

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:26-cv-00590-D**

SCOTT LASSITER,

Plaintiff,

v.

WAKE COUNTY BOARD OF
EDUCATION,

Defendant.

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO DISMISS**

Defendant Wake County Board of Education (“Board” or “Defendant”), by and through counsel, submits this brief in support of its motion to dismiss the Complaint.

PROCEDURAL HISTORY

The Complaint in this action was filed on July 17, 2026, by Scott Lassiter (“Lassiter” or “Plaintiff”) against the Board in Wake County Superior Court, captioned as *Scott Lassiter v. Wake County Board of Education, Case No. 26CV026792-910*. The Board was served with the Summons and Complaint on July 22, 2026, and timely removed this action to this Court on August 19, 2026. Defendant thereafter moved for and was granted an extension of time through September 16, 2026, to respond to the Complaint.

FACTS AS ALLEGED IN THE COMPLAINT

Plaintiff began working as an Assistant Principal at Connections Academy, a school within the Wake County Public Schools (“WCPSS”) in February 2018. Compl. ¶ 6. At the time of his resignation, effective November 5, 2024, Plaintiff was serving

pursuant to a four-year contract that ran from July 1, 2021, to June 30, 2025. *Id.* ¶ 5.

Plaintiff alleges that on May 22, 2024, he and a behavior support specialist (“BST”) intervened in a physical altercation during which they restrained a student, attempted to deescalate, and then “removed” the student. *Id.* ¶¶ 7, 8. Plaintiff alleges that, in response to the incident, the student’s adult brother and mother came to the school and threatened him, resulting in the police handcuffing and detaining the adult brother. *Id.* ¶ 10. Plaintiff alleges he reported the incident to his area superintendent verbally and in writing and contends that these reports were “consistent with Plaintiff’s prior warnings about school safety, staff safety, and inadequate security support.” *Id.* ¶ 10; *see also* ¶¶ 25, 26 (describing Plaintiff’s alleged complaints and advocacy relating to school safety issues).

Plaintiff indicates that sometime after the May 22, 2024, incident the matter was brought to the attention of Human Resources and he was the subject of a personnel review. *Id.* ¶ 11. He attaches his suspension with pay letter dated September 5, 2024, which informed Plaintiff that cause may exist for his dismissal based on an alleged negative physical interaction with a student and that circumstances justified his immediate suspension with pay pending further review. *Id.*, Ex. B. He also attaches a reporting form completed by Human Resources and submitted to the State Department of Public Instruction (“DPI”), which stated in the “description of the allegations” under review that: “Lassiter, along with another employee, pushed a student out of a building door causing her to fall on the ground. He then threw the student’s shoe, which had fallen off, in the direction of the student.” *Id.* Exhibit E, p. 3. Another of his attachments indicates that the student’s mother alleged “Lassiter swung [student] by

her arm, causing her to fall to the ground while removing her from the school.” *Id.* Ex. D. Plaintiff does not dispute the description of the allegations under review by Human Resources; rather, he complains about the timing of his suspension and the submission of the reporting form.

Plaintiff alleges that around the time he was placed on suspension, the school system’s Director of Employee Relations¹ contacted Plaintiff regarding his employment situation and spoke with him about the option of resigning in lieu of a dismissal recommendation. *Id.* ¶ 13. Thereafter, on or about October 6, 2024, Plaintiff entered into a resignation, settlement, and release agreement with the Board, which Plaintiff attached to his Complaint. *Id.* ¶ 14; Exhibit C. The agreement was labeled “Confidential Personnel Agreement,” and it is confidential and protected by North Carolina’s personnel privacy statutes applicable to public school employees. *See* N.C. Gen. Stat. § 115C-319, 321. Pursuant to the agreement, Lassiter voluntarily resigned his employment effective November 5, 2024. Compl. Exhibit C. The agreement also contains a full release of claims against the Board that Lassiter had or “may have” had up to the date of the agreement “including but not limited to any actual or potential claims arising out of or connected with [his] employment.” *Id.* Exhibit C, ¶ 8. Lassiter also specifically waived any right to contest the terms of the agreement, acknowledged that no promises or inducements had been made to him not specifically set out in the agreement, and entered into the agreement freely, knowingly, and voluntarily after consulting with his attorney. *Id.* Exhibit C, ¶¶ 8, 10, 11. Importantly, the agreement clearly states, “[N]othing in this agreement should be construed as impairing the school

¹ Plaintiff, without factual support, attempts to characterize the Director of Employee Relations as a “political operative of the Democrat party.”

system from complying with its legal obligations.” *Id.* Exhibit C, ¶ 4.

