

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PRECISION ASSOCIATES, INC., et al., on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

PANALPINA WORLD TRANSPORT
(HOLDING) LTD., et al.,

Defendants.

Case No.: 08-CV-00042 (BMC) (PK)

**MEMORANDUM IN SUPPORT OF MOTION FOR APPROVAL OF SERVICE
AWARDS TO CLASS REPRESENTATIVES**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THE CLASS REPRESENTATIVES DESERVE SERVICE AWARDS FOR THEIR VALUABLE CONTRIBUTION TO THIS LITIGATION.....	2
A. The Class Representatives Expended Considerable Time and Energy Litigating this Case on Behalf of the Class	3
B. The Class Representatives, Direct Purchasers from Defendants, Risked Retaliation by Pursuing this Litigation	6
III. THE PROPOSED SERVICE AWARDS ARE REASONABLE IN LIGHT OF THE RECOVERY ACHIEVED FOR THE CLASS	7
IV. CONCLUSION.....	9

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page(s)</u>
<i>Brady v. Air Line Pilots Ass'n.</i> , 627 F. App'x 142 (3d Cir. 2015)	10
<i>Denney v. Jenkins & Gilchrist</i> , 230 F.R.D. 317 (S.D.N.Y. 2005).....	8
<i>Gulino v. Symbol Tech., Inc.</i> , No. 06-cv-2810, 2007 WL 3036890 (E.D.N.Y. Oct. 17, 2007).....	2
<i>In re Air Cargo Shipping Servs. Antitrust Litig.</i> , No. 06-md-1775, 2015 WL 5918273 (E.D.N.Y. Oct. 9, 2015)	<i>passim</i>
<i>In re Flonase Antitrust Litig.</i> , 951 F. Supp. 2d 739 (E.D. Pa. 2013)	6
<i>In re High-Tech Employee Antitrust Litig.</i> , No. 11-CV-02509-LHK, 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015).....	1, 9
<i>In re Lorazepam & Clorazepate Antitrust Litig.</i> , MDL No. 1290, 2003 WL 22037741 (D.D.C. June 16, 2003)	2
<i>Marchbanks Truck Serv. v. Comdata Network, Inc.</i> , Case No. 07-CV-1078, (E.D. Pa. July 14, 2014).....	9
<i>In re Titanium Dioxide Antitrust Litig.</i> , No. 10-CV-00318 RDB, 2013 WL 6577029 (D.Md. Dec. 13, 2013).....	1, 9
<i>In re Vitamin C Antitrust Litig.</i> , No. 06-MD-1738 BMC JO, 2012 WL 5289514 (E.D.N.Y. Oct. 23, 2012).....	5,8
<i>Massiah v. MetroPlus Health Plan, Inc.</i> , No. 11-cv-05669, 2012 WL 5874655 (E.D.N.Y. Nov. 20, 2012).....	2
<i>In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.</i> , No. 1:05-md-01720, (E.D.N.Y. Jan. 10, 2014)	
<i>Sheppard v. Consol. Edison Co.</i> , No. 94-CV-0403(JG), 2002 WL 2003206 (E.D.N.Y. Aug. 1, 2002).....	5, 7
<i>Slipchenko v. Brunel Energy, Inc.</i> , No. CIV.A. H-11-1465, 2015 WL 338358 (S.D. Tex. Jan. 23, 2015)	1
<i>Warren v. Xerox Corp.</i> , No. 01-CV-2909, 2008 WL 4371367 (E.D.N.Y. Sept. 19, 2008).....	7

I. INTRODUCTION

After dutifully serving the interests of the Class for years, the Class Representatives deserve reasonable service awards for the significant effort they have expended and impressive results they have achieved for the Class. Class Counsel requests service awards of \$75,000 be awarded to each of the 9 Class Representatives who were deposed,¹ and \$65,000 to the 4 Class Representatives who were not deposed² (a total of \$935,000).³ The amount requested is reasonable in light of the more than 2,200 hours Class Representatives dedicated to this case, the risks Class Representatives took in serving as named plaintiffs in an action against Defendants from whom they directly purchase freight forwarding services necessary for their respective businesses, and the relatively modest size of the awards requested given the nearly \$400 million already recovered in settlements for the Class.⁴

¹ The Class Representatives who were deposed are: David Howell Product Design Inc. d/b/a David Howell & Company; JCK Industries, Inc.; Kraft Chemical Company; Mary Elle Fashions d/b/a Meridian Electric; NORMA Pennsylvania, Inc.; Precision Associates, Inc.; Printing Technology, Inc.; RBX Industries, Inc.; and Zeta Pharmaceuticals LLC.

