

20CV0489

B. CHAN CAUDELL
REG-18, 2020 09:07 AM

**IN THE SUPERIOR COURT OF HABERSHAM COUNTY
STATE OF GEORGIA**



David Wall, Clerk
Habersham County, Georgia

PIEDMONT COLLEGE,)
)
Plaintiff,)
)
v.)
)
CITY OF DEMOREST, GEORGIA;)
RICK AUSTIN, individually and in his)
official capacity as Mayor of the City of)
Demorest, Georgia; SEAN MOORE,)
individually and in his official capacity)
as Councilman of the City of Demorest,)
Georgia; JOHN POPHAM, individually)
and in his capacity as a former Councilman)
of the City of Demorest, Georgia;)
BRUCE HARKNESS, individually and in)
his capacity as a former Councilman of)
the City of Demorest, Georgia; FLORENCE)
WIKLE, individually and in)
her capacity as a former Councilwoman of)
the City of Demorest, Georgia;)
JOEY HOMANS, individually and in)
his official capacity as City Attorney)
of the City of Demorest, Georgia; and,)
ROBIN KROCKUM, individually and)
in his official capacity as Chief of Police)
of the City of Demorest, Georgia,)
)
Defendants.)

CIVIL ACTION FILE
NO. 20CV0489

**PLAINTIFF’S FIRST AMENDED COMPLAINT FOR EQUITABLE RELIEF, DAMAGES,
DECLARATORY JUDGMENT, AND WRIT OF QUO WARRANTO**

COMES NOW PIEDMONT COLLEGE (“Piedmont” or the “College”), Plaintiff in the
above styled civil action, and makes this its First Amended Complaint for Equitable Relief,
Damages, Declaratory Judgment, and Writ of Quo Warranto against the City of Demorest and

the above-named City Officials (collectively the “Defendants”) pursuant to Rule 15 of the Civil Practice Act, O.C.G.A. §9-11-15, and shows this Honorable Court as follows:

PRELIMINARY STATEMENT

1.

This action is brought by Piedmont College against the Defendants for their knowing and intentional violation of the College’s constitutionally and statutorily protected rights, causing the College damage and entitling it to equitable, monetary, and declaratory relief, and to the extraordinary writ of Quo Warranto against certain Defendants both individually and in their official capacities. The College hereby amends its Complaint by removing Count VII, Petition for a Writ of Quo Warranto, renumbering the remaining Counts, and submitting contemporaneously herewith an Application for Leave of Court to File an Information in the Nature of Quo Warranto.

2.

Defendants conspired together to override the College’s federally recognized tax-exempt status through an irrational hike in water and sewage fees targeted solely at the College beginning in 2019. Such a targeted scheme to punish a citizen for exercising a protected right is expressly prohibited by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and these Defendants were aware, or should have been aware, their action was illegal at the time they took it. The Mayor and members of the City Council are personally liable to the College for damages it sustains as the result of any official act of such officers done without authority of law and are not entitled to immunity.

3.

Since Defendants effectuated their scheme to hike water and sewage fees applicable to the College, the City has billed the College fraudulently, even in excess of the illegally adopted water and sewer rates, by intentionally over-billing the College, by charging the College for phantom, non-existent meters, by charging the College incorrect fees, and by charging the College based on erroneous categorization of properties. Once the College discovered the over-billing it notified the City, but the City has refused to enter into discussions with the College or to take action to correct the over-billing. It is a crime in Georgia for a municipal officer willfully and knowingly to demand more cost than he or she is entitled to by law in the administration and under color of his or her office.

4.

These Defendants effectuated their scheme against the College by sending illegal and fraudulent water and sewer bills through means of wire and the United States Postal Service, constituting wire fraud and mail fraud.

5.

Defendants extorted and attempted to extort money and property from the College by public action on several separate occasions, resulting in loss of College property and significant monetary damage. By way of example, Defendants unlawfully pressured Piedmont through the Mayor and City Attorney into forfeiting money and real property for construction on Massachusetts Boulevard, a public road abutting the campus, by threatening a public works project. The detrimental proposal would undermine the value of a \$10 million construction project by Piedmont previously authorized by the City. Defendants also threatened Piedmont with a stop work order related to the same construction project until the College agreed to pay

for more maintenance, beyond the scope of prior agreements. Defendants attempted to extort the College when the City directed its Chief of Police to harass Piedmont College police officers, threatening arrest for falsely impersonating a police officer. This harassment was an effort by the Defendants based on a false claim to force the College to hire city police officers in place of its own, violating Georgia law and depriving Piedmont of all related revenue.

6.

The actions of the Defendants constitute a violation of the civil provisions of the Georgia Racketeer Influenced and Corrupt Organizations (RICO) Act, and Conspiracy to Commit RICO, O.C.G.A §16-14-1, *et seq.*, subjecting them to triple damages and attorneys' fees. Defendants conducted City business as a criminal enterprise through a pattern of racketeering activities consisting of schemes or transactions to defraud Piedmont College or to extort money from Piedmont College on behalf of the City by which they also personally benefited through employment and professional and other fees.

7.

Mayor Austin is an employee of the College and has publicly expressed his personal enmity toward the College and its Officers for terminating the employment of a personal friend as well as for disciplining his son for repeated violations of College rules and destruction of College property. Mayor Austin took a direct and leading role in all of the previously-related actions against the College to avenge these perceived slights. By using his City position to take punitive actions against the College for personal reasons instead of recusing himself and abstaining from such actions, Mayor Austin is in violation of the conflict of interest provisions of the City Charter and of his employment contract with the College. Accordingly, a writ of Quo Warranto, Count VII, lies against Mayor Austin to remove him from office in accordance with

the City Charter. A Declaratory Judgment, Count VIII, should be issued in accordance with College policy determining his actions are seriously detrimental to the College warranting termination of his contract. Defendant Demorest is liable and not immune from suit for its actions in Count I, while Defendants Austin, Moore, Wikle, Harkness, Popham, Homans, and Krockum are liable individually and without immunity for their actions in Counts II-VI. The United States Supreme Court ruled that a municipality can be held liable for an action for deprivation of equal protection via 42 U.S.C. §1983. *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) (per curiam). Title 36 of the Georgia Code protects public officers by qualified immunity of all discretionary acts, save for enumerated exceptions. Here, the individual Defendants are liable personally for Counts II-VI under the O.C.G.A. §36-33-4 exception for malicious, fraudulent and corrupt, or oppressive actions and without authority of law. All Defendants are liable for fees pursuant to Count IX. Defendants hold no immunity against suit.

