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Case Management Conference

08/21/2026 08:30 AM - Department 07

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

ELVIS QUEZADA LEYVA, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WESPAK, INC, a California Corporation; and
DOES 1-50, inclusive.

Defendants.

CASE NO.: VCU334025

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Elvis Quezada Leyva (“Plaintiff”), on behalf of himself and all other similarly
2 situated aggrieved employees, alleges and complains of Defendant WesPak, Inc (“Defendant”) and
3 DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant grower, packer, shipper, and wholesale marketer of farm-fresh, fruit to
6 markets across the country.

7 2. Plaintiff brings this PAGA representative action solely on behalf of the State of
8 California against Defendant for alleged violations of the California Labor Code.

9 3. **Plaintiff does not seek to recover anything other than penalties as permitted by**
10 **California Labor Code § 2699.**

11 4. As set forth below, Plaintiff alleges that Defendant failed to pay for all hours worked
12 due to its failure to record and pay for all time worked off the clock. Plaintiff further alleges that
13 Defendant failed to pay all overtime and sick pay compensation at the proper legal rates by failing to
14 properly calculate the “regular rate of pay.” Moreover, Plaintiff alleges that Defendant’s meal and
15 rest period policies and practices failed to allow and permit aggrieved employees to take all compliant
16 and timely meal and rest periods or pay premium wages at the “regular rate of pay” in lieu thereof.
17 Plaintiff further alleges that Defendant failed to provide the aggrieved employees with accurate
18 written itemized wage statements in violation of Labor Code § 226(a) and failed to timely pay all
19 final wages upon separation of employment in violation of Labor Code §§ 201-203.

20 **JURISDICTION**

21 5. Plaintiff, on behalf of the State of California, brings this representative action pursuant
22 to Labor Code § 2699, *et seq.*, seeking penalties for Defendant’s violation of California Labor Code
23 §§ 201-203, 204, 210, 226(a), 226(a)(6), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194,
24 1197.1, 1199, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”).

25 6. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved
26 employees within the meaning of Labor Code §2699, *et seq.*

27 7. This Court has jurisdiction over Defendant because, upon information and belief,
28 Defendant has sufficient minimum contacts in California, or otherwise intentionally avail themselves

1 to the State of California so as to render the exercise of jurisdiction over them by California courts
2 consistent with the traditional notions of fair play and substantial justice.

3 **VENUE**

4 8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
5 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County
6 of Tulare. Defendant owns, maintains offices, transacts business, has an agent or agents within the
7 County of Tulare, and/or otherwise are found within the County of Tulare, and Defendant is within
8 the jurisdiction of this Court for purposes of service of process.

9 **PARTIES**

10 9. At all relevant times herein, Plaintiff, who is over 18, was and currently is a California
11 resident residing in the State of California.

12 10. Plaintiff is informed, believes, and alleges that Defendants are authorized to do
13 business within the County of Tulare and is and/or was the legal employer of Plaintiff and the
14 aggrieved employees during the applicable statutory periods. Plaintiff was, and is, a victim of
15 Defendants' policies and/or practices complained of herein and has been deprived of the rights
16 guaranteed to him by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7,
17 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199, and the California Business and Professions Code §
18 17200 *et seq.*, and applicable Wage Orders.

19 11. Plaintiff is informed and believes, and based thereon alleges, that during the four years
20 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
21 do) business in the State of California, County of Tulare.

22 12. Plaintiff does not know the true names or capacities, whether individual, partner, or
23 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
24 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
25 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
26 believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or
27 corporate, were responsible in some manner for the acts and omissions alleged herein and proximately
28 caused Plaintiff and the aggrieved employees to be subject to the unlawful employment practices

1 alleged herein.

2 13. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
3 herein, Defendants were and are the employers of Plaintiff and all aggrieved employees. At all times
4 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to
5 have been done by the named Defendants. Furthermore, the Defendants, and each of them, were the
6 agents, servants, and employees of each and every one of the other Defendants, as well as the agents
7 of all Defendants, and at all times herein mentioned, were acting within the course and scope of said
8 agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise
9 ratified each and every one of the acts or omissions complained of herein.

10 14. At all times mentioned herein, Defendants, and each of them, were members of and
11 engaged in a joint venture, partnership, and common enterprise and acting within the course and
12 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
13 alleges that all Defendants were joint employers for all purposes of Plaintiff and all aggrieved
14 employees.

15 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

16 15. Defendant grower, packer, shipper, and wholesale marketer of farm-fresh, fruit to
17 markets across the country.

