

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

Energy Transfer Equity, L.P., and Energy)
Transfer Partners, L.P.,)

Plaintiffs,)

Case No. 1:17-cv-00173

Greenpeace International (aka “Stichting)
Greenpeace Council”); Greenpeace, Inc.;)
Greenpeace Fund, Inc.; Banktrack (aka)
“Stichting Banktrack”); Earth First!; Cody)
Hall; Krystal Two Bulls; Jessica Reznicek;)
Ruby Montoya; Charles Brown; and John and)
Jane Does 1-20,)

Defendants.)

**PLAINTIFFS’ MEMORANDUM OF LAW IN OPPOSITION
TO RUBY MONTOYA’S MOTION TO DISMISS THE AMENDED COMPLAINT
PURSUANT TO RULE 12(b)(2), 12(b)(4), 12(b)(5), and 12(b)(6)**

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Plaintiffs Energy Transfer Equity, L.P. and Energy Transfer Partners, L.P. (together “Energy Transfer” or the “Company”) respectfully submit this memorandum of law in opposition to Ruby Montoya’s Motion to Dismiss Pursuant to Rule 12(b)(2), 12(b)(4), 12(b)(5), and 12(b)(6).

PRELIMINARY STATEMENT

In its Amended Complaint, Energy Transfer details Ms. Montoya’s participation in an unlawful, violent scheme to cause financial harm to Energy Transfer, physically harm Energy Transfer’s employees and infrastructure, and disrupt and prevent Energy Transfer’s construction of the Dakota Access Pipeline (“DAPL”). Ms. Montoya has publicly admitted that on multiple occasions between November 2016 and May 2017, she and defendant Jessica Reznicek trespassed onto Energy Transfer’s private property; intentionally set fire to Energy Transfer’s construction equipment; and used blowtorches to burn holes into the DAPL pipeline and valves, including on one occasion when oil was already flowing in the pipeline. These acts are not “peaceful, nonviolent direct action,” as Ms. Montoya claims, but dangerous crimes of arson and destruction for which she must be held accountable. Had Ms. Montoya’s final attempt to burn a hole into the DAPL pipeline been successful, the oil inside would have ignited, causing an explosion and endangering lives and the very lands Ms. Montoya was purporting to protect.

Ms. Montoya and Ms. Reznicek’s actions were not taken alone. The Amended Complaint alleges that these defendants participated in a criminal enterprise with Earth First! Doe Defendants, Mississippi Stand, Greenpeace International (“GPI”), Greenpeace, Inc. (“GP-Inc.”), Greenpeace Fund, Inc. (“GP-Fund”) (collectively, the “Greenpeace Defendants”), Red Warrior Camp, Cody Hall, and Krystal Two Bulls, to finance, organize, and perpetrate violence, vandalism, and other illegal activity to obstruct construction and operation of Energy Transfer’s government-approved DAPL. Ms. Montoya, Ms. Reznicek, and members of their organization,

Mississippi Stand, were trained by Earth First! Doe Defendants in “direct action” tactics, which they used to “lock down” DAPL construction sites in Iowa on an almost daily basis by blockading access to construction sites, attaching to construction equipment, and executing other illegal acts of trespass. Seeking to halt construction of DAPL for even longer periods, Ms. Montoya and Ms. Reznicek took more drastic measures. Inspired by Red Warrior Camp’s “direct efforts to halt the Black Snake,” they sent members of Mississippi Stand to North Dakota to execute and support Red Warrior Camp’s violent direct actions at construction sites near the Lake Oahe crossing. At the same time, using direct action manuals provided by Earth First! Doe Defendants, they began their “property destruction campaign” in Iowa and South Dakota.

Each of Ms. Montoya’s actions were intended to -- and did -- cause enormous financial harm and physical damage to Energy Transfer. Ms. Montoya has proudly proclaimed that her arson of Energy Transfer’s construction equipment and the DAPL pipeline set back construction of the pipeline by three months, costing Energy Transfer hundreds of millions of dollars in delayed construction, heightened security costs, and damaged equipment. Yet, Ms. Montoya continues to call for arson and property destruction as a “viable” means to stop infrastructure development, providing detailed instructions for the proliferation of such measures with the intent that others will take on the mantle of stopping Energy Transfer’s infrastructure projects. Energy Transfer thus states claims not only for RICO violations, but also for violations of North Dakota racketeering law, trespass, and conspiracy.

Accordingly, Ms. Montoya’s motion should be denied in its entirety.

STATEMENT OF FACTS

A. DAPL -- The Enterprise’s First Target

On June 25, 2014, Energy Transfer announced the development and construction of DAPL -- a 1,172 mile underground pipeline -- to transport nearly a half-million barrels of

domestically produced crude oil daily across four states, from the Bakken region in North Dakota, across South Dakota and Iowa, to Patoka, Illinois. For the next 25 months, the Company, working closely with the United States Army Corps of Engineers (“USACE”), conducted extensive planning to identify a route that would have the least impact on the maximum group of stakeholders and resources. (¶¶ 104, 109-11.)¹

DAPL traverses private land for 99% of its route. One exception is where DAPL crosses *federally* owned and regulated waters at the Missouri River under the man-made Lake Oahe. DAPL follows the route of an existing pipeline -- the Northern Border Pipeline -- under Lake Oahe. Energy Transfer selected this route because it would traverse a path that was already disturbed by other infrastructure. (¶ 109.) Lake Oahe is federally owned and regulated, as is the land surrounding it, and the pipeline “crosses” 90 to 115 feet below the lake. (¶¶ 85-87.) The crossing is located 0.5 miles above the northern boundary of the Standing Rock Sioux Tribe (“SRST”) reservation. (*Id.*) DAPL does not cross SRST-owned land or water. (*Id.*) On July 25, 2016, USACE issued its Final Environmental Assessment for DAPL with a Mitigated Finding of No Significant Impact, concluding that the risk of spill was low and authorizing the pipeline’s route under Lake Oahe. (*Id.* at ¶ 107.)

