BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: WAN HE, L.AC. 4415 Norwalk Drive, Unit 21 San Jose, CA 95129 Acupuncturist License No. AC 11443 Respondent.	Case No. 1A-2013-210

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 17, 2016.

It is so ORDERED September 16, 2016.

Hildegarde Aguinaldo, Board President
Acupuncture Board
Department of Consumer Affairs
State of California

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Attorney General of California
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BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **WAN HE, L.AC.** 4415 Norwalk Drive, Unit 21 San Jose, CA 95129 **Acupuncturist License No. AC 11443** Respondent.	Case No. 1A-2013-210 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Benjamin Bodea ("Complainant") is the Acting Executive Officer of the Acupuncture Board. He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Emily L. Brinkman, Deputy Attorney General.

2. Respondent Wan He, L.Ac. ("Respondent") is represented in this proceeding by attorney Joseph W. Rose, whose address is: Rose Law APC, 11335 Gold Express Drive, Suite 135, Gold River, CA 95670.

3. On or about October 26, 2006, the Acupuncture Board issued Acupuncturist License No. AC 11443 to Wan He, L.Ac. (Respondent). The Acupuncturist License was in full force and

effect at all times relevant to the charges brought in Accusation No. 1A-2013-210 and will expire on November 30, 2016, unless renewed.

JURISDICTION

4. Accusation No. 1A-2013-210 was filed before the Acupuncture Board (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 9, 2015. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 1A-2013-210 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1A-2013-210. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to Counts One and Two contained in Accusation No. 1A-2013-210 and that she has thereby subjected her Acupuncturist License No. AC 11443 to disciplinary action.

10. Respondent agrees that if she ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against her before the Board, all of the charges and allegations contained in Accusation No. 1A-2013-210 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Acupuncture Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceedings.

CONTINGENCY

12. This stipulation shall be subject to approval by the Acupuncture Board. Respondent understands and agrees that counsel for Complainant and the staff of the Acupuncture Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Acupuncturist License No. AC 11443 issued to

Respondent Wan He, L.Ac. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. REIMBURSEMENT FOR PROBATION SURVEILLANCE MONITORING Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period.

2. COURSEWORK Respondent shall take and successfully complete not less than 10 hours of coursework in each area: practice management, risk management and insurance issues, and ethics. The coursework shall be taken as approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all coursework must be completed within the first three (3) years of probation. The required coursework must be in addition to any continuing education courses that may be required for license renewal. Within ninety (90) days of the effective date of the Decision, Respondent shall submit a plan for the Board's prior approval for meeting the educational requirement. All costs of the coursework shall be borne by the Respondent.

Within 90 days of the effective date of this decision, Respondent shall submit a plan for the Board's prior approval for meeting the educational requirements. All costs of the coursework shall be borne by the Respondent.

3. NOTIFICATION SYSTEM FOR PATIENT POPULATION Respondent shall install and maintain in working condition a notification device or system which enables patients to alert her while she is out of the treatment room.

4. OBEY ALL LAWS Respondent shall obey all federal, state and local laws and all regulations governing the practice of acupuncture in California. A full and detailed account of any and all violations of law shall be reported by the Respondent to the BOARD in writing within seventy-two (72) hours of occurrence.

5. QUARTERLY REPORTS Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

6. SURVEILLANCE PROGRAM Respondent shall comply with the Board's probation

surveillance program and shall, upon reasonable notice, report to the assigned investigative district office. Respondent shall contact the assigned probation surveillance monitor regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with 1) victims or complainants associated with the case; 2) Board members or members of its staff; or 3) persons serving the Board as expert examiners.

7. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

8. CHANGES OF EMPLOYMENT Respondent shall notify the Board in writing, through the assigned probation surveillance compliance officer of any and all changes of employment, location and address within 30 days of such change.

9. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE In the event Respondent should leave California to reside or to practice outside the State, Respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

10. EMPLOYMENT AND SUPERVISION OF TRAINEES Respondent shall not employ or supervise or apply to employ or supervise acupuncture trainees during the course of this probation. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this probation.

