

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: September 12, 2019 CASE NUMBER: 2018SA79
Original Proceeding in Discipline, 2017UPL70	
Petitioner: The People of the State of Colorado, v. Respondents: Jalaika Gorden and Affordable Auto Claims Mediation, LLC, a Colorado limited liability company.	Supreme Court Case No: 2018SA79
ORDER OF COURT	

Upon consideration of the Report of Hearing Master Under C.R.C.P. 236(a) filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED JALAIKA GORDEN and AFFORDABLE AUTO CLAIMS MEDIATION, LLC, a Colorado limited liability company (collectively, “Respondents”), are ENJOINED from engaging in the Unauthorized Practice of Law in the State of Colorado, including the following:

* Providing legal services, such as advising or counseling clients in a manner that constituted the unauthorized practice of law, including giving advice on economic and noneconomic damages, such as physical or mental pain suffered; presenting claims of bodily injury to insurers under liability policies; advising clients of their rights, duties or privileges under an insurance policy when such

advice requires any legal skill or knowledge; advising clients whether to accept a settlement offer from an insurance company; advising clients whether to release claims; and becoming involved in any way in a coverage dispute between the client and insurance company;

*Participating in the formation, ownership, direction, or control of a company that offers or provides legal services as described above;

* Having any contact with insurers to settle clients' bodily injury claims against the insurers by negotiating the legal aspects of clients' claims, or by negotiating with insurers the monetary value of clients' claims;

*Instructing insurance companies to make checks payable to Respondents rather than payable only to Respondent's clients;

*Accepting or collecting a fee based on a percentage of any parties' settlement recovery;

* Holding themselves out as being able to mediate, negotiate, or settle insurance claims for bodily injury on a single party's behalf; and

*Advertising in a manner that would lead clients to believe that Respondents offer services requiring legal knowledge or skill as described above, e.g., stating that they can resolve bodily injury claims for clients with insurance companies.

IT IS FURTHER ORDERED that Respondents shall jointly and severally pay RESTITUTION of \$5,548.58 to Nichole Walters, \$5,062.49 to Yasmine Marrero and \$6,321.00 to Erik Mosley.

IT IS FURTHER ORDERED that Respondents shall jointly and severally pay a fine in the amount of \$6,000.00.

IT IS FURTHER ORDERED that Respondents are assessed costs in the amount of \$1,159.00. Costs are to be paid to the Office of Attorney Regulation Counsel within (30) days of the date of this order.

IT IS FURTHER ORDERED that a fine be imposed in the amount of \$500.00 based on the Presiding Disciplinary Judge's determination that Respondents acted in direct contempt of several of the Presiding Disciplinary Judge's Orders during hearings.

BY THE COURT, SEPTEMBER 12, 2019

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN THE UNAUTHORIZED PRACTICE OF LAW BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Petitioner: THE PEOPLE OF THE STATE OF COLORADO	Case Number: 18SA079
Respondents: JALAIKA GORDEN and AFFORDABLE AUTO CLAIMS MEDIATION, LLC, a Colorado limited liability company	
REPORT OF HEARING MASTER UNDER C.R.C.P. 236(a)	

On December 20, 2018, the Presiding Disciplinary Judge (“the PDJ”) entered summary judgment against Jalaika Gorden (“Respondent Gorden”) and her company Affordable Auto Claims Mediation, LLC (“Respondent AACM”) (collectively “Respondents”), finding that they engaged in the unauthorized practice of law by acting as third-party public adjusters on behalf of multiple claimants in settlement negotiations of their bodily injury claims with three insurance companies. The PDJ now recommends that the Colorado Supreme Court enjoin Respondents from the unauthorized practice of law, fine them, and order them to pay restitution and costs. The PDJ also recommends that the Colorado Supreme Court fine Respondent Gorden based on the PDJ’s determination that she acted in direct contempt of several of the PDJ’s orders during the hearing.

I. PROCEDURAL HISTORY

On March 28, 2018, Kim E. Ikeler, Office of Attorney Regulation Counsel (“the People”), filed a “Petition for Injunction and Restitution” against Respondents, alleging that they engaged in the unauthorized practice of law. Respondents responded to the petition on June 19, 2018. On June 25, the Colorado Supreme Court referred this matter to the PDJ for “findings of fact, conclusions of law, and recommendations.” The PDJ held a scheduling conference on September 12, setting the matter for a five-day hearing to begin on January 28, 2019. Both parties attended that scheduling conference.

