

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Appeal from Florence County  
Court of Common Pleas  
Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2024-001234

**RECEIVED**

**Aug 12 2024**

**SC Court of Appeals**

In Re: Lorraine Schueler,.....Appellant,

Noah Veon, on behalf of himself and all others similarly situated,.....Respondent,

v.

Richard James Schueler a/k/a Richard Heart,.....Defendant.

**MEMORANDUM ON APPEALABILITY**

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Pursuant to the Court’s letter dated July 31, 2024, Appellant Lorraine M. Schueler (hereinafter, “Mrs. Schueler” or “Appellant”), by and through her undersigned counsel, hereby submits this memorandum to the Court regarding the issue of appealability.

### INTRODUCTION

This appeal involves more than review of an interlocutory discovery order; it raises threshold questions about whether Mrs. Schueler, a non-party, and other South Carolinians may be subjected to intrusive discovery in a case that was never properly commenced. Before the circuit court, Mrs. Schueler argued the case was not validly commenced because Plaintiff/Respondent filed the case anonymously without obtaining the court’s permission and failed to serve the Defendant in a manner authorized by the Hague Convention. In a Motion for Protective Order, Mrs. Schueler requested that the circuit court halt further discovery until these errors were corrected and the action was properly commenced. The circuit court rejected those arguments and denied Mrs. Schueler’s Motion for Protective Order, her Motion to Reconsider, and her Rule 60(b), SCRCF,<sup>1</sup> Motion seeking relief from judgment or order.

In this appeal, Mrs. Schueler intends to argue the circuit court erred in refusing to halt further proceedings for three primary reasons. First, a complaint listing the names of all parties to the action, as required by Rule 10, SCRCF, has never been filed. Second, the circuit court’s determination that Rule 4.1, SCRCF, allowed Respondent to serve the Defendant via social media and email violated the Hague Convention, an international treaty that operates as the “supreme law of the land.” U.S. Const. art. VI, ¶ 2. Finally, Respondent failed to accomplish “alternative

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<sup>1</sup> As will be more fully explained, Mrs. Schueler filed a Rule 60(b), SCRCF, Motion for Relief from Judgment or Order based on newly discovered evidence that, in another federal case, the Securities and Exchange Commission was able to locate the same Defendant internationally, and the Defendant appeared in that case.

service” as instructed by the circuit court, as the record reveals glaring deficiencies in the attempts at service through social media and email, which could not have provided the Defendant with sufficient notice of Respondent’s action.

Considering the effect of the orders below, rather than simply the way they are “styled,” the Court should hold the orders are immediately appealable. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 147 (2015). Mrs. Schueler respectfully submits the orders are appealable under section 14-3-330(1) because they touch directly upon the merits of the case—whether it has been properly commenced. Mrs. Schueler further contends that, under the unique procedural posture of this case, her appeal at this stage is required to prevent the circuit court’s orders from operating as the law of the case. *See Davis v. Parkview Apartments*, 409 S.C. 266, 280-81, 762 S.E.2d 535, 543 (2014).

### **PROCEDURAL HISTORY**

In this putative class action lawsuit, Plaintiff/Respondent alleges the Defendant marketed and sold a crypto currency token in violation of state and federal securities laws. In attempting to commence the case, however, Plaintiff committed two grave, uncorrected errors, sanctioned by the circuit court. Without requesting the court’s permission, Plaintiff filed the complaint anonymously as “John Doe.” Shortly thereafter, concerning service, Plaintiff admitted the Defendant lives abroad and was very likely living in Europe when the Complaint was filed. *See* October 5, 2022 Memo. in Supp. of *Ex Parte* Mot. to Approve Service by Other Means. Plaintiff failed to serve the Defendant through the mandatory Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague Convention”) in violation of the recently enacted Rule 4.1, SCRPC, and binding South Carolina and United States Supreme Court authority. Instead, the Plaintiff claimed that he was permitted to serve the Defendant through

social media because Plaintiff purportedly did not know the Defendant's foreign address. *Id.* But the Plaintiff never searched for the Defendant abroad, and the circuit court erroneously authorized Plaintiff to pursue "alternative service" via social media and email. October 12, 2022 Order. Although Plaintiff failed even to accomplish alternative service as allowed by the circuit court and the Defendant (unsurprisingly) has not appeared and is in default, Plaintiff and the court below have treated this case as if it were validly commenced.