As noted above, Plaintiff has attached to his Complaint a report submitted by the school system to DPI, following the effective date of his resignation on November 5, 2024, informing DPI that Lassiter had resigned “during or immediately following an investigation into allegations of professional misconduct.” Compl. Exhibit E, p. 2. Plaintiff acknowledges that the school system had a legal duty to report the incident involving possible physical abuse of a student to DPI but questions the timing of the report, claiming that it should have been made within five days of his suspension on September 5, 2024. Compl. ¶ 19. Elsewhere in his Complaint, however, Plaintiff acknowledges that the school system had made an earlier, initial report to DPI near the time of his suspension. Compl. ¶¶ 13, 33.

The reporting requirements at issue are set forth at the top of the reporting form attached to Plaintiff’s Complaint as Exhibit E. First, the form states that under then-applicable State Board Policy,² school systems were required to report complaints of physical abuse made against licensed educators, such as Plaintiff, within five days of, *inter alia*, suspension or resignation. The school system therefore made a report to DPI regarding Lassiter following his suspension and provided an updated report following the effective date of his resignation. Compl. ¶¶ 13, 19, 33. The form also states that school systems are required to make a report within thirty calendar days when a licensed educator resigns as a result of conduct that may justify disciplinary sanctions against the employee under State Board Policy. *Id.* Notably, the reports to DPI are

² The reporting form sets forth the requirements of State Board Policy LICN-007 in effect at the time of the school system’s submission. The policy has since been amended.

confidential and it is unlawful, subject to a Class 1 misdemeanor, for any employee or officer of DPI to disclose any information that the school system could not lawfully disclose. *See* N.C. Gen. Stat. § 115C-13. The form Plaintiff attaches to his Complaint even reiterates this confidentiality in bolded text: “Pursuant to N.C.G.S. § 115C-13, the SBE is an authorized recipient of confidential personnel records held by local boards of education, their officers, and their employees.”

At the time of his suspension, Plaintiff was a Republican candidate for the North Carolina State Senate. Compl. ¶ 12. Plaintiff alleges that the school system delayed its report to DPI “for political reasons to coerce Plaintiff to resign in an effort to harm his race for the State Senate.” *Id.* ¶ 20. As noted above, however, Plaintiff acknowledges the school system made an initial report to DPI around the time of his suspension as required by applicable law and State Board policy. Plaintiff also alleges, based on upon information and belief, that “Defendant’s agent(s), yet to be named[,] reported the student altercation incident to the media to negatively affect his political campaign.” Compl. § 20. The Complaint does not state who allegedly made the report, nor does it state to which media outlet the report was made and what specifically was reported. Notably, Plaintiff has not alleged anywhere in the Complaint that the school system shared with the media any non-public information regarding Plaintiff, as his suspension and resignation are both matters of public record. *See* N.C. Gen. Stat. § 115C-320(a)(9), (11). Finally, Plaintiff claims that the school system had an inconsistent practice of fulfilling its mandatory reporting obligations set forth in state law and State Board policy, and that “Defendant’s decisions suspending Plaintiff and thereafter delaying the report to the DPI implicated First Amendment retaliation

against Lassiter for his ardent student safety advocacy, and, more importantly, his political campaign.” Compl. ¶ 27. Plaintiff does not allege any factual support for his claim that the school system has an inconsistent practice in fulfilling its reporting obligations. His verified Complaint lacks any allegation that the other employee involved in the May 22, 2024, incident was treated differently with respect to suspension or reporting requirements.

