

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MPC Computers, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 08-12667 (PJW)
(Jointly Administered)

Hearing Date: April 24, 2013 at 10:30 a.m. (ET)

Objection Deadline: April 17, 2013 at 4:00 p.m. (ET)

**THE MPC LIQUIDATING TRUST'S TWELFTH OMNIBUS OBJECTION
TO CERTAIN CLAIMS PURSUANT TO 11 U.S.C. § 502 AND FED. R.
BANKR. P. 3001 AND 3007 AND LOCAL RULE 3007-1 [SUBSTANTIVE]**

The MPC Liquidating Trust (the “Trust”), by and through Steven D. Sass LLC as the Liquidating Trustee (the “Trustee”), hereby files this omnibus objection (the “Objection”) pursuant to 11 U.S.C. § 502, Rules 3001 and 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Local Rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Bar Date Order (defined below), the Plan (defined below) and the Confirmation Order (defined below) to the claims (collectively, the “Disputed Claims”) filed by claimants (collectively, the “Claimants”) listed on Exhibits “A”, “B”, “C”, “D” and “E” to the proposed order (the “Proposed Order”) submitted herewith. In support of this Objection, the Trust submits the Declaration of Jeffery Smith, a copy of which is annexed hereto as Exhibit “1” and incorporated by reference, and respectfully represents as follows:

¹ The Debtors in these cases, along with the last four digits of their federal tax identification numbers are MPC Computers, LLC (6916); MPC Corporation (7562); GTG PC Holdings, LLC (6899); MPC-G, LLC (8015); MPC Solutions Sales, LLC (0213); MPC-Pro, LLC (3132); Gateway Companies, Inc. (1398); Gateway Pro Partners, LLC (9747); and Gateway Professional, LLC (8881).

BACKGROUND

1. On November 6, 2008 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

2. On December 16, 2010, the Debtors filed the Second Amended Joint Plan of Liquidation of MPC Corporation and its Subsidiaries Under Chapter 11 of the United States Bankruptcy Code (the "Plan").

3. On March 8, 2011 (the "Confirmation Date"), the Bankruptcy Court entered the Findings of Fact, Conclusions of Law and Order Confirming Second Amended Plan of Liquidation of MPC Corporation and its Subsidiaries under Chapter 11 of the United States Bankruptcy Code (the "Confirmation Order").

4. Pursuant to Article II.C.1 of the Plan, Class 1 Priority Claims, that are not Tax Claims, shall be paid in full in the relative order of priority pursuant to section 507 of the Bankruptcy Code

5. Pursuant to Article II.C.4 of the Plan, each holder of a Class 4 General Unsecured Claim shall receive "its Pro Rata share of Distributable Cash...until paid in full to the extent of then available Liquidation Proceeds." Plan, § II.C.4. Pursuant to the Revised Second Amended Disclosure Statement (the "Disclosure Statement"), Class 4 General Unsecured Claims are projected to receive a 2-8% distribution on account of their claims. Disclosure Statement, at 6.

6. On May 12, 2011 (the "Effective Date"), the Plan became effective. Pursuant to the terms of the Plan, on the Effective Date, the MPC Liquidating Trust Agreement (the "Trust Agreement") was executed, thereby creating the Trust and appointing Steven D. Sass

LLC as Trustee of the Trust. On the Effective Date, among other things, (i) all assets of the Debtors were transferred to the Trust, and (ii) the Notice of (1) Occurrence of Plan Effective Date and (2) Deadlines for Asserting Administrative Expense Claims, Rejection Damages Claims and Professional Fee Claims (the "Notice of Effective Date") was filed.

7. Pursuant to the Confirmation Order and section 3.3 of the Trust Agreement, the Trust reserved the exclusive right to object to the allowance of any claim, and the Trustee was given the authority and power to file objections regarding the allowance and disallowance of claims.

