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12 COATS & CLARK INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE CITY AND COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION
16

17 RUSSELL BRIMER,

18 Plaintiff,

19 v.

20 ACCO BRANDS CORPORATION, *et al.*,

21 Defendants.
22

Case No. CGC-09-485784

**CONSENT TO JUDGMENT AS TO
DEFENDANT COATS & CLARK INC.**

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Coats & Clark Inc.**

3 This Consent to Judgment is entered into by and between Plaintiff Russell Brimer (hereinafter
4 “Brimer” or “Plaintiff”) and Defendant Coats & Clark Inc. (hereinafter “Coats” or “Defendant”), with
5 Brimer and Coats collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 Brimer is an individual residing in California who seeks to promote awareness of exposures to
8 toxic chemicals and improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Coats employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
13 Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Coats has manufactured, distributed and/or sold in the State of California
16 vinyl coated tape measures containing lead on the exterior surface. Lead is listed pursuant to the Safe
17 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § § 25249.5 *et*
18 *seq.* (“Proposition 65”), as a chemical known to the State of California to cause birth defects and other
19 reproductive harm. Lead is referred to herein as the “Listed Chemical.”

20 **1.5 Product Description**

21 The products that are covered by this Consent to Judgment are defined as follows: vinyl coated
22 tape measures containing the Listed Chemical on the exterior surface including, but not limited to,
23 *60” Tape Measure, No. 14485 (#0 77216 04485 2)*. All such items shall be referred to herein as the
24 “Products.”

25 **1.6 Notice of Violation**

26 On March 5, 2009, Brimer served Coats and various public enforcement agencies with a
27 document entitled “60-Day Notice of Violation” that provided Coats and such public enforcers with
28 notice that alleged that Coats was in violation of California Health & Safety Code § 25249.6 for

1 failing to warn consumers and customers that the Products exposed users in California to lead. To the
2 best of the Parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in
3 the 60-Day Notice of Violation ("Notice").

4 **1.7 Complaint**

5 On March 5, 2009, Brimer, acting, in a representative capacity in the interest of the general
6 public in California, filed a complaint in the Superior Court in and for the City and County of San
7 Francisco, alleging violations by various defendants of Health & Safety Code § 25249.6 based, *inter*
8 *alia*, on the alleged exposures to lead contained in vinyl coated paper fasteners (the "Action"). Coats
9 was not then named among the defendants in the action, nor was Coats named in the subsequently
10 filed First Amended Complaint ("FAC"); however, on or about October 9, 2009, Brimer sought leave
11 to file a Second Amended Complaint ("SAC") in the Action. On November 13, 2009, Brimer filed
12 the SAC adding Coats as a defendant in the Action, and alleging that Coats violated Health & Safety
13 Code § 25249.6 based on the alleged exposures to lead contained in the exterior surface of vinyl
14 coated tape measures manufactured, distributed and/or sold by Coats.

15 **1.8 No Admission**

16 Coats denies the material, factual, and legal allegations contained in Brimer's Notice, and
17 expressly denies any wrongdoing whatsoever. Coats further maintains that all products manufactured,
18 distributed and/or sold by it in California, including the Products, have been, and are, in compliance
19 with all laws. Nothing in this Consent to Judgment shall be construed as an admission by Coats of
20 any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent to
21 Judgment constitute or be construed as an admission by Coats of any fact, finding, conclusion, issue
22 of law, or violation of law, such being specifically denied by Coats.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent to Judgment only, the parties stipulate that this Court has
25 jurisdiction over Coats as to the allegations contained in the Complaint, that venue is proper in the
26 City and County of San Francisco, and that this Court has jurisdiction to enter and enforce the
27 provisions of this Consent To Judgment pursuant to Code of Civil Procedure § 664.6.

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1 **1.10 Effective Date**

2 For purposes of this Consent to Judgment, the term “Effective Date” shall mean April 23,
3 2010.

4 **1.11 Full and Final Settlement**

5 Brimer and Coats stipulate to the entry of this Consent Judgment as a full and final settlement
6 of all claims that were raised in the Complaint, arising out of the facts or conduct alleged therein.
7 However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties
8 of Coats under this Consent to Judgment.