Mrs. Schueler is a sixty-eight-year-old (68) resident of Bluffton, South Carolina. Mrs. Schueler's involvement in this case began in April 2023 when she received a subpoena from the then-anonymous Plaintiff commanding her to appear for a deposition and produce a wide range of documents. *See* C/A No. 2023-CP-07-00831, May 4, 2023 Mot. to Quash Ex. A. Notably, the subpoena commanded Mrs. Schueler to turn over to "John Doe" sensitive information like "[a] copy of all bank account numbers," despite the fact that Mrs. Schueler has no connection to this litigation other than being the Defendant's mother.

After hiring counsel, Mrs. Schueler learned that, without revealing his identity or providing any notice to her, the anonymous Plaintiff had *already* obtained a large swath of irrelevant documents about her through subpoenas to other third parties, including years' worth of Mrs. Schueler's personal bank transactions, her home address and phone number, dozens of her private emails, details relating to the purchase of her home, and more.<sup>2</sup> *See, e.g.*, Aug. 4, 2023 Memo. in Supp. of Non-Party Lorraine M. Schueler's Mot. for Protective Order, Ex. 4. Pursuant to Rules 26 and 45, SCRCPC, Mrs. Schueler filed a motion to quash the subpoena issued to her in the Beaufort County Court of Common Pleas (hereinafter, the "Beaufort County Motion"), arguing compliance

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<sup>2</sup> The Plaintiff, who identified himself as Noah Veon upon court order after concealing his identity for over a year, allegedly purchased approximately \$1,700 worth of a cryptocurrency known as HEX.

would be incredibly burdensome because of her poor health, among other reasons. *See* C/A No. 2023-CP-07-00831, May 4, 2023 Mot. to Quash. Importantly, the Beaufort County Motion has not been heard and remains pending.

Through further investigation, Mrs. Schueler and her counsel learned the Plaintiff had filed his “John Doe” Complaint in September 2022, without seeking any permission to file anonymously. He then set out to serve the Defendant, Mrs. Schueler’s son, who Plaintiff acknowledges had not lived in the United States for at least sixteen (16) years. October 5, 2022 Memo. in Supp. of *Ex Parte* Mot. Although the Hague Convention requires a diligent inquiry to locate a defendant abroad, Plaintiff claimed that the Hague Convention did not apply because he did not know the Defendant’s address. *Id.* Plaintiff conducted no diligence to locate the Defendant internationally; indeed, his own filings stated that his private investigator had only attempted to locate the Defendant *within the United States*. *Id.* at Ex. A. Despite failing to make the required international inquiry, Plaintiff sought and obtained permission to skirt the mandatory Hague Convention and serve the international Defendant using social media under the recently enacted alternative service provisions of Rule 4.1, SCRCF. But as his own affidavits reveal, his purported service by social media contained numerous glaring defects. The Clerk has entered the Defendant in default, although he was never validly served and consequently never appeared.

Under a lawsuit that was never properly served and therefore not properly commenced, Plaintiff began issuing subpoenas to Mrs. Schueler, her bank, her real estate attorneys, and her realtor, all without any sort of confidentiality order to ensure that Mrs. Schueler’s personal and financial information—data entirely irrelevant to the securities law claims in this case—would be handled with care. Plaintiff has been conducting more discovery through subpoenas to an untold number of people and entities inside and outside of this state. Plaintiff’s unchecked discovery

even resulted in one HEX owner living in South Carolina—a member of the class on whose behalf the Plaintiff claims to be suing—being arrested and detained for failing to comply with a subpoena that sought information having nothing to do with Plaintiff’s claims. Aug. 22, 2023 Order. Most recently, Plaintiff has subpoenaed Mrs. Schueler’s own counsel representing her in connection with the subpoenas at issue, with the subpoenas seeking still more irrelevant information from two law firms representing her. *See* C/A No. 2024-CP-40-04561; C/A No. 2024-CP-40-04564.

With no other party appearing to litigate the case or oppose discovery, Mrs. Schueler has become gravely injured, unduly burdened, and aggrieved by Plaintiff’s unauthorized, unending battery of subpoenas to her and others. Accordingly, she sought a protective order before the circuit court to put a stop to Plaintiff’s discovery abuses and halt his invalidly filed, improperly served, and virtually unmonitored litigation.

