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CLERK OF THE
DISTRICT COURT
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ATTORNEYS FOR THE DEFENDANT

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

STATE OF MONTANA,) CASE NO.: DC 09-018
Plaintiff,)
vs.) JUDGE: Susan P. Watters
LINDA KATHERINE KAPSA,) SENTENCING MEMORANDUM
Defendant.)

COMES NOW the Defendant, by and through counsel, David A. Duke and Moira Murphy D'Alton, and does submit this Sentencing Memorandum.

BACKGROUND

Linda Kapsa is a 59 year-old woman who was raised on a farm in South Dakota. Ms. Kapsa finished high school but was not able to pursue higher education. She met her husband at a dog show, and they had six children together. All of Ms. Kapsa's children are now adults, and she has been divorced over 25 years. She lives on a ranch in rural Yellowstone County where she lived with her ex-husband and children.

Ms. Kapsa currently receives \$ 667 per month from the Social Security Administration. However, she reports that she will receive an additional \$ 100 a month due to her reduction in income that has resulted since she does not sell puppies. She lives off the land by growing a big

1 garden, eating eggs from her own chickens, and drinking milk from her own goats. Also, Ms.
2 Kapsa trades goats, eggs and vegetables for hay for the horses. She has also used the eggs and
3 goat milk to supplement her puppies feed. Further, Ms. Kapsa has reported that she plans to
4 apply for Supplemental Nutrition Assistance Program (SNAP), and according to according to
5 SNAP income limits, she would qualify for the program. (See Attached State of Montana SNAP
6 Program Overview, exhibit A). Ms. Kapsa would likely qualify for the maximum SNAP benefit
7 of \$ 176 to \$ 200 a month. (See Attached SNAP, Frequently Asked Questions, exhibit B).

8 Prior to Ms. Kapsa being charged with Aggravated Animal Cruelty in December 2008,
9 she had been having difficulty selling puppies due to the economy and other factors, and she was
10 in over her head. Ms. Kapsa plead guilty to failing to provide sufficient food, water, and medical
11 care; she was not charged with overworking, beating, tormenting, torturing, injuring, terrifying,
12 torturing, mutilating, or killing animals. Therefore, this is not a case of intentionally injuring
13 animals but one of not being able to provide properly for hundreds of animals.

14 **I. LENGTH AND TYPE OF SENTENCE**

15 **MS. KAPSA'S MENTAL STATE AT TIME OF OFFENSE AND EXCEPTION TO**
16 **MANDATORY MINIMUM SENTENCE**

17 Because Ms. Kapsa completed State supervision in March 2007, she has been designated
18 a Persistent Felony Offender (hereinafter referred to as PFO). Pursuant to § 46-18-502 MCA, a
19 PFO should be sentenced to a term of not less than 5 years and not more 100 years together with
20 a fine of \$ 50,000. Dr. Michael Butz and Dr. William Stratford both found that Ms. Kapsa
21 suffers from depression. Dr. Butz found that Ms. Kapsa suffered from a mental disease or
22 defect at the time of the commission of the offense, and specifically diagnosed her with Major
23 Depressive Disorder, Recurrent, with Severe Psychotic Features (Delusional and Persecutory).
24 (Dr. Butz's Psychological Assessment of Ms. Kapsa, p. 20). Furthermore, Dr. Butz found that
25

1 Ms. Kapsa had “extreme regressive depression that breached Ms. Kapsa’s ability to judge the
2 condition of her situation and overwhelmed her ability to accurately perceive and respond to her
3 environment, and by extension the care of the animals under her care.” (Dr. Butz’s
4 Psychological Assessment of Ms. Kapsa, p. 25, previously filed with the Court). Pursuant to the
5 plea agreement, the State stipulated that Ms. Kapsa was suffering extreme mental or emotional
6 disturbance at the time of offense. The Mitigating Circumstance which would allow the Court to
7 sentence Ms. Kapsa to less than the mandatory minimum for this offense is as follows: This
8 offense was committed while Defendant was under the influence of extreme mental or emotional
9 disturbance, pursuant to § 46-18-222, MCA. Therefore, Ms. Kapsa need not be sentenced to a
10 minimum of five years in prison even though she is a PFO. Even the PSR author recommends a
11 sentenced sentence.

