



2011

## FAIR LABOR ASSOCIATION INDEPENDENT EXTERNAL MONITORING REPORT

**COMPANY:** American Eagle Outfitters, Inc., and Fifth & Pacific Companies (formerly known as Liz Claiborne, Inc.)

**COUNTRY:** India

**FACTORY CODE:** 980232266J

**MONITOR:** International Resources for Fairer Trade

**AUDIT DATE:** October 18, 2011

**PRODUCTS:** Outerwear, Shirts, Kids Wear

**PROCESSES:** Cutting, Stitching, Washing, Finishing, Packing



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## **Wages, Benefits and Overtime Compensation: Holidays, Leave, Legal Benefits and Bonuses**

WBOT.5 Employers shall provide all legally mandated holidays, leave, benefits and bonuses, such as official holidays, annual leave, sick leave, severance payments and 13th month payments, to all eligible workers within legally defined time periods. In addition, all leave and bonuses shall be calculated correctly. (S)

### **Noncompliance**

**Explanation:** 1) 5% – 10% of the casual workers employed in the factory have not been covered under the social security benefit of the Provident Fund (as per Employees Provident Fund and Miscellaneous Provisions Act, 1952).

2) (Uncorroborated Finding): Worker discussions revealed that the workers have been paid a Bonus of INR 1200-1500 for the year 2009 – 2010; however records for the same year revealed that workers had been paid the bonus amount as per the law, i.e. 8.33% of the annual salary, i.e. approximately INR 3500. (As per the Payment of Bonus Act of 1965, Section 12, the amount on which Bonus shall be calculated on is INR 3500, for those employees drawing a salary of up to INR 10000). The records for the previous years, i.e. before 2009-2010, were not available for review.

### **Plan Of Action:**

1) Though contract workers are allowed legally in India, there are certain requirements (e.g. brokers' registration with the local authorities, etc.) that the supplier must ensure abidance with in the future. AEO (American Eagle Outfitters) and LCI (Liz Claiborne International; has since been renamed to Fifth & Pacific Companies) plans to follow up continually with the supplier to ensure that the contract workers are hired legally and given the required benefits and registration.

2) As for the bonuses from before 2-3 years back, AEO and LCI will check the records and discuss with the management to see if the uncorroborated finding was actually an issue.

#### Revised CAP January 2012:

1) Revise the hiring policy

2) Measure/monitor HR management indicators (turnover, rehires, absenteeism, sickness, overtime hours and cost, male/female ratio, skilled vs. unskilled, change of wage levels, ESI/PF coverage, etc.)

3) Meet workers' representatives on a monthly basis to discuss indicators

4) Create action plans and HR instructions to shorten trial and approval time

5) Allocate budget for HR and skill trainings

6) Send monthly reports to brands with indicators

7) Revise action plans and improve continuously

**Deadline  
Date:** 04/16/2012

**Supplier  
CAP:** The audit team has itself observed that complete records, including for the casual workers, are duly maintained on the floor. It is clarified that the mismatch is because of the workers being on trial for a couple of days. However, we hasten to clarify that the entire workforce is taken into account for all statutory benefits. The trial workers get their social security benefits immediately upon hire.

**Supplier CAP  
Date:** 11/24/2011

**Action  
Taken:** November 2011:

1) Based on interviews on site, the supplier does not recruit long term casual workers; however, there are a number of newly hired workers at any given time, who are not formally registered and therefore do not appear on the company payroll, especially among the sewing operators. These employees are tried for a few days to prove the skill levels they claim, until management approves them. Once approved, the hiring date is registered as the day the worker first entered the factory, therefore there is no loss of benefits. Although this is a practical, industry-wide approach, there are still issues with falling short of the legal requirements and there are also issues with loss of benefits, even for a few days, for the unapproved workers. AEO and LCI will continue to work with the management team to ensure that the hiring procedures are revised and to finalize all trials within reasonably short times, during which legal requirements will not be avoided. The brands are especially concerned about the washing section where there are non-registered workers, whether newly hired as the management claims, or casual as the monitors claimed, who might have possibly been recruited via the external consultant who co-manages the washing plant.