Following a hearing, the circuit court erroneously concluded:

- Mrs. Schueler did not have standing to raise these threshold questions concerning the court’s jurisdiction and the ability of nonparties to oppose discovery in cases that were never properly commenced.<sup>3</sup>
- Plaintiff complied with a previous order issued by Judge Hood permitting alternative service despite the fact that Plaintiff never satisfied the requirements of the Hague Convention.
- Plaintiff effectuated valid service through (1) Twitter direct message, (2) Twitter public post, (3) Telegram chatroom, (4) Telegram direct message, and (5) e-mail to an unverified address, as permitted by Judge Hood.<sup>4</sup>
- Plaintiff had to amend the caption to reflect his identity rather than dismiss the complaint pursuant to Rule 10, SCRCP, or serve an amended complaint.

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<sup>3</sup> Although the circuit court ordered Plaintiff to identify himself by amending the caption going forward—a remedy not founded in the law—the court otherwise denied Mrs. Schueler’s motion.

<sup>4</sup> The circuit court judge also questioned whether he could review Judge Hood’s order permitting alternative service even though the circuit court subsequently retained exclusive jurisdiction after the case was designated complex.

October 18, 2023 Order.

Mrs. Schueler then filed a motion to reconsider and a Rule 60(b) motion based on a critical new development—that the United States Securities and Exchange Commission had served the Defendant in another matter in compliance with the Hague Convention, and that the Defendant had appeared to defend that case. October 30, 2023 Mot. to Recons.; April 24, 2024 Mot. for Relief from J. The circuit court denied both motions in a written order.<sup>5</sup> July 24, 2024 Order. Mrs. Schueler now appeals the denial of her motion for protective order, her motion to reconsider, and her Rule 60(b) motion.

As a nonparty in a lawsuit against a defendant in default, Mrs. Schueler has no ability to protect her rights other than through her motion for a protective order. Accordingly, she appeals the denial of her motions on these novel and vitally important issues. Since filing her Notice of Appeal, Mrs. Schueler petitioned the Supreme Court of South Carolina for a common-law writ of certiorari to review the issues, which remains pending.

#### **APPEALABILITY STANDARD**

“The determination of whether a trial court’s order is immediately appealable is governed by statute.” *Morrow*, 412 S.C. at 537, 773 S.E.2d at 145. The appellate courts shall review the following on appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits

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<sup>5</sup> The circuit court concluded the newly discovered evidence did not demonstrate where Defendant resided at the time of filing the complaint. However, Plaintiff, who knew that Defendant did not reside in the United States when he attempted service, never even bothered to search internationally. Further, the court’s reference that Defendant’s lawyers in the SEC case received notice of a class certification hearing does not, and indeed cannot, cure the fundamental defect of invalid service. *See, e.g., McDonald v. Jacobsen*, 512 P.3d 251, 255 (Mont. 2021); *Campos v. Chisholm*, 821 P.2d 1121, 1122 (Or. Ct. App. 1991) (“[A]ctual notice does not cure a defective service.”).

in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330. “This Court reviews interlocutory orders when they contain other appealable issues.” *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 565, 564 S.E.2d 94, 98 (2002). “[A]n appellate court should look to the effect of an interlocutory order to determine its appealability.” *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011). “By its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis.” *Morrow*, at 538, 773 S.E.2d at 146.

### ARGUMENT

Mrs. Schueler is mindful of the general rule that “[a]n order directing a party to participate in discovery is interlocutory and not directly appealable under S.C. Code Ann. § 14-3-330.” *Ex parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881, 881–82 (1986). Mrs. Schueler is also aware that the rule applies to non-parties. *Id.* Here, however, the orders on appeal do not direct Mrs. Schueler to provide discovery—they confront threshold issues relating to whether the case was properly commenced. As such, the orders “involve the merits” and are immediately appealable under S.C. Code Ann. § 14-3-330(1).

Additionally, because of the procedural posture below, Mrs. Schueler contends her appeal at this stage is required to prevent the circuit court's orders from operating as the law of the case. As the South Carolina Supreme Court has instructed, when a party suffers adverse discovery rulings, continues along in litigation, and waits for a subsequent contempt order, that party waives its right to appeal those discovery orders. *See Davis v. Parkview Apartments*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014) ("Appellants continued to accept the circuit court's formulation of discovery. Right or wrong, these decisions form the law of the case, and Appellants are bound by them now."). Therefore, the procedural posture of Mrs. Schueler's appeal and the nature of her arguments compel immediate appellate review.

