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ORIGINAL FILED
OCT 30 2005
LOS ANGELES
SUPERIOR COURT

REC'D
AUG 24 2006
FILING WINDOW

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KATHERINE LEE BUCKLAND, *et al.*,
Plaintiffs,
v.
THRESHOLD ENTERPRISES, LTD., *et al.*
Defendant.

Case No. BC344046
[Hon. Robert L. Hess]

**[PROPOSED] CONSENT
JUDGMENT ONLY AS TO VITAMIN
POWER, INCORPORATED**

Complaint Filed: December 7, 2005
Location: Dept. 24, Room 314

This Consent Judgment is entered into by and between Katherine Lee Ms. Buckland ("Ms. Buckland"), the California Women's Law Center ("CWLC" – collectively with Ms. Buckland, "Plaintiffs"), and defendant Vitamin Power, Incorporated (hereinafter "Defendant").

1. Definitions. As used in this Consent Judgment, the following definitions shall apply:

1.1 "Regulated Chemicals" are: Progesterone, Medroxyprogesterone acetate, Testosterone and its esters, Methyltestosterone, Testosterone cypionate, and/or Testosterone enanthate as an ingredient. Each Regulated Chemical is a chemical known to the State of California to cause cancer and/or reproductive toxicity.

1.2 "Products" are consumer creams, gels and/or lotion products containing as an ingredient Progesterone. "Products" shall also include any future Products that are

1 manufactured by or on behalf of Defendant for sale in California under any product name or
2 brand, whether a current or new name and/or brand.

3 **1.3** Plaintiffs and Defendant will be referred to collectively as the "Parties" or
4 individually as a "Party."

5 **2. Background.**

6 **2.1** Katherine Lee Buckland is the Executive Director of the California Women's Law
7 Center ("CWLC"), a non-profit California corporation. Since its founding in 1989, CWLC has
8 served as a unique advocate in California, working in collaboration with others to protect, secure
9 and advance the comprehensive civil rights of women and girls. The CWLC works to ensure,
10 through systemic change, that life opportunities for women and girls are free from unjust social,
11 economic, and political constraints.

12 **2.2** Ms. Buckland is a "consumer" within the meaning of California Civil Code
13 ("Civil Code") § 1761(d), and is also a "person" within the meaning of California Business and
14 Professions ("B&P") Code §§17201, 17204 and 17506. She brought and settles this lawsuit on
15 her own behalf and, to the fullest extent permitted by law, on behalf of the general public.

16 **2.3** Defendant is a New York corporation with its principal place of business and/or
17 headquarters located at 39 St. Marys Place, Freeport, NY 11520. Defendant indirectly sells its
18 Products to California consumers.

19 **2.4** Beginning on or about July 28, 2005, CWLC served Defendant and each of the
20 appropriate public enforcement agencies with a "60-Day Notice" that provided Defendant and
21 the public enforcement agencies with a notice alleging that Defendant was in violation of
22 Proposition 65 for failing to warn the purchasers of, and individuals using, the Products that the
23 use of the Products exposes them to Regulated Chemicals. Defendant stipulates for the purpose
24 of this Consent Judgment that the 60-Day Notice sent to it is adequate to comply with Title 22,
25 California Code of Regulations §12903. None of the public enforcement agencies has
26 commenced and begun diligently prosecuting an action against Defendant for such alleged
27 violations.

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1 **2.5** On or about October 5, 2005, Ms. Buckland, pursuant to Civil Code § 1782 served
2 Defendant with a notice letter (the "Notice") via certified mail, return receipt requested, stating
3 *inter alia* as follows:

4 These Products have been sold to literally millions of California
5 consumers without any of the noticed companies providing a clear
6 and reasonable warning prior to their purchase by a consumer that
7 the Progesterone, Medroxyprogesterone acetate, Testosterone and
8 its esters, Methyltestosterone, Testosterone cypionate, and/or
9 Testosterone enanthate in these Products are chemicals known to be
10 carcinogens and/or reproductive toxins by the State of California.
11 Nor has any of the noticed companies disclosed the potential
12 adverse health effect risks posed by exposure to these chemicals in
13 these Products because Progesterone, Medroxyprogesterone acetate,
14 Testosterone and its esters, Methyltestosterone, Testosterone
15 cypionate, and/or Testosterone enanthate in these Products are
16 chemicals regulated as drugs by the U.S. Food and Drug
17 Administration under the federal Food, Drug and Cosmetic Act.
18 These omissions of material facts constitute deceptive
19 representations and misrepresentations, failure to disclose that the
20 product is a regulated drug, and misbranding in violation of § 1770
21 of the CLRA.

22 **2.6** On December 7, 2005, Plaintiffs filed their initial complaint entitled
23 *Buckland, et al. v. Threshold Enterprises, Ltd., et al.*, No. BC 344046, in the Los Angeles
24 County Superior Court. On January 24, 2006, Plaintiffs filed their First Amended Complaint,
25 which is the now-operative complaint in this matter (the "First Amended Complaint").
26 Ms. Buckland alleged violations of the CLRA, Business & Professions Code §§ 17200 *et seq.*
27 and 17500 *et seq.*, and Civil Code §§ 1709 and 1710, against Defendant. Ms. Buckland alleged
28 no claim, directly or indirectly, pursuant to Proposition 65 (H&S Code § 25249.5 *et seq.*) in the
First Amended Complaint." CWLC alleged violations of Proposition 65 (H&S Code § 25249.5
et seq.) in the First Amended Complaint.

2.7 For purposes of this Consent Judgment only, the Parties stipulate that this Court
has jurisdiction over the allegations of the violations contained in the Notices and the First
Amended Complaint, and personal jurisdiction over Defendant as to the acts or omissions
alleged in the First Amended Complaint; that venue is proper in the County of Los Angeles; and
that this Court has jurisdiction to enter this Consent Judgment.

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1 **2.8** Defendant denies that the Products have been or are in violation of any law, and
2 further contends that all Products have been and are safe for use as directed. However, the
3 Parties desire to resolve this matter (including the Notice, First Amended Complaint and all
4 related matters) without further litigation or cost.

5 **2.9** The Parties enter into this Consent Judgment to settle certain disputed claims as
6 alleged in the Notice and the Complaint, to avoid prolonged and costly litigation, and to promote
7 the public interest. By executing and complying with this Consent Judgment, no Party admits
8 any facts or conclusions of law including, but not limited to, any facts or conclusions of law
9 regarding any violations of the California Legal Remedies Act (Civil Code § 1750 *et seq.*), the
10 Unlawful Competition Law (B&P Code § 17200 *et seq.*), the False Advertising Law (B&P Code
11 § 17500 *et seq.*), Civil Code §§1709 and 1710, Proposition 65 (Health & Safety Code § 25249.5
12 *et seq.*) or any other statutory, common law or equitable claim or requirement relating to or
13 arising from Defendant' Products. This Consent Judgment shall not be construed as an
14 admission by Defendant as to any of the allegations in the Notices or the First Amended
15 Complaint.

16 **3. Injunctive Relief.**

17 **3.1 Retail Sale of Products Requires a Warning.**

18 Pursuant to Civil Code § 1782(d), B&P Code §§ 17203 and 17535, and Health & Safety
19 Code §25249.7(a), the sale of a Product by Defendant directly or indirectly to consumers in
20 California shall be accompanied by a warning. This warning shall be provided both by (a)
21 product labeling pursuant to Paragraph 3.1.1; and (b) warnings for any mail order and Internet
22 sales pursuant to Paragraph 3.1.2.

23 **3.1.1 Product Label Warnings.**

24 At the earliest such time when, in the ordinary course of business, new labels for the
25 Products are printed on or after August 1, 2006, Defendant shall include (in the same type size as
26 the surrounding, non-heading text) the following warning on the label of each of its Products that
27 it manufactures and ships for sale directly or indirectly into California, including the specific
28 name or names of the Regulated Chemicals where shown:

1 **“WARNING:** This product contains Progesterone, a chemical
2 known to the State of California to cause cancer. Consult with your
3 physician before using this product.”