8.

In this action the College seeks an injunction and an award of damages against the City of Demorest for the past and continued violation of its Constitutional rights. The College seeks damages pursuant to State law claims of fraud, extortion, civil RICO and conspiracy, and other violations of State law. Piedmont seeks a Writ of Quo Warranto removing Mayor Austin from office for violation of the Demorest City Charter prohibition against conflicts of interest. Finally, Piedmont seeks a declaratory judgment by the Court that the actions of Rick Austin entitle the College to terminate his employment contract as a tenured member of the faculty.

PARTIES

9.

Piedmont College is a non-profit corporation organized pursuant to the laws of the State of Georgia and recognized as a tax-exempt entity pursuant to Internal Revenue Code Section 501(c)(3). The principal place of business of the College is 165 Central Avenue, Demorest, Habersham County, Georgia. 30535.

10.

Defendant City of Demorest, Georgia (the “City”), is a municipal corporation organized pursuant to the laws of the State of Georgia. The City may be served with process through service on the City Clerk at the principal place of business of the City, City Hall, 546 Georgia Street, Demorest, Habersham County, Georgia 30535.

11.

Defendant Rick Austin (“Austin”) is a resident of Habersham County and is sued in his individual capacity and in his official capacity as Mayor of the City of Demorest, Georgia. Austin may be served with process at his place of business, City Hall, 546 Georgia Street, Demorest, Habersham County, Georgia 30535.

12.

Defendant Sean Moore (“Moore”) is a resident of Habersham County and is sued in his individual capacity and in his official capacity as Councilman of the City of Demorest, Georgia. Moore may be served with process at his place of business, City Hall, 546 Georgia Street, Demorest, Habersham County, Georgia 30535.

13.

Defendant Florence Wikle (“Wikle”) is a resident of Habersham County and is sued in her individual capacity and in her capacity as a former Councilwoman of the City of Demorest, Georgia. At all times relevant hereto Wikle was a member of the City Council. Wikle may be served with process at her residence, 151 Ivy Street, Demorest, Habersham County, Georgia 30535.

14.

Defendant Bruce Harkness (“Harkness”) is a resident of Habersham County and is sued in his individual capacity and in his capacity as a former Councilman of the City of Demorest, Georgia. At all times relevant hereto Harkness was a member of the City Council. Harkness may be served with process at his residence, 700 Central Avenue, Demorest, Habersham County, Georgia 30535.

15.

Defendant John Popham (“Popham”) is a resident of Habersham County and is sued in his individual capacity and in his capacity as a former Councilman of the City of Demorest, Georgia. At all times relevant hereto Popham was a member of the City Council. Popham may be served with process at his residence, 157 Ivy Street, Demorest, Habersham County, Georgia 30535.

16.

Defendant Joey Homans (“Homans”) is a resident of Dawson County and is sued in his individual capacity and in his official capacity as City Attorney of the City of Demorest, Georgia. Homans may be served with process at his place of business, 272 Highway 9 South, Dawsonville, Dawson County, Georgia 30534.

17.

Defendant Robin Krockum (“Krockum”) is a resident of Habersham County and is sued in his individual capacity and in his official capacity as Chief of Police of the City of Demorest, Georgia. Krockum may be served with process at his place of business, 465 Georgia Street, Demorest, Habersham County, Georgia 30535.

JURISDICTION AND VENUE

18.

The Superior Court of Habersham County has exclusive jurisdiction in this case in that it is a case involving equity. Constitution of the State of Georgia of 1983, Article VI, Section IV, Paragraph I.

19.

Venue is proper in the Superior Court of Habersham County in that it is a case involving equity and it is brought in the county where a defendant resides against whom substantial relief is prayed. Constitution of the State of Georgia of 1983, Article VI, Section II, Paragraph III.

FACTS ENTITLING PLAINTIFF TO RELIEF

A. THE WATER AND SEWER RATE SCHEME

20.

In addition to Austin’s personal bias against Piedmont related above, the Defendants’ efforts against the College were motivated to alleviate the City’s horrendous financial mismanagement. Water and sewage revenue is the City’s single largest source of income and is used to fund the vast majority of its public works operations, public safety, and general funds

required to run the municipality. When introducing the water rate increase, Austin noted that for each tax-paying parcel in the city, only \$196.00 on average is collected, but \$1,994.00 spent, per parcel. The City relies on its water revenue to make up the difference, but in recent years it has suffered drastic hits to this revenue stream. From 2009 to 2013, the City “misplaced” \$600,000.00 of funds from water and sewage revenue.

21.

At least since 2017 the City has failed to generate adequate property tax revenue. Austin attributed this failure to the College’s tax exempt status. During a public hearing in February 2017, Austin attacked the College for its status, falsely stating it paid no city taxes: “It’s no surprise that Piedmont College is very important to the city of Demorest, but Piedmont College is also the largest landowner in the city of Demorest and they pay no city taxes, and yet receive much city benefits.” Notwithstanding the failure of the City to generate adequate property tax revenue, the Mayor and City Council lowered the millage rate at least twice since 2017, purely for political reasons, without regard to the fiscal impact of such actions.

22.

As a result of the City’s poor financial practices Moody’s Investors Services downgraded the Demorest Water and Sewer Bond to Baa3, close to “junk bond” status, seriously damaging the City’s ability to finance water and sewer projects and increasing the cost of borrowing money. The City Treasurer informed the Mayor of the downgraded bond rating in a private meeting and the Mayor would not allow this information to be shared publicly by the City’s professional staff.

23.

The Mayor expressed enmity toward the College privately and publicly. The Mayor stated his intent to find ways to make Piedmont College pay more to the City, and prior to increasing the water and sewer rates he explored, unsuccessfully, several alternate ways to do so, including business and occupational taxes, impact fees, bond performance fees, and permit fees. After one unsuccessful attempt in 2016, the Mayor publicly stated his intent to continue to look to ways to make the College pay more to the City.

24.