8. By order dated April 9, 2009 (the "Bar Date Order"), the Bankruptcy Court established May 29, 2009 at 5:00 p.m. (Eastern) as the last date and time for filing proofs of claim by any person or entity (including governmental units as such term is defined in section 101(27) of the Bankruptcy Code) in these chapter 11 cases (the "Bar Date"). The Debtors' court-approved claims and noticing agent, Logan & Company (the "Claims Agent" or "Logan") mailed a copy of the *Notice of Deadline to File Proofs of Claim* (the "Bar Date Notice") and a proof of claim form substantially similar to Official Form B10 (the "Proof of Claim Form") to all known entities holding potential pre-petition claims and their counsel (if known), all potential claimants and their counsel (if known), all parties that have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, the Office of the United States Trustee for the District of Delaware and all taxing authorities for the jurisdictions in which the Debtors conducted business.

9. The Bar Date Order further provides that-

[a]ny holder of a claim against the Debtors who is required, but fails, to file a proof of such claim in accordance with this Order on or before the Bar Date shall be forever barred, estopped, and enjoined from asserting such claim against the Debtors in these chapter 11 cases, and

such holder shall not be permitted to vote to accept or reject any chapter 11 plan or participate in any distribution in the Debtors' chapter 11 cases on account of such claim.

Bar Date Order, ¶ 10.

10. On April 23, 2009, the Debtors filed the Affidavit of Service of the Notice of Deadline to File Proofs of Claim with the Bankruptcy Court [D.I. 353].

11. According to Logan, to date, approximately 1,488 claims have been asserted against the Debtors. All proofs of claim received in these cases are recorded on the official claims register maintained by Logan. In the ordinary course of business, including subsequent to the Petition Date, the Debtors maintained Books and Records (the "Books and Records") that reflect, among other things, the Debtors' liabilities and the amounts owed to its creditors. The Trustee, with the assistance of its professionals, has reviewed the Debtors' Books and Records and has compared such Books and Records to the proofs of claim filed in these cases (collectively, including any supporting documentation, the "Proofs of Claim") and the liabilities listed in the Debtors' schedules.

JURISDICTION

12. The Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(B).

13. In addition, pursuant to paragraph 20 of the Confirmation Order and Article XII of the Plan, the Bankruptcy Court retained jurisdiction to (a) determine the allowability, classification or priority of claims upon objection by the Trust and (b) determine all contested matters instituted in these cases.

14. The statutory predicates for the relief requested herein are Bankruptcy Code section 502, Bankruptcy Rules 3001, 3003 and 3007 and Local Rule 3007-1.

RELIEF REQUESTED

15. On the grounds set forth in the Proposed Order, the exhibits annexed thereto and as more fully described below, the Trustee seeks entry of an order pursuant to Bankruptcy Code section 502 and Bankruptcy Rules 3001, 3003 and 3007, as well as Local Rule 3007-1 (i) reducing and reclassifying, in part, each of the Disputed Claims listed on Exhibits “A”, “B” and “C” to the Proposed Order to the amounts set forth therein (ii) reducing the Disputed Claims listed on Exhibit “D” to the Proposed Order to the amounts set forth therein and (iii) expunging the Disputed Claims listed on Exhibit “E” to the Proposed Order.

**EXHIBITS “A”, “B” AND “C”
REDUCE AND RECLASSIFY PRIORITY SEVERANCE CLAIMS**

16. The Disputed Claims listed on Exhibits “A”, “B” and “C” to the Proposed Order are claims by former employees of the Debtors seeking amounts due and owing based upon (i) a severance agreement entered into by such employees with the Debtors based upon an employee’s years of service with the Debtors, (ii) severance owed under the Taiwan Labor Standards Act and (iii) an alternative severance policy entered into by such employee with the Debtors which provides for severance based upon termination without cause. Section 507(a)(4) provides a fourth priority to allowed unsecured claims for wages, salaries, commissions, including vacation, severance and sick leave, earned within 180 days of the Petition Date (the “Priority Period”) up to \$10,950.² 11 U.S.C. § 507(a)(4). However, the

² The Debtors’ cases were commenced on November 8, 2008 and accordingly, the applicable statutory cap under section 507(a)(4) is \$10,950.

amount asserted in each of the Disputed Claims was not earned within 180 days of the Petition Date and is not entitled to priority treatment for the full amount asserted. The Disputed Claims listed on Exhibits “A”, “B” and “C” to the Proposed Order must be reduced and reclassified, in part, to the amounts and natures set forth therein to reflect as a priority claim only the amount earned during the 180 days prior to the Petition Date.

