

## Otto Starzmann

I submit the attached written testimony in strong support of CARB's proposed SB 253 regulations, with five targeted technical recommendations on the three decisions before the Board today: (1) graduate the flat fee structure by revenue tier; (2) allow a consolidated fee election for corporate families filing consolidated reports; (3) clarify the "doing business in California" definition to address digital economy business models; (4) adjust the initial reporting deadline to October 31, 2026; and (5) establish a 30-day first-year grace period for good-faith fee payment delays. These recommendations are grounded in three decades of direct experience implementing disclosure frameworks under multilateral oversight and are intended to strengthen CARB's program, not soften it.

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## WRITTEN TESTIMONY SUBMITTED TO CALIFORNIA AIR RESOURCES BOARD

Public Hearing on Proposed Regulations Implementing SB 253 and SB 261

Climate Corporate Data Accountability Act and Climate-Related Financial Risk Act

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### Submitted to:

California Air Resources Board (CARB)  
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### Submitted by:

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**Re:** Climate Data and Financial Risk Reporting Fee Regulation

**Regulatory Authority:** California Code of Regulations, Title 17, Sections 96070–96077

**Hearing Date:** February 26, 2026

**Position:** SUPPORT with Technical Recommendations

## SUMMARY

I respectfully submit this testimony in strong support of CARB’s proposed regulations implementing SB 253 (*Climate Corporate Data Accountability Act*). California’s leadership in establishing mandatory climate disclosure requirements creates essential market infrastructure that improves capital allocation and positions California businesses competitively as global markets converge around standardized emissions reporting.

This testimony addresses the *three specific decisions* before the Board at this hearing: (1) the fee structure, (2) covered entity definitions, and (3) the first-year reporting deadline. I offer five targeted technical recommendations to strengthen program effectiveness while maintaining compliance feasibility, drawing on more than three decades of experience implementing disclosure and accountability frameworks under multilateral oversight across diverse jurisdictions.

I acknowledge that CARB has appropriately deferred reporting requirements, verification standards, and Scope 3 guidance to subsequent rulemaking. I intend to provide detailed technical analysis on those implementation elements when CARB opens that process. This testimony focuses exclusively on the decisions currently before the Board.

**Regarding SB 261:** I support CARB’s continued parallel rulemaking on climate-related financial risk disclosure. The graduated tier structure and consolidated fee election recommended here for SB 253 apply to SB 261 as well, once the Ninth Circuit injunction is resolved—

recalibrated proportionally around the SB 261 base fee of \$1,403 rather than the SB 253 base of \$3,106. Given that SB 261 implementation remains stayed, this testimony focuses on the SB 253 decisions the Board can act on today.

## **CREDIBILITY AND RELEVANT EXPERIENCE**

My testimony is informed by direct operational experience implementing complex disclosure and accountability frameworks in politically sensitive, multi-jurisdictional contexts:—

- ***Multilateral Development Implementation:*** 14 years managing World Bank and Inter-American Development Bank (IDB) projects requiring cross-jurisdictional regulatory navigation, stakeholder coordination, and disclosure framework implementation across more than 10 countries in Latin America and the Caribbean.
- ***Organizational Complexity Expertise:*** Direct experience navigating how theoretical regulatory requirements meet real-world compliance constraints in organizations with complex subsidiary structures, multi-tier supply chains, and resource limitations—including multi-entity reporting consolidation as a tool for oversight efficiency under multilateral mandates.
- ***Climate Disclosure Practice:*** Extensive implementation experience with *Scope 3* measurement methodologies, carbon accounting system design, and state-level climate policy application across manufacturing, food systems, logistics, and infrastructure sectors.
- ***Regulatory Implementation Perspective:*** Three decades observing how specific regulatory design choices—fee structures, deadline sequences, and definitional thresholds—produce predictable operational outcomes that either enable or undermine program effectiveness.

I offer this testimony as an independent expert with no financial interest in the outcome of this rulemaking beyond advancing effective climate disclosure architecture.

