

1 **ENTORNO LAW, LLP**

2 Noam Glick (SBN 251582)  
3 Craig M. Nicholas (SBN 178444)  
4 Jake W. Schulte (SBN 293777)  
5 Janani Natarajan (SBN 346770)

6 225 Broadway, Suite 1900  
7 San Diego, California 92101  
8 Tel: (619) 629-0527  
9 Email: craig@entornolaw.com  
0 Email: noam@entornolaw.com  
1 Email: jake@entornolaw.com

2 Attorneys for Plaintiff  
3 Environmental Health Advocates, Inc.

4 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

5 **IN AND FOR THE COUNTY OF ALAMEDA**

6 ENVIRONMENTAL HEALTH  
7 ADVOCATES, INC.,

8 Plaintiff,

9 v.

10 BLACK GIRL SUNSCREEN LLC, a Florida  
11 limited liability company; TARGET  
12 CORPORATION, a Minnesota corporation,  
13 and DOES 1 through 100, inclusive,

14 Defendants.

15 Case No. 23CV029336

16 **[PROPOSED] CONSENT JUDGMENT**

17 (Health & Safety Code § 25249.6 *et seq.* and  
18 Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,  
4 (“EHA” or “Plaintiff”) and Black Girl Sunscreen LLC (“Defendant” or “BGS”) with EHA and BGS  
5 each individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 EHA is a corporation organized in the state of California, acting in the interest of the general  
8 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by  
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 BGS employs ten or more individuals and for purposes of this Consent Judgment only, is a  
12 “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic  
13 Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that BGS manufactures, imports, sells, and distributes for sale sunscreen products,  
16 including Black Girl Sunscreen, SPF 30 and Black Girl Kids, SPF 50 Sunscreen,<sup>1</sup> that contains  
17 Benzophenone. EHA further alleges that BGS does so without providing a sufficient health hazard  
18 warning as required by Proposition 65 and the regulations promulgated and adopted thereunder. BGS  
19 denies these allegations and asserts that its products are safe and in compliance with all applicable laws,  
20 rules and regulations.

21 **1.5 Notice of Violation**

22 On or around June 23, 2022, EHA served Defendant BGS, Target Corporation, the California  
23 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of  
24 Violation of Proposition 65 (“Notice”). On or around April 24, 2023, EHA served Defendant BGS,  
25 Target Corporation, the California Attorney General, and all other required public enforcement  
26 agencies with an Amended 60-Day Notice of Violation of Proposition 65 (“Amended Notice”)  
27

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28 <sup>1</sup> The term “SPF” refers to Sun Protection Factor Value as defined at 21 C.F.R. § 352.3.

1 (collectively, “Notices”).

2 The Notices alleged that BGS had violated Proposition 65 by failing to sufficiently warn  
3 consumers in California of the health hazards associated with exposures to Benzophenone contained  
4 in sunscreen products, including but not limited to Black Girl Sunscreen, SPF 30 manufactured or  
5 processed by BGS that allegedly contain Benzophenone and are imported, sold, shipped, delivered, or  
6 distributed for sale to consumers in California by Releasees (as defined in section 4.1).

7 No public enforcer has commenced or is otherwise prosecuting an action to enforce the  
8 violations alleged in the Notice.

### 9 **1.6 Product Description**

10 The products covered by this Consent Judgment are sunscreen products manufactured or processed  
11 by BGS that contain Benzophenone and are imported, sold, shipped, delivered, or distributed for sale  
12 to consumers in California by Releasees (as defined in section 4.1) (“Covered Products”). As of June  
13 13, 2013, BGS has only two products, Black Girl Sunscreen, SPF 30, and Black Girl Kids SPF 50  
14 Sunscreen, that fall within the definition of Covered Products. The foregoing notwithstanding, this  
15 Consent Judgment, and all of its terms, applies to all Covered Products, including the currently  
16 existing Black Girl Sunscreen, SPF 30 and Black Girl Kids SPF 50 Sunscreen, as well as to,  
17 including without limitation, new products and brands introduced, developed, or acquired in the  
18 future by BGS Defendant which would today meet the definition of Covered Products if they  
19 currently were being manufactured or distributed for sale, or being sold, in California. The term  
20 Covered Product, as used hereafter in this Consent Judgment, includes such future products and  
21 brands.

