quoting Guess Decl., Taylor
6 Dep. at 57:12-25). “[Ms. Taylor] would have made the same move if Rocket Dog were
7 in Payless’ position.” *Id.* In short, to rebut the testimony of four Payless representatives
8 with direct knowledge of Payless’ business decisions, Rocket Dog offers testimony that,
9 had their CEO worked for Payless, she would have made different decisions. *Id.* Such
10 speculative testimony is insufficient to raise a genuine issue of fact to defeat summary
11 judgment. *Anheuser–Busch, Inc. v. Natural Beverage Distributors*, 60 F.3d 337, 345 (9th
12 Cir.1995).

13 Rocket Dog also submits a spreadsheet of 2015 orders from Payless, totaling \$9.4
14 million, to compare with purchase orders from 2016, which total only \$238,321.00.
15 Guess Decl., Ex. I at 5-17. However, the fact that two events occurred near each other in
16 time—Mr. Perkins called Payless and Rocket Dog’s business with Payless declined—is
17 not evidence of causation. *Mesa v. ZymoGenetics, Inc.*, No. C10-1486JLR, 2011 WL
18 13124668, at *3 (W.D. Wash. June 6, 2011) (“That correlation proves causation,
19 however, is a well known logical fallacy, and one this court will not entertain.”). Rocket
20 Dog has not submitted any expert testimony or any testimony from Payless that links Mr.
21 Perkins’ calls to Rocket Dog’s decline in business. *See generally* Resp.; Guess Decl.
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1 Finally, Rocket Dog contends that “Northstar has as much as conceded that its
2 ‘derogatory’ and ‘unprofessional’ calls to Payless would damage Rocket Dog.” Resp. at
3 14. But Rocket Dog supports this allegation by misinterpreting the testimony of
4 Northstar’s CEO. Mr. Perkins testified at length regarding his belief that Ms. Taylor
5 should have handled the situation with Payless differently after Mr. Perkins’ calls alerting
6 Payless that Rocket Dog was in default:

7 I mean, it’s not for me to tell [Ms. Taylor] how to manage her relationship with
8 Payless, but that would have mitigated those phone calls . . . [if] she would have
9 gone in, said, look, we’re going to take care of this. We’re going to pay Northstar.
10 They’re going to ship the shoes. She would have come back to me, I’m going to
11 open up letters of credit on these goods, and you’re going to get paid. I would
12 have been fine. No problem. That’s how she should have managed the
13 relationship, but she didn’t. She actually went weak. She went to Payless and
14 said, look, can you take this over for me because I just can’t take care of it. And if
15 Payless sees that, that in itself is probably the kiss of death.

16 Bulthuis Decl. ¶ 4, Perkins Dep. at 84:15-85:4. Instead of testifying that his calls were
17 the “kiss of death” for the Rocket Dog-Payless relationship, as Rocket Dog contends, Mr.
18 Perkins’ “kiss of death” comment refers to the manner in which Ms. Taylor
19 communicated with Payless and cannot be construed as a concession that Mr. Perkins’
20 Payless calls harmed Rocket Dog. *See* Resp. at 14.

21 Because Rocket Dog has failed to submit any evidence that connects Mr. Perkins’
22 phone calls to a decline in Rocket Dog’s business with Payless, Rocket Dog’s tortious
interference claim fails as a matter of law. The Court also finds that Rocket Dog has
abandoned its other counterclaims. Resp. at 9 n. 5, 16 n. 9. Accordingly, all of Rocket
Dog’s counterclaims are dismissed.

1 **IV. CONCLUSION**

2 For the reasons stated above, the Court **GRANTS** Plaintiff's Motion for Summary
3 Judgment. Dkt. # 16.

4 Dated this 26th day of May, 2017.

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8 The Honorable Richard A. Jones
9 United States District Judge
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