, 266°

BALDWIN COUNTY,

ALABAMA.

IN EQUITY.

IN THE CIRCUIT COURT OF ð ELOF M. TUVESON AND EDNA LOF M. LOVESON, LUCILLE TUVESON, Petitioners õ ð VERSUS Ĩ RAY BARWICK AND DELIA D. Q BARWICK, Respondents Q

TO THE HONORABLE TELFAIR J. MASHBURN, JR., JUDGE OF SAID COURT, SITTING IN EQUITY:

Come the petitioners and show unto this Honorable Court as follows:

The petitioners are over the age of Twenty-one (21) 1. years and are residents of Baldwin County, Alabama.

2. The respondent, Delia D. Barwick, is a resident of the City of Fairhope, Baldwin County, Alabama. The respondent, Ray Barwick, is the husband of Delia D. Barwick and his residence is unknown to your petitioners, his last known residence being in the City of Fairhope, Baldwin County, Alabama. The address of the respondent, Delia D. Barwick, is Fairhope, Alabama. The last known address of the respondent, Ray Barwick, is Fairhope, Alabama.

3. On or about the 9th day of September, 1950, the petitioners entered into a contract with the respondents whereby the petitioners agreed to convey to the respondents, upon the prompt and full performance by the respondents of their part of the agreement, which is set out below, the following described property, towit:

> House and One and one-half  $(l_z)$  lots on Gayfer Street, which said lots are described as Lot Fifteen (15) and the West ( $W_{2}^{\pm}$ ) Half of Lot Four-teen (14), Block Twelve (12), of Volanta, an addition to the City of Fairhope, Baldwin County, Alabama, which tract is lying and being in the County of Baldwin, State of Alabama.

In consideration therefor, the respondents agreed to 4. pay as and for the purchase price of the said premises, the sum of Eight Thousand Five Hundred and No/100 (\$8,500.00) Dollars, with interest thereon at the rate of Five (5%) per cent per annum, in manner and at times following, to-wit: One Thousand and No/100 (\$1,000.00) Dollars was payable immediately upon the execution of

the said contract, in cash down, and the unpaid balance was to be payable at the rate of Sixty-five and No/100 (\$65.00) Dollars per month, which monthly payments were to commence on the 1st day of October, 1950. In addition thereto, the respondents further agreed to pay, prior to delinquency thereof, all taxes upon and assessments against the said property as the same shall become due each year, this to include State, County and City taxes and paving improvements, and to keep the said house insured against loss due to fire and windstorm for an amount not less than Six Thousand Five Hundred and No/100 (\$6,500.00) Dollars. According to the agreement, the respondents were to pay the insurance premiums at the rate of Five and 15/100 (\$5.15) Dollars per month.

5. By the terms of the contract, should default be made by the respondents in the payment of any amount due or to become due under the contract, or should they fail to perform any or either of the covenants, agreements, terms or conditions herein contained, to be by said respondents kept or performed, the said petitioners may by written notice declare the contract cancelled and terminated, and all rights, title and interest acquired under the said contract by the respondents would, upon such notice, cease and terminate, and all payments made under the said contract would belong to the petitioners as liquidated damages for breach of the contract by the respondents.

6. The petitioners have attached hereto and made a part of this petition, as if fully written herein, a copy of the said contract, marked Exhibit A.

7. There is a mortgage on the above described property, dated March 28, 1947, the Mortgagors being Ralph Yohn and Arlie Yohn, and the Mortgagee being the Bank of Fairhope, to secure the principal sum of Five Thousand and No/100 (\$5,000.00) Dollars, with interest thereon at the rate of Four and one-half (45%) per cent per annum, which mortgage is recorded in Mortgage Book 128, Pages 35-38, in the Office of the Judge of Probate, Baldwin County, Alabama. There is outstanding, as of the 1st day of February, 1951, a principal balance due on said mortgage of Four Thousand Three Hundred Fifty-three and 67/100 (\$4,353.67) Dollars, which mortgage the petitioners had, upon the conveyance of the property to them, assumed.

