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7 Terry Ciotka and Pangea Fossils, Ltd.

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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA (SOUTHERN DIVISION)**

11 ROBERT "BUTCH" VALLEE, an  
12 Individual.

13 Plaintiff,  
14 vs.

15 TERRY CIOTKA, an Individual;  
PANGEA FOSSILS, LTD, an Alberta  
16 Canada Corporation; and DOES 1  
through 25, inclusive,

17 Defendants.

18 AND RELATED COUNTERCLAIM.  
19

Case No. 8:17-cv-00943

Hon. David O. Carter

**ANSWER AND COUNTERCLAIM  
OF TERRY CIOTKA AND  
PANGEA FOSSILS, LTD, FOR:**

- 20 (1) FRAUD,
- 21 (2) NEGLIGENT
- 22 MISREPRESENTATION, AND
- 23 (3) BREACH OF CONTRACT

24  
25 **DEMAND FOR JURY TRIAL**  
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**ANSWER TO COMPLAINT**

Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Defendants and Counterclaimants Terry Ciotka and Pangea Fossils, Ltd. ("Defendants") hereby answer the Complaint for (1) Intentional Misrepresentation, (2) Negligent Misrepresentation, (3) Rescission, (4) Breach of Written Contract, and (5) Money Had and Received (the "Complaint") filed by Plaintiff Robert "Butch" Vallee ("Plaintiff" or "Vallee"), and set forth their Affirmative Defenses and Counterclaim below. If an averment is not specifically admitted, it is hereby denied.

**RESPONSE TO SPECIFIC ALLEGATIONS**

Defendants hereby specifically respond to the allegations contained in each of the specific paragraphs in Plaintiff's Complaint, as follows:

**JURISDICTION AND VENUE**

1. Defendants admit the allegations contained in paragraph 1 of Plaintiff's Complaint.

2. Defendants admit that this Court has jurisdiction over the subject matter of this action pursuant to 28 USC § 1332(a). Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 1, and deny each such allegation on that basis.

3. Defendants deny that venue is proper in this District under 28 USC § 1391(c)(3) because the Section 10.3 of the Parties' Agreement for the Purchase of Goods and Services, dated 22 January 2013, attached as Exhibit B to Plaintiff's Complaint, entitled "Jurisdiction, Venue and Governing Law," states as follows:

The breaching Party must submit to the jurisdiction and venue of the non-breaching Party's choosing. This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction and venue chosen by the non-breaching party.

As shown in the counterclaims set forth below, Plaintiff, not Defendants and Cross-Complainants, breached the applicable agreements and, therefore, this lawsuit



1 should have been commenced, if at all, in the City of Victoria, Province of British  
2 Columbia, Canada, where defendant Pangea Fossils, Ltd., the non-breaching  
3 Defendant and Cross-Complainant, is headquartered. Defendants admit that they  
4 are non-resident aliens residents, domiciled and/or organized under the laws of the  
5 Provinces of British Columbia and/or Alberta, Canada. Defendants deny that a  
6 substantial part of the events giving rise to the claims asserted herein took place  
7 within this District.

8 **THE PARTIES**

9 4. Defendants are without knowledge or information sufficient to form a  
10 belief as to the truth of the allegations contained in paragraph 4, and deny each such  
11 allegation on that basis.

12 5. Defendants admit the allegations contained in paragraph 5 of Plaintiff's  
13 Complaint.

14 6. Defendants admit the allegations contained in paragraph 6 of Plaintiff's  
15 Complaint.

16 7. Defendants are without knowledge or information sufficient to form a  
17 belief as to the truth of the allegations contained in paragraph 7, and deny each such  
18 allegation on that basis.

19 8. Defendants are without knowledge or information sufficient to form a  
20 belief as to the truth of the allegations contained in paragraph 8, and deny each such  
21 allegation on that basis.

22 **COMMON ALLEGATIONS**

23 9. Defendants admit that Exhibit A to Plaintiff's Complaint is a true and  
24 correct copy of the Contract of Agreement dated February 12, 2012 between Terry  
25 Ciotka of Pangea Fossils Ltd. and Robert "Butch" Vallee of The Crystal Image (the  
26 "Original Agreement"). The Original Agreement speaks for itself and is the best  
27 evidence of its own contents. On that basis, Defendants deny the remaining  
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1 allegations contained in paragraph 9 insofar as they vary or contradict the terms of  
2 the Original Agreement .

3 10. The Original Agreement speaks for itself and is the best evidence of its  
4 own contents. On that basis, Defendants deny the allegations contained in  
5 paragraph 10 insofar as they vary or contradict the terms of the Original Agreement.

6 11. The Original Agreement speaks for itself and is the best evidence of its  
7 own contents. On that basis, Defendants deny the allegations contained in  
8 paragraph 11 insofar as they vary or contradict the terms of the Original Agreement.

9 12. The Original Agreement speaks for itself and is the best evidence of its  
10 own contents. On that basis, Defendants deny the allegations contained in  
11 paragraph 11 insofar as they vary or contradict the terms of the Original Agreement  
12 . Defendants are without knowledge or information sufficient to form a belief as to  
13 the truth of the allegations contained in the last sentence of paragraph 12, and deny  
14 each such allegation on that basis.

15 13. Defendants admit the first sentence of paragraph 13. As to the  
16 remaining allegations contained in paragraph 13, the Original Agreement speaks for  
17 itself and is the best evidence of its own contents. On that basis, Defendants deny  
18 the allegations contained in paragraph 13 insofar as they vary or contradict the terms  
19 of the Original Agreement .

20 14. Answering the first sentence of paragraph 14, Defendants deny that  
21 their failure to provide a skull cast or line drawings constitute a breach of the  
22 Original Agreement, and further deny the remaining allegations of paragraph 14.

23 15. Defendants admit that Mr. Ciotka offered to extend the time for  
24 tendering the Work in Progress payment to December 30, 2012, and that he agreed  
25 to reduce the purchase price, in part because of the lower number of T-Rex bones  
26 than originally anticipated. Defendants deny the remaining allegations contained in  
27 paragraph 15.

