UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, *et al.*,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, *et al.*,

Defendants.

Case No. CV 09-0037-CW

DECLARATION OF MICHAEL KILPATRICK DIRECTOR, STRATEGIC COMMUNICATIONS OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR HEALTH AFFAIRS

I, Michael Kilpatrick, am familiar with the complaint in this case and declare the following under the penalty of perjury:

1. I am the Director of Strategic Communications for the Office of the Under Secretary of Defense for Health Affairs. I am familiar with the chemical and biological test programs the Department of Defense implemented from 1953 through 1975. I make this statement based on my personal knowledge and information provided to me in my official capacity.

2. Since 1976, the Department of Defense has thoroughly investigated the Army's test programs. The investigations have spanned years and cost millions of dollars. The investigations have addressed both the authorizations and procedures governing the testing programs, and the health effects of participation in the programs.

3. Two key investigations have examined the authorizations and procedures governing the chemical and biological testing programs. Addressing the U.S. Army's chemical testing programs between 1950 and 1975 in response to congressional and public inquiry, the Inspector General ("IG") for the Department of the Army ("DA") conducted a seven-month investigation in 1975 and 1976 and published the results in a March 1976 report titled, "Use of Volunteers in Chemical Agent Research." It is my understanding that the report has been produced to Plaintiffs. This report remains the best single-source document describing the use of servicemember test volunteers in Army chemical and biological testing programs. It describes

the history of chemical and biological warfare, the perceived threat that gave rise to the testing programs, the authorities enacted for the testing programs, implementation of those authorities, and specific tests conducted at Edgewood Arsenal and elsewhere. It also outlines tests that deviated from the established authorities. It is thorough and well documented. In addition to the detailed document review, the investigators noted that they interviewed 65 witnesses in 32 cities and travelled in excess of 160,000 passenger miles.

A year after the IG's investigation of the Army's chemical testing programs, the Army published a report concerning the biological testing program at Fort Detrick, Maryland, "U.S. Army Activity in the U.S. Biological Warfare Programs." The purpose of that report was to provide a comprehensive review of the Army's role in biological warfare programs. The report details biological testing activities from 1942-1977. It is my understanding that the report has been produced to Plaintiffs.

4. In addition to these comprehensive examinations of the authorizations and procedures governing the Army's chemical and biological testing programs, DOD has expended considerable resources to determine the long-term health effects on the test volunteers. In 1980, the Army's Medical Command published a report on its follow-up study on the test volunteers exposed to LSD during testing. The investigators determined that 741 test volunteers had been exposed to LSD. The investigators conducted a pilot study between 1975 and 1976 and then began the full follow-up study in 1978. The investigators examined 320 test volunteers as part of the follow-up study. The volunteers had the option of a medical exam that required one week of in-patient evaluation or they could submit responses to a questionnaire. 220 participated in the in-patient evaluation, while 100 submitted responses to written questionnaires. The report following the investigation, "LSD Follow-Up Study Report," fully detailed the health status of the responding test volunteers. It is my understanding that the report has been produced to Plaintiffs.

5. Between 1982 and 1985, working under contract with the Army, the National Research Council conducted a broader examination of 6,720 test volunteers from the chemical test program at Edgewood Arsenal to identify possible long-term health effects of participation in the tests. Of that group, the investigators received 4,085 responses. This research effort

resulted in a three volume publication detailing the health effects of participation in the chemical testing programs, "Possible Long-Term Health Effects of Short-Term Exposure to Chemical Agents," which is available publicly.

6. In 2003, the National Research Council, working under an Army contract, conducted a review of the 1985 report to confirm the long-term health effects for Sarin and other Anticholinesterase agents. Titled "Long-Term health Effects of Exposure to Sarin and Other Anticholinesterase Chemical Warfare Agents," the report is also available publicly. The investigation sought to confirm the findings discussed in the 1985 NRC report discussed above. The investigators in this study identified 4,022 test volunteers and either interviewed or received written responses from 2,748. Like the original NRC report, this follow-up details the health status of the responding test volunteers.

7. In 1993, the National Institute of Health published a Department of Veterans Affairs ("VA")-contracted study of the potential long-term health effects arising from participation in Mustard Gas and Lewisite testing. Titled, "Veterans at Risk: The Health Effects of Mustard Gas and Lewisite," also available publicly, the results of the study gave rise to additional DoD investigation into the chemical and biological testing programs.

