

ORDERED.

Dated: March 10, 2020



Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re:

Chapter 11

SENIOR CARE GROUP, INC.,

Case No. 8:17-bk-6562-CPM

KEY WEST HEALTH AND REHABILITATION
CENTER, LLC,
SCG BAYWOOD, LLC,
SCG GRACEWOOD, LLC,
SCG HARBOURWOOD, LLC,
SCG LAURELLWOOD, LLC,
THE BRIDGES NURSING AND
REHABILITATION, LLC,

Jointly Administered with:

Case No. 8:17-bk-06580-CPM
Case No. 8:17-bk-06563-CPM
Case No. 8:17-bk-06564-CPM
Case No. 8:17-bk-06572-CPM
Case No. 8:17-bk-06576-CPM
Case No. 8:17-bk-06579-CPM

Debtors.

**ORDER ON MOTION OF KEY WEST HEALTH AND REHABILITATION
CENTER, LLC FOR ENTRY OF AN ORDER (I) APPROVING BID
PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY
ALL OF ITS ASSETS, (II) ESTABLISHING PROCEDURES FOR THE
ASSUMPTION AND/OR ASSIGNMENT BY THE DEBTOR OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, (III) APPROVING BREAK UP FEE
AND MINIMUM OVERBID AMOUNT, (IV) APPROVING FORM AND MANNER OF
NOTICE OF BIDDING PROCEDURES, AND (V) SETTING OBJECTION DEADLINES**

THESE CASES came on for hearing before the Court on March 6, 2020 at 1:30 p.m. (the “Hearing”), upon the Motion of Key West Health and Rehabilitation Center, LLC for Entry of an Order (I) Approving Bid Procedures in Connection with the Sale of Substantially All of Its Assets,

(II) Establishing Procedures for the Assumption and/or Assignment by the Debtor of Certain Executory Contracts and Unexpired Leases, (III) Approving Break Up Fee and Minimum Overbid Amount, (IV) Approving Form and Manner of Notice of Bid Procedures, and (V) Setting Objection Deadlines [Doc. No. 1117] (the “**Motion**”).¹

The Debtor, Key West Health And Rehabilitation Center, LLC (“**Key West**” or the “**Debtor**”) has also filed the Motion of Key West Health and Rehabilitation Center, LLC for Order Authorizing (I) the Sale of Substantially All of Its Assets Pursuant to 11 U.S.C. § 363, Free and Clear of All Liens, Claims and Encumbrances, and (II) Authorizing the Assumption and Assignment of Contracts [Doc. No. 1118] (the “**Sale Motion**”).

In the Motion, the Debtor requested that the Court consider the entry of an order (i) approving the bid procedures in connection with the sale of substantially all of the Debtor’s assets pursuant to the Sale Motion to the party submitting the highest and best offer at the Auction, (ii) establishing procedures for the assumption and/or assignment of certain executory contracts and unexpired leases, (iii) approving a minimum overbid amount and a break-up fee in connection with such sale, (iv) approving the form and manner of notice of the sale and the bidding procedures, and (v) setting deadlines for objections to the sale.

The Debtor is licensed to operate a 120-bed facility located at 5860 W. Junior College Road, Key West, Florida (the “**Facility**”). The Debtor received an offer for the purchase of substantially all of the assets and property utilized with respect to the operation of a nursing home in Monroe County (the “**Regal Purchased Assets**”), pursuant to an Operations Transfer Agreement (the “**Regal OTA**”) from Regal Healthcare Acquisition, LLC and/or Assigns (“**Regal**” or “**Stalking Horse Bidder**”) free and clear of liens, claims and encumbrances, except certain

¹ Unless otherwise defined herein, capitalized terms used herein shall have the meaning ascribed to such terms in the Motion.

assumed liabilities as set forth in the Regal OTA. The Facility operates on real property that is leased from The Lower Keys Hospital District. Pursuant to the Regal OTA, the consideration to be paid by Regal for the Regal Purchased Assets shall be the total amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the “**Cash Component of the Regal Purchase Price**”), in addition to the assumption of the Assumed Liabilities (as defined in the Regal OTA), accepting the assignment of the Transferred Debtor Contracts (as defined below); and paying the Cure Amounts (as defined in the Regal OTA); paying the FHA Payoff (as defined in the Regal OTA), and assuming the obligation to pay Hired Employees PTO Benefits (as defined in the Regal OTA) (collectively, the “**Regal Purchase Price**”), subject to adjustments set forth in the Regal OTA.