11. COST RECOVERY Respondent shall pay to the Board its costs of investigation and enforcement in the amount of $13,000.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than six months prior to the end of the probation term. Cost recovery will not be tolled. Respondent understands that failure to timely pay costs is a violation of probation, and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that providing evidence and supporting documentation of financial hardship may delay further disciplinary action. Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is

established from the date of this order to the date payment(s) is due.

12. VIOLATION OF PROBATION If Respondent violates probation in any respect, the Board may, after giving Respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against Respondent.

13. COMPLETION OF PROBATION Upon successful completion of probation, Respondent's license will be fully restored.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Joseph W. Rose. I understand the stipulation and the effect it will have on my Acupuncturist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Acupuncture Board.

DATED: 07/27/2016

WAN HE, L.AC.
Respondent

I have read and fully discussed with Respondent Wan He, L.Ac. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: July 27, 2016

Joseph W. Rose
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Acupuncture Board.

Dated: July 29, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General

EMILY L. BRINKMAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1A-2013-210

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Attorneys for Complainant

FILED
DEC 9 2015
ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **WAN HE** 4415 Norwalk Drive, Unit 21 San Jose, CA 95129 **Acupuncturist License No. AC 11443** Respondent.	Case No. 1A-2013-210 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Terri Thorfinnson (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

2. On or about October 26, 2006, the Acupuncture Board issued Acupuncturist License Number AC 11443 to Wan He (Respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2016, unless renewed.

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JURISDICTION

3. This First Amended Accusation is brought before the Acupuncture Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4955 of the Code states, in relevant part:

"The board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct.

"Unprofessional conduct shall include, but not be limited to, the following:

"(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation of the terms of this chapter or any regulation adopted by the Board pursuant to this chapter.

"(i) Any action or conduct that would have warranted the denial of the acupuncture license.

"(l) The failure to notify the board of the use of any false, assumed, or fictitious name than the name under which he or she is licensed as an individual to practice acupuncture."

5. Section 4955.1 of the Code states:

"The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be limited to, any of the following:

"(a) Securing a license by fraud or deceit.

"(b) Committing a fraudulent or dishonest act as an acupuncturist.

"(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist.

"(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.

"(e) Failing to maintain adequate and accurate records relating to the provision of services to their patients."

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6. Section 4955.2 of the Code states:

"The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing any one of the following: (a) Gross negligence; (b) Repeated negligent acts; (c) Incompetence."

7. California Code of Regulations, title 16, section 1399.453 states:

"An acupuncturist shall keep complete and accurate records on each patient who is given acupuncture treatment, including, but not limited to, treatments given and progress made as a result of the acupuncture treatments."

COST RECOVERY

8. Section 4959 of the Code states:

"(a) The board may request the administrative law judge, under his or her proposed decision in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed actual and reasonable costs of the investigation and prosecution of the case.

"(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.

"(c) When the payment directed in the board's order for payment of costs is not made by the licensee, the board may enforce the order for payment in the superior court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

"(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

"(e) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the Acupuncture Fund."

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct, Failure to Notify the Board of the Use of a Fictitious Name)

9. Respondent is subject to disciplinary action under sections 4955 [unprofessional conduct] and/or 4955(l) [failure to notify the Board of the use of a fictitious name]. The circumstances are as follows:

10. Respondent is licensed under the name Wan He; however, she owns Dr. Helen He Acupuncture Clinic and is known as Dr. Helen He. Respondent is not licensed by the Board under the name Dr. Helen He. Respondent's medical records also use the web address: www.drhelenhe.com.

11. Respondent committed unprofessional conduct and/or failure to notify the Board of the use of a fictitious name based on the use of Dr. Helen He, rather than the name she is licensed by, Wen He.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct based on the care provided to Patient JB)

12. Respondent is subject to disciplinary action under sections 4955 [unprofessional conduct] and/or 4955.2, subdivision (b) [repeated negligent acts] in the care provided to Patient JB, incorporating paragraphs 9 through 11, as if fully set forth below.[1] The circumstances are as follows:

13. In early September 2013, JB called Respondent's clinic to inquire whether Respondent was an in-network provider for United Healthcare. JB was told that Respondent was in-network. JB scheduled an appointment for September 11, 2013 from 6 to 7 p.m. Before the appointment, Patient JB completed paperwork, including a patient information sheet, insurance verification form, and a financial policy statement.

