

NOTICE OF CLASS ACTION SETTLEMENT

MEDICAL PATIENTS: If an attorney requested patient records on your behalf before the filing of a lawsuit (or the appearance of a defendant), a pending class action settlement will affect your rights

ATTORNEYS: If you requested patient records from a California medical provider on behalf of a client, before the filing of an action (or the appearance of a defendant), a pending class action settlement will affect your or your clients' rights

A settlement ("Settlement") has been reached in the class action lawsuit ("Lawsuit") titled *Kristen Nicodemus, et al. vs. Ciox Health, LLC, f/k/a HealthPort Technologies, LLC, et al.*, San Francisco Superior Court Case No. CGC-13-531076 that may affect your rights. Payments will be made only if the Court approves the Final Settlement and any appeals are resolved.

The Lawsuit alleges that Ciox Health, LLC f/k/a HealthPort Technologies, LLC's ("Ciox/HealthPort") charges copy-cost fees in excess of the "reasonable costs" set forth in California Evidence Code section 1158 ("Section 1158") when responding to attorneys' pre-litigation requests for their client's medical records in advance of litigation ("Section 1158 Requests").

- The Court has not decided whether to finally approve the Settlement. Payments will be made only after the Court approves the Settlement and any appeals are resolved. Please be patient.
- You need to decide whether to stay in the case and receive the benefits of the Settlement, object to the Settlement, or opt out of the monetary relief provisions of the Settlement to pursue your claims on your own. **Your legal rights will be affected whether you do or do not act.**
- The decision of whether to participate in, request to be excluded from, and/or object to the Settlement is entirely yours.

LEGAL RIGHTS AND OPTIONS OF CLASS MEMBERS

You Must Submit a Claim to be Eligible for Reimbursement	<p>To be eligible to receive a reimbursement payment, <u>you or the attorney who requested your records ("Requesting Attorney") must submit a claim form</u>. A claim form is attached, and can also be downloaded at www.RecordsOverchargeClass.com, or obtained by contacting the Claims Administrator, Analytics LLC, at (866) 478-1476.</p> <p>Once completed, please submit the claim form to Records Overcharge Class, c/o Analytics LLC, at P.O. Box 2005, Chanhassen, MN 55317-2005, by e-mail at claims@RecordsOverchargeClass.com or Claim Forms may also be completed and submitted electronically at www.RecordsOverchargeClass.com. You may also contact the Claims Administrator to update your address or other contact information on file.</p>	All Claim Forms must be postmarked or submitted electronically by May 23, 2020 .
If You Do Nothing	<p>You must submit a claim form to be eligible for reimbursement of any charges imposed above those defined as "reasonable costs" in Evidence Code section 1158(e)(2). Any Class Member who fails to submit a Claim Form by the end of the Claims Period shall be forever barred from receiving any payment pursuant to the Settlement Agreement and shall in all other respects be bound by the terms of the Settlement Agreement and by the Final Order and Judgment entered in the Lawsuit.</p> <p>If you do not exclude yourself from the Class, you will be bound by the rulings made in this case.</p>	

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It describes how to receive money, or be excluded, from the Settlement.

For More information please contact (866) 478-1476 or visit www.RecordsOverchargeClass.com

You May Exclude Yourself	The Court has certified a class in this case, but the case has not yet gone to trial and no verdict has been entered. If you do not want to be bound by the settlement in this case, you may exclude yourself from the Settlement Class. If you exclude yourself from the Settlement Class, you will not be entitled to any benefits conferred on the Settlement Class.	All exclusions must be postmarked by March 16, 2020.
You May Object	If you believe the Settlement is unfair or inadequate, you may object, personally or through an attorney. You cannot object to the Settlement <i>and</i> exclude yourself from the Settlement.	All objections must be postmarked by March 16, 2020.

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BASIC INFORMATION

1. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class representatives” sue on behalf of other people who have similar claims. The Class representative in this case is Kristen Nicodemus. The Class representative represents the “Class” or “Class Members.”

The Court resolves the issues for all Class Members, except for those people who request to exclude themselves from the Class.

