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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

\_\_\_\_\_, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

v.

FUNKO, INC., BRIAN MARIOTTI, RUSSELL  
NICKEL, KEN BROTMAN, GINO  
DELLOMO, CHARLES DENSON, ADAM  
KRIGER, RICHARD MCNALLY, DIANE  
IRVINE, GOLDMAN SACHS & CO. LLC, J.P.  
MORGAN SECURITIES LLC, MERRILL  
LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED, PIPER JAFFRAY & CO.,  
JEFFERIES LLC, STIFEL, NICOLAUS &  
COMPANY, INCORPORATED, BMO  
CAPITAL MARKETS CORP., and  
SUNTRUST ROBINSON HUMPHREY, INC.,

Defendants.

Case No.:

**CLASS ACTION**

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff \_\_\_\_\_ (“Plaintiff”), by and through his attorneys, alleges the following upon  
2 information and belief, except as to those allegations concerning Plaintiff, which are alleged upon  
3 personal knowledge. Plaintiff’s information and belief is based upon, among other things, his  
4 counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory  
5 filings made by Funko, Inc. (“Funko” or the “Company”) with the United States Securities and  
6 Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by  
7 and disseminated by Funko; and (c) review of other publicly available information concerning Funko.

### 8 NATURE OF THE ACTION AND OVERVIEW

9 1. This is a class action on behalf of persons and entities that purchased or otherwise  
10 acquired the Class A common stock (“stock” or “shares”) of Funko pursuant and/or traceable to the  
11 Company’s false and/or misleading registration statement and prospectus (collectively, the  
12 “Registration Statement”) issued in connection with the Company’s November 1, 2017 initial public  
13 offering (“IPO” or the “Offering”), seeking to pursue remedies under Sections 11, 12(a)(2) and 15 of  
14 the Securities Act of 1933 (the “Securities Act”).

15 2. Funko claims to be a pop culture consumer products company. Funko purportedly  
16 creates licensed toys, collectibles, and other consumer goods, including figures, plush toys,  
17 accessories, apparel, and homewares.

18 3. On November 3, 2017, the Company filed its IPO prospectus with the SEC, which  
19 forms part of the IPO Registration Statement that was declared effective on November 1, 2017. In the  
20 IPO, the Company sold 10,416,666 shares of Class A common stock at a price of \$12.00 per share.  
21 The Company received proceeds of approximately \$116.4 million from the IPO, net of underwriting  
22 discounts and commissions. The proceeds from the IPO were purportedly to be used to purchase  
23 common units from FAH, LLC, so that FAH, LLC could use the funds for general corporate purposes,  
24 and to repay debt.

25 4. On November, 2 2017, *Bloomberg* published an article entitled “Funko Extends  
26 Playtime to Its Accounting,” stating, among other things, that “[p]rofits . . . are slowing,” “just \$7  
27 million, or 10 percent, of Funko’s \$69 million increase in adjusted Ebitda . . . was from actual

1 growth,” and questioning the Company’s claim of “intellectual property worth \$250 million” which  
2 the article author claimed was “odd for a company whose main products are based on others’  
3 intellectual property.”

4 5. On that day, November 2, 2017, Funko’s stock price closed at \$7.07 per share, which  
5 was a decline of \$4.93, or 41%, from the IPO price of \$12.00 per share. On January 5, 2017, Funko’s  
6 stock price closed at \$6.12, which was a decline of \$5.88, or 49%, from the IPO price of \$12.00 per  
7 share.

8 6. The Registration Statement was materially false and misleading and omitted to state (1)  
9 that Funko’s profits and growth were not as positive as the Company represented; and (2) that, as a  
10 result of the foregoing, Defendants’ statements in the Registration Statement regarding Funko’s  
11 business, operations, and prospects, were materially false and/or misleading.

#### 12 **JURISDICTION AND VENUE**

13 7. The claims asserted herein arise under and pursuant to Sections 11, 12 and 15 of the  
14 Securities Act (15 U.S.C. §§ 77k and 77o). This Court has jurisdiction over the subject matter of this  
15 action pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v.