On November 20, 2018, the People filed “Petitioner’s Motion for Partial Summary Judgment.” Respondents did not respond. As noted above, the PDJ entered summary judgment against Respondents on December 20, 2018. In that order, the PDJ converted the five-day hearing to a one-day hearing to be held on February 1, 2019, to decide the sole issue of

restitution. In late January, the PDJ had to continue the hearing due to a scheduling conflict, so he ordered the parties to reset the hearing, which they did for February 15.

On February 15, 2019, the PDJ held the hearing on the limited issue of restitution. Respondent appeared pro se, and Ikeler appeared for the People. The PDJ heard video testimony from Yasmine Marrero as well as in-person testimony from Nichole Walters and Erik Mosley. The PDJ also considered the People's exhibits 6, 8, 11, 12, 16, and 17.

During the trial, Respondent Gorden's conduct was very disruptive. The PDJ warned Respondent Gorden no less than fifteen times that she needed to stop her disruptive behavior or he would hold her in contempt.¹ For example, Respondent Gorden refused to sit down; yelled loudly at the PDJ, Ikeler, and several witnesses; and interrupted the PDJ, Ikeler, and testifying witnesses. She made several attempts to intimidate witnesses by warning them that she could sue them for their alleged breaches of mediation confidentiality, even though the PDJ had earlier determined that Respondents were not neutral mediators and thus not subject to confidentiality. The PDJ issued to Respondent Gorden numerous directives to cease her disruptive conduct and follow courtroom procedures, warning her that he might issue a \$250.00 fine. She refused and persisted in intentionally obstreperous behavior.

After issuing more than ten warnings to Respondent Gorden to stop her disruptive behavior, the PDJ told Respondent Gorden that he would fine her \$250.00, to which she replied, "And I won't pay it." He again warned her to cease her behavior or risk a \$250.00 fine, and she said, "Let's make it more." The PDJ then issued a \$250.00 fine and warned her two more times that he would issue another \$250.00 fine if she did not stop interrupting and refusing to follow courtroom procedures, to which she responded, "I'm not going to give you anything" and, "Let's make it \$10,000.00, I don't care." She continued to argue with and interrupt the PDJ, so the PDJ warned her that he would remove her from the courtroom if she did not stop her disruptive behavior so that the hearing could proceed. In response, Respondent Gorden said, "I think that might be better." The PDJ next directed the Colorado State Patrol to remove her from the courtroom. The hearing continued without her participation.

II. SUMMARY JUDGMENT RULING

The facts and analysis from the PDJ's order granting summary judgment are summarized here.

¹ See *People v. Aleem*, 149 P.3d 765, 782 (Colo. 2007) ("In cases of direct contempt, our rules of civil procedure require the trial court to warn a person to stop disruptive behavior unless that person's conduct is 'so extreme that no warning is necessary.'").

Facts

Respondent Gorden is not licensed to practice law in any state. Respondent Gorden is the principal of Respondent AACM, a Colorado limited liability company. Respondent AACM does not employ any licensed attorneys.

State Farm Matters

On January 24, 2017, Respondents sent a demand letter to State Farm Mutual Automobile Insurance Company (“State Farm”). The letter, signed by Natasha Ball, demanded payment of \$44,390.45 for compensation for Ball’s medical bills and the physical and mental pain she suffered in exchange for a release of Ball’s claims against State Farm and its insured. Respondent Gorden negotiated the settlement of Ball’s bodily injury claim with State Farm’s adjusters and supervisors. State Farm paid Ball \$25,000.00 in exchange for a release of her claims.

On February 17, 2017, Respondents sent another demand letter to State Farm, signed by Robyn Anthony and seeking payment of \$6,216.60 in exchange for a release of Anthony’s claims against State Farm and its insured. This amount included compensation for Anthony’s medical bills and the physical and mental pain she suffered. Respondent Gorden negotiated the settlement of Anthony’s bodily injury claim with State Farm’s adjusters and supervisors. State Farm paid Anthony \$1,916.60 to settle her bodily injury claim. State Farm also paid Respondent AACM \$1,300.00 as part of the settlement.

