

Judicial Notice Exhibit 6

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 Adam Bereki,
12 Plaintiff,
13 v.
14 Gary Humphreys;
15 Karen Humphreys,
16 Defendants.
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Case No.: CV 19-2050-CBM-ADS(x)
**ORDER RE: DEFENDANTS’
MOTION TO DISMISS THE FIRST
AMENDED COMPLAINT
PURSUANT TO RULE 12(B)(1), (6)
& (7) OF THE FEDERAL RULES
OF CIVIL PROCEDURE AND
REQUEST FOR JUDICIAL
NOTICE [JS-6]**

19 The matter before the Court is Defendants Gary Humphreys and Karen
20 Humphreys’ (collectively, “Defendants” or “The Humphreys”) “Motion to
21 Dismiss the First Amended Complaint Pursuant to Rule 12(b)(1), (6), & (7) of the
22 Federal Rules of Civil Procedure and Request for Judicial Notice.” (Dkt. No. 9
23 (the “Motion”).)¹

24 **I. BACKGROUND**

25 This action arises from a state court judgment in favor of Defendants and
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27 ¹ Following the hearing on the Motion, Plaintiff filed a document entitled
28 “Additional Authorities and Corrected Testimony To Be Considered By the Court
re: Defendants Motion to Dismiss Filed 11/19/19,” which has been reviewed by
the Court. (Dkt. No. 30 (hereinafter, “Additional Authorities”).)

1 against Plaintiff in connection with remodeling work performed by Plaintiff. On
2 April 20, 2017, following a bench trial, the Superior Court, County of Orange,
3 entered judgment in favor of The Humphreys and against Plaintiff in the amount
4 of \$848,000 (plus costs).² (FAC Exs. D, G.) The Superior Court found Plaintiff
5 (as opposed to his company Spartan Associates) was the contractor who
6 performed the remodel work for The Humphreys, and found Plaintiff was not a
7 licensed contractor. Accordingly, the superior court awarded The Humphreys
8 disgorgement of all compensation paid by The Humphreys to Plaintiff for the
9 remodel work pursuant to Cal. Bus. & Prof. Code § 7031.³ Plaintiff appealed the
10 state court judgment. The California Court of Appeals affirmed the judgment in
11 favor of The Humphreys. Plaintiff's request for review by the California Supreme
12 Court was denied, and Plaintiff's writ for certiorari with the United States
13 Supreme Court was also denied.

14 Plaintiff then commenced this action on October 28, 2019. On November
15 8, 2019, Plaintiff filed a First Amended Complaint ("FAC") as a matter of right
16 naming only The Humphreys as defendants. (Dkt. No. 11.) The FAC alleges this
17 action is "an Independent Action in Equity to relieve a party from a judgment,
18 order or proceeding pursuant to FRCP Rule 60(d)" (FAC at p.13), and that this
19 action "is a direct attack on the jurisdiction of the California trial and appellate
20 Courts in case numbers – 30-2015-00805897, and G055075" (*id.* at p.17).

21 II. STATEMENT OF THE LAW

22 A. Fed. R. Civ. Proc. 12(b)(1)

23 On a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction,

24 ² While the superior court judgment reflects judgment entered against Plaintiff in
25 the amount of \$848,000, the FAC alleges Plaintiff was "fined \$930,000 for
26 allegedly doing remodel construction work without a contractor's license." (FAC
at p.16.)

27 ³ California Business & Professions Code § 7031 provides: "[A] person who
28 utilizes the services of an unlicensed contractor may bring an action in any court
of competent jurisdiction in this state to recover all compensation paid to the
unlicensed contractor for performance of any act or contract."

1 the party asserting jurisdiction bears the burden of proving jurisdiction exists.
2 *Sopak v. Northern Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir. 1995).
3 A motion under Rule 12(b)(1) may challenge the court's jurisdiction facially,
4 based on the legal sufficiency of the claim, or factually, based on the legal
5 sufficiency of the jurisdictional facts. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.
6 2000). Where the Rule 12(b)(1) motion attacks the complaint on its face, the court
7 considers the complaint's allegations to be true, and draws all reasonable
8 inferences in the plaintiff's favor. *Doe v. Holy See*, 557 F.3d 1066, 1073 (9th Cir.
9 2009) (citation omitted). Where the Rule 12(b)(1) motion challenges the
10 substance of jurisdictional allegations, the court does not presume the factual
11 allegations to be true, and may consider evidence such as affidavits and testimony
12 to resolve factual disputes regarding jurisdiction. *McCarthy v. United States*, 850
13 F.2d 558, 560 (9th Cir. 1988).

