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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 3/9/2023
By /s/ Jennifer Torres
Deputy Clerk

7 Attorneys for Plaintiff MARCEL MCGEE and the Putative Class

8 CALIFORNIA SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN MATEO

10 MARCEL MCGEE, an individual,

Case No.: 23-CIV-01064

11 Plaintiff,

CLASS ACTION COMPLAINT FOR

12 vs.

13 EXECUSHIELD, INC.; and DOES 1-100,
14 inclusive,

15 Defendants.

1. FAILURE TO PAY OVERTIME
2. FAILURE TO PAY MINIMUM WAGE
3. FAILURE TO PROVIDE MEAL BREAKS
4. FAILURE TO PROVIDE REST BREAKS
5. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS
6. VIOLATION OF BUSINESS AND
PROFESSIONS CODE SECTION 17200

JURY TRIAL DEMANDED

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20 Plaintiff Marcel McGee brings this class and collective action against Execushield, Inc., and
21 Does 1 through 100, for violations of the California Labor Code, the California Business and
22 Professions Code, and the IWC Wage Orders.

23 **PARTIES**

24 1. Marcel McGee ("McGee" or "Plaintiff") was, at all times relevant herein, employed in
25 San Mateo County, California, and was an "employee" as defined by the California Labor Code, and
26 the applicable California Industrial Wage Commission ("IWC") Order(s).

2. Execushield, Inc. (“Execushield”) is a California corporation with its principal place of business in Illinois and, at all times relevant herein, was an “employer” as defined by the the California Labor Code and the applicable IWC Order(s).

3. Execushield and Does 1-100 are collectively referred to as Defendants.

4. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

5. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

JURISDICTION AND VENUE

6. This Court has jurisdiction because the unlawful acts alleged herein took place in San Mateo County and McGee's place of employment with Execushield was within San Mateo County. Plaintiff hereby demands a jury trial.

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GENERAL ALLEGATIONS

7. Execushield specializes in security solution and private patrol services. Execushield's security officers serve in various capabilities with duties from ranging from unarmed site security to armed executive protection assignments.

8. McGee began working for Execushield in San Mateo in or around November 2022 as a security officer.

9. Throughout his employment, McGee was an hourly, non-exempt employee. As such, McGee was entitled to be minimum wage or overtime, as appropriate, for every hour he worked.

10. Notwithstanding the foregoing, McGee and Execushield's other non-exempt California employees were not always paid for every hour work.

11. Specifically, McGee and Execushield's other non-exempt California employees often arrived to their posts early in order to prepare for their shifts and receive pertinent information from the outgoing security officer.

12. McGee and Execushield's other non-exempt California employees also often stayed at posts late in order to allow for the incoming security officer to prepare for their shifts and pass down pertinent information from the incoming security officer.

13. Because of Execushield's time keeping practices and illegal rounding, or because they sought to intentionally deprive their employees of pay, Execushield did not pay McGee and its other non-exempt California employee for all hours worked.

14. Execushield was, at all times relevant herein aware of the foregoing.

15. McGee and Execushield's other non-exempt California employees were not consistently authorized or permitted to take meal and rest breaks as required by California law.

16. At times, McGee and Execushield's other non-exempt California employees were unable to take meal and rest breaks at all because their posts were too busy or understaffed.

17. Further, Execushield frequently failed to relieve McGee and its other non-exempt California of employer control during their meal and rest breaks.

1 18. When McGee and Execushield's other non-exempt California employees were able to
2 take their meal breaks, they routinely occurred after 5 hours of work.

3 19. Frequently, roving security offers failed to timely relief McGee and Execushield's other
4 non-exempt California employees for their meal and rest breaks, or failed to show up to relieve them
5 entirely.

6 20. McGee raised this issue to his supervisors on a number of occasions, but was ignored or
7 offered excuses.

8 21. Similarly, McGee and Execushield's other non-exempt California employees were
9 regularly prevented by Execushield from taking rest breaks as required by California law. Although
10 McGee always worked shifts in excess of 3.5 hours, which is reflected in the time records kept by
11 Execushield, during those shifts he was almost never permitted a reasonable opportunity to take a rest
12 break.