On February 22, 2017, Respondents next sent State Farm a demand letter signed by Natasaca Fields. That letter requested payment of \$16,084.69 in exchange for a release of Fields’s claims against State Farm and its insured. The monetary figure demanded included compensation for Fields’s medical bills, loss of income, and the physical and mental pain she suffered. Respondent Gorden negotiated the settlement of Fields’s bodily injury claim with State Farm’s adjusters and supervisors. State Farm paid Fields \$11,550.00 to settle her claim.

State Farm never agreed to allow Respondents to mediate its matters with Anthony, Ball, or Fields, nor did a neutral mediation regarding those bodily injury claims occur. Respondent Gorden did not act in a neutral manner during any of these negotiations. Instead, State Farm’s adjusters and supervisors dealt with Respondent Gorden as a claims representative for those claimants.

Geico Matters

On July 5, 2016, Respondents sent GEICO Casualty Company (“GEICO”) a demand letter signed by Jeffrey McWhorter. The letter sought payment of \$24,027.21 in exchange for a release of his claims against GEICO and its insured. The total amount requested included compensation for McWhorter’s medical bills and the physical and mental pain he suffered.

Respondent Gorden negotiated McWhorter's bodily injury claim with GEICO's adjusters and supervisors. GEICO paid McWhorter and Respondent AACM \$14,136.43 to settle his claim.

On October 8, 2016, Respondents sent a demand letter to GEICO signed by Marcus Riley. The letter sought payment of \$15,572.56 in exchange for a release of Mr. Riley's claims against GEICO and its insured. On that same day, Respondents sent another demand letter to GEICO signed by Yashica Riley. That letter sought payment of \$27,888.02 in exchange for a release of Ms. Riley's claims. The monetary figures Respondents sought for these claimants included compensation for their medical bills and the physical and mental pain they suffered. Respondent Gorden negotiated with GEICO's adjusters and supervisors to settle the Rileys' bodily injury claims. GEICO paid Mr. Riley and Respondent AACM \$8,029.48 to settle his claim, and GEICO paid Ms. Riley and Respondent AACM \$15,874.24 to settle her claim.

On October 31, 2016, Respondents sent a demand letter to GEICO signed by Joshua Brown and seeking payment of \$9,661.06 in exchange for a release of his claims against GEICO and its insured. On that same day, Respondents sent another demand letter to GEICO, signed by Yasmine Marrero. That letter asked GEICO to pay Marrero \$20,651.53 in exchange for a release of her claims against GEICO and its insured. The monetary amounts requested by Respondents for these claimants included compensation for medical bills and the physical and mental pain they suffered. Respondent Gorden negotiated Brown's and Marrero's bodily injury claims with adjusters and supervisors of GEICO. GEICO paid Brown and Respondent AACM \$5,634.72 to settle his claim. GEICO also paid Marrero and Respondent AACM \$8,062.49 to settle her claim.

On December 12, 2016, Respondents sent GEICO a demand letter signed by Erik Mosley. That letter demanded payment of \$21,065.38 in exchange for a release of Mosley's claims against GEICO and its insured. The total amount requested included compensation for Mosley's medical bills, loss of income, and the physical and mental pain he suffered. Respondent Gorden negotiated Mosley's bodily injury claim with GEICO's adjusters and supervisors. GEICO paid Mosley and Respondent AACM \$13,500.00 to settle Mosley's claim.

On June 22, 2017, Respondents sent a demand letter to GEICO signed by Arthur Moore and seeking payment of \$15,673.75 in exchange for a release of Moore's claims against GEICO and its insured. That figure included compensation for Moore's medical bills and the physical and mental pain he suffered. Respondent Gorden negotiated Moore's bodily injury claims with GEICO's adjusters and supervisors. GEICO paid Moore and Respondent AACM \$11,020.75 to settle the claim.