14 **B. Fed. R. Civ. Proc. 12(b)(6)**

15 Federal Rule of Civil Procedure 12(b)(6) allows a court to dismiss a
16 complaint for "failure to state a claim upon which relief can be granted."
17 Dismissal of a complaint can be based on either a lack of a cognizable legal theory
18 or the absence of sufficient facts alleged under a cognizable legal theory.
19 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To survive
20 a motion to dismiss, the complaint "must contain sufficient factual matter,
21 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft*
22 *v. Iqbal*, 556 U.S. 662, 663, (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550
23 U.S. 544, 570 (2007)). A formulaic recitation of the elements of a cause of action
24 will not suffice. *Twombly*, 550 U.S. at 555. To conform to Federal Rule of Civil
25 Procedure 8, the plaintiff must make more than "an unadorned, the-defendant-
26 harmed me" accusation. *Iqbal*, 556 U.S. at 678. Labels and conclusions are
27 insufficient to meet the Plaintiff's obligation to provide the grounds of his or her
28 entitlement to relief. *Twombly*, 550 U.S. at 555. "Factual allegations must be

1 enough to raise a right to relief above the speculative level.” *Id.* If a complaint
2 cannot be cured by additional factual allegations, dismissal without leave to
3 amend is proper. *Id.* On a motion to dismiss for failure to state a claim, courts
4 accept as true all well-pleaded allegations of material fact and construes them in a
5 light most favorable to the non-moving party. *Manzarek v. St. Paul Fire &*
6 *Marine Ins. Co.*, 519 F.3d 1025, 1031–32 (9th Cir. 2008). A court may only
7 consider the allegations contained in the pleadings, exhibits attached to or
8 referenced in the complaint, and matters properly subject to judicial notice.
9 *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

10 **C. Fed. R. Civ. Proc. 12(b)(7)**

11 Rule 12(b)(7) permits a party to move to dismiss the case for “failure to join
12 a party under Rule 19.” Fed. R. Civ. Proc. 12(b)(7). Rule 19 requires “[a] person
13 who is subject to service of process and whose joinder will not deprive the court
14 of subject-matter jurisdiction” to be joined as a party if:

15 (A) in that person’s absence, the court cannot accord complete relief
16 among existing parties; or

17 (B) that person claims an interest relating to the subject of the action
18 and is so situated that disposing of the action in the person’s absence
may:

19 (i) as a practical matter impair or impede the person’s ability to
protect the interest; or

20 (ii) leave an existing party subject to a substantial risk of
21 incurring double, multiple, or otherwise inconsistent
obligations because of the interest.

22 Fed. R. Civ. P. 19. If “a person who is required to be joined if feasible cannot be
23 joined, the court must determine whether, in equity and good conscience, the
24 action should proceed among the existing parties or should be dismissed.” Fed. R.
25 Civ. Proc. 19(b).

26 **III. DISCUSSION**

27 **A. Request for Judicial Notice**

28 Defendants request that the Court take judicial notice of the following:

1. Judgment entered against Plaintiff in Orange County Superior Court, Case No. 30-2015-00805807 (Ex. A);
2. Plaintiff's opening brief filed with the California Court of Appeals appealing the superior court judgment (Ex. B);
3. California Court of Appeals' opinion affirming superior court judgment (Ex. C);
4. Plaintiff's Petition for Review Filed with the Supreme Court of California, Case No. S252954 (Ex. D);
5. California Supreme Court's denial of Plaintiff's Petition for Review (Ex. E);
6. Plaintiff's Petition for Writ of Certiorari filed with the United States Supreme Court, Case No. 18-1416 (Ex. F); and
7. United State Supreme Court's denial of Plaintiff's Petition for Writ of Certiorari (Ex. G).⁴

(Hereinafter, "RJN".) The Court grants Defendants' request for judicial notice because the accuracy of Exhibits A-G can be "readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201.

B. Rooker-Feldman Doctrine

Defendants move to dismiss the FAC for lack of subject matter jurisdiction pursuant to the Rooker-Feldman doctrine. The Rooker-Feldman doctrine bars losing parties "from seeking what in substance would be appellate review of the state judgment in a United States district court." *Johnson v. De Grandy*, 512 U.S. 997, 1006-07 (1994). "The purpose of the doctrine is to protect state judgments from collateral federal attack." *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001). For the *Rooker-Feldman* "to apply, a plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for that relief." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004).

