IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILMA KNAPP, on behalf of herself and others similarly situated,	)	**CASE NO. 3:18-cv-01941-RDM**
	)	**(Judge Robert D. Mariani)**
Plaintiff,	)	
vs.	)	
	)	
CONSULATE HEALTH CARE,	)	
	)	
Defendant.	)	

DEFENDANT'S RULE 12(b)(6)MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant, Susquehanna Village Facility Operations, LLC, d/b/a Manor at Susquehanna Village ("Susquehanna Village"), incorrectly identified as "Consulate Health Care," by and through the undersigned counsel, moves to dismiss Plaintiff's Complaint, and in support thereof, states as follows:

INTRODUCTION

On October 8, 2018, Plaintiff, a nurse, filed a Complaint in this Court on behalf of herself and a class of allegedly similarly situated employees claiming entitlement to unpaid accrued sick and vacation leave time. [Dkt. 1]. According to the Complaint, such leave was eliminated when the Defendant, a nursing home, sold its business and stopped employing the Plaintiffs. [Dkt. 1, ¶ 17]. Through the employee guidebook attached to her Complaint, Plaintiff attempts to override the at-will nature of her employment and claim she is contractually entitled to a payout of accrued time off

pursuant to a breach of contract theory, and through the inapplicable Wage Payment and Collection Law ("WPCL"). [Dkt. 1, pgs. 6-7]. In the alternative, Plaintiff asserts quasi-contractual claims for promissory estoppel and unjust enrichment. [Dkt. 1, pgs. 7-8].

Defendant moves to dismiss these counts as to Plaintiff and as to the alleged class, for failure to state a claim. The Complaint should be dismissed for the following reasons: (1) Plaintiff was an at-will employee with no contract to support a breach of contract claim; (2) without a contract, Plaintiff has no cause of action under the WPCL; (3) promissory estoppel claims are not recognized in the at-will context, and even if they were, Plaintiff has not pled the requisite elements; (4) Plaintiff has not pled the elements for unjust enrichment; and (5) because each of Plaintiff's counts fails to state a claim, the allegations are also insufficient to support the same claims by the purported class. Without Plaintiff to act as a class representative, the class has no standing to proceed, and the Complaint should be dismissed in its entirety.

Defendant respectfully refers the Court to the brief filed contemporaneously in support of this Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via the Electronic Case Filing System for the United States District Court for the Middle District of Pennsylvania on this 26th day of November, 2018, to the following:

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Respectfully submitted,

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CONSULATE HEALTH CARE,	))	
Defendant.	)	

ORDER OF COURT

Upon consideration of Defendant, Susquehanna Village Facility Operations, LLC, d/b/a Manor at Susquehanna Village's, incorrectly identified as "Consulate Health Care," Rule 12(b)(6) Motion to Dismiss Plaintiff's Complaint and the Briefs and arguments submitted by the parties it is hereby **ORDERED** that said Motion is **GRANTED** and the Complaint is **DISMISSED WITH PREJUDICE**.

Entered this ______ day of _________________________________, 2018.

____
The Honorable Robert D. Mariani
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILMA KNAPP, on behalf of herself and other similarly situated,	)	**CASE NO. 3:18-cv-01941-RDM**
	)	**(Judge Robert D. Mariani)**
Plaintiff,	)	
vs.	)	
	)	
CONSULATE HEALTH CARE,	)	
	)	
Defendant.	)	

BRIEF IN SUPPORT OF DEFENDANT'S RULE 12(b)(6) MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT

Defendant, Susquehanna Village Facility Operations, LLC, d/b/a Manor at Susquehanna Village ("Susquehanna Village"), incorrectly identified as "Consulate Health Care," by and through the undersigned counsel, moves to dismiss Plaintiff's Complaint [Dkt. 1], and in support thereof, states the following.