18 16. Plaintiff was employed by Defendant as a non-exempt employee in the role of
19 “General Worker” from January 2025 to May 2, 2025. Based in Dinuba, California, Plaintiff was
20 responsible for a variety of tasks, including, but not limited to, loading and unloading pallets and
21 making boxes with products.

22 17. Alongside Plaintiff, other aggrieved employees, including but not limited to
23 Picker/Packer, General Worker, Machine Operator, Maintenance Mechanic, and Warehouse
24 Associate, played a critical role in supporting Defendant’s daily operations and overall success across
25 California.

26 18. Plaintiff and other aggrieved employees were responsible for a wide range of tasks
27 critical to Defendant’s operations, such as producing, packing, shipping, and performing overall
28 manufacturing duties. Their work ensured the effective operation of Defendant’s assets. Despite the

1 essential nature of their contributions, Plaintiff and other aggrieved employees allege that Defendant
2 failed to comply with California Labor Code, including but not limited to, proper wage payment, and
3 provision of meal and rest periods, as set forth below.

4 19. At all relevant times, Plaintiff and other aggrieved employees regularly worked
5 various shifts, many of which were more than 8.0 hours in a workday and 40.0 hours in a workweek.
6 Plaintiff alleges that other aggrieved employees were also subjected to the same policies, procedures,
7 practices, working conditions, and corresponding wage and hour violations to which he was subjected
8 during his employment.

9 20. First, at all relevant times, Defendant has consistently failed to accurately record and
10 pay for all time worked, including the time aggrieved employees were under the employer's control.
11 This included a policy and practice of failing to properly record the time worked by aggrieved
12 employees, including all time spent working off the clock. As a result of this company-wide
13 policy/practice, Plaintiff and other aggrieved employees are not compensated for all the hours that
14 they work and all of the overtime hours they work, in violation of Labor Code §§ 204, 210, 510,
15 1194, 1197.1, 1199, and applicable Wage Orders.

16 21. As a result, over a period of time, Plaintiff and other aggrieved employees were not
17 properly paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 1194, 1197.1, 1199,
18 and applicable Wage Orders. Additionally, due to the unlawful timekeeping policy/practices, Plaintiff
19 and other aggrieved employees were not properly paid at the correct overtime rate for hours worked
20 in excess of eight hours per shift in violation of Labor Code § 510.

21 22. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
22 by an applicable state or local law or by an order of the commission a civil penalty, restitution of
23 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,
24 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
25 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
26 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
27 underpaid regardless of whether the initial violation was intentionally committed.

1 23. Labor Code § 510 requires an employer to compensate an employee who works more
2 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
3 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
4 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
5 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
6 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
7 applicable Wage Orders, aggrieved employees shall not be employed more than eight (8) hours in
8 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
9 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

10 24. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and other
11 aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510,
12 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and for
13 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

14 25. Furthermore, at all relevant times, Plaintiff and other aggrieved employees worked
15 regular shifts that lasted longer than 8.0 hours in a workday and resulted in aggrieved employees
16 regularly working more than 40 hours in a workweek. However, Defendant uniformly failed to
17 properly calculate and pay overtime wages at the proper legal rate due to Defendant's failure to
18 include all forms of compensation/remuneration, including, but not limited to, stipends, shift pay,
19 non-discretionary bonuses, commissions, incentives, and all other forms of remuneration in
20 calculating the "regular rate of pay" for purposes of overtime compensation.

21 26. Under the California Labor Code (as well as the FLSA), courts have consistently held
22 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
23 determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v.*
24 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
25 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F.
26 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgment to Plaintiff under California
27 and federal law on the grounds that Defendant improperly calculated overtime by excluding annual
28 bonuses paid to employees from the "regular rate of compensation"]; see *Walling v. Youngerman-*

1 *Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. (“The regular rate by its very nature must reflect
2 all payments which the parties have agreed shall be received regularly during the workweek,
3 exclusive of overtime payments. It is not an arbitrary label chosen by the parties but an actual fact.
4 Once the parties have decided upon the amount of wages and the mode of payment, the determination
5 of the regular rate becomes a matter of mathematical computation, the result of which is unaffected
6 by any designation of a contrary ‘regular rate’ in the contracts.”); see also 29 CFR §§ 778.110
7 (“production bonus”) and 778.111 (“piece-rate”).

8 27. Labor Code § 510 requires an employer to compensate an employee who works more
9 than eight (8.0) hours in one workday, forty (40.0) hours in a workweek, and for the first eight (8.0)
10 hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular
11 rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less
12 than twice the regular rate of pay when an employee works more than twelve (12.0) hours in a
13 workday or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section
14 3 of the applicable Wage Orders, aggrieved employees shall not be employed more than eight (8.0)
15 hours in any workday or more than 40.0 hours in any workweek unless the employee receives one
16 and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in
17 the workweek.

