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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF COLUMBIA

12
13 **STATE OF CALIFORNIA by and through**
ARNOLD SCHWARZENEGGER, GOVERNOR
14 **OF THE STATE OF CALIFORNIA, and the**
CALIFORNIA AIR RESOURCES BOARD,
15
16 Plaintiff,
17
18 **v.**
19 **UNITED STATES ENVIRONMENTAL**
PROTECTION AGENCY and STEPHEN L.
JOHNSON, ADMINISTRATOR,
20
21 Defendants.

Case No: _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

22 **INTRODUCTION**

23 1. The State of California, by and through Arnold Schwarzenegger,
24 Governor of the State of California, and the California Air Resources Board,
25 brings this action to compel the United States Environmental Protection Agency
26 and Stephen L. Johnson, Administrator for the United States Environmental
27 Protection Agency (USEPA), to either grant or deny California's request for a
28 waiver of preemption of its Regulation to Control Greenhouse Gas Emissions

1 from Motor Vehicles (GHG Regulation), under section 209(b) of the Clean Air
2 Act (42 U.S.C. § 7543(b)). The California Air Resources Board (CARB)
3 requested the waiver from USEPA on December 21, 2005. The administrative
4 docket is EPA-HQ-OAR-2006-0173.

5 2. California adopted the GHG Regulation to reduce the future harm to
6 California's public health, welfare, safety, and economy resulting from increased
7 global warming. The GHG Regulation requires a reduction in the emissions of
8 greenhouse gases from most light-duty motor vehicles sold in California, on a
9 fleet-wide basis, beginning with the 2009 model-year.

10 3. USEPA must act on the GHG Regulation without further delay
11 because manufacturers cannot market their 2009 model-year vehicles in California
12 without first certifying them. Marketing of the 2009 models can begin as early as
13 January 2008. Also, at least 14 other states have adopted or are considering the
14 adoption of the same emission standards for new vehicles sold in their states.
15 Implementation of their regulations depends on the USEPA first granting
16 California's waiver application.

17 4. USEPA has unreasonably delayed action on the requested waiver.
18 The agency has had nearly two years since CARB applied for the waiver to review
19 the application and supporting materials and to make a decision.

20 5. The comments submitted to the USEPA overwhelmingly support the
21 GHG Regulation. Of the approximately 98,000 comments referenced in the
22 USEPA's docket, more than 99.9% support the GHG Regulation. Only one
23 automaker subject to the GHG regulation submitted any opposition to the USEPA.
24 Two automaker trade groups submitted opposing comments.

25 6. The effect of global warming on California's population, economy
26 and environment has been extensively demonstrated both during CARB's and
27 USEPA's administrative proceedings on the GHG Regulation and in other public
28 forums and scientific proceedings.

1 14. After a series of workshops, comment analysis, and public hearings,
2 the CARB Board approved its GHG Regulation on September 23, 2004. Final
3 language and adoption occurred on August 4, 2005. The regulation amended Title
4 13 of the California Code of Regulations, sections 1900 and 1961, and added
5 section 1961.1.

6 15. On December 21, 2005, CARB applied to the USEPA for waiver of
7 federal preemption of the GHG Regulation under the Clean Air Act pursuant to 42
8 U.S.C. § 7543(b).

9 16. USEPA did not notice a hearing or solicit additional comments on
10 California's waiver application until April 30, 2007, sixteen months after CARB
11 applied for the waiver. USEPA held hearings on May 22 and 30, 2007. The
12 noticed comment period expired on June 15, 2007.

13 17. To date, USEPA has not granted or denied California's request for
14 the waiver.

15 **GLOBAL WARMING IS MAKING CALIFORNIA'S CLIMATE WORSE**

16 18. The climate of California is predominantly arid to semi-arid.
17 Summers are hot and winters mild. Precipitation largely arrives in the form of
18 winter storms carried south-eastward across the state from the Pacific Ocean.
19 Except for mountain snowfall, precipitation arrives as rain.

20 19. Increasing emissions of greenhouse gases into the atmosphere are
21 causing global warming. The resultant climatic change in California includes
22 increasing temperatures, reduced snowfall in the mountains, a northward shift in
23 the prevailing winter storm track, deteriorating air quality, and more extreme
24 weather events.