² The Class Representatives who were not deposed are: Anything Goes LLC d/b/a Mailboxes Etc.; Inter-Global, Inc.; Innovation 714, Inc.; and Mika Overseas Corporation. In May 2015, Anything Goes LLC d/b/a Mailboxes Etc. and Inter-Global, Inc. were dismissed without prejudice. *See* Electronic Order dated May 29, 2015.

³ Courts often award Class Representatives varying awards based on their contributions to the litigation. *See In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5158730, at *17 (N.D. Cal. Sept. 2, 2015) (stating, “[i]mportantly, a court need not award all named plaintiffs the same incentive payment” and awarding one class representative \$120,000 and the other four representatives \$80,000 each); *In re Titanium Dioxide Antitrust Litig.*, No. 10-CV-00318 RDB, 2013 WL 6577029, at *1 (D.Md. Dec. 13, 2013) (awarding \$125,000 to one class representative and \$25,000 to the other two class representatives); *see also Slipchenko v. Brunel Energy, Inc.*, No. CIV.A. H-11-1465, 2015 WL 338358, at *15 (S.D. Tex. Jan. 23, 2015) (“Courts recognize that a differentiation among class representatives based upon the role that each played may be proper in given circumstances.” (brackets and internal quotation marks omitted)).

⁴ The amount of the settlements will continue to grow as several settling Defendants must pay some or all future proceeds they recover in *In re: Air Cargo Shipping Services Antitrust Litigation*, MDL No. 1775 (E.D.N.Y.) to the Class per their respective settlement agreements in this litigation.

II. THE CLASS REPRESENTATIVES DESERVE SERVICE AWARDS FOR THEIR VALUABLE CONTRIBUTION TO THIS LITIGATION

Courts routinely grant service awards to class representatives who dedicate their time and energy, often risking retaliation, in order to benefit the greater good of the Class they seek to represent. *See Denney v. Jenkins & Gilchrist*, 230 F.R.D. 317, 355 (S.D.N.Y. 2005), *aff'd in relevant part*, 443 F.3d 253 (2d Cir. 2006); *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-md-1775, 2015 WL 5918273, at *4 (E.D.N.Y. Oct. 9, 2015) (noting that service awards “are not uncommon and can serve an important function in promoting class action settlement.”) (internal quotations and citation omitted); *In re Lorazepam & Clorazepate Antitrust Litig.*, MDL No. 1290, 2003 WL 22037741, at *10 (D.D.C. June 16, 2003) (“[C]ourts routinely approve incentive awards to compensate named plaintiffs for the service they provided and the risk they incurred during the course of the class action litigation.”) (internal citation and quotation omitted). In granting service awards, courts in the Second Circuit consider several factors, including the time and effort expended by the class representatives in assisting the prosecution of the action or otherwise in adding value (e.g., factual expertise); burdens sustained by the class representatives in devoting themselves to the prosecution of the action; the existence of special circumstances, such as the risk to the plaintiffs’ ongoing businesses in becoming and continuing as litigants; and the ultimate recovery achieved for the Class. *See In re Air Cargo Shipping Servs. Antitrust Litig.*, 2015 WL 5918273, at *4 (quoting *Gulino v. Symbol Tech., Inc.*, No. 06-cv-2810, 2007 WL 3036890, at *2-3 (E.D.N.Y. Oct. 17, 2007)); *Massiah v. MetroPlus Health Plan, Inc.*, No. 11-cv-05669, 2012 WL 5874655, at *8 (E.D.N.Y. Nov. 20, 2012) (Cogan, J.). A review of these factors demonstrates that the Class Representatives deserve the service awards requested here.