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1           16. Defendants deny the allegations contained in the first sentence of  
2 paragraph 16. Defendants admit that they did not provide the Skull Cast or line  
3 drawings to Plaintiff, and were fully justified in doing so, and excused from any  
4 requirement to do so.

5           17. Defendants admit that Pangea Fossils Ltd. entered into a new  
6 agreement with Plaintiff, but deny the remaining allegations contained in paragraph  
7 17.

8           18. Defendants admit that Exhibit B to Plaintiff's Complaint is a true and  
9 correct copy of the "Agreement for the Purchase of Goods and Services," dated  
10 January 22, 2013 (the "New Agreement"). The New Agreement speaks for itself  
11 and is the best evidence of its own contents. On that basis, Defendants deny the  
12 remaining allegations contained in paragraph 18 insofar as they vary or contradict  
13 the terms of the New Purchase Agreement.

14           18 (erroneously repeated). Answering paragraph 18 (erroneously  
15 repeated) of Plaintiff's Complaint, Defendants admit that Exhibit C to Plaintiff's  
16 Complaint is true and correct copy of the "Amendment to Agreement for the  
17 Purchase of Goods and Services" (the "Amendment"), dated March 28, 2013,  
18 between Plaintiff and Pangea Fossils, Ltd. The Amendment speaks for itself and is  
19 the best evidence of its own contents. On that basis, Defendants deny the remaining  
20 allegations contained in paragraph 18 (repeated) insofar as they vary or contradict  
21 the terms of the New Purchase Agreement

22           19. Answering paragraph 19 of Plaintiff's Complaint, the New Agreement  
23 speaks for itself and is the best evidence of its own contents. On that basis,  
24 Defendants deny the allegations contained in paragraph 19 insofar as they vary or  
25 contradict the terms of the Original Agreement .

26           20. Answering paragraph 20 of Plaintiff's Complaint, the New Agreement  
27 and Amendment speaks for themselves and are the best evidence of their own  
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1 contents. On that basis, Defendants deny the allegations contained in paragraph 20  
2 insofar as they vary or contradict the terms of the New Agreement or Amendment.

3 21. Defendants admit the allegations contained in the first sentence of  
4 paragraph 21 of Plaintiff's Complaint. Answering the second sentence of paragraph  
5 21 of Plaintiff's Complaint, Defendants admit that Plaintiff failed to make Payment  
6 A as required, and that Pangea Fossils Ltd. thereafter terminated the contract in  
7 accordance with its terms.

8 22. Answering paragraph 22 of Plaintiff's Complaint, the New Agreement  
9 and Amendment speaks for themselves and are the best evidence of their own  
10 contents. Defendants admit that Plaintiff's payment of \$100,000 was forfeited due  
11 to his breaches of contract. Defendants deny that they are obligated to refund  
12 \$200,000 to Plaintiff, due to Plaintiff's misconduct as alleged in the Counterclaim  
13 below. Defendants deny the remaining allegations contained in paragraph 22  
14 insofar as they vary or contradict the terms of the New Agreement.

15 23. Answering paragraph 23 of Plaintiff's Complaint, Defendants deny that  
16 they are obligated to pay or refund any moneys whatsoever to Plaintiff, and that any  
17 alleged contractual or other obligation to do so (which Defendants' deny) has been  
18 waived and excused, due to Plaintiff's misconduct as alleged in the Counterclaim  
19 below.

20 **FIRST CAUSE OF ACTION**

21 24. Defendants hereby incorporate by reference each and every one of their  
22 responses to paragraphs 1 through 23 of Plaintiff's Complaint, as if fully set forth  
23 herein.

24 25. Defendants admit that the completeness of a dinosaur fossil can impact  
25 its value. Defendants are without knowledge or information sufficient to form a  
26 belief as to the truth of the remaining allegations contained in paragraph 25, and  
27 deny each such allegation on that basis.

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1           26. Defendants admit the number of T-Rex bones was a material issue.  
2 Defendants are without knowledge or information sufficient to form a belief as to  
3 the truth of the remaining allegations contained in paragraph 26, and deny each such  
4 allegation on that basis.

5           27. Defendants admit that they originally believed, in good faith, that the  
6 T-Rex fossil was comprised of 157 bones. Defendants are without knowledge or  
7 information sufficient to form a belief as to the truth of the remaining allegations  
8 contained in paragraph 27, and deny each such allegation on that basis.

9           28. Defendants deny the allegations contained in paragraph 28 of Plaintiff's  
10 Complaint.

11           29. Answering paragraph 29 of Plaintiff's Complaint, Defendants admit  
12 that some people consider them to be experts on certain dinosaur fossils, although  
13 they are not paleontologists; that they have successfully sold many dinosaur fossils  
14 and have a sterling reputation for honesty and integrity in the field; and that the  
15 number of T-Rex bones was set forth in the New Agreement. Defendants deny the  
16 remaining allegations contained in paragraph 29.

17           30. Defendants deny the allegations contained in paragraph 30 of Plaintiff's  
18 Complaint.

19           31. Defendants deny the allegations contained in paragraph 31 of Plaintiff's  
20 Complaint and allege, further, that the T-Rex turned out to have a confirmed bone  
21 count of 170, not 108 or 157.

22           32. Defendants deny the allegations contained in paragraph 32 of Plaintiff's  
23 Complaint.

24           33. Defendants deny the allegations contained in paragraph 33 of Plaintiff's  
25 Complaint.

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**SECOND CAUSE OF ACTION**

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34. Defendants hereby incorporate by reference each and every one of their responses to paragraphs 1 through 23 of Plaintiff's Complaint, as if fully set forth herein.

35. Defendants deny the allegations contained in paragraph 35 of Plaintiff's Complaint, and allege, further, that the T-Rex turned out to have a confirmed bone count of 170, not 108 or 157.

36. Defendants deny the allegations contained in paragraph 36 of Plaintiff's Complaint, and allege, further, that the T-Rex turned out to have a confirmed bone count of 170, not 108 or 157.