*1. The circuit court's orders below involve the merits.*

An order "involves the merits" and is therefore appealable under § 14-3-330(1) when it "finally determines some substantial matter forming the whole or part of a cause of action or defense." *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). Here, the orders on appeal finally determined a threshold issue—proper commencement of the action—that impacts the validity of all proceedings in the case. The circuit court's resolution of this substantial matter, which allows for further proceedings and discovery from third parties like Mrs. Schueler, therefore involves the merits.

The South Carolina Supreme Court's recent decision in *Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868 (2019), is instructive. There, Stone filed a family court action seeking a declaration that he was common-law married to Thompson, a divorce, and equitable distribution of the alleged marital property. *Id.* at 293, 826 S.E.2d at 869. The family court bifurcated proceedings to allow for a trial on the sole issue of whether a common-law marriage existed between the parties. *Id.*

The family court determined a common-law marriage existed, and Thompson appealed. *Id.* at 293-94, 826 S.E.2d at 869.

This Court dismissed Thompson's appeal, concluding the common-law marriage determination was not immediately appealable under section 14-3-330. *Id.* at 294, 826 S.E.2d at 869. The Court found the order was not appealable because it "did not end the case due to the still-pending divorce and equitable distribution causes of action." *Id.* The Court further concluded the order "did not involve the merits because the family court exercised its discretion to bifurcate the case and adjudicated the preliminary issue of marriage before proceeding to the remaining issues." *Id.*

However, the Supreme Court reversed, holding the common-law marriage determination involved the merits and was subject to immediate review. The Supreme Court began its analysis by noting an order "involves the merits under § 14-3-330(1) when it finally determines some substantial matter forming the whole or part of a cause of action or defense." *Id.* at 294, 826 S.E.2d at 870. The Supreme Court concluded the family court's order fit that definition because it finally determined a substantial matter forming part of both Stone's cause of action and Thompson's defense to it. *Id.* at 295, 826 S.E.2d at 870.

Although the Supreme Court noted that its holding in *Stone* was limited, *id.* at 295-96, 826 S.E.2d at 870, the Court's reasoning leads to the conclusion that the circuit court's orders in this matter are immediately appealable. By determining the action was properly commenced, the circuit court finally determined a substantial matter relating to the validity of the case as a whole. Of course, the circuit court also finally determined Mrs. Schueler's primary "defense" that

discovery cannot take place in a case that has not been properly commenced. Under these circumstances, the orders on appeal involve the merits and are immediately appealable.<sup>6</sup>

**2. The law of the case doctrine requires immediate appeal of the orders.**

Again, Mrs. Schueler is familiar with the general rule that, to challenge a discovery order, “the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding.” *Davis*, 409 S.C. at 280, 762 S.E.2d at 543 (citing *Ex parte Whetstone*, 289 S.C. at 580, 347 S.E.2d at 881-82). In this case, however, the nature of the orders on appeal and the general procedural posture below prevent that course of action. Mrs. Schueler should be allowed to appeal at this stage because failing to do so would render the circuit court’s rulings the law of the case.

The South Carolina Supreme Court explained a litigant’s obligation to challenge successive discovery orders in *Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535 (2014). In *Davis*, the circuit court issued several discovery orders over the course of protracted litigation. In March 2009, the circuit court entered a discovery order granting defendants’ motion to compel and ordering plaintiffs to provide complete written discovery responses. *Id.* at 274, 762 S.E.2d at 539. In July 2009, the circuit court issued a privilege order requiring plaintiffs to disclose documents previously withheld on grounds of the attorney-client privilege. *Id.* at 276, 762 S.E.2d at 540. Plaintiffs failed to comply with either order. In April 2010, the circuit court granted defendants’

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<sup>6</sup> Although Mrs. Schueler contends the complaint was not properly served, the Court should not treat the orders below as having the effect of an order denying a Rule 12(b), SCRCPP, motion, which is not immediately appealable. An order denying a motion to dismiss does not finally determine anything, as the movant remains free to raise the issue again at a later stage in the proceedings. See *Woodard v. Westvaco Corp.*, 319 S.C. 240, 243 n.2, 460 S.E.2d 392, 394 n.2 (1995), *overruled on other grounds by Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002). Because Mrs. Schueler is a non-party and cannot re-argue her points at a later stage, the appealability analysis differs greatly in this situation.

motion for sanctions and dismissed plaintiffs' cases for their willful noncompliance with the court's previous orders. *Id.* at 279, 762 S.E.2d at 542. Plaintiffs appealed the sanctions order.

