

1 KINGSLEY & KINGSLEY, APC  
GEORGE R. KINGSLEY, ESQ. SBN-38022  
2 ERIC B. KINGSLEY, ESQ. SBN-185123  
DARREN M. COHEN, ESQ. SBN-221938  
3 BRIAN LEVINE, ESQ. SBN-234155  
16133 VENTURA BL., SUITE 1200  
4 ENCINO, CA 91436  
(818) 990-8300, FAX (818) 990-2903

**FILED**  
YOLO SUPERIOR COURT  
NOV 06 2008  
By                       
Deputy

5 Attorneys for Plaintiffs  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF YOLO  
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11 ROBERT KANE, AHMAD LLOYD ) CASE NO.: CV08-2483  
on behalf of themselves )  
12 and others similarly ) SECOND AMENDED CLASS ACTION COMPLAINT  
situated, ) (seq # 931005190)  
13 Plaintiff, ) 1. Meal Break Premium Pay Under  
Labor \$226.7  
14 v. ) 2. Rest Break Premium Pay Under  
Labor Code §226.7  
15 VALLEY SLURRY SEAL ) 3. Violation of Labor Code §226(a)  
COMPANY; and ) 4. Penalties Pursuant to Labor  
DOES 1 to 50, Inclusive, ) Code §203  
16 Defendants. ) 5. Penalties Pursuant to Labor  
Code §2699  
17 ) 6. Violation of Business &  
Professions Code §17200  
18

BY FAX

19 Plaintiff ROBERT KANE and AHMAD LLOYD on behalf of themselves and all  
20 others similarly situated, complain of defendants, and each of them, as  
21 follows:  
22

23 I

24 INTRODUCTION

25 1. This is a Class Action, pursuant to Code of Civil Procedure  
26 §382, on behalf of plaintiffs and all individuals who hold or held the  
27 position of "hourly employees" who are employed by, or formerly employed

1 by VALLEY SLURRY SEAL COMPANY and any subsidiaries or affiliated  
2 companies doing business as "VALLEY SLURRY SEAL COMPANY" (hereinafter  
3 referred to as "VALLEY" or "defendants"), within the State of California.

4 2. From at least four (4) years prior to the filing of this action  
5 and continuing to the present, defendants have had a consistent policy  
6 of requiring hourly employees within the State of California, including  
7 plaintiffs, to work at least five (5) hours without a meal period and  
8 failing to pay such employees one (1) hour of pay at the employees  
9 regular rate of compensation for each workday that the meal period is not  
10 provided or provided after five (5) hours, as required by California  
11 state wage and hour laws.

12 3. From at least four (4) years prior to the filing of this action  
13 and continuing to the present, defendants have had a consistent policy  
14 of failing to provide hourly employees within the State of California,  
15 including plaintiffs, rest periods of at least ten (10) minutes per four  
16 (4) hours worked or major fraction thereof and failing to pay such  
17 employees one (1) hour of pay at the employees regular rate of  
18 compensation for each workday that the rest period was not provided, as  
19 required by California state wage and hour laws.

20 4. Plaintiffs, on behalf of themselves and all Class Members, bring  
21 this action pursuant to Labor Code §§201, 202, 203, 226.(a), 226.7, 512,  
22 558, 2699, and California Code of Regulations, Title 8, Section 11040  
23 seeking meal and rest period compensation, penalties, injunctive and  
24 other equitable relief, and reasonable attorneys' fees and costs.

25 5. Plaintiffs were all times relevant herein, employees of  
26 defendants and bring this action as a class action on behalf of  
27 themselves and others similarly situated.

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1 6. Plaintiffs, on behalf of themselves and all proposed class,  
2 members, pursuant to Labor Code §2699, seeks penalties for defendants'  
3 failure to provide wage and/or overtime compensation, meal breaks, rest  
4 breaks, reimbursement of expenses, and wages upon termination and/or  
5 resignation.

