

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

ROLANDO ARREDONDO,

**Plaintiff,**

V.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

Case No. 1:14-cv-02097-EPG

## ORDER REGARDING PLAINTIFF'S SOCIAL SECURITY COMPLAINT

## I. INTRODUCTION

Plaintiff Rolando Arredondo (“Plaintiff”) seeks judicial review of the final decision of the Commissioner of Social Security (“Commissioner” or “Defendant”) denying his applications for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act. The matter is before the Court on the parties’ briefs, which were submitted without oral argument to Magistrate Judge Erica P. Grosjean.<sup>1</sup> Upon a review of the entire record, the Court finds the Administrative Law Judge’s decision is proper and is supported by substantial evidence in the record as a whole. Accordingly, this Court affirms the agency’s determination to deny benefits and denies Plaintiff’s appeal.

<sup>1</sup> The parties consented to the jurisdiction of the Magistrate Judge. (ECF Nos. 6 and 7.)

## II. BACKGROUND AND PRIOR PROCEEDINGS<sup>2</sup>

Plaintiff alleges disability due to depression, high blood pressure, tinnitus, wrist damage, arthritis, back injury, and loss of hearing. AR 116. On December 29, 2010 and January 4, 2011, Plaintiff filed applications for DIB and SSI, alleging disability beginning September 1, 2009. AR 94-97, 476-487, 532. Plaintiff's applications were denied initially and on reconsideration. AR 53-55, 58-63. Subsequently, Administrative Law Judge John Cusker (the "ALJ") held a hearing on February 15, 2013 (AR 525-551), and issued an order denying benefits on May 1, 2013. AR 11-24. The ALJ's decision became the Commissioner's final decision when the Appeals Council denied Plaintiff's request for review. AR 6-8.

Plaintiff now challenges that decision, arguing that the ALJ: (1) improperly weighed the testimony of treating physicians; (2) failed to consider all of Plaintiff's impairments in creating the residual functional capacity determination; and (3) as the result of the incorrectly formulated residual functional capacity determination, posed incorrect hypotheticals to the vocational expert at the hearing.

### III. THE DISABILITY DETERMINATION PROCESS

To qualify for benefits under the Social Security Act, a plaintiff must establish that he or she is unable to engage in substantial gainful activity due to a medically determinable physical or mental impairment that has lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. § 1382c(a)(3)(A). An individual shall be considered to have a disability only if:

... his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work, but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work.

42 U.S.C. § 1382c(a)(3)(B).

To achieve uniformity in the decision-making process, the Commissioner has established a sequential five-step process for evaluating a claimant's alleged disability. 20 C.F.R. §§ 404.1520(a), 416.920(a). The ALJ proceeds through the steps and stops upon reaching a dispositive finding that

<sup>2</sup> References to the Administrative Record will be designated as "AR," followed by the appropriate page number.

1 the claimant is or is not disabled. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). The ALJ must  
2 consider objective medical evidence and opinion testimony. 20 C.F.R. §§ 404.1513, 416.913.

3 Specifically, the ALJ is required to determine: (1) whether a claimant engaged in substantial  
4 gainful activity during the period of alleged disability; (2) whether the claimant had medically-  
5 determinable “severe” impairments; (3) whether these impairments meet or are medically equivalent  
6 to one of the listed impairments set forth in 20 C.F.R. § 404, Subpart P, Appendix 1; (4) whether the  
7 claimant retained the residual functional capacity (“RFC”) to perform his past relevant work; and (5)  
8 whether the claimant had the ability to perform other jobs existing in significant numbers at the  
9 regional and national level. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4).

10 **A. The ALJ’s Decision**

11 Using the Social Security Administration’s five-step sequential evaluation process, the ALJ  
12 determined that Plaintiff did not meet the disability standard. AR 15-24. More particularly, the ALJ  
13 found that Plaintiff met the insured status requirements through December 31, 2013, and that he had  
14 not engaged in any substantial gainful activity since September 1, 2009, the alleged disability onset  
15 date. AR 16. Further, the ALJ identified sciatica secondary to degenerative disc disease of the  
16 lumbar spine, gout, and alcohol abuse as severe impairments. AR 16. Nonetheless, the ALJ  
17 determined that the severity of the Plaintiff’s impairments did not meet or exceed any of the listed  
18 impairments in 20 CFR Part 404, Subpart P, Appendix 1. AR 17.