16 8. Each Defendant has sufficient contacts with Washington, or otherwise purposefully  
17 avails themselves of benefits of Washington or has property in Washington so as to render the  
18 exercise of jurisdiction over each by the Washington courts consistent with traditional notions of fair  
19 play and substantial justice.

20 9. This Court has jurisdiction over the subject matter of this action pursuant to Section  
21 22 of the Securities Act (15 U.S.C. § 77v).

22 10. Venue is proper in this Court pursuant to Section 22 of the Securities Act, 15 U.S.C. §  
23 77v. Many of the violations of law complained of herein occurred in this State, including the  
24 dissemination of the materially false and misleading statements complained of herein into this State.  
25 In addition, many Defendants are residents of, do business in, or maintain offices in this State.

#### 26 **PARTIES**

27 11. Plaintiff \_\_\_\_\_ purchased Funko securities pursuant and/or traceable to the

1 Registration Statement issued in connection with the Company’s IPO and has been damaged thereby.  
2 Defendant Funko, Inc. is a Delaware corporation with its principal executive offices located in  
3 Everett, Washington.

4 12. Defendant Brian Mariotti (“Mariotti”) was, at all relevant times, the Chief Executive  
5 Officer (“CEO”) and a Director of Funko, and signed or authorized the signing of the Company’s  
6 Registration Statement filed with the SEC.

7 13. Defendant Russell Nickel (“Nickel”) was, at all relevant times, the Chief Financial  
8 Officer (“CFO”) of Funko, and signed or authorized the signing of the Company’s Registration  
9 Statement filed with the SEC.

10 14. Defendant Ken Brotman (“Brotman”) was a Director Funko and signed or authorized  
11 the signing of the Company’s Registration Statement filed with the SEC.

12 15. Defendant Gino Dellomo (“Dellomo”) was a Director of Funko and signed or  
13 authorized the signing of the Company’s Registration Statement filed with the SEC.

14 16. Defendant Charles Denson (“Denson”) was a Director of Funko and signed or  
15 authorized the signing of the Company’s Registration Statement filed with the SEC.

16 17. Defendant Adam Kriger (“Kriger”) was a Director of Funko and signed or authorized  
17 the signing of the Company’s Registration Statement filed with the SEC.

18 18. Defendant Richard McNally (“McNally”) was a Director of Funko and signed or  
19 authorized the signing of the Company’s Registration Statement filed with the SEC.

20 19. Defendant Diane Irvine (“Irvine”) was a Director of Funko and signed or authorized  
21 the signing of the Company’s Registration Statement filed with the SEC.

22 20. Defendants Mariotti, Nickel, Brotman, Dellomo, Denson, Kriger, McNally, and Irvine  
23 are collectively referred to hereinafter as the “Individual Defendants.”

24 21. Defendant Goldman Sachs & Co. LLC (“Goldman Sachs”) served as an underwriter for  
25 the Company’s IPO. In the Offering, Goldman Sachs agreed to purchase 3,283,898 shares of the  
26 Company’s Class A common stock, exclusive of the over-allotment option.



1 Registration Statement issued in connection with the Company’s IPO, and who were damaged thereby  
2 (the “Class”). Excluded from the Class are Defendants, the officers and directors of the Company or  
3 its related entities, at all relevant times, members of their immediate families and their legal  
4 representatives, heirs, successors or assigns and any entity in which Defendants have or had a  
5 controlling interest.

6 31. The members of the Class are so numerous that joinder of all members is  
7 impracticable. During the relevant period, Funko’s securities were actively traded on the NASDAQ  
8 Stock Market (“NASDAQ”). While the exact number of Class members is unknown to Plaintiff at  
9 this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are  
10 hundreds or thousands of members in the proposed Class. The Company sold 10,416,666 shares of  
11 Class A common stock in the IPO. Moreover, record owners and other members of the Class may be  
12 identified from records maintained by Funko or its transfer agent and may be notified of the pendency  
13 of this action by mail, using the form of notice similar to that customarily used in securities class  
14 actions.