25 20. California's statewide, annual mean temperature increased by 0.57
26 degrees Celsius (1.03 degrees Fahrenheit) between 1949 to 1999. Greenhouse gas
27 emissions are expected to further increase the rate of warming. Average
28 California temperatures in the summer are expected to increase between 4.1°C

1 (7.3°F) and 8.3°C (14.9°F) by the end of 2100. Winter temperatures are expected
2 to rise between 3.0°C (5.4°F) and 4.0°C (7.2°F).

3 21. Rising temperatures are causing less precipitation to fall as snow in
4 California's northern mountains and relatively more as rain.

5 22. Global warming increases extreme heat waves and storm intensities.
6 In the 2006-2007 season, Southern California experienced its driest year since
7 record-keeping began 130 years ago. Two years earlier, Los Angeles had its
8 wettest year in the last 121 years, including the fifteen wettest days since record-
9 keeping began. A heat wave in July of 2006 set a record of six consecutive 110-
10 plus-degree days in Fresno and 11 consecutive triple-digit days in Sacramento.
11 Further global warming will increase weather variability in the future, resulting in
12 longer droughts, more extreme heat waves, and more severe storms.

13 **GLOBAL WARMING ENDANGERS CALIFORNIA'S HUMAN HEALTH,**
14 **WELFARE, SAFETY, ECONOMY AND ENVIRONMENT**

15 23. California is the most populous state in the United States, home to
16 one in seven Americans. Its population is approaching 37 million and is projected
17 to reach 44 million by 2020 and nearly 60 million by 2050.

18 24. California depends on one of the largest network of reservoirs and
19 aqueducts in the world for its water supply. This network stores the winter and
20 early spring snowmelt from the Sierra Nevada and other northern mountains for
21 delivery when water demand is highest, in the late spring and summer. The
22 system irrigates crops in California's central valleys and delivers domestic water
23 to a population centered in the southern and coastal parts of the state. Runoff from
24 the Sierra Nevada snow pack accounts for about 35% of California's water supply.

25
26 25. California has been the leading state in agricultural production for
27 the past 50 years. For example, in 1997, 10.8 million acres of the state were
28 devoted to harvested crops with another 14.4 million acres devoted to pasture and

1 rangeland. It produces more than 350 crops. Half of the fruits, nuts and
2 vegetables in the country come from California. It is the only state producing
3 commercial quantities of almonds, artichokes, clingstone peaches, figs, raisins,
4 walnuts, pistachios, nectarines, olives, dates, and prunes. California also leads the
5 nation in dairy production.

6 26. Agriculture is critical to California's economy. Cash farm receipts
7 to agricultural producers were valued at \$31.8 billion in 2004. California's
8 agriculture is also vital for the nation, as 80% of the production is sold for
9 domestic consumption.

10 27. California agriculture usually consumes about 40 percent of the
11 state's total annual developed water supply. A reduced water supply will decrease
12 the amount and increase the cost of California's crop production. Increased
13 temperatures will decrease dairy production.

14 28. The Colorado River provides more than one-half of Southern
15 California's average annual net water use. It supplies water for agricultural use in
16 the Imperial and Coachella valleys of Southern California and for domestic
17 consumption elsewhere in the southern portion of the state. The Colorado River
18 watershed has been subject to a drought since 1999. This poleward shifting of the
19 Pacific Ocean storm tracks and higher temperatures in the Colorado Basin are
20 expected to increase drought conditions through most of this century.

21 29. Increasing temperatures are reducing the duration, as well as the
22 size, of the mountain snowpack in California. Snow accumulation, measured on
23 the first of April each year, has declined ten percent since 1950. The peak run-off
24 occurs ten to thirty days earlier in the spring than it has in the past.

25 30. Projected increases in temperature will drastically reduce the
26 snowpack needed to sustain California's water supply. By 2070–2099, virtually
27 no snow will be left below the elevation of 1000 m (3280 feet). The volume of
28 snow will be 60% to 93% less at the middle elevations, up to 6560 feet (2000 m),

1 and losses of 25% to 79% will occur above the middle elevations up to 9840 feet
2 (3000 m).