At the Hearing, counsel for the Debtor set forth the bid procedures requested by the Debtor in connection with its receipt of the Regal OTA from Regal and outlined the deadlines set forth in the bidding procedures. In addition, as to any bids for substantially all of the Regal Purchased Assets, counsel for the Debtor requested an overbid amount of One Hundred Fifty Thousand Dollars (\$150,000) be approved by the Court. In addition, counsel for the Debtor requested a break-up fee in the amounts and subject to the conditions described in Ordered paragraph 4 below.

By its Motion, the Debtor requests the Court establish the following deadlines and dates with respect to the relief requested by the Motion:

Bid Deadline	April 24, 2020 at 5:00 p.m. (Eastern Standard Time)
Sale Objection Deadline	April 21, 2020
Cure Amount Objection Deadline	April 10, 2020
Regal Assumption Objection Deadline	The earlier of (i) 30 days after Regal has designated the contract for assignment and the counterparty has been notified of the designation or (ii) April 21, 2020

Deadline for Debtor to Provide Notice of Competing Bidder Designation of Contracts for Assumption and Assignment	April 29, 2020
Auction	May 5, 2020 at 10:00 a.m.
Competing Bidder Assumption Objection Deadline	May 4, 2020
Sale Hearing	May 12, 2020 at 1:30 p.m.

The Court finds that notice of the Motion and the Hearing to creditors and other parties in interest was sufficient, that it complied with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of this Court.

The Court considered the Motion, together with the record and the arguments of counsel at the Hearing, and being otherwise duly advised in the premises, and for the reasons announced on the record at the Hearing, which shall constitute the order of the Court as if specifically provided herein, finds that the relief requested in the Motion is necessary and appropriate, and that the Motion is well taken and shall be granted in accordance with the terms and conditions set forth herein. Specifically, the Court finds that it would be in the best interests of the Debtor, its creditors and its estate that an orderly procedure be established for the selection of the highest and best offer for the sale of the Regal Purchased Assets and the other assets owned by the Debtor (collectively, the “**Offered Assets**”). The Court thus finds that it is appropriate to provide other prospective purchasers with the opportunity to submit competing bids for some or all of the Offered Assets, and that notice of the proposed sale of the Offered Assets shall be sent to all parties that expressed an interest in acquiring some or all of the Offered Assets. The Court also finds that it is appropriate to require any such prospective purchasers to comply with certain requirements in connection with the submission of competing bids, and that the bidding procedures proposed by the Debtor, as set forth in the Motion and as modified herein, are reasonable. The Court further finds that it is appropriate under the circumstances to approve a minimum overbid amount as set forth below as

to any bids for the Offered Assets. The Court has scheduled a hearing to approve the sale to the successful bidder (the “**Sale Hearing**”) for May 12, 2020 at 1:30 p.m. Accordingly, it is

ORDERED:

1. The Motion is GRANTED.
2. The Court approves the following procedures (the “**Bid Procedures**”) for the submission and consideration of any written competing bid (“**Bid**”) by any competing bidder (“**Bidder**”) for the Offered Assets:

(a) Any Bidder must deliver to the parties listed below a Bid for the Offered Assets by no later than 5:00 p.m. (Eastern Daylight Time) on April 24, 2020 (the “**Bid Deadline**”) or such later date agreed to by the Debtor, in consultation with the Official Committee of Unsecured Creditors in the Debtor’s bankruptcy case (the “**Committee**”). The parties to be served by the Bid Deadline with all Bids are: (i) counsel to the Debtor, Scott A. Stichter, Esq. and Elena Paras Ketchum, Esq., Stichter, Riedel, Blain & Postler, P.A., 110 East Madison Street, Suite 200, Tampa, Florida 33602, Email: sstichter@srbp.com and eketchum@srbp.com; (ii) counsel for the Committee, Robert Lapowsky, Esq., Stevens & Lee, P.C., 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406, Email: rl@stevenslee.com and Lynn W. Sherman, Esq., Trenam, Kemker, Scharf, Barkin, Frye, O’Neill & Mullis, P.A., 200 Central Ave., Suite 1600, St. Petersburg, Florida 33602, Email: lsherman@trenam.com, (iii) the Office of the United States Trustee, Attn: Nathan A. Wheatley, Esq., 501 East Polk Street, Suite 1200, Tampa, Florida 33602, Email: nathan.a.wheatley@usdoj.gov., (iv) counsel to the U.S. Department of Housing and Urban Development (“**HUD**”), Christopher J. Emden, United States Attorney’s Office, 400 North Tampa Street, Suite 3200, Tampa, Florida, 33602, Email: christopher.emden@usdoj.gov, and (v) counsel to Lower Florida Keys Hospital District, Scott Underwood, Esq. Buchanan Ingersoll & Rooney, P.C., SunTrust Financial Centre, 401 E. Jackson St., Suite 2400, Tampa, Florida, 33602, Email: scott.underwood@bipc.com (the parties identified in subparagraph (i) – (v) above being hereafter referred to as the “**Notice Parties**”).

(b) Prior to receipt by a prospective Bidder of any information (including business and financial information and access to the Debtor) from the Debtor, each such Bidder will be required to execute a confidentiality agreement in form and content acceptable to the Debtor.

(c) The Bid evidenced by the Regal OTA (the “**Regal Bid**”), provided the Regal OTA has not been terminated, and any Bid submitted by a Bidder other than Regal that satisfies the requirements stated below shall be a “**Qualified Bid**”:

- i) A written offer for the Offered Assets (the “**Bidder’s Purchased Assets**”) in the form of an operations transfer agreement (the “**Bidder’s OTA**”) must be executed by such Bidder, in substantially the form of the Regal OTA, accompanied by a black-line to show all changes made by such Bidder to the form of the Regal OTA. The Bidder’s OTA must be signed by such Bidder and be subject to acceptance by the Debtor. The Debtor, in consultation with the Committee, may accept modifications to the Bidder’s OTA if the Debtor, in consultation with the Committee, determines, in the exercise of its business judgment, that the proposed modifications result in a higher and better offer for the Offered Assets. A copy of the Regal OTA shall be furnished in Microsoft Word format to any Bidder requesting a copy.
- ii) Provide for a purchase price of at least One Hundred Fifty Thousand Dollars (\$150,000.00) above the sum of the Cash Component of Regal Purchase Price plus the FHA Payoff and a statement that specifically sets forth the extent to which the Bid is higher and better than the offer set forth in the Regal OTA.
- iii) Provide a designation of any executory contracts or unexpired leases such Bidder desires the Debtor to assume and assign to the Bidder (the “**Designated Contracts**”).
- iv) Any cash consideration included in the purchase price shall be cash only (unless otherwise agreed by the Debtor, in consultation with the Committee).
- v) Any Bid shall not be contingent upon receipt of financing or due diligence
- vi) A designation of those liabilities of the Debtor such Bidder intends to assume.
- vii) Relevant background and financial information reasonably satisfactory to the Debtor, in consultation with the Committee, (including without limitation the latest available audited and unaudited financial statements) demonstrating the Bidder’s financial ability to close and to consummate an acquisition of the Bidder’s Purchased Assets such as (1) evidence of the Bidder’s ability to assume or satisfy the terms and obligations of the Bidder’s OTA, pay the purchase price provided for therein and provide adequate assurance of

future performance as to any Designated Contracts pursuant to § 365 of the Bankruptcy Code, and (2) a lending commitment from a recognized financial institution or cash sources in the amount of the Bid subject to only those conditions that are acceptable to the Debtor, in consultation with the Committee.