4 **3.1.2 Notice to Third Parties.**

5 For any Product that is sold by Defendant but manufactured by a third party (*i.e.*, non-
6 private-label Products), Defendant shall, within 30 days of entry of this consent judgment by the
7 court, notify the manufacturer or supplier of such Product (sending a copy of each such notice to
8 Plaintiffs) that Defendant will not accept shipments of such Product for sale directly or indirectly
9 into California unless such Product bears the warning required by paragraph 3.1.1 above or a
10 comparable warning pursuant to the terms of a separate consent judgment applying to such
11 Product.

12 **3.1.3 Additional Warnings for Mail Order or Internet Sales.**

13 If Defendant directly sells a Product by mail order or over the Internet to a purchaser in
14 the state of California on or after the date that is 90 days after the entry of this Consent Judgment
15 by the court, the following additional requirements shall apply:

16 (1) For such mail order sales sent to customers in California, the warning language
17 required under this Consent Judgment at paragraph 3.1.1 shall be included in the mail order
18 catalogue, either on the same page as any order form, or on the same page(s) upon which the
19 Product’s price is listed, in the same type size as the surrounding, non-heading text.

20 (2) For such Internet sales sent to customers in California, the warning language
21 required under this Consent Judgment at paragraph 3.1.1 shall be displayed (in the same type
22 size as the surrounding, non-heading text) in one or more of the following ways: (a) on the same
23 page upon which the Product is displayed or referenced; (b) on the same page as any order form
24 for any Product; (c) on the same page as the price for the Product is displayed; (d) on one or
25 more pages displayed to a purchaser over the Internet or via electronic mail during the checkout
26 and order confirmation process for sale of a Product; or (e) in any manner such that it is likely to
27 be read and understood by an ordinary individual under customary business conditions prior to
28 the purchase of the Product.

1 **3.2** Pursuant to Civil Code § 1782(d) and B&P Code §§ 17203 and 17535, and Health
2 & Safety Code §25249.7(a), and effective when, in the ordinary course of business (but no
3 sooner than 90 days after entry of this Consent Judgment), new labels and advertising,
4 marketing, mail order catalog or Internet-based descriptions of each of its respective Products
5 are printed or posted electronically on or after August 1, 2006, Defendant agrees to remove any
6 "health-related" claims (as that term is used by the U.S. Food and Drug Administration under
7 Title 21 United States Code § 321(g) and Title 21 Code of Federal Regulation, Part 310.530,
8 Over-The-Counter Topically Applied Hormone Drug Products) made by Defendant for any of its
9 respective Products.

10 **4. Financial Settlement and Attorneys' Fee Payments.**

11 **4.1** In lieu of damages or penalties, Defendant shall pay to the CWLC the sum of
12 \$2,160.00 ("Settlement Amount"), and shall make that payment to the Client Trust Account of
13 the Carrick Law Group P.C., by wire transfer, certified or bank check in immediately available
14 funds. This settlement amount shall be due and payable within five (5) calendar days after the
15 date of notice of entry of this Consent Judgment. This settlement amount shall be disbursed
16 promptly thereafter by the Carrick Law Group P.C. to the CWLC.

17 **4.2 Attorneys Fees and Costs.** The Parties shall each bear their own attorneys' fees
18 and costs.

