

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
KAREN BENNETT, SUSANA LOPEZ LIRA, and  
DEBORAH PAULIN, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

NEW YORK CITY HOUSING AUTHORITY and  
TINO HERNANDEZ, in his capacity as Chairperson  
of the New York City Housing Authority; the  
UNITED STATES DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT, and MEL MARTINEZ,  
in his capacity as Secretary of Housing and Urban  
Development,

Defendants.

CLASS ACTION COMPLAINT

-----X  
PRELIMINARY STATEMENT

1. This is a class action for injunctive and declaratory relief on behalf of persons with mobility impairments who have been granted vouchers from the Section 8 Housing Choice Voucher Program administered by the New York City Housing Authority. Plaintiffs allege that defendants have violated their rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. ("Section 504"); 24 C.F.R. Part 8; Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq. ("the ADA"); 28 C.F.R. Part 35; and the Fair Housing Act, 42 U.S.C. § 3601 et seq. ("FHA"), by failing or refusing to assist them in finding housing so that they can make use of their housing vouchers.

### JURISDICTION AND VENUE

2. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 for civil actions arising under the laws of the United States; 28 U.S.C. § 1343 for actions under laws providing for the protection of civil rights; and the Administrative Procedure Act, 5 U.S.C. § 701 et seq.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) because two of the named plaintiffs reside in this district.

### PARTIES

4. Plaintiff KAREN BENNETT is a person with disabilities who has been granted a Section 8 voucher and needs assistance in locating appropriate, accessible housing. She currently resides in Brooklyn, New York, but faces imminent eviction.

5. Plaintiff SUSANA LOPEZ LIRA is a person with disabilities who has been granted a Section 8 voucher and needs assistance in locating appropriate, accessible housing. She currently resides in Brooklyn, New York, but in an apartment which is not accessible and in which her tenancy is not stable.

6. Plaintiff DEBORAH PAULIN is a person with disabilities who has been granted a Section 8 voucher and needs assistance in locating appropriate, accessible housing. She currently lives in a shelter in Manhattan.

7. Defendant NEW YORK CITY HOUSING AUTHORITY ("NYCHA") is the public housing agency in the City of New York and is responsible for administering the Section 8 tenant-based Housing Choice Voucher Program as well as for managing public housing in all

boroughs of the City.

8. Defendant TINO HERNANDEZ is the Chairperson of NYCHA and as such is responsible for the administration of all of NYCHA's programs. He is being sued in his official capacity. Collectively, NYCHA and Hernandez will be referred to as "NYCHA defendants."

9. Defendant UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD") is the federal executive agency responsible for the administration of the Section 8 Housing Choice Voucher Program and the public housing program.

10. Defendant MEL MARTINEZ is the Secretary of HUD and as such is responsible for the administration of all of HUD's programs. He is being sued in his official capacity. Collectively, HUD and Martinez will be referred to as "HUD defendants."

#### CLASS ACTION ALLEGATIONS

11. The named plaintiffs, KAREN BENNETT, SUSANA LOPEZ LIRA, and DEBORAH PAULIN, bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and as representatives of all individuals with mobility impairments who are or will be holders of Section 8 Housing Choice Voucher Program vouchers through NYCHA.

12. The class is so numerous that joinder of all members is impracticable.

13. There are questions of law and fact common to the class which predominate over any questions affecting only the individual plaintiffs, including, but not limited to whether the defendants are violating plaintiffs' rights under Section 504 and the ADA and their implementing regulations by failing to provide assistance in locating apartments when necessary, and to notify

them of their right to such assistance.

14. The claims of the individual named plaintiffs are typical of the claims of all class members.

15. The representative plaintiffs will fairly and adequately protect the interests of all members of the class, because they each have the requisite personal interest in the outcome of this case, they have no interest antagonistic to others in the class, and they are represented by the New York Legal Assistance Group, counsel experienced in class action litigation generally, and specifically in litigation involving the rights of people with disabilities.