Specifically, in 1993, DoD initiated the Chemical Weapons Exposure Study with the primary purpose of identifying test volunteers who had participated in Mustard Gas or Lewisite testing. The study, conducted primarily from 1993 through 1995, reviewed thousands of documents at multiple locations in an effort to identify test volunteers involved in Mustard Gas and Lewisite testing.

8. Between September 2002 and March 2007, researchers from the Institute of Medicine, working under a VA contract identified and contacted veterans who had participated in Project 112/SHAD (Shipboard Hazard and Defense), a series of tests conducted between 1962 to 1973 at the Deseret Test Center, headquartered at Fort Douglas, Utah. The purpose of the research was to determine the health effects of the veterans' participation in that testing program. The investigators identified 5,741 SHAD test participants. Of those, the investigators successfully contacted and received responses from 2,684. The investigators used surveys to determine the health status of the test participants. The investigators published the results in "Long-Term

Health Effects of Participation in Project SHAD (Shipboard Hazard and Defense)," which is publicly available.

9. The Army has also analyzed the long term health effects of participation in the biological agent test program. Army researchers contacted 358 biological test program participants who had been exposed to infectious agents during the test program and an additional 164 participants who had not been exposed to act as a control group. The researchers used a self-administered questionnaire to assess the respondents' health and published the results in "An Assessment of Health Status Among Medical Research Volunteers Who Served in the Project Whitecoat Program at Fort Detrick, Maryland," Colonel Phillip R. Pittman et al., in 2005, which is also publicly available.

10. There have also been multiple Congressional and public inquiries into U.S. Government chemical and biological tests since the 1970s. The history of the Army's testing programs has been summarized in several reports from the Government Accountability Office, including "Human Experimentation: An Overview of Cold War Era Programs" (1994); "Chemical and Biological Defense: DOD Needs to Continue to Collect and Provide Information on Tests and Potentially Exposed Personnel" (2004); and "Chemical and Biological Defense: DOD and VA Need to Improve Efforts to Identify and Notify Individuals Potentially Exposed During Chemical and Biological Tests" (2008). The U.S. Senate Committee on Veterans' Affairs issued in 1994 a report titled "Is Military Research Hazardous to Veterans' Health? Lessons Spanning Half a Century". These reports provide background on both the history of the Army's testing programs and the extensive efforts to locate veterans who participated in the tests.

11. As a result of these investigations and congressional and public inquiries, the subject of the Army's chemical and biological agent tests involving human subjects has been aired extensively. I therefore do not have reason to believe that there exists a significant amount of critical information about those testing programs that is not already publicly known.

12. The Department of Defense has continued its efforts to identify all test volunteers involved in chemical or biological agent testing programs. Those efforts have involved three categories of test volunteers: those involved in Mustard Gas or Lewisite testing, those involved

in Project 112 / SHAD, and all other test programs. Test volunteers involved in the first two categories have been identified through previous investigations.

13. DoD continues to search for test volunteers in the Army's chemical and biological agent tests other than Mustard Gas, Lewisite and Project 112/SHAD under a contract with the Battelle Memorial Institute. The contract provides for Battelle to identify all test volunteers involved in chemical or biological testing programs other than Mustard Gas / Lewisite and Project 112 / SHAD from 1942 through present. A copy of the pertinent Statement of Work is attached as Exhibit 1. This task requires researchers to review individual test records and other sources for veterans' identifying information and details about the tests they underwent. In some cases the test records do not identify test volunteers by name. Therefore, the researchers must piece together information from a variety of records to identify test volunteers. In many cases the most pertinent records are archived hard-copy lab notebooks researchers used to record information about the tests. The intended result of the project is to consolidate as much information as possible about the test volunteers, including their names, the chemical or biological agent each was exposed to, and the amount administered and route of administration (e.g., oral) where available.

14. Battelle's search is all-encompassing. The search requires a laborious by-hand search of hard copy records that must be conducted by individual researchers. Battelle transmits test volunteer identifying data to the Office of the Assistant Secretary of Defense for Health Affairs (OASD (HA)) for inclusion in a database of test volunteers maintained by DoD, the "Chemical and Biological Tests Repository" ("Chem-Bio Database"). The search is projected to last until September of 2011. Battelle's effort has cost millions of dollars.

