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1	Roopali H. Desai (024295)	
2	D. Andrew Gaona (028414)	
3	Kristen Yost (034052) COPPERSMITH BROCKELMAN PLC	
3	2800 North Central Avenue, Suite 1900	
4	Phoenix, Arizona 85004 T: (602) 381-5478	
5	rdesai@cblawyers.com	
6	agaona@cblawyers.com	
7	kyost@cblawyers.com	
8	James E. Barton II (023888) Jacqueline Mendez Soto (022597)	
-	BARTON MENDEZ SOTO PLLC	
9	401 W. Baseline Road, Suite 205	
10	Tempe, Arizona 85253 T: (480) 550-5165	
11	james@bartonmendezsoto.com	
12	jacqueline@bartonmendezsoto.com	
	Attorneys for Plaintiffs	
13	ADIZONA SUDE	
	ARIZUNA SUFE	CRIOR COURT
14	MARICOPA	
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	MARICOPA ARIZONA DEMOCRATIC PARTY, an Arizona political party and political action	CV2021 006646
15 16	MARICOPA ARIZONA DEMOCRATIC PARTY, an Arizona political party and political action committee; and STEVE GALLARDO, a	A COUNTY) No.: CV2021-006646))
15 16 17	MARICOPA ARIZONA DEMOCRATIC PARTY, an Arizona political party and political action	COUNTY No.: CV2021-006646))) VERIFIED COMPLAINT FOR
15 16 17 18	MARICOPA ARIZONA DEMOCRATIC PARTY, an Arizona political party and political action committee; and STEVE GALLARDO, a	A COUNTY) No.: CV2021-006646))
15 16 17	MARICOPA ARIZONA DEMOCRATIC PARTY, an Arizona political party and political action committee; and STEVE GALLARDO, a qualified elector,	A COUNTY No.: Verified Complaint for Declaratory Judgment and
15 16 17 18	MARICOPA ARIZONA DEMOCRATIC PARTY, an Arizona political party and political action committee; and STEVE GALLARDO, a qualified elector, Plaintiffs, v.	A COUNTY No.: Verified Complaint for Declaratory Judgment and
15 16 17 18 19	MARICOPA ARIZONA DEMOCRATIC PARTY, an Arizona political party and political action committee; and STEVE GALLARDO, a qualified elector, Plaintiffs, v. KAREN FANN, in her official capacity as	A COUNTY No.: Verified Complaint for Declaratory Judgment and
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 15 16 17 18 19 20 21 22 23 24 	MARICOPA ARIZONA DEMOCRATIC PARTY, an Arizona political party and political action committee; and STEVE GALLARDO, a qualified elector, Plaintiffs, v. KAREN FANN, in her official capacity as President of the Arizona Senate; WARREN PETERSEN, in his official capacity as Chairman of the Senate Judiciary Committee; KEN BENNETT, in his official capacity as the liaison of the Arizona Senate; and CYBER	A COUNTY No.: Verified Complaint for Declaratory Judgment and

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Plaintiffs Arizona Democratic Party ("ADP") and Steve Gallardo (collectively, "Plaintiffs") allege as follows:

PARTIES, JURISDICTION, AND VENUE

Plaintiff ADP is a political party committee with a purpose of electing Democratic
 Party candidates to public office in Arizona. ADP engages in important activities such as
 supporting Democratic Party candidates, engaging in fundraising and organizing efforts, and
 protecting the rights of Arizona voters. ADP has members and constituents throughout Arizona,
 including many voters in Maricopa County.

9 2. Plaintiff Steve Gallardo is a registered Arizona voter residing in Maricopa County
10 and a member of the Maricopa County Board of Supervisors. Plaintiff Gallardo brings this action
11 in his individual capacity.

Defendant Karen Fann is a state senator and the President of the Arizona Senate.
 President Fann is named in this action in her official capacity.

14 4. Defendant Warren Peterson is a state senator and the Chairman of the Arizona
15 Senate Judiciary Committee. Senator Peterson is named in this action in his official capacity.

