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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Maria Acevedo, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 SIERRA HEIDTBRINK, on behalf of the
11 State of California, as a private attorney
general,

12 Plaintiff,

13 vs.

14 JEFFERSON HEALTHCARE, INC., a
15 Corporation; and Does 1 through 50,
Inclusive,

16 Defendants.

Case No. 37-2021-00029068-CU-OE-CTL

REPRESENTATIVE ACTION
COMPLAINT FOR:

1.Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B)

1 Plaintiff Sierra Heidtbrink (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Jefferson Healthcare, Inc.
8 (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and
9 on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does not seek to recover anything other than penalties as permitted by
11 California Labor Code § 2699. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit individuals to bring an action on
15 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 THE PARTIES

23 4. Defendant Jefferson Healthcare, Inc. (“DEFENDANT”) is a Corporation that at
24 all relevant times mentioned herein conducted and continues to conduct substantial and regular
25 business throughout California.

26 5. DEFENDANT offers short term rehabilitation and long term care for adults.

1 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
2 employee entitled to overtime pay and meal and rest periods from May of 2019 to February 4,
3 2021. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a
4 non-exempt employee paid in whole or in part on an hourly basis and received additional
5 compensation from DEFENDANT in the form of non-discretionary incentive wages.

6 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, brings this Representative Action on behalf of the State of California with respect to herself
9 and all individuals who are or previously were employed by DEFENDANT in California and
10 who were classified as non exempt employees (“AGGRIEVED EMPLOYEES”) during the time
11 period of March 11, 2020 until a date as determined by the Court (the "PAGA PERIOD").

12 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
13 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT’s
15 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351,
16 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
17 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
18 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
19 the meaning of Labor Code § 2699, *et seq.*

20 9. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
22 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
23 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
24 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
25 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
26 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
27 responsible in some manner for one or more of the events and happenings that proximately
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caused the injuries and damages hereinafter alleged.

10. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

11. During the PAGA PERIOD, DEFENDANT failed and continues to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately calculate minimum and overtime wages for time worked by PLAINTIFF and other AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct compensation. Specifically, during the PAGA PERIOD, DEFENDANT required PLAINTIFF and other AGGRIEVED EMPLOYEES to wait in line and submit to mandatory temperature checks for COVID-19 screening and also complete a COVID-19 questionnaire regarding whether these employees had any symptoms prior to clocking into DEFENDANT's timekeeping system for the workday. This additional time worked was work performed subject to DEFENDANT's control and for DEFENDANT's benefit. Consequently, all this time constitutes "hours worked" and is therefore compensable. DEFENDANT's policy and practice to not pay employees for compensable work time is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for working without compensation at the correct minimum wage and overtime rates. DEFENDANT's policy and practice to not pay the AGGRIEVED EMPLOYEES the correct

1 compensation for all time worked in accordance with applicable law is evidenced by
2 DEFENDANT's business records. This policy and practice of DEFENDANT was intended to
3 purposefully avoid the payment of the correct compensation as required by California law which
4 allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who
5 complied with the law.

6 12. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
7 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
8 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
9 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
10 time worked, meaning the time during which an employee was subject to the control of an
11 employer, including all the time the employee was permitted or suffered to permit this work.
12 DEFENDANT required these employees to work off the clock without paying them for all the
13 time they were under DEFENDANT's control, including, but not limited to, time spent
14 undergoing mandatory drug testing or any other testing and/or examination required as a
15 condition of employment. Specifically, DEFENDANT required PLAINTIFF to work while
16 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
17 was from time to time interrupted by work assignments. Also, DEFENDANT, as a matter of
18 established company policy and procedure, administered a uniform practice of rounding the
19 actual time worked and recorded by PLAINTIFF and other AGGRIEVED EMPLOYEES,
20 always to the benefit of DEFENDANT, so that during the course of their employment,
21 PLAINTIFF and other AGGRIEVED EMPLOYEES were paid less than they would have been
22 paid had they been paid for actual recorded time rather than "rounded" time. As a result,
23 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
24 compensation by working without their time being accurately recorded and without
25 compensation at the applicable minimum wage and overtime rates. To the extent that the time
26 worked off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
27 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197,
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1 and 1197.1. Further, PLAINTIFF and other AGGRIEVED EMPLOYEES from time to time
2 were not paid wages for all time worked, including overtime wages, such that in the aggregate
3 employees were underpaid wages as a result of DEFENDANT's pattern and practice of unevenly
4 rounding time worked by its employees.