### 22 **1.7 State of the Pleadings**

23 On or around March 15, 2023, EHA filed a Complaint against BGS for the alleged violations  
24 of Proposition 65 that are the subject of the Notice (“Complaint”).  
25

### 26 **1.8 No Admission**

27 BGS denies the material factual and legal allegations of the Notice and Complaint and maintains  
28 that all of the products it has manufactured, imported, sold, and/or distributed for sale in California,

1 including Covered Products, have been, and are, in compliance with all applicable laws, rules and  
2 regulations. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,  
3 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment  
4 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.  
5 This Section shall not, however, diminish or otherwise affect BGS's obligations, responsibilities, and  
6 duties under this Consent Judgment.

### 7 **1.9 Jurisdiction**

8 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this  
9 Court has jurisdiction over BGS as to the allegations in the Complaint, that venue is proper in the  
10 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this  
11 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

### 12 **1.10 Effective Date**

13 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this  
14 Consent Judgment is approved and entered as a judgment of the Court, as discussed in Section 5.

## 15 **2. INJUNCTIVE RELIEF**

### 16 **2.1 Reformulation of the Covered Products**

17 (a) BGS manufactures, and/or distributes, and/or sells sunscreen products, including SPF  
18 sunscreen products. One ingredient used in such products to enhance their ability to provide  
19 protection from the sun is octocrylene, an active ingredient approved for use in sunscreens by the  
20 Federal Food & Drug Administration (“FDA”).<sup>2</sup> Octocrylene can at times contain benzophenone.  
21 Benzophenone (CAS # 119-61-9) is a chemical listed under The Safe Drinking Water and Toxic  
22 Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.* (commonly known as  
23 “**Proposition 65**”) as a chemical “known to the state to cause cancer” as Proposition 65 defines that  
24 phrase. 27 Cal. Code Reg. § 25000.

25 (b) Beginning thirty (30) days after the Effective Date, BGS shall only manufacture or  
26 cause to be manufactured, either Covered Products containing no more than (i) 35 ppm  
27 benzophenone in the finished Covered Products; or (ii) 350 ppm of benzophenone in the ingredient

28 \_\_\_\_\_  
<sup>2</sup> See 76 Fed. Reg. 35620; 21 C.F.R. §§ 352.10, 352.20 (stayed).

1 octocrylene used in the finished Covered Products. These standards are the “**Reformulation**  
2 **Standards.**”

3 (c) The dates and reformulations of the Covered Products as listed in Section 2.1 (b) shall  
4 be referred to collectively as the “**Reformulation Standards,**” consisting of either the standards set  
5 forth in Sections 2.1 (b)(i) (the “**Finished Product Reformulation Standards**”) or Sections 2.1  
6 (b)(ii) (the “**Octocrylene Reformulation Standards**”). BGS may at any time, at its own election,  
7 comply with either, both, or any combination of the applicable Finished Product Reformulation  
8 Standard or the Octocrylene Reformulation Standard with respect to any Covered Product.

9 (d) The Reformulation Standards shall apply to Covered Products which are manufactured  
10 by or on behalf of BGS on or after the applicable Reformulation Standard dates.

11 (e) If BGS elects to meet the Finished Product Reformulation Standard it may, at its  
12 option, either (i) test the Covered Product pursuant to a scientifically appropriate application of U.S.  
13 Environmental Protection Agency testing methodologies 3580A, 8270C, or any other scientifically  
14 appropriate methodology for determining the benzophenone content in a substance of the form of the  
15 specific Covered Product being tested, or (ii) may use the appropriate mathematical calculation based  
16 on octocrylene percentage in the Covered Product and the benzophenone concentration in the lot of  
17 octocrylene used in the finished Covered Product, based either on testing of the octocrylene lot or on  
18 a certificate of analysis documenting benzophenone content from the octocrylene supplier (the  
19 “**Certificate of Analysis**”) at the option of the Settling Defendant.