## **PART 1: TECHNICAL RECOMMENDATIONS ON THE THREE CURRENT CARB DECISIONS**

### **Decision 1: Fee Structure**

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#### **Recommendation #1: Graduate the Fee Structure by Revenue Tiers**

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#### ***Current Proposal***

CARB's draft regulations establish a flat annual fee of approximately \$3,106 for all entities subject to SB 253, regardless of company size, operational complexity, or value chain breadth.

### ***Problem***

A flat fee structure treats a \$1 billion revenue company identically to a \$500 billion revenue company, despite vast differences in:—

- Compliance capacity and technical resources.
- *Scope 3* value chain complexity (supplier count, geographic distribution, and data collection burden).
- Administrative cost absorption capability.
- Systemic and/or strategic importance to California’s overall economy.

This creates disproportionate burdens on smaller entities within the \$1 billion+ threshold while under-recovering costs from the largest, most complex reporters.

### ***Recommendation***

Implement graduated fee tiers based on annual revenue brackets:—

- **Tier 1** (\$1B – \$5B revenue): Base fee (~\$3,106)
- **Tier 2** (\$5B – \$25B revenue): 1.5x base fee (~\$4,659)
- **Tier 3** (\$25B – \$100B revenue): 2.5x base fee (~\$7,765)
- **Tier 4** (\$100B+ revenue): 4x base fee (~\$12,424)

### ***Rationale***

This approach reflects the proportionality principle embedded in EU *Corporate Sustainability Reporting Directive (CSRD)* implementation, where regulatory burden scales with company capacity. It also aligns with California’s own progressive policy traditions in other regulatory domains, including workers’ compensation premium structures and unemployment insurance contributions.

Graduated fees would:—

- Better match program costs to entities creating the greatest compliance complexity.
- Reduce barriers for smaller entities newly crossing the \$1 billion threshold.
- Maintain program revenue adequacy as CARB refines cost estimates.
- Provide political sustainability by demonstrating fairness across a highly varied entity population.

### ***Precedent***

The EU *CSRD* explicitly incorporates proportionality through phased implementation timelines and reduced disclosure requirements for smaller entities. While California’s \$1 billion threshold already provides a materiality floor, graduated fees within that population acknowledge

continued variation in compliance capacity. California’s well-established regulatory tradition supports this approach: the state routinely scales obligations by organizational size and capacity across environmental, labor, and financial regulatory domains.

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**Recommendation #2:**

**Address the Multi-Subsidiary Fee Problem Through a Consolidated Fee Election**

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***Current Proposal***

The draft regulations establish fees *per entity*, not per reporting unit. This means every subsidiary of a parent corporation that independently qualifies under the revenue and “doing business in California” thresholds must pay the \$3,106 fee separately—even when the parent files a consolidated emissions report covering all subsidiaries.

***Problem***

A conglomerate or private equity portfolio with 30 to 50 California-operating subsidiaries, each individually meeting the \$1 billion revenue threshold, faces cumulative SB 253 fee exposure of \$93,000–\$155,000—plus equivalent SB 261 fees once the Ninth Circuit injunction lifts. This is not a barrier for the very largest companies, which can absorb it readily. But it creates disproportionate burden for *mid-market holding structures*—operating companies organized across legal entities for legitimate business purposes—and for portfolio structures common in real estate, infrastructure, and private equity.

Critically, paying multiple fees does not produce better emissions data. When a parent is filing a single consolidated report, the per-entity fee structure imposes administrative duplication on both the regulated community and CARB without improving the quality or completeness of the reported emissions. The structure also creates perverse incentives for corporate restructuring—consolidating entities purely to minimize fee exposure—which would complicate CARB’s oversight without advancing any substantive program goal.

***Recommendation***

CARB should allow a *consolidated fee election* for corporate families filing consolidated emissions reports. Under this approach:—

- A parent entity filing a consolidated report covering multiple California subsidiaries would pay *a single graduated fee* based on the total consolidated revenue of all covered entities.
- All subsidiaries included in the consolidated report would be identified in the filing, providing full transparency to CARB.
- The applicable graduated fee tier would be determined by *total consolidated revenue*, ensuring that large conglomerates pay appropriately scaled fees—not a discounted flat amount.