5. Defendant Cyber Ninjas, Inc. ("CN") is a Florida corporation and a cyber security
company hired by the Arizona Senate to conduct an "audit" of Arizona's 2020 General Election
in Maricopa County (the "Audit").

19 6. Defendant Ken Bennett is an Arizona resident and the Arizona Senate's "liaison"
20 for the Audit.

7. This Court has jurisdiction pursuant to A.R.S. §§ 12-123, 12-1831 and the Arizona
Constitution.

8. Venue is proper pursuant to A.R.S. § 12-401. GENERAL ALLEGATIONS The Legislative Subpoenas

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On January 12, 2021, President Fann and Senator Peterson, on behalf of the

Arizona Senate and the Senate Judiciary Committee, served legislative subpoenas on the
 Maricopa County Board of Supervisors, the Maricopa County Recorder, and the Maricopa
 County Treasurer (the "Subpoenas"). A true and correct copy of the Subpoenas is attached as
 Exhibit 1.

5 10. The Subpoenas requested extensive materials, including physical voted ballots and
6 ballot envelopes, scanned images of voted ballots, voter registration records, ballot tabulation
7 equipment, and electronic voting systems.

8 11. The County and the Senators litigated the validity of the Subpoenas, and on
9 February 25, 2021, the Maricopa County Superior Court found that the Subpoenas were valid
10 legislative subpoenas. *See Maricopa County et al. v. Fann et al.*, Case No. CV2020-016840.

12. In making that finding, Judge Timothy Thomason specifically noted concerns 11 regarding ballot security and confidentiality: "This is not to say that the Court does not have 12 13 concern about the confidentiality of the subpoenaed ballot information. The Elections Procedures Manual has carefully delineated provisions providing for the security of ballots. The 14 15 Manual, however, simply cannot be reasonably read to prevent production of subpoenaed material to government officials, particularly State legislators who are constitutionally charged 16 with ensuring election integrity." A true and correct copy of Judge Thomason's order regarding 17 18 the legality of the Subpoenas is attached as Exhibit 2.

19 13. On or about February 26, 2021, the County informed the Senate that it was ready
20 to deliver the materials requested in the Subpoenas, including 2.1 million physical voted ballots,
21 hundreds of small tabulation machines, and large counting center tabulation machines and other
22 voting equipment.

14. The Senate responded by asking the County not to deliver the materials until the
Senate could arrange to receive them.

25 15. On information and belief, the County has already turned over large amount of
26 data and other information in response to the Subpoenas.

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1 16. On March 3, 2021, Secretary of State Katie Hobbs sent a letter to President Fann 2 and Senator Peterson "to express [her] ongoing concern about the legislative subpoenas issued 3 to the Maricopa County Board of Supervisors for the production of election equipment and 4 ballots from the 2020 General Election and the unspecified audits you intend to conduct." A true 5 and correct copy of Secretary Hobbs' letter is attached as Exhibit 3.

6 17. As Secretary Hobbs explained, "Judge Thomason's ruling makes clear that you 7 are obligated to maintain the security and confidentiality of the materials turned over to you. If 8 your goal is truly to rebuild public confidence in our democracy, it is imperative that you 9 establish and abide by clear procedures and parameters for the security and confidentiality of the 10 ballots and election equipment while in your custody and ensure independence and transparency 11 should you proceed with any further audit." *Id*.

12 18. Secretary Hobbs – as Arizona's chief elections officer – went on to provide a
13 number of suggestions to President Fann and Senator Petersen to ensure that any "audit"
14 complied with Arizona law. *Id.*

Planning the Audit

16 19. Rather than assume custody and control over the materials it demanded, the Senate
17 decided to allow private third parties to accept the materials.

18 20. On March 31, 2021, President Fann announced that the Senate selected a group of
19 private companies, led by CN, to conduct the Audit (the "Private Auditors").

20 21. President Fann announced that the "audit will validate every area of the voting
21 process" and that it will be "done in a transparent manner with the cooperation of Maricopa
22 County."