2) The uncorroborated finding could not be fully inspected, except the current implementation of bonuses, which was in line with the legal requirements. AEO and LCI will make sure that the previous records are ready during the next assessment in order to do a complete check of bonuses from before 2009.

February 2013: Factory currently still has this type of an unofficial trial period and this trial period is a maximum of 3 days. Once approved, all the employees are paid with the legal minimum wages and registered in personnel files. The first day they worked in the factory is put down as the hiring date. For those workers who are not approved at the end of the trial period, he/ she is paid the minimum wage of that category. For the workers in the washing section, they are registered in the factory payroll and are under the same policy as the rest of the factory. FNPC (Fifth and Pacific Companies) will work jointly with the agent to ensure that the practice described above is being followed for all new workers.



**Plan Complete:** No

**Plan Complete Date:**

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### **Wages, Benefits and Overtime Compensation: General Compliance Wages, Benefits and Overtime Compensation**

WBOT.1 Employers shall comply with all local laws, regulations and procedures concerning the payment of wages and benefits, including overtime compensation. In any case where laws and the FLA Code are contradictory, the standard that provides the greatest protection for workers shall apply. Where provisions are lacking, employers shall take measures to reasonably accommodate matters concerning the payments of wages and benefits, including overtime compensation. (S)

#### **Noncompliance**

**Explanation:** 1) Factory is calculating wages on the basis of 30/31 days (number of days in the respective month) as opposed to 26 days, as required by the laws. Calculation of wages on the basis of 30/31 days may lead to an amount less than the daily minimum wage stipulated for [State name] (as per The Payment of Wages Act, 1936).

2) Wage slips provided to the production workers do not have the payment dates on them (as per Payment of Wages Act, 1936 sec. 5). This may also be an indicator that wage payments are not timely.

**Plan Of Action:** 1) Ensure that wages do not fall below the legal minimum wage because they are based on manipulated or erroneous calculations, i.e. 26 vs. 30/31 days per month as the dividend.

2) Ensure that wages are paid on time and the date the wages are earned is consistently marked on the pay slips and paperwork.

**Deadline Date:** 12/30/2011



**Supplier CAP:** The salaries/wages are worked out on the basis of the number of days falling in a calendar month, at the rate of salaries/wages agreed to, in the appointment letter. If we divide by 26 and pay the workers as per law (pay them according to the notified minimum wage of the state government), we are not supposed to pay the weekly days off. However, since we are paying for weekly days off, the calculation method we use is valid and does not cause any loss to the workers. We calculate it based on the number of days falling in the calendar month. The wage payment record of the company would show that the wages are paid on the appointed date, whereas the pay slips are supposed to be issued one day earlier. However, because of your advice, the date of issue is now being reflected on the pay slips. The wage slips for the month of October 2011 are issued on November 7th, 2011 (Monday), because November 6th was a Sunday.

**Supplier CAP Date:** 11/24/2011

**Action Taken:**

- 1) Supplier is hiring employees on a monthly wage basis and is therefore calculating the corresponding daily wages based on the total days in a given month, but regardless of days off in the same month. However, each worker is then entitled to be compensated for weekly days off and public holidays falling on weeks the worker worked more than half the week. This, evidently, results in workers being paid more than they would normally be, if daily wages were calculated a bit higher based on 26 days, but without compensating for the days off. (Note that hourly overtime compensation is calculated based on 26 days as per legal requirement.) In this regard, AEO and LCI do not attempt to change the system, as it will decrease workers' earnings.
- 2) Wage slips are now distributed a day earlier than actual payments and with dates stamped on them.

**Plan Complete:** Yes

**Plan Complete Date:** 11/28/2011



**Wages, Benefits and Overtime Compensation: Payroll Record Maintenance/Worker Acknowledgement**

WBOT.20 All compensation records shall be maintained accurately and shall be acknowledged by the worker as accurate. (P)

**Noncompliance**

**Explanation:** Wage records for contract workers, i.e. canteen workers and security guards, were not available for review (as per The Payment of Wages Act, 1936 sec. 13A).

**Plan Of Action:** Ensure maintenance of wage records for contracted support service workers, such as canteen and security workers.