A. The Class Representatives Expended Considerable Time and Energy Litigating this Case on Behalf of the Class

This litigation began almost nine years ago, with the original complaint filed on January 3, 2008.⁵ During this litigation, the Class Representatives spent significant time and energy on behalf of the Class prosecuting this action to a successful conclusion with settlement payments totaling over \$399 million thus far. The Class Representatives undertook this work without any expectation of compensation beyond their fair share as a class member of any award or settlement reached as a result of their actions.⁶ Each Class Representative expended substantial

⁵ Class representatives Anything Goes LLC d/b/a Mailboxes Etc. and Precision Associates, Inc. were included on the original complaint (ECF No. 1); JCK Industries, Inc. was added to the First Amended Class Action Complaint filed in July 2009 (ECF No. 117); and the remainder of the Class Representatives were added to the Third Amended Class Action Complaint filed in November 2012 (ECF No. 677). Because discovery did not begin in earnest until years into this litigation, those Class Representatives added in the amended complaints and who were deposed were subject to the full battery of discovery, the same as the initial class representatives.

⁶ See Declaration of Ben Spielman in Support of Class Counsel's Motion for Approval of Service Awards to Class Representatives, sworn Aug. 10, 2016, ¶¶ 9-10 ("Anything Goes Dec."); Declaration of David Howell in Support of Class Counsel's Motion for Approval of Service Awards to Class Representatives, sworn July 28, 2016, ¶¶ 4-5 ("David Howell Dec."); Declaration of Takanori Aida in Support of Class Counsel's Motion for Approval of Service Awards to Class Representatives, sworn Aug. 23, 2016, ¶¶ 10-11 ("Innovation Dec."); Declaration of Larry Glazer in Support of Class Counsel's Motion for Approval of Service Awards to Class Representatives, sworn Aug. 22, 2016, ¶¶ 4-5 ("Inter-Global Dec."); Declaration of JCK Industries, Inc. in Support of Motion for Approval of Service Awards to Class Representatives, sworn Aug. 4, 2016, ¶¶ 4-5 ("JCK Dec."); Declaration of Kraft Chemical Company in Support of Motion for Approval of Service Awards to Class Representatives, sworn Aug. 19, 2016, ¶¶ 4-5 ("Kraft Chemical Dec."); Declaration of Mary Elle Fashions, Inc. in Support of Class Counsel's Motion for Approval of Service Awards to Class Representatives, sworn Aug. 12, 2016, ¶¶ 4-5 ("Mary Elle Dec."); Declaration of Michiharu Aida in Support of Support of Class Counsel's Motion for Approval of Service Awards to Class Representatives, sworn Aug. 23, 2016, ¶¶ 10-11 ("Mika Overseas Dec."); Declaration of Clawson "Chip" Cannon in Support of Class Counsel's Motion for Approval of Service Awards to Class Representatives, sworn Aug. 18, 2016, ¶¶ 4-5 ("NORMA Dec."); Declaration of Paul Kadue of Precision Associates, Inc. in Support of Motion for Approval of Service Awards to Class Representatives, sworn Aug. 21, 2016, ¶ 17 ("Precision Dec."); Declaration of Class Representative Printing Technology, Inc. and Jim Liskay in Support of Class Counsel's Motion for Approval of Service Awards to Class Representatives, sworn Aug. 24, 2016, ¶¶ 4-5 ("PTI Dec."); Declaration of RBX Industries, Inc. in Support of Class Counsel's Motion for Approval

time and effort toward the successful prosecution of this litigation, including by: (1) regularly consulting with Class Counsel over the course of several years in order to assist in the prosecution of the litigation and generally stay abreast of its status; (2) assisting in the preparation of its respective complaints and other pleadings over the course of the litigation; (3) analyzing, gathering, and producing voluminous information in order to respond to 166 document requests and 22 interrogatories from Defendants; (4) preparing for and testifying in a deposition on twelve broad topics requiring extensive, time consuming preparation and, in many instances, significant travel time from the Class Representative's home and business in another state to New York City or Washington, D.C.;⁷ and (5) consulting with Class Counsel regarding each of the 31 settlements and all of the other major litigation points of inflection.⁸