- viii) A good faith deposit in immediately available funds in an amount equal to One Hundred Fifty Thousand Dollars (\$150,000)(the “**Bid Deposit**”), which shall be made payable to and delivered to Stichter, Riedel, Blain & Postler, P.A. (“**Stichter Riedel**”), counsel to the Debtor, by no later than the Bid Deadline (or such later date agreed to by the Debtor, in consultation with the Committee). The Bid Deposit shall be deposited into a non-IOTA, non-interest-bearing trust account maintained by Stichter Riedel. Such Bid Deposit will be non-refundable to the Bidder and forfeited to the Debtor in the event such Bidder’s Bid is approved by the Court at the Sale Hearing as the highest and best offer and such Bidder fails to close on the purchase of the Bidder’s Purchased Assets for any reason other than the failure of a condition to the Bidder’s obligation to close provided that such failure was not caused or preceded by a default by such Bidder under any Bidder’s OTA. The Bid Deposit will be applied against the purchase price at the closing. Within five (5) days following the entry of the Sale Order, Stichter Riedel will return the Bid Deposit of all Bidders except the Bidder whose Bid is approved by the Sale Order (the “**Successful Bidder**”) and the Backup Bidder (defined below). The Backup Bidder’s Bid Deposit will be returned within five (5) days following the closing with the Successful Bidder.
- ix) Each Bid shall include a copy of a fully completed HUD Form 2530 and a statement that such form has been duly submitted to HUD along with a copy of a letter from the Bidder to HUD by which the Bidder consents to HUD sharing any and all details relating to its review of the Bidder’s Form 2530 (including any approval or rejection of the transfer of the Offered Assets to the Bidder) with the Debtor and the Committee. Bidders must submit an electronic HUD Form 2530 using the Active Partners Performance System on or before the Bid Deadline. By including this requirement, the Debtor is not conceding that approval by HUD of the sale of the Offered Assets is required.

(d) If by the Bid Deadline a Qualified Bid in addition to the Regal Bid has been received, an auction (“**Auction**”) in respect of the Offered Assets will be held at the office of Stichter Riedel on May 5, 2020 at 10:00 a.m. If, by the Bid Deadline, no Qualified Bid in addition to the Regal Bid has been received, the Auction shall be cancelled and, provided the Regal Bid has not been terminated, Regal shall be designated the Successful Bidder and the Debtor shall seek approval of the Regal Bid at the Sale Hearing.

(e) If the Auction occurs, all parties who submitted Qualified Bids by the Bid Deadline must be present in person at the Auction with full authority to participate in the Auction. At the Auction, the Debtor, in consultation with the Committee, may request a Bidder to provide additional information demonstrating the Bidder’s financial ability to close and to consummate an acquisition of the Offered Assets. At the Auction, the Debtor, in consultation with the Committee, shall consider Bids for the Offered Assets. At the conclusion of the Auction, the Debtor, in consultation with the Committee, will announce the Bid it considers to be the highest and best offer(s) for the Offered Assets (the “**High Auction Bid(s)**”), after taking into account all aspects of the Bids and the Bidders’ OTAs (including, without limitation, the amount of the purchase price, the method and timing of the payment of the purchase price, conditions to closing, the time for closing, the likelihood of regulatory approval, the representations, warranties and covenants to be provided by the Debtor and, if applicable, the Break-up Fee (defined below)). At the Sale Hearing, the Debtor will seek approval of the High Winning Bid(s). The Bidder(s) who submitted the High Auction Bid and any Backup Bids or their authorized representatives must be present at the Sale Hearing.

(f) The Auction will be conducted as an “open cry” auction. Bidding will begin at the purchase price stated in the highest and best Bid as selected by the Debtor, in consultation with the Committee.

(g) Provided the Regal OTA has not been terminated, Regal shall be entitled to submit further bids at the Auction. All subsequent higher Bids for the Offered Assets above the initial Bid (including any subsequent Bid which may be made by Regal) must be in an amount which nets at least Fifty Thousand Dollars (\$50,000.00) in increased consideration to the Debtor (the “**Overbid Amount**”). For purposes of calculating such net increased consideration, the Break-Up Fee shall be taken into account.

(h) Any successful overbid shall be irrevocable until it is declared not to be the highest or best bid. The competitive bidding process among Bidders shall continue according to these Bid Procedures until the Debtor determines, in the exercise of its business judgment and in consultation with the Committee, that a Bidder has made the highest and best offer to purchase the Offered Assets.

