



U.S. SECURITIES
AND EXCHANGE
COMMISSION

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

Securities and Exchange Commission,

Plaintiff,

v.

MX FACTORS, LLC; BBH RESOURCES,
LLC; JTL FINANCIAL GROUP, LLC;
RICHARD M. HARKLESS; DANIEL
BERARDI; THOMAS HAWKESWORTH;
and RANDALL W. HARDING

Defendants.

Case No.

COMPLAINT FOR THE VIOLATIONS
OF FEDERAL SECURITIES LAWS

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

2. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the transactions, acts, practices, and courses of conduct constituting violations of the federal securities laws occurred within this district.

SUMMARY

3. This case involves the ongoing fraudulent and unregistered offering of securities by Mx Factors, LLC ("Mx"); its managing member, Richard M. Harkless ("Harkless"); and its unlicensed broker-dealers, BBH Resources, LLC ("BBH") and its principals, Daniel J. Berardi ("Berardi") and Thomas Hawkesworth ("Hawkesworth"), and JTL Financial Resources, LLC ("JTL") and its president, Randall W. Harding ("Harding") (collectively "defendants"). Defendants began the offering around October 2000. Since September 2002, defendants have raised at least \$33.6 million from at least 247 investors nationwide.

4. The defendants offered and sold notes in Mx, promising a guaranteed return of 12% in 60 or 90 days (the "Mx Investment"). Defendants represented to investors that Mx would use investor funds to provide clients of Mx with accounts receivable financing or loans (referred to by defendants as "factoring"). The defendants further represented that the Mx Investment was safe, because, among other things, BBH and JTL had performed their own due diligence, and because at least 70% of the factoring receivables were government-backed. Most recently, beginning in September 2003, defendants told, and continue to tell, investors that their funds have been placed in an account awaiting completion of an audit.

5. Contrary to defendants' representations, however, Mx and Harkless are operating a Ponzi scheme, and defendants have misused investor funds. Mx has used approximately \$19.9 million of new investor money to meet its obligations to existing investors. Mx further misappropriated approximately \$5.6 million of investors funds to finance an undisclosed Mexican crabbing operation, to make transfers to overseas accounts unrelated to any factoring business, and to pay Harkless', Berardi's, and Hawkesworth's personal expenses. BBH also "skimmed" about \$1.3 million in investor funds that it never forwarded to Mx. Had Berardi, Hawkesworth, and Harding performed adequate due diligence as they had represented to investors BBH and JTL had done, they would have discovered the misuse of proceeds and that only a handful of factoring clients actually had receivables funded by the government. Berardi, Hawkesworth, and Harding also knowingly failed to disclose to investors that BBH and JTL earned commissions of at least 12%.

6. Defendants' fraudulent conduct is ongoing. Despite consenting to a September 26, 2003 order by the California Department of Corporations ("DOC") prohibiting Mx and Harkless from engaging in unregistered securities offerings, Mx, through its sales agents, continued to solicit investors. At least \$200,000 has been raised from investors since the DOC's order. In addition, contrary to defendants' representations that investor funds are safe in an account awaiting distribution, Mx and Harkless have dissipated approximately \$420,000 of investor funds between October 2003 and

January 2004.

7. The defendants, by engaging in the conduct described in this complaint, have violated, and unless enjoined will continue to violate, the securities registration and antifraud provisions of the Securities Act and Exchange Act. In addition, Defendants BBH, JTL, Berardi, Hawkesworth, and Harding have violated, and unless enjoined will continue to violate, the broker-dealer registration provisions of the Exchange Act. By this complaint, the Commission seeks a temporary restraining order and asset freeze, preliminary and permanent injunctions, disgorgement with prejudgment interest, and civil penalties against all of the defendants. The Commission also seeks the appointment of a receiver over Mx, BBH, and JTL. Finally, the Commission seeks an order requiring Mx and Harkless to repatriate their assets to the United States.

THE DEFENDANTS

8. Mx Factors, LLC is a Nevada limited liability company headquartered in Riverside, California. Mx purportedly provides accounts receivable financing to construction-related businesses in the United States. Harkless controls Mx. Mx started its offering of the Mx Investment in October 2000. Mx is not registered with the Commission. On September 26, 2003, Mx consented to an order from the California Department of Corporations prohibiting Mx and Harkless from engaging in the offering of unregistered securities and acting as an unlicensed lender ("September 26, 2003 DOC order").