13 **MS. KAPSA’S ABILITY TO APPRECIATE THE CRIMINALITY OF**
HER ACTIONS

14 Pursuant to § 46-14-206, MCA, Dr. Butz made a determination as to whether Ms. Kapsa
15 could appreciate the criminality of her behavior or could conform her behavior to the
16 requirements of the law. Dr. Butz found that due to Ms. Kapsa’s mental disease or defect (Major
17 Depressive Disorder). Dr. Butz found that Ms. Kapsa’s “ability to conform her behavior to the
18 requirement of the law in her current mental state is highly unlikely.” (Dr. Butz’ Psychological
19 Assessment of Ms. Kapsa, p. 26). If a defendant suffered a mental disease or defect at the time
20 of the commission of the offense that rendered that defendant unable to conform her behavior to
21 the requirements of the law, then a Department of Health and Human Services (hereinafter
22 referred to as DPHHS) sentence is appropriate. § 46-14-311, MCA and *State v. Rathbun*, 2003
23 MT 210, P 8 (2003). The plea agreement provides that a suspended sentence to DPHHS would
24 be appropriate for Ms. Kapsa, and the PSR author also concurs. (PSR, p. 11)

POTENTIAL PENALTIES AND OTHER SENTENCES IN AGGRAVATED ANIMAL CRUELTY CASES

Pursuant to §§ 45-8-211 and 45-8-217, MCA, Ms. Kapsa can be fined an amount not to exceed \$ 2,500 or be sentenced to the Department of Corrections for a term not to exceed 2 years, or both. Ms. Kapsa has plead guilty pursuant to subsection (1)(c) of 45-8-211, MCA, and subsection (2) of 45-8-217, MCA, for alleging failing to provide sufficient food, water, shelter, and medical care to a herd of animals in December 2008. The Aggravated Cruelty to Animals statute was enacted in 2003, and according to statistics provided by Department of Corrections, (hereinafter referred as DOC,) only two other defendants have been sentenced under this statute. Both cases are from Lewis and Clark County: (1) Defendant Hallowell was sentenced to a 24 month deferred imposition of sentence; and (2) Defendant Welch was sentenced to a 36 month deferred imposition of sentence. (See Attached printout from DOC, exhibit C).

The other two defendants likely had no prior felony convictions as they received deferred impositions of sentence. While Ms. Kapsa is not eligible for a deferred sentence, the number of years the State is requesting is exorbitant. Correctional and sentencing policy in Montana requires that the sentences should be “commensurate with the punishment imposed on other person committing the same offenses” § 46-18-101 (3) (b) MCA, Montana only has two other cases for comparison purposes, and the average sentence for those two sentences is 30 months. The State is asking for 240 months or eight times the punishment imposed on other persons who committed the same offense. Taking into account that Ms. Kapsa has two prior felonies, a sentence of 60 months or twice the average length of sentence imposed on the two other defendants is appropriate.

MS. KAPSA IS NOT DEEMED A "VIOLENT FELONY OFFENDER" MAKING A SUSPENDED SENTENCE APPROPRIATE

In sentencing non-violent felony offenders, a court should consider alternatives to imprisonment. The Yellowstone County Attorney's Office and the PSR author recommend a

1 sentence that does not involve incarceration in the Montana Women's Prison. Therefore, a
2 suspended sentence is appropriate for Ms. Kapsa. For the reasons stated above, Defendant
3 contends that a five year suspended sentence to DPHHS is appropriate.

4 **II. RESTITUTION**

5 **RELEVANT STATUTES**

6 § 46-18-101(2)(h), MCA, provides that the Correctional and Sentencing Policy in
7 Montana "must emphasize restitution to the victim by the offender." However, the same statute
8 also provides that only a defendant "who is financially able to do so to pay restitution".... § 46-
9 18-101(2)(h), MCA. Yellowstone County does qualify as a victim for restitution purposes. §
10 46-18-241(1) and *State v. LaTray*, 2000 MT 262, P12 (2000).