13 22. Rest breaks were not scheduled, and McGee was often required to work through rest
14 breaks to attend to needs at his posts. McGee would either not be released to take a rest break or
15 pulled back in the middle of a rest break to attend to work duties.

16 23. McGee and Execushield's other non-exempt California employees had company issues
17 cell phones and/or radios which they were required to carry at all times and which made uninterrupted
18 meal and rest breaks difficult, if not impossible.

19 24. When McGee and Execushield's other non-exempt California were not provided
20 compliant meal and rest breaks, Execushield did not pay premium wages for all of McGee and their
21 other non-exempt employees' missed meal and rest periods. Indeed, Execushield did not pay premium
22 wages for any of McGee's missed meal or rest periods.

23 25. Because of the violations set forth above, the wage statements furnished by Execushield
24 to McGee and its non-exempt California employees violated California Labor Code section 226(a)
25 insofar as they failed to accurately show:

- 26 a. The gross wages earned, in violation of section 226(a)(1);
27 b. The total hours worked by the employee in violation of section 226(a)(2);
28 c. The net wages earned, in violation of section 226(a)(5); and

1 d. All applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate in violation of section 226(a)(9).

3 26. Execushield was, at all times relevant herein, aware of the requirements of California
4 Labor Code section 226.

5 27. Because McGee and Execushield's other non-exempt California employees are not paid
6 for all hours work, provided compliant meal and rest breaks, or paid the premiums associated with
7 missing the same, they are not timely paid all wages due and owing to them during each pay period
8 and at the end of their employment.

9 28. From at least four years prior to the filing of this action, Execushield has adopted and
10 employed unfair business practices. These unfair business practices include, but are not limited to,
11 failing pay minimum wage and overtime, failing to provide compliant meal and rest breaks, and failing
12 to pay premiums associated with the same.

13 **CLASS ACTION ALLEGATIONS**

14 29. McGee seeks to maintain this action as a class action as to the First through Sixth
15 Causes of Action. McGee brings this action, on behalf of herself and all others similarly situated, as a
16 class action pursuant to California Code of Civil Procedures § 3382. The putative class which McGee
17 seeks to represent consists of the following:

- 18 a. All current and former non-exempt California employees of Execushield from
19 March 8, 2019 through the date of trial (the "Non-Exempt Employee Class");
- 20 b. All current and former non-exempt California employees of Execushield who
21 worked one or more shift of longer than five hours from March 8, 2019 through
22 the date of final judgment (the "Meal Break Class");
- 23 c. All current and former non-exempt California employees of Execushield who
24 worked one or more shift of longer than three and one-half hours from March 8,
25 2019 through the date of final judgment (the "Rest Break Class"); and
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1 d. All members of the Non-Exempt Employee Class, the Meal Break Class and the
2 Rest Break Class who were issued one or more wage statements from March 8,
3 2022 to the date of final judgment (the “Wage Statement Class”).

4 The Non-Exempt Employee Class, the Meal Break Class, the Rest Break Class, and the Wage
5 Statement Class are collectively referred to as the Class.

6 30. The class of persons is so numerous that joinder of all members is impracticable, and
7 the disposition of their claims in a class action is a benefit to the parties and to the Court. McGee is
8 informed and believes, and based thereon alleges, that Defendants employ more than 100 employees
9 who satisfy the class definition. Although the exact number and identity of class members is not
10 presently known, they can be identified in Defendants’ records through coordinated discovery
11 pursuant to this class action.

12 31. This action may be maintained as a class pursuant to California Code of Civil
13 Procedure § 382 because the questions of law and fact which are common to class members clearly
14 predominate over any questions affecting only individual members and because a class action is
15 superior to other available methods for adjudicating the controversy.

16 32. There are numerous common questions of law and fact arising out of Defendants’
17 conduct. This class action focuses on Defendants’ uniform: (a) failure to pay all wages, (b) failure to
18 provide compliant meal and rest breaks, and (c) failure to provide accurate itemized wage statements.