9. BBH Resources, LLC is a Nevada limited liability company based in Palm Springs, California. BBH is one of Mx's sales agents, but is not registered with the Commission. Berardi and Hawkesworth control BBH.

10. JTL Financial Services, LLC is a Nevada limited liability company based in Corona, California. JTL is one of Mx's sales agents but is not registered with the Commission. Harding controls JTL.

11. Richard M. Harkless, age 59, resides in Riverside, California. He is Mx's managing member. Harkless is responsible for Mx's day-to-day operations, overseeing the factoring business and solicitation efforts. Harkless offered and sold the Mx Investment and hired sales agents who are not registered with the Commission. He also controlled Mx's bank accounts, signed the vast majority of its checks, and authorized all wire transfers. Harkless is not registered with the Commission. Harkless consented to the September 26, 2003 DOC order.

12. Daniel Berardi, age 40, resides in Palm Springs, California. He is one of BBH's two managing members. Berardi offered and sold the Mx Investment and also supervised other BBH sales agents. He is not registered with the Commission.

13. Thomas Hawkesworth, age 49, resides in Rancho Mirage, California. He is one of BBH's two managing members. Hawkesworth offered and sold the Mx Investment and also supervised other BBH sales agents. He is not registered with the Commission.

14. Randall W. Harding, age 43, resides in Corona, California. He is JTL's president. Harding offered and sold the Mx Investment and also supervised other JTL sales agents. He is not registered with the Commission.

THE FRAUDULENT SCHEME

15. Since approximately September 1, 2002, the defendants have raised approximately \$33.6 million through a fraudulent and unregistered offering of notes in Mx.

A. Defendants' Sales Efforts

16. Defendants sold the Mx Investment to at least 247 investors, who live in and outside of California. Some of Mx's investors were unsophisticated and unaccredited. Neither Mx nor its sales agents sought to determine if investors were accredited or suitable for the Mx Investment.

17. Harkless, Berardi, and Hawkesworth created offering materials comprised of, among other things, brochures, return projections, and sample contracts. Defendants used these materials to solicit prospective investors.

18. Harkless, Berardi, Hawkesworth, and Harding each solicited and recruited others to solicit prospective investors. Defendants held presentations about the Mx Investment for prospective investors in California. Mx and Harkless also offered the Mx Investment through the Internet on the website of Harkless' affiliated company, www.llcregistry.com/mxfactors.

19. In November 2002, Harkless made two presentations to approximately 300 prospective investors in California. Berardi and Hawkesworth attended both presentations. BBH sponsored at least one presentation. During the presentations, Harkless described the Mx factoring program and explained that the financing was for contractors involved in water treatment and other government-funded projects in the United States. During at least one of the presentations, Harkless assured investors that he was not using investor funds to finance one of his new business ventures, a crabbing operation in Mexico.

20. Harkless, Berardi, and Hawkesworth recruited existing investors to become sales agents (the "subagents") and offer the Mx Investment to a wider audience. Berardi and Hawkesworth provided the subagents with an electronic version of the offering materials to use in their solicitations. The offering materials used by the subagents contained the same representations as in the offering materials used by defendants.

21. Mx and Harkless paid BBH and JTL commissions and/or management fees of at least 12% on all amounts invested with Mx. Berardi and Hawkesworth in turn paid subagents referral fees of at least 3% on all amounts invested with Mx through BBH.

B. The Offering Materials And Investment Contracts

22. The offering materials provide that the "Mx Factors' opportunity offers guaranteed, safe, outstanding returns for savvy individuals who are looking to diversify their portfolios." In exchange for an investment of 60 or 90 days, Mx guarantees investors (who are referred to as "participants" in the offering materials) a return of 12% with the option of rolling over their principal and accrued interest each 60 or 90 days for a new investment with the same returns. The offering materials tout a yearly return of at least 50% if investors keep their principal and accrued interest invested in Mx for a year.