6 7. Plaintiffs, on behalf of themselves and all Class Members,  
7 pursuant to Business & Professions Code §§17200-17208, also seeks  
8 injunctive relief, restitution, and disgorgement of all benefits  
9 defendants enjoyed from their failure to pay proper compensation.

10 II

11 PARTIES

12 A. Plaintiffs

13 8. Venue as to each defendant is proper in this judicial district,  
14 pursuant to Code of Civil Procedure §395. The unlawful acts alleged  
15 herein have a direct effect on plaintiff and those similarly situated  
16 within the State of California.

17 9. Plaintiffs, ROBERT KANE and AHMAD LLOYD are residents of  
18 California.

19 10. Plaintiffs and the class were regularly required to:

20 (a) Work in excess of five (5) hours per day without being  
21 provided a meal period and not being compensated one (1) hour of pay at  
22 the regular rate of compensation for each workday that a meal period was  
23 not provided or provided after five (5) hours, all in violation of  
24 California labor laws, regulations, and Industrial Welfare Commission  
25 Wage Orders;

26 (b) Work without being provided a minimum ten (10) minute rest  
27 period for every four (4) hours or major fraction thereof worked and not  
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1 being compensated one (1) hour of pay at their regular rate of  
2 compensation for each workday that a rest period was not provided; and

3 (c) Work without being provided an accurate itemized wage  
4 statements that reflects all deductions from payment of wages and  
5 accurately reporting total hours worked, including when the employee  
6 begins and ends each work period, meal periods, and total daily hours  
7 worked, by plaintiff and the members of the proposed class.

8 11. Defendants willfully failed to provide all wages at the  
9 termination of their employment with defendants.

10 B. Defendants

11 12. Defendant VALLEY SLURRY is a California Corporation. They own  
12 and operate a location in the State of California. Defendants employed  
13 plaintiff and similarly situated persons within California. VALLEY  
14 SLURRY'S mailing address is P.O. Box 981330, West Sacramento, CA 95798.

15 13. The true names and capacities, whether individual, corporate,  
16 associate, or otherwise, of defendants sued herein as DOES 1 to 50,  
17 inclusive, are currently unknown to plaintiff, who therefore sues  
18 defendants by such fictitious names under Code of Civil Procedure §474.  
19 Plaintiff is informed and believes, and based thereon alleges, that each  
20 of the defendants designated herein as a DOE is legally responsible in  
21 some manner for the unlawful acts referred to herein. Plaintiff will  
22 seek leave of court to amend this Complaint to reflect the true names and  
23 capacities of the defendants designated hereinafter as DOES when such  
24 identities become known.

25 14. Plaintiffs are informed and believes, and based thereon alleges,  
26 that each defendant acted in all respects pertinent to this action as the  
27 agent of the other defendants, carried out a joint scheme, business plan

1 or policy in all respects pertinent hereto, and the acts of each  
2 defendant are legally attributable to the other defendants. Furthermore,  
3 defendants in all respects acted as the employer and/or joint employer  
4 of plaintiffs and the Class.

5 III

6 FACTUAL BACKGROUND

7 15. Plaintiffs and the Class are, and at all times pertinent hereto,  
8 have been non-exempt employees within the meaning of the California Labor  
9 Code, and the implementing rules and regulations of the IWC California  
10 Wage Orders. Defendants hire employees who work as "hourly employees."

11 16. Plaintiffs and the Class have not been provided meal periods for  
12 work days in excess of five (5) hours and were not compensated one hours  
13 wages in lieu thereof.

14 17. Plaintiffs and the Class have rest periods for work days in  
15 excess of four (4) without being provided a rest period and were not  
16 compensated one hours wages in lieu thereof.

17 18. Defendants have failed to comply with Industrial Welfare  
18 Commission ("IWC") Wage Order 4-2001(7) by failing to maintain time  
19 records showing when the employee begins and ends each work period, meal  
20 periods, and total daily hours worked by itemizing in wage statements all  
21 deductions from payment of wages and accurately reporting total hours  
22 worked by plaintiff and the members of the proposed class.