14. On or about September 11, 2013, Patient JB went to Respondent's acupuncture office for treatment. JB's chief complaint and reason for seeking treatment was for stress and irritable bowel syndrome. At this first visit, Respondent told JB that she was not in-network and required

[1] Patient initials are used to protect the patient's privacy. Respondent may learn the name of the patient during the discovery process.

her to pay for the treatment at the beginning of the visit. Patient JB paid $165.00 for the acupuncture treatment ($150) and herbs ($15). The patient made a second appointment for September 14, 2013 (a Saturday) at 10:30 a.m. The patient asked that Respondent not bill her insurance since the acupuncture clinic was not in-network. During this first appointment, JB observed a verbal altercation between the Respondent's receptionist, AW, and a patient complaining about his bill.[2]

15. On or about Saturday September 14, 2013, JB returned to Respondent's clinic for follow-up treatment. According to Patient JB, the office was so busy that she waited for almost one hour after her scheduled appointment to be taken to a treatment room. JB also stated that the Respondent told her to pay $315 before the appointment because she was not an in-network provider. Patient JB told Respondent she could not afford that and Respondent offered her $50 treatments. There is no written agreement documenting the $50 treatments offered by Respondent. JB did not pay for any services on September 14, 2013.

16. In the treatment room, Respondent placed the needles and then left the patient in the room. The patient states that she was left alone in the room for so long (approximately two hours) that the lights automatically went off. At that point, the patient had to get off of the treatment table, half-dressed, and yell for the doctor. The receptionist, AW, came into the room, apologized, and removed the needles from the patient. JB said that AW told her she would not be charged for the visit. Patient JB scheduled a third appointment for September 18, 2013.

17. During an interview on November 18, 2014 with an investigator for the Department of Consumer Affairs on behalf of the Board, Respondent admitted that her receptionist, AW,[3] removed the patient's needles without Respondent's permission. Respondent could not explain how or why AW would have believed it was acceptable to remove the needles herself. Respondent hired AW from a Craigslist ad and she employed AW for approximately one month. Respondent denied that the patient waited two hours between checks with needles inserted.

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[2] According to AW, her boyfriend came to the office and the two of them got into a fight in front of JB. Respondent asked AW and her boyfriend to leave the office.

[3] During the interview, Respondent only remembered AW's first name; however, sometime later, Respondent was able to locate AW's full name and address.

Respondent did not terminate AW from her employment or discipline after learning that she removed the needles from Patient JB. According to Respondent, AW asked for an advance on her paycheck, which she agreed to, and then AW never returned to work.

18. On or about September 18, 2013, Patient JB called Respondent's office and rescheduled her appointment for September 25, 2013.

19. On or about September 25, 2013, Patient JB was a no-show for her appointment with Respondent. JB never returned to Respondent's clinic.

20. Respondent committed unprofessional conduct, and/or repeated negligent acts, based on the failure of providing adequate patient monitoring to a patient undergoing acupuncture treatment, failing to remove the needles personally from the patient, and not being physically present to complete the patient's acupuncture treatment.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct, Aiding and Abetting the Unlicensed Practice of Acupuncture)

21. Respondent is subject to disciplinary action under sections 4955 [unprofessional conduct], and/or 4955, subdivision (d) [aiding and abetting the unlicensed practice], and/or 4955.2, subdivision (b) [repeated negligent acts] based on allowing an unlicensed person to remove acupuncture needles from a patient, incorporating paragraphs 9 through 20 as if fully set forth below. The circumstances are as follows:

22. Respondent hired AW as a receptionist and she worked for Respondent in that capacity from August 28, 2013 to October 1, 2013. AW is not a licensed acupuncturist and has no formal acupuncture training. As part of AW's duties, she was required to check on patients when treatment timers went off and then notify Respondent. Respondent's office contained seven treatment beds in five treatment rooms. When AW first began working for Respondent, Respondent showed her how to remove acupuncture needles from patients and to apply cotton balls to the needle site areas to limit blood flow. AW did not know whether a timer going off meant the treatment was over or not so she notified Respondent. Respondent would then tell AW to remove the needles from the patients because she was usually with another patient. AW never removed acupuncture needles without first telling Respondent. AW placed the used needles in

the red bio-hazard bin as instructed by Respondent. AW estimated that she removed more than 200 needles from patients under the instruction of Respondent.