23. The offering materials represent that Mx will pool funds from investors to provide its factoring clients - construction contractors, wholesalers, and manufacturers in California, Nevada, and Arizona - accounts receivable financing by extending to them loans or lines of credit (the "factor loans"). According to the offering materials, the factor loans are secured against the client's receivables through an assignment, which "collateralizes the advance, gives Mx complete ownership of all the receivables, and secures a return for both Mx and its participants." At the end of a factor loan, the factoring client pays the principal in full. In this way, according to the offering materials, investor "[f]unds are constantly being placed to produce returns." The offering materials do not disclose the use of investor funds for any other purpose.

24. The offering materials explain that the guaranteed 12% return to investors will be funded by the interest paid by the factoring clients. According to the offering materials, a factoring client agrees

to pay Mx interest of 10% per month equal to the loan amount. The offering materials do not disclose that any other funding source will be used to pay investors' returns.

25. The offering materials further tout the Mx Investment as "safe" based on the following claims. First, at least 70% of the receivables are government backed or funded. Second, the amount of each loan or line of credit is limited to no more than one third of the value of the accounts receivable that the client has assigned. Third, Mx uses "rigorous quality standards" and a "rigorous approval process" when considering a new client. Fourth, Mx receives a security agreement and assignment that functions as a lien on the receivables and is recorded by Mx with the Secretary of State (the "UCC-1 financing statement") when the factor loan is funded.

26. The JTL version of the offering materials for the Mx Investment contains additional assurances to investors. It states that JTL "prides itself on generating high returns for [its] clients by finding and validating unique opportunities" and that "[d]ue diligence is performed through rigorous analysis of every proposition."

27. The offering materials never mention or suggest that Mx engages in factoring outside of the United States.

28. The offering materials do not disclose the payment of any commission, referral, or management fee to any sales agents.

29. None of the offering materials that were given to prospective investors included any financial statements for Mx. Federal law requires defendants to provide such information to unaccredited investors.

30. In connection with their investment, Mx investors sign a contract that evidences their investment (referred to by defendants as the "participation agreement"). This contract is usually on Mx letterhead and identifies the amount invested, the term of the investment, the rate of return, and the payout date. All participation agreements state that the "guarantee for the factor is in place; i.e., the total rate of return is at least 12%" and that the investor "has the right to release all placed funds after" each 60 or 90 days, as applicable. Each contract is signed by the investor and the sales agent, and then forwarded to Mx along with the investment. Harkless signed some of the participation agreements.

31. Just before the payoff date for each participation agreement, sales agents contact investors to determine whether the investment will be rolled over into a new investment or withdrawn. Some investors have withdrawn the guaranteed 12% return on each payoff date and only rolled over their principal into new investments. The vast majority of investors, however, have rolled over their principal and accrued interest and contributed additional principal to Mx, based on defendants' claims that the Mx Investment consistently earns 12% returns during each 60 or 90 day period.

32. Because BBH, JTL, Berardi, Hawkesworth, and Harding are in the business of offering and selling securities to the public, they had a duty, and were required, to conduct an independent investigation relating to the Mx Investment and to disclose all material facts to prospective investors. They, however, did not perform adequate due diligence of the Mx Investment before soliciting and recommending the investment to prospective investors, or if they did perform adequate due diligence, they disregarded, and failed to disclose to investors, the results of their independent investigation.

C. Defendants' Misrepresentations And Omissions

1. Mx Is A Ponzi Scheme

33. While the defendants claim that Mx will use investor funds to provide accounts receivable

financing for its factoring clients, Mx is, in fact, operating a Ponzi scheme. Since at least September 2002, the revenue generated by the Mx financing program has failed to cover its payments to investors. In fact, Mx selected its last factoring client in 2002 and ceased factoring operations in March 2003. Thus, the only way that Mx has been able to meet its promised guaranteed returns to investors is by using funds from new investors.

34. Indeed, from September 2002 through September 2003, Mx generated, at most, \$9.5 million in revenue from accounts receivable financing and \$2 million from non-investor sources. Nevertheless, during this same period, Mx paid out a total of approximately \$31.4 million to investors and sales agents. Because Mx did not have any other source of income, Mx used at least \$19.9 million of new investor funds to finance its interest and/or principal payments to investors as well as undisclosed commissions to sales agents. This undisclosed use of investor funds - which represents 63% of investor funds raised by defendants between September 1, 2002, and September 30, 2003 - constitutes a Ponzi scheme.