At a City Council meeting on March 7, 2017, the Mayor proposed a resolution to seek an audience with the Piedmont College Board of Trustees purportedly to improve relations between the City and the College. The resolution was adopted by the Mayor and all members of the City Council. Despite the stated intent to improve relations with the College, the resolution falsely accuses the College of paying no taxes and making no monetary contributions to offset expenses borne by the City. The primary reason for the City to request a meeting with the Board of Trustees was to seek the College's agreement to pay the City additional impact fees even though the College owed no such fees. The Board of Trustees declined the requested meeting.

25.

Contrary to the statement in the resolution that the College pays no taxes and makes no monetary contributions to offset expenses borne by the City, in 2016, the last full year immediately before the March 7, 2017, resolution, the College paid the following sums to the City:

Water and sewer service charges:	\$179,874.56
Student Commons tap and impact fees:	\$54,000.00

Piedmont Village charges, tap, and fees: \$217,081.28

For the few projects the City did for the College, the College routinely paid for supplies, while City employees, who were already being paid to perform these services, provided the manpower.

26.

In the fall of 2018, the City Manager was charged by the Mayor and City Council to develop alternate revenue calculations based upon different hypothetical water and sewer rates for use in the budget for 2019. The City Manager developed these calculations based upon several different overall percentage rate increases. These were calculations based upon different assumptions and none constituted a recommendation for a rate increase.

27.

There were many meetings with the City staff at which the Mayor stated his intent to create a category of water and sewer users that would apply only to Piedmont College so that the City could charge it higher rates. There was a meeting with the Mayor, City Council, the City Attorney and others at which the separate category for the College was discussed. The City Attorney cautioned the Mayor not to create a category of water and sewer users that would contain only Piedmont College. The City Attorney opined that such an action would be legally impermissible. The Mayor ignored this advice.

28.

In the winter of 2018, the Mayor contacted the City Engineer and sought his support to justify a new category of water and sewer users that would apply only to Piedmont College. It was the Mayor's intent to separate the College so that the water and sewer rates could be raised on the College without affecting other users. The Mayor informed the City Engineer that the College put an inordinate burden on the City water and sewer infrastructure. The Mayor

requested a letter from the City Engineer to support the Mayor's position. The City Engineer provided this letter, dated December 17, 2018, to the Mayor and City Council. The Mayor referred to this letter in the City Council meeting on December 18, 2018, to justify the separate water and sewer category for Piedmont College. The information provided to the City Engineer by the Mayor was subsequently contained in the City engineer's letter and used to justify a separate, higher, rate for the College is false. On information and belief, the City Engineer made no independent investigation of the facts stated in his letter.

29.

The City Engineer bases his letter in part on the statement that "the college has numerous meters and fire hydrants which need to be read and maintained by the City . . ." The fact that the college has multiple meters is not justification for increased rates. The meter fee on the College campus doesn't have any other cost than any other meter at any business or residence in all of Habersham County. Each meter is subject to its own individual rate which the College pays per meter. There is no justification to support the claim that multiple meters cost the City more money. The same conclusion is true for the multiple fire hydrants that the City maintains. Each hydrant is paid for in the base rates and usage charges.

30.

The City Engineer also bases his letter in part on the statement that the College has a "number of buildings which have sprinkler systems designed to provide better fire protection." The sprinkler systems in buildings are not an additional cost for the City. The risers and sprinkler systems in each building are maintained by the College. All the sprinklers are on the other side of the meters, and the City's responsibility stops at the meter.

31.

The City Engineer also bases his letter in part on the statement that “the City has to maintain many lines throughout the college campus.” As stated above, The City's responsibility stops at the meters and therefore has no responsibility to maintain any of the college's water or sewer lines. For water and sewer lines supplying the College, the City maintenance cost is paid with the multiple base rates and usage charges which the College pays as any other user.

32.

Independent of the City Engineer's purported justification for the rate hike, at the public hearing Austin provided his own justification for the new rates structure. First, Austin stated that the increase is necessary to offset the increased costs imposed on the City in terms of manpower and material costs. Austin also stated that the new structure is necessary to align Demorest fees with those of surrounding cities. Both of these asserted justifications are false.

33.

The Mayor's purported cost justifications are simply inapplicable to Piedmont. Piedmont pays for material costs for projects on its campus, while the City provides the manpower. Moreover, the City has a separate rate structure for connection fees and costs of new meters already imposed on the customer prior to 2019. As for the manpower cost justification, the Mayor's basis is also inapplicable to Piedmont. Austin stated in the December 18 meeting that “90-95 percent” of the City's maintenance crew's water and sewer work is from *outside* the City. For the burden Piedmont actually imposes on the City's crews it pays its fair share which was appropriately accounted for by the costs and fees prior to the hike.

34.

Another stated purpose for the rise in rates is to better align Demorest with other similarly situated cities in the area, which is also unsupported by the facts. In the December 11 proposal, the City includes six other cities' water and sewage rates for comparison. Of the six, only one other city, Cornelia, even makes the distinction between institutions and commercial entities but does not distinguish between public and private. Cornelia's base rate for institutional inside the city is \$16.14 per gallon, while Demorest's is \$30.00.

35.

The City Manager was on from leave from the City for six weeks during December 2018 and January 2019. During this time the City Treasurer, provided information and financial support for the City. The Mayor and City Council provided the City Manager information on the 2019 budget as adopted and the new water and sewer rate structure.

36.

The City held hearings on the adoption of a new water and sewer rate structure on December 11, and December 18, 2018. These hearings were recorded.

37.

On December 18, 2018, the City adopted new water and sewer rates effective January 1, 2019. The rate structure separates the "Institutional" category into two sub-categories, "Institutional Private" and "Institutional Public." Both of these categories are further divided into "Inside the City" and "Outside the City." For the category "Institutional Private Inside the City" there is only one entity: Piedmont College.

38.

Once the City passed the new categorization, it then instituted discriminatory water and sewage fees on Piedmont. For water consumption at the base rate Piedmont College was increased 50% and consumption rates from 2,000 gallons to 100,000 gallons per month were increased 25% across the board. By comparison, Commercial and Institutional Public, inside and outside the City, and residential outside, were given only a 4% increase on all fees including base, while residential inside was given no raise. As for sewage rates, Piedmont was the only entity to receive a raised rate, all others remained the same but for “Commercial Inside” which rate *decreased*. Austin stated that the reason residential rates remained the same and for the discrepancy between public and private institutions, was that these groups already “pay taxes” and do not deserve an increase.