19 **5. Claims Covered and Released.**

20 This Consent Judgment includes the resolution of actual and potential claims that were
21 considered or could have been brought by Plaintiffs regarding the Regulated Chemical(s) in
22 Defendant's Products. This Consent Judgment is a final and binding resolution between
23 Plaintiffs and Defendant of any and all alleged violations of the California Legal Remedies Act
24 (Civil Code § 1750 *et seq.*), the Unlawful Competition Law (B&P Code § 17200 *et seq.*), the
25 False Advertising Law (B&P Code § 17500 *et seq.*), Civil Code §§1709 and 1710, Proposition
26 65 (Health & Safety Code § 25249.5 *et seq.*) or any other law that was or could have been
27 asserted by Plaintiffs arising from or related to Products manufactured, distributed, or sold by
28 Defendant through the date of entry of this Consent Judgment, including, but not limited to any

1 claims for attorneys' fees and costs. Plaintiffs hereby release Defendant and Defendant's
2 predecessors, successors, affiliates and assigns, the officers, directors, employees, shareholders,
3 and counsel of each of them, from and against the claims described in this paragraph to the
4 extent such claims do, did, or could arise from or relate to Defendant's Products; however,
5 Plaintiffs cannot and expressly do not release any other claims, including specifically and
6 without limitation any personal injury or directly related claims, that could be brought by any
7 other individual or organization. Defendant hereby releases Ms. Buckland and CWLC from and
8 against any claims arising out of Plaintiffs' filing or prosecution of this action. Each Party
9 respectively waives any right to appeal or other review of this Consent Judgment, except as
10 expressly provided in this Consent Judgment.

11 **6. Covenant Not To Sue.** Plaintiffs and Defendant covenant and agree that with regard to
12 those matters that Plaintiffs have herein released and that are described above, neither
13 Ms. Buckland, CWLC nor Defendant will ever institute a lawsuit or administrative proceedings
14 against the other, nor shall Ms. Buckland, Defendant or CWLC assert any claim of any nature
15 against any person or entity hereby released with regard to any such matters which have been
16 released. However, nothing in this paragraph shall be interpreted to preclude enforcement of this
17 Consent Judgment pursuant to Section 7 below.

18 **7. Enforcement of Consent Judgment.** Any Party may, by noticed motion or order to
19 show cause before the Superior Court of Los Angeles, enforce this Consent Judgment. To
20 enforce this Consent Judgment, any Party must first give written notice of any violation of this
21 Consent Judgment alleged to have occurred to the Party alleged to be in violation. The Parties
22 shall meet and confer in good faith and attempt to resolve the alleged violation. If a resolution is
23 not reached within thirty (30) days of the date of the notice, the aggrieved Party may move the
24 Court to hear and resolve the dispute. The prevailing Party in any proceeding brought to enforce
25 this Consent Judgment shall be entitled to recover from the other Party the prevailing Party's
26 reasonable attorneys' fees and costs incurred in the investigation and prosecution of such an
27 enforcement proceeding.

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1 **8. Application of Consent Judgment.** Sections 3, 5 and 6 of this Consent Judgment shall
2 apply to, be binding upon and inure to the benefit of the Parties, their divisions, subdivisions,
3 subsidiaries, affiliates, successors, predecessors and assigns, and the directors, officers,
4 employees, legal counsel, and agents of each of them, as applicable, and will inure to the benefit
5 of the Parties' parent companies, all suppliers, distributors, wholesalers, retailers and contract
6 manufacturers, and all of their respective directors, officers, employees, legal counsel, and
7 agents. This Consent Judgment shall have no effect on Products sold by Defendant and shipped
8 to customers for use outside the State of California; provided that the Products are not sold
9 directly or indirectly to consumers in California by Defendant.

10 **9. Modification/Termination of Consent Judgment.** This Consent Judgment may be
11 modified or terminated upon written agreement of the Parties, with approval of the Court, or
12 upon noticed motion for good cause shown.

13 **10. Governing Law.** This Consent Judgment shall be governed by, and construed in
14 accordance with, the laws of the State of California.

15 **11. Entire Agreement.** The Parties declare and represent that no promise, inducement or
16 other agreement has been made conferring any benefit upon any party except those contained
17 herein and that this Consent Judgment contains the entire agreement pertaining to the subject
18 matter hereof. This Consent Judgment supersedes any prior or contemporaneous negotiations,
19 representations, agreements and understandings of the Parties with respect to such matters,
20 whether written or oral. Parol evidence shall be inadmissible to show agreement by, between or
21 among the Parties to any term or condition contrary to or in addition to the terms and conditions
22 contained in this Consent Judgment. The Parties acknowledge that each has not relied on any
23 promise, representation or warranty, expressed or implied, not contained in this Consent
24 Judgment except with regard to that certain declaration executed under penalty of perjury by the
25 Defendant providing information that induced Ms. Buckland and CWLC to enter into the
26 financial terms of this Consent Judgment, which declaration may be used solely as evidence in
27 any future enforcement proceeding brought pursuant to Section 7 above.