Never did GEICO agree that Respondents could mediate the claims of Brown, Marrero, Moore, Mosley, the Rileys, and McWhorter, nor did a neutral mediation of those claims take place. During the negotiations, Respondent Gorden did not act neutrally. Rather, GEICO's supervisors and adjusters dealt with Respondent Gorden as a claims representative for the claimants.

Nationwide Matters

On February 22, 2017, Respondents sent a demand letter signed by Tony Wattley to Allied Insurance Company, an affiliate of Nationwide Mutual Insurance Company (“Nationwide”). That letter demanded payment of \$28,267.02 in exchange for a release of Wattley’s claims against Nationwide and its insured. On May 15, 2017, Respondents sent a separate demand letter to Nationwide, this time seeking payment of \$12,245.98 in exchange for a release of Nichole Walters’s claims against Nationwide and its insured. This letter was signed by Walters. The total amount that Respondents demanded for each claimant included compensation for their medical bills and the physical and mental pain suffered.

Respondent Gorden negotiated Wattley’s and Walters’s bodily injury claims with Nationwide’s adjusters and supervisors. Nationwide paid Wattley \$16,000.00 to settle his claim. It paid Walters \$11,648.58 to settle her claim.

Nationwide did not agree that Respondents could mediate the claims of Wattley and Walters, nor did a neutral mediation of these claims occur. Rather, Nationwide’s supervisors and adjusters dealt with Respondent Gorden as a claims representative of those claimants. During the negotiations with Nationwide, Respondent Gorden pressed adjusters for immediate review of the claims, demanded quick payment, and stated that she was a representative of the claimants.

Unauthorized Practice of Law Standards and Analysis

The Colorado Supreme Court, which has exclusive jurisdiction to define the practice of law within this state,² restricts the practice of law to protect members of the public from receiving incompetent legal advice from unqualified individuals.³ Colorado Supreme Court case law holds that a layperson who acts “in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counselling, advising and assisting that person in connection with these rights and duties” engages in the unauthorized practice of law.⁴

In his summary judgment order, the PDJ determined that through the conduct described above, Respondents acted in a representative capacity when they drafted and sent demand letters to insurance companies on behalf of claimants, directly contacted and negotiated multiple settlements with insurance company employees, analyzed the claimants’ damages, advocated for monetary settlements, and obtained settlements. The PDJ

² C.R.C.P. 228.

³ *Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d 822, 826 (Colo. 1982); see also *Charter One Mortg. Corp. v. Condra*, 865 N.E.2d 602, 605 (Ind. 2007) (“Confining the practice of law to licensed attorneys is designed to protect the public from the potentially severe consequences of following advice on legal matters from unqualified persons.”); *In re Baker*, 85 A.2d 505, 514 (N.J. 1952) (“The amateur at law is as dangerous to the community as an amateur surgeon would be.”).

⁴ See *Denver Bar Ass’n v. Pub. Utils. Cmm’n*, 154 Colo. 273, 279, 391 P.2d 467, 471 (1964); see also *People v. Shell*, 148 P.3d 162, 171 (Colo. 2006).

determined that these activities affected the legal rights of claimants and called for the exercise of legal knowledge and skills, thus constituting the unauthorized practice of law.⁵

The PDJ also determined that Respondent Gorden acted as a third-party public adjuster when she represented and assisted claimants with their claims against a third party's insurance company; when she directly communicated with those companies about the claimants' claims; when she made monetary demands upon those companies for loss of income, reimbursement of medical expenses, and noneconomic damages; and when she negotiated the settlements of the claimants' claims and analyzed the value of their injuries.⁶

Finally, the PDJ rejected Respondents' mediation defense, finding that Respondents never obtained the consent of the three insurance companies to mediate bodily injury claims between the insurers and claimants. Nor did any insurance company agree to permit Respondents to serve as mediators; accordingly, the negotiations that transpired cannot be characterized as mediation between the insurance companies and the claimants.⁷ The PDJ also concluded that Respondents' services were not neutral and, instead, that Respondents were advocating for the claimants.⁸

III. FINE, RESTITUTION, AND COSTS

Turning first to the matter of a fine, C.R.C.P. 236(a) provides that if a hearing master finds that a respondent has engaged in the unauthorized practice of law, the hearing master shall recommend that the Colorado Supreme Court impose a fine ranging from \$250.00 to \$1,000.00 for each incident of the unauthorized practice of law. The People request that the PDJ recommend the minimum fine of \$250.00 per incident, or \$3,000.00 for the twelve instances in which Respondent was found to have engaged in the unauthorized practice of

⁵ See *Shell*, 148 P.3d at 171 (indicating that the exercise of legal knowledge and skill constitutes the practice of law); *In re Boyer*, 988 P.2d 625, 627 (Colo. 1999) (“Analyzing the value of a client’s personal injury claim, making demands on an insurer for setting a client’s claim, and advising the client about whether to settle for a certain amount are well within the ambit of the practice of law.”).