- This election would be *optional*: entities preferring to file and pay separately could continue to do so.

### ***Rationale***

Multi-entity reporting consolidation at the program level is a well-established principle in multilateral development finance, where I have direct operational experience. Under World Bank and IDB frameworks, program-level consolidated reporting consistently produced better oversight outcomes than entity-by-entity reporting—because it allowed regulators to assess systemic performance patterns rather than isolated entity snapshots. The same logic applies here.

A consolidated fee election would:—

- Eliminate duplicative administrative burden for both regulated entities and CARB staff.
- Remove incentives for artificial corporate restructuring to minimize fee exposure.
- Maintain program revenue adequacy through graduated fee tiers calibrated to total consolidated revenue.
- Simplify CARB’s verification and enforcement processes by aligning the fee-paying unit with the reporting unit.

This is a gap in the current draft that other submissions are unlikely to have addressed from an operational implementation standpoint. I urge the Board to close it.

## **Decision 2: Covered Entity Definitions**

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### **Recommendation #3: Clarify “Doing Business in California” for Digital Economy Business Models**

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#### ***Current Proposal***

CARB’s *Initial Statement of Reasons* defines “doing business in California” by excluding certain activities (telework-only operations and wholesale electricity transactions without physical presence) but does not affirmatively clarify the treatment of digital economy business models.

#### ***Ambiguity***

Many companies generate substantial California revenue through purely digital channels. These include: (1) Software-as-a-service; (2) Cloud computing; (3) Streaming media; and (4) E-commerce platforms. These entities may have:—

- Minimal or no physical California presence (no offices, warehouses, or employees).
- A large California customer base generating revenue well above the \$1 billion threshold.
- An unclear nexus under traditional “doing business” frameworks.

The current draft language does not explicitly address whether such entities are “doing business in California” for SB 253 purposes.

Given that California’s technology and digital media economy represents one of the largest concentrations of high-revenue digital businesses anywhere in the world, this ambiguity is not a peripheral edge case—it is a structural gap that could exempt a significant population of large emitters from the program’s reach.

### ***Recommendation***

CARB should clarify that entities with \$1 billion+ in annual ***California-source revenue*** (sales to California customers, regardless of the entity’s physical presence) are subject to SB 253 reporting requirements.

This approach:—

- Aligns with the economic reality that digital business models have substantial California market presence through customer relationships, not physical footprints.
- Prevents avoidance strategies where companies opt to maintain minimal physical presence while continuing to serve large California markets.
- Treats digital and physical businesses equivalently—a software company selling to California customers reports on the same basis as a manufacturer with California-located facilities.
- ***Harmonizes with California’s own existing legal framework:*** CARB’s proposed definition already tracks *Revenue and Taxation Code* §25120(e)/(f), which uses a sales-based assignment methodology. That methodology, in its modern economic nexus interpretation following the 2018 *South Dakota v. Wayfair* Supreme Court decision, already attributes revenue to the customer’s location for digital businesses.

Applying the same economic nexus principle to SB 253 represents a logical extension of California’s own definitional framework. CARB should note, however, that *Wayfair* established economic nexus for ***tax*** jurisdiction specifically—and that regulatory disclosure jurisdiction is a legally distinct concept.

CARB should therefore either confirm this interpretation explicitly by regulatory clarification in the final rule, or—if the statutory language requires it—seek targeted legislative authority to make the economic nexus standard explicit for disclosure jurisdiction purposes. Either pathway closes the gap; only the first can be acted on today.

### ***Alternative***

If CARB concludes that the statutory language limits jurisdiction to entities with physical California presence, clarifying this explicitly would provide legal certainty and allow legislative correction if the California Legislature intends broader coverage.

### ***Rationale***

Regulatory clarity prevents both over-compliance (entities unnecessarily reporting) and under-compliance (entities avoiding reporting through definitional ambiguity). Digital economy business models are central to California's economy. They should not create enforcement gaps in a program designed to capture the state's largest corporate emitters.

