

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

399CV0571 - X
CIVIL ACTION NO.

VS

BENJAMIN FRANKLIN COOK, individually and dba
DENNEL FINANCE LIMITED, GERALD LEE PATE,
ELLSWORTH WAYNE McLAWS, and ALAN CLAGG,

Defendants,

and

FPC-1 LIMITED PARTNERSHIP, SAMUEL LIMITED
PARTNERSHIP, ALLIANCE INVESTMENTS CORP.,
CORNERSTONE MANAGEMENT, LLC,
INTERNATIONAL BUSINESS CONSULTANTS
LIMITED, HIGHLANDER LIMITED PARTNERSHIP,

Defendants Solely for Purposes
of Equitable Relief

COMPLAINT

Plaintiff, Securities and Exchange Commission (“Commission”), for its Complaint against Defendants Benjamin Franklin Cook (“Cook”), individually and d/b/a Dennel Finance Limited (“Dennel”), Gerald Lee Pate (“Pate”), Ellsworth Wayne McLaws (“McLaws”) and Alan Clagg (“Clagg”) (collectively the “Defendants”), and against relief defendants FPC-1 Limited Partnership (“FPC”), Samuel Limited Partnership (“Samuel”), Alliance Investments Corp. (“Alliance”), Cornerstone Management LLC (“Cornerstone”), International Business Consultants Limited (“IBC”), Highlander Limited Partnership

(“Highlander”), and C. Kelly Olsen (“Olsen”) (collectively the “Relief Defendants”), alleges as follows:

SUMMARY

1. From at least 1997 to the present, Defendants have been and are engaged in a fraudulent scheme to offer and sell unregistered “prime bank” securities throughout the United States. This fraudulent trading program was developed by Defendants Denzel and Cook and marketed to investors chiefly by Pate, McLaws and Clagg, each of whom are regional managers of Denzel.

2. In connection with the scheme, Defendants have, to date, raised approximately \$30 million from more than 100 investors nationwide. In soliciting funds for the Denzel prime bank scheme, Defendants have targeted religious and charitable groups and persons investing retirement funds.

3. In the course of offering and selling the unregistered prime bank securities, Defendants have been and are engaged in numerous misrepresentations and omissions of material fact concerning, among other things, the use and safety of investor funds. Defendants represent, for example, that investor funds will be transferred to a London bank, secured by a bank guarantee and used as collateral to trade financial instruments with top 50 European banks. This trading activity, investors are told, will provide them with annual returns of 24 to 60 percent. In reality, the prime bank program marketed to investors does not exist, Denzel has not sent any funds to

Europe for use in a trading program and funds have not been secured by any type of guarantee. Rather, Defendants have misappropriated investment funds for personal and unauthorized uses, including making Ponzi payments to existing investors with funds provided by new investors.

4. In the course of marketing the Dennel trading program, Defendants Pate, McLaws and Clagg have acted as broker-dealers even though they were not registered with the Commission as broker-dealers.

5. Relief Defendants FPC, Samuel, Alliance, Cornerstone, IBC, Highlander and Olsen have received Dennel investor funds or control property derived from Dennel investor funds.

6. By engaging in such conduct, as detailed in the Complaint, Defendants Dennel, Cook, Pate, McLaws, and Clagg, directly or indirectly, singly or in concert, have engaged, and, unless enjoined and restrained, will again engage in transactions, acts, practices and courses of business that constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act"), [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)], and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange"), [15 U.S.C. § 78j(b)l, and Rule IOb-S [17 C.F.R. § 240.IOb-5], promulgated thereunder.

7. By engaging in such conduct, as detailed in this Complaint, Defendants Pate, McLaws, and Clagg, directly or indirectly, singly or in concert, have engaged, and, unless enjoined and restrained, will again engage in transactions, acts, practices and

courses of business that constitute violations of Section 15(a)(1) of the Exchange Act, [15 U.S.C. 78o(a)(1)].

JURISDICTION AND VENUE

8. The prime bank securities described by the Defendants are “securities” under Section 2(1) of the Securities Act [15 U.S.C. § 77b), and Section 3(a)(10) of the Exchange Act, [15 U.S.C. 78c].

9. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, [15 U.S.C. § 77t(b)], and Section 21(d) of the Exchange Act (15 U.S.C. 78u(d)), to enjoin Defendants Dannel, Cook, Pate, McLaws and Clagg from future violations of the federal securities laws. The Commission also seeks from Defendants disgorgement of ill-gotten gains plus prejudgment interest, an asset freeze, an accounting, and such other equitable relief that may be deemed appropriate. In addition, the Commission seeks civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

10. The Commission is also seeking an order requiring the Relief Defendants to disgorge the funds and assets in their possession that are derived, directly or indirectly, from money Defendants fraudulently obtained from investors, and pay prejudgment interest thereon.

11. This Court has jurisdiction over this action, and venue is proper, pursuant to Section 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77(b), 77t(d), and 77v(a)], and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 77u(e) and 78aa].

12. The Defendants, directly or indirectly, singly or in concert, made use of the means or instruments of transportation and communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of business alleged herein. Certain of the transactions, acts, practices and courses of business alleged herein took place in the Northern District of Texas.

DEFENDANTS

13. Benjamin Franklin Cook, approximately age 49, is a resident of Carefree, Arizona. Cook owns Dannel and is responsible for the business activities and securities offerings made by Dannel. In response to a Commission subpoena for testimony and documents, Cook asserted his Fifth Amendment privilege against self-incrimination.

14. Dannel Finance Limited is an unincorporated entity with offices in Carefree, Arizona.

Gerald Pate is a resident of Dallas, Texas. Pate is a regional manager fundraiser for Dannel. In the past, Pate was registered as a securities broker to sell certain insurance products.

Ellsworth Wayne McLaws, age 53, is a resident of Phoenix, Arizona. McLaws is a regional manager and a principal fund raiser for Dannel. From March 1991, McLaws was licensed as a registered representative.

Alan Clagg is a resident of Fresno, California. Clagg is a regional manager and principal fund raiser for Dannel. He is also in the insurance business.

In response to the Commission's subpoena for investigative testimony, Clagg asserted his Fifth Amendment privilege against self-incrimination.

RELIEF DEFENDANTS

FPC-1 Limited Partnership is a Nevada limited partnership formed in 1998 to facilitate investments in Dannel with individual retirement account ("IRA") funds of \$100,000 or greater. The general partner of FPC is Alliance Investments Corp.

Samuel Limited Partnership is an Arizona limited partnership created in 1998 by McLaws to facilitate investments in Dannel with IRA funds in excess of \$100,000.

Alliance Investment Corp., a Nevada Corporation with its principal place of business in Carefree, Arizona, is the general partner to FPC and several other

entities related to Cook. The mailing address of Alliance is the same rented mail box as the mailing address of Dennel.

21. **International Business Consultants Limited** is an entity associated with Cook and used by him to raised money in one or more offerings unrelated to Dennel.

22. **Cornerstone Management, LLC** is an entity located in Wake Forrest, North Carolina. Cornerstone is affiliated with IBC.

23. **Highlander Limited Partnership** is a limited partnership with a mailing address at the same rented mail box as Dennel. The Commission is informed and believes that Highlander is a shell entity used by Cook to funnel investor funds to Cook for his personal use.

24. **C. Kelly Olsen**, a resident of California, is a fundraiser for Dennel.

**STATEMENT OF FACTS AND ALLEGATIONS
RELEVANT TO ALL CAUSES OF ACTION**

The Offer And Sale Of Dennel Securities

25. In or before 1997, Cook formed Dennel for the purpose of offering and selling a fraudulent prime bank trading program. Thereafter, Cook enlisted and trained others to raise money for the Dennel program. The majority of the approximately \$30 million in Dennel investments have been generated through the fundraising efforts of Pate, McLaws and Clagg, the regional managers. To date, Clagg has raised at least \$12.8 million, Pate has raised at least \$7.4 million and McLaws has raised at least \$6.3 million.

26. Cook oversees the fundraising efforts of the regional managers and provides them with periodic training. In 1998, for example, Cook held approximately ten meetings with the regional managers in Arizona to discuss sales and procedural issues.

27. Dannel and Cook supplied the regional managers with false and misleading information, including written offering materials, which the regional managers have, in turn, disseminated to investors and potential investors. Dannel's offering materials make numerous representations concerning the use of investor funds, the risk pertaining to the investment and the returns generated by the Dannel program. Cook and Dannel's regional managers repeated these representations in their discussions with investors and potential investors.