23 22. President Fann also announced that the Senators "will not be directly involved" in
24 the Audit.

25 23. Thus, on information and belief, the Senate plans to give CN full unsupervised
26 authority to conduct the Audit, the Senate will abdicate any responsibility or participation in the

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Audit, and neither the Senate nor any other government official will participate in the audit to ensure security and confidentiality of the ballots, voter registration files, or voting equipment.

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24. On April 1, 2021, Secretary of State Katie Hobbs wrote to the County expressing her concerns regarding the Audit, and in particular, the Senate's selection of CN to conduct the audit. A true and correct copy of Secretary Hobbs' letter is attached as Exhibit 4.

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25. As Secretary Hobbs wrote,

7 Unfortunately, yesterday's announcement made it clear that the Senate has no intention of conducting an independent audit or ensuring the ongoing security 8 and confidentiality of Maricopa County's ballots and voting equipment. As you know, the Senate has confirmed its hiring of Cyber Ninjas Inc. This firm's CEO 9 not only harbors conspiratorial beliefs about the 2020 election, but has shared 10 conspiracies about Dominion election equipment, the exact equipment he has been hired to audit. Moreover, Jovan Hutton Pulitzer confirmed yesterday that he 11 too would be involved in this audit. To be sure, Mr. Pulitzer is also a known, 12 and frequently debunked, conspiracy theorist (to say nothing of "failed treasure hunter" or inventor of one of the "25 worst tech products of all time"). To 13 compound the concerning nature of these revelations, the Statement of Work signed by the Senate indicates that these "auditors" plan to visit Maricopa County 14 voters at their home to inquire about their registration and voting history.8 And if 15 all that were not concerning enough, the Senate President's press release states that the Senate "leadership will not be directly involved [in the audit], and 16 members do not expect to comment on any of the processes of the audit until the 17 report is issued." In other words, the Senate intends to give free reign to Cyber Ninjas, Inc. and will abdicate any responsibility or engagement in the audit 18 process to ensure the security and confidentiality of the ballots and voting equipment or the integrity of the process. In addition to being dangerous and 19 irresponsible, this abdication appears contrary to Judge Thomason's assumption 20 that the Senate will ensure any third parties will handle the subpoenaed materials appropriately. 21

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26. In addition, the Senate engaged former Arizona Secretary of State Ken Bennett to

serve as the Senate's "liaison" to the Private Auditors.

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27. On information and belief, CN has never conducted an election audit.

- 28. On information and belief, Mr. Bennett has never conducted an election audit.
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29. CN's CEO, Doug Logan, is a proud supporter of the "Stop the Steal" movement
 and has retweeted numerous posts on Twitter claiming that the 2020 General Election was rigged
 against Donald Trump. See, e.g., Jeremy Duda & Jim Small, Arizona Senate hires a 'Stop the
 Steal' advocate to lead 2020 election audit, Ariz. Mirror (Mar. 31, 2021),
 https://www.azmirror.com/2021/03/31/arizona-senate-hires-a-stop-the-steal-advocate-to-lead 2020-election-audit/.

30. 7 Mr. Logan also "drafted a document for U.S. senators who planned to object to the 8 certification of the election results on Jan. 6 promoting various disproven or baseless conspiracy 9 theories about the election, including claims against the company whose ballot tabulation 10 machines he'll [be] tasked with inspecting." Jeremy Duda, *Election auditor wrote 'election fraud* facts' report for GOP senators who tried to overturn the 2020 election, Ariz. Mirror (Apr. 9, 11 2021), https://www.azmirror.com/2021/04/09/arizona-audit-leader-doug-logan-wrote-fraud-12 13 claims-on-kraken-lawyers-website/.

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31. On information and belief, Mr. Logan has never administered a post-election audit.
32. On April 1, 2021, Mr. Logan sent a list of questions to President Fann, which he claimed CN "absolutely need[ed]" to conduct the audit. He also attached a long list of additional questions, explaining that "the team did have a bunch more questions that would be very useful to know." A true and correct copy of Mr. Logan's email is attached as Exhibit 5.