There is, however, a further operational dimension to this recommendation that distinguishes it from the positional arguments CARB is likely to receive from other submitters on this point. Technology companies with significant California revenue have strong incentives to argue—through legal counsel—that they fall outside coverage under a physical-presence reading of the statute. Advocacy organizations have equally strong incentives to argue the opposite. Both sets of arguments are about who wants to be covered. This recommendation addresses something different: ***The operational consequences of leaving the ambiguity unresolved***—regardless of which side ultimately prevails.

In multi-jurisdictional regulatory environments where I have direct implementation experience, definitional ambiguity around coverage thresholds consistently produces three predictable outcomes:—

- (a) Well-resourced entities use the ambiguity as litigation cover, delaying compliance for years while the question works through the courts;
- (b) Smaller entities at the threshold—unable to absorb that uncertainty—either over-comply at significant cost or wait for clarity that does not come; and
- (c) The administrative entity's (in this case, CARB's) first enforcement action against a well-resourced entity (in this case, a non-resident digital-only mega-corporation), whenever it arrives, becomes the test case through which the program's jurisdictional reach gets litigated down.

These consequences are almost inevitable—unless the definitional question has been pre-resolved by explicit regulatory language. None of these outcomes serve CARB's program objectives. An explicit clarification—in either direction—costs CARB nothing administratively and eliminates all three risks. Leaving the ambiguity open preserves no useful optionality. It simply defers a problem that will be harder and more expensive to resolve once the first enforcement dispute has been filed.

### **Decision 3: First-Year Reporting Deadline**

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### **Recommendation #4: Adjust the Initial Reporting Deadline to October 31, 2026**

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### ***Current Proposal***

The first *Scope 1* and *2* emissions reports are due August 10, 2026, covering calendar year 2025 emissions.

### ***Problem***

The August 10, 2026 deadline creates a compound timing problem that makes first-year compliance structurally unachievable for a significant portion of covered entities, regardless of their good-faith preparation efforts. This is not an argument about corporate willingness. It is an argument about a regulatory procedural sequence that has made adequate preparation impossible in practice.

The mechanics are as follows:—

1. CARB is finalizing regulations at this February 26, 2026 hearing.
2. If the Board adopts substantive modifications today, California’s *Administrative Procedure Act* requires a further **15-day** comment period on the modified text.
3. That process pushes regulatory finalization to mid-March 2026 at the earliest.
4. The reporting template and associated CARB guidance will not be fully operational until finalization—meaning companies cannot complete their data collection and submission preparation until they have a final, stable set of requirements to work against.
5. Companies with non-calendar fiscal years must disaggregate emissions data across two different fiscal periods to produce calendar-year 2025 figures—a data engineering exercise that adds weeks to preparation timelines and has no shortcut.
6. Public companies cannot finalize *Scope 1* and *2* emissions data independently of their SEC 10-K process, which typically closes 60–90 days after fiscal year-end. For December fiscal year-end companies, that means late February to early March 2026—leaving only five months between data availability and the August 10 deadline, with regulatory finalization uncertainty layered on top.

August 10, 2026 does not allow adequate time for any of these constraints to be resolved in sequence. They are not independent obstacles—they are a chain, and the total elapsed time from regulatory finalization to a complete, submission-ready filing is structurally longer than the remaining window provides.

### ***Additional Timing Pressures***

- Many companies operate on non-calendar fiscal years, common in retail, entertainment, and agriculture—sectors that are prominent in California. A company with a June 30 fiscal year-end reporting “2025” calendar-year emissions under CARB’s framework must disaggregate data from two different fiscal periods, adding weeks to data collection timelines.
- Public companies subject to SEC reporting typically finalize annual disclosures 60–90 days after fiscal year-end. Requiring verified emissions disclosure by August 10 compresses timelines in ways ***that will compromise data quality*** in early reporting years—precisely the opposite of what CARB intends.