A class was previously certified in this case (the “Certified Class”). The Settlement Class differs slightly from the Certified Class in this Lawsuit in that it also includes attorneys who made requests on behalf of their clients and encompasses a larger time frame. The Settlement Class is defined as:

All adult patients, guardians or conservators of adult patients (or of the adult patient’s estate), parents or guardians of minor patients, or personal representatives or heirs of deceased patients, attorneys, or law firms who: (1) requested medical records from a hospital or other medical provider (as enumerated in California Evidence Code § 1158) located in California; (2) (i) through an attorney at law or his/her representative or (ii) as an attorney at law or through such attorney’s representative pursuant to a signed authorization (but in the case of 2(ii), only if such attorney paid for and was not reimbursed for the applicable charges); (3) prior to litigation, and (4) were charged by Ciox Health, LLC f/k/a HealthPort Technologies, LLC¹ (and paid) more than: (a) ten cents (\$0.10) per page for reproduction of medical records 8½ x 14 inches or less, (b) twenty cents (\$0.20) per page for reproduction of medical records from microfilm, (c) \$16.00 per hour (computed on the basis of four dollars per quarter hour or fraction thereof) for clerical costs, (d) actual postage charges, and/or (e) actual costs charged by a third person during the Class Period.

Excluded from the Class are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and its/their legal representatives, officers, directors, assigns and successors; (2) the judge to whom this case is assigned and any member of the judge’s immediate family; and (3) claims for personal injury, wrongful death and emotional distress and claims of consequential property damage and loss.

2. What is the Lawsuit about?

This Lawsuit involves allegations against Ciox/HealthPort for violation California Evidence Code section 1158 (“Section 1158”). In general terms, Section 1158 states that “if an attorney at law or his or her representative presents a written authorization therefor signed by a patient” to a “medical provider,” “the medical provider shall promptly make all of the patient’s records under the medical provider’s custody or control available for inspection and copying.” Section 1158 allows for “[a]ll reasonable costs incurred by a medical provider in making patient records available pursuant to this section [to] be charged against the attorney who requested the records,” but limits those “reasonable costs” (to, e.g., “ten cents (\$0.10) per page for standard reproduction of documents of a size 8 ½ by 14 inches or less...”).

The Lawsuit alleges that when responding to attorneys’ pre-litigation requests for their client’s medical records in advance of litigation, Ciox/HealthPort violates Section 1158 by charging more than the amounts allowed by the statute.

3. How does Ciox/HealthPort respond?

Ciox/HealthPort denies allegations that its business practices violated Section 1158.

4. Why is the Lawsuit being settled?

After certification of the Class, exchange of information and documents, and settlement negotiations, the Class representative and Ciox/HealthPort have agreed to settle the claims rather than go to trial. The Settlement represents a compromise of disputed claims and is not an admission that any of the defendants violated the law. The parties and their attorneys believe the Settlement is in the Class’ best interests given the risks and expense of going to trial.

¹ See Order Granting Request for Change of Name from HealthPort Technologies, LLC, to Ciox Health, LLC f/k/a HealthPort Technologies, LLC, entered April 7, 2017.

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5. Has the Court decided who is right?

No. The Court has decided only that notice of the Settlement should be distributed so that Class Members can review the Settlement terms and determine whether they want to participate, object, or exclude themselves from the Settlement.

6. Who is the Claims Administrator?

The Claims Administrator is a third party appointed by the Court to send this notice, process and issue Settlement checks, and otherwise administer the Settlement. You may contact the Claims Administrator to provide updated contact information or ask questions regarding the processing of Settlement awards.

You may contact the Claims Administrator at:

Records Overcharge Class
c/o Analytics LLC
P.O. Box 2005
Chanhassen, MN 55317-2005
(866) 478-1476
info@RecordsOverchargeClass.com

7. What does the Settlement provide to Class Members?

Ciox/HealthPort has agreed to fully reimburse all Class Members who submit a valid claim form up to the \$10,000,000 total amount allocated to the common fund. If the valid claims submitted amount to more than \$10,000,000 collectively, Class Members who submit a valid claim form will receive a pro-rata amount. Ciox/HealthPort has also agreed to change certain business practices detailed in section 15 below. In return, Class Members who do not timely request to be excluded from the settlement will release any claims they might have against Ciox/HealthPort that were or could have been raised in the Lawsuit based on the allegations in the Lawsuit.