11 **AT MOST, MS. KAPSA SHOULD BE ORDERED TO PAY A NOMINAL MONTHLY**
12 **AMOUNT OF RESTITUTION**

13 Ms. Kapsa will be living on a fixed income of \$ 767 per month and SNAP benefits.
14 However, Ms. Kapsa cannot afford to reimburse Yellowstone County for all the monies it
15 expended on the upkeep and medical bills for her animals. "Defendant's ability to pay restitution
16 significantly hampered by her limited means of support, the cost of food and care of the animals
17 the Court allows to remain in her care, and her current inadequate assets to meet her own basic
18 needs." (PSR, p. 8) The PSR author states that Ms. Kapsa "should be responsible for a nominal
19 monthly amount of restitution." (PSR, p. 8).

20 **THE LENGTH OF A SENTENCE CANNOT BE BASED ON PROVIDING SUFFICIENT**
21 **TIME OR MS. KAPSA TO PAY RESTITUTION**

22 A restitution order in a criminal case survives the termination of a criminal sentence, and
23 restitution can be collected after a sentence expires pursuant to a civil judgment. *State v. Brown*,
24 182 P.3d 75, 79 (2008), and § 46-18-241(1), MCA. As such, it is not appropriate to order a
25 lengthy sentence for the sole purpose of allowing a defendant enough time to pay restitution.

1 While the County has agreed not to "affirmatively" place a lien against Ms. Kapsa's ranch, the
2 County or the State could attempt to collect restitution after State supervision ends by enforcing
3 a civil judgment.

4 **III. NUMBER OF ANIMALS**

5 The plea agreement provides that Ms. Kapsa shall be allowed to keep 40 chickens, 20
6 goats, 3 cats, 8 horses, and 2 cockatiels, and that she can argue to keep up to 20 unaltered dogs.
7 Ms. Kapsa has written up a monthly budget which is attached. (See Monthly Budget – Linda K.
8 Kapsa, Exhibit D). According to Ms. Kapsa's calculations, she can afford for the care and
9 upkeep 20 dogs, 40 chickens, 20 goats, 3 cats, 8 horses, and 2 cockatiels. Furthermore, Ms.
10 Kapsa has properly cared for numerous dogs, cats, horses, and goats during the pendency of this
11 matter. (See Exhibits E – FF).

12 For the reasons stated above, Defendant, by and through her attorneys, Moira Murphy
13 D'Alton and David A. Duke, respectfully requests that the Court impose a sentence of five years
14 to DPHHS, all suspended, with a nominal monthly restitution amount, and Ms. Kapsa should be
15 allowed to keep 20 dogs, 40 chickens, 20 goats, 3 cats, 8 horses, and 2 cockatiels.

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17 DATED this 10 of August, 2009

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David A. Duke
Attorney for Defendant



Moira Murphy D'Alton.
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that on the 10th day of August, 2009, a true and correct copy of the enclosed and foregoing Sentencing Memorandum was delivered by courier to:

Yellowstone County Attorney's Office
Yellowstone County Courthouse
Room 701
Billings, Montana 59101

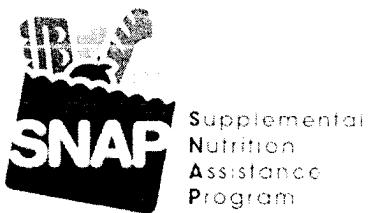
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YELLOWSTONE COUNTRY

YELLOWSTONE COUNTY PUBLIC DEFENDERS

And a Courtesy Copy delivered to the Hon. Judge Susan P. Watters



State of Montana SNAP Program Overview

March 2009

Effective October 1, 2008 the federal Food Stamp Program was renamed the **Supplemental Nutrition Assistance Program (SNAP)**. The name change more accurately reflects the mission of providing supplemental food and nutrition assistance to low income people. SNAP recipients use EBT cards, which are similar to debit cards, to purchase food in authorized retail stores.

WHO IS ELIGIBLE TO PARTICIPATE IN THE PROGRAM?