35. Harkless knew, or was reckless in not knowing, that Mx is a Ponzi scheme. Harkless received a weekly status report on outstanding and potential factor loans. He also signed and/or otherwise received investors' new participation agreements. Because Harkless tracked the deposits and payments in the Mx bank accounts, he knew or was reckless in not knowing how much income was generated by the factoring business as well from the offering.

2. Mx And Harkless Misappropriated Investor Funds

36. In addition to the \$19.9 million of investor funds used to finance the Ponzi scheme, Mx also misappropriated at least \$5.64 million of investor funds raised by defendants between September 1, 2002 and September 30, 2003, for Harkless' and others' personal use. Specifically, Mx, with the knowledge and/or at the direction of Harkless, used investor funds for the following undisclosed purposes: (1) to finance a Mexican crab operation, including refurbishing a fishing boat (\$2.55 million); (2) to pay Harkless', Berardi's, and Hawkesworth's personal expenses, including mortgage and credit card payments (\$1.59 million); and (3) to fund wire transfers to Mx's foreign bank accounts unrelated to accounts receivable financing (\$1.5 million).

3. The Mx Investment Was Not Safe

37. Contrary to defendants' representations in its offering materials regarding the safety of the Mx Investment, the majority of factoring receivables were not funded or backed by the government.

38. Indeed, Harkless placed few restrictions on the kinds of businesses that could receive loans from Mx. As a result, only two out of 20 factoring clients were involved in government-funded projects. Furthermore, of the approximately \$6.2 million in investor funds that Mx purportedly used for factoring, only approximately \$259,000, or about 4%, of client receivables were funded or backed by the government. In addition, by late 2002 or early 2003, many of the factoring clients had defaulted on their loans. Because some of these loans were not subject to any UCC-1 filing, these loans did not have any collateral, contrary to representations to investors, and Mx did not recover the principal and interest owed by the defaulting factoring clients.

39. Harkless knew that Mx was not following the procedures or safeguards set forth in the offering materials. He received regular reports regarding the factoring business, approved the financing for each factoring client, and knew of the status of each outstanding loan.

4. Sales Agents Received Undisclosed Commissions And Otherwise "Skimmed" Investor Funds

40. Despite the fact that BBH and JTL each received at least 12% of the amount invested with Mx, defendants never disclosed these commissions to investors. In addition, although the sales agent

commissions should have been paid out of the revenue generated by Mx's factoring program, they were financed by investor funds, because Mx did not generate sufficient income to fund the commissions, especially after March 2003, when Mx stopped its factoring business.

41. The individual defendants each knew or were reckless in not knowing about the payment of undisclosed commissions. Harkless hired Berardi, Hawkesworth, and Harding and paid each of them at least 12% in commissions or management fees. Defendants knew the commissions actually were paid because Harkless authorized or directed the payment of commissions to BBH and JTL, and Berardi, Hawkesworth, and Harding knew that BBH and JTL received commissions from Mx. In fact, Harding maintained a spreadsheet that identified the management fees owed to JTL by investor. Defendants also knew or were reckless in not knowing that the payment of sales agent commissions was not disclosed to investors, because they prepared and/or disseminated the offering materials and solicited investors.

42. Harkless further knew or was reckless in not knowing that investor funds were being used to pay BBH's and JTL's undisclosed commissions, because he tracked the deposits and payments in the Mx's bank accounts.

43. In addition, from May 1, 2003 through September 30, 2003, BBH received almost \$1.3 million in investor funds that Berardi and Hawkesworth failed to transfer to Mx and instead kept for their personal use.

44. Defendants failed to keep accurate or complete records of transactions involving investor funds and commingled investor funds with the personal funds of BBH's and JTL's principals.

D. Mx's Audit And Defendants' Ongoing Fraud

45. As a result of the DOC's investigation into Mx, on September 9, 2003, defendants sent investors notice that no new investments were being accepted by Mx and that investors' funds were being held in an unidentified account pending completion of an audit by an outside accounting firm hired by Mx. In connection with this audit, Harkless and others instructed investors to submit claims of the amounts owed to them along with proof to support their principal investment.

46. The accounting firm now has made a preliminary determination that Mx's investors are owed at least \$32 million in principal and \$24.6 million in accrued interest for a total of \$56.6 million.