19 Based on his review of the entire record, the ALJ determined Plaintiff’s RFC and imposed  
20 the following limitations:

21 The claimant has the residual functional capacity to lift and carry 50 pounds  
22 occasionally and 25 pounds frequently. He is able to stand and/or walk for a total of  
23 six hours and sit for six hours in an eight-hour workday. He is able to frequently  
crouch, crawl, and climb.

24 AR 18.

25 After considering the testimony of a vocational expert, the ALJ determined that Plaintiff is  
26 capable of performing past relevant work as a farm equipment mechanic. AR 22. He also  
27 determined Plaintiff could perform other jobs that exist in significant numbers in the national  
28 economy. AR 22. As a result, Plaintiff was not disabled under the Social Security Act. AR 23.

#### **IV. SCOPE OF REVIEW**

Congress has provided a limited scope of judicial review of the Commissioner's decision to deny benefits under the Act. In reviewing findings of fact with respect to such determinations, this Court must determine whether the decision of the Commissioner is supported by substantial evidence. 42 U.S.C. § 405(g). Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to determine whether: (1) it is supported by substantial evidence; and (2) it applies the correct legal standards. *See Carmickle v. Commissioner*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d 1071, 1074 (9th Cir. 2007).

“Substantial evidence means more than a scintilla but less than a preponderance.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). It is “relevant evidence which, considering the record as a whole, a reasonable person might accept as adequate to support a conclusion.” *Id.* “Where the evidence is susceptible to more than one rational interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” *Id.*

## V. DISCUSSION

## A. Medical Record

The medical evidence that relates to the issues raised in this appeal is summarized below.

*i. Treatment*

In March 2000, Jay Sumner, PA-C, treated Plaintiff for back and neck pain. AR 250-251. Plaintiff was involved in a motor vehicle accident eleven months prior to the examination and had been seeing a chiropractor. AR 251. X-rays of Plaintiff's thoracic and cervical spine revealed normal findings with minimal degenerative changes. AR 252. In June 2002, a CT scan of Plaintiff's lumbar spine revealed L5-S1 disc herniation with impingement on the left S1 nerve root. AR 423.

In November 2004, Plaintiff's right wrist suffered a "crushing-time injury" during a work-related incident. AR 326-327. Upon evaluation, Plaintiff was unable to use his right hand and had considerable swelling. AR 326. Cyril Rebel, M.D., diagnosed a small avulsion fracture, dorsum of the capitate, and recommended that Plaintiff see an occupational therapist and use a wrist brace. AR 326-327.

1       On September 2, 2005, Plaintiff's right ring finger was crushed and nearly amputated during  
2 a work-related incident. AR 179, 351-352. Plaintiff required surgery and was referred to an  
3 occupational therapist for hand therapy. AR 179-180. Following the surgery, Plaintiff began getting  
4 regular treatment from Hongshik Han, M.D. AR 179, 211-222. On September 7, 2005, Dr. Han  
5 opined that Plaintiff's wound was healing well. AR 222. In June 2006, Dr. Han noted that all of  
6 Plaintiff's wounds are completely healed and Plaintiff is performing normal daily activities without  
7 any restriction. AR 214. However, Plaintiff complained of cold sensitivity in his right ring fingertip  
8 and reported severe dorsal radial wrist pain. AR 211, 214. In August 2006, Dr. Han noted moderate  
9 swelling on Plaintiff's right dorsal wrist. AR 211. Moreover, during subsequent appointments,  
10 Plaintiff reported that moving his wrist created significant pain and discomfort. AR 213. Plaintiff  
11 was instructed to wear a protective splint on his right hand at all times. AR 213. On December 29,  
12 2006, exploratory surgery confirmed a tear in Plaintiff's right scapholunate interosseous ligament.  
13 AR 203. In February 2007, Dr. Han discussed Plaintiff's treatment options and Plaintiff declined  
14 further surgery. AR 212. Plaintiff was also diagnosed with gout and hypertension. AR 239, 244-  
15 246.