3 31. California's flood protection system includes dams and levees that
4 were designed based on historical conditions. These conditions are changing and
5 flood risks are increasing as intense storms are becoming larger and a greater
6 proportion of precipitation falls as rain. Draining reservoirs before winter storms
7 to reduce flood risks increases the separate risk of water becoming unavailable for
8 California's agricultural and domestic needs.

9 32. California's ocean coastline is more than 1000 miles long. The coast
10 includes wide beaches and broad plains in Southern California. Major inland bays
11 and estuaries, including the San Francisco Bay and the Sacramento-San Joaquin
12 Deltas, are in the northern part of the State. Seventy percent of California's
13 population lives within 60 miles of the coast.

14 33. Sea level rise has affected much of the coast in Southern California,
15 Central California, and the San Francisco Bay and estuary. These historical trends
16 have approached 2 mm/year (0.08 inches/year). These rates are consistent with
17 the global sea level rise. Average sea level around the globe is projected to rise an
18 additional 0.18 to 5.9 meters (0.6 to 19.4 feet) by 2100.

19 34. The projected sea level rise will further erode California's beaches
20 and bluffs, inundate low-lying coastal lands and marshes, spread through the bays,
21 exacerbate flooding at the mouths of rivers and streams, increase saltwater
22 intrusion into estuaries and coastal aquifers, increase the risk of levee failures, and
23 threaten California's system for controlling water flow in the Sacramento-San
24 Joaquin Delta.

25 35. Ozone is a component of smog that damages the respiratory tract
26 and increases the symptoms of asthma, a debilitating breathing affliction that has
27 become increasingly common. California's South Coast and San Joaquin air
28 basins experience the highest ozone concentrations in the United States; they have

1 the only severe and serious health area designations for the national 8-hour ozone
2 standard. Global warming increases the formation of ozone. These effects will
3 increase the already dangerously high levels of ozone in the South Coast and San
4 Joaquin air basins.

5 36. Heat-related deaths are a major health risk in California. A heat-
6 wave in July of 2006 was responsible for 140 deaths in California. Global
7 warming is projected to increase heat-related deaths. For example, in Los
8 Angeles in the 2090's, the risk is expected to be two to three times higher than in
9 the corresponding decade a century before. Other projections are greater, with
10 estimates of a five to seven fold increase in heat-related deaths.

11 37. California has extensive forests and other wild lands. The 85 million
12 acres of wild lands includes 17 million acres of commercial forests. Global
13 warming has already increased the number of large wild land fires by causing fire
14 seasons to be drier and hotter, start earlier, and last longer. Fires larger than 1000
15 acres in the western United States occurred four time more often between 1987
16 and 2003 than they did between 1970 and 1986. The resulting property damage
17 and fire suppression costs have increased as well. Further acceleration of snow
18 melt and higher temperatures will increase the frequency of large fires by making
19 wild land vegetation drier and fire seasons last longer. The area historically
20 burned by fires is expected to expand by nine to fifteen percent by the end of the
21 century.

22 38. Global warming will also alter the natural biota. Alpine and
23 subalpine forests will decline and coniferous forests will be partly replaced by
24 mixed conifer and evergreen hardwoods. Grasslands will expand, largely at the
25 expense of woodlands and chaparral. Increases in woody growth due to longer
26 growing seasons and, under some climatic scenarios, more precipitation, will be
27 cut short by the increased wildfires. Warming temperatures will allow the
28 expansion of agricultural weeds, pests and microbial diseases.

1 39. Additional risks for California, more difficult to predict, but of far
2 greater magnitude, include the potential acceleration of ice-sheet melting from the
3 Antarctic and Greenland. Computer modeling of future climates indicates that a
4 global increase of up to 3°C could cause these ice sheets to melt in the next
5 century. More recent measurements and studies indicate that ice melting is
6 happening more rapidly and may cause catastrophic sea level rise within this
7 century. Loss of the Greenland Ice Sheet would cause the sea level to rise twenty-
8 one feet and loss of the West Antarctic Ice Sheet would cause a rise of twenty-six
9 feet.