15. A primary objective of the investigation is to enable test participants to receive pertinent information about the tests. Once the test information is gathered for a given participant and entered into the Chem-Bio database, DoD transmits it to VA so that VA may notify the participant of the potential exposure and, in case the individual has health concerns, provide guidance on scheduling a free clinical examination at a VA health care facility, applying for VA health care benefits, and filing a VA disability claim.

16. DoD and the Army have already searched for and produced a large number of documents in this litigation. DoD and the Army continue to search for documents related to the Army's chemical and biological agent testing, including the documents listed in the footnotes and bibliography of the original DA IG investigation, documents pertaining to health effects of tested substances, and documents relating to test volunteers' consent to the tests.

17. The previous investigations into DOD's chemical and biological testing programs have clearly delineated the purpose, authorities, conduct of the programs. Additionally, previous investigations have analyzed the potential long-term health effects of participation in the testing programs. Finally, DOD is actively working to identify all test volunteers. As illustrated by these previous investigations, and the level of effort expended to date to identify test volunteers and the fact that the Army's chemical and biological testing programs began over 60 years ago and spanned more than 20 years, there are an enormous number of very old records concerning the tests. Searching through all of those records – many of which are not digitized and would require by-hand review – for documents responsive to all of the requests that Plaintiffs have served would require an enormous amount of time and resources. By way of example, Battelle's on-going investigation to identify test volunteers, covering only a portion of these documents, has spanned years and cost millions of dollars.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of August, 2010.

Michael Kilpatrick
Director, Strategic Communications
Office of the Under Secretary of Defense
Health Affairs

EXHIBIT 1

Section C - Descriptions and Specifications

STATEMENT OF WORK
CBRNIAC Task 729 / CB-08-0046

Chemical and Biological Warfare Defense Research for Office of the Special Assistant (Chemical Biological Defense & Chemical Demilitarization Program) (OSA(CBD&CDP))

1.0 Background. The Office of the Special Assistant to the Secretary of Defense for Chemical/ Biological Defense and Chemical Demilitarization Programs, OSA(CBD&CDP), is responsible for all chemical and biological defense programs within the Department of Defense (DoD) and oversees activities ranging from basic research to the procurement and supportability of development systems. The OSA(CBD&CDP) has identified the need for timely and accurate access to current and historical Chemical and Biological (CB) information and data, and access to subject matter experts with an awareness of threat and friendly capabilities as well as government and industrial research and development that might impact on CB matters. The OSA(CBD&CDP) frequently requires analyses related to current CB topics and must reply to questions and issues regarding the CB defensive program in a timely fashion to the highest levels of government.

Concerned that veterans and others might have health problems from exposure to chemical and/or biological materials, OSA(CBD&CDP) has identified an additional need to identify and assess information on prior testing of personnel potentially exposed to chemical and/or biological agents. An extensive Chemical, Biological, Radiological, and Nuclear (CBRN) knowledge base is required to identify and analyze chemical and biological defense archival information and make it available to the entire CBD community.

This task deals with the Technical Area Task (TAT) technical scope area 6.1.d (Medical Effects and Treatment), 6.1.n (International Technology, Proliferation, and Control), and 6.1.s (Domestic Preparedness) of the CBRN Information Analysis Center (CBRNIAC) contract. These efforts will continue to generate CBRN Defense (CBRND) information not previously available to the CBRNIAC and CBRN community and will, therefore, add to the CBRN knowledge base. The CBRNIAC will receive copies of all deliverables under this task and will incorporate the information from the deliverables into its databases for dissemination, as appropriate, to CBRNIAC users.

2.0 Objectives. The objectives of this task are four fold:

2.1 The first objective is to provide research, tests, and evaluations in response to inquiries related to the protection against, and destruction of chemical and biological warfare agents as well as broad-spectrum medical countermeasures against advanced bio-terror threats.

2.2 The second objective is to provide senior scientific technical examination of internal Chemical Biological Defense Program Science and Technology (S&T) research

efforts and how to effectively coordinate and integrate the research of external strategic intradepartmental and interagency work groups.