Based on these allegations, Plaintiff attempts to state two causes of action—a state law fraudulent inducement claim and a claim for First Amendment retaliation under 42 U.S.C. § 1983. With respect to the fraudulent inducement claim, Plaintiff alleges that he would not have entered into the resignation agreement with the Board if he had known that the school system was going to report the student altercation matter to DPI. *Id.* ¶ 32. Plaintiff alleges that he “relied on and was deceived by the omission of Defendant’s reporting in agreeing to resign from the school system and waiving his procedural and substantive rights.” *Id.* ¶ 34. In his First Amendment retaliation claim, Plaintiff claims that the Board, “improperly and unconstitutionally employed the mandatory misconduct reporting requirement as a cudgel to undermine Plaintiff’s” First Amendment rights, “suspending and reporting Plaintiff for the primary reason of negatively affecting his campaign for the North Carolina State Senate.” *Id.* ¶ 38.

For the reasons stated below, Plaintiff has failed to sufficiently allege either claim, and his Complaint against the Board should be dismissed in full.

STANDARD OF REVIEW

The purpose of a motion to dismiss pursuant to Federal Rule of Civil Procedure

12(b)(6) is to test the legal sufficiency of the complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). When considering a motion to dismiss under Rule 12(b)(6), a court must accept as true all well-pleaded factual allegations in the complaint, viewing the complaint in a light most favorable to the plaintiff. *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). However, a plaintiff has “the burden . . . to allege facts sufficient to state all the elements of her claim.” *Bass v. E.I. Dupont De Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003). “[A] formulaic recitation of the elements of a cause of action will not do.” *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 55 (2007)).

A motion to dismiss under Rule 12(b)(6) will succeed if a plaintiff fails to establish a “plausible” claim for relief. *Twombly*, 550 U.S. at 556. When considering a motion to dismiss, a court need not accept a complaint’s legal conclusions. *Iqbal*, 556 U.S. at 678-79; *Nemet Chevrolet Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009). Similarly, a court need not accept as true a plaintiff’s “unwarranted inferences, unreasonable conclusions, or arguments.” *Eastern Shore Mkts. v. J.D. Assocs. Ltd.*, 213 F.3d 175, 180 (4th Cir. 2000). A complaint must allege “more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678.

ARGUMENT

I. Plaintiff has failed to state a claim for fraudulent inducement.

To state a fraudulent inducement claim under North Carolina law, a plaintiff must allege: “(1) [f]alse representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) made with intent to deceive, (4) which does in fact deceive, (5) resulting in damage to the injured party. . . . Additionally, any reliance on the allegedly

false representations must be reasonable.” *Dillon v. The Leazer Grp., Inc.*, 374 F. Supp. 3d 547, 559 (2019) (quoting *Forbis v. Neal*, 361 N.C. 519, 526-27 (2007)).

Additionally, Federal Rule of Civil Procedure 9(b) imposes a heightened pleading standard for fraud and requires a plaintiff to “state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). “[T]he ‘circumstances’ required to be pled with particularity under Rule 9(b) are ‘the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.’” *Dillon*, 374 F. Supp. at 559 (quoting *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 784 (4th Cir. 1999)). “These facts are often referred to as the who, what, when, where, and how of the alleged fraud.” *Bakery & Confectionary Union & Indus. Int’l Pension Fund v. Just Born II, Inc.*, 888 F.3d 696, 705 (4th Cir. 2018). “In North Carolina, a fraud claim is fatally defective unless it alleges detrimental reliance, and damages proximately flowing from such reliance, with particularity.” *Food Lion, LLC v. Schuster Mktg. Corp.*, 382 F. Supp. 2d 793, 798 (2005).