A. Claims Based Upon Severance Agreements with the Debtors

17. Prior to the Petition Date, the Debtors provided memorandum agreements (the “Severance Agreements”) to certain employees alerting them to the elimination of their position as of a certain date (the “Termination Date”). Pursuant to the Severance Agreements, employees were offered a severance payment (either bi-weekly, monthly or otherwise, the “Severance Claim”) if certain requirements were satisfied based upon each employee’s “full years of credited service and ... annualized regular based pay as of the Termination Date.” Accordingly, the payments made to employees pursuant to the Severance Agreements were based upon an employee’s years of service with the Debtors.

18. In order for severance claims based upon years of service to be accorded priority treatment, they must have been “earned” within the Priority Period. In re Roth Am., Inc., 975 F.2d 949, 951 (3d. Cir. 1992). As severance claims based upon years of service are earned over the course of employment, such employee is only entitled to a priority claim for the portion of the claim which is earned over the Priority Period, and to an administrative claim for the portion of the claim which is earned post-petition, if any. Id. The remainder of any such claim is a general unsecured claim. Id.

19. The Disputed Claims listed on Exhibit “A” seek priority treatment for the full amount of severance benefits earned under the Severance Agreements. However, the

Disputed Claims listed on Exhibit “A” earned their severance claims over the course of their employment based upon their years of service with the Debtors. Accordingly, only the portion that was “earned” within the Priority Period is entitled to priority treatment with the remainder of such claim, entitled to general unsecured treatment, in accordance with section 507(a)(4) of the Bankruptcy Code. Furthermore, certain Claimants listed on Exhibit “A” previously received a portion of their Severance Claim. Accordingly, if the Disputed Claims listed on Exhibit “A” are not reclassified and reduced, in part, to account for such payments, the Disputed Claims would receive a larger recovery than that to which they are otherwise entitled. Accordingly, such claims must be reduced and reclassified, in part, to the amounts and natures set forth in Exhibit “A”.

B. Claim Based Upon Employment Agreement with the Debtors

20. Based upon the Debtors’ Books and Records, the Claimant listed on Exhibit “B” was the Debtors’ sole international employee working in Taiwan. The Debtors entered into an employment agreement³ (the “Employment Agreement”) with such employee which provided that the rights and obligations of the parties shall be “governed and construed in accordance with the laws of the ROC and in particular, the Labor Standards Law.” Employment Agreement, at 4. The Claimant listed on Exhibit “B” is asserting a severance claim based upon the Taiwan Labor Standards Law. Article 17 of the Labor Standards Act provides an employee “who has continuously worked for a business entity owned by the same employer...one month of average wage for each year of service” if such employee is terminated by its employer. Labor Standards Law, Art. 17. Accordingly, severance owed based upon the Labor Standards Law is based upon years of service.

³ A copy of the Employment Agreement is available upon request.

21. In order for severance claims based upon years of service to be accorded priority treatment, they must have been “earned” within the Priority Period. In re Roth Am., Inc., 975 F.2d 949, 951 (3d. Cir. 1992). As severance claims based upon years of service are earned over the course of employment, such employee is only entitled to a priority claim for the portion of the claim which is earned over the Priority Period, and to an administrative claim for the portion of the claim which is earned post-petition, if any. Id. The remainder of any such claim is a general unsecured claim. Id.

22. The Disputed Claim listed on Exhibit “B” seek priority treatment for the full amount of severance benefits earned under the Labor Standards Act. However, the Disputed Claim listed on Exhibit “B” earned its severance claim over the course of his employment based upon Claimant’s years of service with the Debtors. Accordingly, only the portion that was “earned” within the Priority Period is entitled to priority treatment with the remainder of such claim entitled to general unsecured treatment, in accordance with section 507(a)(4) of the Bankruptcy Code. If the Disputed Claim listed on Exhibit “B” is not reclassified, in part, the Disputed Claim would receive a larger recovery than that to which it is otherwise entitled and in contravention of the Bankruptcy Code. Accordingly, such claim must be reclassified to the amounts and natures set forth in Exhibit “B”.