16. The prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications with respect to the practices at issue in this action. Separate actions would, as a practical matter, be dispositive of the interests of other members of the class and would substantially impair or impede their ability to protect their own interests.

17. The defendants have acted and will act on grounds generally applicable to each member of the plaintiff class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole. A class action is superior to other methods for the fair and efficient adjudication of this controversy.

#### STATUTORY AND REGULATORY SCHEME

18. The Section 8 program is intended to provide "decent, safe, and sanitary dwellings for families of lower income." 42 U.S.C. § 1437.

19. The Section 8 program is administered by HUD, through local public housing

authorities ("PHAs"). 42 U.S.C. § 1437(f). HUD has promulgated regulations governing the Section 8 program, codified at 24 C.F.R. Part 982.

20. When an individual is found eligible for the Section 8 program, he or she is given a "voucher" and is supposed to find an apartment in the private housing market with a landlord who is willing to sign a contract with the PHA, pursuant to which the PHA pays a portion of the rent. 24 C.F.R. § 982.1(b)(2).

21. Section 504 states that "no otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a).

22. A program or activity receiving federal financial assistance is prohibited from denying a qualified handicapped person "the opportunity accorded others to participate in the program" and "an equal opportunity to achieve the same benefits that others achieve in the program." 28 C.F.R. § 42.503(b)(i) & (ii).

23. The ADA states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

24. A "public entity" is "any department, agency,...or other instrumentality of a State or States or local government." 42 U.S.C. § 12131.

25. Federal regulations require that public entities must "make available to...beneficiaries, and other interested persons information regarding the...protections against

discrimination assured them by the Act and this part.” 28 C.F.R. § 35.106.

26. “A public entity, in providing any aid, benefit, or service, may not,...on the basis of the disability, [d]eny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service.” 28 C.F.R. § 35.130(b)(1)(i).

27. HUD has promulgated federal regulations implementing Section 504 as it applies to the administration of the Section 8 program. 24 C.F.R. Part 8.

28. The federal regulations mandate that “[w]hen issuing a...Housing Voucher to a family which includes an individual with handicaps,” the PHA must “include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit.” 24 C.F.R. § 8.28(a)(3).

29. The regulations further require that PHAs, in their activities to encourage participation by landlords, “include encouragement of participation by owners having accessible units.” 24 C.F.R. § 8.28(a)(2).

30. PHAs must “[t]ake into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with handicaps for extensions of...Housing Vouchers; and...[i]f necessary as a reasonable accommodation for a person with disabilities, approve a family request for an exception rent under § 982.504(b)(2) for a regular tenancy under the Section 8 certificate program so that the program is readily accessible to and usable by persons with disabilities.” 24 C.F.R. § 8.28(a)(4) & (5).

31. The initial term of a Section 8 voucher is 60 days, and PHAs may grant extensions at their discretion. 24 C.F.R. § 982.303. But the regulations mandate that “[i]f the family needs and requests an extension of the initial voucher term as a reasonable accommodation, in

accordance with part 8 of this title, to make the program accessible to a family member who is a person with disabilities, the PHA must extend the voucher up to the term reasonably required for that purpose.” 24 C.F.R. § 982.303(b)(2).

32. The general regulations controlling the Section 8 program govern the waiting lists for both the tenant-based Section 8 program and the public housing programs also administered by PHAs. PHAs may merge the waiting lists for these different programs, at their own discretion. If they do not choose to merge the lists, if the waiting list for tenant-based assistance is open when an applicant is placed on the waiting list for the PHA’s public housing program, “the PHA must offer to place the applicant on its waiting list for tenant-based assistance.” And conversely, if the waiting list for the public housing program is open when an applicant is placed on the waiting list for its tenant-based program, “and if the other program includes units suitable for the applicant, the PHA must offer to place the applicant on its waiting list for the other program.” 24 C.F.R. § 982.205(a)(2).