Here, Plaintiff has failed to plausibly plead with particularity any of the required elements for his fraudulent inducement claim. With respect to the first element, false representation or concealment of a material fact, Plaintiff alleges that Defendant, “failed to disclose to Plaintiff its intention to make a misconduct report about him to DPI” Compl. ¶ 16. This allegation cannot serve as the basis for a viable fraud claim. As Plaintiff acknowledges, *see* Compl. ¶ 19, the misconduct report was required by state law and State Board of Education policy, and the resignation and release agreement signed by Plaintiff states, “[N]othing in this agreement should be construed as impairing the school system from complying with its legal obligations.” *Id.* Exhibit C,

¶ 4. Plaintiff was therefore plainly on notice that the agreement allowed the school system to comply with its legal obligations, including mandatory reporting. As a school system administrator, Lassiter had a duty to be familiar with State Board policies and thus he knew or should have known of the school system's reporting obligations. It is not plausible that Lassiter was unaware of the reporting requirement and it is not reasonable for him to have relied on a belief that the school system would not comply with its mandatory reporting obligations and potentially face criminal charges for failing to do so.

Further, Plaintiff had the opportunity to review the agreement with counsel and he acknowledged in the agreement that no promises or inducements had been made to him not specifically set out in the agreement. Lassiter also specifically waived his right to contest the terms of the agreement, which itself should bar his claims. *Id.* Exhibit C, ¶¶ 8, 10, 11.

With respect to the second and third elements, that the alleged concealment was reasonably calculated to deceive, made with the intent to deceive, and that Plaintiff was in fact deceived, Plaintiff has pled no facts to support his claim. Defendant did not act pursuant to calculated deception when it informed Plaintiff in writing that it retained the right to meet its legal obligations and then subsequently took action to comply with those obligations. Plaintiff has not alleged that anyone within the school system made any representation to him, express or implied, that the school system would not comply with its legal obligations and make the required report. *See Dillon v. The Leazer Grp., Inc.*, 374 F. Supp. 3d 547, 560 (2019) (“There is no allegation as to who made any such statements to plaintiff, when such statements were made, what were the specific

contents of such statements, nor where such statements were made. Plaintiff's fraud claims based thereon must therefore be dismissed for failure to comply with the requirements of Federal Rule of Civil Procedure 9(b).").

Plaintiff claims that he was deceived because the resignation and release agreement was labeled "Confidential" and the report to DPI breached this confidentiality. As noted above, the report to DPI was itself confidential and, as noted on the reporting form, "Pursuant to N.C.G.S. § 115C-13, the SBE is an authorized recipient of confidential personnel records held by local boards of education, their officers, and their employees." Compl. Ex. E.

Lassiter also does not explain how he was damaged by the report to DPI. For example, he does not allege that the report resulted in any further investigation from DPI, caused him to lose his educator's license, or otherwise had any negative impact on his future employment. It is also unclear how the report could have had any negative impact on his political campaign, as the report and any subsequent investigation by DPI were confidential. *See* N.C. Gen. Stat. § 115C-13.

To the extent plaintiff is attempting to base his fraud claim on his vague and unsupported allegation that an unnamed agent of the school system reported the student altercation incident to the media prior to execution of the agreement, this allegation fails to meet the heightened pleading requirements of Rule 9. Plaintiff does not state who made the media report, when it was made, to whom it was made, or what information the report contained.³ Even if there had been such a disclosure from

³ As noted above, if Plaintiff is alleging that the school system shared with the media the fact of Plaintiff's suspension and/or resignation, such information is public record. *See* N.C. Gen. Stat. § 115C-320(a)(9), (11).

somewhere within the school system, Plaintiff does not include any particularized allegations that the disclosure was in any way connected to the negotiation of his resignation agreement. Under this theory, the material fact concealed would apparently be that the school system entered into the agreement having secretly provided a leak to the media prior to the execution of the agreement. Plaintiff includes no particularized allegations to support such a theory. Further, even if such a media report had been made, it is not plausible that Plaintiff would have been unaware of the media report when he signed the resignation and release agreement waiving all claims against the Board. Plaintiff's fraudulent inducement claim fails to meet the pleading requirements of *Twombly/Iqbal* and heightened pleading standard of Rule 9 and is subject to dismissal. *See MichJeff, LLC v. FCX Glob., Inc.*, 2025 U.S. Dist. LEXIS 32630, *32-34 (2025) ("Plaintiffs' amended complaint lacks sufficient 'factual enhancement' to move plaintiffs' 'naked assertions' of fraud against the defendants from possible to plausible.").

