

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ANGELA PERRY  
and MICHAEL PETERSON,  
individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

PROGRESSIVE MICHIGAN INSURANCE CO.,  
A Michigan corporation, and  
PROGRESSIVE MARATHON INSURANCE CO.,  
A Michigan corporation,

Defendants.

CASE NO.: 2022- CK

22-000971-CK

Hon.

JUDGE ARCHIE C.

BROWN

CLASS ACTION

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*Two civil actions between other parties arising out of the same occurrence alleged in the complaint have been previously filed in this Court, where they were given case numbers 19-741-CK and 22-408-CK and were assigned to Judge Timothy P. Connors. The actions remain pending.*

**CLASS ACTION COMPLAINT AND JURY DEMAND**

Plaintiffs Angela Perry (“Perry”) and Michael Peterson (“Peterson”) (collectively, “Plaintiffs”) on behalf of themselves and all others similarly situated, file this Class Action Complaint against Progressive Marathon Insurance Company (“Progressive Marathon”) and Progressive Michigan Insurance Company (“Progressive Michigan”) (collectively “Progressive” or “Defendants”), and in support thereof state the following:

**NATURE OF THE ACTION**

1. This is a class action lawsuit by Plaintiffs, the named insureds under Progressive automobile policies issued for private-passenger auto physical damage including comprehensive and collision coverage, which requires payment of “Actual Cash Value” or “ACV.” Plaintiffs bring claims for breach of contract and declaratory relief.

2. Defendants are large private-passenger auto insurance carriers operating in Michigan. Progressive Marathon alone has 15.05% of the market share for private-passenger auto insurance in Michigan According to the National Association of Insurance Commissioners (“NAIC”). NAIC 2017 Market Share Reports [https://www.naic.org/prod\\_serv/MSR-PB-18.pdf](https://www.naic.org/prod_serv/MSR-PB-18.pdf) at 349 (last visited March 19, 2019). One of the coverages Progressive offers is comprehensive and collision coverage. Upon information and belief, Progressive systematically underpaid not just Plaintiffs, but thousands of other putative Class members, amounts Progressive owed their insureds for ACV losses for total loss vehicles insured with comprehensive and collision coverage.

3. This lawsuit is brought by the Plaintiffs, individually and on behalf of all other similarly situated insureds, who suffered damages due to Defendants’ practice of refusing to pay full ACV payments or full total loss payments (“FTLP”) to first-party total loss insureds on physical damage policies (“Policies”) containing comprehensive and collision coverages. Specifically, as a matter of policy, Progressive fail to include sales tax, title transfer and vehicle registration fees (“Tax, Title, and Registration Fees”) in its calculation of ACV when paying FTLP to its insureds.

4. The failure to pay Tax, Title, and Registration Fees to first-party total losses owed to the Progressive insureds pursuant to the policy language is a breach of the policy and constitutes a breach of contract as to Plaintiffs and each putative class member.

### **PARTIES, JURISDICTION, AND VENUE**

5. This is an action asserting class claims for damages and declaratory relief pursuant to MCR 3.501.

6. The amount in controversy exceeds \$25,000, exclusive of interest, costs, and attorneys' fees. Plaintiffs do not currently know if the total amount in controversy exceeds \$5 million.

7. At all times material hereto, Perry is and was domiciled in Macomb County, Michigan, and is a citizen of the State of Michigan.

8. At all times material hereto, Peterson is and was domiciled in Gogebic County, Michigan, and is a citizen of the State of Michigan.

9. At all times material hereto, Progressive Michigan is and was a Michigan corporation, authorized to transact and regularly transacting insurance business in the State of Michigan, with its principal place of business in the State of Ohio.

10. At all times material hereto, Progressive Marathon is and was a Michigan corporation, authorized to transact and regularly transacting insurance business in the State of Michigan, with its principal place of business in the State of Ohio.

11. This Court has general and limited personal jurisdiction over Progressive pursuant to MCL § 600.711, MCL § 600.715, and MCL § 600.745, because Defendants entered into the contracts at issue with Plaintiffs in Michigan, Defendants carry on a continuous and systematic part of their general business in Michigan, Defendants transact business in Michigan. Defendants are also incorporated in Michigan.