10 40. Because of the feedback effects of global warming, a rise in global
11 temperatures of less than 3°C could cause ice sheet melting to reach a “tipping
12 point,” which would preclude future emission reductions from reversing the loss
13 of polar ice and resultant sea rise. Such a tipping point could occur with a global
14 increase in temperatures of between 1°C and 3°C.

15 **AUTOMOTIVE EMISSIONS ARE A MAJOR SOURCE OF**
16 **GREENHOUSE GASES**

17 41. California has at least 32.5 million registered vehicles, more than
18 twice the number of any other state.

19 42. Light-duty motor vehicles account for about 30% of the greenhouse
20 gases emitted in California.

21 43. Vehicle emissions are the most rapidly growing source of
22 greenhouse gas emissions in California.

23 44. USEPA approval of the GHG regulation would reduce greenhouse
24 gas emissions by about 30 million metric tons in 2020. Because USEPA approval
25 will allow regulations based on California’s standards to take effect in at least 12
26 other states, the total 2020 reductions would be about 74 million metric tons.

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1 45. A reduction in greenhouse gas emissions will reduce the rate of
2 global warming and the associated risks and magnitude of the adverse impacts of
3 global warming on California.

4 **THE GHG REGULATION REQUIRES REDUCTIONS IN VEHICULAR**
5 **EMISSIONS OF GREENHOUSE GASES**

6 46. The GHG Regulation requires that the major manufacturers of light-
7 duty vehicles sold in California begin to reduce the vehicular emissions of
8 greenhouse gases on a fleet-wide basis beginning with the 2009 model-year.

9 47. The regulation divides the light-duty vehicles of each affected
10 manufacturer into two fleets. One fleet (PC/LDT1) comprises passenger cars,
11 pick-up trucks and small sports utility vehicles. The other fleet (LDT2/MDPV)
12 comprises larger light-duty trucks, up to 8500 pounds (gross vehicle weight), large
13 sports utility vehicles, and medium-duty passenger vehicles of less than 10,000
14 pounds.

15 48. Greenhouse gas emissions, measured in terms of CO2-equivalents,
16 are limited to a fleet-average 323 grams per mile for PC/LDT1s in the 2009
17 model-year and decline over the years to 205 grams per mile in the 2016 model-
18 year. Emission limits for LTD2/MDPVs are 439 grams per mile in the 2009
19 model-year and decline to 332 grams per mile in the 2016 model-year.

20 49. Automakers can achieve compliance with the GHG Regulation
21 through a combination of improved technologies and other actions. Compliance
22 can be achieved by reductions in tailpipe emissions of greenhouse gases, the use
23 of alternative fuels, credits for air conditioner improvements, credits carried over
24 from another year or fleet, and credit-trading among manufacturers.

25 **CONGRESS INTENDED PROMPT USEPA ACTION ON WAIVER**
26 **APPLICATIONS FOR CALIFORNIA AUTOMOBILE EMISSIONS**
27 **REGULATIONS.**

28 50. Congress intended that California (1) serve as a laboratory for the
nation in the control of automotive emissions, (2) be able to adopt more stringent

1 regulations for automotive emissions than the federal government, and (3) be able
2 to act more quickly than USEPA in adopting air pollution control measures.

3 51. California has traditionally led the USEPA in establishing emission
4 standards for light-duty vehicles.

5 52. 42 U.S.C. § 7543(a) requires, subject to specified exceptions, that
6 USEPA's Administrator grant a waiver of federal preemption under the Clean Air
7 Act if California has determined that its "standards will be, in the aggregate, at
8 least as protective of public health and welfare as applicable Federal standards."

9 53. The specified exceptions are set out in 42 U.S.C. § 7543 (b)(1). The
10 USEPA Administrator must make at least one of the following three findings in
11 order to deny the waiver application:

12 (a) California's determination of protectiveness is arbitrary and capricious,

13 (b) California does not need the standards to meet compelling and
14 extraordinary conditions, or

15 (c) the standards and accompanying enforcement procedures are not
16 consistent with 42 U.S.C. § 7521(a).

17 54. Under 42 U.S.C. § 7543, the USEPA does not go through the
18 process of independent rule-making. Instead USEPA provides notice and
19 opportunity for public participation during its review of the California emission
20 regulation.