**Deadline Date:** 12/30/2011

**Supplier CAP:** The attendance and wage records for the canteen workers are duly maintained as per the law and can be verified during your next visit. The wage records/wage slips (September 2011 to October 2011) for the security guards are duly maintained and available in the facility.

**Supplier CAP Date:** 11/24/2011

**Action Taken:** Wage records of canteen and security workers are now available for October-November 2011 and will be available regularly from now on.

**Plan Complete:** Yes

**Plan Complete Date:** 11/28/2011

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## **Wages, Benefits and Overtime Compensation: Record Maintenance**

WBOT.21 Employers shall ensure that all legally required payroll documents, journals and reports are available, complete, accurate and up-to-date. (P)

### **Noncompliance**

**Explanation:** The employee list kept by the factory management (maintained on their payroll system) does not include the full list of the casual workers. The monitor observed several manually kept worker lists on the production floor, which included casual workers, and several names on these lists were missing in the complete worker list.

**Plan Of Action:** Though contract workers are allowed legally in India, there are certain requirements (e.g. brokers' registration with the local authorities, etc.) that the supplier must ensure abidance with in the future. AEO and LCI plans to follow up continually with the supplier to ensure that the contract workers are hired legally and given the required benefits and registration.

#### Revised CAP January 2012:

- 1) Revise hiring policy
- 2) Measure/monitor HR management indicators (turnover, rehires, absenteeism, sickness, overtime hours and cost, male/female ratio, skilled vs. unskilled, change of wage levels, ESI/PF coverage, etc.)
- 3) Meet workers' representatives on a monthly basis to discuss indicators
- 4) Create action plans and HR instructions to shorten trial and approval time
- 5) Allocate budget for HR and skill trainings
- 6) Send monthly reports to brands with indicators
- 7) Revise action plans and improve continuously

**Deadline Date:** 04/16/2012

**Supplier CAP:** The audit team has itself observed that complete records, including for the casual workers, are duly maintained on the floor. It is clarified that the mismatch is on account of workers being appointed for a trial period for a couple of days. However, we hasten to clarify that the entire workforce is taken into account for all statutory benefits. The trial workers get their social security benefits immediately upon passing the trial period and getting hired.





**Supplier CAP** 11/24/2011

**Date:**

**Action**

**Taken:**

November 2011: Based on interviews on site, the supplier does not recruit long term casual workers; however, there are a number of newly hired workers at any given time, who are not formally registered and therefore do not appear on company payroll, especially among the sewing operators. These operators are tried for a few days to prove the skill levels they claim, until management approves them. Once approved, the hiring date is registered as the day the worker first entered the factory, and therefore they experience no loss of benefits. Although this is a practical, industry-wide approach, there is still an issue of falling short of the legal requirements and there are still issues with loss of benefits, even for a few days, for the unapproved. AEO and LCI will continue to work with the management team to ensure that hiring procedures are revised to finalize all trials within reasonably short times, during which legal requirements will not be avoided. The brands are especially concerned about the washing section where there are non-registered workers, whether newly hired as management claims or casual as the monitors claim, who might have possibly been recruited via the external consultant who co-manages the washing plant.

February 2013: Factory currently still has this type of unofficial trial period and this trial period is a maximum of 3 days. Once approved, all the employees are paid the legal minimum wages and registered in the personnel files. Their first day is recorded as their date of hire. For those workers who are not approved at the end of the trial period, he/she is paid the minimum wage of that category. For the workers in the washing section, they are registered in the factory payroll and are under the same policy as the rest of the factory. FNPC (Fifth and Pacific Companies) will work jointly with the agent to ensure that the practice described above is being followed for all new workers.

**Plan**

No

**Complete:**

**Plan**

**Complete**

**Date:**

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### Wages, Benefits and Overtime Compensation: Worker Wage Awareness

WBOT.22 Employers shall make every reasonable effort to ensure workers understand the wages, including the calculation of wages, incentives systems, benefits and bonuses they are entitled to in a factory and under applicable laws. To this end, employers shall communicate orally and in writing to all workers all relevant information in the local language or language(s) spoken by the workers, if different from the local language. (P)

#### Noncompliance

**Explanation:** The wage slips provided to the security guards, available for review for the month of August, were in English and not in the local language. (as per The Payment of Wages Act, 1936)

**Plan Of Action:** Ensure maintenance of wage records in the local language for contracted support service workers, such as canteen and security workers.