12. Further, venue is proper in this Court because Progressive has a place of business in and regularly conducts business in Washtenaw County.

13. This case is not removable to federal court because Plaintiffs, and all putative class members, and Defendants are citizens of Michigan. In addition, neither Plaintiffs nor any member of the class assert any claim based on any federal question.

## FACTUAL ALLEGATIONS

14. Defendants' standardized policy language as to collision and comprehensive coverage for ACV of total loss vehicles is present in every Progressive auto policy issued by Defendants in Michigan that provide for collision and comprehensive coverage.

15. The policy language used in Policies issued by Progressive is standardized in all relevant and material ways.

16. At all times material hereto, Plaintiff Perry owned a 2009 Pontiac G6 Sedan, VIN # 1G2ZG57B894153582 ("Perry's Insured Vehicle").

17. At all times material hereto, Perry insured Perry's Insured Vehicle under an insurance policy issued by Progressive Michigan. *See Perry Insurance Policy and Declarations Page*, attached as Exhibit A.

18. On or about February 13, 2022, Perry's Insured Vehicle was involved in an accident. As a result of said accident, Perry filed a claim for property damage with Progressive Michigan, claim number 22-4311575-01.

19. Following the filing of said claim, Progressive Michigan determined that Perry's Insured Vehicle was a total loss with a base value of \$4,731.35. Progressive Michigan applied a "condition adjustment" of \$321.13 resulting in a "Net Settlement" of \$4,495.22, which did not include any amount for Tax, Title, and Registration Fees. *See Perry Settlement Summary*, attached as Exhibit B.

20. From the "Net Settlement" of \$4,495.22, Progressive Michigan then subtracted the deductible of \$100.00. Thus, the Total Settlement was in the amount of \$4,395.22, which Progressive paid to Perry. *See Ex. B.*

21. Progressive Michigan's failure to include amounts for Tax, Title, and Registration Fees in its payment of \$4,395.22 constituted a breach of its insurance policy.

22. At all times material hereto, Plaintiff Peterson owned a 2008 Toyota Tundra VIN # 5TFDV54158X068431 ("Peterson's Insured Vehicle").

23. At all times material hereto, Peterson insured Peterson's Insured Vehicle under an insurance policy issued by Progressive Marathon. *See* Peterson Insurance Policy and Declarations Page, attached Exhibit C.

24. On or about March 28, 2022, Peterson's Insured Vehicle was involved in an accident. As a result of said accident, Peterson filed a claim for property damage with Progressive Marathon, claim number 22-6273946-01.

25. Following the filing of said claim, Progressive Marathon determined that Peterson's Insured Vehicle was a total loss with a base value of \$13,186.97. Progressive Marathon applied a "condition adjustment" of \$1,062.19, resulting in a "Net Settlement" of \$12,259.78, which did not include any amount for Tax, Title, and Registration Fees. *See* Settlement Summary, attached as Exhibit D.

26. From the "Net Settlement" of \$12,259.78, Progressive Marathon then subtracted the deductible of \$500.00. Thus, the Total Settlement was in the amount of \$11,759.78, which Progressive paid to Peterson. *See Ex. D.*

27. Progressive Michigan's failure to include amounts for Tax, Title, and Registration Fees in its payment of \$11,759.78 constituted a breach of its insurance policy.

28. Sales tax is a mandatory cost that must be paid to replace any vehicle in the State of Michigan. Michigan sales tax is assessed in the amount of 6% of the purchase price.

29. Tax, Title, and Registration Fees are mandatory applicable fees that must be paid to replace any vehicle in the State of Michigan.

30. Michigan law requires that all vehicles be properly titled in order to be legally driven on Michigan roadways.

31. Michigan law requires that all vehicles have proper registration in order to be legally driven on Michigan roadways.

32. Plaintiffs were owed, at minimum, 1) title transfer fees and registration fees, plus 2) tag transfer fees, plus 3) sales tax in an amount equal to 6% of the base vehicle value, all of which comprise Tax, Title, and Registration Fees.

33. Plaintiffs paid all premiums owed and otherwise satisfied all conditions precedent such that their insurance policies were in effect and operational at the time of the accidents.