⁶ See *La. State Bar Ass’n v. Carr & Assocs., Inc.*, 15 So. 3d 158, 170 (La. App. 2009) (holding that a layperson engaged in the unauthorized practice of law when he advised clients how to redress legal wrongs under their insurance policies, negotiated settlements, and contacted insurers to discuss the merits of clients’ claims); see, e.g., *State ex rel. Stovall v. Martinez*, 996 P.2d 371, 375 (Kan. App. 2000) (finding that third-party public adjusting “unquestionably” qualifies as the practice of law); *Cincinnati Bar Ass’n v. Sershion*, 934 N.E.2d 332, 333-34 (Ohio 2010) (holding that it is the unauthorized practice of law to present “claims of bodily injury under liability policies” and to assert “claims for extra-contractual damages under other policies of insurance”); *Dauphin Cnty. Bar Ass’n v. Mazzacaro*, 351 A.2d 229, 234 (Pa. 1976) (holding that third-party representation by lay adjusters is the unauthorized practice of law); see also 3 Couch on Ins. § 48:66 (2017) (“An adjuster who represents him or herself in the public as able to compromise, adjust, or settle claims generally is engaged in the practice of law . . .”).

⁷ See Jacqueline M. Nolan-Haley, *Informed Consent in Mediation: A Guiding Principle for Truly Educated Decision Making*, 74 Notre Dame L. Rev. 775, 787, 827 (1999) (noting that informed consent is the “distinguishing characteristic” of non-mandatory mediation).

⁸ See *Cincinnati Bar Ass’n v. Jansen*, 5 N.E.3d 627, 631-32 (Ohio 2014) (dismissing the respondents’ arguments in an unauthorized practice of law matter that they provided neutral mediation where their business practices belied that claim); cf. *In re Bright*, 171 B.R. 799, 803 (Bankr. E.D. Mich. 1994) (holding that a disclaimer that a nonlawyer was not providing legal services was irrelevant if in fact the nonlawyer did provide legal services).

law. In assessing fines for the unauthorized practice of law, the Colorado Supreme Court previously has examined whether a respondent's actions were "malicious or pursued in bad faith" and whether the respondent engaged in unlawful activities over an extended timeframe despite warnings.⁹ In this case, there is no evidence of any malice or bad faith, but Respondent Gorden was exceedingly defiant, stating on numerous occasions that she would continue to run her business no matter what the PDJ or the Colorado Supreme Court determined.¹⁰ Accordingly, the PDJ recommends that Respondent be fined \$500.00 for each instance, or \$6,000.00, for engaging in the unauthorized practice of law.¹¹

Next, the People request awards of restitution: \$5,548.58 payable to Nichole Walters, \$5,062.49 payable to Yasmine Marrero, and \$6,321.00 payable to Erik Mosley. These amounts reflect the fees these claimants paid Respondents. The People's request is supported by evidence adduced at the hearing.¹² Because the Colorado Supreme Court has deemed it appropriate to award restitution of any fees received for the unauthorized practice of law,¹³ the PDJ finds that restitution is warranted here.

Finally, the People ask that Respondents be ordered to pay \$1,159.00 in costs to cover the People's administrative fee and service of process fees. On February 25, 2019, Respondent Gorden emailed the People and the PDJ, objecting to the statement of costs.¹⁴ Relying on C.R.C.P. 237(a), the PDJ considers the sum requested by the People to be reasonable and therefore recommends that the Colorado Supreme Court assess \$1,159.00 in costs against Respondents.¹⁵

IV. RECOMMENDATION

The PDJ **RECOMMENDS** that the Colorado Supreme Court **FIND** that Respondents engaged in the unauthorized practice of law and **ENJOIN** Respondents from the unauthorized practice of law, including the following:

⁹ *People v. Adams*, 243 P.3d 256, 267-68 (Colo. 2010).