Finally, Plaintiff's Complaint seeks damages based on fraudulent inducement as well as rescission of the resignation agreement. *See* Compl. ¶ 35. However, "[i]t is well-established that a party alleging fraud must elect either the remedy of rescission or that of damages, but may not seek both, as these remedies are inconsistent." *Mehovic v. Mehovic*, 133 N.C. App. 131, 135 (1999). Plaintiff's claim is therefore also subject to the dismissal to the extent he seeks inconsistent remedies. *Id.*

II. Plaintiff has failed to state a First Amendment retaliation claim.

Plaintiff must satisfy three elements to state his First Amendment retaliation claim: "(1) his speech was protected, (2) the 'alleged retaliatory action adversely affected'

his protected speech, and (3) a causal relationship between the protected speech and the retaliation.” *Raub v. Campbell*, 785 F.3d 876, 885 (4th Cir. 2015). The causation requirement is “rigorous,” and “it is not enough that the protected expression played a role or was a motivating factor in the retaliation; claimant must show that ‘but for’ the protected expression the [state actor] would not have taken the alleged retaliatory action.” *Huang v. Bd. of Governors of the Univ. of N.C.*, 902 F.2d 1134, 1140 (4th Cir. 1990). Moreover, “[u]nder the *Monell* line of cases, a municipality does not incur Section 1983 liability solely because of its employer-employee relationship with an alleged wrongdoer.” *Huggins v. Sch. Dist. of Manatee Cnty.*, 151 F.4th 1268, 1285 (11th Cir. 2025) (dismissing first amendment retaliation claim against a board of education in part based on failure to include allegations imputing liability to the board pursuant to *Monell*).

Plaintiff alleges that the Defendant engaged in First Amendment retaliation through his suspension and the required misconduct report made to DPI. Compl. ¶ 38. As an initial matter, to the extent Plaintiff is basing his claim on his suspension⁴ and any report that occurred prior to execution of his resignation agreement, the claim is barred by the agreement’s release. See Compl. Ex. C, ¶ 8. To the extent his claim is based on the second report to DPI made following the effective date of his resignation, Plaintiff’s claim should be dismissed because he has failed to plausibly allege sufficient facts to satisfy the second and third elements set forth by the Fourth Circuit in *Raub*.

⁴ Even if it were not barred by the release, Plaintiff’s suspension with pay could not support his retaliation claim because placing an employee on suspension with pay for purposes of an investigation is not an adverse employment action. See *Lacasse v. Didlake, Inc.*, 194 F. Supp. 3d 494, 504 (E.D.Va. 2016) (holding within the Title VII context that “[p]aid leave is not an adverse employment action.”).

With respect to the second element:

For a government employee to invoke protection under the First Amendment's bar on retaliation, the employee must allege that a government employer took a sufficiently retaliatory action against the employee. The nature of the retaliatory act must be 'more than *de minimis* or trivial.' On one hand, a government employer takes a sufficiently retaliatory action against an employee when the employer makes decisions that relate to the "promotion, transfer, recall, and hiring" of the employee based on the employee's exercise of his or her First Amendment rights. On the other hand, when the government employer takes an action that simply "criticiz[es], false[ly] accus[es], or verbal[ly] reprimands" the employee, the action is insufficiently retaliatory.