5 13. State and federal law provides that employees must be paid overtime at one-and-
6 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
7 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
8 employee's performance.

9 14. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
10 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
11 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
12 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
13 hourly basis with incentive compensation when the employees met the various performance
14 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
15 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
16 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
17 of calculating overtime pay. Management and supervisors described the incentive program to
18 potential and new employees as part of the compensation package. As a matter of law, the
19 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
20 be included in the "regular rate of pay." The failure to do so has resulted in a systematic
21 underpayment of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES
22 by DEFENDANT.

23 15. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
25 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
26 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
27 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
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1 compensation as required by California law which allowed DEFENDANT to illegally profit and
2 gain an unfair advantage over competitors who complied with the law. To the extent equitable
3 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
4 PAGA PERIOD should be adjusted accordingly.

5 16. As a result of their rigorous work schedules, PLAINTIFF and other
6 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
7 were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
8 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
9 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
10 DEFENDANT failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with a
11 second off-duty meal period from time to time in which these employees were required by
12 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED
13 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
14 accordance with DEFENDANT's corporate policy and practice.

15 17. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
16 were from time to time also required to work in excess of four (4) hours without being provided
17 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
18 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
19 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
20 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
21 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
22 AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. As
23 a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES
24 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
25 managers. Additionally, the applicable California Wage Order requires employers to provide
26 employees with off-duty rest periods, which the California Supreme Court defined as time
27 during which an employee is relieved from all work related duties and free from employer
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1 control. In so doing, the Court held that the requirement under California law that employers
2 authorize and permit all employees to take rest period means that employers must relieve
3 employees of all duties and relinquish control over how employees spend their time which
4 includes control over the locations where employees may take their rest period. Employers
5 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
6 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
7 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
8 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
9 leave the work premises during their rest period.

10 18. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
11 employees with an accurate itemized wage statement in writing showing, among other things,
12 gross wages earned and all applicable hourly rates in effect during the pay period and the
13 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
14 failed to provide to PLAINTIFF and the AGGRIEVED EMPLOYEES wage statements that
15 identify the correct gross and net wages earned, the applicable number of hours worked and
16 rates of pay. Specifically, DEFENDANT violated Section 226(a)(9) by failing to identify the
17 correct rates of pay and number of hours worked, including for the "Details Not Displayed,"
18 item of pay, which is a wage payment. Additionally, DEFENDANT violated Section 226(a)(8)
19 by failing to list the correct name of the legal entity that employed PLAINTIFF and other
20 AGGRIEVED EMPLOYEES. Aside, from the violations listed above in this paragraph,
21 DEFENDANT failed to issue to PLAINTIFF and other AGGRIEVED EMPLOYEES an
22 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

23 19. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
24 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
25 and other non-exempt employees earned non-discretionary remuneration, including but not
26 limited to, incentives and bonuses. Rather than pay sick pay at the regular rate of pay,
27 DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at
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1 their base rates of pay.

2 20. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
3 employment are due and payable twice during each calendar month, on days designated in
4 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(a) expressly
5 requires employers to pay employees all wages owed within eleven (11) days of the close of the
6 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
7 AGGRIEVED EMPLOYEES all wages owed to them within eleven (11) days of the close of
8 the payroll period.

9 21. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
10 to collect or receive from an employee any part of wages theretofore paid by said employer to
11 said employee.” DEFENDANT made unlawful deductions from compensation payable to
12 PLAINTIFF and other AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
13 deductions from compensation payable to PLAINTIFF and the other AGGRIEVED
14 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable pay
15 period and upon termination.