8. The petitioners have title to the said property by

virtue of a warranty deed from Ralph Yohn and Arlie Yohn, dated October 2, 1948, recorded Book 135, Page 317, in the Office of the Judge of Probate, Baldwin County, Alabama, subject to the above described mortgage, which, as mentioned above, the petitioners assumed when the property was conveyed to the petitioners, a copy of which deed is attached hereto and made a part hereof, marked Exhibit B.

9. The respondents have defaulted in the conditions of the said contract, Exhibit A, in that they have failed to pay the monthly installment payments due on the 1st day of January, 1951, and on the 1st day of February, 1951. The petitioners aver that they have fully kept and performed all their covenants and agreements in the said contract on their part, and this default of the respondents is now continuing.

10. The petitioners further show unto your Honor that written notice has been given to the respondent, Delia D. Barwick, upon the said default having been made by the respondents, of the cancellation and termination of the said contract, a copy of which notice is hereto attached and made a part hereof, marked Exhibit C. The petitioners further show that the respondent, Delia D. Barwick, has accepted the said notice of cancellation of the said contract.

11. The petitioners further show that the petitioners have attempted to notify the respondent, Ray Barwick, in writing, of the cancellation of the said contract, but the petitioners have been unsuccessful in having a notice in writing of the cancellation of the said contract served upon the respondent, Ray Barwick. The petitioners show that a registered letter has been mailed to the respondent, Ray Barwick, addressed to him at Fairhope, Alabama, under United States Mail Registry Number 951; that the said registered letter was returned by the United States Post Office, marked "moved, left no address". Whereupon the petitioners, on information and belief that the said respondent, Ray Barwick, may have been located in Auburndale, Florida, wrote another registered letter, giving notice of cancellation of the said contract, addressed to the respondent, Ray Barwick, Auburndale, Florida. The petitioners show that said letter addressed to the respondent, Ray Barwick, at Auburndale, Florida, has been returned by the United States Post Office, marked "unknown" and "for better address". The latter letter was sent through the United States mails, under United States Post Office Registry Number 1015.

12. The petitioners further show that they have published in the Fairhope Courier, a newspaper published in Baldwin County, Alabama, once a week for four consecutive weeks, a notice to the respondent, Ray Barwick, notifying him that the said contract has been cancelled by the petitioners.

WHEREFORE, THE PREMISES CONSIDERED, your petitioners pray that appropriate process issue out of this Honorable Court, making the said respondents, Delia D. Barwick and Ray Barwick, parties respondent, requiring them to appear, plead or answer this petition within the time required by law, and upon their failing to do so, that a decree pro confesso be taken against them; that upon a consideration by this Honorable Court, the petitioners pray that your Honor will decree that the contract between the petitioners and the respondents is duly cancelled; that the said respondents, Ray Barwick and Delia D. Barwick, are divested of all rights, title and interest, if any, acquired under said contract, in and to the above described property; that all the right, title and interest in and to the said property is revested in your petitioners, subject to the mortgage on the above described property; that your petitioners have the right to sell or convey the said property, subject to the said mortgage, to any other person, without any interference in such sale by the respondents; that the petitioners have the right to retain all monies paid under said contract by the said respondents, as liquidated damages for its breach, and the petitioners further pray for such general relief that they may be entitled to by virtue of the circumstances of the case.

# EXHIBIT A

STATE OF ALABAMA, I BALDWIN COUNTY.

THIS AGREEMENT, MADE and entered into this 9th day of September, 1950, by and between ELOF M. TUVESON and EDNA LUCILLE TUVESON, Husband and Wife, Sellers, and RAY BARWICK and DELIA D. BARWICK, Husband and Wife, Buyers:

WITNESSETH, That the said Sellers, in consideration of the covenants and agreements of said Buyers, hereinafter contained hereby sell and agree to convey unto said Buyers and their assigns by a WARRANTY DEED and to furnish an abstract of title upon the prompt and full performance by the said Buyers of this agreement upon the property described as a House and one and one-half  $(\frac{1}{2})$ lots on Gaffer Street, which said lots are described as Lot Fifteen (15) and West Half  $(W_2)$  of Lot Fourteen (14), Block Twelve (12) of Volanta, an addition to the City of Fairhope, Baldwin County, Alabama, which tract is lying and being in the County of Baldwin, and State of Alabama, as follows, to-wit:

And the said Buyers, in consideration of the premises, hereby agree to pay the said Sellers, as and for the purchase price of the said premises, the sum of Eight Thousand Five Hundred and No/100 (\$8,500.00) Dollars, with interest thereon at the rate of Five per cent (5%) per annum in manner and at times following; towit: One Thousand and No/100 (\$1,000.00) Dollars is payable immediately upon the execution hereof in cash down, and the unpaid balance is payable at the rate of Sixty-Five and No/100 (\$65.00) Dollars per month, which includes at the rate of Five per cent (5%) per annum, said monthly payments of Sixty-Five and No/100 (\$65.00) Dollars to commence on the <u>lst</u> day of <u>October</u>, 1950.

Said Buyers further covenant and agree to pay, prior to delinquency thereof, all taxes upon and assessments against the said property as the same shall become due each year, this to include State, County, and City taxes, and paving improvements and to keep the said House insured against loss due to fire and windstorm for an amount not less than Six Thousand Five Hundred and No/100 (\$6,500.00) Dollars. Policies of insurance shall be made payable to the Sellers. The insurance premiums shall be payable by the Buyers at the rate of Five Dollars and Fifteen Cents (\$5.15) per month. It is understood and agreed, however, that should the rates of insurance on said property be increased or decreased, the Buyers shall pay such increase, or the amount for insurance shall be reduced in such amount as the rates of insurance are decreased, whichever be the case.

Said Buyers further agree that all buildings or improvements now on said land, or that shall hereafter be erected, placed, or made thereon, shall not be removed therefrom, but shall be and remain the property of the Sellers until this contract shall be fully performed by the Buyers.

All taxes, assessments, and insurance due on said property .are to be pro-rated between the Buyers and the Sellers as of the date of the execution of this contract.

It is understood and agreed that this Contract is subject to an F. H. A. mortgage against the said property, which the Sellers agree to pay, but the Sellers also agree that the Buyers shall have the right to assume the payments of the said F. H. A. mortgage, and thereby reduce the amounts payable hereunder by such an amount as would be payable under the said F. H. A. mortgage, which said F. H. A. mortgage is payable at the Bank of Fairhope, Fairhope, Alabama, should the Sellers default in their payment of the same.

Should default be made by the Buyers in the payment of any amount due or to become due hereunder, or should they fail to perform any or either of the covenants, agreements, terms or conditions herein contained, to be by said Buyers kept or performed, the said Sellers may by written notice declare this contract cancelled and terminated, and all rights, title, and interest acquired thereunder, by said buyers, shall thereupon cease and terminate, and all payments made hereunder shall belong to the said sellers as liquidated damages for breach of this contract by the said Buyers. Neither the extention of the time of payment of any sum or sums of money to be paid hereunder, nor any waiver by the Sellers rights to declare this contract forfeited by reason of any breach thereof, shall in any manner affect the right of the said Sellers to cancel this contract because of defaults subsequently maturing.

It is mutually agreed, by and between the parties hereto, that the time for payment shall be an essential part of this contract.

IN WITNESS WHEREOF the Sellers and Buyers hereunto have set their hands and seals this 9th day of September, 1950.

s/Elof M. Tuveson (SEAL) Elof M. Tuveson s/Edna Lucille Tuveson (SEAL) Edna Lucille Tuveson (SELLERS)

s/Ray Barwick (SEAL) Ray Barwick s/Delia D. Barwick (SEAL) Delia D. Barwick

(BUYERS)

STATE OF ALABAMA, BALDWIN COUNTY.