9 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

10 **2.1 Reformulation Commitment**

11 Commencing on the Effective Date, Coats shall not ship, sell or offer to be shipped for sale in
12 California any Products unless such Products is “Lead Free.” For purposes of this Consent Judgment,
13 “Lead Free” Products shall mean Products containing components that may be handled, touched or
14 mouthed by a consumer, and which yield less than 100 parts per million (“ppm”) lead when analyzed
15 pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized by
16 federal or state agencies for the purpose of determining lead content in a solid substance. Products
17 that are Lead Free are referred to hereinafter as “Reformulated Products.”

18 **2.2 Product Warnings/Return**

19 For Products distributed and sold before the Effective Date that are not Lead Free and remain
20 in inventory with retailers and distributors, Coats must either provide Proposition 65 warnings or
21 request that the retailer or distributor return the unsold Products. To this end, Coats represents and
22 warrants that it has taken steps to contact all retailers with locations in California that have offered the
23 Products for sale and instructed such retailers, at Coat’s cost, to return the Products to Coats.

24 **2.2.1** In the event that Coats discovers after the Effective Date that Products that are
25 not Lead Free continue to remain in inventory with retailers and/or distributors and that such Products
26 are available for sale in California through such retailers and/or distributors, Coats must either provide
27 Proposition 65 warnings or request that the retailer or distributor return the unsold Products. Coats
28 hereby agrees that, within thirty (30) days of discovering that Products that are not Lead Free continue

1 to remain in inventory and be offered for sale in California, Coats will send a letter, via certified mail
2 with a copy to counsel for plaintiff, to each California retailer or distributor that is known or believed
3 to have any inventory of the Products. The letter shall explain, in detail, the retailer's or distributor's
4 duty to provide Proposition 65 Warnings.

5 **2.2.2 Proposition 65 Warnings**

6 **(a) Retail Store Sales.**

7 **(i) Stickers/Labels.** If a warning is provided by sticker or adhesive label,
8 Coats shall provide warnings, or otherwise include with the letter referenced above in
9 paragraph 2.2.1 a sufficient number of warning stickers/adhesive labels to be affixed to
10 the packaging, labeling, or directly on each Product, containing the following
11 language:

12 **WARNING:** This product contains lead, a chemical
13 known to the State of California to cause
birth defects and other reproductive harm.

14 The stickers/labels shall be placed on the product packaging for those Products that
15 require Proposition 65 Warnings and remain on the sales floor of the retailer or are
16 otherwise in inventory at the store or distribution facility. Warning stickers issued for
17 Products shall be prominently placed with such conspicuousness as compared with
18 other words, statements, designs or devices as to render it likely to be read and
19 understood by an ordinary individual under customary conditions before purchase;

20 **(i) Point-of-Sale Warnings.** Alternatively, Coats may provide warning
21 signs, or with the letter referenced above in paragraph 2.2.1, in the form below to its
22 customers in California with instructions to post the warnings in close proximity to the
23 point of display of the Products.

24 **WARNING:** This product contains lead, a chemical known to
25 the State of California to cause birth defects and
26 other reproductive harm.

1 Where more than one Product is sold in proximity to other like items or to those that do
2 not require a warning (e.g., Reformulated Products as defined in Section 2.1), the
3 following statement must be used:¹

4 **WARNING:** These products contain lead, a chemical known to
5 the State of California to cause birth defects and
6 other reproductive harm.

7 *[list products for which warning is required]*

8 **(b) Mail Order Catalog and Internet Sales.** In the event that Coats sells
9 Products via mail order catalog or internet to customers located in California after the
10 Compliance Date that are not Reformulated Products, Coats shall provide a warning for
11 Products sold via mail order catalog or the Internet to California residents: (1) in the mail
12 order catalog; or (2) on the website. Warnings given in the mail order catalog or on the
13 website shall identify the specific Product to which the warning applies as further specified in
14 Sections 2.1(b)(i) and (ii).

15 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order
16 catalog must be in the same type size or larger than the Product description text within
17 the catalog. The following warning shall be provided on the same page and in the
18 same location as the display and/or description of the Product:
19

20 **WARNING:** This product contains lead, a chemical known to
21 the State of California to cause birth defects and
22 other reproductive harm.