18 28. By their policy of requiring Plaintiff and the other aggrieved employees to work in
19 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
20 them at the lawful rate of one-half (1 1/2) their “regular rate of pay,” Defendant willfully violated the
21 provisions of Labor Code § 510 and the applicable Wage Orders.

22 29. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and other
23 aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510,
24 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and for
25 attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

26 30. Similarly, at all relevant times, Defendant also failed in its obligation to provide
27 Plaintiff and other aggrieved employees the legally required paid sick days at the legal rate pursuant
28 to Labor Code §§ 246(a),(b), which requires that “[a]n employee who, on or after July 1, 2015, works

1 in California for the same employer for 30 or more days within a year from the commencement of
2 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
3 worked, beginning at the commencement of employment.” Labor Code § 246(l)(1) provides that paid
4 sick time for aggrieved employees must be “calculated in the same manner as the regular rate of pay
5 for the workweek in which the employee uses paid sick time, whether or not the employee actually
6 works overtime in that workweek.”

7 31. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
8 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
9 hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
10 requires employers to “provide an employee with written notice that sets forth the amount of paid
11 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
12 the employee’s itemized wage statement described in Section 226 or in a separate writing provided
13 on the designated pay date with the employee’s payment of wages.”

14 32. Here, at all relevant times, Defendant failed in its obligation to provide Plaintiff and
15 other aggrieved employees the legally required paid sick days at the legal rate, including all forms of
16 compensation, pursuant to Labor Code §§ 246(a), (b). As such, Defendant paid sick time below the
17 “regular rate of pay” as required by Labor Code §§ 246(l) (1-2). Based on the foregoing Labor Code
18 violations, Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code
19 § 2699(f)(2), and for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

20 33. Moreover, at all relevant times, Plaintiff and other aggrieved employees were denied
21 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
22 Defendant’s uniform meal period policies/practices, operational requirements, and work demands,
23 Plaintiff and other aggrieved employees often could not take timely and uninterrupted net 30-minute
24 first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other aggrieved
25 employees worked more than 10.0 hours in a shift, they were not allowed and permitted to take a
26 mandated second meal period before the end of the tenth hour of work in violation of the Labor Code
27 and applicable Wage Orders. Indeed, Plaintiff’s and other aggrieved employees’ meal periods were
28 often interrupted and/or lasted fewer than 30 minutes due to Defendant’s meal period

1 policies/procedures, operational requirements, and work demands.

2 34. In addition, for each missed or non-compliant meal period, Defendant failed and
3 continues to fail to maintain a mechanism by which aggrieved employees were paid meal period
4 premiums at the “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11
5 5th 858 and Labor Code § 226.7.

6 35. Accordingly, due to Defendant’s uniform meal period practices, aggrieved employees
7 were also regularly denied legally compliant meal periods in violation of Labor Code §§ 226.7, 510,
8 516, and applicable Wage Orders, and would be entitled to penalties under Labor Code § 2698 *et seq.*

9 36. Next, at all relevant times, Plaintiff and other aggrieved employees were not provided
10 with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to
11 Defendant’s uniform rest period policies/practices, operational requirements and work demands. As
12 a result, Plaintiff and other aggrieved employees were and are often unable to take a net 10-minute
13 duty-free rest period for every major fraction of four hours worked. This includes a second rest period
14 for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in a workday.

15 37. By not relieving all aggrieved employees of all duties during rest periods, Defendant
16 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
17 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
18 duties and relinquish control over how employees spend their time.”] (Emphasis added). In *Augustus*,
19 the California Supreme Court expressly rejected the employer’s assertion that it could provide an on-
20 duty rest period to employees who worked as security guards and further explained: “that employers
21 [must] relinquish any control over how employees spend their break time and relieve their employees
22 of all duties.” *Id.* at 273. Each time aggrieved employees could not take a compliant rest period;
23 Defendant failed and continues to fail to adequately pay rest period premium payments at the “regular
24 rate of pay” as required by Labor Code § 226.7.