37. Defendants deny the allegations contained in paragraph 37 of Plaintiff's Complaint.

38. Answering paragraph 38 of Plaintiff's Complaint, Defendants admit that some people consider them to be experts on certain dinosaur fossils, although they are not paleontologists; that they have successfully sold many dinosaur fossils and have a reputation for professionalism and integrity in the field; and that the number of anticipated T-Rex bones was set forth in the New Agreement. Defendants deny the remaining allegations contained in paragraph 38.

39. Defendants deny the allegations contained in paragraph 39 of Plaintiff's Complaint.

40. Defendants deny the allegations contained in paragraph 40 of Plaintiff's Complaint.

41. Defendants deny the allegations contained in paragraph 41 of Plaintiff's Complaint.

42. Defendants deny the allegations contained in paragraph 42 of Plaintiff's Complaint.

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**THIRD CAUSE OF ACTION**

43. Defendants hereby incorporate by reference each and every one of their responses to paragraphs 1 through 23 of Plaintiff's Complaint, as if fully set forth herein.

44. Defendants deny the allegations contained in paragraph 44 of Plaintiff's Complaint.

**FOURTH CAUSE OF ACTION**

45. Defendants hereby incorporate by reference each and every one of their responses to paragraphs 1 through 23 of Plaintiff's Complaint, as if fully set forth herein.

46. Defendants deny the allegations contained in paragraph 46 of Plaintiff's Complaint.

47. Defendants deny the allegations contained in paragraph 47 of Plaintiff's Complaint.

48. Defendants deny the allegations contained in paragraph 48 of Plaintiff's Complaint.

49. Defendants deny the allegations contained in paragraph 49 of Plaintiff's Complaint.

**FIFTH CAUSE OF ACTION**

50. Answering paragraph 50 of Plaintiff's Complaint (which is incorrectly designated as paragraph "45"), Defendants hereby incorporate by reference each and every one of their responses to paragraphs 1 through 23 of Plaintiff's Complaint, as if fully set forth herein.

51. Answering paragraph 51 of Plaintiff's Complaint (which is incorrectly designated as paragraph "46"), Defendants deny the allegations contained in that paragraph.

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1 **AFFIRMATIVE DEFENSES**

2 Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, Defendants  
3 plead the following separate Affirmative Defenses. Defendants reserve the right to  
4 assert additional Affirmative Defenses that discovery indicates are proper.

5 **FIRST AFFIRMATIVE DEFENSE**

6 Plaintiff's Complaint, and each cause of action contained therein, fails to state  
7 a claim upon which relief can be granted against Defendants.

8 **SECOND AFFIRMATIVE DEFENSE**

9 Any damage to Plaintiff herein, the existence of which is denied, was caused,  
10 in whole or in part, by the actions of Plaintiff, its agents or a third party unknown to  
11 Defendants.

12 **THIRD AFFIRMATIVE DEFENSE**

13 Plaintiff has failed to mitigate its damages, the existence of which is  
14 specifically denied.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 Plaintiff's Complaint is barred by the applicable statute of limitations.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 Any damage to Plaintiff herein, the existence of which is specifically denied,  
19 was caused, in whole or in part, by the negligence of Plaintiff or its agents.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 Plaintiff is estopped from obtaining the relief sought in the Complaint by its  
22 own acts, conduct and omissions.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 Plaintiff's Complaint is barred by the doctrine of unclean hands.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 Plaintiff's Complaint is barred by the doctrine of justification. Both by  
27 contract and common law, Defendants were justified in acting as Defendants did.

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1 **NINTH AFFIRMATIVE DEFENSE**

2 Plaintiff's Complaint is barred by the doctrine of forum non conveniens.

3 **TENTH AFFIRMATIVE DEFENSE**

4 Plaintiff's Complaint should be brought, if at all, in Canada by virtue of the  
5 forum selection clause in the parties' contracts. The Central District of California is  
6 an improper venue for this lawsuit.

7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 Plaintiff's Complaint is barred by the doctrine of rescission of contract by  
9 conduct.

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 Plaintiff's Complaint fails to state facts sufficient to constitute a cause of  
12 action.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 By conduct, representations and omissions, Plaintiff is equitably estopped to  
15 assert any claim for relief against Defendants respecting the matters which are the  
16 subject of the complaint.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 Plaintiff has failed to do equity in the matters alleged in the Complaint and  
19 any recovery by Plaintiff must be diminished or barred by reason thereof.

20 **FIFTEENTH AFFIRMATIVE DEFENSE**

21 By conduct, representations and omissions, Plaintiff has waived, relinquished  
22 and/or abandoned and are equitably estopped from asserting any claim for relief  
23 against Defendants respecting the matters which are the subject of the complaint.

24 **SIXTEENTH AFFIRMATIVE DEFENSE**

25 Plaintiff did not exercise ordinary care, caution and prudence in connection  
26 with the transactions and events alleged in the complaint, and Plaintiff is therefore  
27 barred entirely from recovery against Defendants or alternatively, Plaintiff should  
28 have its recovery, if any, proportionally reduced.



1 to plaintiff Vallee, or whether he failed to allow Vallee to examine the T-Rex fossil,  
2 or whether Vallee was wrongfully tricked into entering into agreements to purchase  
3 the T-Rex fossil based on supposedly exaggerated claims about its uniqueness and  
4 completeness. As set forth in detail below, all of those claims by Vallee are false  
5 and easily refuted. On the contrary, this case is about a small-time mineral and  
6 fossil dealer who lied about his financial ability and wherewithal to purchase one of  
7 the most remarkable and complete T-Rex fossils ever discovered – the famous  
8 "Tristan" T-Rex which now stars as the main attraction of Berlin's famous Natural  
9 History Museum (Museum für Naturkunde):