For more information about your estimated payment from the Settlement and the way it was calculated, see Section 18 below. For more information about the claims you will release if you do not exclude yourself from the Settlement, see Section 21 below.

8. How do I participate in the Settlement?

Medical Patients: To be eligible to receive a reimbursement payment, you or an attorney on your behalf must submit a claim form. A claim form is attached, and can also be downloaded at www.RecordsOverchargeClass.com, or obtained by contacting the Claims Administrator, Analytics LLC, at (866) 478-1476. Once completed, please submit the claim form to Claims Administrator, at Records Overcharge Class, c/o Analytics LLC, P.O. Box 2005, Chanhassen, MN 55317-2005, or electronically at claims@RecordsOverchargeClass.com.

Attorneys: To be eligible to receive a reimbursement payment on your own behalf or on behalf of a medical patient, you must submit a claim form. A claim form is attached, and can also be downloaded at www.RecordsOverchargeClass.com, or obtained by contacting the Claims Administrator, Analytics LLC, at (866) 478-1476. Once completed, please submit the claim form to Records Overcharge Class, c/o Analytics LLC, at P.O. Box 2005, Chanhassen, MN 55317-2005, or electronically at claims@RecordsOverchargeClass.com.

A list of Class Members for whom you or your law firm requested medical records is included with the mailed copy of this notice, and can also be obtained by contacting the Claims Administrator, Analytics LLC, at P.O. Box 2005, Chanhassen, MN 55317-2005, or electronically at info@RecordsOverchargeClass.com.

Additional claim forms can be obtained from and submitted to the Claims Administrator, Analytics LLC: (866) 478-1476, Records Overcharge Class, c/o Analytics LLC, P.O. Box 2005, Chanhassen, MN 55317-2005, info@RecordsOverchargeClass.com, www.RecordsOverchargeClass.com.

All claims forms must be postmarked or submitted electronically by May 23, 2020.

Attorneys are reminded that they are required to “promptly notify a client of the receipt of funds in which the lawyer knows the client has an interest,” and “promptly distribute any undisputed funds in the possession of the lawyer that the

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client is entitled to receive.” Cal. Rules Pro. Cond. (“CRPC”), 1.15(d)(1), (7); Model Rules Pro. Cond. (“MRPC”) 1.15(d)-(e) (same). Accordingly, ***where an attorney obtains funds from this settlement with respect to a transaction that was previously paid for by a client, or recouped through resolution of that client’s claims, they must deliver the funds received from this settlement, with respect to that transaction, to the client.*** See CRPC 1.4(a)(3) & MRPC 1.4(a)(3)-(4) (attorneys must “keep the[ir] client reasonably informed about significant developments relating to the representation”); CRPC 1.8.1 & MRPC 1.8 (must not “acquire a pecuniary interest adverse to a client”); CRPC 1.5(a) & MRPC 1.5(a) (must not “charge or collect an unconscionable or illegal fee”); CRPC 4.1(a) & MRPC 4.1(a) (must not “make a false statement of material fact to a third person”).

9. How do I request to be excluded from the Settlement?

In order to exclude yourself, mail a letter to the Claims Administrator, postmarked by **March 16, 2020**, stating, “I hereby assert my right to be excluded from the Class in *Kristen Nicodemus, et al., vs. Ciox Health, LLC, f/k/a HealthPort Technologies, LLC, et al.*, San Francisco Superior Court Case No. CGC-13-531076.” Print your name and mailing address, as well as the name and mailing address of your attorney who requested medical records on your behalf. Sign the letter and mail it to the Claims Administrator at Records Overcharge Class, c/o Analytics LLC, P.O. Box 2005, Chanhassen, MN 55317-2005. You may also submit a request for exclusion electronically, to info@RecordsOverchargeClass.com, but such request must be signed by hand and scanned, and must be sent no later than March 16, 2020. ***You will not receive any Settlement proceeds if you are excluded from the Settlement Class.***

Please further note, if you request exclusion from the Settlement (i.e., opt-out) you may not also object to the Settlement; if you attempt to submit both an exclusion request and an objection, you will be bound by your opt-out.