B. The Enterprise

The Amended Complaint alleges a RICO enterprise consisting of the following:

1. The Greenpeace Defendants

The Greenpeace Defendants are parts of the international “Greenpeace” organization, a network of legally distinct, but centrally coordinated, international, national, and regional associations. (¶¶ 46-47.) GPI reviews, approves, and underwrites the activities of national and

¹ References to “¶ ___” are to paragraphs of the Amended Complaint (ECF No. 95).

regional “Greenpeace” entities -- here, GP-Inc. and GP-Fund’s operations against Energy Transfer. (¶¶ 46-47, 58.) GP-Inc. and GP-Fund collectively hold themselves out as “Greenpeace USA,” and act together as “Greenpeace USA.” (¶¶ 52, 55-56.)

Greenpeace USA and GPI directed and operated the campaign against Energy Transfer including by: publishing and disseminating false statements about Energy Transfer and DAPL to deceive the public, foment protests, and raise funds for attacks on DAPL (¶¶ 80, 83-112); training protestors in North Dakota to engage in “direct action” (¶¶ 59, 75, 117, 130); coordinating with Earth First! Doe Defendants and Red Warrior Camp to train members of Red Warrior Camp to execute violent attacks on construction sites in North Dakota (¶¶ 39, 60); seconding Greenpeace USA employees to Red Warrior Camp to perpetrate attacks (¶¶ 11, 61, 118); and providing supplies to Red Warrior Camp to sustain its encampment at Lake Oahe (¶ 126).

2. Earth First! and Earth First! Doe Defendants

Earth First! is a radical environmental activist group. (¶¶ 63, 66.) In connection with the DAPL protests, Earth First! Doe Defendants provided \$500,000 to extremist protestors, including Mr. Hall and Ms. Two Bulls, to form and fund the violent Red Warrior Camp at the DAPL crossing near Lake Oahe (¶ 118); coordinated with Greenpeace USA to provide training in “direct action” and criminal sabotage to Red Warrior Camp (¶¶ 39, 60); provided training in “direct action” and criminal sabotage to members of Mississippi Stand, including Ms. Montoya and Ms. Reznicek, in Iowa (¶¶ 12, 44, 68, 128, 149, 196); and distributed copies of its Direct Action Manual and Ecodefense Guide -- which provide instruction on “direct action” techniques -- to Red Warrior Camp in North Dakota and Mississippi Stand in Iowa. (¶¶ 71-76, 196). These guides include instructions on using u-locks, steel pipes, barrels and other equipment to

“blockade” or “lockdown” construction, arson to damage or destroy heavy construction equipment, and oxyacetylene torches to cut through steel pipe. (¶¶ 71-76.)

3. Red Warrior Camp, Cody Hall, and Krystal Two Bulls

“Red Warrior Camp” is the name of a sub-group of the most radical anti-DAPL activists based in camps near Lake Oahe in North Dakota. Red Warrior Camp amounts to a front organization for Greenpeace USA intended to provide cover for Greenpeace USA’s support of and engagement in illegal “direct action” against Energy Transfer and DAPL. (¶ 38.) “Direct action,” as the term is used by activists, included destruction of Energy Transfer construction equipment, attacks on and intimidation of Energy Transfer employees, and operations to damage or destroy DAPL.

Mr. Hall formed Red Warrior Camp in the fall of 2016 with the financial support and direction of Greenpeace USA and Earth First! Doe Defendants in connection with anti-DAPL protests in North Dakota. (¶ 38.) Ms. Two Bulls was a leader, “media coordinator,” “organizer,” and fundraiser for Red Warrior Camp, and served as the group’s liaison with Greenpeace USA. (¶¶ 31, 38, 126-27, 130-32.) Under the direction of Mr. Hall and Ms. Two Bulls, Red Warrior Camp repeatedly trespassed on federal and private land, attacked Energy Transfer’s property and personnel, and destroyed Energy Transfer’s property and federal lands by arson. (¶¶ 120-25, 133, 144.)

4. Mississippi Stand, Jessica Reznicek, and Ruby Montoya

Mississippi Stand is a sub-group of radical anti-DAPL activists based in Iowa. (¶ 43.) Ms. Reznicek formed Mississippi Stand in the fall of 2016 to engage in illegal “direct action” to obstruct construction at DAPL construction sites in Iowa. (¶¶ 32, 128.) Ms. Montoya joined

Mississippi Stand after participating in protests in North Dakota (Recine Decl., Exs. 1, 2 at 12)², and quickly took on a leadership role as an organizer, press representative, and fundraiser for the group. (¶¶ 33, 128, 140).

Mississippi Stand members, including Ms. Reznicek and Ms. Montoya, were trained by Earth First! Doe Defendants in “direct action” techniques, and provided with copies of the Earth First! Direct Action Manual and Ecodefense Guide. (¶¶ 12, 44, 68, 71-76, 128, 149, 196.) Using Earth First! tactics, Mississippi Stand members stopped construction at DAPL construction sites in Iowa on an almost daily basis by attaching themselves to equipment, blockading bulldozers and other equipment, and “occupying” sections of pipeline. (¶¶ 44, 129, 139.) By October 2016, under the direction and leadership of Ms. Reznicek and Ms. Montoya, Mississippi Stand had also established a presence at the North Dakota protests, joining Red Warrior Camp’s violent attacks on DAPL construction sites in North Dakota. (¶¶ 128, 141.) With training and methods provided by Earth First!, Ms. Reznicek and Ms. Montoya took even more extreme measures, deliberately setting fire to six pieces of Dakota Access machinery and burning holes into sections of DAPL on multiple occasions between November 2016 and May 2017. (¶¶ 44, 144-51.)

C. Defendants’ Operations Against Energy Transfer

The Enterprise’s operations against Energy Transfer consisted of three related components. First, the Greenpeace Defendants disseminated false statements about Energy Transfer and DAPL via their websites, e-mail, and U.S. mail for the purpose of deceiving the public into funding the Enterprise’s racketeering activity, recruiting individuals, and inciting the radical protestors to descend on Lake Oahe to halt construction of DAPL. (¶¶ 83-112.) Second,

² Plaintiffs may present facts supporting a *prima facie* showing of personal jurisdiction through exhibits extraneous to the complaint. *K-V Pharmaceutical Co v. J. Uriach & CIA, S.A.*, 648 F.3d 588, 592 (8th Cir. 2011).

the Greenpeace USA and Earth First! Doe Defendants organized, funded, and supported Red Warrior Camp's commission of violence in North Dakota, while Earth First! Doe Defendants supported Mississippi Stand's commission of violence in Iowa. (¶¶ 113-52.) Third, the Greenpeace Defendants disseminated false statements about Energy Transfer and DAPL directly to Energy Transfer's lenders and investors to fraudulently induce the termination or impairment of these relationships. (¶¶ 158-77.)