#### **THE PROGRESSIVE INSURANCE POLICY**

34. Progressive's insurance policy under the section entitled "Part IV, Damage to a Vehicle," states that "we will pay for sudden, direct and accidental loss to a: 1. **covered auto** . . . resulting from a **collision**." *Exs. A and C* p. 17 (emphasis in original) (collectively referred to as the "Policy"). The section also covers comprehensive coverage, stating "we will pay for sudden, direct and accidental loss to a: 1. **covered auto** . . . that is not caused by a **collision**." *id.* at p. 18 (emphasis in original).

35. "'**Collision**' means the upset of a vehicle or its impact with another vehicle or object." *Id.* at p. 21 (emphasis in original).

36. "Comprehensive" coverage means that Defendant will pay for any non-excluded loss other than collision to the covered auto. The Policy includes a non-exhaustive list of what "A loss not caused by **collision** includes." *Id.* at p. 18 (emphasis in original).

37. In the same section, under a provision entitled “Limits of Liability,” the Policy states that the “limit of liability for loss... is the lowest of:

- a. the actual cash value of the stolen or damaged property at the time of the loss reduced by the applicable deductible;
- b. the amount necessary to replace the stolen or damaged property reduced by the applicable deductible;
- c. the amount necessary to repair the damaged property to its pre-loss condition reduced by the applicable deductible; or
- d. the Stated Amount shown on the **declarations page** for that **covered auto**.

*Id.* at p. 23–24. (emphasis in original).

38. ACV is not defined in the Policy.

39. There is no difference, for purposes of the duty to pay ACV on a first-party total loss claim, between a collision total loss claim and a comprehensive total loss claim.

40. Clearly then, the policy language does not further define ACV as including: (1) any provision excluding Tax, Title, and Registration Fees from ACV; (2) any provision deferring payment of the ACV Tax, Title, and Registration Fees for any purpose whatsoever; (3) any provision requiring an insured to obtain a replacement vehicle; (4) any provision requiring the insured to first obtain a replacement vehicle as a condition precedent to receiving ACV Tax, Title, and Registration Fees; or (5) any provision linking the amount of ACV Tax, Title, and Registration Fees to a particular replacement vehicle and the corresponding Tax, Title, and Registration Fees on said replacement vehicle.

41. The policy language applies to all covered autos irrespective of ownership interests - whether owned, financed or leased, insured autos are considered a “covered-auto” for purposes of the policy. *Id.* at p. 1.

## **PAYMENT OF MANDATORY TAXES AND FEES**

42. Michigan law is clear that courts cannot limit the scope of a term, if it is not defined in the policy, to a narrow definition that benefits the insurer; in fact, if policy language is susceptible to more than one reasonable interpretation, it is construed in the light that would grant coverage, *i.e.*, to the benefit of the insured and against the insurer. *See State Farm Mut. Automobile Ins. Co v Enterprise Leasing Co.*, 549 NW2d 345 (Mich. 1996).

43. Michigan law requires payment of sales tax on vehicle purchases, and requires vehicles to be legally titled and registered, for which Michigan imposes mandatory fees.

44. Progressive's Policies promise to provide the costs of replacement, including Tax, Title, and Registration Fees, and that such costs will be determined at the time of loss. No policy provision provides exclusion for such costs nor conditions payment on vehicle replacement.

45. Progressive's promise to pay ACV necessarily includes sales tax equal to a percentage of the base value and mandatory transfer fees. Progressive fails to actually make such payment to total loss insureds as a uniform and standard policy.

## **CLASS ALLEGATIONS**

46. Plaintiffs bring this class action pursuant to MCR 3.501 on behalf of themselves and the following class ("Class") of similarly situated persons:

All people insured by Progressive and whose insurance covers a vehicle with private-passenger physical damage coverage for comprehensive or collision loss who made a first party claim that was adjusted by Progressive as a total loss and who received an actual cash value payment from Progressive that did not include Tax, Title, and/or Registration Fees, within the six years prior to the date on which this lawsuit was filed until the date of any certification order.

47. Plaintiffs reserve the right to modify or amend the definition of the proposed Class.



48. Excluded from the Class is Progressive, including any parent, subsidiary, affiliate, or controlled person of Progressive; Progressive's officers, directors, agents, or employees; the judicial officers assigned to this litigation; and members of their staffs and immediate families.