23 19. Plaintiffs and the proposed class are, and at all times  
24 pertinent hereto, have been non-exempt employees within the meaning of  
25 the California Labor Code, and the implementing rules and regulations of  
26 the IWC California Wage Orders.

27 20. Plaintiffs and the class are covered by California Industrial  
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1 Welfare Commission Occupational Wage Order No. 4-2001, California  
2 Industrial Welfare Commission in No. 4 (Title 8 Cal. Code of Reg.  
3 §§11040).

4 IV

5 CLASS ACTION ALLEGATIONS

6 21. Plaintiffs bring this action on behalf of themselves and all  
7 others similarly situated as a Class Action pursuant to §382 of the Code  
8 of Civil Procedure. Plaintiff seeks to represent a class defined as  
9 follows:

10 All persons who are employed or have been employed, and  
11 who have worked as hourly employees for VALLEY SLURRY in  
12 the State of California since four (4) years prior to the  
13 filing of this action.

14  
15 22. Plaintiffs reserve the right under Rule 3.765, California Rules  
16 of Court, to amend or modify the class description with greater  
17 specificity or further division into subclasses or limitation to  
18 particular issues.

19 23. This action has been brought and may properly be maintained as  
20 a class action under the provisions of §382 of the Code of Civil  
21 Procedure because there is a well-defined community of interest in the  
22 litigation and the proposed Class is easily ascertainable.

23 A. Numerosity

24 24. The potential members of the Class as defined are so numerous  
25 that joinder of all the members of the Class is impracticable. While the  
26 precise number of Class Members has not been determined at this time,  
27 plaintiff is informed and believes that defendants currently employ, and

1 during the relevant time periods employed, well over 100 "hourly  
2 employees".

3 25. Accounting for employee turnover during the relevant periods  
4 necessarily increases this number substantially. Plaintiff alleges  
5 defendants' employment records would provide information as to the number  
6 and location of all Class Members. Joinder of all members of the  
7 proposed Class is not practicable.

8 B. Commonality

9 26. There are questions of law and fact common to the Class that  
10 predominate over any questions affecting only individual Class Members.  
11 These common questions of law and fact include, without limitation:

12 (a) Whether defendants violated Labor Code §§226.7 and 512, IWC  
13 Wage Order 4-2001 or other applicable IWC Wage Orders, and Cal. Code  
14 Regs., Title 8, Section 11040 by failing to provide meal periods before  
15 the fifth hour of employment and failing to compensate said employees one  
16 (1) hours wages in lieu of meal periods;

17 (b) Whether defendants violated Labor Code §§226.7 and 512, Wage  
18 Order 4-2001 or other applicable IWC Wage Orders, and Cal. Code Regs.,  
19 Title 8, Section 11040 by failing to provide daily rest periods for every  
20 four (4) hours or major fraction thereof worked and failing to compensate  
21 said employees one (1) hours wages in lieu of rest periods;

22 (c) Whether defendants violated Labor Code §226 and Wage Order  
23 4-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title  
24 8, Section 11040 by failing to provide an accurate itemized wage  
25 statements that reflects all deductions from payment of wages and  
26 accurately reporting total hours worked, including when the employee  
27 begins and ends each work period, meal periods, and total daily hours

1 worked, by plaintiff and the members of the proposed class;

2 (d) Whether defendants violated §§201-203 of the Labor Code by  
3 failing to pay compensation due and owing at the time that any Class  
4 member's employment with defendants terminated;

5 (e) Whether defendant's violated §2699 et. seq. of the Labor  
6 Code by engaging in the acts previously alleged;

7 (f) Whether defendants violated §17200 et seq. of the Business  
8 & Professions Code by engaging in the acts previously alleged; and

9 (g) Whether plaintiff and the members of the class are entitled  
10 to equitable relief pursuant to Business & Professions Code §17200, et.  
11 seq.