15 32. Plaintiff’s claims are typical of the claims of the members of the Class as all members  
16 of the Class are similarly affected by Defendants wrongful conduct in violation of federal law that is  
17 complained of herein.

18 33. Plaintiff will fairly and adequately protect the interests of the members of the Class and  
19 has retained counsel competent and experienced in class and securities litigation.

20 34. Common questions of law and fact exist as to all members of the Class and  
21 predominate over any questions solely affecting individual members of the Class. Among the  
22 questions of law and fact common to the Class are:

- 23 (a) whether the Securities Act was violated by Defendants’ acts as alleged herein;
- 24 (b) whether statements made by Defendants to the investing public in connection  
25 with the Company’s IPO omitted and/or misrepresented material facts about the business, operations,  
26 and prospects of Funko; and
- 27 (c) to what extent the members of the Class have sustained damages and the proper  
28 measure of damages.

1  
2 A class action is superior to all other available methods for the fair and efficient adjudication of this  
3 controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by  
4 individual Class members may be relatively small, the expense and burden of individual litigation  
5 make it impossible for members of the Class to individually redress the wrongs done to them. There  
6 will be no difficulty in the management of this action as a class action.

## 7 **SUBSTANTIVE ALLEGATIONS**

### 8 **Background**

9 35. Funko claims to be a pop culture consumer products company. Funko purportedly  
10 creates licensed toys, collectibles, and other consumer goods, including figures, plush toys,  
11 accessories, apparel, and homewares.

### 12 **The Company's False and/or Misleading**

#### 13 **Registration Statement and Prospectus**

14 36. On October 23, 2017, Funko filed its final amendment to the IPO Registration  
15 Statement with the SEC on Form S-1/A, which forms part of the IPO Registration Statement. The  
16 Registration Statement was declared effective on November 1, 2017.

17 37. On November 3, 2017, the Company filed with the SEC its IPO prospectus, which  
18 forms part of the IPO Registration Statement. In the IPO, the Company sold 10,416,666 shares of  
19 Class A common stock at a price of \$12.00 per share. The Company received proceeds of  
20 approximately \$116.4 million from the IPO, net of underwriting discounts and commissions. The  
21 proceeds from the IPO were purportedly to be used to purchase common units from FAH, LLC, so  
22 that FAH, LLC could use the funds for general corporate purposes, and to repay debt.

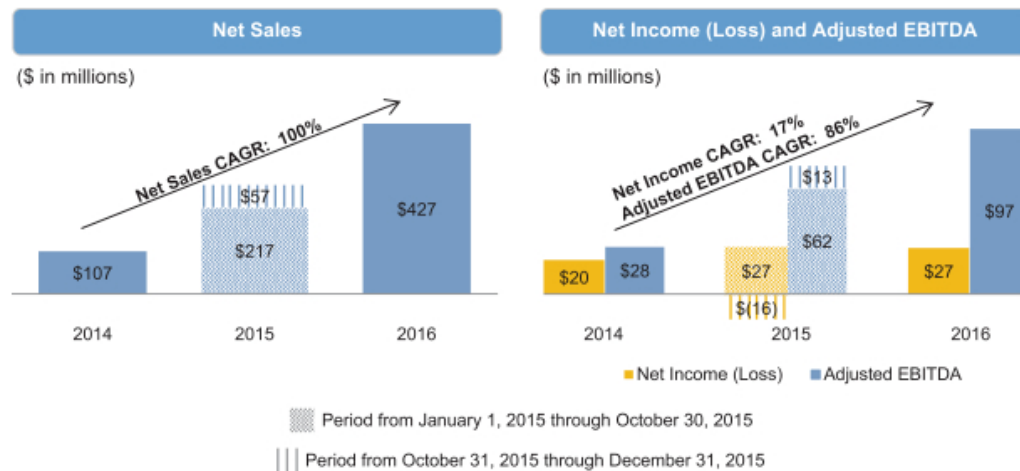
23 38. The IPO Registration Statement was negligently prepared and, as a result, contained  
24 untrue statements of material facts or omitted to state other facts necessary to make the statements  
25 made not misleading, and was not prepared in accordance with the rules and regulations governing its  
26 preparation.