- People who live together and buy food and prepare meals together are grouped as a "household" for SNAP. Husbands and wives, and children under age 22 living with their natural, adoptive or stepparents must be considered as one household.
- Household members that wish to be included must be U.S. citizens or legal aliens.
- Household members that wish to be included must furnish or apply for a social security number.
- Income and resource guidelines listed in this overview must be met.
- Able-bodied household members who are age 16 through 59 must register for work, and may be required to participate in a SNAP Employment and Training Program unless a specified exemption is met.

WHERE DO HOUSEHOLDS GO TO APPLY FOR SNAP BENEFITS?

Contact your local County Public Assistance Office. Generally, the phone number and address can be found in the government section of your phone book under Public Health and Human Services. If the number cannot be located, contact 1-800-332-2272 for a phone number of an office in your area.

[Download Application for SNAP](#)

*Exhibit
A*

EXPEDITED SERVICES

The intent of expedited services is to make food benefits available within seven calendar days of the application date to eligible households who meet the following criteria:

- Households with less than \$150 in monthly gross income **and** \$100 or less in liquid resources; **OR**
- Migrant or seasonal farm worker households with \$100 or less in liquid resources; **OR**
- Households with a combined monthly gross income and liquid resources less than the household's monthly rent (or mortgage) and utilities.

FINANCIAL CRITERIA

- INCOME
 - Households who meet the gross and net income standards listed below may participate in SNAP.
 - Households who meet the gross monthly income standard are then evaluated for the net monthly income standard after allowable deductions have been taken into consideration.

SNAP INCOME LIMITS March 1, 2009 through September 30, 2009					
Households that meet Expanded Categorical Eligibility criteria			All Other Households		
People in Household	Gross Monthly Income Standard	Net Monthly Income Standard	People in Household	Gross Monthly Income Standard	Net Monthly Income Standard
1	\$1,604	\$ 867	1	\$1,127	\$ 867
2	\$2,159	\$1,167	2	\$1,517	\$1,167
3	\$2,714	\$1,467	3	\$1,907	\$1,467
4	\$3,269	\$1,767	4	\$2,297	\$1,767
5	\$3,824	\$2,067	5	\$2,687	\$2,067
6	\$4,379	\$2,367	6	\$3,077	\$2,367
7	\$4,934	\$2,667	7	\$3,467	\$2,667
8	\$5,489	\$2,967	8	\$3,857	\$2,967
Each Additional Member	+\$555	+\$300	Each Additional Member	+\$390	+\$300

• RESOURCES

- Resources of individuals that meet the Expanded Categorical Eligibility

criteria are excluded. If all members of your household meet Expanded Categorical Eligibility criteria all household resources will be excluded. In order to determine if members of your household meet this criteria please contact your local Office of Public Assistance.

- If the household does not meet Expanded Categorical Eligibility criteria, countable household resources cannot exceed:
 - \$3,000 for households that include a member age 60 or over, or include a disabled household member, and
 - \$2000 for all other households.
- The home you live in, vehicles, tax-preferred educational and retirement accounts, and combat-related military pay are excluded as resources.
- Households in which *all* household members are receiving Temporary Assistance for Needy Families (TANF) cash assistance, tribal TANF cash assistance, or Supplemental Security Income (SSI) are *not* subject to a resource limit.

- **DEDUCTIONS**

Allowable deductions for SNAP are listed below. The following deductions can be subtracted from countable income when determining a household's SNAP benefits:

- Twenty percent (20%) of the total gross earned income for each household;
- A standard deduction of the net income limit based on the household size;
- Certain dependent-care costs;
- Legally owed and paid child support;
- A percentage of shelter costs; and
- A medical expense deduction can be allowed for the portion of non-reimbursable medical expenses that exceed \$35 per month per household. This deduction is *allowed for elderly and disabled household members*.

ELECTRONIC BENEFIT TRANSFER (EBT)

- The State of Montana has implemented an Electronic Benefit Transfer (EBT) System for the delivery of SNAP benefits. The EBT System

eliminated paper food stamp coupons. Instead, SNAP participants are issued a debit card (called the Montana Access Card) for purchasing food products.