Here, Plaintiff seeks relief from the superior court judgment pursuant to Fed. R. Civ. P. 60(d) (FAC at p.13), and an order from this Court (1) vacating the

⁴ Plaintiff did not oppose Defendants' request for judicial notice.

1 judgment entered against Plaintiff in the superior court action and (2) ordering the
2 superior court to remove the property lien based on the judgment entered against
3 Plaintiff in the superior court action (*id.*, Prayer for Relief). The FAC also alleges
4 the instant federal action “is a direct attack on the jurisdiction of the California
5 trial and appellate Courts in case numbers – 30-2015-00805897, and G055075.”
6 (*Id.* at p.17.) Therefore, Plaintiff seeks relief from the state court judgment
7 affirmed by the California Court of Appeals.

8 The FAC also alleges a legal error by the superior court and California
9 Court of Appeals on the ground that the superior court and appellate court entered
10 and affirmed the judgment against Plaintiff without supporting evidence, and erred
11 in holding disgorgement pursuant to Cal. Bus. & Proc. § 7031 is an equitable
12 remedy rather than a penalty, thereby “resulting in a void judgment.” (FAC at
13 p.82, 90.)

14 **(1) Extrinsic Fraud on the Court**

15 Where the federal plaintiff does not complain of a legal injury caused by a
16 state court judgment, but rather of a legal injury caused by an adverse party,
17 Rooker-Feldman does not bar jurisdiction. *Noel v. Hall*, 341 F.3d 1148, 1163 (9th
18 Cir. 2003). Therefore, the Rooker-Feldman doctrine does not apply where the
19 plaintiff alleges extrinsic fraud on a state court and seeks to set aside a state court
20 judgment obtained by that fraud. *Kougasian*, 359 F.3d at 1141.

21 Plaintiff contends this action is not barred because this Court has the power
22 to set aside or enjoin state-court judgments procured by fraud. The FAC alleges
23 Defendants committed “fraud in the procurement of jurisdiction” in the superior
24 court action because Defendants took one position during summary judgment (i.e.,
25 that they had contracted with Spartan (Plaintiff’s company) to perform the work)
26 and then took a contrary position during trial (i.e., that they believed they
27 contracted with Plaintiff to perform the work). (FAC at 94-97.) Such alleged
28 conduct does not constitute “extrinsic” fraud on the court since such evidence was

1 presented by Defendants before the superior court, nor constitute a legal injury
2 caused by Defendants. Rather, the FAC alleges the superior court erred in
3 entering judgment despite Defendants taking contrary positions throughout the
4 state court litigation. Therefore, the extrinsic fraud exception to the Rooker-
5 Feldman doctrine does not apply. *Kougasian*, 359 F.3d at 1141.

6 **(2) Constitutional Challenge**

7 Plaintiff also argues the Rooker-Feldman doctrine does not bar this action
8 because the FAC raises a constitutional challenge to California Business &
9 Professions Code §§ 7071.17 and 7031. While the FAC raises a “facial” and “as
10 applied” challenge to the constitutionality of Sections §§ 7071.17 and 7031, the
11 relief sought by Plaintiff is an order vacating or voiding the state court judgment.
12 Moreover, the basis for Plaintiff’s constitutional challenge is that the Superior
13 Court and California Court of Appeals lacked subject matter jurisdiction to enter
14 and affirm the judgment against Plaintiff because (1) there is no evidence
15 supporting the judgment; and (2) disgorgement pursuant to Cal. Bus. & Prof. Code
16 § 7031 is a penalty and an excessive fine, and therefore unconstitutional. The
17 California Court of Appeals, however, found there was evidence supporting the
18 Superior Court’s judgment and held disgorgement pursuant to Cal. Bus. & Prof.
19 Code § 7031 is an equitable remedy, not a penalty or fine. (RJN, Ex. C.) Thus,
20 despite purporting to raise a “constitutional” challenge in his FAC, Plaintiff seeks
21 relief from the state court judgment in this action and asserts legal errors by the
22 Superior Court and California Court of Appeals. Therefore, the Rooker-Feldman
23 doctrine applies to bar Plaintiff’s instant action.

24 * * *

25 Accordingly, the Court finds Plaintiff’s action is barred pursuant to the
26 Rooker-Feldman doctrine because Plaintiff seeks relief from the state court
27 judgment and alleges legal errors by the state trial and appellate court. *See Bell v.*
28 *City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013).

1 **C. Res Judicata / Collateral Estoppel**

2 Defendants also move to dismiss the FAC as barred by the res judicata /
3 collateral estoppel doctrines.⁵

4 Issue preclusion, or collateral estoppel, bars relitigation of issues that have
5 been adjudicated in a prior action. *DKN Holdings LLC*, 61 Cal. 4th at 824.