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1 **12. Challenges.** Subject to Section 9 hereof, the Parties agree that they, individually or
2 collectively, will not seek to challenge or to have determined invalid, void or unenforceable any
3 provision of this Consent Judgment or this Consent Judgment itself. The Parties understand that
4 this Consent Judgment contains the relinquishment of legal rights and each Party has, as each
5 has deemed appropriate, sought the advice of legal counsel, which each of the Parties has
6 encouraged the other to seek. Further, no Party has reposed trust or confidence in any other
7 Party so as to create a fiduciary, agency or confidential relationship.

8 **13. Construction.** This Consent Judgment has been jointly negotiated and drafted. The
9 language of this Consent Judgment shall be construed as a whole according to its fair meaning
10 and not strictly for or against any Party.

11 **14. Authority to Stipulate to Consent Judgment.** Each signatory to this Consent Judgment
12 represents and warrants that each signatory has all requisite power, authority and legal right
13 necessary to execute and deliver this Consent Judgment and to perform and carry out the
14 transactions contemplated by this Consent Judgment. Each signatory to this Consent Judgment
15 represents that each has been duly authorized to execute this Consent Judgment. No other or
16 further authorization or approval from any person will be required for the validity and
17 enforceability of the provisions of this Consent Judgment, except entry by the Court.

18 **15. Cooperation and Further Assurances.** The Parties hereby will execute such other
19 documents and take such other actions as may be necessary to further the purposes and fulfill the
20 terms of this Consent Judgment.

21 **16. Counterparts.** This Consent Judgment may be executed in counterparts and has the
22 same force and effect as if all the signatures were obtained in one document.

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1 **17. Notice.**

2 **17.1** All correspondence and Notice required by this Consent Judgment to Plaintiffs
3 shall be sent as follows:

4 Katherine Lee Buckland, Esq.
5 Executive Director
6 California Women's Law Center
7 6300 Wilshire Boulevard, Suite 980
8 Los Angeles, CA 90048
9 Tel: (323) 951-1041
10 Fax: (323) 951-9870
11 E-mail: katie.buckland@cwlc.org

With a copy to:

Roger Lane Carrick, Esq.
The Carrick Law Group, P.C.
350 S. Grand Avenue, Suite 2930
Los Angeles, CA 90071-3406
Tel: (213) 346-7930
Fax: (213) 346-7931
E-mail: roger@carricklawgroup.com

9 **17.2** All correspondence and Notice required by this Consent Judgment to Defendant shall be
10 sent to Defendant as follows:

11 David Friedlander
12 Vitamin Power, Incorporated³⁹
13 Saint Mary's Place
14 Freeport Industrial Park
15 Freeport, NY 11520
16 Tel. (800) 645-6567
17 Fax: (516) 378-0919

With a copy to:

Amy P. Lally, Esq.
Judith M. Praitis, Esq.
Sidley Austin LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013
Tel: (213) 896-6642
Fax: (213) 896-6600
E-mail: alally@sidley.com
jpraitis@sidley.com

17 **18. Entry of Stipulation For Entry of Consent Judgment Required.** This Consent
18 Judgment shall be null and void, and without any force or effect, unless fully approved as
19 required by law and entered by the Court. If the Court does not enter this Consent Judgment, the
20 execution thereof by Defendant or Plaintiffs shall not be construed as an admission by Defendant
21 or Plaintiffs of any fact, issue of law or violation of law.

22 **19. Jurisdiction.** This Court shall retain jurisdiction of this matter to implement this Consent
23 Judgment.