- All Montana EBT participants have access to a help desk hotline (1-866-850-1556). This interactive voice response system provides functions such as PIN selection, balance inquiry, and review of the last 10 transactions, as well as help with EBT system problems.
- SNAP benefits are electronically transferred to an account linked to the participant's debit card. Participants use the debit card, along with their personal identification number (PIN), to purchase food using an online system similar to commercial point of sale (POS) services.

FARMERS MARKET

EBT debit cards can be used to buy fresh produce at participating Farmers Markets.

NUTRITION EDUCATION (SNAP ED)

- SNAP offers participants nutritional information and education opportunities.
- The goal of the program is to help individuals and families develop skills and behaviors leading to improved nutritional well-being.
- Nutrition Education Topics include:
 - Using the USDA Food Guide Pyramid to make healthier choices
 - Managing and budgeting food resources (money, SNAP benefits, commodities, WIC foods)
 - Meal planning and making foods stretch
 - Food buying
 - Low-cost food preparation
 - Food safety and sanitation
- For more information please contact your local Public Assistance Office.

NON-DISCRIMINATION STATEMENT

In accordance with Federal law and United States Department of Agriculture (USDA) policy, this institution is prohibited from discriminating on the basis of age, race, color, sex, disability, religion, national origin, or political beliefs.

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TTY).

USDA and DPHHS are equal opportunity providers and employers.

Page last updated: 05/26/2009

Supplemental Nutrition Assistance Program (SNAP) Frequently Asked Questions

Q. Why are SNAP benefits going up?

A. Because of the American Recovery and Reinvestment Act of 2009 law, you get more Supplemental Nutrition Assistance Program (SNAP) benefits. SNAP is the new name for the Food Stamp Program.

Q. How can I use the extra benefits?

A. Use your extra benefits to buy food at your grocery store in order to supplement your monthly income. The benefits can help you buy extra food allowing your monthly income to go toward other bills like your utilities.

Q. How do I get the extra benefits?

A. If you are currently receiving SNAP benefits you get the extra benefits starting April 2009. The extra benefits will be added automatically to your EBT card. You do not have to do anything. If you are not currently receiving SNAP benefits and you think you may be eligible, you may apply at your local Department of Human Services Office.

Q. How much extra do I get?

A. Most 1 or 2 person households who get the minimum SNAP benefit of \$14 a month may get \$16 a month starting in April. For those 1 person households who get the maximum benefit of \$176 a month may get \$200 a month starting in April. Others may get more.



MCA: 458217 - Aggravated Animal Cruelty

LEWIS & CLARK COUNTY

Offender Name	Offender ID	Docket #	Sent Year	Sent Pro Date	Sentence Type	Prison	Suspended	Deferred	Net Months	Counts	Age At Offense
HOLLOWELL, KYLE K	3000335	CDC 08-329	2008	12/11/2008	Deferred	0	0	24	24	1	19.2
WELCH, ANDREW JOSEPH	3000349	CDC 2008-	2008	12/11/2008	Deferred	0	0	36	36	1	20.1

2 = TOTAL FOR LEWIS & CLARK COUNTY

Start Date: 1/01/1997 End Date: 8/5/2009

Sentence Length (Months)											

Average Age: 19.7

2 = TOTAL FOR REPORT

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Exhibit C

STATEWIDE AVG AGE: 19.7

MT Dept of Corrections, Information & Business Technology Bureau, Statistics & Data Quality Unit

Page 1 of 1

Monthly Budget - Linda K. Kapsa

Electricity - YVDC	\$ 150.00
Telephone	\$ 69.00
Long Distance - Qwest	\$ 22.00
Groceries & Household Supplies	\$ 75.00
Gasoline - Vehicle	\$ 25.00
Car Insurance	\$ 30.00
Chicken Feed	\$ 16.00
Dog Food	\$ 168.00
Goat Grain	\$ 22.00
Bird Seed	\$ 5.00
Hay	\$ 125.00
Misc. - Animals, Etc.	<u>\$ 60.00</u>
Total	\$ 767.00