### ***Recommendation***

Adjust the initial deadline to ***October 31, 2026*** for calendar year 2025 emissions. This provides 10 months post-period for first-year compliance and aligns more closely with:—

- The realistic regulatory finalization timeline, including the possibility of a 15-day APA comment period following any modifications adopted today.
- Corporate fiscal year-end closing cycles.
- SEC 10-K filing timelines.
- Standard third-party verification engagement timelines.

For subsequent years, I recommend maintaining the October 31 deadline or considering an option for companies to report based on their own fiscal year-end with appropriate period labeling.

### ***Rationale***

First-year implementations invariably encounter technical issues. These could include: (1) Reporting system questions; (2) Verification standard interpretation; and (3) CARB guidance clarifications. Providing additional time for the inaugural reporting cycle ***increases data quality*** and ***reduces enforcement burden*** associated with good-faith delays that are a direct consequence of the regulatory timeline, not corporate indifference.

The adjustment from August 10 to October 31 does not represent a substantive retreat from SB 253's ambitions. It represents implementation realism in service of those ambitions: better data, collected under viable conditions, reported with genuine third-party verification, ***is worth more to CARB's program objectives than rushed filings of uncertain quality.***

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### **Recommendation #5:**

#### **Establish a First-Year Payment Grace Period for Good-Faith Fee Payment Delays**

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### ***Current Proposal***

The draft regulations specify that each day an entity fails to pay required fees constitutes a separate violation subject to penalties. (I note that CARB has already announced it will not assess penalties during Year 1 for substantive reporting deficiencies—this recommendation addresses ***fee*** payment enforcement specifically, where that protection has not been equally extended.)

### ***Problem***

This enforcement structure provides no flexibility for first-year administrative delays that do not reflect intentional non-compliance. Causes could include: (1) Payment processing errors; (2) Entity identification questions; (3) CARB fee notice delivery issues; or (4) Banking and accounting system constraints. Daily accruing penalties can create disproportionate exposure for technical violations during a program's inaugural year when both regulated entities and CARB staff are navigating novel administrative processes simultaneously.

### ***Recommendation***

CARB should establish a first-year grace period providing entities with **30 additional days** beyond the payment deadline to cure fee payment deficiencies without penalty, provided:—

- The entity demonstrates good-faith compliance effort.
- Payment is completed within the cure period.
- The delay does not reflect a pattern or practice of non-compliance.

After the inaugural year, CARB may eliminate or reduce the grace period as program administration matures and entities establish reliable payment processes.

To make the good-faith standard workable in practice, CARB should publish—alongside the final regulation—a clear, standardized fee notice procedure specifying: (1) The form in which fee invoices will be issued; (2) The office or system from which they will originate; and (3) The deadline that will run from notice receipt rather than from an assumed awareness date.

Establishing what good-faith compliance effort looks like before a dispute arises is more efficient than adjudicating it after one does. A defined notice procedure would give both covered entities and CARB a shared reference point for evaluating any grace period request—reducing the administrative burden of case-by-case determinations while making the grace period mechanism meaningfully enforceable rather than merely aspirational.

### ***Precedent***

The Internal Revenue Service provides “first-time abatement” of penalties for taxpayers with clean compliance history who encounter isolated payment delays. The California Franchise Tax Board offers similar penalty relief for reasonable cause. Both recognize that administrative systems require adjustment periods and that proportional enforcement distinguishes honest mistakes from willful violations.

### ***Rationale***

CARB’s regulatory authority is most effectively preserved when enforcement focuses on substantive non-compliance—failure to report emissions or refusal to pay fees—rather than technical administrative timing. A grace period for first-year payment issues:—

- Builds a voluntary compliance culture in the program’s formative period.
- Reduces CARB’s administrative burden from penalty appeals during a period when staff are already managing implementation pressures.
- Concentrates enforcement attention on entities deliberately evading requirements.
- Acknowledges the inevitable reality of first-year implementation friction without creating any permanent exemption from fee obligations.

## **PART 2: A NOTE ON SUBSEQUENT RULEMAKING ELEMENTS**

CARB has appropriately deferred several critical program elements to subsequent rulemaking: (1) Reporting requirements; (2) Verification and assurance standards; (3) *Scope 3* implementation guidance; and (4) Ongoing enforcement provisions. These are the decisions that will ultimately determine whether SB 253 produces high-quality, actionable emissions data—or generates compliance theater.