I, <u>J. E. Gooden</u>, a Notary Public in and for said County in said State, hereby certify that Elof M. Tuveson, Edna Lucile Tuveson, Ray Barwick and Delia D. Barwick, who are known to me, and whose names are signed to the within instrument, acknowledged before me on this day that, being informed of the contents of the same, they executed the same voluntarily on the day the same bears date.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office this <u>9th</u> day of September, 1950.

> s/J. E. Gooden Notary Public.

STATE OF ALABAMA, BALDWIN COUNTY.

STATE OF ALABAMA,

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BALDWIN COUNTY.

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I, <u>J. E. Gooden</u>, a Notary Public in and for said County in said State, hereby certify that on the <u>9th</u> day of September, 1950, came before me the within named Edna Lucile Tuveson, known to me to be the wife of the within named Elof M. Tuveson, touching her signature to the within instrument, acknowledged before me that she executed the same voluntarily and without fear, constraints or threats on the part of her husband.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office this <u>9th</u> day of September, 1950.

> s/J. E. Gooden Notary Public.

J. E. Gooden \_\_\_\_\_, a Notary Public in and

for said County in said State, hereby certify that on the <u>9th</u> day of September, 1950, came before me the within named Delia D. Barwick, known to me to be the wife of the within named Ray Barwick, touching her signature to the within instrument, acknowledged before me that she executed the same voluntarily and without fear, constraints or threats on the part of her husband.

IN WITNESS WHEREOF, I have hereto set my hand and official seal of office this <u>9th</u> day of September, 1950.

s/J. E. Gooden

Notary	Public.	

EXHIBIT B

THE STATE OF ALABAMA) BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS,

That in consideration of the sum of TEN (\$10.00) DOLLARS to the undersigned grantors, Ralph N. Yohn and Arlie Yohn, his wife, in hand paid by Elof M. Tuveson and Edna Lucille Tuveson, his wife, the receipt whereof is acknowledged, we the said Ralph N. Yohn and Arlie Yohn, his wife, do grant, bargain, sell and convey unto the said Elof M. Tuveson and Edna Lucille Tuveson, husband and wife, as joint tenants, with right of survivorship, the following described real estate, situated in Baldwin County, Alabama, to-wit:

All of Lot 15 and the West half of Lot 14, Volanta, in Block Twelve, all being according to the map of Volanta, Alabama, recorded in Miscellaneous Book No. 1, Page 341, signed by Theo. Widell, Surveyor, April 27th, 1914. The land is situated in Section 37, Baron De Ferriet Grant, Township Six South, Range Two East.

TO HAVE AND TO HOLD Unto the said Elof M. Tuveson and Edna Lucille Tuveson, husband and wife, as joint tenants, with right of survivorship, their heirs and assigns forever; it being the intention of the parties to this conveyance, that (unless the joint tenancy hereby created is severed or terminated during the joint lives of the grantees herein), in the event one grantee herein survives the other, the entire interest in fee simple shall pass to the surviving grantee, and if one grantee does not survive the other, then the heirs and assigns of the grantees herein shall take as tenants in common.

And we do, for ourselves and for our heirs, executors and administrators, covenant with the said grantees, their heirs and assigns that we are lawfully seized in fee simple of said premises; that they are free from all encumbrances, that we have a good right to sell and convey the same as aforesaid; that we will, and our heirs, executors and administrators will warrant and defend the same to the said grantees, their heirs and assigns forever against the lawful claims of all persons.

In Witness Whereof, we have hereunto set our hands and seals,

this 2nd day of October, 1948.

s/Ralph	N. Yohn	(SEAL)
s/Arlie	Yohn	<u>(</u> SEAL)

STATE OF ALABAMA)

I, E. G. Rickarby , a Notary Public in and for said County, in said State, hereby certify that Ralph N. Yohn and Arlie Yohn, husband and wife, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 2 day of October, 1948.

s/E. G. Rickarby NOTARY PUBLIC

STATE OF ALABAMA)

I, E, G. Rickarby , a Notary Public in and for said County, in said State, hereby certify that on the <u>2nd</u> day of October, 1948, came before me the within named Arlie Yohn known to me to be the wife of the within named Ralph N. Yohn and who, being examined geparate and apart from the husband, touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, and without fear, constraints, or threats on the part of her husband.