19 33. Furthermore, common questions of fact and law predominate over any questions
20 affecting only individual members of the class. The predominating common or class-wide questions
21 of law and fact include the following:

- 22 a. Whether Defendants paid their non-exempt California employees all the wages
23 they were owed;
- 24 b. Whether Defendants provided compliant meal and rest breaks to the non-
25 exempt California employees;
- 26 c. Whether Defendants paid all premiums owed to their non-exempt California
27 employees for noncompliant meal and rest periods;

- d. Whether Defendants furnished accurate itemized wage statements to their non-exempt California employees;
- e. Whether the alleged violations constitute unfair business practices;
- f. Whether the Class is entitled to injunctive relief; and
- g. Whether the Class is entitled to unpaid wages, statutory penalties, civil penalties, and/or restitutionary relief, and the amount of the same.

34. McGee's claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the alleged violations of Defendants, because Defendants subjected McGee and each member of the Class to the same violations alleged herein.

35. The defenses of Defendants, to the extent that such defenses apply, are applicable generally to the whole Class and are not distinguishable as to the proposed class members.

36. McGee will fairly and adequately protect the interests of all members of the Class, and has retained attorneys with extensive experience in litigation, including class and representative actions. McGee has no interests that conflict with those of the Class. McGee is able to fairly and adequately protect the interests of all members of the class because it is in her best interest to prosecute the claims alleged herein in order to obtain the full compensation due himself and the other class members.

37. A class action is superior to any other method available for fairly and efficiently adjudicating the controversy because 1) joinder of individual class members is not practicable, 2) litigating the claims of individual class members would be unnecessarily costly and burdensome and would deter individual claims, 3) litigating the claims of individual class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to bring individual claims, 5) class members would be discouraged from pursuing individual claims because the damages available to them are relatively small, and 6) public policy encourages the use of

1 the class actions to enforce employment laws and protect individuals who, by virtue of their
2 subordinate position, are particularly vulnerable.

3 38. Judicial economy will be served by maintenance of this lawsuit as a class action. To
4 process numerous virtually identical individual cases will significantly increase the expense on the
5 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
6 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action
7 by this Court and doing so will provide multiple benefits to the litigating parties including, but not
8 limited to, efficiency, economy, and uniform adjudication with consistent results.

9 39. Notice of a certified class action and any result or resolution of the litigation can be
10 provided to class members by mail, email, publication, or such other methods of notice as deemed
11 appropriate by the Court.

12 **FIRST CAUSE OF ACTION**
13 **Failure to Pay Overtime**
14 **[Cal. Lab. Code § 510 and the IWC Wage Orders]**
Against Defendants

15 40. McGee hereby realleges and incorporates by reference each and every allegation set
16 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
17 allegations of this cause of action.

18 41. Pursuant to California Labor Code section 510, any work in excess of eight hours in
19 one workday and any work in excess of 40 hours in any one workweek and the first eight hours
20 worked on the seventh day of work in any one workweek shall be compensated at the rate of no less
21 than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours
22 in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
23 employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be
24 compensated at the rate of no less than twice the regular rate of pay of an employee.

25 42. Pursuant to California Labor Code section 1198, the maximum hours of work and
26 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
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1 standard conditions of labor for employees and the employment of any employee for longer hours than
2 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

3 43. During the relevant time period, McGee and Defendants' other non-exempt California
4 employees regularly worked overtime.

5 44. During the relevant time period, Defendants intentionally and willfully failed to pay all
6 overtime wages due to McGee and the other members of the Non-Exempt Employee Class.

7 45. Wherefore, McGee and the other members of the Non-Exempt Employee Class have
8 been injured as set forth above and request relief as hereafter provided.

9 **SECOND CAUSE OF ACTION**
10 **VIOLATION OF CALIFORNIA LABOR CODE § 1182 et seq.**
11 **(Failure to Pay Minimum Wage)**
12 **Against Defendants**

13 46. McGee hereby realleges and incorporates by reference each and every allegation set
14 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
15 allegations of this cause of action.