39.

In the discussion of the rate increases and the approval by the Mayor and City Council in the meeting on December 18, 2018, Piedmont College is identified as the only entity in the Institutional Private Inside the City category. In the meeting the Mayor repeatedly states that the City Manager recommended an across the board increase of water rates of 4%. There is no truth in this statement. The minutes also reflect that the increases were “based on the recommendation of the City Manager.” There is no truth in this statement. Upon reading the minutes the City Manager sent a text message to the Mayor requesting that the minutes be corrected. The Mayor declined to correct the minutes.

40.

In the meeting on December 18, 2018, the Mayor and City Council approved the water rate for Institutional Private Inside the City for above 100,000 gallons per month in the amount

of \$7.00 per 1,000 gallons. The minutes of the meeting show approval of the rate of \$7.00 per 1,000 gallons. However, the ordinance adopting the increased water rates, signed by the Mayor, imposes a rate of \$8.75 per 1,000 gallons. Piedmont College has informed the City of Demorest that it is imposing an unapproved and illegal water rate on the College, but the City has taken no action to correct the illegal rate.

41.

Piedmont College experienced an overall increase in water and sewer expenses from the City of Demorest in the amount of \$73,960.42 from January 2019 through September 2020. Of this amount only \$52,854.43 can be accounted for in increased rates; \$21,105.99 of the increase constitutes overcharges for phantom, non-existent meters, incorrect fees, bogus charges, and erroneous categorization of properties which the City has failed and refused to correct. The Mayor and City Council are guilty of demanding and receiving, by illegal overcharges levied against the College, greater costs and fees allowed by law, in violation of O.C.G.A. §45-11-4 and -5. The penalty thereof is a misdemeanor and removal from office. Piedmont College expects discovery to reveal additional improper water and sewer charges.

B. ACTS OF EXTORTION AND ATTEMPTED EXTORTION

1. MASSACHUSETTS BOULEVARD

42.

In October 2018, Piedmont began construction on a \$10 million Music Conservatory along Massachusetts Boulevard, a public road abutting the College. Construction drawings were approved by the City's Building Inspector. Those plans included new handicap parking along the Boulevard and handicapped access to the building. The City agreed to close the Boulevard to

public traffic during the construction period and Piedmont agreed to pay \$60,000.00 to City to repave the Boulevard at the project's conclusion.

43.

In June of 2019, well into the construction of the conservatory and once the College was fully and irrevocably committed to the project, the Mayor and City Council proposed the idea at public hearing to close the Boulevard permanently in favor of expanding an adjacent park. The College was never consulted. The College had relied upon the City's approval of its plans to keep Massachusetts Boulevard open in order to undertake the \$10 million Music Conservatory project.

44.

The park proposal posed a tremendous detriment to the College and to the citizens of the City. There was disruption caused to a multi-million dollar construction project. Moreover, each year, the College hosts approximately 40 concerts and recitals free to the community. These events provide public access to high-quality music and arts, while giving exposure to Piedmont's music program. Piedmont relies on such exposure to maintain its program's national acclaim and to draw top students from around the Southeast. Without the Boulevard, the City could cut off public access to Piedmont's multi-million dollar project. The College also relies on the Boulevard for all handicap parking for abutting buildings.

45.

Following multiple public hearings in which Demorest citizens voiced their disapproval of a potential road closure, Austin attempted to pressure the College by garnering public support in favor of the park plan through an unfounded Facebook post on his private page. Austin claimed that persons opposed to expanding the park – that is, the College – blamed gang activity

and decreased safety from the citizens of Demorest – rather than detriments to the College and public. Austin’s statement is false.

46.

On July 18, 2019, the City and College reached an agreement to keep Massachusetts Boulevard open after increasing pressure on the College by City officials to capitulate. The agreement, drafted by City Attorney Homans, provided that the College would pay the entire repaving bill of \$132,000; the City would take 0.2 acres of private property from the College for park expansion; and the City would use Piedmont’s parking spots during public events. It constitutes the crime of extortion when a person unlawfully obtains property of or from another person by threatening to take or withhold action as a public official or cause an official to take or withhold action. These officials committed extortion by acquiring property of the College through unlawfully threatening the closure of Massachusetts Boulevard.

47.

Even after reaching agreement with the College, Defendants issued a stop work order to the College’s contractor, Thomason Construction, Inc., on August 5, citing drainage issues and damaged sod in the city park. The park in question, Demorest Springs Park, was aptly named for its artesian wells around the turn of the 20th Century. The Order required Piedmont to submit a hydrology report and plan to combat the drainage issues before work could continue. The College responded that the water issues cited in the Order long predated the construction project, and yet again agreed to incur expenses of the City to keep its construction project going.

48.

Austin voiced his displeasure with continuing construction stating that the public should bear no cost, despite the College shouldering the entire cost of construction on the public street

up to that point. Within a month of the stop work order, the City and Piedmont reached a new agreement to split the cost caused by the drainage issues, resulting in an additional \$19,500+ forfeiture by the College.

49.

After the second agreement, the City further pressed the College for more funds. Some of the additional costs included relocating a portion of the City's sewer line, replacing retaining walls along the Boulevard's sidewalk deemed by a civil engineer as unsafe, replacement of all sidewalks, steps, handrails, and lighting along the Boulevard, and construction of a handicapped ramp to enter the park. It is common practice for the City to handle such projects with SPLOST funds, rather than impose these costs on its citizens. Nonetheless, Piedmont was forced to foot the bill or be subject to "appropriate enforcement measures," according to a strongly worded letter by the City Attorney. The final cost to the College approached \$250,000, nearly \$200,000 greater than the initial agreement with the City.

2. PIEDMONT COLLEGE POLICE DEPARTMENT

50.

Beginning in 2018, Demorest Chief of Police Robin Krockum harassed and threatened Piedmont College police officers under the direction of Defendants. Defendants asserted that the College's officers did not have authority to act, and Krockum's instructions to the City officers were to confront the College officers on this claim. Krockum threatened that non-compliant College officers would be arrested for impersonating a police officer.

51.