Given under my hand and official seal this <u>2nd</u> day of October, 1948.

s/E. G. Rickarby

NOTARY FUBLIC

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### EXHIBIT C

STATE OF ALABAMA, BALDWIN COUNTY.

### NOTICE

TO DELIA D. BARWICK, FAIRHOPE, ALABAMA:

You are hereby notified that default has been made in the conditions of that certain contract, dated the 9th day of September, 1950, whereby Elof M. Tuveson and Edna Lucille Tuveson, as Vendors, sold and agreed to convey to Ray Barwick and Delia D. Barwick, as Vendees, the following described real property, situated, lying and being in Baldwin County, Alabama, to-wit:

> A House and One and One-Half  $(l\frac{1}{2})$  lots on Gaffer Street, which said lots are described as Lot Fifteen (15) and West Half  $(W^{1}_{2})$  of Lot Fourteen (14), Block Twelve (12) of Volanta, an addition to the City of Fairhope.

That the condition of said contract in which said default has been made is as follows:

By the terms of the said contract the said Vendees agreed to pay to the said Vendors, as and for the purchase price of the said property the sum of \$8,500.00, with interest thereon at the rate of 5% per annum in manner and at times following: to-wit: \$1,000.00 was payable upon the execution of the said contract by the parties thereto, and the unpaid balance was payable at the rate of \$65.00 per month, said monthly payments to commence on the 1st day of October, 1950. Also, by the terms of the said contract, the said Vendees had the right to assume the payments of an F. H. A. mortgage on the said property and thereby reduce the amounts payable under the said contract as above stated by such an amount as would be payable under the said F. H. A. mortgage, which mortgage is payable at the Bank of Fairhope, in Fairhope, Alabama.

Yet, the said Vendees have failed to pay the installments payment due on the 1st day of January, 1951, either to the said Vendors or to the Bank of Fairhope on the said mortgage, and the said Vendees are now in default in payment of the said installments;

Now, therefore, the said contract is hereby cancelled and terminated.

s/William R. Lauten William R. Lauten, Attorney for Vendors.

STATE OF ALABAMA, BALDWIN COUNTY.

This is to acknowledge receipt of the above notice and a copy of the same, and the undersigned hereby waives all further notice that may have been contemplated in cancelling that certain contract which is described hereinabove.

s/Delia D. Barwick

STATE OF ALABAMA, BALDWIN COUNTY.

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I, <u>William R. Lauten</u>, a Notary Public in and for said County in said State, hereby certify that DELIA D. BARWICK, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily on the day the same bears date.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 24th day of January, 1951.

	<sup>anne</sup> an	s/William R. Lauten	
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ELOF M. TUVESON AND EDNA	<b>Q</b>	IN THE CIRCUIT COURT O	Ŧ
LUCILLE TUVESON, Petitione	ers I	BALDWIN COUNTY,	
	Q	ALABAMA.	
VERSUS	<u> </u>	IN EQUITY.	
RAY BARWICK AND DELIA D.	X		
BARWICK, Responder	nts í		•

# AFFIDAVIT

Before me, E. G. Rickarby, Jr., a Notary Public in and for the County of Baldwin, State of Alabama, personally appeared William R. Lauten, who, being by me first duly sworn, deposes and says that he is of counsel for the petitioners in the above styled cause; that the residence of the respondent, Ray Barwick, is unknown and cannot be ascertained after reasonable effort; that in the belief of the affiant, the respondent is over the age of Twentyone (21) years; that the respondent, Ray Barwick, last resided in the City of Fairhope, Baldwin County, Alabama, to the knowledge of the affiant; that the petitioners have mailed a registered letter to the respondent at his address, Fairhope, Alabama; that such registered letter was returned, marked "moved, left no address"; that the petitioners have mailed another registered letter to the respondent, Ray Barwick, at Auburndale, Florida, which letter has been returned to the writer, marked "for better address" and "unknown"; that the affiant on information and belief says that the address of the said Ray Barwick may be c/o Auburndale Trucking Corporation, 819 Magnolia Avenue, Auburndale, Florida.