6 Pursuant to the doctrine of collateral estoppel, “a federal court must give to a
7 state-court judgment the same preclusive effect as would be given that judgment
8 under the law of the State in which the judgment was rendered.” *Migra v. Warren*
9 *City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984); *see also* 28 U.S.C. § 1738.

10 Under California law, collateral estoppel/issue preclusion applies: “(1) after final
11 adjudication (2) of an identical issue (3) actually litigated and necessarily decided
12 in the first suit and (4) asserted against one who was a party in the first suit or one
13 in privity with that party.” *DKN Holdings LLC*, 61 Cal. 4th at 825.

14 Here, the FAC alleges the superior court lacked jurisdiction and violated
15 Plaintiff’s due process rights because there was no evidence supporting the
16 judgment. The FAC, however, alleges Plaintiff challenged the jurisdiction of the
17 superior court in a motion to vacate the judgment, which was denied. (FAC at 97-
18 98.)

19 Plaintiff appealed the state court judgment. In his appeal, Plaintiff argued
20 the Superior Court committed due process violations and lacked subject matter
21 jurisdiction, and argued Cal. Bus. & Prof. Code § 7031 was unconstitutional
22 because it is penal in nature. (RJN, Ex. B.) The California Court of Appeals
23 affirmed the Superior Court’s judgment, and found Plaintiff’s arguments on
24 appeal had “no merit.” (*Id.* Ex. C; *see also* FAC at p.19 (alleging California Court
25 of Appeal held the superior court judgment against Plaintiff was a “non-punitive”

26
27 ⁵ “Res judicata” refers to claim preclusion. *Henrichs v. Valley View Dev.*, 474
28 F.3d 609, 615 (9th Cir. 2007) Since the claims asserted by Plaintiff in this action
were not asserted in the state court action, res judicata would not apply to bar
Plaintiff’s claims here.

1 “equitable remedy”).)

2 Plaintiff filed a petition for review with the California Supreme Court
3 wherein Plaintiff argued the superior court and California Court of Appeals lacked
4 jurisdiction and violated Plaintiff’s due process rights, and argued Cal. Bus. &
5 Prof. Code §§ 7031 and 7071.17 were unconstitutional and authorize imposition
6 of penalties. (RJN, Ex. D.) The California Supreme Court denied Plaintiff’s
7 petition for review. (*Id.* Ex. E.) On April 23, 2019, Plaintiff filed a petition for
8 writ of certiorari with the United States Supreme Court, which was denied. (*Id.*
9 Exs. F, G.)

10 Therefore, the issues raised by Plaintiff in this federal action regarding the
11 Superior Court and California Court of Appeal’s lack of jurisdiction and violation
12 of Plaintiff’s due process rights, the unconstitutionality of Cal. Bus. & Prof. Code
13 §§ 7031 and 7071.17, Plaintiff’s contention that disgorgement pursuant to Cal.
14 Bus. & Prof. Code § 7031 is a penalty/fine rather than an equitable remedy, and
15 the lack of evidence supporting the Superior Court’s judgment and California
16 Court of Appeals decision affirming the judgment, were actually litigated by
17 Plaintiff in the state court action and necessarily decided in a final judgment. *See*
18 *DKN Holdings LLC*, 61 Cal. 4th at 825; *Rodriguez v. City of San Jose*, 930 F.3d
19 1123, 1132 (9th Cir. 2019).

20 Thus, even if the instant action was not barred pursuant to the Rooker-
21 Feldman doctrine, the Court finds Plaintiff is collaterally estopped from bringing
22 this action. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 750 (9th
23 Cir. 2006).

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IV. CONCLUSION

Accordingly, the Court **GRANTS** Defendants' Motion to Dismiss, and dismisses the action with prejudice because Plaintiff is collaterally stopped from bringing this action.⁶ The Court also finds this action is barred pursuant to the Rooker-Feldman doctrine.⁷

IT IS SO ORDERED.

DATED: February 6, 2020.




CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

⁶ Because Plaintiff's claims are barred on collateral estoppel grounds, leave to amend would be futile. *See Tait v. Asset Acceptance, LLC*, [2013 WL 3811767](#) (C.D. Cal. July 22, 2013).

⁷ Defendants also move to dismiss the FAC on the ground Plaintiff fails to join the superior court and California Court of Appeals which are "indispensable parties." Because the Court dismisses this action pursuant to the Rooker-Feldman doctrine, and finds collateral estoppel would bar Plaintiff from bringing this action, it does not reach the issue of whether the superior court and California Court of Appeals are indispensable parties.