20 (f) If BGS elects to meet the Octocrylene Reformulation Standard it shall obtain a  
21 Certificate of Analysis or analytical testing report for each lot of octocrylene used in the manufacture  
22 of Covered Products. If, after BGS has advised its octocrylene suppliers to include a Certificate of  
23 Analysis with each lot of delivered octocrylene, an octocrylene supplier fails to include a Certificate  
24 of Analysis, a BGS may correct the lapse upon discovery.

25 (g) BGS may, absent grounds to question the accuracy, demonstrate compliance with  
26 either Reformulation Standard by relying in good faith on an octocrylene supplier’s Certificate of  
27 Analysis or comparable verified quantitative benzophenone content information. Such good faith  
28 reliance establishes compliance with the Octocrylene Reformulation Standard. Octocrylene suppliers

1 may rely on any scientifically appropriate testing methodology for determining the benzophenone  
2 content of octocrylene.


3 (h) BGS shall retain compliance documentation for three years after delivery of a lot of  
4 octocrylene and compliance documentation shall be made available within 30 days of a written  
5 request by Plaintiff, who may make no more than two such requests annually.  
6

7  
8 (i) As used in this Section 2, “distributed for sale in CA” means to directly ship Covered  
9 Products into California or to sell Covered Products to a distributor BGS knows will sell Covered  
10 Products in California.


## 11 2.2 Clear and Reasonable Warnings

12 For Covered Products that contain Benzophenone or Octocrylene in a concentration exceeding  
13 the applicable Reformulation Standards set forth in section 2.1 above, and which are distributed or  
14 directly sold by BGS in the State of California on or after the Effective Date, BGS shall provide one of  
15 the following warning statements.

### 16 Option 1:

17  **WARNING:** This product can expose you to chemicals including  
18 Benzophenone, which is known to the State of California to cause  
cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

### 19 Option 2:

20  **WARNING:** Cancer- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

21 This warning statement shall be prominently displayed on the Covered Products, on the packing  
22 of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is displayed with  
23 such conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
24 read and understood by an ordinary individual prior to sale. If the warning statement is displayed on  
25 the Covered Products’ packaging, it must be in a type size no smaller than the largest type size used  
26 for other consumer information on the product. In no case shall a warning statement displayed on the  
27 Covered Products’ packaging appear in a type size smaller than 6-point type. The same warning shall  
28 be posted on any websites under the exclusive control of BGS where Covered Products are sold into

1 California. BGS shall instruct any third-party website to which it directly sells its Covered Products to  
2 include the same warning as a condition of selling the Covered Products in California.

### 3 **2.3 Sell-Through Period**

4 Notwithstanding anything else in this Consent Judgment, Covered Products that are  
5 manufactured, packaged, or put into commerce on or after the date this Agreement is executed shall be  
6 subject to the release of liability pursuant to this Consent Judgment, without regard to when such  
7 Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations  
8 of BGS, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered Products  
9 manufactured, packaged, or put into commerce between the date this Agreement is executed and the  
10 Effective Date.

## 11 **3. MONETARY SETTLEMENT TERMS**

### 12 **3.1 Settlement Amount**

13 BGS shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all the  
14 claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes civil  
15 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section  
16 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00)  
17 pursuant to Code of Civil Procedure section 1021.5.

### 18 **3.2 Civil Penalty**

19 The portion of the settlement attributable to civil penalties shall be allocated according to Health  
20 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid  
21 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining  
22 twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand dollars  
23 (\$5,000.00) in civil penalties shall be paid as follows:

- 24 • One payment of \$3,750.00 to OEHHA, due 120 (one hundred and twenty) days after  
25 the effective date.
- 26 • One payment of \$1,250.00 to EHA, due 120 (one hundred and twenty) days after the  
27 effective date.