21 55. Congress generally intended that the USEPA make determinations
22 of this type in a matter of weeks or months, not years.

23 **REASONABLE TIME FOR THE USEPA TO ACT HAS EXPIRED**

24 56. CARB submitted a comprehensive analysis of the GHG regulation
25 when it applied for the waiver in December 2005. The USEPA requested no
26 additional information.

27 57. When the USEPA took no action on California's waiver application,
28 California Governor Arnold Schwarzenegger wrote the President of the United

1 States on April 10, 2006 and requested urgent action on California's waiver
2 application. A copy was sent to the USEPA Administrator.

3 58. The USEPA did not respond. It did not indicate what action, if any,
4 it was taking on CARB's application. Nevertheless, the USEPA had been
5 studying the GHG regulation since at least September of 2004.

6 59. California's Governor again wrote the President and copied the
7 USEPA on October 24, 2006. The Governor repeated his request for urgent
8 action.

9 60. On February 21, 2007, the USEPA informed CARB that USEPA did
10 not intend to act on California's waiver application, other than opening an
11 electronic docket, until the United States Supreme Court decided whether USEPA
12 was obligated to address greenhouse gases as air pollutants under the Clean Air
13 Act. The Supreme Court ruled on April 2, 2007, that the greenhouse gases are
14 subject to regulation under the Clean Air Act.

15 61. USEPA requires no additional time to review California's
16 determination that its standards are "at least as protective of public health and
17 welfare as applicable Federal standards" under 42 U.S.C. § 7543(b)(1) and (2).
18 California explicitly documented its determination in its December 2005
19 submission to the USEPA.

20 62. The protectiveness comparison of state and federal standards also
21 requires no additional time, since USEPA has no federal standards.

22 63. USEPA requires no additional time to determine whether
23 California's rule making was arbitrary and capricious under 42 U.S.C. §
24 7543(b)(1)(A). USEPA was provided with a comprehensive exposition of
25 CARB's two-year rule-making when CARB first requested the waiver in
26 December 2005. CARB's December 2005 submission to USEPA included an
27 outline of its rule-making process, a detailed 251-page Initial Statement of
28 Reasons for the rule, as well as a 446-page Final Statement of Reasons containing

1 CARB's further analysis and response to additional comments and statements
2 presented on the rule. The public policy objective of reducing atmospheric
3 greenhouse gases is directly achieved by the GHG regulation since it set standards
4 for reducing emissions of these very gases.

5 64. USEPA requires no additional time to determine whether California
6 needs the GHG regulation to meet compelling and extraordinary conditions under
7 42 U.S.C. § 7543(b)(1)(B). The USEPA is already aware, through its
8 administration of other provisions of the Clean Air Act, that criteria air pollutants
9 in California's South Coast and San Joaquin air basins continue to exceed national
10 air quality standards. The USEPA is also aware of the perils of global warming,
11 as it has been separately studying global warming effects since at least 1984.

12 65. In addition, the policy and practice of the USEPA is to evaluate
13 California's need to meet compelling and extraordinary conditions in terms of
14 California's motor vehicle emissions program as a whole. In this respect, the
15 USEPA was already aware of California's continuing need for this program.

16 66. USEPA requires no additional time to determine whether California
17 standards are consistent with 42 U.S.C. § 7521(a), as the substantive comments
18 based on lead time and technological feasibility were limited, and CARB
19 submitted comprehensive documentation in its original December 2005
20 submission.

21 67. USEPA requires no additional time to consider comments submitted
22 in the course of its review of the GHG regulation. The deadline for comment
23 submission expired on June 15, 2007. Of the approximately 98,000 comments
24 referenced by the USEPA's docket, more than 99.9% support the GHG
25 Regulation. General Motors Corporation is the only automaker subject to the
26 regulation that submitted any comments. Opposition is largely restricted to two
27 automaker advocacy groups, the Alliance of Automobile Manufacturers and the
28 Association of International Automobile Manufacturers. Only 15 entities who

1 opposed the regulation included any analysis in their comments, so the review
2 time cannot be lengthy.