1. The Enterprise Disseminated Falsehoods About DAPL to Fund and Facilitate Its Racketeering Activity

Beginning in July 2016 and continuing up until the operation of DAPL, the Greenpeace Defendants disseminated false claims about the impacts of the development, construction, and operation of DAPL. (¶¶ 83-112.) These misrepresentations regarding DAPL and Energy Transfer fall into six broad categories: false statements regarding DAPL's path, false statements alleging Energy Transfer "desecrated" cultural resources, false statements regarding the environmental impact of DAPL on water supplies, false statements regarding the impact of DAPL on climate change, false statements regarding Energy Transfer's pre-construction environmental assessments of DAPL project, and false statements regarding Energy Transfer's treatment of anti-DAPL protestors. (*Id.*) Specific misrepresentations are set forth in detail in Appendix A to the Amended Complaint. (ECF No. 95-1.)

2. The Enterprise Organized, Supported, and Funded Violence Against DAPL

a. Red Warrior Camp Leads Violent Attacks on DAPL and Energy Transfer in North Dakota

Beginning in August 2016, in response to the Enterprise's misinformation campaign, thousands of protestors traveled to North Dakota to form encampments near the Lake Oahe crossing. (¶ 117.) Earth First! Doe defendants gave \$500,000 in seed money to violent

infiltrators to form Red Warrior Camp. (¶ 118.) Greenpeace USA trained members of Red Warrior Camp directly and also sent its own employees to the newly-formed Red Warrior Camp to participate in the DAPL protests under the Red Warrior Camp umbrella. (¶¶ 11, 61, 118.)

On August 11, 2016, roughly 200 protestors led by Red Warrior Camp and Mr. Hall entered DAPL property near Lake Oahe. (¶ 120.) Red Warrior Camp members jumped fences and threatened DAPL employees and law enforcement with knives. (*Id.*) Attacks continued on August 12, when hundreds of members of Red Warrior Camp entered DAPL property, threatening Energy Transfer employees with violence. (¶ 121.) Due to these threats of violence, Dakota Access personnel were evacuated by police escort, stopping construction. (*Id.*)

On September 3, 2016, Red Warrior Camp and Mr. Hall led hundreds of protestors in an attack on construction crews working on DAPL. (¶ 122.) Red Warrior Camp members stampeded horses, dogs, and motor vehicles onto federal and private land where DAPL construction was ongoing. (*Id.*) Protesters attacked security personnel with knives, fence posts and flagpoles, resulting in numerous hospitalizations. (*Id.*) Protesters also destroyed Energy Transfer's property. (*Id.*) Red Warrior Camp mounted a similar attack on September 6. (¶ 124.) Days later, Mr. Hall was arrested for his role in the September 3 and September 6 attacks. (*Id.*)

After these initial attacks, Greenpeace USA coordinated with Mr. Hall and Ms. Two Bulls to support Red Warrior Camp by organizing donation drives in ten cities across the country to collect supplies to fund, feed, and house Red Warrior Camp members at Lake Oahe. (*Id.*) Greenpeace USA sent the funds and supplies directly to Mr. Hall, notwithstanding knowledge of his recent arrest. (¶¶ 126-27.)

Money and supplies raised through the media campaign led by Ms. Two Bulls, in coordination with Greenpeace USA, enabled Red Warrior Camp to continue its violent attacks

on DAPL through October and November 2016. On October 27, 2016, protestors led by Red Warrior Camp trespassed on Energy Transfer property near Highway 1806, setting fire to the land and appurtenant structures, numerous Energy Transfer vehicles, and heavy construction machinery. (¶ 133.) On November 20, 2016, Red Warrior Camp members gathered at Backwater Bridge in North Dakota and attempted to cross the bridge to establish an encampment on DAPL property. (¶ 141.) Armed Red Warrior Camp members attacked police, ignited fires on and near the bridge, and threw grenades and flares at law enforcement officers. (*Id.*)

b. Mississippi Stand Provides Assistance to Red Warrior Camp in North Dakota and Obstructs Construction in Iowa.

No later than the fall of 2016, as an extension of the protest camps in North Dakota, Ms. Reznicek formed “Mississippi Stand” to establish protest camps and pursue illegal direct action against DAPL at construction sites in Iowa. After participating in early anti-DAPL protests in North Dakota (Recine Decl., Exs. 1, 2 at 12), Ms. Montoya joined Mississippi Stand in the fall of 2016 and served as an organizer, press representative, and fundraiser for the group (¶¶ 33, 128, 140). Ms. Montoya communicated regularly with protestors in North Dakota, and recruited protestors from North Dakota to join in direct actions in Iowa. (Recine Decl., Ex. 1.)

In September and October 2016, Earth First! representatives provided direct action training sessions for Mississippi Stand, including Ms. Reznicek and Ms. Montoya, in Lee County, Iowa. (¶¶ 12, 44, 68, 128, 149, 196.) Among other things, Earth First! taught protestors how to form “blockades” and use “lock boxes” and “sleeping dragons” to attach themselves to construction equipment. (*Id.*) Members of Mississippi Stand proceeded to employ these tactics at DAPL construction sites in Iowa on an almost daily basis between August and November 2016, shutting down construction numerous times. (¶¶ 44, 129.)

By October, Mississippi Stand had also established a presence in North Dakota, having sent its members to join Red Warrior Camp's direct actions at DAPL construction sites. "Inspired" by Red Warrior Camp's "direct efforts to halt the black snake," Mississippi Stand escalated their tactics in Iowa. (¶¶ 139-40.) Mississippi Stand consistently supported Red Warrior Camp's actions, even after the SRST unanimously voted to evict Red Warrior Camp from the Lake Oahe area, purporting to "fight[] the black snake in solidarity with Red Warrior Camp" and calling for "warriors" to continue showing up at DAPL easement sites "until we cut off this black snake indefinitely." (¶ 138.) Subsequently, Mississippi Stand members sent to North Dakota participated in Red Warrior Camp's violent November 20 attack on a DAPL construction site. (¶ 141.) Funds raised by Mississippi Stand through their video recording and publication of "direct actions" went directly to Ms. Montoya, and were used to fund even more dangerous measures. (¶ 140.)