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21 See <https://www.naturkundemuseum.berlin/en/museum/exhibitions/tristan-berlin-bares-teeth>. Counterdefendant Vallee further lied to Mr. Ciotka about his ability to  
22 expertly and professionally market the fossil to high-net-worth private fossil  
23 collectors whom he personally knew. Vallee made these misrepresentations in order  
24 to obtain, under false pretenses, the exclusive right to "shop" the fossil for only  
25 \$300,000 – conniving to obtain in practical effect an "exclusive option" regarding  
26 the fossil for a tiny fraction of its true worth, during a critical time in the commercial  
27 dinosaur fossil market, when the transaction was supposed to be a firm sale.  
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1           6.       Vallee went on to peddle the T-Rex like a "carnival barker" at the  
2 Tucson Gem and Mineral Show and other fossil market venues, using the cheapest  
3 possible printout asking for \$10 million for the specimen, hawking it to key museum  
4 representatives in direct violation of his contract with Mr. Ciotka and Pangea. In so  
5 doing, Vallee substantially harmed the value of the T-Rex fossils among the small  
6 number of super-wealthy private fossil collectors and natural history museums who  
7 are in the market for such expensive dinosaur specimens. Mr. Ciotka and his  
8 company are the true victims here, not Vallee.

9 **B.     THE DINOSAUR FOSSIL MARKET**

10           7.       The T-Rex reigned supreme as the king of carnivores and the pinnacle  
11 predator during the final Cretaceous era of the dinosaurs between 68 through 65  
12 million years ago. Their long reign was cut short by the Cretaceous-Tertiary mass  
13 extinction (also known as the K/T extinction), when a 6-mile-wide asteroid the size  
14 of Mount Everest slammed into the Gulf of Mexico, creating mile-high tsunamis,  
15 sending a gigantic fireball and megatons of burning ash high into the stratosphere,  
16 igniting firestorms worldwide, and thrusting the entire Planet into a deadly "nuclear"  
17 and "impact" winter that drowned out sunlight while poisoning the land and water  
18 with toxic acid rain.

19           8.       That was a long, long time ago. Yet in modern times, the T-Rex has  
20 reentered the world stage and been re-crowned the superstar of dinosaurs, stomping  
21 through the popular imagination in Jurassic Park, the summer blockbuster movie of  
22 1993.

23           9.       By fortuitous coincidence, at the same time Jurassic Park was  
24 captivating audiences with 3-D images of cloned T-Rexes terrorizing Jeffrey  
25 Goldblum and frightened children, the largest, best preserved, and most complete  
26 Tyrannosaurus Rex specimen ever found was excavated from the flatlands of South  
27 Dakota. Named "Sue" after Sue Hendrickson, the paleontologist who discovered it,  
28 the massive T-Rex was sold at auction in October 1997 for \$8.4 million. At the

1 time, it was highest amount ever paid for a dinosaur fossil. Sue now reigns supreme  
2 as the star exhibit at the Field Museum of Natural History in Chicago, Illinois.  
3 Then, in 2003, the movie King Kong became another blockbuster summer movie in  
4 which the T-Rex, the King of the Dinosaurs, went mano-a-mano with the King of  
5 the Jungle. This further cemented T-Rex's permanent place as a cultural icon  
6 worldwide.

7 10. The headline-grabbing discovery and sale of "Sue," the star power of  
8 the T-Rex generated by Jurassic Park, King Kong, and their sequels, and the sheer,  
9 awesome majesty of T-Rex together have made high-quality T-Rex fossils the most  
10 sought after, and expensive, dinosaur specimens. No other dinosaur fossil  
11 commands as much attention or generates as much excitement.

12 11. The international market for high-end dinosaur fossils, while rarified, is  
13 robust and highly competitive. High-net-worth private collectors compete with  
14 natural history museums in public and private auctions and negotiated bidding wars  
15 for the most prized specimens. The stakes are high because large vertebrate fossils  
16 are so rare. The king of all collectible fossils is the aptly-named Tyrannosaurus Rex  
17 (T-Rex) -- "tyrant lizard king" (Greek tyrannos/τύραννος = tyrant + sauros/σαῦρος  
18 = lizard + rex = king).

### 19 **C. DINOSAUR FOSSIL VALUATIONS AND "FAKE" FOSSILS**

20 12. Many factors bear upon the monetary value and collectability of a  
21 dinosaur fossil for the commercial fossil market. These factors include, but are not  
22 limited to, the degree of completeness (how many bones have been preserved?),  
23 condition (are the bones well-preserved in their natural shape and form?), rarity  
24 (how rare are examples of a particular specimen?), popularity (is a particular fossil  
25 specimen in high demand?), and marketability (is there a public or private market  
26 for a particular fossil type?).

27 13. Yet, surprisingly, there are no certified, professional dinosaur fossil  
28 appraisers, nor any dinosaur fossil appraisal courses or schools, nor any fossil



1 appraisal degrees or licenses. Trained and credentialed paleontologists rarely, if  
2 ever, do formal appraisal work for the private market (although they do provide  
3 expert consultations on the kind, completeness, and quality of fossil specimens),  
4 because, as a general matter, paleontologists are scientists who loath to see top fossil  
5 specimens leave universities and public museums into the hands of private  
6 collectors.

7 14. With respect to T-Rex fossils, the number and quality of the bones are  
8 perhaps the most important factors in their overall value. Between 1902 and today,  
9 less than 50 specimens of this dinosaur superstar have been uncovered. The vast  
10 majority of the specimens are incomplete, with many missing and incomplete bones,  
11 and many warped and distorted bones and fragments. Relatively complete and well-  
12 preserved T-Rex specimens are vanishingly rare and precious.

13 15. In that regard, having the assistance reputable and experienced  
14 commercial fossil dealer is critical for commercial and private fossil collectors  
15 because entirely false fossil specimens and partially false specimens have been  
16 peddled by unscrupulous "discoverers," sellers and dealers from the very earliest era  
17 of paleontological discoveries. The infamous "Piltdown Man" is the earliest widely-  
18 known fossil hoax, in which various bone fragments from different species were  
19 pieced together in 1912 (only a decade after the first T-Rex skeleton was  
20 discovered). "Piltdown Man" was presented as a 500,000-old early human ancestor  
21 who was the "missing link" between homo sapiens and apes. The fraud was not  
22 discovered until over 40 years later, in 1952. In the dinosaur fossil wing of the  
23 paleontological world, the most recent well-known is the famous "Archaeoraptor"  
24 specimen from the Liaoning Province of China. This "discovery" was the subject of  
25 coverage by media sources including National Geographic and Nature. Early  
26 concerns by noted paleontologists in the end turned out to be warranted.  
27 "Archaeoraptor" was not the "missing link" between dinosaurs and birds; it was a  
28 composite "Piltdown Bird" assembled from separate specimens that were

1 fraudulently merged to assemble a single "individual. This type of "Frankenstein"  
2 skeleton -- or "Frankensaur" -- is aptly named after Doctor Frankenstein's monster  
3 created from several human corpses in Mary Shelley's 1818 novel and the horror  
4 movies based on it.