12 C. Typicality

13 27. The claims of the named plaintiffs are typical of the claims  
14 of the class. Plaintiff and all members of the class sustained injuries  
15 and damages arising out of and caused by defendants' common course of  
16 conduct in violation of laws, regulations that have the force and effect  
17 of law and statutes as alleged herein.

18 D. Adequacy of Representation

19 28. Plaintiffs will fairly and adequately represent and protect the  
20 interests of the members of the class. Counsel who represents plaintiff  
21 is competent and experienced in litigating large employment class  
22 actions.

23 E. Superiority of Class Action

24 29. A class action is superior to other available means for the  
25 fair and efficient adjudication of this controversy. Individual joinder  
26 of all Class Members is not practicable, and questions of law and fact  
27 common to the Class predominate over any questions affecting only

1 individual members of the Class. Each member of the class has been  
2 damaged and is entitled to recovery by reason of defendants' illegal  
3 policy and/or practice of denying class members proper compensation.

4 30. Class action treatment will allow those similarly situated  
5 persons to litigate their claims in the manner that is most efficient and  
6 economical for the parties and the judicial system. Plaintiff is unaware  
7 of any difficulties that are likely to be encountered in the management  
8 of this action that would preclude its maintenance as a class action.

9 v

10 FIRST CAUSE OF ACTION

11 FAILURE TO ALLOW MEAL BREAKS PURSUANT TO LABOR CODE §226.7

12 31. Plaintiffs incorporate paragraphs 1 through 30 as though fully  
13 set forth herein.

14 32. Labor Code §226.7 requires an employer to pay an additional  
15 hour of compensation for each meal period the employer fails to provide.  
16 Employees are entitled to a meal period of at least thirty (30) minutes  
17 per five (5) hour work period. Plaintiffs and the class consistently  
18 worked over five (5) hour shifts. Pursuant to the Code, plaintiffs and  
19 the class are entitled to a meal period of not less than thirty (30)  
20 minutes prior to exceeding five (5) hours of employment.

21 33. Defendants failed to provide plaintiffs and others with timely  
22 meal breaks of not less than thirty (30) minutes as required by the Labor  
23 Code during the relevant class period.

24 34. Pursuant to Labor Code §226.7, plaintiffs and the class are  
25 entitled to damages in an amount equal to one (1) hour of wages per  
26 missed meal break, in a sum to be proven at trial.

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VI

SECOND CAUSE OF ACTION

FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7

35. Plaintiffs incorporate paragraphs 1 through 34 as though fully set forth herein.

36. Labor Code §226.7 requires an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked. Plaintiffs and the class consistently worked over four (4) hours per shift with no rest breaks.

37. Defendants failed to provide plaintiffs and others with rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant class period.

38. Pursuant to Labor Code §226.7, plaintiffs and the class are entitled to damages in an amount equal to one (1) hour of wages per missed rest break, in a sum to be proven at trial.

VII

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 226(a)

39. Plaintiffs incorporate paragraphs 1 through 38 as though fully set forth herein.

40. Section 226(a) of the California Labor Code requires defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by plaintiffs and the members of the proposed class. Defendants have knowingly and intentionally failed to comply with Labor Code §226(a) on each and every wage statement that should have been provided to plaintiffs and members of the proposed

1 class.

2 41. IWC Wage Orders 4-2001(7), 4-2000(7), 4-1998(7) require  
3 defendants to maintain time records showing, among others, when the  
4 employee begins and ends each work period, meal periods, split shift  
5 intervals and total daily hours worked in an itemized wage statements,  
6 and must show all deductions from payment of wages, and accurately report  
7 total hours worked by plaintiffs and the members of the proposed class.

8 42. An employee suffering injury as a result of a knowing and  
9 intentional failure by an employer to comply with Labor Code §226(a) is  
10 entitled to recover the greater of all actual damages or fifty dollars  
11 (\$50) for the initial pay period in which a violation occurs and one  
12 hundred dollars (\$100) per employee for each violation in a subsequent  
13 pay period, not exceeding an aggregate penalty of four thousand dollars  
14 (\$4,000), and is entitled to an award of costs and reasonable attorney's  
15 fees.