28. Defendants represent, orally and in writing, that after investors funds are wired to the Dannel bank account, Dannel wires the funds to a London bank for participation in a high-yield European trading program. Specifically, Defendants state that investment funds are used by "traders" to trade European bank instruments with other traders associated with "top 50 European banks." Defendants further represent that investor funds are used exclusively in the buying and selling activities and serve as collateral for the trading activities. Moreover, investors are told that investor funds are secured by a bank guarantee, safe-keeping receipt, or certificate of deposit issued by a Top Money Center Bank. Defendants also tell investors that their funds are not placed at risk or transferred to any other accounts "for any reason, without exception." In

addition, Defendants state that the traders do not execute a transaction until they have lined up a seller and purchaser of the instruments, thus making the transaction risk free.

29. Defendants represent that Denne1's trading activities also generate enormous profits. Defendants promise investors returns between two and five percent per month during the 12 month duration of their contracts with Denne1. Defendants also promise that the participants' principal investment will be returned at the expiration of the 12-month period.

30. Denne1 and Cook have conducted several group presentations to solicit prospective investors. Two such presentations were attended by approximately 80 and 30 prospective investors, respectively. Cook has also conducted sales presentations in concert with one or more of the regional managers. For example, Cook traveled to Dallas, Texas to meet with Pate and several prospective investors. Pate and McLaws also organized a meeting in the Phoenix area during which they introduced prospective investors to Cook.

31. In their efforts to solicit investor funds, at least Cook, Pate and McLaws have targeted members of religious and charitable organizations. Pate has made donations to various charitable organizations after persons associated with a particular charity invested with Denne1. On at least one occasion, Pate donated money to a pastor's favorite charity after receiving an introduction to the church congregation. A substantial portion of the funds raised by Pate were solicited from members of this

church as well as the congregation of the Richardson, Texas church of which Pate is a member. Investors' concerns about the legitimacy of the Dannel program have been assuaged by assurances that Pate and others affiliated with Dannel are very religious men.

32. The Defendants have also targeted persons seeking an investment vehicle for their retirement funds. To facilitate investments in Dannel with individual retirement accounts (UIRAN) funds, Defendants created FPC to accept IRA funds of \$100,000 or greater and Samuel, owned by McLaws, to accept investments of IRA funds in amounts of less than \$100,000. Investors receive a promissory note as evidence of their investment in Dannel through one of the limited partnerships.

33. Dannel and Cook pay referral fees to the regional managers as compensation for their marketing efforts. These payments are purportedly derived from the trading profits and are calculated as a percentage of the funds invested by the investors. The referral fees range from two to six percent and are paid every month. Dannel and Cook determines a total percentage of investment principal to be paid as referral fees and investor returns. Regional managers are then permitted to allocate these funds between referral fees and investor returns. For example, Cook has set Pate's total return at eight percent of the investment. Pate pays two to five percent to investors, depending upon the amount invested, one percent to "associates" who refer investors to him, and retains the remainder as his fee. The Commission is informed

and believes that the other regional managers make similar allocations. There are no established criteria for determining the monthly return rates to investors or the percentage of fees paid to associates; such are determined at the whim of regional managers.

34. Dannel and Cook have also conducted sales contests among the regional managers. In the summer of 1998, each regional manager was challenged to raise \$1 million within one month in order to be rewarded. During the summer, Pate received \$100,000 in cash and McLaw5 and Clagg each received new BMW automobiles from Cook as bonuses. Each regional manager also received a Rolex watch from Cook.

35. Defendants knew, or were grossly reckless in not knowing, that the information they supplied to investors and others in the course of the scheme was false and misleading. Contrary to the representations made by Defendants, funds collected by Dannel have not been sent to London and used in a program to trade bank instruments issued by a top 50 European bank. In reality, no trading program exists and none of the investment funds have been transferred to London. Moreover, no bank guarantee or safe-keeping receipt has been procured to secure investor funds.

36. Dannel investor funds have been misappropriated and dispensed for and unauthorized business uses. Funds represented to investors as "returns personal from the promised trading program are, in fact, Ponzi payments in that later investors' funds are being used to pay a return to earlier investors in the Dannel scheme.

Moreover, Cook is using Dannel investor funds to repay investors from an earlier, unrelated investment program.

Role of Relief Defendants

37. Each of the Relief Defendants has received investor funds and/or control assets which the Commission is informed and believes were procured with investor funds.

38. More than \$11 million in Dannel investor funds were collected through FPC and Samuel, two limited partnerships created for the purpose of attracting IRA funds. At least \$6.5 million in Dannel investor funds collected through FPC, while at least \$4.7 million in Dannel investors funds were collected through Samuel.