5 16. There are two other primary kinds of fossil hoaxes: (1) Those that  
6 contain no original fossil material whatsoever, such 100% cast bones in resin or  
7 other materials, or carved in rock; and (2) Those that contain original fossil material,  
8 but are entirely or partially altered in order to give the appearance of a more  
9 complete specimen (example: a sculpted carved skull from a fragment of a limb-  
10 bone. These hoaxes or frauds must be distinguished from the common practice of  
11 museums (and private collectors) making resin casts of missing bones so as to  
12 assemble a "complete" dinosaur skeleton for exhibition. Also, museums and private  
13 collectors also sometimes request that real fossil bones from more than one  
14 specimen be combined to create a composite skeleton that would be more complete  
15 than one made from one individual set of fossil remains alone. The key difference  
16 between a fraud and a fabulous composite fossil is disclosure and transparency.

17 17. That is where skilled, trustworthy, and reliable private fossil dealers  
18 such as Pangea and Mr. Ciotka come in. Mr. Ciotka is a private dinosaur fossil  
19 collector, seller, and consultant. He has sold major dinosaur fossils both to  
20 museums and to private collectors, including well known celebrities (who wish to  
21 remain anonymous for privacy reasons). Mr. Ciotka also has been one of the  
22 foremost dealers in high-end T-Rex specimens. He has arranged for the excavation,  
23 assembly, and sale of composite dinosaurs, including a large composite T-Rex  
24 called "King Kong," as well as even more unitary fossil skeletons from single  
25 specimens from a single quarry. Mr. Ciotka and his team have an established  
26 reputation for competence, expertise, and fair dealing in the fossil and mineral  
27 industry, not only in the United States, but internationally.

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1 **D. THE TANGLED HISTORY OF T-REX "BUTCH," LATER**  
2 **RENAMED "TRISTAN"**

3 18. In September 2010, as a result of his reputation, experience, and  
4 expertise, Mr. Ciotka obtained the rights to market and sell one of the finest T-Rex  
5 fossils ever discovered. By mid-2011, it became apparent that the T-Rex specimen  
6 was almost fully grown, massive, with beautiful, obsidian-black bones that were in  
7 excellent condition.

8 19. After it was excavated, but before it was fully extracted, it was  
9 estimated to have the most complete T-Rex skull ever found and to be one of the top  
10 three most significant T-Rex dinosaurs ever discovered. Word of this spectacular  
11 discovery soon spread throughout the fossil and mineral industry.

12 20. Counterdefendant Vallee was a mineral and fossil shop owner who, on  
13 information and belief, in late 2011 learned that the Pangea T-Rex was coming to  
14 market. He reached out to Mr. Ciotka, and entered into negotiations with him in  
15 January 2012 to obtain the rights to purchase the fossil.

16 21. To that end, the parties entered into the "Contract of Agreement," dated  
17 February 21, 2012, which is attached as Exhibit A to Plaintiff Vallee's Complaint  
18 (the "Original Agreement"). Pursuant to the terms of the Original Agreement, Mr.  
19 Vallee made an initial "Deposit" payment of \$200,000 to Mr. Ciotka. Mr. Vallee  
20 agreed to pay between \$6,500,000 to \$6,700,000 for the Pangea T-Rex (depending  
21 on the length of the payment schedule). The specimen was provisionally named  
22 "Butch" (after Mr. Vallee's nickname).

23 22. Mr. Vallee requested additional time to make his "Work in Progress"  
24 payment of \$100,000. In addition, by late 2012, it had become apparent during the  
25 fossil bone extraction process that there were fewer than 220 bones. In multiple  
26 instances, what had appeared to be two bones in fact comprised a single bone. In  
27 addition, gastralia "bones" -- floating, dermal ossifications situated in the ventral  
28 abdominal wall of T-Rex dinosaurs and crocodiles -- by industry consensus had

1 stopped being added to T-Rex bone counts. Once it became clear, by late 2012, that  
2 there were less T-Rex bones in this specimen than had been represented and  
3 anticipated, Mr. Ciotka informed Mr. Vallee of that fact. The parties entered into  
4 negotiations which resulted in a substantially reduced purchase price for the T-Rex  
5 specimen.

6 23. The parties then entered into a new agreement which replaced the  
7 Original Agreement in its entirety, entitled "Agreement for the Purchase of Goods  
8 and Services (the "New Agreement"), dated as of January 22, 2013. In the New  
9 Agreement, Vallee agreed to pay a reduced price of \$5,550,000 for the T-Rex fossil,  
10 which Mr. Ciotka believed at that time consisted of at least 157 bones. A true and  
11 correct copy of the New Agreement is attached as Exhibit B to Plaintiff's  
12 Complaint.

13 (i) **Counterdefendant Vallee Made Misrepresentations, Half-**  
14 **Truths, And Material Omissions In Order To Acquire The**  
15 **T-Rex**

16 24. In order to induce Mr. Ciotka to enter into both the Original  
17 Agreement, in February 2012, and the New Agreement, in January, 2013, Vallee  
18 made the following representations to Mr. Ciotka, in person, by telephone, and/or  
19 (as noted below), in writing:

20 A. That he had the financial ability and wherewithal to fulfill  
21 his financial commitments under both the Original Agreement and the  
22 New Agreement;

23 B. That had the ability and expertise to professionally market  
24 the fossil to a group of high-net-worth clients, in Dubai, UAE, and  
25 elsewhere, but that he would not market the fossil to any museum  
26 representatives without obtaining approval, input, and assistance from  
27 Mr. Ciotka.