28 All payments owed to EHA shall be delivered to the following address:

1  
2 Isaac Fayman  
3 Environmental Health Advocates  
4 225 Broadway, Suite 2100  
5 San Diego, CA 92101

6 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA  
7 (Memo Line "Prop 65 Penalties") at the following addresses:

8 For United States Postal Service Delivery:

9 Mike Gyurics  
10 Fiscal Operations Branch Chief  
11 Office of Environmental Health Hazard Assessment  
12 P.O. Box 4010  
13 Sacramento, CA 95812-4010

14 For Federal Express 2-Day Delivery:

15 Mike Gyurics  
16 Fiscal Operations Branch Chief  
17 Office of Environmental Health Hazard Assessment  
18 1001 I Street  
19 Sacramento, CA 95814

20 BGS agrees to provide EHA's counsel with a copy of the check payable to OEHHA,  
21 simultaneous with its penalty payment to EHA.

22 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.  
23 Relevant information is set out below:

- 24 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided above.
- 25 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

### 26 **3.3 Attorney's Fees and Costs**

27 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's  
28 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not  
limited to investigating potential violations, bringing this matter to BGS's attention, as well as litigating  
and negotiating a settlement in the public interest.

BGS shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's  
counsel by physical check or by electronic means, including wire transfers, at BGS's discretion, as



1 follows: forty-five thousand dollars (\$45,000.00) in Attorney’s Fees and Costs shall be paid as  
2 follows:

- 3 • One payment of \$15,000.00, due one hundred and twenty (120) days after the Effective Date.
- 4 • One payment of \$15,000.00, due three hundred (300) days after the Effective Date.
- 5 • One payment of \$15,000.00, due four hundred and eighty (480) days after the Effective Date.

6 The attorney fee payments shall be made payable to Entorno Law, LLP. The address for this  
7 entity is:

8 Noam Glick  
9 Entorno Law, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

10 **4. CLAIMS COVERED AND RELEASE**

11 **4.1 EHA’s Public Release of Proposition 65 Claims**

12 Plaintiff, acting on its own behalf and in the public interest, releases BGS, and its parents,  
13 subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals,  
14 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant  
15 Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered  
16 Products, including but not limited to downstream distributors, wholesalers, customers, retailers,  
17 including, but not limited to, Target Corporation, and marketplaces franchisees, franchisors,  
18 cooperative members, suppliers, licensees, and licensors, and all of the foregoing entities’ owners,  
19 directors, officers, agents, principals, employees, attorneys, insurers, accountants, representatives,  
20 predecessors, successors, and assigns (collectively referred to as the “Releasees”) from all claims for  
21 violations of Proposition 65 up through the Effective Date based on exposure to Benzophenone from  
22 Covered Products as set forth in the Notice(s). Compliance with the terms of this Consent Judgment  
23 constitutes compliance with Proposition 65 with respect to exposures to Benzophenone from Covered  
24 Products as set forth in the Notice(s). This Consent Judgment is a full, final, and binding resolution of  
25 all claims under Proposition 65 that were or could have been asserted against BGS and/or Releasees  
26 for failure to comply with Proposition 65 for alleged exposure to Benzophenone from Covered  
27 Products. This release does not extend to any third-party retailers selling the product on a website who,  
28

1 after receiving instruction from BGS to include a warning as set forth above in section 2.2, do not  
2 include such a warning.

#### 3 **4.2 EHA's Individual Release of Claims**

4 EHA, in its individual capacity, also provides a release to BGS and/or Releasees, which shall  
5 be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,  
6 costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every nature,  
7 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or  
8 actual exposures to Benzophenone in Covered Products manufactured, imported, sold, or distributed  
9 by BGS before the Effective Date.