22 Where it is impracticable to provide the warning on the same page and in the same
23 location as the display and/or description of the Product, Coats may utilize a
24 designated symbol to cross reference the applicable warning and shall define the term
25 “designated symbol” with the following language on the inside of the front cover of the
26 catalog or on the same page as any order form for the Product(s):

27 ¹For purposes of the consent judgment, “sold in proximity” shall mean that the Product and another product are offered
28 for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably
determine which of the two products is subject to the warning sign.

1 **WARNING:** Certain products identified with this symbol ▼
2 and offered for sale in this catalog contain lead,
3 a chemical known to the State of California to
4 cause birth defects and other reproductive
5 harm.

6 The designated symbol must appear on the same page and in close proximity to
7 the display and/or description of the Product. On each page where the designated
8 symbol appears, Coats must provide a header or footer directing the consumer to the
9 warning language and definition of the designated symbol.

10 If Coats elects to provide warnings in the mail order catalog, then the warnings
11 must be included in all catalogs offering to sell one or more Products printed after the
12 Compliance Date.

13 (ii) **Internet Website Warning.** A warning may be given in conjunction
14 with the sale of the Product via the Internet, provided it appears either: (a) on the same
15 web page on which the Product is displayed; (b) on the same web page as the order
16 form for the Product; (c) on the same page as the price for any Product; or (d) on one
17 or more web pages displayed to a purchaser during the checkout process. The
18 following warning statement shall be used and shall appear in any of the above
19 instances adjacent to or immediately following the display, description, or price of the
20 Product for which it is given in the same type size or larger than the Product
21 description text:

22 **WARNING:** This product contains lead, a chemical known to
23 the State of California to cause birth defects and
24 other reproductive harm.

25 Alternatively, the designated symbol may appear adjacent to or immediately
26 following the display, description, or price of the Product for which a warning is being
27 given, provided that the following warning statement also appears elsewhere on the
28 same web page, as follows:

WARNING: Products identified on this page with the
 following symbol contain lead, a chemical

1 known to the State of California to cause birth
2 defects and other reproductive harm: ▼.

3 (c) **Return of Product.** With respect to remaining inventory, as an alternative to
4 providing warnings, Coats may request in the letter referenced above in paragraph 2.2.1 that
5 the retailer or distributor return Products remaining in inventory in California, if any, to Coats,
6 and state that Coats will pay for shipping of the returned product.

7 As part of the instructions under options (a), (b), and (c), Coats must specify the product name,
8 product number, and SKU number, if available, for each Product covered by the instruction letter.

9 **3. MONETARY PAYMENTS**

10 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

11 Pursuant to Health & Safety Code § 25249.7(b), Coats shall pay \$1,000 in settlement of this
12 claim. This payment shall be apportioned in accordance with California Health & Safety Code
13 § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health
14 Hazard Assessment ("OEHHA") and the remaining 25% remitted to Brimer as provided by California
15 Health & Safety Code § 25249.12(d).

16 Coats shall issue two separate checks for each of these payments pursuant to § 25192: (a)
17 one check made payable to The Chanler Group in Trust for the State of California's Office of
18 Environmental Health Hazard Assessment (OEHHA) in the amount of \$750, representing 75% of
19 the total; and (b) one check to The Chanler Group in Trust for Brimer in the amount of \$250,
20 representing 25% of the total. Two separate 1099s shall be issued for the above payments: The
21 first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in
22 the amount of \$750. The second 1099 shall be issued in the amount of \$250 to Brimer, whose
23 address and tax identification number shall be furnished, upon execution of this Agreement. The
24 payment shall be made payable to The Chanler Group and shall be delivered within ten (10) days of
25 the Effective Date, at the following address:

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

1 **4. REIMBURSEMENT OF FEES AND COSTS**

2 **4.1 Attorney Fees and Costs**

3 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without
4 reaching terms on the amount of attorney fees and costs to be reimbursed to them, thereby leaving the
5 fee issue to be resolved after the material terms of the agreement had been settled. Coats then
6 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
7 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Brimer
8 and his counsel under general contract principles and the private attorney general doctrine codified at
9 California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual
10 execution of this agreement. Coats shall reimburse Brimer and his counsel the total of \$19,900 for
11 fees and costs incurred as a result of investigating, bringing this matter to Coats's attention, and
12 litigating and negotiating a settlement in the public interest. Coats shall issue a separate 1099 for fees
13 and costs (EIN: 94-3171522) and shall make the check payable to "The Chanler Group" and shall be
14 delivered within ten (10) days of the Effective Date, to the following address:

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710-2565

19 **5. RELEASE OF ALL CLAIMS**

20 **5.1 Brimer's Release of Coats**

21 In further consideration of the promises and agreements herein contained, and for the
22 payments to be made pursuant to Sections 3 and 4 above, Brimer, on behalf of himself, his past and
23 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
24 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
25 legal action and releases all claims, including, without limitation, all actions, and causes of action, in
26 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
27 expenses (including, but not limited to, investigation fees, expert fees and attorney fees) of any nature
28 whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Coats

1 and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers,
2 franchisees, dealers, customers (including, but not limited to, Michael's Stores, Inc., and its affiliates
3 and/or subsidiaries), owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,
4 and their respective officers, directors, attorneys, representatives, shareholders, agents, and
5 employees, and sister and parent entities (collectively "Releasees"). This release is limited to those
6 claims that arise under Proposition 65, as such claims relate to Coats's alleged failure to warn about
7 exposures to or identification of lead contained in the Products.

8 Brimer also, on behalf of himself and his agents, attorneys, representatives, successors and
9 assigns, in his individual capacity only and not in his representative capacity, provides a general
10 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
11 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
12 liabilities and demands of Brimer of any nature, character or kind, known or unknown, suspected or
13 unsuspected, and agrees not to initiate, participate in or maintain any further legal action in any
14 judicial or administrative forum, including any Claim, against Coats arising from any alleged
15 violations of Proposition 65. Brimer acknowledges that he is familiar with Section 1542 of the
16 California Civil Code, which provides as follows:

17 A general release does not extend to claims which the creditor does not know or
18 suspect to exist in his or her favor at the time of executing the release, which if known
by him or her must have materially affected his or her settlement with the debtor.

19 Brimer, in his individual capacity only and *not* in his representative capacity, on behalf of
20 himself and his agents, attorneys, representatives, successors and assigns, expressly waives and
21 relinquishes any and all rights and benefits that he may have under, or that may be conferred on him
22 by, the provisions of Section 1542 of the California Civil Code as well as under any other state or
23 federal statute or common law principle of similar effect, to the fullest extent that he may lawfully
24 waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the
25 release hereby given shall be and remain in effect as a full and complete release notwithstanding the
26 discovery or existence of any such additional or different claims or facts arising out of the released
27 matters.

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1 The Parties further understand and agree that this release shall not extend upstream to any
2 entities that manufactured the Products for Coats or any component parts thereof or to any distributors
3 or suppliers who sold the Products or any component parts thereof to Coats.

4 **5.2 Coats's Release of Brimer**

5 Coats waives any and all claims against Brimer, his attorneys, and other representatives for
6 any and all actions taken or statements made (or those alleged to have been taken or made) by Brimer
7 and his attorneys and other representatives in the course of investigating claims or otherwise seeking
8 enforcement of Proposition 65 against them in this matter with respect to the Products.

9 Coats also provides a general release herein which shall be effective as a full and final accord
10 and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorney fees,
11 damages, losses, claims, liabilities and demands of Coats of any nature, character or kind, known or
12 unknown, suspected or unsuspected, arising out of the subject matter of the Action. Coats
13 acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as
14 follows:

15 A general release does not extend to claims which the creditor does not know or
16 suspect to exist in his or her favor at the time of executing the release, which if known
by him or her must have materially affected his or her settlement with the debtor.

17 Coats expressly waives and relinquishes any and all rights and benefits that it may have under,
18 or that may be conferred on it by, the provisions of Section 1542 of the California Civil Code as well
19 as under any other state or federal statute or common law principle of similar effect, to the fullest
20 extent that it may lawfully waive such rights or benefits pertaining to the released matters. In
21 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
22 complete release notwithstanding the discovery or existence of any such additional or different claims
23 or facts arising out of the released matters.