25 38. Accordingly, due to Defendant’s uniform rest period policies/practices, aggrieved
26 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,
27 512, and applicable Wage Orders, and would be entitled to penalties under Labor Code § 2698 *et seq.*

28 39. As a result of Defendant’s failure to pay Plaintiff and other aggrieved employees for

1 all hours they were subject to the control of Defendant, including all minimum, overtime and sick
2 pay wages, and Defendant's failure to pay all meal and rest period premiums at the "regular rate of
3 pay," Defendant issued wage statements which failed to identify the gross wages earned accurately,
4 the total hours worked, the net wages earned, and the correct corresponding number of hours worked
5 at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

6 40. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
7 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
8 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
9 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
10 deduction statement or fails to keep the required in subdivision (a) of Section 226."

11 41. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
12 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant's violations of
13 Labor Code § 226(a). Consequently, because Defendant failed to comply with Labor Code § 226(a),
14 Plaintiff and other aggrieved employees would be entitled to recover penalties under Labor Code §
15 226(e) and/or 2698 *et seq.*

16 42. Finally, because Defendant failed to pay all minimum, overtime, and sick pay wages,
17 and meal and rest period premiums at the "regular rate of pay," Defendant also failed and continues
18 to fail to pay Plaintiff and other aggrieved employees all wages owed at their time of separation from
19 employment in violation of Labor Code §§ 201-203. Thus, aggrieved employees would be entitled to
20 recover waiting time penalties under Labor Code §§ 201-203 and/or 2698 *et seq.*

21 **FIRST CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT**

23 **(Plaintiff and Similarly Aggrieved Employees Against All Defendants)**

24 43. Plaintiff re-alleges and incorporates by reference each and every allegation outlined
25 in the preceding paragraphs.

26 ///

27 44. Defendant has committed several Labor Code violations against Plaintiff and other
28 similarly aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code

1 § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action against
2 Defendant to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the
3 State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not
4 limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per employee per
5 pay period for those violations of the Labor Code for which no civil penalty is specifically provided
6 based on the following Labor Code violations:

- 7 a) Defendant's failure to record and pay for all hours worked;
- 8 b) Defendant's failure to pay all overtime wages at the "regular rate of pay" because
9 Defendant failed to include all forms of compensation, including, but not limited to, shift differential,
10 commissions, incentives, non-discretionary bonuses, and other forms of remuneration;
- 11 c) Defendant's failure to pay all sick pay at the "regular rate of pay";
- 12 d) Defendant's failure to allow and permit legally compliant meal periods or compensation
13 at the "regular rate of pay" in lieu thereof;
- 14 e) Defendant's failure to allow and permit legally compliant rest periods or compensation
15 at the "regular rate of pay" in lieu thereof;
- 16 f) Defendant's failure to furnish legally compliant wage statements pursuant to Labor
17 Code § 226(a); and
- 18 g) Defendant's failure to pay final wages to aggrieved employees in a timely manner at the
19 time of separation from employment was unlawful.

20 45. On or about December 5, 2025, Plaintiff notified Defendant WesPak, Inc.
21 ("Defendant") via certified mail and the California Labor and Workforce Development Agency
22 ("LWDA") via its website of Defendant's violations of the California Labor Code § 2698 *et seq.*
23 with respect to violations of the California Labor Code identified in Paragraph 44 (a)-(g). Now that
24 sixty-five days (65) have passed from Plaintiff notifying Defendant of these violations, Plaintiff has
25 exhausted his administrative requirements for bringing a claim under the Private Attorneys General
26 Act with respect to these violations.

27 46. Plaintiff was compelled to retain the services of counsel to file this court action to
28 protect his interests and the interests of other similarly aggrieved employees and to assess and collect

1 the civil penalties owed by Defendant. Plaintiff has, therefore, incurred attorneys' fees and costs,
2 which he is entitled to receive under California Labor Code § 2698 *et seq.*

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff prays for judgment for himself and all others on whose behalf this
5 suit is brought against Defendant, as follows:

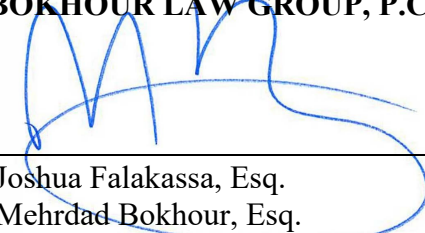
6 1. Upon the First Cause of Action, for civil penalties due to similarly aggrieved
7 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
8 including, but not limited to: (1) \$100 for each initial violation and \$200 for each subsequent violation
9 per employee per pay period for those violations of the Labor Code for which no civil penalty is
10 specifically provided under the Labor Code;

11 2. For attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194, Code
12 of Civil Procedure § 1021.5; and

13 3. For such other relief that the Court may deem just and proper.
14

15 Dated: April 16, 2026

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16
17
18 By: 

19 Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

20 Attorneys for Plaintiff and the Aggrieved Employees
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