47. Contrary to defendants' representations, however, there is no account that is holding the principal and interest owed to investors. The only Mx trust account that existed at the time contained a total of approximately \$428,000 as of September 30, 2003. Mx then dissipated all but \$7,500 of the \$428,000 in the trust account between October 2003 and January 2004.

48. In addition, despite the fact that Mx and Harkless consented to the September 26, 2003 DOC order, Mx, through its sales agents, continued to solicit investors. Just four days after the order was issued, on or about September 30, 2003, one of Mx sales agents received \$100,000 for a note offering the same guaranteed return of 12% in 90 days. That same sales agent entered into another \$100,000 note with another Mx investor on or about October 8, 2003, for purported factoring in Mexico. Harkless knew or was reckless in not knowing that this Mx sales agent was soliciting investors in direct violation of the DOC order. Not only did Harkless consent to the September 26, 2003 order but Harkless specifically directed this sales agent to do business with a business associate who was both a sales agent and purported factoring client of Mx in Mexico.

FIRST CLAIM FOR RELIEF

UNREGISTERED OFFER AND SALE OF SECURITIES

**Violations of Sections 5(a) and 5(c) of the Securities Act
(Against All Defendants)**

1. The Commission realleges and incorporates by reference paragraphs 1 through 48 above.
2. The defendants, and each of them, by engaging in the conduct described above, directly or indirectly, made use of means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interstate commerce for the purpose of sale or for delivery after sale.
3. No registration statement has been filed with the Commission or has been in effect with respect to the offering alleged herein.
4. By engaging in the conduct described above, each of the defendants violated, and unless restrained and enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

SECOND CLAIM FOR RELIEF

FRAUD IN THE OFFER OR SALE OF SECURITIES

**Violations of Section 17(a) of the Securities Act
(Against All Defendants)**

49. The Commission realleges and incorporates by reference paragraphs 1 through 48 above.
50. The defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails:
 - a. with scienter, employed devices, schemes, or artifices to defraud;
 - b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
 - c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

51. By engaging in the conduct described above, each of the defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

THIRD CLAIM FOR RELIEF

FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES

**Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder
(Against All Defendants)**

52. The Commission realleges and incorporates by reference paragraphs 1 through 48 above.
53. The defendants, and each of them, by engaging in the conduct described above, directly or

indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

- a. employed devices, schemes, or artifices to defraud;
- b. made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

54. By engaging in the conduct described above, each of the defendants violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

FOURTH CLAIM FOR RELIEF

FAILURE TO REGISTER AS A BROKER-DEALER

Violations of Section 15(a) of the Exchange Act (Against Defendants BBH, JTL, Berardi, Hawkesworth, and Harding)

5. The Commission realleges and incorporates by reference paragraphs 1 through 48 above.

6. Defendants BBH, JTL, Berardi, Hawkesworth, and Harding, and each of them, by engaging in the conduct described above, directly or indirectly, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce, the purchase or sale of securities, without being registered as brokers or dealers in accordance with Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

7. By engaging in the conduct described above, Defendants BBH, JTL, Berardi, Hawkesworth, and Harding violated, and unless restrained and enjoined will continue to violate, Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that the defendants committed the alleged violations.

II.

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), temporarily, preliminarily, and permanently enjoining the defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order or judgment by personal service or otherwise, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

III.

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), temporarily, preliminarily, and permanently enjoining Defendants BBH, JTL, Berardi, Hawkesworth, and Harding, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order or judgment by personal service or otherwise, and each of them, from violating Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

IV.

Issue, in a form consistent with Fed. R. Civ. P. 65, a temporary restraining order and a preliminary injunction freezing the assets of each of Defendants Mx, BBH, JTL, Harkless, Berardi, and Hawkesworth, appointing a receiver over Defendants Mx, BBH, and JTL, repatriating the assets of Defendants Mx and Harkless to the United States, prohibiting each of the defendants from destroying documents, and requiring accountings from each of the defendants.

V.

Order each defendant to disgorge all ill-gotten gains from their illegal conduct, together with prejudgment interest thereon.

VI.

Order each defendant to pay civil penalties under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

VII.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VIII.

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: February 25, 2004

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