23. Respondent committed unprofessional conduct, and/or repeated negligent acts, and/or aided and abetted in the unlicensed practice of acupuncture based on allowing an unlicensed person to remove acupuncture needles from a patient.

FOURTH CAUSE FOR DISCIPLINE

(Fraudulent Billing)

24. Respondent is subject to disciplinary action under sections 4955 [unprofessional conduct] and/or 4955.2, subdivision (b) [repeated negligent acts], and/or 4955.1, subdivision (b) [fraud/dishonesty] in the care provided to Patient JB, incorporating paragraphs 9 through 23, as if fully set forth below. The circumstances are as follows:

25. On or about September 11, 2013, Patient JB paid $165 for her Respondent's services, which included $150 for the examination and $15 for herbs.

26. On or about September 28, 2013, Respondent billed Patient JB's insurance $680.00 based on services provided on September 11 and 14, 2013. Respondent billed $200 for an initial examination and two $90 charges for the acupuncture treatments for the September 11th visit. Respondent billed $120 for a normal examination and two $90 charges for the acupuncture treatments for the September 14th visit. Respondent did not inform the insurance company that the second treatment was not completed by Respondent and that it was not a normal visit, despite billing it as a normal visit. Respondent did not inform the insurance company that she did not personally complete the acupuncture treatment of Patient JB either.

27. On or about October 24, 2013, Patient JB's insurance company sent a reimbursement check for $315 to JB. Patient JB never sent the check to Respondent for payment for services.

28. In an undated letter to Patient JB's health insurance company, Respondent cancelled the insurance claim submitted for services on September 11 and 14, 2013.

29. On or about December 13, 2013, Patient JB wrote check number 1178 in the amount of $315 to Respondent for payment for services on September 11 and 14, 2013.

30. On or about August 12, 2014, Respondent hired a collection company to seek payment of $315 from Patient JB.

31. Respondent trained AW, as part of her duties as a receptionist, to bill insurance and patients for the care she provided. AW had no background in medical billing. AW learned from Respondent and another employee who left shortly after AW started how to handle the insurance billings. If a patient was paying out of pocket, they were charged between $90 to $110 per visit for a 30 minute treatment session. If the patient had insurance, Respondent told AW what Current Procedural Terminology (CPT) codes to use and how to bill the insurance company.

32. Respondent told AW to bill the insurance company regardless of what money was received from or billed to the patient. For example, if the patient received one 30 minute acupuncture treatment, Respondent had AW bill the insurance company for two fifteen minute treatments using separate CPT codes. Respondent also instructed AW to bill insurance companies for using different treatment tools, such as a heat lamp, electric stimulation, or therapeutic exercises. Additionally, Respondent instructed AW to bill insurance companies for the full cost of the treatment even when the patient pre-paid a reduced treatment fee based on a Groupon or Living Social discount or for providing a positive Yelp.com review.[4]

33. Respondent committed unprofessional conduct, and/or repeated negligent acts, and/or dishonesty based on billing JB's insurance company for a completed treatment on September 14, 2013, when, in fact, she did not complete the treatment since the receptionist removed the needles from the patient.

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[4] Respondent offered her patient's $25 off of their next treatment if they wrote a positive review of her practice on Yelp.com.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Acupuncture Board issue a decision:

1. Revoking or suspending Acupuncturist License Number AC 11443, issued to Wan He;

2. Ordering Wan He to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959;

3. Taking such other and further action as deemed necessary and proper.

DATED: DEC 09 2015

TERRI THORFINNSON
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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