The City's threat was an effort to force Piedmont to disband its campus police force in favor of contracting with Demorest Police for its security needs, a fact made known to Piedmont

Vice President Tom Estes. On information and belief, at the time the City enjoyed a similar private security agreement with the local hospital that generated over \$100,000 per year to the City. Defendants' harassment of the College and its officers was an attempt to obtain property rights of the College in the form of tickets, fines, and contractual fees without authority of law.

52.

Krockum and the City abandoned its harassment of Piedmont officers following confirmation from the Georgia Bureau of Investigation that the College was duly authorized to operate a campus police department. Krockum committed attempted extortion by threatening illegal action against the College police officers to force the College to enter into a private security agreement against State law. O.C.G.A. §16-10-3.

C. AUSTIN'S CONFLICTS OF INTEREST

53.

Defendant Austin is a tenured professor of Biology at Piedmont College and has been an employee since 1997. Austin currently works under an annual contract that incorporates the Policies of Piedmont College, including policy § 3.18, Conflict of Interest:

Employees are expected to avoid actual or apparent conflict of interests between their College obligations and outside activities.

During his employment by the College, Austin has engaged in outside activities that conflict with his duties to the College.

54.

Defendant Austin is the elected Mayor of the City of Demorest and has served since January 2014. In that capacity Austin is also subject to the requirements of the City Charter, including Charter Section 2.15(b) (1), also prohibiting conflicts of interest:

No elected official . . . shall knowingly: (1) Engage in any business transaction or have a

financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of that person's official duties or which would tend to impair the independence of that person's judgment or action in the performance of that person's official duties

During his time as mayor, Austin has voted on measures in which he has a direct personal and financial interest and led and participated in discussions concerning the same, violating the provision prohibiting conflicts of interest.

55.

Defendant Austin has engaged in a number of actions that demonstrate his enmity toward Piedmont College and its administration and his willingness to act contrary to the interests of Piedmont College and to the interests of the City of Demorest. Defendant Homans, friend and personal attorney to Austin, likewise has developed personal contempt for the College from his relation to Austin and failed claims against the College. Homans has demonstrated his personal enmity toward Piedmont by carrying out a number of frivolous actions against it on behalf of Austin, as well as numerous threats, verbal and written, and public attacks against the College.

56.

Defendant Austin's personal enmity toward the College and its officers stems in part from his belief that the College improperly disciplined his son for repeated violations of College rules and for destruction of College property. City Attorney Homans, acting as legal counsel for Austin's son, threatened legal action against the College and demanded monetary damages for the alleged improper discipline. The College denied the demand, and the claims were dropped.

57.

Defendant Austin's personal enmity toward the College and its officers also stems from the termination of employment of a friend. Austin has taken a significant role in supporting the lawsuit against the College filed by his friend, filing false affidavits and false charges designed to

undermine the College and its officers.

58.

In March 2019, Defendant Austin filed an affidavit in the lawsuit against the College filed by his friend, in which he was not a party, falsely claiming the President had subjected him to sexual harassment and retaliation and that the College had improperly targeted his son for disciplinary action. When confronted, his counsel withdrew those claims.

59.

In April 2019 Defendant Austin filed a charge with the Equal Employment Opportunity Commission against the College asserting the same false claims made in his affidavit. The EEOC dismissed his claims October 2019.

60.

In May 2019 Defendant Austin made a complaint with the United States Department of Education falsely claiming the College had violated FERPA by responding to the court affidavit he filed in March. The College denied the claim, and after over a year and a half, DOE has not acted on his complaint.

61.

In February 2020 Defendant Austin filed a charge with the Equal Employment Opportunity Commission against the College falsely asserting retaliation for filing the previous charge. The EEOC notified the College on March 3, 2020, and dismissed the claim the next day.

62.

Defendant Austin has used his official position as Mayor of the City to carry out his personal vendetta against the College. There are multiple examples of his improper use of his position.

63.

Defendant Austin sponsored a resolution passed by the City Council in 2017 falsely stating that “Piedmont College . . . renders no remuneration to the City of Demorest,” “pays no city taxes nor makes any other regular monetary contribution to offset expenses,” and “failed to meet all of the conditions required by the rezoning of the property known as Piedmont Village” in a failed effort to get the College to pay the City more money.

64.

Defendant Austin threatened to close Massachusetts Boulevard in June 2019 after the City agreed with the College to pay \$60,000 to repave it, requiring the College to pay \$132,000, cede 0.2 acres, and lose several parking spaces to avoid closure. Then the City issued a stop work order on August 5, 2019, and pressured the College for more money. The final costs approached \$250,000, nearly \$200,000 greater than the original agreement.

65.

Defendant Austin directed the Chief of Police Krockum, beginning in 2018, to confront College Police officers with the false claim that the College officers did not have legal authority. The City Police officers threatened to arrest the College Police officers. The City’s threats were an attempt to force the College to contract with the City of Demorest for security, generating revenue for the City. The Georgia Bureau of Investigation confirmed the authority of the College Police force.

66.

Defendant Austin targeted the College for an increase in water and sewer rates because of its legally exercised tax-exempt status. During hearings on December 11, and 18, 2019, the Mayor repeatedly stated that the College – and no other private institution in the City – was

subject to a significant increase. The Mayor introduced the rate increase and falsely claimed that it was the recommendation of the City Manager and was justified by the City Engineer.

67.

Defendant Austin's illegal use of his position continues in his improper water and sewer bills to the College even after the College delivered a demand that the City cease its illegal actions.

68.

Defendant Austin also engaged in financial transactions that conflict with his position as Mayor. In August 2017 Austin acquired, through a business he owned, a water and sewer business that provides water and sewer services in Northeast Georgia, in particular, the neighboring county of Rabun. Austin improperly used City Officials, City Water and Sewer employees, and City equipment and assets to evaluate and at times operate this private business. By perpetuating higher water and sewage rates in Habersham County as Mayor, Austin has a direct hand in the market of which his business is a participant. Austin stated himself that a purpose for instituting the new rates is to better situate Demorest's rates with surrounding cities. For his role in passing the 2018 Ordinance, Austin violated the City Charter for failure to avoid indirect financial conflict with his official duties. City Attorney Homans, acting also as Austin's personal attorney, defended a lawsuit brought against Austin and his business for defaulting on the purchase of the water and sewer company, ultimately terminating Austin's interest in the competing business in August 2019, via settlement, after initiating the rate increases for the City.

COUNT I

VIOLATION OF EQUAL PROTECTION

69.