16 47. California Labor Code section 1182.12 establishes the minimum wage for California
17 employees from July 1, 2014, to present.

18 48. Labor Code Section 1194 provides, in relevant part:

19 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
20 than the legal minimum wage ... applicable to the employee is entitled to recover in a
21 civil action the unpaid balance of the full amount of this minimum wage ... including
22 interest thereon, reasonable attorney's fees, and costs of suit.

23 49. Labor Code section 1194.2 provides, in relevant part:

24 In any action under ... Section 1194 to recover wages because of the payment of a wage less
25 than the minimum wage fixed by an order of the commission, an employee shall be entitled to
26 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
27 thereon.

28 50. Labor Code section 1197 provides that the minimum wage for employees fixed by the
commission is the minimum wage to be paid to employees, and the payment of a lesser wage is
unlawful.

1 51. Labor Code section 1197.1 further provides that any employer or other person acting
2 either individually or as an officer, agent, or employee of another person, who pays or causes to be
3 paid to any employee a wage less than the minimum fixed by an order shall be subject to restitution of
4 wages and liquidated damages payable to the employee.

5 52. Pursuant to California Labor Code section 1198, the maximum hours of work and
6 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
7 standard conditions of labor for employees and the employment of any employee for longer hours than
8 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

9 53. During the relevant time period, Defendants intentionally and willfully failed to pay
10 McGee and the other members of the Non-Exempt Employee Class for every hour worked.

11 54. Wherefore, McGee and the other members of the Non-Exempt Employee Class have
12 been injured as set forth above and request relief as hereafter provided.

13 **THIRD CAUSE OF ACTION**
14 **Failure to Provide Meal Breaks**
15 **[Cal. Lab. Code §§ 226.7, 512 and the IWC Wage Orders]**
 Against Defendants

16 55. McGee hereby realleges and incorporates by reference each and every allegation set
17 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
18 allegations of this cause of action.

19 56. Labor Code § 226.7 requires employers to provide employees meal breaks as mandated
20 by Order of the Industrial Welfare Commission. It states:

- 21 a. No employer shall require any employee to work during any meal or rest period
22 mandated by an applicable order of the Industrial Welfare Commission.
- 23 b. If an employer fails to provide an employee a meal period or rest period in
24 accordance with an applicable order of the Industrial Welfare Commission, the
25 employer shall pay the employee 1 additional hour of pay at the employee's
26 regular rate of compensation for each work day that the meal or rest period is
27 not provided.

1 57. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer may
2 not employ a person for a work period of more than 5 hours per day without providing that employee a
3 meal period of not less than 30 minutes, except that if the total work period per day is no more than six
4 hours, the meal period may be waived by mutual consent of both the employer and employee. An
5 employer may not employ a person for a work period of more than 10 hours per day without providing
6 an employee with a second meal period of not less than 30 minutes, except that if the total work period
7 per day of the employee is no more than twelve 12 hours, the meal period may be waived by mutual
8 consent of both the employer and the employee, and if the first meal period was not waived

9 58. Per the California Labor Code and applicable Wage Order(s) of the Industrial Welfare
10 Commission (“IWC”), if an employer fails to provide a meal or rest or recovery period in accordance
11 with an order of the IWC, the employer shall pay the employee one additional hour of “premium” pay
12 at the employee’s regular rate of compensation for each workday that the meal or rest or recovery
13 period is not provided. Labor Code § 226.7, Cal. Code Regs., tit. 8, § 11020, subds. 11(D), 12(B).

14 59. As set forth above, McGee and the other members of the Meal Break Class were not
15 provided complaint meal breaks and did not receive all meal period premiums owed for said
16 violations.

17 60. Wherefore, McGee and the other members of the Meal Break Class have been injured
18 as set forth above and request relief as hereafter provided.

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20 **FOURTH CAUSE OF ACTION**
21 **Failure to Provide Rest Breaks**
22 **[Cal. Lab. Code §§ 226.7 and the IWC Orders]**
 Against Defendants

23 61. McGee hereby realleges and incorporates by reference each and every allegation set
24 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
25 allegations of this cause of action.