1 Under applicable SEC rules and regulations, the IPO Registration Statement was required to disclose  
 2 known trends, events or uncertainties that were having, and were reasonably likely to have, an impact  
 3 on the Company’s continuing operations.

4 With respect to the Company’s growth, the Registration Statement stated, in relevant part:

5 We have developed a nimble and low-fixed cost production model. The strength of  
 6 our in-house creative team and relationships with content providers, retailers and  
 7 third-party manufacturers allows us to move from product concept to pre-selling a  
 8 new product in as few as 24 hours. We typically have a new figure on the store shelf  
 9 between 110 and 200 days and can have it on the shelf in as few as 70 days. As a  
 10 result, we can dynamically manage our business to balance current content releases  
 11 and pop culture trends with content based on classic evergreen properties, such as  
 12 Mickey Mouse or classic Batman. This has allowed us to deliver significant growth  
 13 while lessening our dependence on individual content releases.

14 Our financial performance reflects the strong growth of our business. From 2014 to  
 15 2016, we expanded our net sales, net income and Adjusted EBITDA at a 100%, a  
 16 17% and an 86% compound annual growth rate, or CAGR, respectively. We  
 17 achieved this growth without reliance on a singular “hit” property as no single  
 18 property accounted for more than 15% of annual net sales during that period. We  
 19 believe our strong growth and profitability reflect our pop culture consumer products  
 20 leadership.



23 39. With respect to intangible assets, the Registration Statement, in relevant part, stated:  
 24 As of December 31, 2016 and 2015, intangible assets, net was composed of the  
 25 following (in thousands):  
 26  
 27



	December 31, 2016		
	Gross Carrying Amount	Accumulated Amortization	Intangible Assets, Net
Intangible assets subject to amortization			
Intellectual property	\$ 114,411	\$ (6,674)	\$ 107,737
Trade names	81,358	(4,746)	76,612
Customer relationships	63,129	(3,682)	59,447
Balance as of December 31, 2016	<u>\$ 258,898</u>	<u>\$ (15,102)</u>	<u>\$ 243,796</u>

\* \* \*

### Funko Acquisition Holdings, L.L.C. and Subsidiaries

#### Condensed Consolidated Balance Sheets

(in thousands, except share amounts)

	June 30, 2017 (unaudited)	December 31, 2016
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 12,752	\$ 6,161
Accounts receivable, net	81,629	83,607
Inventory	57,982	43,616
Prepaid expenses and other current assets	31,573	19,040
Total current assets	<u>183,936</u>	<u>152,424</u>
Property and equipment, net	35,639	25,473
Goodwill	106,521	97,453
Intangible assets, net	257,991	243,796
Other assets	4,293	3,091
Total assets	<u>\$ 588,380</u>	<u>\$ 522,237</u>

40. The IPO Registration Statement was materially false and misleading and omitted to state: (1) that Funko’s profits and growth were not as positive as the Company represented; and (2) that, as a result of the foregoing, Defendants’ statements in the Registration Statement regarding Funko’s business, operations, and prospects, were materially false and/or misleading.

#### The Subsequent Disclosure

On November, 2 2017, *Bloomberg* published an article entitled “Funko Extends Playtime to Its Accounting,” stating, among other things, that “[p]rofits . . . are slowing,” “just \$7 million, or 10 percent, of Funko’s \$69 million increase in adjusted Ebitda . . . was from actual earnings growth,” and

1 questioning the Company's claim of "intellectual property worth \$250 million" which the article  
2 author (Stephen Gandel) claimed was "odd for a company whose main products are based on others'  
3 intellectual property." In greater part, the article stated:

4 Funko, the purveyor of 2017's version of bobble-head dolls, appears to have a big  
5 head when it comes to its financial results.