Monthly Income	767.00
SNAP Benefits	<u>200.00</u>
Total	967.00

Exhibit

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E



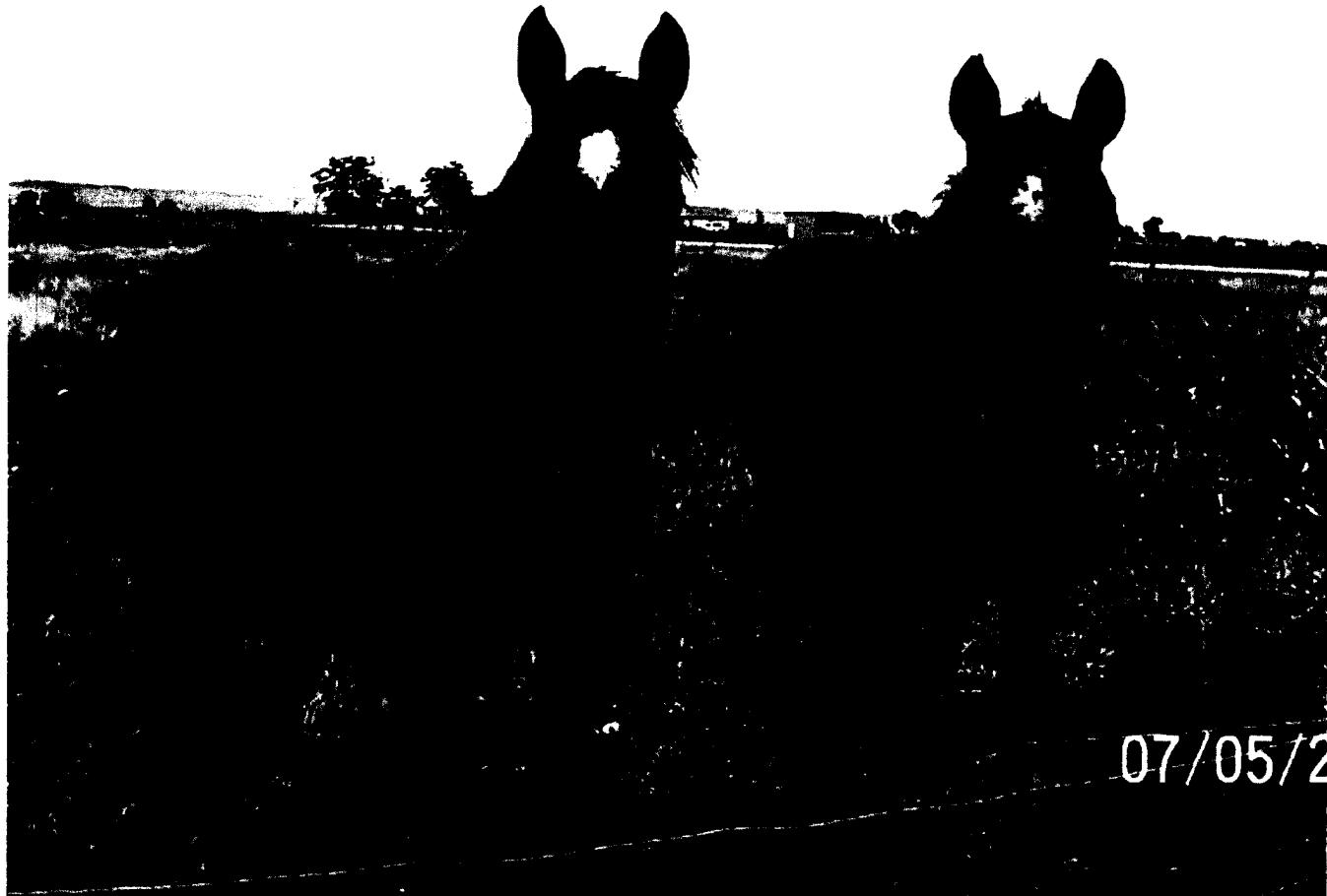
Exhibit

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