28 ///

1 C. That, in his marketing efforts, he would not engage in any  
2 conduct that would detrimentally impact the value, marketability, or  
3 prestige of the T-Rex fossil specimen.

4 25. Indeed, in the New Agreement, which upon its execution expressly  
5 rendered the Old Agreement "null and void" (*see* Complaint Exhibit B, at pg. 19, 5<sup>th</sup>  
6 "WHEREAS"), Counterdefendant Vallee makes the following express, written  
7 covenants:

8 A. That he (the "Purchaser") "has all requisite ability to enter  
9 into this Agreement and to perform [his] obligations under this  
10 Agreement (*id.*, pg. 4, § 3.2(b)); and

11 B. That he "has money or the ability to obtain all monies  
12 required to satisfy all requirements of the Purchase Price and the Mode  
13 of Payment." (*id.*, § 3.2(c).)

14 26. In addition, in Part V of the New Agreement, entitled "MARKETING  
15 OF T-REX BONES," the parties agreed and represented as follows:

16 5.1 Marketing

17 The Seller and Purchaser agree to the following with regards to  
18 marketing and selling of the T-Rex Bones to a Museum:

19 (a) If the Purchaser has received, or receives interest  
20 from any Museum in the T-Rex Bones, or contacts a Museum  
21 which expresses interest in the T-Rex Bones, then the Purchaser  
22 will advise the Seller of such interest and tell the Museum of  
23 Seller's involvement with the T-Rex Bones; and

24 (b) The Seller would provide an expert who could  
25 verify the T-Rex Bones' legitimacy, as well as verify the  
26 Purchaser's right to sell the T-Rex Bones.

27 (*See* New Agreement [Complaint, Exhibit B], pg. 5, § 5.1.)

28 ///

1           27.    These representations were false when made and Counterdefendant  
2 Vallee knew they were false when he made them. Vallee knew (or was reckless in  
3 not knowing), that:

4           A.    He did not have the financial ability to enter into either the  
5 Original Agreement or the New Agreement, and did not have the  
6 ability to perform his obligations under either contract;

7           B.    He lacked both the ability and expertise to professionally  
8 market the T-Rex fossil;

9           C.    He never had any relationship with a group of high-net-  
10 worth clients, in Dubai, UAE, or elsewhere, that had the means and  
11 interest to purchase a museum-quality, multi-million-dollar T-Rex  
12 specimen;

13           D.    He fully intended to market the fossil to museum  
14 representatives, at the Tucson Gem and Mineral Show and elsewhere,  
15 without obtaining approval, input, and assistance from Mr. Ciotka; and

16           E.    He did not care in the least that his inept marketing efforts  
17 would detrimentally impact the value, marketability, or prestige of the  
18 T-Rex fossil specimen.

19           28.    He knew that Mr. Ciotka and Pangea would rely on the  
20 misrepresentations, false promises and material omissions to their detriment and  
21 intended that they would in fact rely on them to their detriment. In particular, under  
22 Section 5.2 of the New Agreement, Mr. Ciotka and Pangea were "prohibited from  
23 contacting any Museum or other potential buyer concerning the T-Rex Bones, or  
24 otherwise marketing the T-Rex Bones without the Purchaser's knowledge and  
25 written consent." (See New Agreement [Complaint Exhibit B] pg. 5, § 5.2.)

26           29.    Vallee failed to make "Payment A" as required under the New  
27 Agreement (for \$2,625,000). When he failed to cure his default, Mr. Ciotka  
28 cancelled the contract as permitted under Section 9.1(b).



1                   **(ii) Counterdefendant Vallee's Misconduct Significantly**  
2                   **Damaged The Marketability And Value Of The T-Rex**  
3                   **Specimen**

4           30. When Mr. Ciotka attempted to market the T-Rex fossil afterwards, he  
5 learned that its value had been substantially diminished, by several million dollars,  
6 due to Vallee's ineptitude, false promises, and contractual breaches in his ham-  
7 handed attempts to publicize and market the specimen for \$10 million using  
8 unprofessional, rankly amateurish sales materials. In violation of his written  
9 promises and representations, it turned out that Vallee had tried to sell the fossil,  
10 using his "carnival barker" sales techniques, to actual and potential museum clients  
11 of Mr. Ciotka and Pangea at the Tucson Gem and Mineral Show, sponsored by the  
12 Tucson Gem and Mineral Society (<http://www.tgms.org>). By way of example,  
13 without limitation, Counterdefendant Vallee solicited the sale of the T-Rex to  
14 Michael Fleeman, Founder and Director of the LGF Museum of Natural History and  
15 the LDG Foundation, Inc., an Arizona natural history museum and supporting  
16 foundation which actively research, accumulate, assemble, preserve, and display  
17 dinosaur fossils and other artifacts for the benefit of science and the education of the  
18 general public. Counterdefendant Vallee's hawking of the T-Rex for \$10 million  
19 using unprofessional and cheaply-assembled sales materials put a substantial "taint"  
20 on the specimen among the many museum representatives who might otherwise  
21 have been interested in purchasing the specimen for "top dollar." The taint on the T-  
22 Rex specimen caused by Vallee's contractual breaches and fraud only recently has  
23 been washed away by the success of its placement in the Berlin Natural History  
24 Museum, on loan from the private purchaser to whom Mr. Ciotka sold it for a "fire  
25 sale" price due to Vallee's misconduct.