Piedmont re-alleges paragraphs 1-41.

70.

The City by municipal ordinance deprived Piedmont of its right to Equal Protection under the Fourteenth Amendment of the United States Constitution through its adoption of the 2019 water and sewage rate scheme, causing direct harm to the College in the current amount of \$52,854.43. The scheme intentionally treats Piedmont differently from others similarly situated with no rational basis. The City water and sewage rate scheme singled out Piedmont to override the College's tax-exempt status, unlawfully discriminating against it. Defendants' purported justifications for the hike are irrational and wholly arbitrary. The United States Supreme Court held such a "class of one" scheme to punish an individual for exercising a legal right is a violation of Equal Protection in the case of *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) (per curiam). The College may enforce its right to Equal Protection through 42 U.S.C. §1983, entitling the College to damages and injunctive relief. The College is entitled to attorney's fees as a prevailing party pursuant to 42 U.S.C. § 1988.

COUNT II

VIOLATION OF O.C.G.A. § 36-33-4 BY WILLFUL, WANTON, MALICIOUS, AND
CORRUPT ACTION WITHOUT AUTHORITY OF LAW

71.

Piedmont re-alleges paragraphs 1-41.

Defendants Austin, Moore, Popham, Harkness, Wikle, took official action to adopt the 2019 water and sewer rate scheme without authority of law and with malicious, oppressive, or corrupt intent. It is well established that public officers are protected by qualified immunity against negligence claims for discretionary acts. However, it is equally well established that public officers may be held personally liable for acts that are willful, wanton, malicious, corrupt, or outside the scope of the officers' authority. The home rule statute, O.C.G.A. § 36-35-3, provides that governing authorities of each municipality have legislative power only to adopt clearly reasonable ordinances which are not inconsistent with the Constitution or any applicable charter provision. The 2019 water and sewer rates are adopted in violation of the Equal Protection Clause under the Fourteenth Amendment of the United States Constitution. Moreover, Defendants Austin, Moore, Popham, Harkness, and Wikle's imposition of overtly targeted legislation confirms an intent to do wrong and inflict injury. Since 2016, Defendants have demonstrated a commitment to make Piedmont "pay" for its tax-exempt status. Defendants' general disregard for the College's well-established right subjects each Defendant to personal liability. The College has been specially damaged by the Defendants' illegal action. Piedmont's injury supports a claim for a certain, calculable amount of special damages resulting directly from Defendants' imposed Ordinance in the amount of \$52,854.30 through September 2020. Pursuant to O.C.G.A. § 36-33-4 the Defendants are personally liable to the College for special damages for acts that are willful, wanton, malicious, corrupt, or without authority of law.

COUNT III

VIOLATION OF O.C.G.A. § 51-6-2 FOR FRAUDULENT AND RECKLESS
MISREPRESENTATION OF MATERIAL FACT

73.

Piedmont re-alleges paragraphs 1-41.

74.

Defendant Austin made willful misrepresentations of material fact regarding the proposed 2019 Ordinance with the intent to induce, and did cause, reliance by Piedmont, causing it injury. During the December 11 and December 18 public hearings, Austin made misrepresentations that are demonstrably false to justify the Ordinance:

(1) *increased burden of material costs*—Piedmont pays for these costs independently for all projects; (2) *increased burden of man power*—Piedmont, inside the city, has minimal impact on this burden, whereas “90-95%” of this burden comes from outside the city; (3) *Piedmont’s numerous meters and fire hydrants maintained by the city*—Piedmont, like others, pays a meter fee for each meter, thus any increased burden was already appropriately covered; (4) *Piedmont’s sprinkler systems*—all sprinklers are maintained by the College and are not the responsibility of the City; (5) *Piedmont’s water lines*—the College maintains all lines on campus as the City’s responsibility stops at the meters; (6) *to better align with similarly situated cities*—no other city cited in Austin’s proposal has a separate category for private institutions and the only cited city of six that distinguishes between institutional and commercial entities imposes a base rate for institutions of nearly half of that applied to Piedmont.

Further during a public meeting in February 2017, Austin also falsely asserted (7) *Piedmont pays no property taxes*—Piedmont pays property taxes on its rental properties.

75.

Defendant Austin was aware at the time of these representations of their falsity or made them in reckless disregard for their veracity even if he did not know of their falsity. On information and belief, Austin knew of the City’s true financial condition at, or before, the time of the water and sewer proposal. Austin’s purpose and intention in making these material

misrepresentations was to deceive Piedmont as to its burden on the City and induce payment disproportional to Piedmont's actual impact. Piedmont justifiably relied on these misrepresentations and suffered damages of \$52,854.43, in violation of O.C.G.A. § 51-6-2.

76.

Defendants also defrauded Piedmont by causing, either directly or indirectly, the City to impose on Piedmont improper charges for water and sewage. Since the Ordinance came into effect on January 1, 2019, the City has billed Piedmont fraudulently, even in excess of the illegally adopted water and sewer rates, by intentionally over-billing the College, by charging the College for phantom, non-existent meters, by charging the College incorrect fees, and by charging the College based on erroneous categorization of properties in the amount of \$21,105.99. These improper charges are willful misrepresentations of material fact, and were intended to induce, and did induce, Piedmont into paying charges in excess of the appropriate fees. On information and belief, Defendants were aware at the time of these representations of their falsity or made them in reckless disregard for their veracity even if they did not know of their falsity. Piedmont justifiably relied on these misrepresentations and suffered damages of \$21,105.99 in violation of O.C.G.A. § 51-6-2. The Mayor and City Council are guilty of demanding and receiving, by illegal overcharges levied against the College, greater costs and fees allowed by law, in violation of O.C.G.A. §45-11-4 and -5. The penalty thereof is a misdemeanor and removal from office.

COUNT IV

CONSPIRACY TO DEFRAUD

77.

Piedmont re-alleges paragraphs 1-41 and 71-76.

78.

Defendants Austin, Moore, Popham, Harkness, Wikle, and Homans, conspired to defraud Piedmont when they tacitly came to a mutual understanding to accomplish the unlawful water and sewage rates scheme. As early as 2016, Austin and Homans conspired to act through the City under a guise of lawful municipal action to economically punish the College. Austin stated publicly that he and Homans would work to develop additional fees to impose on Piedmont to override their tax-exemption. Austin has since stated publicly and privately on many occasions his continued desire and intent to punish the College. Unsuccessful with the fees he and Homans crafted to impose on Piedmont prior to 2018, Austin developed the unlawful water and sewage rates scheme and justified it by the misrepresentations of material fact detailed above.