10. May I object to the Settlement?

If you believe the Settlement is unfair or inadequate, you may object, personally or through an attorney, by mailing a copy of your objection to the Claims Administrator. You cannot object to the Settlement ***and*** exclude yourself from the Settlement. If you attempt to object and exclude yourself from the Settlement, only your exclusion will be considered.

If you wish to object to the Settlement, you must mail a written, personally signed (in ink) statement to the Claims Administrator that contains your name, address and telephone number. Your objection must also contain the words “I object to the Settlement in *Nicodemus vs. Ciox Health, LLC, f/k/a HealthPort Technologies, LLC, et al.*,” and set forth the legal and factual basis for the objection. To be effective, your objection must be mailed to the Claims Administrator at Records Overcharge Class, c/o Analytics LLC, P.O. Box 2005, Chanhassen, MN 55317-2005 **postmarked no later than March 16, 2020**. You may also submit an objection electronically, to info@RecordsOverchargeClass.com, but such objection must be signed by hand and scanned, and must be sent no later than March 16, 2020. Do not telephone the court or Ciox/HealthPort’s counsel.

If you or your counsel wish to appear in Court at the hearing on final approval of the Settlement, you (and your counsel, if any) must include a statement in your written objection to that effect, and include with your objection copies of any papers, exhibits, or other evidence that you or your counsel intend to present to the Court in connection with your objection.

If you hire your own lawyer, you are responsible for paying for that lawyer.

If the Court rejects your objection, you will still be bound by the terms of the Settlement. You will not be able to exclude yourself from the Settlement.

11. When will I receive my payment?

Payments will be sent if the Court gives the Settlement final approval, and if no objections are submitted. If any objections are submitted, and/or if any appeal is taken, payments will be delayed until the time to appeal has expired or any appeals are finally resolved in favor of the Settlement. Please be patient.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this Lawsuit?

The Court has determined that Lori Andrus, of Andrus Anderson LLP (lori.andrus@andrusanderson.com), and Mark Burton,

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of Hersh & Hersh P.C. (mburton@hershlaw.com), are qualified to represent all Class Members. Lawyers for these firms are called “Class Counsel.” They are experienced in handling similar cases.

13. May I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. Nonetheless, you may hire your own lawyer if you wish. If you hire your own lawyer, you are responsible for paying for that lawyer.

14. How will Class Counsel be paid?

You do not have to pay Class Counsel’s fees and costs. The fees and expenses that the Court approves will be paid by Ciox/HealthPort separate and apart from the funds available to the Class. More information about the attorneys’ fees and costs is contained in Section 17 below.

TERMS OF THE SETTLEMENT

15. What has Ciox/HealthPort agreed to do?

Ciox/HealthPort has agreed to pay at least \$610,000, and up to \$10,010,000 into the “Common Fund.” The Common Fund includes at least \$600,000, and up to \$10,000,000 to pay reimbursement to Class Members. Class Members who submit a valid claim form will be reimbursed (1) \$0.15 per page of medical records provided by Ciox/HealthPort (where Ciox/HealthPort had charged \$0.25 per page); (2) all \$30 “basic fees” charged by Ciox/HealthPort; and (3) all \$15 “retrieval fees” charged by Ciox/HealthPort. If any money, up to \$600,000 is left in the Common Fund at the conclusion of the claims process, the remainder may be paid as *cy pres* to Golden Gate University School of Law’s Litigation Center or Public Justice, P.C. In other words, if Settlement Class members submit claims exceeding \$600,000, they will be paid by Ciox (up to \$10,000,000) and the *cy pres* recipient will not receive anything from the funds provided for Settlement Class members.