**Deadline Date:** 12/30/2011

**Supplier CAP:** The wage records/wage slips (September 2011 to October 2011) for the security guards are duly maintained and available in the facility.

**Supplier CAP Date:** 11/24/2011

**Action Taken:** Wage records of canteen and security workers are now available in the local language for October-November 2011 and will be regularly available in the local language from now on.

**Plan Complete:** Yes

**Plan Complete Date:** 11/28/2011

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**Code Awareness:**

GEN.3 Develop a secure communications channel, in a manner appropriate to the culture and situation, to enable Company employees and employees of contractors and suppliers to report to the Company on noncompliance with the workplace standards, with security that they shall not be punished or prejudiced for doing so.

**Noncompliance**

**Explanation:** Neither AE, nor LC has developed a direct and secure communication channel for the workers to report non-compliances directly to the company representatives.

**Plan Of Action:** AEO, based on its commitments to FLA, has started to implement the Eagle Eye project as a pilot in one sourcing country, China. Key suppliers are supplying a local service provider's contact information to workers so that they can report grievances, if any. Once the project completes its pilot phase in mid-2012, it will be considered for global launch or in key countries/with key suppliers. However, AEO assessment teams are always leaving contact information for workers, especially following long interactions and in an attempt to prevent retaliation.

**Deadline Date:** 07/30/2012

**Action Taken:** November 2011: During follow up visit, the local AEO partner, who acted as a worker interviewer, gave contact information to several workers he interacted with on the floor; no grievance has been received so far post assessment.

Liz Claiborne (now known as Fifth and Pacific Companies): An agent of Liz Claiborne, [Agent name], had conducted a follow up audit on November 24, 2011 and found that the factory had posted Liz Claiborne's COC poster on the main notice board. A hotline number and email for Liz Claiborne are available on the poster so that the workers can have a direct and secure communication channel to report to the company. Training on the COC was also done on August 26, 2011, and the training record is available. Liz would continuously work on establishing a direct and secure communication channel for the workers to report non-compliances directly to us.

**Plan Complete:** No

**Plan Complete Date:**

## Miscellaneous: Illegal Subcontracting

MISC.1 Illegal Subcontracting

### Noncompliance

**Explanation:** Factory does not have a labor registration contract for contractors of the canteen and security personnel [Names of contractors removed].

**Plan Of Action:** Ensure legal registration of contracted support services to 3rd party organizations.

**Deadline Date:** 12/30/2011

**Supplier CAP:** The registration certificate under the act is required only if the principle employer is employing 20 or more workers through the contractor or the contractor(s), under section 7 of Contract Labour (Regulation Abolition) Act of 1970. If the contractual workers number less than 20, the Registration under the Act is not required.

**Supplier CAP Date:** 11/24/2011

**Action Taken:** The said act indeed specifies the requirement for registration of contractors only when the number of such workers is above 20 total. Please refer to said act of 1970, Section 7, under Registration.

February 2013: There are two canteen staff employed by [contractor name] and fifteen security staff employed by [contractor name]. The number of staff is below 20.

**Plan Complete:** Yes

**Plan Complete Date:** 11/28/2011

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## Health And Safety: Evacuation Requirements and Procedure

H&S.9 All applicable legally required or recommended elements of safe evacuation (such as posting of evacuation plans, the installation and maintenance of an employee alarm and emergency lighting systems, ensuring aisles/exits are not blocked and that workers are not blocked within their workstations, employee education, evacuation procedures, etc.) shall be complied with. Workers shall be trained in evacuation procedures. Alarm systems shall be regularly tested and evacuation drills shall be undertaken at least annually. (S)

### Noncompliance

**Explanation:** Emergency evacuation plans on the production floor were not legible (they were faded) and they were not clear. Moreover, in the canteen, the displayed emergency evacuation plan was a layout of the approved building plan (required as per the Factories Act, 1948). Aisles and exits on the ground floor in the packing section were obstructed by hanging garments and material (storage boxes and containers, a trolley).