**A. Numerosity**

49. Although the precise number of Class members is unknown to Plaintiffs at this time and can only be determined through appropriate discovery, Plaintiffs believe that because Progressive is amongst the largest motor vehicle insurers in the State of Michigan and writes millions of dollars of private-passenger physical damage coverage premiums, the class of persons affected by Progressive's unlawful practice consists of thousands of individuals or the class of persons affected are otherwise so numerous that joinder of all class members is impractical. The unlawful practice alleged herein is a standardized and uniform practice, employed by Progressive pursuant to standardized insurance policy language, and results in the retention by Progressive of insurance benefits properly owed to Plaintiffs and the Class members. The class definition will permit the court to reasonably ascertain whether any individual or entity is a member of the Class as any individual who is an insured of Progressive in the class period and received an ACV that did not include Vehicle Title and Registration Fees will be a member of the class.

50. Upon information and belief, Progressive uniformly fails to pay Tax, Title, and Registration Fees in total loss cases. Accordingly, the Class consists of many thousands, if not tens of thousands, of Progressive's insureds who were not paid in violation of their insurance policies. Thus, pursuant to MCR 3.501(A)(1)(a), the large size of the Class renders the Class so numerous that joinder of all individual members is impracticable.

**B. Commonality**

51. Common questions of law and fact predominate in this matter because Progressive's conduct towards the members of the Class is identical. Progressive uniformly fails to pay Tax, Title, and Registration Fees in total loss cases.

52. Progressive shares a common interest with all members of the putative Class in the objects of the action and the relief sought.

53. Progressive satisfies MCR 3.501(A)(1)(b)'s commonality requirement because her claims arise from a practice which Progressive applies uniformly to all of the similarly situated Class members and are based on the same legal theories as all other members of the putative Class, that failing to pay Tax, Title, and Registration Fees in total loss cases violates the uniform insurance Policies. Because Progressive's conduct was uniform as to all Class members, the material elements of Plaintiffs' claims and those of absent Class members are subject to common proof, and the outcome of Plaintiffs' individual actions will be dispositive for the Class. The common questions include, but are not limited to, the following: (a) whether, under the Progressive's standardized policy language, Plaintiffs and the Class members are owed Tax, Title, and Registration Fees as part of ACV upon the total loss of an insured vehicle; (b) whether Progressive has breached its insurance contracts with Plaintiffs and the class members by failing to pay Tax, Title, and Registration Fees as part of ACV upon the total loss of an insured vehicle.

**C. Typicality**

54. Pursuant to MCR 3.501(A)(1)(c), Plaintiffs' claims are typical of the claims of all other members of the Class because all such claims arise from the Progressive's failure to pay Tax, Title, and Registration Fees on total loss claims of insured vehicles.

55. Plaintiffs' and Class members' legal claims arise from the same core practices, namely, the failure to pay full ACV, including Tax, Title, and Registration Fees, for first-party total loss claims. The material facts underlying the claims of each putative class member are the same material facts as those supporting the Plaintiffs' claims alleged herein and require proof of the same material facts.

**D. Adequacy**

56. Plaintiffs can and will adequately represent the putative class and their interests are common to, and coincident with, those of all absent Class members. By proving their, Plaintiffs will necessarily prove the claims of the putative class and prove Defendant's liability to the Class. Plaintiffs have no known conflicts of interest with any members of the Class; their interests and claims are not antagonistic to those of any other Class members; nor are their claims subject to any unique defenses.

57. The representative Plaintiffs therefore can and will fairly and adequately protect and represent the interests of the Class under the criteria set forth in MCR 3.501(A)(1)(d).

58. Plaintiffs' counsel—The Miller Law Firm, P.C.; Kopelowitz Ostrow Ferguson Weiselberg Gilbert; Edelsberg Law, P.A.; and Shamis & Gentile, P.A.—have extensive experience in complex commercial litigation and class actions, and have the ability to vigorously litigate this case to conclusion in the interests of the Class.

59. If appointed class representatives, Plaintiffs are aware of, and are committed to, faithfully upholding their fiduciary duties to absent Class members. Plaintiffs and their counsel are committed to the vigorous prosecution of this action and will allocate the appropriate time and resources to ensure that the Class is fairly represented.