2.3 The third objective is to provide analytic review of international CBRND program activities by identifying areas for international cooperative development, production, and sustainment thus eliminating redundancies focused on Chemical Biological Defense Program (CBDP) priorities.

2.4 The fourth objective is to develop the consolidated reference repository of chemical and biological defense information required for the Chemical and Biological Archive Information Management System (CBAIMS) as well as agent fate and analysis that identifies personnel that were potentially exposed to chemical and biological agents during either weapons testing or defensive equipment testing.

3.0 Specific Deliverables. The CBRNIAC shall provide the necessary personnel, labor, facilities, materials, supplies, and equipment to perform the following tasks and shall perform these tasks without direct Government supervision, direction or control.

3.1 Chemical Biological Defense Program (CBDP) Inquiry Analyses.

3.1.1 Studies and Experimental Tests/Research Inquiries. The CBRNIAC shall perform the necessary research and analysis to respond to DoD inquiries related to chemical and biological defense programs and the issues surrounding the protection against, and destruction of chemical and biological warfare agents. The OSA (CBD&CDP) anticipates approximately 15-20 inquiries per year for the duration of this task. The CBRNIAC shall conduct initial searches of the CBRNIAC database and the DTIC Defense Research, Development, Test, and Evaluation Online System (DROLS) as well as other CBRN resources in responding to these inquiries. Based on the initial results, it is anticipated that 1-2 such inquiries per year will require in-depth laboratory analysis in order to support the initial findings and conclusions.–

3.1.2 Medical Countermeasures Research. The CBRNIAC shall analyze and report on current and developing medical research focused on the development of broad-spectrum medical countermeasures against advanced bio-terror threats, including genetically engineered intracellular bacterial pathogens and hemorrhagic fevers.

3.2 Science and Technology Integration Evaluation. The CBRNIAC shall identify and conduct an evaluation of new and/or alternative CBD technologies and assess their capability to be inserted into or implemented within CBDP S&T strategic directives, measures, and standards. Specific areas of interest include detection, warning and reporting, biological and chemical medical countermeasures, individual and collective protection, decontamination and modeling and simulation. In order to obtain the most current information on new and emerging technology initiatives, the CBRNIAC shall:

- Consult the National Research Council's Post-Doctoral Research Program, the CBD Lab Directors and Chief Scientists Council, and the Non-Traditional Chemical Agent Steering Group.
- Identify Chemical Biological Defense related S&T efforts at, or sponsored by other DoD organizations and other Federal agencies.
- Correlate Defense Science and Technology Advisory Group (DSTAG) and Defense Basic Research Advisory Group (DBRAG) initiatives.

3.3 CB Defense International Program Assessment. The CBRNIAC shall identify, review and assess current and proposed international CB defense research projects being performed at DoD laboratories or by allied laboratories such as Porton Down in the United Kingdom. The CBRNIAC's assessment shall consider all aspects of the project(s) to include technical scope, approach and objectives of the CB defense research projects. Assessment results shall be compiled in a report and delivered to the Government.

3.4 CBAIMS Archives: The OSA (CBD&CDP) had identified the need to develop an Archival Information Management System that incorporates several known CB defense data repositories into one central location. The Chemical and Biological Archive Information Management System (CBAIMS) was developed with the intent to provide an integrated database system that is accessible, at appropriate levels, by the CBD community of users. All existing and participating data repositories have access to the CBAIMS central database. Key unique information from the US Army Chemical School closedown from Fort McClellan, AL and the National Archives at College Park, Maryland were preserved in earlier phases of this program. The OSA (CBD&CDP) has identified the need to leverage work conducted under CBRNIAC Tasks 423 and 360, in order to continue to identify and incorporate additional chemical and biological defense archival information from other known holdings.

The CBRNIAC shall search and data mine existing Government databases, commercial databases and restricted-access data repositories for CBRN related documents as recommended by DoD. The CBRNIAC shall identify and collect CBD archival information and make it available to the entire CBD community through the CBAIMS collection; and define and execute the most effective and efficient processes to respond to the requirements established by the CBAIMS Advisory Committee.