C. Severance Claim Based Upon Termination Without Cause

23. The Disputed Claim listed on Exhibit “C” seeks priority treatment for the full amount of severance such Claimant was entitled to under an alternative severance plan (the “Alternative Severance Plan”). The Alternative Severance Plan provided certain designated employees with a lump sum payment “in the event of an involuntary termination without cause.” The severance claim arising under the Alternate Severance Plan compensated the

employee for termination without cause, and is not based on years or service or in lieu of notice. Severance claims that arise from termination of an employee without cause vest at the time the employee becomes eligible for the severance benefit. In re M Group, Inc., 268 B.R. 896, 901 (Bankr. D. Del. 2001) (holding that employee became eligible for severance benefits at the time that he signed his employment contract, which was prepetition, and the fact that he was terminated post-petition does not make such severance claims administrative claims.) Accordingly, to the extent such claim vests outside of the Priority Period, it must be reclassified as a general unsecured claim.

24. The Disputed Claim listed on Exhibit “C” seeks priority treatment for the full amount of severance earned under the Alternative Severance Plan. However, the Disputed Claim listed on Exhibit “C” earned its right to severance at the time it entered into the Alternative Severance Plan, which was prior to the Priority Period. Accordingly, the Disputed Claim listed on Exhibit “C” is not entitled to priority treatment under section 507(a)(4) of the Bankruptcy Code. If the Disputed Claim listed on Exhibit “C” is not reclassified, the Disputed Claim would receive a larger recovery than that to which it is otherwise entitled. Accordingly, the Disputed Claim listed on Exhibit “C” must be reclassified.

EXHIBIT “D” – REDUCE RETENTION BONUS CLAIMS

25. Prior to the Petition Date, the Debtors entered into agreements (the “Retention Agreements”) with certain employees offering such employees a lump-sum payment (the “Retention Bonus”) upon satisfactory completion of their employment through a certain date. The Disputed Claims listed on Exhibit “D” seek the full amount of their Retention Bonus earned pursuant to the applicable Retention Agreement. However,

the Claimants listed on Exhibit “D” previously received a portion of their respective Retention Bonus. Accordingly, the Disputed Claims listed on Exhibit “D” must be reduced to the amounts set forth on Exhibit “D” to account for such payments. If the Disputed Claims listed on Exhibit “D” are not reduced, the Claimant would receive a recovery to which they are otherwise not entitled. Accordingly, the Disputed Claims listed on Exhibit “D” must be reduced.

EXHIBIT “E” - EXPUNGE UNSECURED CLAIMS PURSUANT TO 11 U.S.C. 502(d)

26. Section 502 of the Bankruptcy Code provides that “the court shall disallow any claim of any entity for which property is recoverable under section . . . 550 that is a transferee of a transfer avoidable under section . . . 547, 548 . . . unless such . . . transferee has paid the amount . . . for which such transferee is liable[.]” 11 U.S.C. § 502(d). The disallowance of a claim under section 502(d) requires a “judicial determination that a claimant is liable.” In re Lids Corp., 260 B.R. 680, 684 (Bankr. D. Del. 2001). The purpose of section 502(d) of the Bankruptcy Code is to ensure compliance with judicial orders and to promote pro-rata sharing of a debtor’s estate among its creditors. See Official Unsecured Creditors’ Comm. of Broadstripe, LLC v. Highland Capital Mgmt., L.P. (In re Broadstripe, LLC), 444 B.R. 51, 109 (Bankr. D. Del. 2010) (quoting In re Oxford Royal Mushroom Prod. Inc., 59 B.R. 926, 927 (Bankr. E.D. Pa. 1986)); Logan v. Credit Gen. Ins. Co. (In re PRS Ins. Group), 331 B.R. 580, 587 (Bankr. D. Del. 2005) (noting that “the purpose of section 502(d) is to ensure compliance with judicial orders by totally disallowing any claim filed by a creditor that is liable for a preferential or fraudulent transfer -- unless the creditor first pays the amount due to the estate”) (citations omitted).