19 33. Indeed, the Senate and Mr. Logan apparently expected that Maricopa County
20 would allow the audit to be performed at their facilities with the assistance of Maricopa County's
21 audit experts. In an email to Maricopa County dated April 2, 2021, President Fann stated: "I had
22 hoped we would be able to do this together in the spirit of transparency and the desire to answer
23 our constituents['] questions about the election." Ex. 5.

34. Maricopa County confirmed they would not assist: "Maricopa County cannot be
involved in supporting your audit as to do so may expose it to liability for which it has no similar
legal protection. To avoid any confusion, I want to be clear that the audit is not a joint effort

between the County and the Senate Republican Caucus. Maricopa County will not communicate
 with your vendors or interpret Arizona law for them." Ex. 5.

3 35. On information and belief, unknown private right-wing groups and supporters of
4 former President Donald J. Trump have donated at least \$150,000 to fund the Audit.

36. On April 7, 2021, attorney Lin Wood – known for his support of the "Stop the
Steal" movement and adherence to the "QAnon" conspiracy theory – posted on Telegram
pledging a donation to fund the Audit and asked others to donate. He added: "When the fraud is
finally revealed in one state, just watch the other states fall like dominoes!" Lin Wood, Telegram
(Apr. 7, 2021), <u>https://t.me/linwoodspeakstruth/1400</u>.

10 37. On April 9, 2021, Christina Bobb, a host on far-right media outlet "One America News", tweeted about the Audit as follows: "Our goal is to fund \$150,000 to cover expenses of 11 the audit, which will ensure its complete scope of work. We're \$10K away from our goal." 12 13 Christina Bobb. Twitter (Apr. 9, 2021), https://twitter.com/christina_bobb/status/1380562776918200320. 14

15 38. In a Telegram post that same day, Lin Wood announced that the \$150,000 goal
16 had been reached. He added: "I know the individual who is leading the Arizona audit team," and
17 "He will reveal the truth. I did NOT make this happen. Nor did Christina. We merely showed
18 the way." Lin Wood, Telegram (Apr. 9, 2021), <u>https://t.me/linwoodspeakstruth/1434</u>.

39. The Senate ultimately directed the County to deliver the materials requested in the
Subpoenas to the Arizona Veterans Memorial Coliseum, where the Private Auditors plan to
perform the Audit.

40. On April 21, 2021, the County delivered tabulators and central counting machines
to the Coliseum as requested by the Senate.

24 41. On April 22, 2021, the County is expected to deliver 2.1 million voted ballots to
25 the Coliseum as requested by the Senate.

42. On information and belief, there are not sufficient safeguards in place to ensure proper security to prevent access to or tampering with the equipment or ballots at the Coliseum. 43.

The Audit is scheduled to begin on April 23, 2021.

The Audit Procedures

44. On April 19, 2020, ADP's executive director and counsel conferred with Defendant Bennett by telephone to ask about the planned procedures for conducting the Audit.

45. 7 According to Defendant Bennett, the Private Auditors have hired staff to, among 8 other things, (1) review tabulation machines and other voting equipment; (2) machine-tabulate 9 2.1 million ballots and conduct a hand count of those same ballots; and (3) compare ballot affidavit signatures with signatures in voters' registration records.

46. On information and belief, Defendants have no policies and procedures in place 11 for performing these tasks or for preserving the integrity of the process, including but not limited 12 13 to:

Policies and procedures for ensuring a secure and documented chain of 14 A. custody for the ballots and election equipment; 15

16 B. Policies and procedures for ensuring the physical security of the ballots and physical, data, and cyber security of election equipment so that they are not tampered with, 17 18 stolen, or mishandled or compromised;

C. 19 Policies and procedures for ensuring that markings on ballots are not altered or added while in Defendants' custody; 20

21 D. Policies and procedures for ensuring that the handling, inspection, and 2.2 counting of ballots and equipment is performed by bipartisan teams including at least two members of different political parties; 23

24 E. Policies and procedures for the security of hardware and other components of electronic voting systems. 25

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47. Defendants have not publicly disclosed any policies or training materials relating
 to the Audit's procedures.