16       Plaintiff received regular treatment at health clinics and Madera Community Hospital. AR  
17 289-475. In April 2011, Plaintiff reported hip and ear pain, and deafness in his left ear. AR 340. In  
18 May 2011, Plaintiff complained of back and hip pain. AR 319, 320. An X-ray of Plaintiff's lumbar  
19 spine revealed "satisfactory alignment" of the vertebral bodies and posterior elements; no acute  
20 fracture or dislocation; multilevel degenerative changes; and sclerosis in the left supra-acetabular  
21 ileum. AR 308. Plaintiff was also diagnosed with gout and reported hip pain in June 2011. AR  
22 315-316. Plaintiff reported lower back pain radiating down to his left leg in October 2011. AR 309.  
23 In November 2011, a CT scan revealed L5-S1 disk bulging and posterior disk narrowing, and  
24 degenerative changes in the lumbar spine. AR 471.

25       In January 2012, Dr. Rebel treated Plaintiff for left hip pain. AR 402. An X-ray of  
26 Plaintiff's pelvis and left hip showed no evidence of acute fracture or dislocation; mild degenerative  
27 changes; rounded areas of sclerosis, osteomas, or bone island involving the supraacetabular illac  
28 bone on the left and superior ramus; and an intact pelvic ring. AR 429. In May 2012, Plaintiff was

1 examined by Bruce Noyes, PA-C. AR 465-467. Plaintiff reported hip pain that radiated down to his  
2 foot. AR 465. In addition, Plaintiff was treated for lumbago, hyperlipidemia, hypertension, and  
3 thigh and pelvic pain. AR 466. Mr. Noyes administered Toradol and instructed Plaintiff to avoid  
4 heavy lifting. AR 466. Moreover, upon a general physical examination of Plaintiff's ears, Mr.  
5 Noyes opined that Plaintiff's hearing was "grossly normal." AR 466.

6 In June 2012, Melody Simpano, NP, noted that Plaintiff's severe pain had not been relieved  
7 by medications. AR 454. Plaintiff also reported a previous left ear surgery. AR 454. In August and  
8 September 2012, Plaintiff was treated for lumbago, a L4-L5 disc bulge, and left hip pain. AR 446-  
9 449. In September 2012, Dr. Rebel diagnosed Plaintiff with arthritis of the lumbar spine and chronic  
10 pain. AR 443. In October 2012, Christopher Horton, PA-C, treated Plaintiff for lumbago, chronic  
11 pain, and radiculopathy. AR 439. In November 2012, an MRI revealed a discogenic disease at the  
12 mid to distal lumbar spine. AR 431.

13                   *ii.       Consultative Examiners*

14                   On July 3, 2011, Mary Lewis, Psy.D., examined Plaintiff and performed a psychiatric  
15 evaluation. AR 260-265. During the evaluation, Plaintiff was cooperative and complained of pain  
16 in his left hip and right hand. AR 260-261. Dr. Lewis opined that Plaintiff's judgment and insight  
17 was within normal limits, and his fund of knowledge was below average. AR 263. Dr. Lewis also  
18 diagnosed Plaintiff with alcohol abuse. AR 264. Dr. Lewis concluded that Plaintiff had the ability  
19 to manage his own funds, understand and remember short and simple instructions, maintain  
20 concentration and attention, accept instructions from a supervisor and respond appropriately, sustain  
21 an ordinary routine without special supervision, complete a normal workday and workweek without  
22 interruptions, and deal with various workplace changes. AR 264.