PROCEDURAL AND FACTUAL BACKGROUND

This is a class action suit brought by one employee, a nurse, on behalf of a group class of allegedly similarly situated employees claiming entitlement to unpaid accrued sick and vacation leave time. [Dkt. 1]. According to the Complaint, such leave was eliminated when the Defendant, a nursing home, sold its business and stopped employing the Plaintiffs. [Dkt. 1, ¶ 17]. Through the employee guidebook attached to her Complaint, Plaintiff attempts to override the at-will nature of her employment and

claim she is contractually entitled to a payout of accrued time off pursuant to a breach of contract theory, and through the inapplicable Wage Payment and Collection Law ("WPCL"). [Dkt. 1, pgs. 6-7]. Alternatively, Plaintiff asserts quasi-contractual claims for promissory estoppel and unjust enrichment. [Dkt. 1, pgs. 7-8].

STATEMENT OF ISSUES TO BE RESOLVED

Defendant moves the Court to determine that the Plaintiff has failed to state a claim for any of the counts in her Complaint on her own behalf, or on behalf of her purported class.

MEMORANDUM OF LAW

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) for "failure to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). A 12(b)(6) motion requires the court to examine the sufficiency of the complaint. *Conley v. Gibson*, 355 U.S. 41, 45, 78 S.Ct. 99, 102, 2 L.Ed.2d 80, 84 (1957) (abrogated in other respects by *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Bank v. City of Philadelphia*, 991 F. Supp. 2d 523,527 (E.D. Pa. 2014). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct

alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (citations omitted).

Here, the Complaint fails to meet this standard for any of the claims alleged, specifically: (1) Plaintiff was an at-will employee with no contract to support a breach of contract claim; (2) without a contract, Plaintiff has no cause of action under the WPCL; (3) promissory estoppel claims are not recognized in the at-will context, and even if they were, Plaintiff has not pled the requisite elements; (4) Plaintiff has not pled the elements for unjust enrichment; and (5) because the grounds for dismissal of Plaintiff's claims apply equally to the rest of the purported class, Plaintiff cannot maintain a cause of action on her own behalf or on behalf of the class, and the Complaint should be dismissed in its entirety.

I. <u>Plaintiff's breach of contract claim must be dismissed as Plaintiff was an at-will employee with no contract.</u>

In Pennsylvania, employment is presumed to be at-will absent an employment contract for a definite term or a just cause provision. *Carlson v. Cmty. Ambulance Services, Inc.*, 824 A.2d 1228, 1232 (Pa. Super. Ct. 2003) (citing *McLaughlin v. Gastrointestinal Specialists, Inc.,* 561 Pa. 307, 313-14, 750 A.2d 283, 286-87 (2000))*;* *McNichols v. Commw., Dep't of Transp.*, 804 A.2d 1264, 1267 (Pa. Commw. Ct. 2002) (citations omitted). "[T]he plaintiff has the burden to present facts to overcome the at-will presumption." *Preobrazhenskaya v. Mercy Hall Infirmary*, 71 F. App'x 936, 940

(3d Cir. 2003) (citing *Scott v. Extracorporeal, Inc.*, 376 Pa. Super. 90, 545 A.2d 334, 336-37 (Pa. Super. Ct. 1988)). "[F]ederal and state courts have held that the quantum of evidence to overcome the at-will employment presumption is substantial." *Mercante v. Preston Trucking Co., Inc.*, 1997 U.S. Dist. LEXIS 7453, at *9 (E.D. Pa. May 20, 1997).

Additionally, an employer's customs, practices, or policies, in conjunction with accolades given to the employee, do not create a *per se* implied contract. *Rossi v. Sun Ref. & Mktg. Corp.*, No. 94-3037, 1995 U.S. Dist. LEXIS 225, at *12-13 (E.D. Pa. Jan. 10, 1995). Instead, to establish the existence of an implied contract, the employee will have to clearly show that she and the employer intended to form a contract. *See DiBonaventura v. Consolidated Rail Corp.*, 372 Pa.Super. 420, 425, 539 A.2d 865, 868 (Pa. Super.1988).