16 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
17 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
18 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
19 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
20 2802, employers are required to indemnify employees for all expenses incurred in the course
21 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
22 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
23 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
24 directions of the employer, even though unlawful, unless the employee, at the time of obeying
25 the directions, believed them to be unlawful."

26 23. In the course of their employment PLAINTIFF and other AGGRIEVED
27 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
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1 cellular phones as a result of and in furtherance of their job duties as employees for
2 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
3 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
4 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
5 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
6 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
7 for the benefit of DEFENDANT.

8 24. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
9 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
10 to accurately calculate and record the correct overtime rate for the overtime worked by
11 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
12 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
13 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
14 calculate and/or pay all required overtime compensation for work performed by the
15 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
16 promulgated thereunder as herein alleged.

17 25. All of the conduct and violations alleged herein occurred during the PAGA
18 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
19 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
20 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
21 AJDAR 12157 (Certified for Publication 12/19/18).

22 **JURISDICTION AND VENUE**

23 26. This Court has jurisdiction over this Action pursuant to California Code of Civil
24 Procedure, Section 410.10.

25 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
27 maintained offices and facilities in this County and/or conducts substantial business in this
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1 County, and (ii) committed the wrongful conduct herein alleged in this County against
2 PLAINTIFF and the AGGRIEVED EMPLOYEES.

3
4 **FIRST CAUSE OF ACTION**

5 **For Violation of the Private Attorneys General Act**

6 **[Cal. Lab. Code §§ 2698, *et seq.*]**

7 **(By PLAINTIFF and Against All Defendants)**

8 28. PLAINTIFF realleges and incorporates by this reference, as though fully set
9 forth herein, the prior paragraphs of this Complaint.

10 29. PAGA is a mechanism by which the State of California itself can enforce state
11 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
12 the state's labor law enforcement agencies. An action to recover civil penalties under
13 PAGA is fundamentally a law enforcement action designed to protect the public and not to
14 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
15 but to create a means of "deputizing" citizens as private attorneys general to enforce the
16 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
17 public interest to allow aggrieved employees, acting as private attorneys general to recover
18 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
19 claims cannot be subject to arbitration.

20 30. PLAINTIFF, and such persons that may be added from time to time who
21 satisfy the requirements and exhaust the administrative procedures under the Private
22 Attorney General Act, brings this Representative Action on behalf of the State of California
23 with respect to herself and all individuals who are or previously were employed by
24 DEFENDANT in California and who were classified as non exempt employees
25 ("AGGRIEVED EMPLOYEES") during the time period of March 11, 2020 until a date as
26 determined by the Court (the "PAGA PERIOD").

27 31. On March 11, 2021, PLAINTIFF gave written notice by electronic mail to the
28 Labor and Workforce Development Agency (the "Agency") and by certified mail to the

1 employer of the specific provisions of this code alleged to have been violated as required by
2 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
3 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
4 now commence a representative civil action under PAGA pursuant to Section 2699 as the
5 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
6 defined.

7 32. The policies, acts and practices heretofore described were and are an unlawful
8 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
9 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
10 properly record and provide legally required meal and rest periods, (c) failed to pay
11 minimum wages, (d) failed to pay overtime wages, (e) failed to reimburse employees for
12 required expenses, and (f) failed to provide wages when due, all in violation of the
13 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
14 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code
15 of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
16 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
17 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private
18 Attorney General Act of 2004 as the representative of the State of California for the illegal
19 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
23 severally, as follows:

- 24 1. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:

26 _____
27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 A) Recovery of civil penalties as prescribed by the Labor Code Private
2 Attorneys General Act of 2004; and,

3 B) An award of attorneys' fees and cost of suit, as allowable under the
4 law, including, but not limited to, pursuant to Labor Code §2699.

5 Dated: July 7, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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8 By: /s/ Norman Blumenthal
9 Norman B. Blumenthal
10 Attorneys for Plaintiff
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