23                   On July 18, 2011, Fariba Vesali, M.D., examined Plaintiff and performed a comprehensive  
24 orthopedic evaluation. AR 272-275. During the evaluation, Plaintiff reported low back pain. Dr.  
25 Vesali diagnosed Plaintiff with chronic low back pain and possible left sacroiliac joint dysfunction.  
26 Dr. Vesali further noted that Plaintiff has a history of gout and right big toe arthritis. Dr. Vesali  
27 concluded that Plaintiff is able to: walk, stand, and sit six hours in an eight-hour day with normal  
28 breaks; ambulate without assistance; lift and carry fifty pounds occasionally and twenty-five pounds

1 frequently; and frequently crouch, crawl, and climb. AR 275. In addition, Dr. Vesali noted that  
2 Plaintiff does not require any manipulative limitations or other workplace environmental limitations.  
3 AR 275.

4 ***iii. State Agency Medical Consultant Opinions***

5 In August 2011, Steve Owens, M.D., reviewed Plaintiff's medical record and determined that  
6 Plaintiff could lift and carry fifty pounds occasionally and twenty-five pounds frequently; push and  
7 pull without limitations; and stand, walk and sit for six hours in an eight-hour workday. AR 282.  
8 Dr. Owens also concluded that it was not necessary to impose any postural, manipulative,  
9 environmental, or communicative limitations. AR 283-285. In March 2012, A. Khong, M.D.,  
10 reviewed Plaintiff's medical record and affirmed Dr. Owen's findings. AR 425-428.

11 **B. The ALJ's Assessment of the Medical Opinions is Supported by Substantial  
12 Evidence**

13 ***i. The ALJ's Findings***

14 The ALJ summarized Plaintiff's medical impairments and evaluated the doctors' opinion  
15 evidence as follows:

16 I accord great weight to Dr. Vesali's Opinion. It is consistent with her examination  
17 findings and with the medical evidence. She is a board specialist in physical  
medicine and rehabilitation, which enhances her reliability.

18 Thus, the evidence shows that the claimant has sciatica and degenerative disc disease  
19 of the lumbar spine, but findings on the physical examinations were inconsistent  
20 regarding gait and straight leg raising tests. Further, the consultative examination  
found very little wrong, and noted positive Waddell's signs, which can suggest  
symptom magnification. I find that Dr. Vesali's opinion and the opinions of the State  
agency consultants are most consistent with the medical evidence.

21 AR 19-20.

22 ***ii. Legal Standard for Medical Opinions***

23 The weight given to medical opinions depends in part on whether they are offered by  
24 treating, examining, or non-examining (reviewing) professionals. *Holohan v. Massanari*, 246 F.3d  
25 1195, 1201 (9th Cir. 2001); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Ordinarily, more  
26 weight is given to the opinion of a treating professional, who has a greater opportunity to know and  
27 observe the patient as an individual. *Id.*; *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir. 1996).

1 An ALJ may reject an *uncontradicted* opinion of a treating or examining medical  
2 professional only for “clear and convincing” reasons. *Lester*, 81 F.3d at 831. In contrast, a  
3 *contradicted* opinion of a treating or examining professional may be rejected for “specific and  
4 legitimate” reasons. *Id.* at 830. While a treating professional’s opinion is generally accorded  
5 superior weight, if it is contradicted by an examining professional’s opinion (when supported by  
6 different independent clinical findings), the ALJ may resolve the conflict. *Andrews v. Shalala*, 53  
7 F.3d 1035, 1041 (9th Cir. 1995), *citing Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).  
8 The regulations require the ALJ to weigh the contradicted treating physician opinion, *Edlund v.*  
9 *Massanari*, 253 F.3d 1152 (9th Cir. 2001), except that the ALJ need not give it any weight if it is  
10 conclusory and supported by minimal clinical findings. *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th  
11 Cir. 1999) (treating physician’s conclusory, minimally supported opinion rejected); *see also*  
12 *Magallanes*, 881 F.2d at 751.