Within Reparter

Sworn to and subscribed before me this 21 st day of February, 1951.

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ELOF M. TUVESON AND EDNA LUCILLE TUVESON,	Į	IN THE CIRCUIT COURT OF
Petitioners	Q	BALDWIN COUNTY,
	<b>X</b>	ALABAMA.
VERSUS	I	IN EQUITY.
RAY BARWICK AND DELIA D. BARWICK.	Ž	مراجع الحاري المستقرفة المحمد والمركب ومحاري المحمد المحمل المركب المحمل المركب المستقد المحمد المحمد المحمد ال المراجع المحمد المحمد المحمد والمحمد والمحمد المحمد المحمد المحمد المحمد المحمد المحمد المحمد المحمد المحمد الم

Respondents

This day came the petitioners in the above styled cause and filed with the Court their affidavit, by their solicitor of record, showing that the residence of the respondent, Ray Barwick, is unknown and cannot be ascertained after reasonable effort; that in the belief of the petitioners, the respondent, Ray Barwick, is over the age of Twenty-one (21) years, it is

Therefore ordered that the respondent be required to answer the said petition before the \_\_\_\_\_\_ day of March, 1951, and that this order be published in the Fairhope Courier, a newspaper published in Baldwin County, Alabama, once a week for four consecutive weeks, and that a copy of this order be posted up at the door of the Courthouse of Baldwin County, Alabama, and that the respondent, Ray Barwick, be mailed another copy thereof, together with a copy of the bill of complaint, to the respondent where his address is shown by the bill or affidavit, as aforesaid; which copies shall be posted up and sent by mail, within twenty days from the making of this order.

Done this, the 23 day of February, 1951.

Unice Leuch

WILLIAM R.LAUTEN SOLICITOR FOR PETITIONERS WILLIAM R. LAUTEN ATTORNEY AT LAW MORENE ALAW Fairhope, Alabama February 21, 1951

Mrs. Alice J. Duck, Register, Circuit Court of Baldwin County Bay Minette, Alabama

> Re: Elof M. Tuveson, et al. Vs: Ray Barwick, et al.

Dear Mrs. Duck:

I hand you herewith a petition, affidavit, order and notice of publication, in the above styled case. Please file the originals of each, and dispose of the copies as per the labels attached to each paper.

The address of the respondent, Ray Barwick, is unknown and after reasonable effort cannot be ascertained. Although a registered letter has been returned to me "unknown", addressed to Auburndale, Florida, I would appreciate your mailing him a copy of the complaint and order to Ray Barwick, c/o Auburndele Trucking Corporation, 819 Magnolia Avenue, Auburndale, Florida, and there is just a chance that he may receive it. I shall secure a waiver of service from the respondent, Delia D. Barwick, so it will not be necessary to summons her.

Thanking you, I am

Yours very truly,

William R. Tanun

L/s

Notice is hereby given to Ray Barwick, whose residence is unknown and cannot be ascertained after reasonable effort, as shown by an affidavit heretofore filed with the petition of Elof M. Tuveson and Edna Lucille Tuveson against Ray Barwick and Delia D. Barwick in the Circuit Court of Baldwin County, Alabama.

It is ordered that the respondent, Ray Barwick, be reguired to answer or plead to the said petition before the  $\frac{13^{4}}{23^{4}}$ day of March, 1951.

JIAM

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FOR

LAUTEN

PREITTORES

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Affidavit Original for file of case.

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# ORDER.

l copy to be posted on Court House Door.

l copy to be mailed to Ray Barwick, c/o Auburndale Trucking Corp., 819 Magnolia Avenue Auburndale, Fla. l copy return to me.

original for file of case.

Please fix date for answer of respon-

# Petition

Original for file of case.

l copy KXK to be mailed to Ray Barwick c/o Auburndale Trucking Corp. 819 Magnolia Avenue Auburndale, Fla.

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