The Class Representatives combined spent more than 1,000 hours responding to Defendants' interrogatories and identifying and gathering electronic and physical documents responsive to Defendants' 166 documents requests, producing approximately 240,668 pages of documents to Defendants.⁹ In addition, Class Representatives spent more than 290 hours traveling to and from, preparing for, testifying at their respective depositions, and ultimately

of Service Awards to Class Representatives, sworn Aug. 8, 2016, ¶¶ 4-5 ("RBX Dec."); Declaration of Zeta Pharmaceuticals LLC in Support of Class Counsel's Motion for Approval of Service Awards to Class Representatives, sworn Aug. 5, 2016, ¶¶ 4-5 ("Zeta Dec.").

⁷ Class Representatives Anything Goes LLC d/b/a Mailboxes Etc.; Inter-Global, Inc.; Innovation 714, Inc.; and Mika Overseas Corporation participated in all other discovery, but were not deposed.

⁸ See generally Anything Goes Dec.; David Howell Dec.; Innovation Dec.; Inter-Global Dec.; JCK Dec.; Kraft Chemical Dec.; Mary Elle Dec.; Mika Overseas Dec.; NORMA Dec.; Precision Dec.; PTI Dec.; RBX Dec.; and Zeta Dec.

⁹ See Anything Goes Dec., ¶ 6; David Howell Dec., ¶¶ 10-12; Innovation Dec., ¶ 6; Inter-Global Dec., ¶¶ 10-11; JCK Dec., ¶¶ 10-11; Kraft Chemical Dec., ¶¶ 10-11; Mary Elle Dec., ¶¶ 10-11; Mika Overseas Dec., ¶ 6; NORMA Dec., ¶¶ 16-29; Precision Dec., ¶¶ 9-10; PTI Dec., ¶¶ 10-11; RBX Dec., ¶¶ 10-11; and Zeta Dec., ¶ 10.

reviewing their deposition transcripts.¹⁰ Because of the extensive list of topics noticed for these depositions, Class Representatives often needed to designate very senior level personnel to testify at these depositions who, in many instances, needed to consult with numerous employees in order to prepare.¹¹

Each of the Class Representatives dedicated significant time and resources to this litigation, often at the expense of their daily business needs. In total, Class Representatives dedicated more than 2,200 hours to this litigation.¹² The effort put into this litigation by the Class Representatives exceeded what was necessary to meet their fiduciary duty to the Class and warrants a reasonable service award. *See In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 BMC JO, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012) (Cogan, J.) (granting incentive awards of \$50,000 and recognizing the class representatives’ “substantial efforts” including “responding to discovery requests, including collectively producing over 10,000 pages of documents, sitting for depositions, and agreeing to appear at trial.”); *Sheppard v. Consol. Edison Co.*, No. 94-CV-0403(JG), 2002 WL 2003206, at *6 (E.D.N.Y. Aug. 1, 2002) (Gleeson, J.) (*Sheppard II*) (noting that the “time, effort, and invaluable consultative assistance [class representatives] provided,” among other things, are “reasons [to] support an award of incentive payments.”). Moreover, the service awards requested compensate for the out-of-pocket expenses and hardships incurred by

¹⁰ *See* David Howell Dec., ¶¶ 13-15; JCK Dec., ¶¶ 14-15; Kraft Chemical Dec., ¶ 15; Mary Elle Dec., ¶¶ 14-15; NORMA Dec., ¶ 14; Precision Dec., ¶ 13; PTI Dec., ¶ 15; RBX Dec., ¶¶ 14-15; and Zeta Dec., ¶ 13.

¹¹ *See* David Howell Dec., ¶¶ 6, 12-16; JCK Dec., ¶ 13; Kraft Chemical Dec., ¶¶ 6, 13-15; Mary Elle Dec., ¶¶ 12-13; NORMA Dec., ¶¶ 1, 13-16; Precision Dec., ¶¶ 10-11; PTI Dec., ¶¶ 13-15; RBX Dec., ¶¶ 7, 12-13; and Zeta Dec., ¶¶ 11-12.