### *iii. Analysis*

14 There is no dispute regarding the content of the medical records or the doctors' opinions.  
15 Instead, the parties are disputing the weight that the ALJ accorded the physicians' opinions, and the  
16 interpretation of the medical record. Specifically, Plaintiff argues that the ALJ improperly  
17 discounted the opinion of all treating physicians by stating that the physical examinations regarding  
18 gait and straight leg raising tests were inconsistent. (Plaintiff's Opening Brief 7:23-28, ECF No. 13;  
19 Plaintiff's Reply Brief 4:3-8, ECF No. 18). The Court disagrees.

20 As noted above, Plaintiff was treated by several physicians and health care personnel  
21 between 2000 and 2013. Plaintiff correctly notes that medical reports diagnosed hip pain, lower  
22 back pain, sciatica, arthritis, compressed nerve of the spine, hearing loss and radiculopathy.  
23 Moreover, the ALJ did not afford any particular weight to the treating physicians. The Court finds  
24 that the ALJ did not discount the testimony of the treating physicians by pointing out the  
25 inconsistency regarding Plaintiff's gait and straight leg testing. Instead, the ALJ was simply  
26 demonstrating why the restrictions imposed by examining and non-examining physicians are  
27 consistent with the medical evidence. In other words, the limitations imposed by the examining and  
28 non-examining physicians did not contradict the opinions of the treating physicians. Since the ALJ

1 did not discredit the treating physicians' opinions, Plaintiff has failed to identify any error. *See*  
2 *McLeod v. Astrue*, 640 F.3d 881, 887-88 (9th Cir. 2011) (party seeking reversal bears the burden of  
3 establishing harmful error). It is well within the ALJ's discretion to weigh and harmonize the  
4 evidence in the medical record. 20 C.F.R. §§ 404.1546(c), 416.946(c).

5 Moreover, because the majority of the medical reports "did not contain any functional  
6 limitations, they were not probative as to what kind of work plaintiff could perform despite his  
7 impairments and, therefore, the ALJ was not required to formally assess, or even discuss, them."  
8 *Corso v. Colvin*, 2014 WL 950029, \*10 (D. Or. Mar. 11, 2014) (citations omitted). This is because  
9 an ALJ can disregard a medical report that does "not show how [a claimant's] symptoms translate  
10 into specific functional deficits which preclude work activity." *Morgan v. Comm'r of Soc. Sec.*  
11 *Admin.*, 169 F.3d 595, 601 (9th Cir. 1999); *see also Johnson v. Shalala*, 60 F.3d 1428, 1432-33 (9th  
12 Cir. 1995) (Medical records that "make only limited references to medically observed limitations on  
13 functional capacity...fall short of the substantial medical evidence required to establish a  
14 disability."); *Meanel*, 172 F.3d at 1113-14; *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012  
15 (9th Cir. 2003) (ALJ did not err in failing to discuss or afford weight to medical reports that were not  
16 significant probative evidence). Thus, for example, a single reference to Plaintiff's apparent  
17 discomfort in sitting during a doctor's visit (*see* AR 337) need not constitute substantial evidence of  
18 a disability.

19 Plaintiff also does not specify any additional restrictions that result from the treating  
20 physicians' opinions and there is no medical evidence in the record providing that Plaintiff's  
21 impairments created functional limitations beyond those already identified in the RFC. Plaintiff  
22 points to treatment notes that instruct Plaintiff to avoid strenuous activity and heavy lifting.  
23 (Plaintiff's Reply Brief 4:1-2; ECF No. 18). However, the ALJ considered these limitations in  
24 formulating the RFC and imposed lifting and carrying restrictions accordingly. AR 18.