¹⁰ The PDJ notes that *People v. Jalaika Gorden and Affordable Auto Claims Mediation LLC, a Colorado Limited Liability Company*, case number 17SA287, is currently pending before the Colorado Supreme Court. In that case, the PDJ recommended that Respondents be enjoined from the unauthorized practice of law for four instances of third-party public adjusting and for acting in a representative capacity—the same conduct that is at issue in this case.

¹¹ Even though the PDJ analyzed the Marcus Riley and Yashica Riley matters together in his order granting summary judgment, the PDJ considers these matters as two separate matters for purposes of a fine because Respondents pursued individual claims for these claimants.

¹² The uncontroverted and credible testimony showed that after Respondents' fees were deducted, Walters received only \$6,100.00 from her \$11,648.58 settlement; Marrero received only \$3,000.00 from her \$8,062.49 settlement; and Mosley received only \$7,179.00 from his \$13,500.00 settlement. See Exs. 8, 11, 12, and 17.

¹³ *People v. Love*, 775 P.2d 26, 27 (Colo. 1989) (ordering nonlawyer to pay amounts in restitution for fees he received while engaging in the unauthorized practice of law).

¹⁴ Respondent Gorden said, "I will not pay any money to the OARC or the disputants for I am not guilty of practicing law, just because Mr. Ikeler[']s friend William was paid off by the Judges fund from the insurance carriers [does] not give him the right to falsely accuse me of practicing law."

¹⁵ See C.R.S. § 13-16-122 (setting forth an illustrative list of categories of "includable" costs in civil cases).

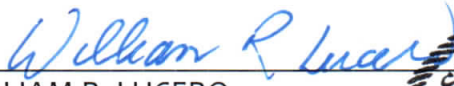
- Providing legal services, such as advising or counseling clients in a manner that constitutes the unauthorized practice of law, including giving advice on economic and noneconomic damages, such as physical or mental pain suffered; presenting claims of bodily injury to insurers under liability policies; advising clients of their rights, duties, or privileges under an insurance policy when such advice requires any legal skill or knowledge; advising clients whether to accept a settlement offer from an insurance company; advising clients whether to release claims; and becoming involved in any way in a coverage dispute between the client and insurance company;
- Participating in the formation, ownership, direction, or control of a company that offers or provides legal services as described above;
- Having any contact with insurers to settle clients' bodily injury claims against the insurers by negotiating the legal aspects of clients' claims, or by negotiating with insurers the monetary value of clients' claims;
- Instructing insurance companies to make checks payable to Respondents rather than payable only to Respondents' clients;
- Accepting or collecting a fee based on a percentage of any parties' settlement recovery;
- Holding themselves out as being able to mediate, negotiate, or settle insurance claims for bodily injury on a single party's behalf; and
- Advertising in a manner that would lead clients to believe that Respondents offer services requiring legal knowledge or skill as described above, e.g., stating that they can resolve bodily injury claims for clients with insurance companies.

The PDJ also **RECOMMENDS** that the Colorado Supreme Court enter an order requiring Respondents, jointly and severally, to pay **RESTITUTION** of \$5,548.58 payable to Nichole Walters, \$5,062.49 payable to Yasmine Marrero, and \$6,321.00 payable to Erik Mosley; requiring Respondents, jointly and severally, to pay a **FINE** of \$6,000.00; and requiring Respondents, jointly and severally, to pay **COSTS** of \$1,159.00. Finally the PDJ **RECOMMENDS** that the Colorado Supreme Court **FINE** Respondent Gorden \$500.00 based on the PDJ's determination that she acted in direct contempt of several of the PDJ's orders during the hearing.

Any party may file objections to this report with the Colorado Supreme Court within twenty-eight days of today's date or as otherwise ordered by the Colorado Supreme Court.¹⁶

¹⁶ C.R.C.P. 236(b).

DATED THIS 18th DAY OF MARCH, 2019.


WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE



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