27. As such, section 502(d) authorizes a bankruptcy court to “disallow a claim if the claimant has failed to pay money it owes the estate” Broadstripe, 444 B.R. at 109 (quoting Oxford Royal, 59 B.R. at 927); see also In re Mid Atlantic Fund, Inc., 60 B.R. 604, 609 (Bankr. S.D.N.Y. 1986) (noting that section 502(d) operates to “preclude entities which have received voidable transfers from sharing in the distribution of the assets of the estate unless and until the voidable transfer has been returned to the estate.”). As one commentator noted, “[o]nce the liability of the transferee has been determined, the claim . . . will be disallowed unless such transferee gives effect to the judgment” 4 COLLIER ON BANKRUPTCY (16th ed. 2007) ¶ 502.05[1]. Until such time as the liability on the voidable transfer has been repaid to the estate, any claim held by such person or entity must be disallowed. See Logan, 331 B.R. at 587.

28. Each of the Claimants listed on Exhibit “E” to the Proposed Order is a transferee of at least one avoidable transfer which the Trustee has sought to avoid and recover by filing an avoidance action (each, an “Avoidance Action”, and collectively, the “Avoidance Actions”) pursuant to sections 547, 548 and 550 of the Bankruptcy Code. The Trustee has obtained a default judgment (each a “Default Judgment”, and collectively, the “Default Judgments”) ⁴ in each of the Avoidance Actions against each listed Claimant. To date, each Claimant listed on Exhibit “E” has failed to pay the amount for which it is liable as set forth in each Default Judgment. As each Default Judgment is outstanding and has not been satisfied, the Trustee respectfully requests that the Disputed Claims listed on Exhibit “E” to the Proposed Order be disallowed and expunged in full.

⁴ Copies of the Default Judgments against each of the Claimants are annexed hereto as Exhibit 2.

FILING AND SERVICE OF RESPONSES

29. To contest this Objection, a Claimant must file with the Bankruptcy Court and serve on the parties identified below a written response to the Objection (a “Response”) so that such Response is **RECEIVED NO LATER THAN 4:00 P.M. (ET) ON April 17, 2013** (the “Response Deadline”). The Claimant should read the Proposed Order and its attached exhibits carefully. If a Claimant timely files a written Response and wishes to oppose the Objection, the Claimant must attend the hearing scheduled to be held on **April 24, 2013 AT 10:30 A.M. (ET)**, in the courtroom of the Honorable Peter J. Walsh, Judge of the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 6th Floor, Wilmington, Delaware 19801 (the “Hearing”).

30. Every Response shall be served upon the following entities at the following addresses:

- a. Co-Counsel for the Trust, Hahn & Hessen, LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022 (Attn: Mark S. Indelicato, Esq., Katharine G. Craner, Esq. and Lauren S. Schlussel, Esq.).
- b. Co-Counsel for the Trust, Drinker Biddle & Reath LLP, 1100 North Market Street, Suite 1000, Wilmington, Delaware 19801 (Attn: Howard A. Cohen, Esq.).
- c. The Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 N. King Street, Room 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane M. Leary, Esq.).

31. Contents of Response. A Response to the Objection must contain, at a minimum, the following:

- a. a caption setting forth the name of the Court, the name of the Debtors, the case number and the title of the Objection to which the Response is directed;

- b. the name of the Claimant and description of the basis for the amount of the Disputed Claim;
- c. a concise statement setting forth the reasons why the Disputed Claim should not be reclassified or reduced including, but not limited to, the specific factual and legal bases upon which the Claimant will rely in opposing the Objection;
- d. all documentation or other evidence in support of the Disputed Claim, not previously filed with the Court with the Claimant's proof of claim, upon which the Claimant will rely in opposing the Objection at the Hearing;
- e. the name, address, telephone number and fax number of the person(s) (which may be the Claimant or his/her/its legal representative) to whom counsel for the Trust should serve a reply to the Response and who possesses authority to reconcile, settle, or otherwise resolve the Objection to the Disputed Claims on behalf of the Claimant.