39. Alliance, a limited partnership that shares the same address as Dannel and is the general partner of FPC, has received at least \$2.4 million from Dannel. Between June 1997 and December 1998, Dannel paid nearly \$800,000 to IBC. Cornerstone has been paid a net total of at least \$4.5 million from Dannel. A principal of IBC and Cornerstone has purchased a \$700,000 home and three automobiles with a total value of \$300,000 during the time that Cornerstone has been receiving funds from Dannel.

40. Highlander, a limited partner which also shares the same address as Dannel, has apparently been used by Cook to funnel investor funds to Cook for his personal use. In addition to at least \$229,000 transferred from Dannel accounts, Cook

and other Denzel employees are in possession of property, including luxury vehicles and prime Arizona real estate, titled in the name of Highlander. Cook and his family members have also received disbursements from Highlander.

41. Olsen, a Denzel fund raiser located in California, received at least \$432,606 from Denzel bank accounts between November 1997 and August 1998.

RECENT EVENTS AND ACTMTIES

42. Defendants are continuing to solicit funds for the Denzel program and Denzel is continuing to make Ponzi payments to investors and pay monthly compensation to fundraisers.

43. Defendants have also recently made lulling statements to investors who, after researching prime bank investments, raised questions with Cook and Pate regarding the legitimacy of the Denzel program. Cook and Pate have assured investors that while certain prime bank investment programs may be fraudulent, Denzel's program is genuine.

CAUSES OF ACTION

FIRST CLAIM

Violation of Section 10(b) of the Exchange Act and Rule 10-5

44. Plaintiff Commission repeats and realleges paragraphs I through 43 of this Complaint and incorporated herein by reference as if set forth *verbatim*.

45. Cook, Dannel, Pate, McLaws and Clagg, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have:

(a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

46. As a part of and in furtherance of their scheme, Cook, Dannel, Pate, McLaws and Clagg, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth in Paragraphs 1 through 43 above.

47. Cook, Dannel, Pate, McLaws and Clagg made the above-referenced misrepresentations and omissions knowingly or grossly recklessly disregarding the truth.

48. By reason of the foregoing, Cook, Dannel, Pate, McLaws and Clagg have violated and, unless enjoined, will continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5]

SECOND CLAIM

Violations of Section 17(a) of the Securities Act

49. Plaintiff Commission repeats and realleges paragraphs 1 through 43 of this Complaint and incorporated herein by reference as if set forth *verbatim*.

50. Cook, Dannel, Pate, McLaws and Clagg, directly or indirectly, singly, in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

51. As part of and in furtherance of this scheme, Cook, Dannel, Pate, McLaws and Clagg, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence,

and oral presentations, which contained untrue statements of material fact and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those statements and omissions set forth in paragraph I through 43 above.

52. Cook, Denzel, Pate, McLaws and Clagg made the above-referenced misrepresentations and omissions knowingly or grossly recklessly disregarding the truth.

53. By reason of the foregoing, Cook, Denzel, Pate, McLaws and Clagg have violated, and unless enjoined, will continue to violate Sections 17(a) of the Securities Act [15 U.S.C. 77q(a)].

THIRD CLAIM

Violations of Section 5(a) and 5(c) of the Securities Act

54. Plaintiff Commission repeats and realleges paragraphs I through 43 of this Complaint and incorporated herein by reference as if set forth *verbatim*.

55. Defendants Cook, Denzel, Pate, McLaws and Clagg, directly or indirectly, singly and in concert with others, have been offering to sell, selling and delivering after sale, certain securities, and have been, directly and indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise; (b) carrying and causing to be carried through the mails and

in interstate commerce by the means and instruments of transportation, such securities for the purpose of sale and for delivery after sale; and (C) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

56. As describe in paragraphs I through 43, the purported Denel prime bank trading program was offered and sold to the public through a general solicitation of investors. No registration statements have been filed with the Commission or are otherwise in effect with respect to these securities.

57. By reason of the foregoing, Cook, Denel, Pate, McLaws and Clagg have violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. 77e(a) and 77e(c)].

FOURTH CLAIM

Violations Of Section 1 5(a)(1) Of The Exchange Act

58. Plaintiff Commission repeats and realleges paragraphs 1 through 43 of this Complaint and incorporated herein by reference as if set forth *verbatim*.

59. At the times alleged in this Complaint, Pate, McLaws and Clagg have been in the business of effecting transactions in securities for the accounts of others.

60. Pate, McLaws and Clagg made use of the mails and of the means and instrumentalities of interstate commerce to effect transactions in and to induce or attempt to induce the purchase of securities.