(i) The Debtor, in consultation with the Committee, may make such modifications to the Overbid Amount and other Auction procedures as the Debtor believes are advisable, in the exercise of its discretion, to effect the Auction.

(j) Any Bid shall not be contingent upon receipt of financing or due diligence.

(k) Any Bidder shall provide satisfactory evidence (as determined by the Debtor (in consultation with the Committee) that it is (i) financially able to consummate the transaction contemplated by such Bid and (ii) able to consummate the transaction on the date and on the terms contemplated by the Bidder's OTA, including obtaining any necessary regulatory approvals.

(l) Any Bid shall not contain any conditions precedent to such Bidder's obligation to purchase the Purchased Assets and assume and perform any liabilities to be assumed, other than as may be included in the Bidder's OTA.

(m) Any Bid shall set forth (1) any applicable governmental, regulatory, or other approvals and any applicable consents that would be required to be obtained, (2) all actions taken to obtain such approvals or consents, (3) any approvals or consents obtained, and (4) the Bidder's best estimates as to the likelihood and timing of any such approvals or consents.

(n) If any Bid does not conform to all of the requirements set forth above, such Bid will not be considered by the Court or be admissible at the Sale Hearing, unless otherwise agreed to by the Debtor, in consultation with the Committee.

(o) The Court will conduct the Sale Hearing on May 12, 2020 at 1:30 p.m. to consider the highest and best bid of the Regal Purchased Assets to the Successful Bidder. At the Sale Hearing, the Debtor will seek entry of an order authorizing and approving the sale of the Offered Assets to the Successful Bidder and will request that such order become effective immediately.

(p) Upon approval by the Bankruptcy Court, the Successful Bidder shall be required to close on the purchase of the Offered Assets pursuant to the terms set forth in the Bidder's OTA.

(q) At the Sale Hearing, the Debtor will request that the Court approve the second highest Bid and Bidder (the "**Backup Bidder**"), whose Bidder's OTA shall be a binding contract with the Debtor and shall close in the event the Successful Bidder fails to consummate the acquisition of the Purchased Assets in accordance with the provisions described above and in the Sale Order. Any closing with the Backup Bidder shall occur within two (2) days of notification that the Successful Bidder failed to close.

(r) Other than Regal, no Bidder submitting any Bid shall be entitled to any expense reimbursement or any break-up, termination or similar fee or payment.

(s) All objections to sale of the Offered Assets pursuant to the Bid Procedures shall be filed with the Court and served on the Notice Parties set forth in subparagraph (a) above on or before April 21, 2020 (the "**Sale Objection Deadline**").

3. Notwithstanding any contrary provision in the Regal OTA, Regal shall designate all Assigned Contracts, as defined in the Regal OTA, by providing the Debtor with a completed Schedule 1.1(a)(x) on or before April 1, 2020. Subsequent to April 1, 2020, the Assigned Contracts under the Regal OTA may only be modified with the consent of the Debtor, in consultation with the Committee.

4. The Court hereby approves a \$100,000 break-up fee (the “**Break-Up Fee**”) for Regal as liquidated damages for Regal’s time, expenses, and lost opportunity in connection with this transaction if a higher and better offer for the Offered Assets is received and approved by the Court and the sale is consummated thereafter with the Successful Bidder, who is not Regal. Notwithstanding the foregoing, there shall be no Break-Up Fee or an entitlement to a Break-Up Fee by Regal if, prior to the Auction, the Regal OTA is terminated by the Debtor, other than pursuant to Section 9.021(d) of the Regal OTA. The Break-Up Fee shall be paid solely from the proceeds of a consummated sale to the Successful Bidder, who is not Regal.