26                   **(iii) Counterdefendant Vallee's Accusations Are Easily Refuted**

27           31. While Vallee accuses Mr. Ciotka of not permitted him to view the T-  
28 Rex specimen, that is demonstrably false. Inserted below is a picture of



1 Counterdefendant Vallee holding the T-Rex's lower jaw of the "Prehistoric  
2 Journeys" work studio of paleontologist Barry James on May 5, 2012:



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12 32. Vallee similarly falsely accuses Mr. Ciotka of falsely claiming that the  
13 T-Rex specimen contained at least 157 bones when in fact Mr. Ciotka supposedly  
14 knew, through the retention of a paleontological expert, that only 108 bones existed.  
15 (See Complaint, pg. 6, ¶¶ 27-28.) The scientists at the Berlin Natural History  
16 Museum, as well as paleontologist Barry James (M.S., vertebrate paleontology)  
17 have confirmed that the T-Rex specimen, "Tristan," in fact has 170 bones and is the  
18 third most complete T-Rex skeleton ever found, and it has the most complete T-Rex  
19 skull ever found, anywhere in the world;

20 Tyrannosaurus rex is the superstar among dinosaurs. Between 1902  
21 and today, around 50 specimens have been discovered in North  
22 America, none of them complete. The Museum für Naturkunde now  
23 exhibits one of the best-preserved skeletons worldwide. Of  
24 approximately 300 bones, 170 have been preserved, which puts it in  
25 third position.

26 (See [https://www.naturkundemuseum.berlin/en/museum/exhibitions/tristan-berlin-](https://www.naturkundemuseum.berlin/en/museum/exhibitions/tristan-berlin-bares-teeth)  
27 [bares-teeth.](https://www.naturkundemuseum.berlin/en/museum/exhibitions/tristan-berlin-bares-teeth))

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1           33.     Moreover, Tristan's bones have been extensively analyzed by Dr. Philip  
2 John Currie, PhD, LLD (Hon), the world-famous Canadian paleontologist and  
3 museum curator who helped found the Royal Tyrrell Museum of Paleontology in  
4 Drumheller, Alberta, and who is now Professor of Paleontology at the University of  
5 Alberta in Edmonton. Dr. Currie is one of the models for paleontologist Alan Grant  
6 in the film Jurassic Park. (See [https://en.wikipedia.org/wiki/Philip\\_J.\\_Currie](https://en.wikipedia.org/wiki/Philip_J._Currie).) Dr.  
7 Currie is one of the world's foremost experts, if not the foremost experts on  
8 fossilized tetrapods (extinct, four-legged vertebrates), especially T-Rex specimens.  
9 If any esteemed paleontologist in the world has a more wary eye out for "Piltdown"  
10 composite fossil specimens, it is Dr. Currie. He early on noted discrepancies in the  
11 Archaeoraptor fossil showcased in the National Geographic brouhaha, and later  
12 confirmed his initial suspicions that the "Piltdown Bird" actually was a Frankenstein  
13 composite fossil. Here, Dr. Currie has written a report on Tristan, and has never  
14 raised any doubt about the authenticity of the 170 bones being from a single  
15 specimen.

16           34.     Similarly, world-famous dinosaur expert, Peter Larson, also carefully  
17 examined and reported on Tristan's 170 bones. In 1990, Larson led the excavation  
18 of the Tyrannosaurus rex skeleton later named "Sue." Larson has written and co-  
19 authored numerous publications on dinosaurs, has excavated more T. Rex skeletons  
20 than any other paleontologist,[4] and his organization's work on excavation and  
21 preparation of fossils has been recognized by paleontologists Robert Bakker, Philip  
22 Currie, Phillip Manning, and Jack Horner for its quality. (See  
23 [https://en.wikipedia.org/wiki/Peter\\_Larson](https://en.wikipedia.org/wiki/Peter_Larson).) Mr. Larson also has written a report on  
24 Tristan, and has never raised any doubt about the authenticity of the 170 bones  
25 being from a single specimen.

26           35.     The paleontological team from the Berlin Natural History Museum  
27 (Museum für Naturkunde) recently visited the excavation site where Tristan was  
28



1           39. The representations and half-truths (and correlative material  
2 nondisclosures) specified in paragraphs 24 through 26 of this Counterclaim were  
3 false when made, and Vallee knew them to be false or was reckless in not knowing  
4 that they were false.

5           40. Counterdefendant Vallee intended that Mr. Ciotka and Pangea rely on  
6 his representations and half-truths (and correlative material nondisclosures),  
7 specified above, in entering into the Original Agreement and New Agreement, and  
8 in foreclosing their ability to market and sell the T-Rex specimen effectively and  
9 profitably to truly qualified purchasers, for approximately 2 years, at a critical time  
10 in the international dinosaur fossil market.

11           41. The true state of facts about Vallee's acts and omissions, which violated  
12 his duty of care owed to Counterclaimants, were unknown and unavailable to  
13 Counterclaimants through the exercise of reasonable diligence. Counterclaimants'  
14 actual, demonstrable reliance on Vallee's material misrepresentations, half-truths  
15 and omissions was reasonable and justified under the circumstances.

16           42. Counterclaimants did not know, nor should they have known, of  
17 Vallee's misconduct prior to three years before this Counterclaim was filed.  
18 Counterclaims did not know the true facts regarding Vallee's misconduct and its  
19 detrimental impact on the value of the T-Rex specimen until late 2014, when  
20 negotiating the sale of the T-Rex specimen to a private collector. Discovery of the  
21 true facts was delayed due to Vallee's active concealment of his lack of financial  
22 resources and client contacts, his lack of expertise and experience in marketing and  
23 selling high-end, museum-quality vertebrate fossils, and his inept marketing and  
24 sales efforts to museum representatives and private fossil collectors.

25           43. Counterclaimant Ciotka (and by extension, Pangea) were harmed as a  
26 direct and proximate result of his reliance on the false representations and half-truths  
27 (and correlative material nondisclosures), specified above, in an amount exceeding  
28 \$2 million.







1 true facts was delayed due to Vallee's active concealment of his lack of financial  
2 resources and client contacts, his lack of expertise and experience in marketing and  
3 selling high-end, museum-quality vertebrate fossils, and his inept marketing and  
4 sales efforts to museum representatives and private fossil collectors.

5 50. Counterdefendant Vallee intended that Mr. Ciotka and Pangea rely on  
6 his representations and half-truths (and correlative material nondisclosures),  
7 specified above, in entering into the Original Agreement and New Agreement, and  
8 in foreclosing their ability to market and sell the T-Rex specimen effectively and  
9 profitably to truly qualified purchasers, for approximately 2 years, at a critical time  
10 in the international dinosaur fossil market.