60. Plaintiffs and their counsel will therefore fairly and adequately assert and protect the interests of the Class.

**E. Predominance and Superiority**

61. A class action provides a fair and efficient method for the adjudication of this controversy under the criteria set forth in MCR 3.501(A)(1)(e). Class treatment is a superior form of adjudication than the prosecution of individual claims and provides a substantial benefit to the court and litigants by avoiding a multiplicity of suits, and the risk of inconsistent results.

62. Because Progressive's conduct was uniform with respect to all prospective Class members, common questions of law and fact predominate over individual questions.

63. Because the Class encompasses many thousands of claims (if not tens of thousands of claims), a single, state-wide class action is far more efficient than many thousands of individual lawsuits, each requiring the same discovery and proofs. Given the relatively small amount of the claim(s) of each putative class member, it is likely that, absent class representation, such claims would not be brought, and the Class would never have appropriate redress for Progressive's improper conduct. A class action is superior and more efficient to other available methods for the fair and efficient adjudication of this controversy.

64. Class treatment ensures uniformity and consistency in results, enables the many small claims of Class members as well as claims for class-wide declaratory relief to be brought efficiently, and will provide optimum relief to Class members for their past and future injuries, as well as deter Progressive and other similar businesses from engaging in such wrongful conduct in the future.

65. In addition, the expense and burden of individual litigation effectively makes it a practical impossibility for individual Class members to seek redress for the wrongs alleged herein.

66. The advantages of maintaining this action as a class suit far outweigh the expense and waste of judicial effort that would result from thousands of separate adjudications or the unfairness of none at all, which is the likely outcome if the small individual claims at issue are not aggregated as a class.

67. There are also no unusual difficulties likely to be encountered in the maintenance of this action as a class suit, and this Court can effectively manage the class action.

68. Any argument that class treatment is not viable or productive in the present action is undercut by the fact that the Southern District of Florida recently certified a class of Progressive insureds in a case that is substantially identical to the present action. *See Paris v. Progressive Am. Ins., Co.*, No. 19-21761, 2020 U.S. Dist. LEXIS 21217 (S.D. Fla. Nov. 13, 2020). More recently, the court in *Paris* entered summary judgment in favor of the certified class. *See Paris v. Progressive Am. Ins., Co.*, No. 19-21761, 2021 U.S. Dist. LEXIS 165314 (S.D. Fla. Aug. 31, 2021). The Middle District of Florida similarly certified a class of insureds in *Roth v. Geico General Insurance Co.*, No. 16-62942 (S.D. Fla. June 14, 2018).

69. The Class is not so large that it would be unmanageable, and no difficulties are foreseen providing notice to individual claimants because Progressive keeps records of insurance policies and claims of prospective Class members during the class period, including records of total loss vehicles. Therefore, both the membership of the Class and the amount of individual damages is readily ascertainable from Progressive's records.

**F. Declaratory Relief Under MCR 3.501(A)(2)(b)**

70. Pursuant to MCR 3.501(A)(2)(b), class treatment is warranted because Progressive has acted or refused to act on grounds generally applicable to all the members of the Class, thereby making final declaratory relief concerning the Class as a whole appropriate.

71. Because declaratory relief is sought, class treatment ensures uniformity and consistency in results, enables the many small claims of Class members as well as claims for class-wide declaratory relief to be brought efficiently, and will provide optimum relief to Class members for their past and future injuries, as well as deter Progressive and other similar businesses from engaging in such wrongful conduct in the future.

72. Because Progressive has acted consistently towards all members of the Class, declaratory relief is appropriate with respect to both the Class and Plaintiffs' claims and is likewise subject to common proof and adjudication.

73. Based on the foregoing, class treatment is the most fair and efficient form of adjudication for this matter.

**COUNT I**  
**BREACH OF CONTRACT**

74. The allegations contained in paragraphs 1–73 are incorporated by reference.

75. This count is brought by Plaintiffs, individually and on behalf of the Class members.

76. Perry was party to a contract, the insurance policy, with Defendant as described herein. *See Ex. A.* Peterson was also party to an identical contract, the insurance policy, with Progressive as described herein. *See Ex. C.* All Class members were parties to an insurance contract with one or both Progressive entities containing materially identical terms.