48. Defendants have not publicly disclosed any information about the staff who will
conduct the Audit, including the number of workers, their credentials, their political party
affiliations, or the training they have received.

6 49. On information and belief, the Audit workers who perform signature comparison
7 are planning to use voter registration records, including the voter's signature, date of birth,
8 address, political party affiliation and other personally identifying information.

9 50. On information and belief, the Audit workers who will perform signature
10 comparison are not trained in signature comparison or verification techniques.

11 51. Defendant Bennett has stated that observers will be allowed to observe the Audit,
12 but only for six-hour shifts at a time.

13 52. Defendant Bennett has rejected observation requests from various nonpartisan,
 14 nonprofit organizations that exist to ensure open and transparent elections, including The
 15 Elections Group.

16 53. According to Defendant Bennett, approximately 70% of individuals who have
17 applied for observation shifts are Republicans, and the remaining 30% are Libertarians,
18 Independents, or Democrats.

19 54. In addition, less than 24 hours before the Audit is set to begin, there are no clear
20 procedures in place for how media will be able to observe the Audit.

55. Indeed, over the past several days, Defendant Bennett has made a series of
conflicting and contradictory statements about media access at the Audit.

(Declaratory Judgment)

COUNT I

56. All previous allegations are re-alleged as if set forth herein.

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57. Under Arizona law, certain components of a voter's registration records, including 1 2 date of birth, signature, and country of birth, may not be viewed, accessed, reproduced, or 3 disclosed to a member of the public who is not an authorized government official. See A.R.S. § 16-168(F); 4 Election Procedures Manual ("EPM") Ch. 1 X.C.I, Ş https://azsos.gov/sites/default/files/2019 ELECTIONS PROCEDURES MANUAL APPRO 5 VED.pdf. 6

58. The EPM – promulgated by the Secretary of State and approved by the Governor
and Attorney General – has the force and effect of law. *Arizona Pub. Integrity All. v. Fontes*, 250
Ariz. 58 ¶ 16 (2020); A.R.S. § 16-452(C).

10 59. The Private Auditors and their agents are not authorized to review confidential
11 voter registration records.

12 60. Only election officials, postal workers, and certain family members and other
13 authorized individuals may "gain possession or control" of voted early ballots. A.R.S. § 1614 1005(H).

15 61. The Private Auditors and their agents are not authorized to gain possession or16 control of voted early ballots.

17 62. Under Arizona law, "[a]ll persons taking part in the actual processing and counting
18 of ballots, including the employees of a jurisdiction conducting an election, must be appointed
19 in writing and take an oath provided by the Board of Supervisors (or designee) that they will
20 faithfully and impartially perform their duties. Any person who has not been appointed in writing
21 or taken the oath shall, under no circumstances, be permitted to touch any ballot, computer, or
22 counting device used in processing ballots." EPM Ch. 10 § I.A.

63. The Private Auditors and their agents have not been appointed in writing or taken
an oath required under EPM Ch. 10 § I.A, and thus are not authorized to touch any ballot,
computer, or counting device.

64. Arizona law also requires "that staff performing the signature verification are 1 2 properly trained." EPM Ch. 6 § II.C.

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65. On information and belief, the Private Auditors and their agents are not properly trained in signature verification.