3.4.1 Initial Database Search: Upon gaining access to a CB defense data resource to include databases and hard-copy repositories, the CBRNIAC shall conduct preliminary searches of the CBRNIAC database and the DTIC Defense Research, Development, Test, and Evaluation Online System (DROLS) on the subject matter within the identified holdings. This effort will mitigate the processing of duplicate data already existing in CBRNIAC or the Defense Technical Information Center (DTIC) bibliographic databases.

3.4.2 Site Characterization. The CBRNIAC shall research and conduct an assessment of the technical holdings within each data repository. The CBRNIAC shall perform site characterizations to obtain detailed information on the types of CB defense materials contained within the repository and their relevance to CBRND. Additionally, the site characterization will provide parameters on how to execute the consolidation of information. Factors to be considered include: the number of documents in each collection; how documents are catalogued (i.e., electronically, manually, or not at all); number of classified versus unclassified documents within each collection; whether documents have a valid distribution statement; number of documents available in electronic form (i.e., imaged, word processed, PDF, etc.); and any unique site requirements for holdings (e.g., must all holdings remain on site or certain holdings are destined for destruction).

3.4.3 Site Preparation and Preliminary Processing. The CBRNIAC shall determine whether or not a document is appropriate for the CBAIMS collection. The CBRNIAC shall conduct a document-by-document review in order to identify scientific and technical documents that are related to CBRND per CBAIMS Advisory Committee recommendations. Documents that will not be processed will be those that are purely historical, programmatic, and technical documents that are not CBRN related (e.g., those pertaining to convention weapons, armor testing, etc.).

3.4.4 Document Selection and Conversion. The CBRNIAC shall conduct a down selection of the documents within each site's repository for relevance to CBRND. The CBRNIAC shall identify the documents that have little to no relevant content value or those where the same information already exists within CBAIMS. The CBRNIAC shall utilize all relevant documents, convert them to searchable electronic format, and save them onto electronic media.

3.5 CB Exposure Document Review. Concerned that veterans and others might have health problems from exposure, the OSA (CBD&CDP) has identified a need to expand the search for personnel potentially exposed to chemical and/or biological agents while involved in tests and other ancillary events. The CBRNIAC shall analyze all documents at the following sites for information on personnel potentially exposed to chemical and/or biological agents while involved in tests and other ancillary events. The information to be collected will include the test names, test objectives, chemical or biological agents involved, and number of service members and other personnel potentially affected by each test from 1942 to the present timeframe. The results of this work will be separate and distinct from those identified from Project 112 which was a classified chemical and biological test program from 1963-69. The timeframe is to be expanded to cover the period from 1942 to the present. These sites include:

- RDECOM Historical Office
- Medical Research Institute of Infectious Diseases
- Edgewood Chemical Biological Center Technical Library Laboratory Notebooks
- West Desert Technical Information Center Classified
- Naval Research Laboratory
- Naval Medical Research Center
- Walter Reed Army Institute of Research
- Naval Medical Research and Development Command
- Eglin Air Force Base
- Military History Institute
- Kirtland Air Force Base
- Air Force Institute of Operational Health
-U.S. Army Chemical School

3.5.1 **Processing and Quality Assurance/Quality Control (QC).** The CBRNIAC shall scan relevant documents, QC the scanned documents, conduct technical data extraction to identify potential exposures, and QC the technical data extracted from the documents

3.5.2 **Consolidated Reference Repository.** As a result of the activities outlined in section 3.5.1 the CBRNIAC shall develop collection, generation, processing, analysis, dissemination or access strategies for DoD approval and will develop a consolidated reference repository within the CBRNIAC outlining the metadata information that characterizes identified documents and their content. This subtask shall include pertinent file sources and data from previous CBRNIAC efforts and other CBW related activities as approved by the sponsoring organizations. Data created or obtained in support of this task will be provided to and accessed through the CBRNIAC according to customer's distribution instructions and archived as appropriate. The CBRNIAC shall also develop and implement capabilities for organizing, storing, and disseminating appropriate data to include a full-text collection of this information searchable on a classified server.

3.5.3 **Data Transfer Progress Reports.** The CBRNIAC shall provide a synopsis of extracted technical data to OSA (CBD&CDP) and the Assistant Secretary of Defense for Health Affairs for Force Health Protection & Readiness (OASD(HA)FHP&R) on a monthly basis.