Beginning in or around November 2016, Reznicek and Montoya began more destructive measures to stop DAPL. On November 8, Reznicek and Montoya trespassed on a DAPL construction site in Buena Vista County, Iowa. (¶ 144.) Following instructions from Earth First!'s Ecodefense manual, they used motor oil, rags, and coffee canisters to set fire to six pieces of DAPL construction equipment, causing more than \$1 million in damages. (*Id.*) Reznicek and Montoya trespassed on DAPL property and set fire to construction equipment on other occasions, including in May 2017, in Newell, Iowa. (*Id.*)

Reznicek and Montoya also used arson on the DAPL pipeline itself. On March 13, 2017, Reznicek and Montoya trespassed on DAPL property in Mahaska County, Iowa, and used an oxyacetylene torch to cut a hole through an above-ground safety valve. (¶ 146.) On March 17, 2017, Reznicek and Montoya trespassed on DAPL property in Sioux County, South Dakota, and

used an oxyacetylene torch to cut holes at two valve sites near Sioux Falls. (¶ 147.) In addition to damaging the pipeline, Reznicek and Montoya's arson delayed completion of the pipeline for weeks. (*Id.*)

Finally, on May 3, 2017, Ms. Montoya and Ms. Reznicek cut through a chain link fence on DAPL property in Wapello County, Iowa, and used an oxyacetylene torch to cut into an aboveground section of the pipe where oil was already flowing. (¶ 148.) While they failed to cut through the thick steel, the torch left visible burn marks on the pipeline. (*Id.*) Had the torch successfully cut through the pipeline, it would have ignited the oil inside and caused an explosion, endangering lives and the very land Reznicek and Montoya were purporting to protect. (*Id.*)

On July 24, 2017, Ms. Montoya and Ms. Reznicek publicly claimed responsibility for the arson and pipeline destruction, calling upon others to join in taking destructive measures to stop the pipeline and to cause financial harm to Energy Transfer, and providing a detailed blueprint for others to take such destructive measures. (¶¶ 149-51; *see also* Recine Decl., Ex. 2 at 14, 29-32.)

3. Enterprise Members Target Energy Transfer's Lenders, Investors, and Business Partners

The Greenpeace Defendants disseminated falsehoods concerning Energy Transfer and DAPL directly to Energy Transfer's business constituents in an effort to induce the termination or impairment of these relationships. (¶¶ 158-77.) In reliance on these misrepresentations, numerous banks funding DAPL sold their equity interest in Energy Transfer and exited the \$2.5 billion lending facility for DAPL. (*Id.*) Such divestment directly harmed Energy Transfer by driving up its borrowing costs.

D. The Enterprise’s Continuing Conduct

Greenpeace and Earth First! Doe Defendants continue to jointly target Energy Transfer’s infrastructure projects. Greenpeace USA and Earth First! Doe Defendants have funded and directed protestors to establish encampments to protest the Mariner East 2 pipeline in Pennsylvania and the Bayou Bridge Pipeline in Louisiana. (¶ 154.) In 2018, Greenpeace USA hired defendant Charles Brown as a pipeline organizer solely to interfere with Energy Transfer’s projects. (¶¶ 62, 154.) Greenpeace USA sent Brown and other employees to train hundreds of protestors at both campsites. (¶ 154.) Using Greenpeace/Earth First! blockade techniques, protestors have stopped construction on an almost daily basis for both projects. (*Id.*) Additionally, unknown individuals have used Ecodefense Guide techniques to vandalize and damage bulldozers and other construction equipment at both sites. (¶¶ 155-56.) The Earth First! Doe Defendants, through Earth First! Journal, have called for “further sabotage” and a “proliferation of more actions like these.” (¶ 157.)

LEGAL STANDARD

A complaint should be dismissed only where the facts alleged fail to state a plausible claim for relief. Fed. R. Civ. P. 12; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). On a Rule 12 motion, the Court must “assume all factual allegations in the pleadings are true and interpret them in the light most favorable to the nonmoving party.” *Murphy v. Aurora Loan Servs., LLC*, 699 F.3d 1027, 1033 (8th Cir. 2012) (quotation omitted). A complaint need only set forth allegations that “clear[] the relatively low hurdle of presenting plausible facts to create a reasonable inference that [a defendant] is involved in activities that may have harmed [p]laintiffs.” *Ginardi v. Frontier Gas Servs., LLC*, No. 4:11-cv-420 (BRW), 2011 WL 3493125,

at *2 (E.D. Ark. Aug. 10, 2011) (Wilson, J.). Applying these standards, Defendants' motions should be denied in their entirety.

ARGUMENT

I. PLAINTIFFS' FEDERAL RICO CLAIMS AGAINST MS. MONTOYA ARE ADEQUATELY PLED.

The Racketeer Influenced and Corrupt Organizations Act ("RICO") bars "any person employed by or associated with an enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate directly or indirectly in the conduct of such an enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. § 1962(c). RICO also provides a private right of action to "[a]ny person injured in his business or property by reason of RICO's substantive provisions." 18 U.S.C. § 1964(c). To plead a RICO violation, a plaintiff must allege that a defendant: (1) conducted, (2) an enterprise, (3) through a pattern, (4) of racketeering activity, (5) resulting in damages to business or property. *See Handeen v. Lemaire*, 112 F.3d 1339, 1347-54 (8th Cir. 1997).

The RICO statute also makes it unlawful for any person to conspire to conduct or participate in the conduct of a RICO enterprise. 18 U.S.C. § 1962(d). To plead a violation of 18 U.S.C. § 1962(d), a plaintiff must establish that either "a defendant personally agreed to commit two predicate acts in furtherance of the enterprise or that a defendant agree[d] to participate in the conduct of the enterprise with the knowledge and intent that other members of the conspiracy would commit at least two predicate acts in furtherance of the enterprise." *United States v. Henley*, 766 F.3d 893, 908 (8th Cir. 2014) (internal citations omitted).