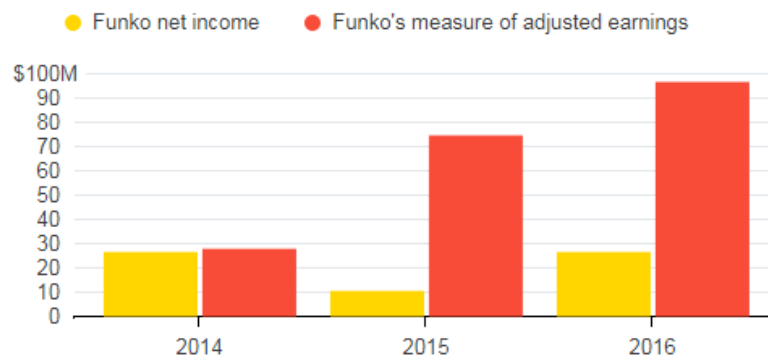
6 Shares of the company priced on Wednesday night at \$12 and are scheduled to begin  
7 trading on Thursday morning. The pricing was below the indicated range of \$14 to  
8 \$16, but even that may have been too high.

9 In Funko's IPO prospectus, in a chart with a big arrow pointing up, the company says  
10 that an important measure of its income, which it uses to determine the success of its

11 operational strategies, rose by an average of 86 percent in its past two full years. The  
12 actual bottom line, though, was up an average of just 16 percent in 2015 and 2016  
13 and has turned negative lately. Funko lost just more than \$10 million in the first half of  
14 this year. How the toymaker gets a loss of \$10 million to reflect back as an 86 percent  
15 earnings increase is the latest example of fun-house accounting on Wall Street.

## 12 Dress Up

13 There's a [sic] a big difference between Funko's earnings and what it highlights as  
14 growing profits



21 Source: Funko corporate filings

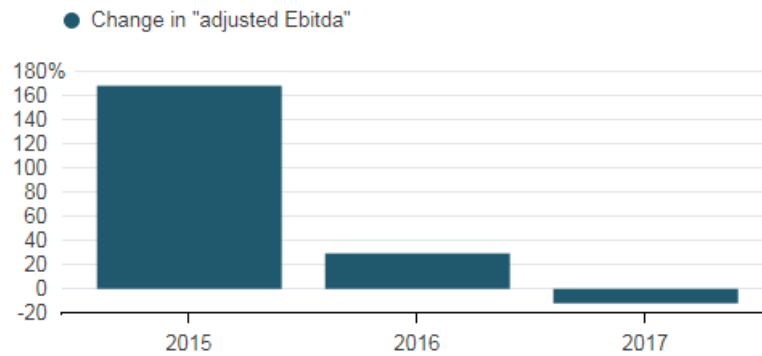
22 Based on GAAP net income and Funko's reported "adjusted Ebitda."

24 Funko's main product, Pop! dolls, is hot. The plastic figures with enlarged heads cost  
25 about \$10 each and are typically of popular characters from kids' movies or TV shows.  
26 But there are also Pop! figures based on athletes and characters from the popular HBO  
27 series "Game of Thrones." They have become fixtures at Gamestop and Barnes &  
28 Noble. (Full disclosure: My daughter's Pop! collection is nearing the entire population  
of Hogwarts, with Moana as a visiting student.) Sales of Pop! dolls grew an impressive  
34 percent last year.

1 The question is how profitable the \$10 figures are, if at all. Funko arrives at its 86  
2 percent compounded annual earnings growth rate by focusing on a figure that more  
3 and more companies point their shareholders to called adjusted Ebitda, which excludes  
4 a number of costs. Each company computes the figure slightly differently, which is  
why many accounting experts hate it, but companies like Funko say it is a better  
measure of their operations. Let's see.