26 62. Labor Code § 226.7 requires employers to provide employees rest breaks as mandated
27 by Order of the Industrial Welfare Commission. It states:

- 1 a. No employer shall require any employee to work during any meal or rest period
2 mandated by an applicable order of the Industrial Welfare Commission.
- 3 b. If an employer fails to provide an employee a meal period or rest period in
4 accordance with an applicable order of the Industrial Welfare Commission, the
5 employer shall pay the employee 1 additional hour of pay at the employee's
6 regular rate of compensation for each work day that the meal or rest period is
7 not provided.

8 63. The applicable Wage Order(s) provides that every "employer shall authorize and permit
9 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
10 period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten
11 (10) minutes net rest time per four (4) hours or major fraction thereof..." The applicable Wage Order
12 further provides that "[i]f an employer fails to provide an employee rest period in accordance with the
13 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
14 employee's regular rate of compensation for each workday that the rest period is not provided."

15 64. Per the California Labor Code and applicable Wage Order(s) of the Industrial Welfare
16 Commission ("IWC"), if an employer fails to provide a meal or rest or recovery period in accordance
17 with an order of the IWC, the employer shall pay the employee one additional hour of "premium" pay
18 at the employee's regular rate of compensation for each workday that the meal or rest or recovery
19 period is not provided. Labor Code § 226.7, Cal. Code Regs., tit. 8, § 11020, subds. 11(D), 12(B).

20 65. As set forth above, McGee and the other members of the Rest Break Class were not
21 provided complaint rest breaks.

22 66. When McGee and the other members of the Rest Break Class were not provided
23 compliant rest breaks, Defendant did not pay premiums as required by California law.

24 67. Wherefore, McGee and the other members of the Rest Break Class have been injured as
25 set forth above and request relief as hereafter provided.

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FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a) – PAGA
(Failure to Furnish Accurate Itemized Wage Statements)
Against Defendant

68. McGee hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

69. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment.”

70. As set forth above, Defendant intentionally and willfully failed to furnish accurate itemized wage statements which complied with Labor Code section 226.

71. Wherefore, McGee and the other members of the Wage Statement Class have been injured as set forth above and request relief as hereafter provided.

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SIXTH CAUSE OF ACTION
Unfair Business Practices
[Cal. Bus. & Prof. Code § 17200 *et seq.*]
Against Defendants

72. McGee hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

73. The statutory violations, as alleged above, are unfair business practices within the meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et. seq.*), and include, but are not limited to, failing to pay minimum wage and overtime and failing to provide compliant meal breaks and rest breaks and to pay all premiums owed for the same.

74. Wherefore, McGee and the other members of the Non-Exempt Employee Class, the Meal Break Class and the Rest Break Class have been damaged as set forth above and request relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, McGee prays judgment against Defendants as follows:

As to the First through Sixth Causes of Action:

1. That this Court certify the Class;
2. That this Court appoint Plaintiff as the representative of the Class;
3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
4. That this Court award actual, compensatory, special, and general damages as well as restitutionary relief to Plaintiff and the members of the Class;
5. That this Court award injunctive relief, including that available under Business and Professions Code Section 17203;
6. That this Court award penalties and liquidated damages including, but not limited to, those available under Labor Code sections 226, 226.7, 510 and 1194.2;

- 1 7. That this Court award statutory attorneys' fees and costs, including those available
2 under Labor Code sections 218.5, 226(e)(1), 226(h), and 1194, as well as Code of Civil
3 Procedure section 1021.5;
4 8. That this Court award prejudgment and post-judgment interest according to any
5 applicable provision of law or as otherwise permitted by law; and
6 9. That this Court award such other and further relief as the court deems just and proper.
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8 **DATED:** March 9, 2023

MAYALL HURLEY P.C.

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10 By 
11 ROBERT J. WASSERMANN
12 JENNY D. BAYSINGER
13 Attorneys for Plaintiff and the Putative Class
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