24 **20. Compliance with Reporting Requirements.** CWLC shall comply with the reporting
25 form requirements referred to in Health and Safety Code section 25249.7(f) and established in
26 Title 11 of the California Code of Regulations sections 3000-3008. Copies of all such reports
27 shall be supplied as provided in Paragraph 18.2.

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1 21. Non-Interference in Settlement Approval Process. The Parties will cooperate, as well
2 as use their respective best efforts, to secure the Attorney General's approval of this Consent
3 Judgment, and not to seek his disapproval of any portion of this Consent Judgment.
4

5 **IT IS SO STIPULATED.**

6 Date: July __, 2006

KATHERINE LEE BUCKLAND

7
8 By: _____
KATHERINE LEE BUCKLAND

9
10 Date: July __, 2006

CALIFORNIA WOMEN'S LAW CENTER

11
12 By: _____
Executive Director

13
14 Date: July 31, 2006

VITAMIN POWER, INCORPORATED

15
16 By:  _____
DAVID FRIEDLANDER
17 President/CEO
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1 **21. Non-Interference in Settlement Approval Process.** The Parties will cooperate, as well
 2 as use their respective best efforts, to secure the Attorney General's approval of this Consent
 3 Judgment, and not to seek his disapproval of any portion of this Consent Judgment.

4
 5 **IT IS SO STIPULATED.**

6 Date: July 18, 2006
 7 August

KATHERINE LEE BUCKLAND

8 By: 
 9 _____
 KATHERINE LEE BUCKLAND

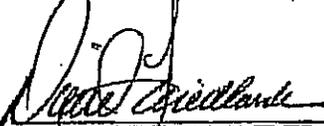
10 Date: July 18, 2006
 11 August

CALIFORNIA WOMEN'S LAW CENTER

12 By: 
 13 _____
 Executive Director

14 Date: July 31, 2006

VITAMIN POWER, INCORPORATED

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 16 By: 
 17 _____
 DAVID FRIEDLANDER
 18 President/CEO

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KATHERINE LEE BUCKLAND, *et al.*,

Plaintiffs,

v.

THRESHOLD ENTERPRISES, LTD., *et al.*

Defendants.

Case No. BC 344046

[Hon. Robert L. Hess]

[PROPOSED] FINDINGS AND ORDER

Complaint Filed: December 7, 2005
1st Amended Cmplt.: January 24, 2006

Location: Dept. 24, Room 314

FINDINGS AND ORDER

1. The Court finds that the warnings that may be required in Section 3 of the stipulated Consent Judgment in this matter regarding the sale of certain products by defendant VITAMIN POWER, INCORPORATED comply with the provisions of Health & Safety Code §§ 25249.5-25249.13.

2. In the stipulated Consent Judgment in this matter, the Parties' agreement in Section 4 of the Consent Judgment that no civil penalties are warranted is in accord with the criteria set forth in Health & Safety Code § 25249.7(b) (2), in that payments totaling \$2,160.00 in financial relief in the form of "in lieu of damages or penalties" are to be made by the Defendant to Plaintiff California Women's Law Center ("CWLC"). The Court finds that CWLC has committed to use this financial relief in conformity with Proposition 65's overall goals as

1 well as its own non-profit articles of incorporation to address the litigation's public health issue
2 of protecting women's health through CWLC's programs, which include but are not limited to
3 projects addressing public health, domestic violence, reproductive rights, and physical fitness
4 issues.

5 3. Because each Party to the Consent Judgment is bearing its own attorneys' fees and
6 costs, no finding by the Court is required as to whether those fees and costs are reasonable.

7 4. In light of the findings made above, and based upon the Court's review of the
8 proposed stipulated Consent Judgment executed among the Parties, the Court finds that this
9 Consent Judgment serves and will serve the public interest

10 5. The Consent Judgment is hereby adopted as the ORDER and JUDGMENT of this
11 Court.

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13 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

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15 DATED: OCT 3 0 2008



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18 ROBERT L. HESS
19 JUDGE OF THE SUPERIOR COURT

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