Ciox/HealthPort has also agreed to pay \$10,000 as a Class representative Service Award. The Court may approve the Class representative Service Award in recognition of the time, effort, and risks the Class representative took to prosecute the case. If the Court awards less than this amount, the difference will be distributed to Class Members as part of the Settlement.

Ciox/HealthPort has also agreed to separately pay the costs of Settlement Administration, as discussed in Section 16, below.

Ciox/HealthPort has also agreed to certain business practice changes. Specifically, Ciox/HealthPort will, upon final approval of the Settlement by the Court, implement the following:

- When Ciox/HealthPort responds to a Section 1158 Request by mail, include the following information as part of its response:
 - That Ciox is offering to send the requestor copies of the records requested upon the requestor’s employing Ciox as the requestor’s representative to make and send the copies.
 - That Ciox’s rates for copying the records as the requestor’s representative are \$30.00 + \$0.25 per page plus actual postage and applicable sales tax, that copies from microfilm are \$30.00 plus \$0.75 per page, that the medical provider may charge a flat fee of \$15.00 for retrieving and making the records available for copying, that additional charges may apply if records must be retrieved from off-site locations, and that the charges are itemized on the included invoice if they apply. (This information may be modified from time to time as necessary to account for fee and rate modifications and statutory amendments.)
 - That the rates Ciox charges as the requestor’s representative are not regulated by Section 1158’s cost limitations.
 - That a requestor may sign up electronically for Ciox to serve as the requestor’s representative.
 - That a requestor may pay for a specific request by following the instructions on the included invoice, that, by so doing, agrees to employ Ciox as the requestor’s representative for that specific request only, and that Ciox will send the requested records to the requestor upon full receipt of payment from the requestor.
 - That, alternatively, a requestor may employ a copy service other than Ciox to retrieve copies of the records, or a requestor may make arrangements with the medical provider for access to inspect and copy the records itself.
 - That the requestor may sign up to receive the records requested electronically for an electronic delivery fee.

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- When Ciox/HealthPort responds to a Section 1158 Request other than by mail (i.e., via electronic means), Ciox/HealthPort shall ensure that the requester receives or has previously received the information noted in 3.1.1, 3.1.2, 3.1.3, and 3.1.6, above, and that the requester receive any modifications to previous information as described in 3.1.2, if any.

16. How much will it cost to administer the Settlement?

Ciox/HealthPort has agreed to pay up to \$250,000 to administer the Settlement, including distribution of this Notice, communicating with and performing outreach to Class Members, reviewing claim forms, and processing payments to Class Members. The amount it costs to administer the Settlement will not reduce the amount of money that will be distributed to the Class.

Any funds remaining after administration of the Class, up to \$250,000, shall be paid to the *cy pres* recipient (i.e. Golden Gate University School of Law’s Litigation Center or Public Justice, P.C.).

17. How much will Class Counsel receive?

The Settlement allows Plaintiff to request that the Court award their attorneys’ fees and costs incurred in connection with their work in this case, in an amount not to exceed \$1,750,000. Class Members are not personally liable for any fees and costs, and Ciox/HealthPort will pay these fees and costs separately from the money going to Class Members. In other words, the amount awarded to Class Counsel by the Court will not reduce the amount of money that will be distributed to the Class.

18. How will the Common Fund be distributed to Class Members?

Ciox/HealthPort maintains a list of all requests for medical records made by attorneys pursuant to written authorizations to California medical providers that it has fulfilled since May 1, 2009, which list includes, as relevant here, information regarding which attorney requested the records, whose records were requested, and how much was paid to Ciox/HealthPort to fulfill the request (the “Transactions List”).

Every valid claim form that is submitted will be compared against this list to determine the amount of reimbursement to be paid. Specifically, for each valid claim form, Ciox/HealthPort will reimburse the Class Member for amounts charged beyond those permitted by Evidence Code Section 1158, up to (1) \$0.15 per page of medical records provided by Ciox/HealthPort (where Ciox/HealthPort had charged \$0.25 per page); (2) all \$30 “basic fees” charged by Ciox/HealthPort; and (3) all \$15 “retrieval fees” charged by Ciox/HealthPort. So long as the aggregate amount presented by all valid claim forms does not exceed \$10,000,000, Class Members will receive 100% of their reimbursement amount; if the aggregate amount of all valid claim forms does exceed \$10,000,000, Class Members will be paid on a pro-rata basis.