79.

Defendants Moore, Popham, Harkness, and Wikle joined in common design against Piedmont when on December 11 and 18, 2018, they supported the fraudulent scheme, both by vote and verbal affirmation. Defendants' conspiracy may be inferred from the nature of the act—unanimous public action against the College—relationship of parties, and the common interest of the conspirators to override Piedmont's tax-exemption. The tacit agreement to join in common design can be implied without evidence of a formal meeting to enter into explicit agreement and without verbal or written confirmation of their unlawful objects. For their roles in forming and joining an unlawful conspiracy against Piedmont, Defendants are liable for conspiracy to defraud in violation of O.C.G.A. § 51-6-2.

COUNT V

VIOLATION OF THE GEORGIA RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS (RICO) ACT, O.C.G.A §16-14-4(a)&(b)

80.

Piedmont re-alleges paragraphs 1-79.

81.

As a result of the illegal actions stated above and herein below, Defendants Austin, Moore, Popham, Harkness, Wikle, Homans, and Krockum, are in violation of the civil provisions of the Georgia Racketeer Influenced and Corrupt Organizations (RICO) Act, O.C.G.A §16-14-1, *et seq.*, subjecting them to triple damages and attorneys' fees. Defendants conducted their racketeering activity through the City as an enterprise to defraud, deceive, and extort Piedmont to cover the financial ineptitude of the City and to settle personal vendettas. The College was damaged by their actions as set forth above and is entitled to triple damages and attorney's fees.

82.

Defendants committed numerous predicate acts against Piedmont as part of an enterprise engaged in an ongoing pattern of racketeering activity with similar purposes (to bypass the College's tax-exemption and to settle personal vendettas), results (additional fees), participants (Mayor, Councilmembers, and City Officials), victim (Piedmont College), or methods of commission (by municipal action). The City served as a passive instrument through which these Defendants committed, advanced, or concealed their racketeering activity. Because the acts against Piedmont were illegal or unreasonable, they lacked authority of law and were imposed

maliciously, oppressively, corruptly, or fraudulently, Defendants are personally liable for their roles in the enterprise. But for this action, Defendants demonstrate a substantial threat of continued wrongdoing against the College.

PREDICATE ACTS

A. FRAUD BY MAIL AND WIRE

83.

Defendants Austin, Moore, Popham, Harkness, and Wikle caused water and sewer bills to be sent to the College through the City. These bills are currently sent to the College via email and were previously sent to the College by United States Post. The water and sewer bills are representations made by these Defendants that they know are false and are made with the purpose of deceiving the College into paying them. The College reasonably relied on the bills to be true and correct and paid them, directly causing the College damage. Defendants have thus committed fraud on the College in violation of O.C.G.A. § 51-6-1, causing it damage. Bills mailed to a consumer that reflect illegal overcharges that cause damage constitute fraud and mail fraud and are applicable in Georgia Civil RICO claims. Because the water and sewer bills were sent via email and United States Post, the fraud constitutes wire fraud and mail fraud, predicate acts for Civil RICO.

B. THEFT BY EXTORTION AND ATTEMPTED EXTORTION

84.

Defendants committed extortion or attempted extortion on at least four separate occasions in violation of O.C.G.A §16-8-16 (a) (4), which provides, “[a] person commits the offense of theft by extortion when he unlawfully obtains property of or from another person by threatening to: . . . Take or withhold action as a public official or cause an official to take or withhold

action.” By their actions Austin and Homans unlawfully obtained property of the College, and Austin and Krockum unlawfully attempted to obtain property of the College in the following ways. Extortion and attempted extortion constitute predicate acts for Civil RICO.

1. MASSACHUSETTS BOULEVARD PARK PROPOSAL

85.

Defendants extorted money and property from Piedmont when it unlawfully obtained property from the College by threatening public action and threatening to withhold public action concerning its Music Conservancy. In June of 2019, Defendants proposed at public hearing to permanently close Massachusetts Boulevard in favor of expanding a City park. Defendant’s proposal implicitly threatened Piedmont to either renegotiate their original financial agreement or suffer immense loss of value to its new \$10 million Music Conservancy due to closure of the public road. As a result of Defendant’s threat, Piedmont renegotiated its original agreement with the City for \$60,000 repaving fees to now include \$132,000 in fees, 0.2 acres of the College’s real property, and rights to the College’s parking spaces for City events.

2. MASSACHUSETTS BOULEVARD STOP-WORK ORDER

86.

Defendants extorted money from Piedmont a second time when it again unlawfully obtained property from the College by threatening public action and threatening to withhold public action concerning its Music Conservancy. On August 5, 2019, Defendants issued a stop-work order to Piedmont for its construction project, citing drainage issues with the park. Defendants threatened that it would continue the halt until Piedmont fixed the drainage issues, despite these issues pre-dating construction. Defendants’ threat resulted in Piedmont’s forfeiture of an additional amount in excess of \$19,500.00 in costs.

3. MASSACHUSETTS BOULEVARD DEMANDED IMPROVEMENTS

87.

Defendants extorted money from Piedmont a third time when it again unlawfully obtained property from the College by threatening public action and threatening to withhold public action concerning its Music Conservancy. Nearing the completion of its project, Defendants approached Piedmont with demands to take on additional costs or face “appropriate enforcement measures.” These costs included relocating a portion of the City’s sewer line, replacing retaining walls along the Boulevard’s sidewalk deemed by a civil engineer as unsafe, replacement of all sidewalks, steps, handrails, and lighting along the Boulevard, and construction of a handicapped ramp to enter the park. The costs to the College for the project approached \$250,000, nearly \$200,000 greater than the initial agreement with the City.

4. ATTEMPTED EXTORTION CONCERNING PIEDMONT POLICE

88.

Defendants also attempted to extort money and property from Piedmont when they tried unlawfully to obtain property from the College by threatening public action and threatening to withhold public action concerning Piedmont Police. Beginning in 2018, Krockum, instructed by other Defendants, confronted Piedmont Police officers with the false claim that the College officers did not have legal authority and threatened to arrest them for impersonating an officer. Defendants’ threats were an attempt to force the College to contract with the City of Demorest for security and to forfeit its claims to all fines levied which would, in turn, then be collected by Demorest Police. Krockum committed attempted extortion by threatening illegal action against the College police officers to force the College to enter into a private security agreement.