#### 10 **4.3 BGS's Release of EHA**

11 BGS on its own behalf, and on behalf of Releasees as well as its past and current agents,  
12 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA  
13 and its attorneys and other representatives, for any and all actions taken or statements made by EHA  
14 and its attorneys and other representatives, whether in the course of investigating claims, otherwise  
15 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

#### 16 **4.4 No Other Known Claims or Violations**

17 EHA and EHA's counsel affirm that they are not presently aware of any actual or alleged  
18 violations of Proposition 65 by BGS or for which BGS bears legal responsibility other than those that  
19 are fully resolved by this Consent Judgment.

### 20 **5. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved by the Court and shall be null and  
22 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or  
23 by such additional time as the Parties may agree to in writing.

### 24 **6. SEVERABILITY**

25 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held  
26 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.  
27  
28

1     **7. GOVERNING LAW**

2             The terms of this Consent Judgment shall be governed by the laws of the state of California as  
3 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise  
4 rendered inapplicable for reasons, including but not limited to changes in the law, then BGS may  
5 provide written notice to EHA of any asserted change, and shall have no further injunctive obligations  
6 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so  
7 affected.

8             In the event the California Office of Health Hazard Assessment adopts a regulation or safe use  
9 determination, or issues an interpretive guideline that exempts Covered Products from meeting the  
10 requirements of Proposition 65; or if Benzophenone cases are permanently enjoined by a court of  
11 competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden  
12 on First Amendment rights with respect to Benzophenone in Covered Products or Covered Products  
13 substantially similar to Covered Products, then BGS shall be relieved of its obligation to comply with  
14 Section 2 herein.

15     **8. ENFORCEMENT**

16             In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled  
17 to its reasonable attorneys' fees and costs.

18     **9. NOTICE**

19             Unless otherwise specified herein, all correspondence and notice required by this Consent  
20 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified  
21 mail, return receipt requested; or (iii) a recognized overnight courier; and (iv) with a copy by email; to  
22 the following addresses:

23     If to BGS:

24     Steve Tekosky  
25     Tatro Tekosky Sadwick LLP  
26     7083 Hollywood Blvd., Suite 500  
27     Los Angeles, CA 90028  
28     rparks@parksandsolar.com

23     If to EHA:

24     Noam Glick  
25     Entorno Law, LLP  
26     225 Broadway, Suite 2100  
27     San Diego, CA 92101  
28     noam@entornolaw.com

29             Any Party may, from time to time, specify in writing to the other, a change of address to which  
30 notices and other communications shall be sent.

1 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

5 **11. POST EXECUTION ACTIVITIES**

6 EHA agrees to comply with the reporting form requirements referenced in Health and Safety  
7 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
8 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which  
9 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually  
10 employ their reasonable best efforts, including those of their counsel, to support the entry of this  
11 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For  
12 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for approval,  
13 responding to any objection that any third-party may make, and appearing at the hearing before the  
14 Court if so requested.

15 **12. MODIFICATION**

16 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of  
17 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any  
18 Party, and the entry of a modified consent judgment thereon by the Court.

19 **13. AUTHORIZATION**

20 The undersigned are authorized to execute this Consent Judgment and acknowledge that they  
21 have read, understand, and agree to all of the terms and conditions contained herein.

22 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

23 If a dispute arises with respect to either Party’s compliance with the terms of this Consent  
24 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in  
25 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed  
26 in the absence of such a good faith attempt to resolve the dispute beforehand.

27 **15. ENTIRE AGREEMENT**


1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties  
2 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,  
3 commitments, and understandings related hereto. No representations, oral or otherwise, express or  
4 implied, other than those contained herein have been made by any Party. No other agreements, oral or  
5 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

6 **AGREED TO:**

**AGREED TO:**

7  
8 Date: 06/14/2023 \_\_\_\_\_

6/21/2023  
Date: \_\_\_\_\_

9  
10 By:  \_\_\_\_\_  
11 ENVIRONMENTAL HEALTH  
12 ADVOCATES, INC.

By:  \_\_\_\_\_  
BLACK GIRL SUNSCREEN LLC

13 **IT IS SO ORDERED.**

14  
15 Date: \_\_\_\_\_

\_\_\_\_\_  
16 JUDGE OF THE SUPERIOR COURT  
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