33. The FHA prohibits discrimination in housing against persons with disabilities. 42 U.S.C. § 3604(f)(2)(A).

34. The FHA defines discrimination as “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a disabled] person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. § 3604(f)(3)(B).

35. The FHA mandates that HUD “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of [the FHA].” 42 U.S.C. § 3608(e)(5).

FACTS PERTAINING TO THE CLASS

36. NYCHA defendants receive federal money for the Section 8 program.
37. NYCHA defendants have not made and are not making reasonable efforts to provide to tenants with mobility impairments current, useful lists of available, accessible apartments whose landlords will accept Section 8 vouchers.
38. The lists of supposedly available apartments provided by NYCHA to Section 8 voucher holders show: of the apartments listed as available on July 27, 2001, two (2) out of two hundred and eleven (211) are marked as accessible (0.95%); of those listed on April 5, 2002, zero out of sixty-six (66) are marked as accessible (0.0%); and of those listed on May 3, 2002, three (3) out of ninety-one (91) are marked as accessible (3.3%). Few, if any, of these apartments are available.
39. NYCHA defendants do not assist voucher holders who have mobility impairments in locating appropriate, accessible apartments whose landlords will accept Section 8 tenants, even when such assistance is necessary to enable the voucher holders to locate housing.
40. NYCHA defendants have no established policy or practice for offering to place on the public housing waiting list applicants for their Section 8 program or for offering to place on the Section 8 waiting list applicants for their public housing program.
41. NYCHA defendants have no established policy or practice for making such offers to people with mobility impairments.
42. NYCHA defendants have not made and are not making reasonable efforts to encourage participation in the Section 8 program by landlords with accessible dwelling units.
43. NYCHA defendants have no established policy or practice of informing people with



mobility impairments that they may obtain housing subsidies above market rents if that is necessary for them to find appropriate, accessible apartments.

44. NYCHA defendants have no policy of informing people with mobility impairments that NYCHA will provide other assistance in finding available, accessible apartments.

#### FACTS ABOUT THE NAMED PLAINTIFFS

45. Plaintiff KAREN BENNETT has Multiple Sclerosis ("MS"), a progressive neuromuscular disease which now requires her to use a wheelchair. She lives with five of her children, all of whom are under the age of 14.

46. The only sources of income to Ms. Bennett's family are Supplemental Security Income and public assistance.

47. Ms. Bennett has had a Section 8 voucher since approximately 1992 and her current landlady has accepted her Section 8 subsidy.

48. Ms. Bennett's current apartment is on the second floor in a house with no elevator. Her children carry her wheelchair up and down the stairs and she must drag herself, crawling, up and down the stairs.

49. Because her apartment is not accessible to people with mobility impairments and because conditions in the apartment were, and are, terrible, Ms. Bennett began a search for a new apartment more than one year ago.

50. In April 2001, Ms. Bennett requested a transfer voucher from NYCHA to permit her to transfer to another apartment.

51. When Ms. Bennett initially requested the transfer voucher from NYCHA, NYCHA

did not offer to place her on the waiting list for NYCHA's public housing program, or otherwise suggest that she apply to that program. In March 2002, on her own initiative, Ms. Bennett filed an application for public housing.

52. In June 2001, Ms. Bennett received a 30-day Notice from her landlady informing her that the landlady was about to start court proceedings to regain possession of the apartment for her own family. The landlady subsequently commenced a proceeding in Housing Court, to which Ms. Bennet has no defense.

53. On approximately September 4, 2001, Ms. Bennett appeared in Housing Court and signed a Stipulation agreeing to move by February 28, 2002.

54. On September 24, 2001, NYCHA issued a transfer voucher to Ms. Bennett.

55. Because she was unable to find an accessible apartment large enough for herself and her five children, Ms. Bennett was unable to move by February 28, 2002 and in April, a Warrant of Eviction was issued by the Housing Court.

56. Execution of the Warrant of Eviction has been stayed by the Housing Court until July 15, 2002. Efforts are being made by Ms. Bennett and her attorneys to obtain a further stay of the eviction, but Ms. Bennett and her five children face imminent eviction.