5 66. Under Arizona law, election officers "must develop and implement a training plan to ensure that elections staff (and any temporary workers) understand and comply with all 6 security procedures applicable to the electronic voting system." EPM Ch. 4 § III. 7

8 67. Arizona law also requires that hardware components of the electronic voting 9 system are, among other things: (1) "stored in a locked, secured location that prevents 10 unauthorized access"; (2) "sealed with tamper-resistant or tamper-evident seals once programmed"; (3) "safeguarded from unauthorized access when being moved, transferred, 11 serviced, programmed, or temporarily stored", (4) "accessed by elections staff only to the extent 12 13 necessary to perform their authorized task"; and (5) "witnessed by two or more election staff members (of different political parties if possible) when being moved or transferred, which 14 includes an inventory of the equipment and chain of custody before and after the move or 15 transfer." EPM Ch. 4 § III.A. 16

17 68. Further, components of the electronic voting system "may not be connected to the 18 internet, any wireless communications device, or any external network (except for e-pollbooks)," 19 and "must be observed by the officer in charge of elections or a designee if the election program (or any software or firmware) is updated or modified." EPM Ch. 4 § III.B. 20

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69. On information and belief, Defendants have not adopted or implemented training plans or security measures required by EPM Ch. 4 § III. 22

23 70. Arizona law requires security of official ballots, including requirements that 24 ballots: (1) "may be accessed by elections staff only to the extent necessary to perform their authorized task; (2) "must be stored in a locked, secured location that prevents unauthorized 25 26 access"; and (3) "must be witnessed by two or more election staff members (of different political

parties if possible) when being moved or transferred, which includes an inventory of the ballots
 before and after the move or transfer." EPM Ch. 8 § V.E. Election officials also "must implement
 security procedures to ensure that official ballots are properly secured prior to distribution to
 voting locations." *Id.*

5 71. On information and belief, Defendants have not adopted or implemented security
6 procedures required by EPM Ch. 8 § V.E.

7 72. On information and belief, experienced election officials would confirm that the 8 safeguards and requirements set forth in Paragraphs 55-68 are necessary to perform a secure and 9 reliable audit, that Defendants' planned Audit does not comply with these safeguards and 10 requirements, and Defendants' planned Audit undermines the integrity and security of Arizona's 11 elections and voter information.

12 73. An actual and justiciable controversy exists regarding the legality of the Audit
13 procedures scheduled to begin on April 23, 2021.

14 74. Plaintiffs request a declaration that Defendants or their agents are in violation of,
15 or have threatened to immediately violate, the statutory and EPM provisions set forth above.

COUNT II

(Injunctive Relief)

75. All previous allegations are re-alleged as if set forth herein.

19 76. For the reasons set forth above in Paragraphs 53-70, *supra*, Defendants and their
20 agents will proceed with the Audit in violation of various statutory and EPM provisions absent
21 the entry of an injunction.

Plaintiff ADP will suffer irreparable harm absent the entry of an injunction because
the private information of its members – including how they voted in the 2020 General Election
- will be placed into the hands of unknown, untrained agents of the Private Auditors without the
protections guaranteed by statute and the EPM.

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1	78. The balance of hardships and public interest both favor Plaintiffs, who seek to	
2	ensure that Arizona laws concerning privacy and confidentiality of the personal information of	
3	voters and the sanctity of our system of secret ballots is preserved.	
4	PRAYER FOR RELIEF	
5	WHEREFORE, Plaintiffs respectfully request the following relief against Defendants and	
6	their agents:	
7	A. For declaratory judgment declaring that the Audit is unlawful and in	
8	violation of statute and the EPM;	
9	B. For a temporary restraining order and a preliminary and permanent	
10	injunction preventing Defendants and any of their agents from proceeding with the Audit;	
11	C. For an order awarding Plaintiffs their taxable costs under A.R.S. §§ 12-341	
12	and 12-1840; and	
13	D. For an order awarding Plaintiffs their attorneys' fees under any applicable	
14	statute or equitable doctrine; and	
15	E. For any other relief as may be appropriate.	
16	RESPECTFULLY SUBMITTED this 22nd day of April, 2021.	
17		
18	COPPERSMITH BROCKELMAN PLC	
19	By <u>s/Roopali H. Desai</u> Roopali H. Desai	
20	D. Andrew Gaona	
21	Kristen Yost BARTON MENDEZ SOTO PLLC	
22	James E. Barton II	
23	Jacqueline Mendez	
24	Attorneys for Plaintiffs	
25		
26		
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