**Plan Of Action:** Ensure fire safety management of every element, including physical safety aids, such as clear evacuation plans on every floor. Ensure also that all aisles/exits are clear for safe evacuation, especially in areas such as packing where the nature of the work may undermine clearance and upkeep of housekeeping duties.

**Deadline Date:** 12/30/2011

**Supplier CAP:** Emergency evacuation plans (new and enlarged) have been displayed in the canteen and on the production floor. The hanging rods have been removed from the finishing section, since they were obstructing the passage.

**Supplier CAP Date:** 11/24/2011

**Action Taken:** Renewed evacuation plans are in good shape and are clearly understandable; aisles/exits were also observed to be cleared and orderly maintained/safer.

**Plan Complete:** Yes

**Plan Complete Date:** 11/28/2011

### Health and Safety: Medical Facilities

H&S.21 Medical facilities shall be established and maintained in factories as required by applicable laws. Medical staff shall be fully licensed and recognized under applicable local rules and regulations. An appropriate number of medical staff shall be on duty during all working hours, including any type of overtime, as required under local law. An appropriate stock of medical supplies shall be maintained at all times. Medicines of which the expiration date has passed must be replaced immediately and disposed of in a safe manner. (P)

#### Noncompliance

**Explanation:** 1) The dispensary (i.e. the ambulance room) in the factory was not equipped with the correct number of beds, i.e. 4 beds, as per the [State name] Factory Rules Sec. 45 (4)/Rule No 64.

2) Factory does not have a medical professional (doctor) on duty during the working hours of the factory (as per [State name] Factory Rules Sec. 45 (4)/Rule No. 64).

**Plan Of Action:** Ensure that the dispensary is sufficiently equipped and manned to maintain timely medical emergency services at all times.

Revised CAP January 2012:

- 1) Revise policy and provide H&S resources, including a medical specialist
- 2) Assess health risks in writing and conduct regular medical checks
- 3) Consult internal and external stakeholders, including the workforce
- 4) Make health inspection plans and create preventive procedures
- 5) Budget and invest in medical equipment and trainings
- 6) Send monthly reports to brands with key indicators and achievements
- 7) Review and improve continually

**Deadline Date:** 04/16/2012

**Supplier CAP:** The dispensary is well equipped, with one bed short. We will provide the extra bed within 1 week. We have hired a qualified attendant from the [local hospital name]. He will be starting work on December 1st, 2011.

**Supplier CAP Date:** 11/24/2011

**Action Taken:** [November 2011:](#) Dispensary still not well equipped and not functional enough. The medical staff is starting work in December 2011; therefore all planned improvements will be checked remotely as well as during the next follow up visit.

[February 2013:](#) Factory now has one bed in the dispensary and has employed a full-time medical nurse.

**Plan Complete:** No

**Plan Complete Date:**

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### **Health and Safety: Sanitation in Factory Facilities**

H&S.22 All facilities including factory buildings, toilets, canteens, kitchens, and clinics, shall be kept clean and safe and be in compliance with all applicable laws, including relevant sanitation, medical and safety and health regulations. (S)

#### **Noncompliance**

**Explanation:** Housekeeping on the production floors and in the factory premises was not maintained appropriately. The drinking water sources on the 1st floor of the production area were unhygienic. Workers would frequently spit in that area, and there was a dustbin that was used as a spittoon placed near one of the drinking water sources. In addition, a large amount of garbage (dry and wet waste) was stored in the back of the factory and had not been cleared out for a few days. The foul smell in the vicinity and the large amount of garbage indicated that it had not been removed for almost a week. The management agreed that that was the case.

**Plan Of Action:** Ensure better housekeeping and adherence to hygiene standards, including keeping up the cleanliness of the potable water and its storage location, as well as the upkeep of throwing out the garbage.

[Revised CAP January 2012:](#)

- 1) Revise hygiene policy and provide sufficient resources
- 2) Assess hygiene risks in writing and conduct regular inspections
- 3) Consult internal and external stakeholders, including the workforce
- 4) Make hygiene inspection plans and issue procedures

- 5) Invest in and budget for a better environment, equipment and trainings
- 6) Send monthly reports to brands with key indicators and achievements
- 7) Review and improve continually.