3.6 **Program Plan and Quarterly Program Reviews.** The CBRNIAC shall deliver a program plan 15 days after task award which addresses but not limited to Concept of Operations (CONOPs) specific to the work presented in this SOW, metrics to measure progress, government decision points, quality assurance metrics, Work Breakdown Structures, and Research/Study Plan procedures. The CBRNIAC shall

conduct quarterly program reviews with OSA(CBD&CDP) and OASD(HA)FHP&R to review program performance, site priorities, data quality, and lessons learned.

3.7 Quarterly Field Site Visits. The CBRNIAC shall host quarterly field site visits by the OSA(CBD&CDP) tests repository program manager.

3.8 Place of Performance. This effort will be accomplished at Government locations and at CBRNIAC facilities as appropriate.

3.9 Period of Performance. All work is to be completed 1095 days after task award.

3.10Travel Requirements. Local, foreign, and domestic travel is anticipated for this task.

4.0 Reporting Requirements.

4.1 Monthly report. The monthly progress report includes task expenditures versus planned expenditures, technical progress made, schedule status, travel conducted, meetings attended, Principal Contracting Officer (PCO) approved equipment/ materials procured and excessed, issues and recommendations. The monthly progress report will be in PDF format and e-mailed to the client and CBRNIAC.

4.2 Interim Technical Report. The CBRNIAC shall submit a technical report (TR) for each year during this task. Each TR will be delivered to the client, COTR, and CBRNIAC. The format, content, and submission requirements for any TR (interim, final comprehensive, or other) are the same as listed below for the Final Comprehensive Technical Report.

4.3 Final Comprehensive Technical Report. A final detailed written TR will include task background, objectives, assumptions, specific data collected, analyses conducted, conclusions and recommendations. Each TR will be delivered to the client, COTR, and CBRNIAC. Under authority of the client (when an unclassified document or a classified document) and with approval by the COTR, each TR will have a Distribution Statement that provides guidance on the distribution authority and access level required to access information contained within each TR. If the TR is CLASSIFIED, the COTR and client will review the document for appropriate security markings IAW DoD Security Guidelines and will also have a distribution statement assigned. An UNCLASSIFIED abstract/citation (Report Documentation Forms, Standard Form 298) of every TR (i.e., all TAT report deliverables) will be created and entered into the IAC bibliographic database in the Total Electronic Migration System (TEMS). TEMS allows authorized DTIC STI users to perform simple and complex queries of the entire IAC knowledge base using any Web browser. An electronic full text copy in PDF format of every TR will be placed in the IAC full text database (TEMS) for DoD reference.

The CBRNIAC shall submit two copies of the draft Final Comprehensive Technical Report with a completed SF298 no later than 45 days prior to the completion of this task. The Government will require 30 days for review and comment on the draft version. The CBRNIAC shall will incorporate the Government's comments and deliver hard copies and electronic copies of the Final Comprehensive Technical Report within 1 days of receipt of the Government comments.

4.4 Deliverable Schedule Table.

Deliverable Requirement Tasks	Ref.	Due Date
Laboratory Studies and Experimental Tests/Research Inquiries	3.1.1	30 days after completion of inquiry
Medical Countermeasures Research Analysis Report	3.1.2	180 days after task award
Science and Technology Integration Evaluation Report	3.2	180 days after task award
CB Defense International RDA Program Assessments Report	3.3	365 days after task award
Data Transfer Reports	3.5.3	15th of each month
Detailed Program Plan	3.6	15 days after task award
Quarterly Program Reviews	3.6	115th day and 90 days thereafter
Monthly Report	4.1	15th of each month
Interim Technical Report	4.2	365 & 730 days after task award
Draft Final Comprehensive Technical Report	4.3	August 16, 2011
Final Comprehensive Technical Report	4.3	September 28, 2011

5.0 Government-Furnished Equipment/Information. The Government will provide access to collections, archives, classified data systems, and network connectivity as required for research, collection, and dissemination of relevant source material.

6.0 Security. Access to and generation of material up to Top Secret, NATO Secret, or Top Secret Special Compartmented Information will be required. Contactor personnel working on this task will have appropriate clearances.

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