57. Ms. Bennett has asked NYCHA for help in finding an apartment because she needed an accessible apartment whose landlord would accept Section 8 vouchers and she was having trouble finding such an apartment.

58. NYCHA has given Ms. Bennett several lists of landlords who supposedly had available apartments, and she has called the landlords on those lists. Very few, if any, of the apartments on the lists were identified as accessible. No landlord had an available, accessible

apartment.

59. Ms. Bennett has also contacted real estate brokers and individual landlords, but has never been offered an appropriate apartment.

60. Although Ms. Bennett requested assistance from NYCHA in finding an apartment, NYCHA has not offered any help to Ms. Bennett in her efforts to find an appropriate, accessible apartment that would accept her Section 8 voucher, other than to provide her with lists. Without assistance from NYCHA, Ms. Bennett is unlikely to find an appropriate, accessible apartment.

61. Plaintiff DEBORAH PAULIN is a 40 year old woman with MS, who since the fall of 2001, has used a motorized scooter to travel some of the time. The rest of the time she uses a cane.

62. Ms. Paulin has been living in a homeless shelter since approximately December 2000 with her daughter, who is now a freshman in college and comes "home" to her mother on holidays and summer vacation.

63. Ms. Paulin's only source of income is Social Security Disability benefits.

64. Ms. Paulin applied to NYCHA's public housing program in approximately January 2001. At that time she did not yet know that she had MS, but she was having multiple medical problems and had trouble standing up, so she asked for an accessible apartment.

65. When Ms. Paulin applied for a NYCHA apartment, no one at NYCHA asked her if she was interested in applying for a Section 8 voucher at the same time.

66. In approximately March 2001, Ms. Paulin was diagnosed with MS.

67. At around that same time, Ms. Paulin moved into the Regency Family Residence where she now lives. There she had a new caseworker, who suggested that she apply for a

Section 8 voucher, which she did.

68. When Ms. Paulin applied for a Section 8 voucher, she requested assistance from NYCHA because of her disability. NYCHA offered no assistance other than to provide with a list of supposedly available apartments.

69. In February, 2002, Ms. Paulin received a Section 8 voucher and attended the compulsory briefing. At that time, she asked if NYCHA would help her find an apartment and was told that they would not.

70. In February 2002, Ms. Paulin was notified that she was being offered a NYCHA apartment, but it was not accessible.

71. Subsequently, NYCHA withdrew the offer of an apartment stating that Ms. Paulin was no longer "a family" because her daughter was in college. Still later, NYCHA claimed that Ms. Paulin was not eligible because she owed money from a prior NYCHA tenancy.

72. Ms. Paulin is disputing both of these bases for NYCHA's denial of her current eligibility.

73. Ms. Paulin has received lists from NYCHA of supposedly available Section 8 apartments, but there were almost no accessible apartments on the lists, and when she called the landlords, she was told there were no available, accessible apartments.

74. Ms. Paulin has several times requested assistance from NYCHA in finding an apartment, but has always been told that NYCHA does not provide any such help, and she has received no such help.

75. Most recently, Ms. Paulin was told that there might be a NYCHA apartment available to her.

76. If NYCHA actually offers her an apartment, she will withdraw her claims in this action, but because that has not yet happened, and because she has had the experience of offers being withdrawn, she continues to seek assistance in making use of her Section 8 voucher.

77. Without assistance from NYCHA, Ms. Paulin is unlikely to find an appropriate, accessible apartment.

78. Plaintiff SUSANA LOPEZ LIRA is a 52 year old woman with a mobility impairment. She injured her hip in a car accident in 1975 and that injury resulted in severe infection in the joint. She has undergone four surgeries, ending in a procedure in which part of her hip was removed. It is extremely difficult and painful for her to walk. She is in severe, chronic, and debilitating pain and needs further surgery, but has not been able to have it because of her unstable housing situation. She has a motorized scooter, but cannot use it now because her apartment is not accessible.