5. The Court finds that the Overbid Amount is reasonable and approves the Overbid Amount.

6. As soon as practicable, but in any event no later than five (5) business days following entry of this Order, the Debtor shall serve a notice (the “**Assumption and Assignment Notice**”) by first class mail upon each counterparty to an executory contract or unexpired lease with the Debtor (a “**Contract**”). The Assumption and Assignment Notice will (i) inform each recipient that the Debtor is seeking to sell substantially all of its assets, (ii) identify the Contract, (iii) advise that, in connection with the sale process, such Contract may be assumed and assigned to Regal or another Bidder, (iv) state the amounts (the “**Cure Amounts**”) that the Debtor asserts are due to cure any monetary and non-monetary defaults in the event that the applicable Contract is

assumed and assigned, (v) advise that any objections to the Cure Amounts (the “**Cure Amount Objection**”) must be in writing, include the detail described in paragraph 6 below and be filed with the Court no later than April 10, 2020 (the “**Cure Amount Objection Deadline**”), (vi) advise that any objections to the assumption and assignment to Regal of any Contracts identified in an Assumption and Assignment Notice, including based upon the ability of Regal to provide adequate assurance of future performance, (the “**Regal Assumption Objection**”) must be in writing, include the detail described in paragraph 6 below and be filed with the Court by the earlier of (i) 30 days after Regal has designated the contract for assignment and the counterparty has been notified of the designation and (ii) April 21, 2020, 2020 (the “**Regal Assumption Objection Deadline**”), (vii) advise that, in the event a Bidder, other than Regal includes Designated Contracts in its Bid, the Debtor will provide written notice of such designation to the counterparties to such Designated Contracts on or before April 29, 2020 and any objections to the assumption and assignment to such Bidder of such Contracts, including based upon the ability of such Bidder to provide adequate assurance of future performance (the “**Competing Bidder Assumption Objection**”) must be in writing, include the detail described in paragraph 6 below and be filed with the Court no later than May 4, 2020 (the “**Competing Bidder Assumption Objection Deadline**”), and (viii) advise that any timely asserted Cure Amount Objection, Regal Assumption Objection, and Competing Bidder Assumption Objection will be decided by the Court at the Sale Hearing.

7. Each of the Cure Amount Objection, Regal Assumption Objection, and Competing Bidder Assumption Objection shall set forth: (a) the specific grounds for such objection; and (b) in the case of any Cure Amount Objection, any and all defaults of the Debtor (whether monetary or non-monetary) that the objector alleges are in existence under such Contract and if such alleged

defaults are non-monetary, the nature of such non-monetary defaults and the amount of money or the type of action required to cure such non-monetary defaults.

8. Any lessors or other parties to Contracts who fail to assert timely objections to the proposed assumption and assignment of their Contracts and/or to the Cure Amounts stated in any Assumption and Assignment Notice shall be conclusively deemed to have waived any such objections and to have consented thereto.

9. Any lessors or other parties to Contracts filing a Cure Amount Objection, Regal Assumption Objection, or Competing Bidder Assumption Objection must serve the objection so as to be received by the relevant deadline by the Notice Parties set forth in subparagraph 2(a) above. Nothing in this Order is a final approval of the terms of the Regal OTA nor a waiver by any party impacted by the Regal OTA, each of which interested parties maintain their substantive rights and objections to the Regal OTA other than process related aspects to advancing the Bid Procedures set forth in this Order.

10. The granting of the Motion as set forth herein shall not constitute the approval of any sale of the Offered Assets or any term or provision of the Regal OTA or any other Bidder's OTA.

11. Creditor Lower Florida Keys Hospital District's Limited Objection to the Motion (the "Lower Keys Hospital Objection") [Doc. No. 1127] is overruled without prejudice to Lower Keys Hospital District's ability to raise objections to the sale. For avoidance of doubt, all objections to the Sale Motion and the assumption and assignment of the Debtor's lease with the Lower Keys Hospital District are preserved and nothing in this Order shall preclude the Lower Keys Hospital District from objecting to the Sale Motion and /or the assumption and assignment of its lease.

12. To the extent there is any inconsistency between the provisions of this Order and the terms of any OTA, the provisions of this Order shall control.

13. Following the entry of this Order, the Debtor shall serve a copy of this Order to (a) parties listed on the Local Rule 1007-2 Parties in Interest List; (b) all parties which, to the knowledge of the Debtor, have or have asserted liens on the Offered Assets; (c) all counterparties to the Contracts; and (d) any party that has expressed an interest to the Debtor in acquiring any of the Offered Assets. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Attorney Scott A. Stichter is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within 3 days of entry of the order.

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