Here, Plaintiff has pled no facts to overcome the at-will presumption. Moreover, the at-will nature of her employment is underscored by the exhibit to her Complaint, the employee guidebook. [DE-1, pgs. 15-16].[1] The first substantive page of the guidebook contains a provision entitled "**At Will Employment Status**," which provides, in part, "employment is terminable at either the will of CHC or the employee

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[1] In deciding a motion to dismiss, the Court should consider the complaint, exhibits attached to the complaint, and matters of public record. *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010) (citations omitted).

at any time[...]CHC may terminate your employment at any time, for any reason not prohibited by law, with or without cause." [Dkt. 1 pg. 15]. The same page of the guidebook provides that the employer "reserves the right to revise the policies or procedures in this guidebook, in whole or in part, at any time, without notice." *Id*. Apart from this guidebook, Plaintiff does not attach any other alleged agreement, nor does she plead that one exists.

Taking Plaintiff's Complaint as true for purposes of this Motion, there is no legal or factual basis for Plaintiff's breach of contract claim based either on an express or implied contract. While Plaintiff points to the employee guidebook's vacation and sick leave policies in support of her position that Defendant had a contractual obligation to "honor the sick and vacation leave time earned," neither the specific policies mentioned, nor the guidebook's more general provisions contain any language indicating that they are a legally binding contract between the parties. [Dkt. 1, pgs. 6, 15, 26-27]. On the contrary, the guidebook language cited above makes explicit the employer's intention not to be bound by the policies, and to reserve the right to unilaterally revise them at any time. [Dkt. 1, pg. 15]. Given this language, as a matter of law, this guidebook cannot be found to constitute a contract. *See Luteran v. Loral Fairchild Corp*., 455 Pa. Super. 364, 688 A.2d 211, 216 (Pa. Super. 1997).

Moreover, the unambiguous language of the sick leave policy under which Plaintiff claims she was denied a payout of accrued time, specifically states "[s]ick

time is not paid out at termination of employment, whether voluntary or involuntary." [Dkt. 1, pg. 27]. Accordingly, even assuming the sick leave policy was a contract for the accrual of sick leave *during* Plaintiff's employment, it expressly denies Plaintiff the relief she is now seeking - - continuation of accrual or payout of leave after Defendant's sale of the operation. *Id*. Thus, there is no contractual provision to serve as the basis for Plaintiff's claims that she is entitled to a payout of accrued leave.

II. Plaintiff's claim under the Wage Payment and Collection Law must be dismissed as there is no contract upon which it is based.

The WPCL does not establish any substantive rights; it simply provides a statutory remedy for an employee "when the employer breaches **a contractual obligation** to pay earned wages." *Weldon v. Kraft, Inc.*, 896 F.2d 793, 801 (3d Cir. 1990) (emphasis added); *Rosario v. First Student Mgmt., LLC*, 247 F. Supp. 3d 560, 568 (E.D. Pa. 2017). In other words, a prerequisite for relief under the WPCL is a contract between employee and employer that sets forth their agreement on wages to be paid. *Razak v. Uber Techs.,* No. 16-573, 2016 WL 5874822, at *9 (E.D. Pa. Oct. 7, 2016) (quoting *Scott v. Bimbo Bakeries, USA, Inc.,* 2012 WL 645905, at *4 (E.D. Pa. Feb. 29, 2012)). Thus, "to sustain [a] wage-payment claim[], [the plaintiff] must demonstrate that he was contractually entitled to compensation and that he was not paid." *Divenuta v. Bilcare, Inc.*, No. 09-3657, 2011 WL 1196703, at *9 (E.D. Pa. Mar. 31, 2011). "Where an employee does not work under a written employment

contract or collective bargaining agreement, the employee will have to establish the formation of an implied oral contract to recover under the WPCL." *Oxner v. Cliveden Nursing & Rehab. Ctr. PA, L.P.*, 132 F. Supp. 3d 645, 649 (E.D. Pa. 2015). "Under Pennsylvania law, an implied contract arises when parties agree on the obligation to be incurred, but their intention, instead of being expressed in words, is inferred from the relationship between the parties and their conduct in light of the surrounding circumstances." *Id.*