77. The interpretation of Plaintiffs' and all Class members' insurance Policies are governed by Michigan law.

78. Plaintiffs and all Class members made a claim determined by Progressive to be a first-party total loss under the insurance policy and determined by Progressive to be a covered claim.

79. Progressive, by paying the total loss claim, determined that Plaintiffs and each Class member complied with the terms of their insurance contracts, and fulfilled all of their duties and conditions under the Policies for each insured to be paid on his or her total loss.

80. Pursuant to the aforementioned uniform contractual provisions, upon the total loss of insured vehicles, the Plaintiffs and every Class member were owed the actual cash value of the vehicle, including all Tax, Title, and Registration Fees.

81. Progressive refused to make full ACV payment to Plaintiffs and every Class member.

82. Progressive's failure to provide the promised coverage constitutes a material breach of contract with Plaintiffs and every Class member.

83. As a result of said breaches, Plaintiffs and the Class members are entitled under Progressive's Policies to sums representing the benefits owed for Tax, Title, and Registration Fees, as well as costs, prejudgment and post-judgment interest, and other relief as is appropriate.

84. In addition, Plaintiffs and the Class members are entitled to an award of attorney's fees and costs pursuant to Michigan law.

**COUNT II**  
**DECLARATOR RELIEF**

85. The allegations contained in paragraphs 1–73 are incorporated by reference.

86. This count seeks declaratory relief pursuant to MCR 2.605.

87. This count is brought by Plaintiffs on behalf of themselves and all members of the Class. Progre

88. Perry was party to a contract, the insurance policy, with Defendant as described herein. *See* Ex. A. Peterson was also party to an identical contract, the insurance policy, with

Progressive as described herein. *See Ex. C.* All Class Members were parties to an insurance contract with one or both Progressive entities containing materially identical terms.

89. Plaintiffs seek a declaratory judgment that an insured is entitled to Tax, Title, and Registration Fees in a FTLP to pay a vehicle's ACV in the event of a total loss under the insurance policies that govern Plaintiffs' and the Class members' contractual relationships with Progressive.

90. Plaintiffs contends Progressive is required to pay Tax, Title, and Registration Fees to pay a vehicle's ACV in the event of a total loss under the insurance Policies and under Michigan law that govern Plaintiffs and the Class members' relationship with Progressive.

91. Progressive disagrees with Plaintiffs' interpretation of the insurance Policies as evidenced by its practice of failing to pay Tax, Title, and Registration Fees to pay a vehicle's ACV in the event of a total loss.

92. Because of Progressive's claim to the contrary, Plaintiffs are in doubt as to their rights under the insurance policy.

93. The above allegations present ascertained or ascertainable facts of a present controversy between Plaintiffs and Progressive as to entitlement to the Tax, Title, and Registration Fees.

94. The above allegations reflect that Plaintiffs have presented a justiciable question as to the existence of their right to the Tax, Title, and Registration Fees.

95. All antagonistic and adverse interests, namely Plaintiffs and Progressive and the Class when certified, are before this Court by the filing of this count.

96. Plaintiffs are entitled to a declaration of their right to the Tax, Title, and Registration Fees to resolve her doubt about her rights under the insurance policy considering the Progressive's position otherwise.



**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs Angela Perry and Michael Peterson, individually and on behalf of those similarly situated, demand a trial by jury on all triable issues and seeks and prays for relief and judgment as follows:

- a) For an Order certifying this action as a Class Action on behalf of the Class described above;
- b) For an Order appointing undersigned counsel and their firms as counsel for the Class;
- c) For an Order appointing Plaintiffs as Class Representatives;
- d) For an award of compensatory damages in amounts owed under the Policies;
- e) For declaratory relief to be entered for Plaintiffs and the Class that the Defendant is required to pay Tax, Title, and Registration Fees to Plaintiffs and the Class;
- f) For all other damages according to proof;
- g) For an award of attorney's fees and expenses as appropriate pursuant to applicable law;
- h) For costs of suit incurred herein;
- i) For pre and post judgment interests on any amounts awarded;
- j) For other and further forms of relief as this Court deems just and proper.

Dated: July 18, 2022

Respectfully submitted,

/s/ E. Powell Miller

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