### 5 Party's Over

6 Profits at toy maker Funko, even by its preferred measure, are slowing



Source: Corporate filings

2017 is through June 30. Adjusted Ebitda is as defined by Funko in its S-1 statement.

15 Funko says it had \$97 million in adjusted Ebitda earnings in 2016, up from just \$28  
16 million in 2014, an increase of \$69 million. How did it manage that increase? Two  
17 years ago, Funko was sold to a private equity firm. Funko says acquisitions are a one-  
18 time expense, even though it says it plans to do more deals in the future. Nonetheless,  
19 exclude those costs, and the company's adjusted Ebitda jumps nearly \$25 million.  
20 Funko also contends it has intellectual property worth \$250 million. That's odd for a  
21 company whose main products are based on others' intellectual property. Anyway, the  
22 company stepped up write-offs of that intellectual property last year. Depreciation  
23 costs rose \$19.5 million. But Funko says that cost is not part of its operations and  
excludes it from its adjusted Ebitda, causing that figure to rise once again. Funko has  
also piled on debt in the past two years, in part because of its private equity ownership.  
Interest expense rose \$14.5 million, which is also excluded from adjusted Ebitda. You  
get the picture; the higher cost is reflected back as better earnings once it's excluded.

24 The result, just \$7 million, or 10 percent, of Funko's \$69 million increase in adjusted  
25 Ebitda -- which led to that 86 percent increase in growth from 2014 to 2016 -- was  
26 from actual earnings growth. The other 90 percent came from higher costs that the  
company says investors should just ignore. Funko Pop! dolls are based on fantasy. Its  
accounting shares a similar trait.



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**SECOND CLAIM**  
**Violation of Section 12(a)(2) of The Securities Act**  
**(Against All Defendants)**

51. Plaintiff repeats and re-alleges each and every allegation contained above, except any allegation of fraud, recklessness or intentional misconduct.

52. This Count is brought pursuant to Section 12(a)(2) of the Securities Act, on behalf of the Class, against all Defendants (the “Section 12 Defendants”).

53. The Section 12 Defendants were sellers, offerors, and/or solicitors of purchasers of Class A common stock offered by Funko pursuant to the IPO. The Section 12 Defendants issued, caused to be issued, and/or signed the IPO Registration Statement in connection with the Offering. The IPO Registration Statement was used to induce investors, such as Plaintiff and other members of the Class, to purchase Funko securities.

54. The IPO Registration Statement was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

55. The Section 12 Defendants’ actions of solicitation included participating in the preparation of the false and/or misleading IPO Registration Statement.

56. None of the Section 12 Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the IPO Registration Statement were true and without omissions of any material facts and were not misleading.

57. Plaintiff and other Class members did not know, nor could they have known, of the untruths and/or omissions contained in the IPO Registration Statement and Secondary Registration Statement.

58. By virtue of the conduct alleged herein, the Section 12 Defendants are liable for the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages suffered.

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**THIRD CLAIM**  
**Violation of Section 15 of The Securities Act**  
**(Against the Individual Defendants)**

59. Plaintiff repeats and re-alleges each and every allegation contained above.

60. This count is asserted against the Individual Defendants (the “Section 15 Defendants”) and is based upon Section 15 of the Securities Act.

61. The Section 15 Defendants, by virtue of their offices, directorship and specific acts were, at the time of the wrongs alleged herein and as set forth herein, controlling persons of Funko within the meaning of Section 15 of the Securities Act. The Section 15 Defendants had the power and influence and exercised the same to cause Funko to engage in the acts described herein.

62. The Section 15 Defendants’ positions made them privy to and provided them with actual knowledge of the material facts concealed from Plaintiff and the Class.

63. By virtue of the conduct alleged herein, the Section 15 Defendants are liable for the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages suffered.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action under Federal Rule of Civil Procedure Rule 23;

(b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants’ wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

(d) Awarding rescission or a rescissory measure of damages; and

(e) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

1 Dated: April 2, 2018

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