Here, in the absence of any contract, Plaintiff premises her WPCL claim upon the sick and vacation leave policies contained in the employee guidebook. [Dkt. 1, pg. 15]. However, as argued above, such policies to do not constitute a contract, particularly when, as here, the guidebook contains a disclaimer stating that the policies may be modified at any time. *See Luteran*, 455 Pa. Super. at 216 (workplace handbooks and policies are not contracts unless they contain affirmative language indicating an intent to be contractually bound). The guidebook here expressly negates any claim that Defendant intended to be bound by contractual terms.

In *Giuliani v. Polysciences*, the Court dismissed a plaintiff's WPCL claim for accrued sick time which was premised upon the employer's guidebook. *Giuliani v. Polysciences, Inc.*, 275 F. Supp. 3d 564, 579 (E.D. Pa. July 31, 2017). In doing so, the Court found that although the policy referenced encouraged employees to accrue sick time, it expressly disclaimed a payout for the same; as such, there was no

implied contract for payout of accrued PTO upon which a WPCL claim could be based. *Id.*

Here, just like in *Giuliani*, the sick leave policy attached to the Complaint specifically states that no sick leave is paid out upon termination. [Dkt. 1, pg. 27]. As such, there is no contractual language upon which Plaintiff can base her claim that she was owed a payout of her accrued sick time when her employer terminated her employment. Accordingly, even if this Court were to find an implied contract for Plaintiff's vacation time, the guidebook unambiguously refutes such an obligation with respect to sick time, and this part of Plaintiff's Complaint must be dismissed. *See Klee v. Lehigh Valley Hosp.*, No. 97-4642, 1998 WL 966011, at *3 (E.D. Pa. Nov. 30,1998) (dismissing WPCL and breach of contract claims for earned sick time based on "unambiguous language" in employee handbook).

III. Plaintiff's promissory estoppel claim must be dismissed because she was an employee at-will and there was no detrimental reliance.

As an alternative to her breach of contract and WPCL claims, Plaintiff asserts a quasi-contractual claim for promissory estoppel. This claim must be dismissed for two reasons: first, Plaintiff was an at-will employee, and second, there was no reasonable reliance by Plaintiff on a promise which injustice can only be avoided by enforcing.

Plaintiff's promissory estoppel allegation is premised on the existence of an alleged promise to deliver a payout of accrued vacation and sick benefits in an at-will employment context. However, Pennsylvania does not allow promissory estoppel claims in the at-will employment context. *See, e.g., Dyche v. Bonney*, 277 Fed. App'x 244, 246 (3d Cir. 2008); *Bair v. Purcell,* 500 F. Supp. 2d 468, 491-92 (M.D. Pa. 2008)*; Denillo v. Starwood Hotels & Resorts Worldwide, Inc.*, 2014 Pa. Super. LEXIS 3164 *9 (an employee cannot maintain a promissory estoppel claim based on provisions set forth in a non-contractual policy or handbook); *Geiger v. AT&T Corp.,* 962 F. Supp. 637, 648 (E.D. Pa. 1997) (not recognizing former employee's promissory estoppel claim that he took an early retirement package from his employer in reliance on the employer's promise that it would hire him back as an independent contractor because Pennsylvania fails to recognize promissory estoppel claims in the at-will employment arena).