Farrell v. Bd. of Educ., 2017 U.S. Dist. LEXIS 41011, *10-11 (D. Md. 2017) (internal quotations and citations omitted). Here, the misconduct report did not affect the terms or conditions of Plaintiff's employment and Plaintiff has not alleged how he was damaged in any way by the confidential report. At most, such a report "simply criticizes...or verbally reprimands the employee" and is insufficient to support a retaliation claim. *Id.*

With respect to the third element, Plaintiff cannot establish that his political activity was the 'but-for' cause of the misconduct report for multiple reasons, the most obvious of which is that, as Plaintiff concedes, the report was required by law. Notably, school officials could have been subject to a felony charge for not making a required report. *See* N.C. Gen. Stat. 115C-326.20(b) ("Failure to report misconduct pursuant to this section is a Class I felony.") Taking required action to avoid criminal liability is an "obvious alternate explanation" for defendant's conduct in making the misconduct report to DPI, eliminating the plausibility of Plaintiff's claim. *McCleary-Evans v. Md. DOT*, 780 F.3d 582, 588 (4th Cir. 2015). The causation element of Plaintiff's claim is

also undermined by the timing of the November report informing DPI of his resignation. Plaintiff's Complaint is premised on the notion that the school system retaliated against him based on his political affiliation and in attempt to interfere with his State Senate campaign. The report attached to Plaintiff's complaint, however, is dated November 14, 2024—nine days after the election on November 5, 2024. If the report was designed to harm Plaintiff's campaign, it would have had to have been made before the election was over. *See Porter v. Bd. of Trs. of N.C. State Univ.*, 72 F.4th 573, 584-585 (4th Cir. 2023) (dismissing First Amendment retaliation claim based in part on failure to sufficiently allege 'but-for' causation). Even an argument that an earlier report to DPI was retaliatory would be meritless. Per Plaintiff's own verified Complaint, following his suspension (which would have occurred during the campaign period) the "report to DPI was required by state law." Compl. ¶ 19.

Plaintiff has also failed to allege any facts supporting his conclusory allegations of retaliatory intent by Defendant. Plaintiff alleges generically that "Defendant and its agents [were] opposed to his view and party affiliation" but Plaintiff does not specify which agents he is referring to and includes no factual support for his claim that some unspecified actors within the school system were fueled by retaliatory animus. "Plaintiffs may not rely on conclusory assertions of retaliatory motive, but must offer instead some tangible proof to demonstrate that their version of what occurred was not imaginary." *Roth v. Farmingdale Union Free Sch. Dist.*, 2019 U.S. Dist. LEXIS 121223, *12 (2019) (quoting *Kiernan v. Town of Southampton*, 734 F. App'x 37,42 (2d Cir. 2018) (summary order) (citing *Morris v. Lindau*, 196 F.3d 102, 110 (2d Cir. 1999)).

Finally, Plaintiff has included no allegations to impute any retaliatory action to

the Board for purposes of Section 1983 liability. Plaintiff cannot rely on a *respondeat superior* theory to establish liability against the Board. Instead, he must allege that the Board acted pursuant to policy in retaliating against him. *See Johnson v. Balt. City*, 163 F.4th 808, 822 (4th Cir. 2026). Here, Plaintiff alleges that school system had a “vacillating policy [] regarding the mandatory and timely reporting of alleged cases of misconduct to the DPI.” Comp. ¶ 27. Plaintiff includes no factual enhancement in support of this conclusory statement and, regardless, it is unclear how such an allegation could support the existence of a practice by the Board of First Amendment retaliation so “persistent and widespread as to constitute a custom or usage with the force of law.” *Lytle v. Doyle*, 326 F.3d 463, 471 (4th Cir. 2003). Plaintiff has failed to allege a plausible claim of First Amendment retaliation claim against the Board, and his claim is subject to dismissal.

CONCLUSION

For all of the reasons stated above, the Board respectfully requests that Plaintiff's claims be dismissed in fully with prejudice.

Respectfully submitted, this the 16th day of September 2026.

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CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3, counsel for Defendant certifies that this brief, was prepared using a 12-point proportionally spaced font with serifs, is less than 6,250 words (excluding covers, captions, indexes, counsel's signature block, certificates of service, and this certificate of compliance) as reported by the word-processing software.

Respectfully submitted, this the 16th day of September 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September 2026, I electronically filed the foregoing Memorandum of Law in Support of Motion to Dismiss with the Clerk of the Court using CM/ECF which will send notification of such filing to all counsel of record.

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