The U.S. Supreme Court mandates that RICO "be liberally construed to effectuate its remedial purposes," *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498 (1985), and has repeatedly "refused to adopt narrowing constructions of RICO in order to make it conform to a

preconceived notion of what Congress intended to proscribe,” *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 660 (2008). Under this precedent, the Amended Complaint adequately pleads each element of a RICO violation.³

A. The Amended Complaint Adequately Pleads a RICO Enterprise and Ms. Montoya’s Participation in the Enterprise.

A RICO “enterprise” is “any union or group of individuals associated in fact although not a legal entity.” 18 U.S.C. § 1961(4). The “very concept of an association in fact is expansive” and encompasses any “continuing unit that functions with a common purpose.” *Boyle v. United States*, 556 U.S. 944, 945, 948 (2009). To plead a RICO enterprise, a plaintiff must allege: (1) a common purpose among members of engaging in a course of conduct; (2) relationships among those associated with the enterprise; and (3) sufficient longevity to permit the associates of the enterprise to pursue its purpose. *Id.* at 946. The Amended Complaint alleges an enterprise consisting of Greenpeace Defendants, the Earth First! Doe Defendants, Mississippi Stand, Ms. Montoya, Ms. Reznicek, Red Warrior Camp, Mr. Hall, and Ms. Two Bulls. (¶¶ 37-76.) The Enterprise’s alleged common purpose is to further an anti-development, anti-fossil fuel agenda and to impede or prevent the construction of DAPL and harm Energy Transfer through the publication and dissemination of false statements concerning Energy Transfer and DAPL; obstruction of DAPL construction by means of trespass, vandalism, violence, property

³ Since Energy Transfer has sufficiently pleaded its federal RICO claims, it has likewise pleaded its claims under the North Dakota counterpart, N.D.C.C. § 12.1-06.1-03(2). *See Burr v. Kulus*, 564 N.W.2d 631, 636 (N.D. 1997) (North Dakota RICO statute modeled after federal RICO statute and contains similar language for a similar purpose). Moreover, Plaintiffs have adequately alleged probable cause that Defendants committed the predicate acts. *See Geraci v. Women’s Alliance, Inc.*, 436 F. Supp. 2d 1022, 1043 (D.N.D. 2006) (probable cause requires only “fair probability”).

destruction, and other unlawful activity; and interference with Energy Transfer’s critical business relationships. (¶¶ 2, 80-82.)

Sufficient relations between Enterprise members, including Ms. Montoya and her organization, Mississippi Stand, are also alleged. Members of Mississippi Stand, including Ms. Montoya, were trained by Earth First! Doe Defendants in “direct action” techniques to attack construction DAPL construction sites in Iowa, and used Earth First! tactics to “lockdown” DAPL construction sites on an almost daily basis. (¶¶ 128-29.) Ms. Montoya is also alleged to have maintained a relationship with Red Warrior Camp and to have provided support to its anti-DAPL cause at Lake Oahe. Under the direction of Ms. Montoya and Ms. Reznicek, Mississippi Stand members established a presence in North Dakota, joining Red Warrior Camp’s violent actions on DAPL construction sites near Lake Oahe. (¶¶ 128, 141.) Indeed, Ms. Montoya and her organization’s support for Red Warrior Camp’s violent tactics cannot be disputed, as evidenced by their public statement of support for Red Warrior Camp’s “direct action” tactics after the SRST voted to evict the group because of its violence. (¶¶ 138-39.)⁴

⁴ On a motion to dismiss, it is inappropriate for the Court to consider Ms. Montoya’s factual contention -- untested by discovery -- that she did not know certain other members of the enterprise, such as Greenpeace Defendants. In any event, participation in an enterprise does not require involvement in each act of the enterprise, or knowledge of the identity of all of the other enterprise members. *See United States v. Donnell*, 596 F.3d 913, 923 (8th Cir. 2010) (participation in a conspiracy may be found “even if many participants are unaware of, or involved in, some of [its] transactions”); *United States v. McCarthy*, 97 F.3d 1562, 1570 (8th Cir. 1996) (“[o]ne does not have to have contact with all of the other members of a conspiracy to be held accountable as a conspirator”).

Likewise, on a motion to dismiss, the Court should not consider Ms. Montoya’s contention that she did not serve a “press representative” for Mississippi Stand. In any event, such contentions are refuted by public sources that identify Ms. Montoya as a “press representative” and Ms. Montoya’s own statements that she “worked as media” for Mississippi Stand (Recine Decl., Ex. 2 at 13).

The foregoing allegations also establish Ms. Montoya's role in directing "*some part*" of the Enterprise's affairs. *United States v. Darden*, 70 F.3d 1507, 1542-43 (8th Cir. 1995) (RICO liability is "not limited to the kingpin" but extends to all "operators or managers"). To direct some part of the Enterprise's affairs, a party need not yield control of the enterprise; rather, liability extends to those who participated in the management or operation of the enterprise -- whether upper management or lower-rung participants acting at their direction. Ms. Montoya's role as an organizer, press representative, and fundraiser for key enterprise member Mississippi Stand satisfies this standard. *Id.*; *see also Handeen*, 112 F.3d at 1350-51 (defendants participated in "operation or management" of the enterprise by overseeing enterprise's navigation of the legal system).

B. The Amended Complaint Adequately Pleads a Pattern of Racketeering Activity.

A pattern of racketeering activity also requires a showing of either (i) "a series of related predicates extending over a substantial period of time," *i.e.*, closed-ended continuity; or (ii) "that the predicate acts or offenses are part of an ongoing entity's regular way of doing business," *i.e.*, open-ended continuity. *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 242 (1989). A pattern also requires "at least two acts of racketeering activity." 18 U.S.C. § 1961(5). While Ms. Montoya does not challenge the Amended Complaint on continuity grounds (*see* ECF No. 129 at 17-21), Plaintiffs have sufficiently alleged both open-ended and closed-ended continuity. The Amended Complaint alleges that Enterprise members have targeted Energy Transfer's pipeline projects since at least September 2016 when Earth First! Doe Defendants trained members of Mississippi Stand to engage in illegal direct action. (¶¶ 68, 128.) Ms. Montoya and Ms. Reznicek continued illegal activities in 2017 by executing multiple acts of arson on the pipeline. (¶¶ 144-48.) Enterprise members, including Earth First! Doe Defendants, continue

attacks on Energy Transfer’s infrastructure projects to this day. (¶¶ 154-57.) These allegations establish that the Enterprise engaged in predicate acts over a period of two years and are sufficient to plead “closed-ended” continuity. *See, e.g., Atlas Pile Driving Co. v. DiCon Fin. Co.*, 886 F.2d 986, 994-95 (8th Cir. 1989) (pattern element satisfied where complaint alleged two separate criminal schemes involving different victims and participants but common purposes, methodology, and results); *see also First Nat’l Bank and Trust Co. v. Hollingsworth*, 931 F.2d 1295, 1304 (8th Cir. 1991). These allegations also establish that the Enterprise’s RICO activity is ongoing, establishing “open-ended” continuity. *See H.J. Inc.*, 492 U.S. at 241-43; *United States v. Hively*, 437 F.3d 752, 762 (8th Cir. 2006).⁵