Even if this Court were to allow a promissory estoppel claim in spite of Plaintiff's at-will employment, this count still must be dismissed because Plaintiff has failed to plead a clear and unambiguous promise and detrimental reliance on that promise. The elements of a claim for promissory estoppel are: (1) a promise made by the defendant to the plaintiff, which the defendant expected would induce action on the part of the plaintiff; (2) which does induce the expected action by the plaintiff; and (3) "injustice can only be avoided by enforcing the promise." *CMR D.N. Corp.*

v. City of Philadelphia, 703 F.3d 612, 634 (3d Cir. 2013) (*citing Rinehimer v. Luzerne Cnty. Cmty. Coll.,* 372 Pa. Super. 480, 539 A.2d 1298, 1306 (Pa. Super. Ct. 1988)). To be actionable, a claim of promissory estoppel must be grounded in a promise that is "clear and unambiguous." *Morris v. Ace Medical Co*., No. 95-1271, 1996 WL 69400, at *9 (E.D. Pa. Feb. 16, 1996). A promise that is vague or indefinite will not be enforced. *Id*. *See also C&K Petroleum Prods., Inc. v. Equibank*, 839 F.2d 188, 192 (3d Cir. 1988) (affirming dismissal of promissory estoppel claim based on "broad and vague implied promise").

Here, the guidebook specifically says that all policies therein may be changed at any time. [Dkt. 1, pg. 15]. As such, the vacation and sick policies—which were always subject to change at any time - - cannot be construed as clear, unambiguous promises which would reasonably induce Plaintiff to continue working for Defendant. Moreover, the sick leave policy unequivocally denies employees a payout of accrued time at termination, and does not create an exception based on the sale of the business. As such, the policy which Plaintiff claims to be a promise denies her entitlement to exactly the benefit she now seeks.

Plaintiff has also failed to plead detrimental reliance on either the vacation or sick policy. All Plaintiff pled she was induced to do by Defendant's alleged promise is "not pursue other employment opportunities because changing employers would have resulted in the loss of many years of earned leave time that she understood

would be available to her in a time of need." [Dkt. 1, ¶16]. As a matter of law, this allegation does not suffice to meet Plaintiff's burden. *Engstrom v. John Nuveen & Co.*, 668 F. Supp. 953 (E.D. Pa. 1987) ("Merely failing to seek other employment is not detrimental reliance . . . . [Plaintiff] must present sufficient evidence from which it could reasonably be found that [he] refused offers of comparable work and relied on the alleged promises of employment . . . to his detriment . . . ."). Further, such reliance would be unreasonable in these circumstances given the plain language of the guidebook which leaves both the vacation and sick policies open to unilateral employer-modification at any time. It would be even less reasonable for Plaintiff to rely upon the sick leave policy for a payout, as it plainly states that Plaintiff would *not* be paid accrued sick leave in the event of a termination of any kind. Accordingly, Plaintiff's Complaint does not state a cause of action for promissory estoppel, and should be dismissed.

IV. Plaintiff's unjust enrichment claim must be dismissed as she has not pled facts sufficient to show she conferred a benefit on Defendant which was appreciated under inequitable circumstances.

Count IV alleges unjust enrichment based upon Defendant not paying Plaintiff accrued vacation and sick time when Defendant ceased operations of the facility and terminated her employment. Plaintiff alleges (without any basis) that she believes Defendant obtained a better value for the business when it was sold because it did not honor Plaintiff's and other's accrued leave time. [Dkt. 1, ¶ 18].

For a claim of unjust enrichment, a plaintiff must "show that he conferred a benefit upon [defendant], that [defendant] realized the benefit and that retention of the benefit under the circumstances would be unjust." *Herbst v. Gen. Accident Ins. Co*., 1999 WL 820194, at *9 (E.D. Pa. Sept. 30, 1999).

Plaintiff fails to state a claim because she has not pled that she conferred any benefit upon Defendant beyond her employment (for which she admits in her complaint she was paid her wages, and provided with paid days off, which she took). [DE-1, pg. 3, ¶¶ 13, 14]. *See Giuliani*, 275 F. Supp. 3d 564 (*citing Herbst*, 1999 WL at *9 (denying claim for unjust enrichment where "plaintiff has not shown that he did anything more than work to the best of his abilities for defendant as he was engaged to do")); *See also Ankerstjerne v. Schlumberger Ltd*, 2004 U.S. Dist. LEXIS 9927, at *20 (E.D. Pa. May 12, 2004) (finding plaintiff did not state a claim for unjust enrichment based on unpaid bonuses, as he had not shown that he provided the defendants with anything more than the work he was hired to do). [2]