25 **C. The ALJ's RFC Determination is Supported by Substantial Evidence**

26 The RFC is the maximum a claimant can do despite his limitations. 20 C.F.R. §§ 404.1545,  
27 416.945. RFC is an assessment of an individual's ability to do sustained work-related physical and  
28 mental activities in a work setting on a regular and continuing basis of eight hours a day, for five

1 days a week, or equivalent work schedule. SSR 96-8p. “The RFC assessment considers only  
2 functional limitations and restrictions that result from an individual’s medically determinable  
3 impairment or combination of impairments.” *Id.* “In determining a claimant’s RFC, an ALJ must  
4 consider all relevant evidence in the record including, *inter alia*, medical records, lay evidence, and  
5 the effects of symptoms, including pain, that are reasonably attributed to a medically determinable  
6 impairment.” *Robbins v. Social Security Admin.*, 466 F.3d 880, 883 (9th Cir. 2006) (citations and  
7 internal quotation marks omitted). In other words, an ALJ only needs to consider impairments  
8 supported by objective evidence in the record in crafting an RFC. *Bayliss v. Barnhart*, 427 F.3d  
9 1211, 1217 (9th Cir. 2005).

10 Plaintiff asserts that the ALJ’s RFC determination was improper, because the ALJ failed to  
11 account for the Plaintiff’s chronic pain and hearing loss. (Plaintiff’s Opening Brief 8:15-16, ECF  
12 No. 13). However, as noted above, nothing in the record, including the treating physicians’ medical  
13 records, suggests that Plaintiff is unable to perform work consistent with the RFC. While the record  
14 indicates that Plaintiff experiences some chronic pain and is deaf in his left ear (AR 314, 336-338,  
15 340, 401, 435-436), the record is otherwise devoid of any functional limitations associated with  
16 chronic pain or hearing. Similarly, Plaintiff does not identify what further restrictions result from his  
17 deafness and chronic pain. *See Houghton v. Comm’r Soc. Sec. Admin.*, 493 F. App’x 843, 845-46  
18 (9th Cir. 2012) (“The ALJ was not required to discuss...alleged medical conditions in the absence of  
19 significant probative evidence that [the medical impairments] had some functional impact on [a  
20 claimant’s] ability to work.”). Therefore, Plaintiff is unable to demonstrate that his loss of hearing or  
21 chronic pain had any limiting effect on his ability to work. The Court finds that the ALJ’s RFC  
22 determination accounts for all well-supported limitations in the record.

23 **D. Reliance on the Vocational Expert’s Testimony was Proper**

24 “Hypothetical questions posed to the vocational expert must set out all the limitations and  
25 restrictions of the particular claimant . . . .” *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988).  
26 The testimony of a vocational expert (“VE”) “is valuable only to the extent that it is supported by  
27 medical evidence.” *Sample v. Schweiker*, 694 F.2d 639, 644 (9th Cir. 1982). The VE’s opinion  
28 about a claimant’s residual functional capacity has no evidentiary value if the assumptions in the

1 hypothetical are not supported by the record. *Embrey*, 849 F.2d at 422. An ALJ is thus only required  
2 to present the VE with those limitations he finds to be credible and supported by the evidence.  
3 *Osenbrock v. Apfel*, 240 F.3d 1157, 1165-66 (9th Cir. 2001).

4 For the reasons stated above, the hypothetical that the ALJ posed to the VE included all of  
5 the limitations that the ALJ found credible and supported by substantial evidence in the record.  
6 Therefore, the ALJ's reliance on testimony the VE gave in response to the hypothetical was proper.  
7 See *Magallanes*, 881 F.2d at 756-57 (holding that it is proper for an ALJ to limit a hypothetical to  
8 restrictions supported by substantial evidence in the record).

9 **VI. CONCLUSION**

10 Based on the foregoing, the Court finds that the ALJ's decision that the Plaintiff is not  
11 disabled as defined by the Social Security Act is supported by substantial evidence in the record as a  
12 whole and is based on proper legal standards. Accordingly, this Court **DENIES** Plaintiff's appeal  
13 from the administrative decision of the Commissioner of Social Security. The Clerk of this Court is  
14 **DIRECTED** to enter judgment in favor of Defendant Carolyn W. Colvin, the Commissioner of  
15 Social Security, and against Plaintiff Rolando Arredondo.

16 IT IS SO ORDERED.  
17

18 Dated: March 24, 2016

19 /s/ *Eric P. Groj*  
20 UNITED STATES MAGISTRATE JUDGE

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