3 68. The automakers' ability to timely and reasonably comply with the
4 GHG Regulation was independently confirmed in a civil action, tried over the
5 course of five weeks, before the United States District Court for the State of
6 Vermont. The action for federal preemption was brought by General Motors
7 Corporation, DaimlerChrysler Corporation, and domestic and foreign automaker
8 trade associations, as well as car dealers, in an attempt to invalidate Vermont's
9 identical version of California's GHG Regulation. The same adverse claims
10 contained in the comments submitted in this USEPA proceeding were litigated in
11 that civil action. The District Court rejected those claims in a 240-page opinion
12 issued on September 12, 2007.

13 **MULTIPLE AND SUBSTANTIAL INTERESTS ARE**
14 **PREJUDICED BY DELAY**

15 69. Since the GHG Regulation's graduated emission standards begin to
16 apply with the 2009 model-year, further delay by the USEPA will interfere with
17 implementation of the certification procedure required under the GHG Regulation.
18 An order of the United States District Court for the Eastern District of California
19 prohibits implementation of the GHG regulation until the USEPA grants the
20 waiver.

21 70. Automakers that will be subject to the GHG regulation have alleged
22 in court pleadings, either directly or through their trade associations, that "it is
23 essential for manufacturers subject to the rules like the AB 1493 regulations to
24 obtain approval of their vehicle models well before the relevant model-year
25 begins." As the automakers correctly observe, the 2009 model-year can begin as
26 early as January 2008.

27 71. At least the following 14 states have adopted the GHG Regulation
28 under Section 177 of the Clean Air Act or are in the process of adopting it:

1 Arizona, Connecticut, Florida, Maine, Maryland, Massachusetts, New Jersey, New
2 Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont and
3 Washington. In at least ten of these states, the regulations apply beginning with
4 the 2009 model-year. They account for more than 40% of the nation's population.
5 USEPA's delay prejudices these states as it does California, since implementation
6 of their regulations requires that USEPA first waive federal preemption for the
7 GHG regulation.

8 72. Further delay also means that the postponed restoration of a
9 relatively stable and more equable climate would be less likely. Such a delay
10 would also require more drastic and rapid greenhouse gas reductions in the future
11 at a greater cost.

12 73. Longer delay also increases the risk of an abrupt climate change
13 within this century that would include a larger and more rapid rise of sea level
14 along California's coasts, inland bays and deltas. Disintegration of the Greenland
15 Ice Sheet would raise sea level by twenty-one feet and disintegration of the West
16 Antarctic Ice Sheet would raise sea level by twenty-six feet. A later loss of the
17 East Antarctic Ice Sheet would add more than 210 additional feet to the sea level.

18 74. The USEPA is obligated to either grant or deny California's request
19 for a waiver of federal preemption of its GHG Regulation under 42 U.S.C. §
20 7543(b)(1).

21 75. The USEPA's current failure to make a determination under 42
22 U.S.C. § 7543(b)(1) constitutes an unreasonable delay under 42 U.S.C. § 7604(a).

23 76. The USEPA's failure to make a determination under 42 U.S.C. §
24 7543(b)(1) constitutes an unreasonable delay under 5 U.S.C. § 706(1).

25 77. The USEPA's failure to make a determination under 42 U.S.C. §
26 7543(b)(1) constitutes agency action unlawfully withheld under 5 U.S.C. § 706(1).

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1 WHEREFORE, plaintiff demands:

- 2 1. That this court issue an order declaring that defendants United States
3 Environmental Protection Agency and Stephen L. Johnson, Administrator,
4 have unreasonably delayed in deciding California's application for waiver of
5 federal preemption of California's GHG Regulation under 42 U.S.C. § 7543(b)
6 and that their failure constitutes agency action unlawfully withheld.
- 7 2. That this court issue an order compelling defendants United States
8 Environmental Protection Agency and Stephen L. Johnson, Administrator, to
9 decide California's application for waiver of federal preemption of
10 California's GHG Regulation under 42 U.S.C. § 7543(b) forthwith.
- 11 3. That this court retain jurisdiction over this action at least until the
12 United States Environmental Protection Agency and Administrator decide
13 California's application.
- 14 4. That the court grant such other and further relief as may be proper.

15
16 Dated: November 5, 2007

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24 Governor of the State of California, and the
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