C. THEFT BY DECEPTION

89.

Austin committed theft by deception in proposing and implementing the 2019 Ordinance. During the December 11 and 18 public hearings, Austin made willful misrepresentations of material fact regarding the proposed 2019 Ordinance with the intent to induce, and did cause, reliance by Piedmont, causing in injury. On information and belief, Austin had actual knowledge or believed that these representations were false and intended harm thereby. Austin is thus in violation of O.C.G.A §16-8-3, a predicate act for Civil RICO.

D. FALSE CERTIFICATION

90.

In the meeting on December 18, 2018, Defendants approved the water rate for Institutional Private Inside the City for above 100,000 gallons per month in the amount of \$7.00 per 1,000 gallons. The minutes of the meeting show approval of the rate of \$7.00 per 1,000 gallons. However, the ordinance adopting the increased water rates, certified by the Austin, imposes a rate of \$8.75 per 1,000 gallons. Austin's knowingly false certification of a rate in an ordinance higher than that officially passed by the defendants is a crime punishable by imprisonment for not less than one nor more than five years in accordance with O.C.G.A. §16-10-8.

91.

E. FALSE STATEMENTS

During the December 11 and 18 public hearings, Defendants knowingly made false, fictitious, and fraudulent statements or representations regarding the water and sewage rates proposal, a matter within the jurisdiction of the City. Additionally, Defendants, knowing these

statements to be false, used these misrepresentations to willfully perpetuate a scheme against the College through illegal billing. As a result, Defendants committed the crime of false statement, a predicate act of Civil RICO, in violation of O.C.G.A. § 16-10-20.

COUNT VI

CONSPIRACY TO VIOLATE THE GEORGIA RACKETEER INFLUENCED AND
CORRUPT ORGANIZATIONS (RICO) ACT, O.C.G.A §16-14-4(c)

92.

Piedmont re-alleges paragraphs 1-91.

93.

For their roles in the scheme against Piedmont, Defendants Austin, Moore, Popham, Harkness, Wikle, and Homans, violated O.C.G.A §16-14-4(c), conspiracy to violate Civil RICO. Defendants agreed to the overall objective of the scheme to override Piedmont's tax-exempt status and agreed to at least two predicate acts. On information and belief, Defendants have knowledge of the essential nature of the conspiracy.

COUNT VII

DECLARATORY JUDGMENT, O.C.G.A. §9-4-1, *ET SEQ.*

94.

Piedmont re-alleges paragraphs 1-93.

95.

The College seeks a declaration pursuant to O.C.G.A. §9-4-1, *et seq.*, that the actions of Rick Austin related above constitute sufficient cause to terminate his contract as a Tenured Professor of Piedmont College. There is an actual controversy between the College and Austin concerning his contractual rights, and the College seeks relief from uncertainty and insecurity

with respect to its rights, status, and other legal relations concerning Austin. The College is reasonably of the belief that violation of the conflict of interest provision of the Policies rises to the level of conduct that is seriously prejudicial to the College and falls within College Policy

§4.16 Termination of Faculty Employment:

Any faculty member, at, or before, the end of the current term, may be dismissed for the following reasons: . . . B) Termination may occur at any time during the academic year when a tenured or non-tenured faculty member's conduct is found to be seriously prejudicial to the College.

The College seeks a declaration that Rick Austin is thereby in breach of his contract and is subject to termination by the College.

COUNT VIII

ATTORNEYS FEES FOR BAD FAITH AND STUBBORN LITIGIOUSNESS

96.

Piedmont re-alleges paragraphs 1-95.

97.

Piedmont College has at all times attempted to work harmoniously with the City of Demorest to resolve its differences. The College sent a demand letter to the City outlining the substance of the claims stated herein with the intent of resolving the matter without litigation. In response legal counsel for the City refused to enter into discussions. Legal counsel for Mayor Austin likewise refused to enter into discussions and suggested the College engage instead in "obsequious groveling" to the Mayor.

98.

The actions of the City and Mayor in this matter are in bad faith, stubbornly litigious, and have caused Piedmont College the unnecessary trouble and expense of filing this lawsuit to enforce its rights to fair treatment under the law. Accordingly, O.C.G.A. § 13-6-11 permits

Piedmont College to recover its expenses of litigation, including attorney's fees, in an amount to be proved at trial.

WHEREFORE PIEDMONT COLLEGE PRAYS THAT:

- a) The City of Demorest be enjoined permanently from continuing to violate the Constitutional Rights of Piedmont College and that Piedmont College be awarded damages and attorney's fees for that violation;
- b) Piedmont College be awarded special and compensatory damages, jointly and severally against all of the named Defendants, in an amount to be proven at trial;
- c) Piedmont College be awarded special damages against the Austin, Moore, Popham, Harkness, and Wikle pursuant to O.C.G.A. § 36-33-4, for their willful, wanton, malicious, and corrupt action without authority of law by adopting the unconstitutional 2019 water and sewer rate scheme and for collecting greater costs and fees allowed in violation of O.C.G.A. § 45-11-4 and -5;
- d) Piedmont College be awarded damages against Austin, Moore, Popham, Harkness, Wikle, and Homans for fraudulent and reckless misrepresentation of material fact and conspiracy to defraud in violation of O.C.G.A. § 51-6-2;
- e) Piedmont College be awarded triple damages and attorney's fees against all RICO Defendants pursuant to O.C.G.A. §16-14-1, *et seq*;
- f) A Declaratory Judgment issue against Defendant Austin for breach of contract with Piedmont;
- g) Piedmont College recover its expenses of litigation, including attorney's fees;
- h) This matter be tried to a jury; and,

i) Piedmont be granted such other and further relief as justice and equity may demand.

RESPECTFULLY SUBMITTED, this 18th day of December, 2020.

/Patrick W. McKee/

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically submitted the foregoing to the Clerk of Court using the PeachCourt e-filing system which will automatically send electronic mail notification of such filing, and via statutory electronic service to the following counsel of record:

Sharon P. Horne
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This 18th day of December, 2020.

/Patrick W. McKee/
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