**Deadline Date:** 04/16/2012

**Supplier CAP:** Housekeeping has improved.

**Supplier CAP Date:** 11/24/2011

**Action Taken:** November 2011: Housekeeping and garbage collection is better organized; however, the water supply area is full of dripping water and the related equipment is rusted. Toilets in the canteen area as well as on the production floors are mostly messy/dirty (no proper drainage of sewage, lack of lighting, broken doors/walls, no soap, etc.).

February 2013: Factory has improved the housekeeping by having housekeeping log sheets. Photos of the production floor have been sent to FLA for review.

**Plan Complete:** No

**Plan Complete Date:**

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## Health and Safety: Other - Health and Safety

Other

### Noncompliance

**Explanation:** Factory has not conducted a risk assessment to assess the hazards and risks involved in production.

Legal Reference: The Factories Act, 1948 [Section 41G 'Workers' participation in safety management' and Section 41C. 'Specific responsibility of the occupier in relation to hazardous processes'.]





**Plan Of Action:** Ensure that a sound risk assessment is planned, implemented and updated at regular intervals, in collaboration with a specialist as well as the workforce.

**Deadline Date:** 04/16/2012

**Action Taken:** November 2011: Management is aware of the haphazard and reactive safety measures in place, therefore risk assessment not only a legal requirement, but also a necessity. AEO and LCI recommended an external organization be consulted for a proper risk assessment and the results of this work will be assessed continually by the brands.

February 2013: Factory still has not conducted the risk assessment. FNPC (Fifth and Pacific Companies) will work with the factory to develop the risk assessment.

**Plan Complete:** No

**Plan Complete Date:**

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### Hours of Work: Time Recording System

HOW.6 Time worked by all workers, regardless of compensation system, shall be fully documented by time cards or other accurate and reliable recording systems such as electronic swipe cards. Employers are prohibited from maintaining multiple time-keeping systems and/or false records for any fraudulent reason, such as to falsely demonstrate working hours. Time records maintained shall be authentic and accurate. (P)

#### Noncompliance

**Explanation:** The minutes of the grievance committee meeting dated August 30th, 2011, mentioned that the factory was operational on August 24th, 2011, which was a Sunday, the weekly off day. Workers had worked overtime on this day. However, the time records in the electronic time keeping system did not reflect any attendance for that particular day.

**Plan Of Action:** Ensure that there is no existing practice of manipulating payroll and time records to circumvent legal or brands' CR requirements. Transparency, at all costs, should be the pillar of a successful business and a compliant partnership. Brand sourcing is committed to engaging and helping with the problems that the factory may be encountering due to production inefficiency and/or order management issues.

Revised CAP January 2012:

- 1) Revise policy and provide HR resources
- 2) Measure/monitor HR management indicators (turnover, rehires, absenteeism, sickness, overtime hours and cost, male/female ratio, skilled vs. unskilled, change of wage levels, ESI/PF coverage, etc.)
- 3) Meet worker representatives on a monthly basis to discuss indicators
- 4) Create action plans and HR instructions
- 5) Allocate budget for production/HR incentives and invest more in trainings
- 6) Send monthly reports to brands with indicators
- 7) Revise action plans and improve continuously

**Deadline** 04/16/2012  
**Date:**

**Action** November 2011: Factory is apparently maintaining two sets of records based on  
**Taken:** different buyers' requirements, especially due to the fact that some buyers do actually cause the problem because of their production demands and changes, which is not helpful. Instead, they require overnight solutions to endemic overtime problems. AEO and LCI have access to real records, where e.g. finishing workers exceeded 60 hours/week recently, though not currently, due to low season circumstances. Besides, payment of overtime is per the legal requirement of +100%, which not many suppliers abide by in India. Though the brands are committed to analyzing and examining this issue continually, the risk of non-compliance is not very high due to the fact that the factory has the space and extra machinery to hire more workers if need be.

**Plan** No  
**Complete:**

**Plan**  
**Complete**  
**Date:**

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