The Amended Complaint alleges that Ms. Montoya committed multiple violations of the Patriot Act. The Patriot Act prohibits: (i) destruction of a hazardous liquid pipeline facility in violation of 18 U.S.C. § 60123(b); (ii) destruction of an energy facility in violation of 18 U.S.C. § 1366(a); and arson and bombing of property used in interstate commerce in violation of 18 U.S.C. § 844(i); (iv) providing material support or resources to anyone to anyone “knowing or intending that [the resources] are to be used in preparation for, or in carrying out, a violation” of 18 U.S.C. § 2339A(a).⁶ “Material support or resources” includes, *inter alia*, “any property,

⁵ Specific actors and members may change without “loss of the enterprise’s identity as an enterprise.” *United States v. Kragness*, 830 F.2d 842, 856 (8th Cir. 1987); *see Boyle*, 556 U.S. at 941 (sustaining enterprise where “participants . . . included a core group, along with others . . . recruited from time to time”).

⁶ While the Amended Complaint does not specifically cite 18 U.S.C. § 2339A as a predicate act, the facts alleged in the Amended Complaint sufficiently state a violation. *Johnson v. City of Shelby, Miss.*, 135 S. Ct. 346, 347 (Nov. 10, 2014) (although complaint did not cite statute under which it was seeking to recover, *Twombly* and *Iqbal* require only that plaintiff “plead facts sufficient to show that her claim has substantive plausibility,” which is established by setting forth factual basis for the complaint).

tangible or intangible, or service, including currency . . . lodging, training, expert advice or assistance . . . [or] personnel.” *Id.* § 2339A(b).

First, Ms. Montoya violated the Patriot Act by executing multiple acts of arson on Energy Transfer’s construction equipment and the DAPL pipeline in South Dakota and Iowa, as detailed above, *supra at* § C.2.b. Ms. Montoya’s arson of pipeline and construction equipment and the pipeline itself violate 18 U.S.C. §§ 60123(b), 844(i), and 1366(a). Second, Ms. Montoya violated 18 U.S.C. § 2339A by knowingly and intentionally providing personnel to Red Warrior Camp in furtherance of its arson, bombing, and destruction of federal lands and pipeline equipment in North Dakota. *See supra at* § C.2; *Holder v. Humanitarian Law Project*, 561 U.S. 1, 17-18 (2010) (providing support to known terrorist organization constitutes intentionally providing “material support” under 18 U.S.C. § 2339A).

C. Energy Transfer Has Standing to Bring Its RICO Claims.

Energy Transfer has established standing to bring its RICO claims. “Any person injured in his business or property by reason of a violation” of 18 U.S.C. § 1962 may bring a civil cause of action. 18 U.S.C. § 1964(c). “[I]n order to show injury ‘by reason of’ a RICO violation,” a plaintiff must establish that its alleged injury was proximately caused by defendants. *Bridge*, 553 U.S. at 654. A plaintiff needs merely to demonstrate that there is “some direct relation between the injury asserted and the injurious conduct alleged.” *Id.* (quoting *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 528, 268 (1992)). The Amended Complaint alleges that Energy Transfer suffered extensive injury to its business and property as a result of the Enterprise’s conduct. (¶ 184.) These alleged injuries are cognizable RICO injuries to “business or property.” *Raineri Const., LLC v. Taylor*, 2014 WL 2348632, at *2 (E.D. Mo. Jan. 31, 2014) (interference with customer relationships, business operations, and causing property damage are injuries to business or property).

The Amended Complaint pleads that Energy Transfer's injuries were proximately caused by the Enterprise's RICO violations. First, Energy Transfer unquestionably alleges injuries to its business proximately caused by the alleged Enterprise, of which Ms. Montoya was a part. These injuries include those suffered by Energy Transfer at the DAPL protests and the damage inflicted by reason of the defamatory campaign against Energy Transfer. *Supra* §§ C.1; C.2.a. Energy Transfer also alleges -- and Ms. Montoya admits -- that Ms. Montoya participated in destructive attacks against DAPL in South Dakota and Iowa. *Supra* § C.2.b. These include allegations that Ms. Montoya, along with Ms. Reznicek, committed multiple acts of arson and destroyed Energy Transfer property. *Id.* Moreover, Energy Transfer alleges that Ms. Montoya provided material support to Red Warrior Camp by sending personnel to join Red Warrior Camp in its illegal attacks on Energy Transfer's North Dakota DAPL construction sites. *Id.* The Amended Complaint alleges that Energy Transfer incurred damages for damaged and destroyed equipment, increased security costs at DAPL, and costs associated with construction delays. (¶ 184.) This establishes the "direct relation between the injury asserted and the injurious conduct alleged"; thus, Energy Transfer has adequately established proximate cause with respect to the alleged physical injuries to Energy Transfer property and business costs incurred in connection with Mississippi Stand and Red Warrior Camp's attacks. *See Bridge*, 553 U.S. at 654.

D. Ms. Montoya Is Liable for the Conduct of the RICO Enterprise And All Damage Flowing Therefrom.

All RICO defendants are liable for all the acts of their co-conspirators reasonably linked to the Enterprise's goals, irrespective of whether they participated in the commission of the predicate act or had knowledge thereof. *See Salinas v. United States*, 522 U.S. 52, 63 (1997) (RICO "conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense"); *see also id.* at 63, 64 ("[if] conspirators have a plan

which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators” and “[e]ach is responsible for the acts of each other”). Moreover, “[o]ne does not have to have contact with all of the other members of a conspiracy to be held accountable as a conspirator.” *McCarthy*, 97 F.3d at 1570.