16 VIII

17 FOURTH CAUSE OF ACTION

18 WAITING TIME PENALTIES UNDER LABOR CODE §203

19 43. Plaintiffs incorporate paragraphs 1 through 42 as though fully  
20 set forth herein.

21 44. Numerous members of the class including the plaintiffs are no  
22 longer employed by defendants. They were either fired or quit defendants  
23 employ.

24 45. The defendant's failure to pay wages, as alleged above was  
25 willful in that defendants and each of them knew wages to be due but  
26 failed to pay them, thus entitling plaintiffs and the class to penalties  
27 under Labor Code §203, which provides that an employee's wages shall

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1 continue as a penalty until paid for a period of up to thirty (30) days  
2 from the time they were due.

3 46. Defendants have failed to pay plaintiffs and others a sum  
4 certain at the time of termination or within seventy-two (72) hours of  
5 their resignation, and have failed to pay those sums for thirty (30) days  
6 thereafter. Pursuant to the provisions of Labor Code §203, plaintiffs  
7 and members of the class are entitled to a penalty in the amount of  
8 plaintiffs' and others daily wage multiplied by thirty (30) days.

9 IX

10 FIFTH CAUSE OF ACTION

11 PENALTIES PURSUANT TO LABOR CODE §2699

12 47. Plaintiffs incorporate paragraphs 1 through 46 as though fully  
13 set forth herein.

14 48. As a result of the acts alleged above, plaintiffs seek penalties  
15 under Labor Code §§2698 and 2699 because of defendants' violation of  
16 Labor Code §§§201, 202, 203, 226.7, 510, 512, and 2802 which call for  
17 civil penalties.

18 49. For each such violation, plaintiffs and the proposed class are  
19 entitled to penalties in an amount to be shown at the time of trial  
20 subject to the following formula:

- 21
- 22 a. For \$100 for the initial violation per employee per pay  
23 period
  - 24 b. For \$200 for each subsequent violation per employee per pay  
25 period

26 50. These penalties shall be allocated 75% to the Labor and Workforce  
27 Development Agency and 25% to the affected employees.

28 51. Plaintiffs sent a certified letter to the LDWA and defendants as

1 prescribed by the code postmarked April 4, 2008. As thirty-three  
2 calender days has passed since receipt of the letter without response by  
3 the LDWA, plaintiff is entitled to commence a civil action seeking  
4 penalties as though the LDWA decided not to investigate pursuant to Labor  
5 Code §2699.3(a)(2)(A).

6 X

7 SIXTH CAUSE OF ACTION

8 UNFAIR COMPETITION PURSUANT TO

9 BUSINESS & PROFESSIONS CODE §17200

10 52. Plaintiffs incorporate paragraphs 1 through 51 as though fully  
11 set forth herein.

12 53. This is a Representative Private Attorney General Action and  
13 Class Action for Unfair Business Practices. Plaintiffs, ROBERT KANE and  
14 AHMAD LLOYD on behalf of themselves, the general public, and on behalf  
15 of others similarly situated, brings this claim pursuant to Business &  
16 Professions Code §17200, et seq. The conduct of all defendants as alleged  
17 in this Complaint has been and continues to be unfair, unlawful, and  
18 harmful to plaintiffs, the general public, and the class. Plaintiff  
19 seeks to enforce important rights affecting the public interest within  
20 the meaning of C.C.P. §1021.5.

21 54. Plaintiffs are both a "persons" within the meaning of Business  
22 & Professions Code §17204, and therefore has standing to bring this cause  
23 of action for injunctive relief, restitution, and other appropriate  
24 equitable relief.

25 55. Business & Profession Code §17200, et seq. prohibits unlawful  
26 and unfair business practices.

27 56. Wage and hour laws express fundamental public policies.