19. How long will I have to cash my check?

Any checks not cashed after **ninety (90) days** shall be void. After that, the funds from all uncashed checks shall be returned to the Common Fund.

20. Will I have to pay taxes on my award?

You should consult a tax professional for information about your own specific situation.

RELEASE OF CLAIMS

21. What claims are being released under the Settlement?

Upon final approval of the Settlement by the Court, Plaintiff, along with each Class Member who does not opt out, will fully release and discharge (1) Ciox Health, LLC f/k/a HealthPort Technologies, LLC; and (2) “medical providers” in California (as defined by Section 1158), and each of their respective affiliates, parents, subsidiaries, successors and all other related entities, including but not limited to all of their incumbent and former officers, directors, owners, members, managers, shareholders, investors, agents, insurers, attorneys, employees, fiduciaries, successors, assigns, and representatives, in their individual and/or representative capacities.

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Specifically, Plaintiff and Class Members who do not opt out will release all claims: (a) asserted in the Lawsuit; (b) arising out of, based on, or related to the factual allegations in the Lawsuit; and (c) arising out of, based on, or related to the transactions in the Transactions List.

Only as to the claims released herein, each Class Member waives all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and does so understanding the significance of that waiver. Section 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party. Claims based on or arising out of events occurring after the date of preliminary approval of the Settlement are not barred.

This waiver of Civil Code Section 1542 means that members of the Settlement Class who do not request exclusion will release any claims against Defendants which could have been raised in the Lawsuit, even if they are not aware of those claims at the time of the Settlement. It does not mean, however, that you will release claims unrelated to the Lawsuit, or which arise after the close of the Class Period (i.e. December 18, 2019).

FINAL SETTLEMENT APPROVAL HEARING

22. When will the Court consider whether to finally approve the Settlement?

The Court will hold a hearing in Department 613 of the San Francisco Superior Court, located at 400 McAllister St., San Francisco, CA 94102, on July 10, 2020 at 9:00 a.m., to decide whether to finally approve the Settlement. At that time, the Court will also decide whether to approve Class Counsel's request for attorneys' fees and reimbursement of costs, and the Class representative Service Award. Class Counsel's motion for approval of attorneys' fees and reimbursement of costs must be filed by February 13, 2020.

It is not necessary for you to appear at this hearing. If you have timely submitted an objection to the Settlement and included in that objection a statement that you intend to appear at the hearing, you or an attorney that you hire may appear at the hearing to argue your objection to the Court.

The hearing may be postponed without further notice to the Class. If the Settlement is not approved, the Lawsuit will continue to be prepared for trial or other judicial resolution.

FURTHER INFORMATION

23. How do I get more information?

The pleadings and all other records of this litigation may be examined and copied during regular office hours at the office of the Clerk of the Court, and can be accessed online, free of charge, at <http://www.sfsuperiorcourt.org/online-services> (select 'Case Query,' and enter Case No. CGC-13-531076). You can also visit www.RecordsOverchargeClass.com for information about this case and to obtain relevant documents including the operative complaint, the Superior Court's February 23, 2017 order certifying the class, the Court of Appeal's published decision, *Nicodemus v. Ciox Health, LLC, et al.*, 3 Cal. App. 5th 1200 (2016), the Order on Defendants' Motions for Summary Judgment or, in the Alternative, Summary Adjudication, and Plaintiff's Motion for Summary Adjudication, the Settlement Agreement, this Notice, Claim Forms, Plaintiff's Supplemental Motion for Preliminary Approval of Class Settlement and all supporting declarations and exhibits, as well as all preliminary and final approval papers and orders.

Do not call the Court or the Clerk's office regarding this Notice. If you have questions about this Notice, contact class counsel: Lori Andrus of Andrus Anderson LLP (lori.andrus@andrusanderson.com) and Mark Burton of Hersh & Hersh, P.C. (mburton@hershlaw.com).

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