¹² *See* Anything Goes Dec., ¶ 6; David Howell Dec., ¶ 16; Innovation Dec., ¶ 9; Inter-Global Dec., ¶ 12; JCK Dec., ¶ 16; Kraft Chemical Dec., ¶ 16; Mary Elle Dec., ¶ 16; Mika Overseas Dec., ¶ 9; NORMA Dec., ¶ 16; Precision Dec., ¶ 14; PTI Dec., ¶¶ 10-11, 15; RBX Dec., ¶ 16; and Zeta Dec., ¶ 14.

the Class Representatives, but are not so great as to constitute special compensation in light of the time and effort incurred by the Class Representatives. *See In re Air Cargo Shipping Servs. Antitrust Litig.*, 2015 WL 5918273, at *5.

B. The Class Representatives, Direct Purchasers from Defendants, Risked Retaliation by Pursuing this Litigation

The Class Representatives each relied on one of more Defendants to ship goods for their respective businesses, and those shipments were critical to the ongoing viability of each one's business. The losses they could have suffered from retaliation for suing Defendants potentially could have far exceeded what they hoped to recover as a claimant in this case. Nevertheless and notwithstanding the very real risk of material and damaging retaliation, the Class Representatives willingly put themselves forth as the named plaintiffs representing thousands of putative class members. Not only did Class Representatives agree to file a complaint in federal court against freight forwarders with whom many had current business relationships, they also filed a case against 64 freight forwarding defendants—who together constituted a significant portion of the freight forwarding market that Class Representatives relied upon to run their businesses. As this Court has recognized, a “class representative lends his or her name and efforts to the prosecution of litigation at some personal peril.” *Sheppard II*, 2002 WL 2003206, at *5. The risk that antitrust plaintiffs, like the Class Representatives here, face in suing businesses they directly deal with is well-recognized. *See, e.g., In re Air Cargo Shipping Servs. Antitrust Litig.*, 2015 WL 5918273, at *5 (approving awards to class representatives who, among other substantial burdens, “put their businesses in risk of potential retaliation by . . . suppliers.”); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, No. 1:05-md-01720, ECF No. 6169, at 16 (E.D.N.Y. Jan. 10, 2014) (Gleeson, J.) (recognizing the “risks that the named plaintiffs may have undertaken” to bring an antitrust case); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739,

751 (E.D. Pa. 2013) (finding that “class representatives launched this litigation despite the risk of retaliation inherent in suing a supplier,” and that “[t]his risk should be recognized.”). The risk of retaliation the Class Representatives took in order to prosecute this action supports the service awards requested.

III. THE PROPOSED SERVICE AWARDS ARE REASONABLE IN LIGHT OF THE RECOVERY ACHIEVED FOR THE CLASS

As discussed in detail above, the Class Representatives expended considerable time and effort in the face of potential retaliation in order to prosecute this action on behalf of a Class of tens of thousands of businesses and individuals. The Class Representatives could have sat back and let someone else take on the task of prosecuting Defendants for their antitrust violations, but chose to take action—not only on their own behalf, but in order to recoup unlawful overcharges for all Class members and restore competition to the freight forwarding industry. Each Class Representative undertook this responsibility and work without any expectation of compensation beyond their proportional share as a class member of any judgment or settlement. They were always informed by Class Counsel that the Court alone would decide what, if any, service award they were entitled to for their efforts.¹³

¹³ *E.g.*, Precision Dec., ¶ 17, Anything Goes Dec., ¶¶ 9-10; David Howell Dec., ¶¶ 4-5; Innovation Dec., ¶¶ 10-11; Inter-Global Dec., ¶¶ 4-5; JCK Dec., ¶¶ 4-5; Kraft Chemical Dec., ¶¶ 4-5; Mary Elle Dec., ¶¶ 4-5; Mika Overseas Dec., ¶¶ 10-11; NORMA Dec., ¶¶ 4-5; PTI Dec., ¶¶ 4-5; RBX Dec., ¶¶ 4-5; and Zeta Dec., ¶¶ 4-5. Importantly, Class Representatives were not aware of the amount of service awards Class Counsel would seek on their behalf until after *all* settlements in this action had been reached and presented to the Court, and therefore were not (and could not) have been tempted to approve suboptimal settlements in order to receive service awards. *See Warren v. Xerox Corp.*, No. 01-CV-2909, 2008 WL 4371367, at *6 (E.D.N.Y. Sept. 19, 2008) (Gleeson, J.) (“[T]he size of any incentive award must be carefully monitored to ensure that named plaintiffs have not accepted a suboptimal settlement of absent Class members’ claims in exchange for their own special payment.”).