Even if the Complaint could somehow be construed to show that Plaintiff conferred a benefit upon the Defendant, there is nothing unjust about Defendant's retention of Plaintiff's work. Plaintiff alleges she labored for years under the

[2] *See also King of Prussia Equip. Corp. v. Power Curbers, Inc.*, 117 F. App'x 173, 176 (3d Cir. 2004) (Unjust enrichment will not be found where a plaintiff renders services to advance its own interests.)

impression that her leave time would be administered as written in the guidebook. [Dkt. 1, ¶ 16]. The guidebook plainly states that accrued sick leave would not be paid out at the end of the employment relationship. [Dkt. 1, pg. 27]. Therefore, by her own allegations, Plaintiff admits she knew she would not be entitled to a payout of accrued sick leave whenever she left, and yet, Plaintiff elected to keep working for Defendant—Plaintiff's choice to do this does not amount to unconscionability on Defendant's part.

When analyzing whether Plaintiff has pled that Defendant was unjustly enriched by Plaintiff's work, the Court should not afford the Plaintiff's conclusory allegation about the value of the transaction between Defendant and the new operator of the facility any weight because Plaintiff has failed to plead any facts to show how she, as a nurse, would be, or was in fact, privy to such information. *See Morse v. Lower Merion School Dist.,* 132 F.3d 902, 906 (3d Cir. 1997) (a court need not credit "bald assertions" in assessing a motion to dismiss) (citing with approval Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE § 1357 (2d ed.1997) ("Courts, when examining 12(b)(6) motions, have rejected 'legal conclusions,' 'unsupported conclusions,' 'unwarranted inferences,' 'unwarranted deductions,' 'footless conclusions of law,' or 'sweeping legal conclusions cast in the form of factual allegations.'") Plaintiff further fails to plead any way in which Defendant's alleged refusal to pay such accrued time to its employees would allow

Defendant to command a higher purchase price, as she claims. Plaintiff also pled nothing that establishes that her work specifically led to an increased valuation for the company, which Defendant unjustly retained. All Plaintiff's Complaint establishes is that she worked for Defendant, and she was paid for that work; this is not unjust. Given these circumstances, the Court should find Plaintiff has not pled sufficient facts to support an unjust enrichment claim.

V. **The class action must be dismissed because the grounds for dismissal of Plaintiff's action apply equally to the entire class.**

A finding that finding that Plaintiff's Complaint fails to state a claim under Rule 12(b)(6) "disqualifies [P]laintiff as a proper class representative." *McNulty v. Fed. Hous. Fin. Agency*, 954 F.Supp.2d 294, 303 (M.D. Pa. 2013). Without a class representative who has standing to bring an action against Defendant, there can be no class action. *See DaimlerChrysler Corp. v. Askinazi*, No. 99-5581, 2000 U.S. Dist. LEXIS 9165, *13 (E.D. Pa. June 29, 2000). As such, the dismissal of Plaintiff's claims necessarily requires dismissal of the purported class action.

CONCLUSION

Plaintiff has not set forth any facts to overcome her status as an at-will employee, or to plead the existence of a contract. In fact, the employee guidebook undermines any such claim. In the absence of a contract, Plaintiff has not pled sufficient facts to justify an equitable remedy, as she has only pled that she worked for Defendant and

was compensated for her work. Plaintiff's failure to state a claim is fatal to her own action, and to the class action. For the reasons discussed herein, Defendant respectfully requests this Court dismiss the Complaint.

LOCAL RULE 7.8 CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the brief above does not exceed 15 pages, and contains 3,440 words, not including the case caption.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via the Electronic Case Filing System for the United States District Court for the Middle District of Pennsylvania on this 26th day of November, 2018, to the following:

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Respectfully submitted,

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