24 **6. COURT APPROVAL**

25 This Consent to Judgment is not effective until it is approved and entered by the Court and
26 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
27 after it has been fully executed by all parties, in which event any monies that have been provided to
28 Brimer, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen
(15) days after receiving written notice from Coats that the one-year period has expired.

1 **7. SEVERABILITY**

2 If, subsequent to the execution of this Consent to Judgment, any of the provisions of this
3 Consent to Judgment are held by a court to be unenforceable, the validity of the enforceable
4 provisions remaining shall not be adversely affected.

5 **8. GOVERNING LAW**

6 The terms of this Consent to Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
8 rendered inapplicable by reason of law generally, or as to the Products, then Coats shall provide
9 written notice to Brimer of any asserted change in the law, and shall have no further obligations
10 pursuant to this Consent to Judgment with respect to, and to the extent that, the Products are so
11 affected.

12 **9. NOTICES**

13 Unless specified herein, all correspondence and notices required to be provided pursuant to
14 this Consent to Judgment shall be in writing and personally delivered or sent by: (i) first-class,
15 registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the other
16 party at the following addresses:

17 For Coats:

18 Donna Armstrong
19 Coats & Clark, Inc.
20 3430 Toringdon Way, Suite 301
21 Charlotte, NC 28277

22 with a copy to:

23 Joshua A. Bloom
24 BARG COFFIN LEWIS & TRAPP LLP
25 350 California Street, 22nd Floor
26 San Francisco, CA 94104-1435

27 For Brimer:

28 Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

1 Any party, from time to time, may specify in writing to the other party a change of address to which
2 all notices and other communications shall be sent.

3 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Consent to Judgment may be executed in counterparts and by facsimile, each of which
5 shall be deemed an original, and all of which, when taken together, shall constitute one and the same
6 document.

7 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

8 Brimer agrees to comply with the reporting form requirements referenced in California Health
9 & Safety Code § 25249.7(f).

10 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

11 The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion
12 is required to obtain judicial approval of this Consent to Judgment. In furtherance of obtaining such
13 approval, Brimer and Coats and their respective counsel agree to mutually employ their best efforts to
14 support the entry of this agreement as a Consent to Judgment and obtain approval of the Consent to
15 Judgment by the Court in a timely manner.

16 **13. MODIFICATION**

17 This Consent to Judgment may be modified only: (1) by written agreement of the parties and
18 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
19 any party and entry of a modified consent judgment by the Court. The Attorney General shall be
20 served with notice of any proposed modification to this Consent to Judgment at least fifteen days in
21 advance of its consideration by the Court.

22 **14. AUTHORIZATION**

23 The undersigned are authorized to execute this Consent to Judgment on behalf of their
24 respective parties and have read, understood, and agree to all of the terms and conditions hereof.

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AGREED TO:

Date: 4-23-10

By: 
RUSSELL BRIMER

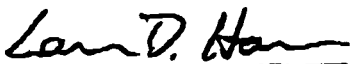
AGREED TO:

Date: 4/23/2010

By: 
DONNA ARMSTRONG
COATS & CLARK INC.

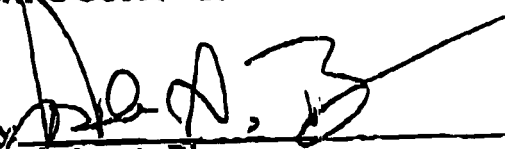
APPROVED AS TO FORM:

Date: 4/23/2010
THE CHANLER GROUP

By: 
Laurence D. Havson
Attorneys for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: 4/23/10
BARG COFFIN LEWIS & TRAPP LLP

By: 
Joshua A. Bloom
Attorneys for Defendant
COATS & CLARK INC.

1 **AGREED TO:**

2 Date: _____

4 By: _____
RUSSELL BRIMER

AGREED TO:

Date: 4/23/2010

By: Donna Armstrong
DONNA ARMSTRONG
COATS & CLARK INC.

7 **APPROVED AS TO FORM:**

8 Date: 4/23/2010
9 THE CHANLER GROUP

11 By: Laurence D. Haveson
12 Laurence D. Haveson
13 Attorneys for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: 4/23/10
BARG COFFIN LEWIS & TRAPP LLP

By: Joshua A. Bloom
Joshua A. Bloom
Attorneys for Defendant
COATS & CLARK INC.

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