I hereby attest and certify on 5/19/25
that the foregoing document is a full, true
and correct copy of the original on file in
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA


DEPUTY CLERK

JASON JIANG



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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 19-2050-CBM-(ADSx) Date November 12, 2019

Title Bereki v. Humphreys et al.

Present: The Honorable CONSUELO B. MARSHALL, UNITED STATES DISTRICT JUDGE

YOLANDA SKIPPER
Deputy Clerk

NOT REPORTED
Court Reporter

Attorneys Present for Plaintiff:

NONE PRESENT

Attorneys Present for Defendants:

NONE PRESENT

Proceedings: **IN CHAMBERS- ORDER RE: REQUEST FOR ASSISTANCE OF COUNSEL**

The matter before the Court is Plaintiff's Request for Assistance of Counsel (the "Request").

The Request is **DENIED** because the Court does not appoint counsel in civil cases.

The Court, however, advises Plaintiff that the Central District of California offers Pro Se Clinics in Los Angeles, Riverside, and Santa Ana to provide information and guidance to *pro se* litigants, such as Plaintiff, who are not represented by counsel. Below is information regarding the Pro Se Clinics:

Los Angeles Federal Pro Se Clinic

The Edward Roybal R. Federal Building and U.S. Courthouse
255 East Temple Street, Suite 170 (Terrace Level)

Los Angeles, CA 90012

Hours (by appointment only): Mondays, Wednesdays, and Fridays, 9:30 am - 12:00 pm
and 2:00 pm - 4:00 pm

To make an appointment, contact Public Counsel at 213-385-2977, Ext. 270.

Riverside Joint Federal Pro Se Clinic

George E. Brown Federal Building

3420 Twelfth Street, Room 125

Riverside, CA 92501

Hours: Tuesdays and Thursdays, 10:00 am – 2:00 pm

Santa Ana Federal Pro Se Clinic

Ronald Reagan Federal Building and United States Courthouse

411 W. 4th Street, Room 1055 (first floor)

Santa Ana, CA 92701

Hours: Tuesdays, 1:00 pm – 4:00 pm; Thursdays, 10:00 am – 12:00 pm and 1:30 pm – 3:30 pm

Plaintiff can find more information about the Pro Se Clinics, including contact information, at <http://prose.cacd.uscourts.gov/federal-pro-se-clinics>.

IT IS SO ORDERED.

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 Adam Bereki,
12 Plaintiff,
13 v.
14 Gary Humphreys;
15 Karen Humphreys,
16 Defendants.
17
18

Case No.: CV 19-2050-CBM-ADS(x)

**ORDER RE: NINTH CIRCUIT'S
REFERRAL AND REVOCATION
OF PLAINTIFF'S IN FORMA
PAUPERIS STATUS [34]**

19 Plaintiff filed the Complaint in this action on October 28, 2019. (Dkt. No.
20 1.) On October 31, 2019, the Court granted Plaintiff's Request to Proceed in
21 Forma Pauperis. (Dkt. No. 5.) On February 6, 2020, this Court issued an order
22 granting Defendants' Motion to Dismiss, and dismissed the action with prejudice
23 because Plaintiff is collaterally estopped from bringing this action and the action is
24 barred pursuant to the Rooker-Feldman doctrine. (Dkt. No. 31 (the "Order").)

25 Plaintiff filed a notice of appeal of the Order on February 10, 2020. (Dkt.
26 No. 32.) On February 24, 2020, the Ninth Circuit referred the matter to this Court
27 "for the limited purpose of determining whether in forma pauperis status should
28 continue for this appeal or whether the appeal is frivolous or taken in bad faith."


1 (Dkt. No. 34.)

2 The Court finds Plaintiff's in forma pauperis status should not continue for
3 the appeal because Plaintiff's appeal of the Order is frivolous. Therefore, the
4 Court revokes Plaintiff's in forma pauperis status. *See* 28 U.S.C. § 1915(a)(3)
5 ("An appeal may not be taken in forma pauperis if the trial court certifies in
6 writing that it is not taken in good faith."); *Hooker v. Am. Airlines*, 302 F.3d 1091,
7 1092 (9th Cir. 2002) (revocation of in forma pauperis status is appropriate where
8 the district court finds the appeal to be frivolous).

9 The clerk of this Court shall provide notice to the Ninth Circuit and the
10 parties of this Order.

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12 **IT IS SO ORDERED.**

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14 DATED: February 27, 2020.



CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

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