“Notwithstanding a defendant’s lack of knowledge of the identity of all of the other co-conspirators or his failure to appreciate the extent of the enterprise, a defendant can be held liable as a co-conspirator if he shares the same common purpose or goal of the other conspirators.” *Id.* at 1570-71. The focus is “not on the agreement to commit the individual predicate acts,” but on “the agreement to participate in the enterprise through a pattern of racketeering activity.” *Henley*, 766 F.3d at 908. An agreement to participate in an enterprise through a pattern of racketeering “may be shown wholly through the circumstantial evidence of [each defendant’s] actions.” *Handeen*, 112 F.3d at 1355.

Here, Ms. Montoya’s relationships with Earth First! Doe Defendants and Red Warrior Camp, and the actions she took in her role as a leader of Mississippi Stand, establish that Ms. Montoya is a part of the alleged RICO enterprise. Further, the Amended Complaint alleges that Ms. Montoya agreed with her co-defendants and enterprise members to engage in the illegal scheme targeting Energy Transfer, *supra* § I.A, and performed numerous overt acts in furtherance of that scheme, *supra* § I.B, causing injury to Energy Transfer. Thus, Ms. Montoya is legally responsible for the acts of her co-conspirators that are reasonably foreseeable to be within the scope of the conspiracy. *See, e.g., Henley*, 766 F.3d at 909 (imputing liability to defendant for acts of co-conspirators where circumstantial evidence demonstrated agreement to participate in enterprise).

II. PLAINTIFF'S STATE LAW CLAIMS ARE PROPERLY PLED

A. The Complaint States a Claim for Trespass.

The Amended Complaint also states a claim for trespass. To state a claim for trespass on real property under North Dakota law, the complaint must allege that a person “intentionally and without a consensual or other privilege . . . enters land in possession of another or any part thereof or causes a thing or third person to do so.” *McDermott v. Sway*, 50 N.W.2d 235, 240 (N.D. 1951). Thus, “[i]f, by any act of his, the actor intentionally causes a third person to enter land, he is as fully liable as though he himself enters.” *Id.* To state a claim for trespass to chattel, the complaint must allege a loss of use of the property. *Sagebrush Resources, LLC v. Peterson*, 841 N.W.2d 705, 712 (N.D. 2014). The Amended Complaint alleges that Ms. Montoya trespassed on Energy Transfer’s construction sites in Iowa and South Dakota to commit arson on Energy Transfer’s equipment and the DAPL pipeline, damaging or destroying them, and to otherwise obstruct construction. *See supra* § C.2.b. The Amended Complaint also alleges that Ms. Montoya sent individuals to engage in Red Warrior Camp’s trespass on Energy Transfer’s construction sites in North Dakota to obstruct construction. (*Id.*) These allegations sufficiently state a claim for trespass on both real property and chattel. *See Minto Grain, LLC v. Tibert*, 776 N.W.2d 549, 566 (N.D. 2009) (awarding damages for loss of financing as a result of trespass); *Bladow v. Bladow*, 249 N.W.2d 917, 919 (N.D. 1977) (awarding value of loss of use of land for certain time period).⁷

⁷ The elements of trespass and trespass to chattel under Iowa law are substantively the same. Under Iowa law, trespass to real property occurs where “one who is not rightfully upon the property of another [] enters it without consent, either express or implied, of the owner or occupier.” *Iowa State Highway Comm’n v. Hipp*, 147 N.W.2d 195, 199 (Iowa 1966). Trespass to chattel occurs where a defendant physically contacts chattel in the possession of another, including by intentionally damaging the object without consent or any other privilege. *McLeod USA Telecoms. Servs., Inc. v. Qwest Corp.*, 469 F. Supp. 2d 677, 704 (N.D. Iowa Jan. 16, 2007).

B. The Complaint States a Claim for Conspiracy.

The Amended Complaint also alleges a claim for civil conspiracy under North Dakota law, the elements of which are: “(1) [t]wo or more persons, and for this purpose a corporation is a person; (2) [a]n object to be accomplished; (3) [a] meeting of minds on the object or course of action; (4) [o]ne or more unlawful or overt acts; and (5) [d]amages as the proximate result thereof.” *In re N. Dakota Pers. Injury Asbestos Litig. No. 1*, 737 F. Supp. 1087, 1096 (D.N.D. 1990). As set forth above, the Amended Complaint plausibly alleges Defendants’ common plan, concerted action, and unlawful and overt acts, including violations of state and federal law. *See supra* §§ I.A and I.B.

III. THE COURT HAS PERSONAL JURISDICTION OVER MS. MONTOYA.

Ms. Montoya’s contention that she is not subject to personal jurisdiction in this Court is unavailing. The Amended Complaint alleges facts sufficient to show that Ms. Montoya is subject to this Court’s jurisdiction under the RICO statute and North Dakota law.

A. This Court Has Jurisdiction Over Ms. Montoya Under RICO.

Where a plaintiff has established personal jurisdiction over at least one RICO defendant under 18 U.S.C. § 1965(a), a court may exercise jurisdiction over additional RICO defendants who do not reside within the district, so long as they are served within “any judicial district of the United States.” *Id.* § 1965(b). RICO defendants GP-Inc., GP-Fund, and Ms. Two Bulls have not disputed this Court’s jurisdiction. Energy Transfer effected service on Ms. Montoya in the United States. (*See* ECF No. 123.) Thus, Ms. Montoya is subject to the jurisdiction of this Court under section 1965(b).

B. This Court Has Jurisdiction Over Ms. Montoya Under North Dakota Law.

Ms. Montoya is also subject to this Court’s jurisdiction under North Dakota’s long-arm statute, which provides jurisdiction over a person who, “directly or by an agent,” “commit[s] a

tort within or outside this state causing injury to another person or property within this state; [or] commit[s] a tort within this state, causing injury to another person or property within or outside this state.” N.D. R. Civ. P. 4(b)(2); *see* Fed. R. Civ. P. 4(k)(1)(A). At the motion to dismiss stage, Plaintiffs need only make a minimal *prima facie* showing that personal jurisdiction exists. *K-V Pharmaceutical Co.*, 648 F.3d 588 at 591-92 (8th Cir. 2011).