Class Representatives' significant efforts were not for naught – they successfully prosecuted this action leading to settlement payments totaling over \$399,118,252.68.¹⁴ The service awards requested here are modest in comparison to the results achieved for the Class, with the total service awards of \$935,000 representing less than a quarter of a percent (0.23%) of the total recovery, “so there is no serious concern that the payments will dwarf the average monetary award per class member.” *In re Air Cargo Shipping Servs. Antitrust Litig.*, 2015 WL 5918273, at *6 (approving service awards that constituted 0.06% of total settlement pot at time of award). Although the proposed awards to each Class member are still being finalized, the service awards requested here pale in comparison to the awards that will be received by the largest Class members --- despite the fact that it was the Class Representatives that took the risk and expended considerable time and resources on this case for the benefit of all Class members. Moreover, the Court-approved notice informed the Class that service awards of up to \$75,000 each would be requested and, to date, not a single objection to the service awards has been received.¹⁵ Finally, the service awards requested here are consistent with those given in comparable litigation. *See, e.g., In re Air Cargo Shipping Servs. Antitrust Litig.*, 2015 WL 5918273, at *5 (approving award of \$90,000 for each class representative); *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11 (approving awards of \$50,000 each for class representatives); *Brady v. Air Line Pilots Ass'n.*, 627 F. App'x 142, 144, 146 (3d Cir. 2015)

¹⁴ Final approval has already been granted with respect to all but two of these settlements. A final fairness hearing on Plaintiffs' settlements with DHL and Hellmann will be held on November 4, 2016. Furthermore, as discussed *infra*, the value of many of the settlements reached in this litigation will continue to grow with the receipt of additional *Air Cargo* proceeds recovered by the settling Defendants.

¹⁵ Under the Court-approved notice to the Class, the deadline to comment on or object to this motion is September 20, 2016. If any objections are received after this motion is filed and before the deadline, Class Counsel will address them at or prior to the Court's November 4, 2016 hearing of this motion.

(affirming allocation of \$640,000 to 12 class representative out of a \$53 million settlement); *In re High-Tech Emp. Antitrust Litig.*, No. 11-cv-02509, 2015 WL 5158730, at *17 (N.D. Cal. 2015) (awarding one class representative \$120,000 and four other class representatives \$80,000 each); *In re Titanium Dioxide Antitrust Litig.*, No. 10-cv-00318, 2013 WL 6577029, at *1 (D. Md. 2013) (awarding the lead class representative a service award of \$125,000 and two others \$25,000 each); *Marchbanks Truck Serv. v. Comdata Network, Inc.*, Case No. 07-CV-1078, Dkt. 713 at 2, 8 (E.D. Pa. July 14, 2014) (approving \$130 million class action settlement, including service awards of \$150,000 to one class representative, awards of \$75,000 to two class representatives, and an award of \$15,000 to one class representative).

IV. CONCLUSION

For the above reasons, Class Counsel respectfully request the Court grant incentive awards of \$75,000 to Class Representatives David Howell Product Design Inc. d/b/a David Howell & Company; JCK Industries, Inc.; Kraft Chemical Company; Mary Elle Fashions d/b/a Meridian Electric; NORMA Pennsylvania, Inc.; Precision Associates, Inc.; Printing Technology, Inc.; RBX Industries, Inc.; and Zeta Pharmaceuticals LLC, and \$65,000 to Anything Goes LLC d/b/a Mailboxes Etc.; Inter-Global, Inc.; Innovation 714, Inc.; and Mika Overseas Corporation.

Dated: September 1, 2016

Respectfully submitted,

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