On appeal, plaintiffs argued the circuit court "erred in making the various discovery rulings in th[e] case." *Id.* at 280, 762 S.E.2d at 542. However, the Supreme Court held plaintiffs were procedurally barred from challenging the earlier discovery and privilege orders on appeal; the Court held plaintiffs could only challenge the sanctions order. *Id.* at 280-81, 762 S.E.2d at 543. The Supreme Court noted that, with respect to the earlier discovery orders, plaintiffs did not fail to comply with the orders, suffer contempt, and appeal. *Id.* Instead, plaintiffs "continued to accept the circuit court's formulation of discovery." *Id.* at 281, 762 S.E.2d at 543. Accordingly, the Supreme Court held the previous discovery orders formed "the law of the case" and appellate review would only extend to the sanctions order. *Id.*

Under the facts of this appeal, *Davis* is significant. In the orders on appeal, the circuit court rejected Mrs. Schueler's argument that discovery cannot take place because the case was never properly commenced. Importantly, however, the orders below do not specifically require Mrs. Schuler to provide any discovery. In this situation, the circuit court in Beaufort County would have to enter another order before Mrs. Schueler will have to provide discovery.

As noted above, before moving for a protective order, Mrs. Schueler filed the Beaufort County Motion, asking the court to quash Plaintiff's subpoena commanding her to appear for a deposition and produce documents. In that Motion, Mrs. Schueler argues, *inter alia*, that the subpoena seeks information that is not relevant to the issues in Plaintiff's case and that compliance with the subpoena would be unduly burdensome in light of Mrs. Schueler's health issues.<sup>7</sup> If the

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<sup>7</sup> With the consent of Plaintiff and Mrs. Schueler, the court issued an order continuing the Beaufort County Motion until after the resolution Mrs. Schueler's motion for a protective order. C/A No. 2023-CP-07-00831, July 19, 2023 Order.

circuit court denies the Beaufort County Motion, Mrs. Schueler could then choose whether to refuse to comply, suffer contempt, and appeal.

However, under *Davis*, if Mrs. Schueler does so at that future stage, she will be procedurally barred from challenging the orders currently before the Court regarding whether the case was properly commenced. Accordingly, rather than “accept[ing] the circuit court's formulation of discovery,” *Davis*, 409 S.C. at 281, 762 S.E.2d at 543, Mrs. Schueler is obligated to pursue this appeal to prevent the circuit court’s orders from becoming the law of the case. Because there is currently no order requiring Mrs. Schueler to provide discovery that could give rise to a finding of contempt, an appeal at this stage is the only avenue for Mrs. Schueler to obtain appellate review of the circuit court’s orders. Under these circumstances, the orders below are immediately appealable.

#### **CONCLUSION**

Because Mrs. Schueler raises significant threshold arguments about the legal viability of the case and the Defendant has not been properly served or appeared, the circuit court’s orders relating to Mrs. Schueler’s motion for a protective order, including the motion to reconsider and the motion for relief from judgment or order under Rule 60(b), SCRPC, are immediately appealable.

*[Signature page to follow]*

Respectfully submitted,

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Columbia, South Carolina

August 12, 2024

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**SC Court of Appeals**

APPEAL FROM FLORENCE COUNTY  
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Noah Veon, on behalf of himself and all others similarly situated, . . . Respondent,  
v.  
Richard James Schueler a/k/a Richard Heart, ..... Defendant.

PROOF OF SERVICE

I certify that I have served the Memorandum on Appealability upon counsel for all parties  
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August 12, 2024

cc: G. Murrell Smith, Jr., Esq.  
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**Subject:** Case No.: 2024-001234 Veon v Schueler- Memo on Appealability  
**Attachments:** 2024.08.12- Memorandum on Appealability.pdf

Dear Counsel,

Please find attached the Memorandum on Appealability regarding the above referenced matter.

Thank you,  
Meredith



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August 12, 2024

The Honorable Jenny A. Kitchings  
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*Noah Veon, on behalf of himself and all others similarly situated, Respondent,*  
*v. Richard James Schueler, Defendant.*  
Appellate Case No.: 2024-001234

Dear Ms. Kitchings:

Enclosed for filing is the Memorandum on Appealability in the above case. I have also enclosed proof of service of this Memorandum upon all parties.

Thank you for your attention to this matter. Please let me know if you need anything further.

With kind personal regards,

Sincerely,

/s/ John S. Nichols

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