32. Timely Response Required. If a Claimant fails to file and serve a timely Response by the Response Deadline, the Trust will present to the Bankruptcy Court an order (i) reducing and reclassifying, in part, the Disputed Claims listed on Exhibits "A", "B" and "C", to the Proposed Order, (ii) reducing the Disputed Claims listed on Exhibit "D" to the Proposed Order and (iii) expunging the Disputed Claims listed on Exhibit "E" to the Proposed Order.

33. Service Address. If a Response contains an address for a Claimant that is different from the address shown on such Claimant's Disputed Claim, the address in the Response shall constitute the service address for future service of papers upon the Claimant until the Trust's counsel receives written notice of a change of address from the Claimant or the Claimant's counsel.

REPLIES TO RESPONSES

34. The Trust may, at its option, file and serve a reply to any Response so that it is received by the Claimant (or the Claimant's counsel, if represented) no later than three (3) days prior to the Hearing.

ADJOURNMENT OF HEARING

35. The Trust reserves the right to seek an adjournment of the Hearing on any Response to the Objection. In the event that the Trust seeks such an adjournment, it will be noted on the notice of agenda for the Hearing, and such agenda will be served on the Claimant by serving the person designated in the Response.

RESERVATION OF RIGHTS

36. By this Objection, the Trust is seeking to (i) reclassify the Disputed Claims listed on Exhibits "A", "B" and "C" to the Proposed Order (ii) reduce the Disputed Claims listed on Exhibit "D" to the Proposed Order, and (ii) expunge the Disputed Claims listed on Exhibit "E". The Trust is not seeking to allow the Disputed Claims listed on Exhibits "A", "B" and "C" as they are subject to further review. The Trust therefore expressly reserves its rights to object to these claims on any and all non-substantive or substantive grounds, including, but not limited to, objecting to reduce or expunge the Disputed Claims on the basis that the amounts asserted by the Disputed Claims are not due and owing.

37. The Trust expressly reserves the right to amend, modify or supplement this Objection, and to file additional objections to any other claims (filed or not) that may be asserted against the Debtors or the Trust. Should one or more of the grounds of objection stated in this Objection be overruled, the Trust reserves its right to object to the Disputed Claims on any other ground that bankruptcy and non-bankruptcy law permits.

FURTHER INFORMATION

38. Questions about or requests for additional information about the proposed disposition of the Claims hereunder should be directed to the Trust's counsel in writing as follows: Hahn & Hessen LLP, 488 Madison Avenue, 15th Floor, New York, New York 10022 (Attn: Mark S. Indelicato, Esq., Katharine G. Craner, Esq. and Lauren S. Schlusel, Esq.). **Claimants should not contact the Clerk of the Court to discuss the merits of the Disputed Claims or this Objection.**

COMPLIANCE WITH LOCAL RULES

39. The form of this Objection complies with Rule 3007-1 of the Local Rules of this Court.

NOTICE

40. A copy of the Objection has been served upon: (i) the United States Trustee for the District of Delaware, (ii) the affected Claimants and (iii) all parties who have previously requested notice pursuant to Bankruptcy Rule 2002. The Trustee submits that no further notice is required.

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WHEREFORE, the Trust respectfully requests that an order be entered (i) pursuant to Bankruptcy Code section 502 and Bankruptcy Rules 3001 and 3007, as well as Local Rule 3007-1 (a) reducing and reclassifying, in part, each of the Disputed Claims listed on Exhibits “A”, “B” and “C” and to the Proposed Order, (b) reducing the Disputed Claims listed on Exhibit “D” to the Proposed Order, (c) expunging the Disputed Claims listed on Exhibit “E” to the Proposed Order; and (ii) granting such other relief as is deemed just and proper.

Dated: March 25, 2013

DRINKER BIDDLE & REATH LLP

By: /s/ Howard A. Cohen

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