I intend to provide detailed technical analysis on all of these elements when CARB opens that process, drawing on direct implementation experience with *Scope 3* measurement methodology, *double materiality* frameworks, sector-specific disclosure challenges across California’s major industries, and the structural lessons from how multilateral disclosure frameworks have succeeded or failed in comparable implementation environments.

I flag here, for completeness, that verifier capacity and cost deserve early attention as CARB develops the subsequent rulemaking timeline. Limited assurance becomes mandatory for *Scope 1* and 2 reporting after the inaugural 2026 cycle, with reasonable assurance required by 2030.

Industry and practitioner projections place first-year assurance engagement costs in the range of \$150,000 to \$500,000 per entity for corporate-scale engagements—a figure that will shape compliance feasibility for the entire covered entity population when assurance requirements take effect. The verification standards ultimately adopted will also determine whether the existing CARB-accredited verifier pool can serve the SB 253 market or whether new accreditation pathways are required. Beginning that rulemaking process promptly—so that assurance standards are final well in advance of the first mandatory assurance cycle—is the most important timeline management decision CARB can make to prevent the verification capacity problem from becoming, in a future reporting year, exactly the kind of structural impossibility this recommendation addresses for 2026.

## **PART 3: LITIGATION CONTEXT**

The U.S. Chamber of Commerce challenged both SB 253 and SB 261 primarily on First Amendment grounds, arguing that the disclosure requirements unconstitutionally compel speech. The Ninth Circuit issued a preliminary injunction staying SB 261 implementation but declined to stay SB 253—allowing emissions disclosure requirements to proceed. Oral argument before a three-judge panel took place January 9, 2026, with questioning focused closely on whether each statute compels speech and whether the required disclosures qualify as purely factual, uncontroversial commercial speech. No ruling has been issued as of this testimony date.

This distinction reflects the First Amendment difference between compelling disclosure of historical, factual emissions data (SB 253) and compelling disclosure of forward-looking risk assessments and mitigation measures (SB 261)—which courts treat as closer to compelled

opinion, carrying a higher constitutional burden. The Ninth Circuit’s decision to allow SB 253 to proceed while staying SB 261 signals that the court views factual emissions reporting as more likely to survive First Amendment scrutiny as uncontroversial commercial speech. This provides CARB a clear path to finalize and implement these regulations while the underlying litigation continues. I urge the Board to proceed with confidence on that basis.

## CONCLUSION

I urge CARB to adopt the proposed SB 253 regulations with the following five technical refinements:—

1. **Graduate the fee structure** by revenue tiers to reflect proportionality and compliance capacity differences across a highly varied entity population.
2. **Allow consolidated fee elections** for corporate families filing consolidated emissions reports, eliminating duplicative administrative burden while maintaining revenue adequacy through graduated tiers based on total consolidated revenue.
3. **Clarify the “doing business” definition** to explicitly address digital economy business models based on California-source revenue, harmonizing with the economic nexus principles already embedded in California’s own Revenue and Taxation Code.
4. **Adjust the initial reporting deadline to October 31, 2026** to align with the realistic regulatory finalization timeline, corporate fiscal year-end cycles, and third-party verification engagement requirements—*so that the data produced is actually worth having*.
5. **Establish a first-year payment grace period** of 30 days for good-faith fee payment delays, focusing enforcement resources on substantive non-compliance.

These recommendations are grounded in direct experience implementing disclosure frameworks in the conditions that matter: *real* organizations, *real* resource constraints, *real* multi-jurisdictional complexity, and *real* consequences when design choices fail at the implementation stage. They are intended to strengthen CARB’s program, not to soften it.

Thank you for the opportunity to provide this testimony. I am available to serve as a continuing resource to CARB staff on technical questions related to these implementation elements and, when the time comes, on the subsequent rulemaking addressing reporting requirements, verification standards, and *Scope 3* guidance.

**Respectfully submitted,**

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