79. Ms. Lopez Lira is also legally blind, currently has a serious infection in one eye, and may need a corneal transplant. She cannot do this unless she has a safe, stable place to live.

80. Her only source of income is public assistance and food stamps.

81. Ms. Lopez Lira was evicted from her last apartment in approximately January 2001. She spent several days in the subway and then obtained the help of a priest who paid for her to stay in a room in someone else's apartment.

82. The apartment is on the third floor of a building with no elevator and Ms. Lopez Lira is unable to use her scooter. She must drag herself slowly and painfully up and down the flights of stairs.

83. Ms. Lopez Lira applied for a Section 8 voucher as a homeless person in January

2001, after her eviction.

84. At the time of her application, Ms. Lopez Lira informed NYCHA of her disability, presented medical information, and told them she would need an accessible apartment.

85. In November 2001, Ms. Lopez Lira received a Section 8 voucher. When she went to the briefing, one employee of NYCHA, seeing that she was almost blind and was having trouble walking, asked Ms. Lopez Lira if she had anyone – a friend, family member, husband – who could help her find an apartment. Ms. Lopez Lira said that she did not. The NYCHA employee said, “Good luck.”

86. When Ms. Lopez Lira applied for a Section 8 voucher, no one asked her if she would like to apply for a regular NYCHA apartment. Later, when she asked about NYCHA apartments, she was told that there was a long waiting list, and was given the impression that, because it would take such a long time to get a NYCHA apartment, it was not even worth applying.

87. It is extremely difficult for Ms. Lopez Lira to look for an apartment because it is hard for her to travel. She has no telephone, and therefore cannot leave messages for landlords to call back.

88. She has gotten help from several social services agencies and has tried to call many landlords and brokers, but she has not been able to find an accessible apartment whose landlord will accept her Section 8 voucher.

89. Ms. Lopez Lira asked NYCHA for assistance in finding an apartment, but she was told that NYCHA did not provide any such assistance and she has received no such assistance.

90. Without assistance from NYCHA, Ms. Lopez Lira is unlikely to find an appropriate accessible apartment.

FIRST CAUSE OF ACTION

91. NYCHA defendants have violated and are violating the rights of the plaintiffs under 24 C.F.R. § 8.28(a)(3); Section 504, 29 U.S.C. § 794(a); and Title II of the ADA, 42 U.S.C. §§ 12131 - 12165 by failing to provide a current listing of available accessible units and by failing to otherwise assist plaintiffs in locating available accessible dwelling units.

SECOND CAUSE OF ACTION

92. NYCHA defendants have violated and are violating the rights of plaintiffs under 24 C.F.R. § 8.28(a)(2); Section 504, 29 U.S.C. § 794(a); and Title II of the ADA, 42 U.S.C. §§ 12131 - 12165 by failing to make reasonable efforts to encourage participation in the Section 8 program by owners having accessible units.

THIRD CAUSE OF ACTION

93. NYCHA defendants have violated and are violating the rights of plaintiffs under 24 C.F.R. § 8.28(a)(3); 24 C.F.R. § 982.205(a)(2); Section 504, 29 U.S.C. § 794(a); and Title II of the ADA, 42 U.S.C. §§ 12131 - 12165 by failing to affirmatively offer to place plaintiffs on the Section 8 waiting lists when they apply for NYCHA public housing and by failing to affirmatively offer to place plaintiffs on the public housing waiting lists when they apply for the Section 8 program.

FOURTH CAUSE OF ACTION

94. NYCHA defendants have violated and are violating the rights of plaintiffs under 28

C.F.R. § 35106; Section 504, 29 U.S.C. § 794(a); and Title II of the ADA, 42 U.S.C. §§ 12131 - 12165 by failing to inform them of all the protections assured by these statutes.