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1 Providing employees with compensation and breaks are fundamental public  
2 policies of this State and of the United States. Labor Code §90.5(a)  
3 articulates the public policies of this State to enforce vigorously  
4 minimum labor standards, to ensure that employees are not required or  
5 permitted to work under substandard and unlawful conditions, and to  
6 protect law-abiding employers and their employees from competitors who  
7 lower their costs by failing to comply with minimum labor standards.

8 57. Defendants have violated statutes and public policies. Through  
9 the conduct alleged in this Complaint, defendants, and each of them, have  
10 acted contrary to these public policies, have violated specific  
11 provisions of the Labor Code, and have engaged in other unlawful and  
12 unfair business practices in violation of Business & Profession Code  
13 §17200, et seq., depriving plaintiffs, and all persons similarly  
14 situated, and all interested persons of rights, benefits, and privileges  
15 guarantees to all employees under law.

16 58. Defendants' conduct, as alleged hereinabove, constitutes unfair  
17 competition in violation of §17200 et. seq. of the Business & Professions  
18 Code.

19 59. Defendants by engaging in the conduct herein alleged, by not  
20 providing proper compensation, either knew or in the exercise of  
21 reasonable care should have known that the conduct was unlawful. As such  
22 it is a violation of §17200 et. seq. of the Business & Professions Code.

23 60. As a proximate result of the above mentioned acts of  
24 defendants, plaintiffs and others similarly situated have been damaged  
25 in a sum as may be proven.

26 61. Unless restrained by this Court, defendants will continue to  
27 engage in the unlawful conduct as alleged above. Pursuant to Business  
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1 & Professions Code this Court should make such orders or judgments,  
2 including the appointment of a receiver, as may be necessary to prevent  
3 the use or employment, by defendants, their agents or employees, of any  
4 unlawful or deceptive practice prohibited by the Business & Professions  
5 Code, and/or, including but not limited to, disgorgement of profits which  
6 may be necessary to restore plaintiffs and the class members to the money  
7 defendants have unlawfully failed to pay.

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9

RELIEF REQUESTED

10 WHEREFORE, plaintiffs pray for the following relief:

11 1. For compensatory damages in the amount of plaintiffs' and each  
12 class members' hourly wage for each meal period missed or taken late from  
13 at least four (4) years prior to the filing of this action to the present  
14 as may be proven;

15 2. For compensatory damages in the amount of plaintiffs' and each  
16 class members' hourly wage for each shift where rest period(s) were  
17 missed from at least four (4) years prior to the filing of this action  
18 to the present as may be proven;

19 3. For penalties pursuant to Labor Code §226(e) for violation of  
20 Labor Code §226(a) in the amount of fifty dollars (\$50) for the initial  
21 pay period in which a violation occurs and one hundred dollars (\$100) per  
22 employee for each violation in a subsequent pay period, not exceeding an  
23 aggregate penalty of four thousand dollars (\$4,000);

24 4. For penalties pursuant to Labor Code §203 for all employees who  
25 were terminated or resigned equal to their daily wage times thirty (30)  
26 days;

27 5. An order enjoining defendant and its agents, servants, and

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1 employees, and all persons acting under, in concert with, or for it from  
 2 providing plaintiff and class members with proper breaks pursuant to  
 3 Labor Code §512 and IWC 4-2001;

4 6. For penalties pursuant to Labor Code §2699;

5 7. For restitution for unfair competition pursuant to Business &  
 6 Professions Code §17200, including disgorgement or profits, in an amount  
 7 as may be proven;

8 8. An award of prejudgment and post judgment interest;

9 9. An award providing for payment of costs of suit;

10 10. An award of attorneys' fees; and

11 11. Such other and further relief as this Court may deem proper and  
 12 just.

13 DEMAND FOR JURY TRIAL


14 Plaintiffs hereby demand a trial of his claims by jury to the extent  
 15 authorized by law.

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17 Dated: October 17, 2008 KINGSLEY & KINGSLEY, APC

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By:   
 BRIAN KEVENE  
 ATTORNEY FOR PLAINTIFFS

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