The Amended Complaint alleges Ms. Montoya directed the commission of torts within North Dakota by sending Mississippi Stand members to North Dakota to execute violent direct actions with Red Warrior Camp. (¶¶ 128, 141.) The Amended Complaint also alleges that Ms. Montoya committed torts outside the state with the intention of causing harm to Energy Transfer in North Dakota. Direct actions by Ms. Montoya and her organization, Mississippi Stand, were taken “in solidarity” with Red Warrior Camp and intended to “shut down” construction “in all four states” through which DAPL traverses, including North Dakota. (¶ 138.)

In addition, Ms. Montoya has admitted that she participated in anti-DAPL protests in North Dakota before joining Mississippi Stand in Iowa, and, upon joining Mississippi Stand, regularly communicated with protestors in North Dakota and even recruited individuals from North Dakota to participate in illegal “direct actions” in Iowa. (Recine Decl. Ex. 1.) The foregoing facts sufficiently establish that Ms. Montoya purposefully directed activities at North Dakota in connection with the Enterprise’s unlawful scheme.

North Dakota law also permits the exercise of this Court’s jurisdiction over Ms. Montoya based on the contacts of her co-conspirators in this state, including Earth First! Doe Defendants, Red Warrior Camp, and members of Mississippi Stand sent to North Dakota to execute violent direct actions alongside Red Warrior Camp. *See In re N. Dakota Pers. Injury Asbestos Litig.*, 737 F. Supp. at 1098-99 (finding jurisdiction over Canadian defendant based on co-conspirators’

North Dakota activities). Jurisdiction lies here because Ms. Montoya participated in a conspiracy that engaged in tortious conduct in North Dakota. *See supra* I.A.⁸

IV. MS. MONTOYA WAS PROPERLY SERVED.

On January 5, 2019, Ms. Montoya was properly served with the summons and Amended Complaint. (ECF No. 123; Bond Decl. ¶ 4.). Ms. Montoya's assertion that Plaintiffs' process server did not provide her with a copy of the Amended Complaint is false. (Bond Decl. ¶ 4). While Plaintiffs served Ms. Montoya outside the 45-day extension initially granted by the Court (ECF No. 117),⁹ Plaintiffs moved for a second extension of time to serve Ms. Montoya before the December 19 deadline and demonstrated good cause for their inability to serve Ms. Montoya within the time provided by Fed. R. Civ. P. 4(m) and the Court's order. (ECF Nos. 114, 119.)¹⁰

⁸ In the alternative, if the Court determines that the contacts set forth in the Amended Complaint and exhibits attached this opposition do not establish a *prima facie* showing of personal jurisdiction, Plaintiffs request targeted jurisdictional discovery to determine the full extent of Ms. Montoya's contacts with North Dakota in connection with the illegal campaign giving rise to this action. Such discovery is warranted in light of Ms. Montoya's admitted participation in anti-DAPL protests in North Dakota prior to joining Mississippi Stand, regular communication with and recruitment of anti-DAPL protestors in North Dakota, and commission of torts within the state by sending members of Mississippi Stand to join Red Warrior Camp in North Dakota. *Steinbuch v. Cutler*, 518 F.3d 580, 589-90 (8th Cir. 2008) (reversing district court's denial of jurisdictional discovery in light of evidence that out-of-state defendant had some contacts with the forum).

⁹ Ms. Montoya's contention that Plaintiff untimely filed its initial, November 5, 2018 motion to extend time for service is wrong. Plaintiffs filed the Amended Complaint on August 6, 2018, and the 90-day service period set forth by the federal rules expired at the end of day on November 5, 2018. Fed. R. Civ. P. 6(a)(1) ("When the period is stated in days . . . include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.").

¹⁰ Ms. Montoya's assertion that she "lived openly and never made any attempts to evade service," as purportedly evidenced by service effected the Berrigan House located at 713 Indiana Avenue, Des Moines, IA, is contradicted by press reports and the observations of Plaintiffs' investigators and process servers. These sources reported that Ms. Montoya had left Des Moines, "gone into hiding," and "dropped out" to undisclosed destinations after the FBI raided the Berrigan House in connection with her arson of DAPL. (ECF No. 108 ¶ 10; ECF No. 108-1.) Plaintiffs' repeated attempts to serve Ms. Montoya at the Berrigan House in August and September 2018 were unsuccessful and met with hostility. (ECF No. 108 ¶¶ 4, 8-10; ECF No.

The Court should thus grant Plaintiffs' pending motion for an extension of time to serve Ms. Montoya. *See* Fed. R. Civ. P. 4(m) ("if the plaintiff shows good cause for the failure [to timely serve] the court *must* extend the time for service for an appropriate period"); *Kurka v. Iowa Cnty., Iowa*, 628 F.3d 953, 957 (8th Cir. 2010) (good cause exists when "the plaintiff has acted diligently in trying to effect service" or "defendant has evaded service of process"); *Lewis v. MSM, Inc.*, 63 Fed. App'x 972, 972 (8th Cir. 2003) (good cause is demonstrated by "a good-faith attempt to effect timely service").

CONCLUSION

For the foregoing reasons, Ms. Montoya's motion to dismiss should be denied in its entirety. To the extent the Court grants Ms. Montoya's motions in whole or in part, Energy Transfer requests that such dismissal be without prejudice and that leave to amend the complaint be granted.

115-2.) Further, research conducted by Plaintiffs' investigators suggested that Ms. Montoya moved frequently and stayed in hotels under assumed names. (ECF No. 115 ¶¶ 11-14; ECF No. 120 ¶ 3.) Indeed, Ms. Montoya herself has admitted, in a message shared on Facebook, that she spent the year "on the road, coast to coast to coast." (Recine Decl., Ex. 3.) During this time, she was aware of Energy Transfer's "lawsuit against me" and its attempts to locate her, and thus is not prejudiced by any delay. (*Id.*) It was only after Ms. Montoya returned to the Berrigan House in or around January 2, 2019 that Plaintiffs were able to effect service there.

DATED this 11th day of February, 2019.

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