11 51. Counterclaimant Ciotka (and by extension, Pangea) were harmed as a  
12 direct and proximate result of his reliance on the false representations and half-truths  
13 (and correlative material nondisclosures), specified above, in an amount exceeding  
14 \$2 million.

15 **COUNT THREE**

16 **(Breach of Written Contract)**

17 52. Counterclaimants incorporate by this reference paragraphs 1 through 36  
18 of this Counterclaim as though fully set forth herein.

19 53. In the January 22, 2013 New Agreement, Counterdefendant Vallee  
20 makes the following express, written covenants:

21 A. That he (the "Purchaser") "has all requisite ability to enter  
22 into this Agreement and to perform [his]<sup>1</sup> obligations under this  
23 Agreement (*id.*, pg. 4, § 3.2(b)); and

24 B. That he "has money or the ability to obtain all monies

25 \_\_\_\_\_  
26 <sup>1</sup> Section 3.2(b) uses the word "Seller's" before the word "obligations," but that  
27 clearly is a typographical error, because it is a nonsequitur for the purchaser to  
28 covenant to fulfill the seller's contractual obligations. It makes no sense for Vallee  
to covenant to fulfill Mr. Ciotka's obligations to Vallee.



1 required to satisfy all requirements of the Purchase Price and the Mode  
2 of Payment."

3 (*See* New Agreement [Complaint, Exhibit B], pg. 4, § 3.2(c).)

4 54. In addition, in Part V of the New Agreement, entitled "MARKETING  
5 OF T-REX BONES," the parties agreed and represented as follows:

6 5.1 Marketing

7 The Seller and Purchaser agree to the following with regards to  
8 marketing and selling of the T-Rex Bones to a Museum:

9 (a) If the Purchaser has received, or receives interest  
10 from any Museum in the T-Rex Bones, or contacts a Museum  
11 which expresses interest in the T-Rex Bones, then the Purchaser  
12 will advise the Seller of such interest and tell the Museum of  
13 Seller's involvement with the T-Rex Bones; and

14 (b) The Seller would provide an expert who could  
15 verify the T-Rex Bones' legitimacy, as well as verify the  
16 Purchaser's right to sell the T-Rex Bones.

17 (*See* New Agreement [Complaint, Exhibit B], pg. 5, § 5.1.)

18 55. Counterclaimant Vallee breached Sections 3.2(b), 3.2(c), and 5.1 of the  
19 New Agreement in the following respects:

20 A. Vallee did not have the financial ability to enter into either  
21 the Original Agreement or the New Agreement, and did not have the  
22 ability to perform his obligations under either contract;

23 B. He lacked both the ability and expertise to professionally  
24 market the T-Rex fossil;

25 C. He never had any relationship with a group of high-net-  
26 worth clients, in Dubai, UAE, or elsewhere, that had the means and  
27 interest to purchase a museum-quality, multi-million-dollar T-Rex  
28 specimen;



1 D. He fully intended to market the fossil to museum  
2 representatives, at the Tucson Gem and Mineral Show and elsewhere,  
3 without obtaining approval, input, and assistance from Mr. Ciotka; and

4 E. He did not care in the least that his inept marketing efforts  
5 would detrimentally impact the value, marketability, or prestige of the  
6 T-Rex fossil specimen.

7 56. Counterclaimants did all, or substantially all, of the significant things  
8 that the New Agreement required of them. Because of Vallee's misconduct,  
9 Counterclaimants were excused from having to return the \$200,000 deposit to  
10 Vallee, under Section 9.1(a) of the New Agreement (Complaint, Exhibit B, pg. 8, §  
11 9.1(a) ("If the Purchaser fails to satisfy Payment A, then the Seller agrees to refund  
12 the Deposit to the Purchaser"). That Mr. Ciotka and Pangea did not provide a cast  
13 of the T-Rex skull or line drawings to Vallee under the Old Agreement was waived  
14 and excused by Vallee when he entered into the New Agreement, which did not  
15 contain those requirements.

16 57. Counterclaimants did not know, nor should they have known, of  
17 Vallee's misconduct prior to four years before this Counterclaim was filed.  
18 Counterclaimants did not know the true facts regarding Vallee's misconduct and its  
19 detrimental impact on the value of the T-Rex specimen until late 2014, when  
20 negotiating the sale of the T-Rex specimen to a private collector. Discovery of the  
21 true facts was delayed due to Vallee's active concealment of his lack of financial  
22 resources and client contacts, his lack of expertise and experience in marketing and  
23 selling high-end, museum-quality vertebrate fossils, and his inept marketing and  
24 sales efforts to museum representatives and private fossil collectors.

25 58. As a direct and proximate result of Vallee's breaches of Sections 3.2(b),  
26 3.2(c), and 5.1 of the New Agreement, Counterclaimant Ciotka and Pangea have  
27 suffered damages in an amount exceeding \$2 million.

28

**PRAYER FOR RELIEF**

WHEREFORE, Counterclaimants pray for the following relief:

**1. On Count One:**

a. For a judgment that Plaintiff Vallee take nothing by his Complaint;

b. For an award of compensation (whether by way of general and special damages) in the sum of at least \$2,000,000;

c. For punitive damages in such amounts as may be permitted by law;

d. For costs of suit incurred herein; and

e. For such other and further relief as this Court may deem proper.

**2. On Count Two:**

a. For a judgment that Plaintiff Vallee take nothing by his Complaint;

b. For an award of compensation (whether by way of general and special damages) in the sum of at least \$2,000,000;

c. For costs of suit incurred herein; and

d. For such other and further relief as this Court may deem proper.

**3. On Count Three:**

a. For a judgment that Plaintiff Vallee take nothing by his Complaint;

b. For an award of compensation (whether by way of general and special damages) in the sum of at least \$2,000,000;

c. For costs of suit incurred herein; and

d. For such other and further relief as this Court may deem proper.



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