61. At the times alleged in this Complaint, Pate, McLaws and Clagg were not registered with the Commission as a broker or dealer, as required by section 15(b) of the Exchange Act [15 U.S.C. §780(b)].

62. By reason of the foregoing, Pate, MoLaws and Clagg have violated and, unless enjoined, will continue to violate section 1 5(a)(1) of the Exchange Act [15 U.S.C. §78o(a)(1)J.

FIFTH CLAIM

Claim Against the Relief Defendants As Custodians of Investor Funds

63. Plaintiff Commission repeats and realleges paragraphs 1 through 43 of this Complaint and incorporated herein by reference as if set forth *verbatim*.

64. As set forth in paragraphs 37 through 41 of this Complaint, Relief Defendants have received funds and property from one or more of the Defendants, which are the proceeds, or are traceable to the proceeds, of the unlawful activities of Defendants, as alleged in paragraphs I through 62, above.

65. Relief Defendants have obtained the funds and property alleged above as part of and in furtherance of the securities violations alleged in paragraphs 1 through 62 and under the circumstances in which it is not just, equitable or conscionable for them to retain the funds and property. As a consequence, Relief Defendants FPC, Samuel, Alliance, IBC, Cornerstone, Highlander and Olsen have been unjustly enriched.

RELIEF REQUEST

WHEREFORE, Plaintiff respectfully requests that this Court:

I.

Temporarily, preliminarily and permanently Cook, DenneI, Pate, McLaws and Clagg from violating Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act, and Rule I Ob-5 thereunder.

II.

Temporarily, preliminarily and permanently Pate, McLaws and Clagg from violating Section 15(a)(1) of the Exchange Act.

III.

Enter an Order *instanter* freezing the assets of Defendants Cook, DenneI, Pate, McLaws and Clagg and directing that all financial or depository institutions comply with the Court's Order. Furthermore, order *instanter* that Defendants repatriate any funds held at any bank or other financial institution not subject to the jurisdiction of the Court, and that they direct the deposit of such funds in identified accounts in the United States, pending conclusion of this matter.

IV.

Enter an Order *instanter* freezing the assets of Relief Defendants FPC, Samuel, Alliance, IBC, Cornerstone, Highlander and Olsen which they received, directly or indirectly, from the activities described in the Commission's Complaint. Furthermore,

order *instanter* that these Relief Defendants repatriate any funds which they received, directly or indirectly, from the activities described in the Commission's Complaint held at any bank or other financial institution not subject to the jurisdiction of the Court, and that they direct the deposit of such funds in identified accounts in the United States, pending conclusion of this matter.

V.

Order *instanter* that Defendants and Relief Defendants shall file with the Court and serve upon Plaintiff Commission, no later than 72 hours the Court, an accounting, under oath, detailing all of their assets and all funds or other assets received from investors and from one another.

VI.

Order *instanter* that Defendants and Relief Defendants be restrained and enjoined from destroying, removing, mutilating, altering, concealing or disposing of, in any manner, any of their books and records or documents relating to the matters set forth in the Complaint, or the books and records and such documents of any entities under their control, until further order of the Court.

VII.

Order *instanter* the appointment of a receiver *pendente lite* for Defendants and Relief Defendants, for the benefit of Dannel investors, to marshal, conserve, protect and hold funds and assets obtained by the defendants and their agents, co-conspira-

tors and others involved in this scheme, wherever such assets may be found, or, with the approval of the Court, dispose of any wasting asset in accordance with the application and proposed order provided herewith.

VIII.

Order that the parties may commence discovery immediately, and that notice periods be shortened to permit the parties to require production of documents, or the deposition of any party or party-representative, on 72 hours notice.

IX.

Order the Defendants to disgorge an amount equal to the funds and benefits they obtained illegally as a result of the violations alleged herein, plus prejudgment interest on that amount, and order the Relief Defendants to disgorge an amount equal to the illegally obtained investors funds they received from the Defendants, plus prejudgment interest on that amount.

X.

Order civil penalties against the Defendants pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)], for the violations alleged herein.

XI.

Order *instanter* that Cook, Pate, McLaws, and Clagg surrender their passports to the Clerk of this Court, to hold until further order of this Court.

XII.

Order such further relief as this Court may deem just and proper. For the Commission, by its attorneys:

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Dated: March 16, 1999 Fort Worth, Texas

CERTIFICATE OF SERVICE

This is to certify that on this the 16th day of March, 1999, a true and correct copy of the foregoing document was served by Federal Express on the following individuals and entities:

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