FIFTH CAUSE OF ACTION

95. HUD defendants have violated and are violating the rights of plaintiffs under Section 504, 29 U.S.C. § 794(a); Title II of the ADA, 42 U.S.C. §§ 12131 - 12165; and the FHA, 42 U.S.C. § 3604(f); and 42 U.S.C. § 3608(e)(5) by failing to adequately oversee the actions of the NYCHA defendants and by failing to ensure that NYCHA defendants comply with existing federal regulations concerning the rights of people with disabilities in the Section 8 program.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request the court to:

1. Enter an order certifying this action as a class action pursuant to Rule 23 (b)(2) of the Federal Rules of Civil Procedure, with the class consisting of all individuals with mobility impairments who are or will be holders of Section 8 Housing Choice Voucher Program vouchers through NYCHA;

2. Enter a declaratory judgment against the NYCHA defendants finding that:

a. NYCHA defendants have violated and are violating the rights of plaintiffs under 24 C.F.R. § 8.28(a)(3); Section 504, 29 U.S.C. § 794(a); and Title II of the ADA, 42 U.S.C. §§ 12131 - 12165 by failing to provide a current listing of available accessible units and by failing to otherwise assist the plaintiffs in locating available accessible dwelling units;

b. NYCHA defendants have violated and are violating the rights of plaintiffs



under 24 C.F.R. § 8.28(a)(2); Section 504, 29 U.S.C. § 794(a); and Title II of the ADA, 42 U.S.C. §§ 12131 - 12165 by failing to make reasonable efforts to encourage participation in the Section 8 program by owners having accessible units;

c. NYCHA defendants have violated and are violating the rights of plaintiffs under 24 C.F.R. § 8.28(a)(3); 24 C.F.R. § 982.205(a)(2); Section 504, 29 U.S.C. § 794(a); and Title II of the ADA, 42 U.S.C. §§ 12131 - 12165 by failing to affirmatively offer to place plaintiffs on the Section 8 waiting lists when they apply for NYCHA public housing and by failing to affirmatively offer to place plaintiffs on the public housing waiting lists when they apply for the Section 8 program;

d. NYCHA defendants have violated and are violating the rights of plaintiffs under 28 C.F.R. § 35106; Section 504, 29 U.S.C. § 794(a); and Title II of the ADA, 42 U.S.C. §§ 12131 - 12165 by failing to inform them of all the protections assured by these statutes.

3. Enter a declaratory judgment against HUD defendants finding that HUD defendants have violated and are violating the rights of plaintiffs under Section 504, 29 U.S.C. § 794(a); Title II of the ADA, 42 U.S.C. §§ 12131 - 12165; and the FHA, 42 U.S.C. §§ 3604(f) and 3608(e)(5) by failing to adequately oversee the actions of NYCHA defendants and by failing to ensure that NYCHA defendants comply with existing federal regulations concerning the rights of people with disabilities in the Section 8 program.

4. Permanently enjoin NYCHA defendants to:

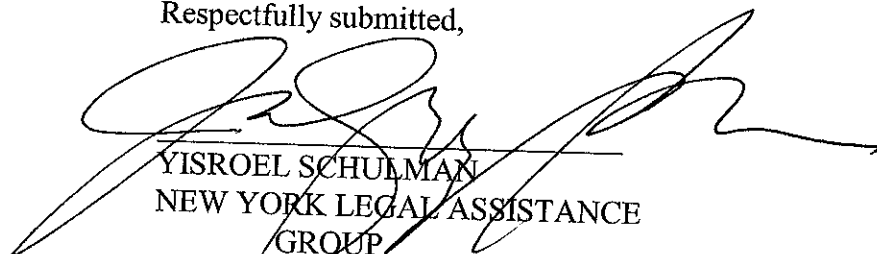
a. Provide to all holders of Section 8 vouchers who have mobility impairments current listings of available accessible units;

b. Establish, maintain, and enforce procedures for assisting members of plaintiff

9. Grant such other and further relief as the Court may deem just and proper.

Dated: June 17, 2002  
New York, New York

Respectfully submitted,



YISROEL SCHULMAN  
NEW YORK LEGAL ASSISTANCE  
GROUP

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