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STATE OF WASHINGTON
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NO. 101653-1

SUPREME COURT OF THE STATE OF WASHINGTON

KING COUNTY,
a political subdivision of the State of Washington,

Respondent,

v.

ABDULHAFID TAHRAOUI, individually, and
AMANA GLOBAL COMPANY, a sole proprietorship,

Petitioners.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Petitioners Abdulhafid Tahraoui and Amana Global (“Tahraoui”) seek discretionary review under RAP 13.4(b) of the Court of Appeals decision denying his appeal of the trial court’s denial of his motion for reconsideration (the “Decision”). Review should be denied because Tahraoui establishes no basis for review by this Court, primarily because Tahraoui was an “unlawful occupant” under the relevant state and federal relocation statutes when King County commenced its unlawful detainer action in 2020.

As an “unlawful occupant,” Tahraoui was not entitled to relocation benefits at the time of the unlawful detainer, so the decision below does not conflict with those statutes. And Tahraoui cannot rely on those statutes to argue that his affirmative defenses should have been considered in the unlawful detainer proceeding, because his affirmative defenses did not go to the issue of possession. Further, the decision below did not err in preserving King County’s other claims for

a separate civil matter, which is the ordinary rule in an unlawful detainer case. And the court below correctly ruled that the County's writ of restitution was timely returned following a lengthy stay that Tahraoui himself sought and received. As such, the decision below does not conflict with prior decisions of this Court or the Court of Appeals. Nor does Tahraoui demonstrate a significant constitutional question or an issue of significant public interest. The Petition should be denied.

II. STATEMENT OF THE CASE

King County adopts the facts as set forth in the Decision at pgs. 1-5.

III. ARGUMENT

Tahraoui presents no basis for review of the Decision by this Court under RAP 13.4(b). The Decision is not in conflict with this Court's precedent or with a published decision of the Court of Appeals; the Petition identifies no state or federal constitutional issue; and the Petition presents no question of substantial public interest. RAP 13.4(b)(1)-(4). This Court

should deny review.

A. The Court need not consider Tahraoui's argument that the Decision incorrectly concluded that the land was condemned.

This Court should not review Tahraoui's first argument why review should be accepted because he fails to cite to any controlling legal authority to support the argument. Petition at pg. 11. The Court need not need consider arguments that are not supported by citation to binding authority. *McKee v. Am. Home Products, Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045 (1989); RAP 10.3(a)(6); *Regan v. McLachlan*, 163 Wn. App. 171, 178, 257 P.3d 1122 (2011) (Court will not address issues raised without proper citation to legal authority.)

B. The Court of Appeals' rejection of Tahraoui's claim that he was entitled to a 90-day notice before the County could require him to vacate the County's warehouse does not conflict with the decisions of this Court or a published decision of the Court of Appeals.

The Decision correctly held that the 90-day notice requirement of the Federal and State relocation regulations codified at 49 C.F.R. § 24.203(c) and WAC 468-100-203(3) did

not apply because Tahraoui was ineligible for relocation benefits when King County initiated unlawful detainer proceedings under chapter 59.12 RCW. Tahraoui argues that the Decision improperly construed the language in the Federal and State relocation regulations cited above in determining that he was not entitled to a 90-day notice before the County could require him to vacate the County's warehouse.

In support of this allegation, Tahraoui cites *Ballard Square Condo. Owners Ass' v. Dynasty Constr Co.*, 158 Wn.2d 603, 610, 146 P.3d 914 (2006). *Ballard Square Condo. Owners Ass'* does not involve the relocation of a tenant for a public project and accordingly does not mention 49 C.F.R. § 24.203(c) and WAC 468-100-203(3).¹ The Decision does not conflict

¹ Tahraoui cites to *Ballard Square Condo Owners Ass'* because one sentence in the opinion states the unremarkable legal proposition that "a court may not construe a statute in a way that renders statutory language meaningless or superfluous." Tahraoui's argues that the Court of Appeals, or in fact any court, that rejects his interpretation of 49 C.F.R. § 24 and WAC 468-100 is construing them in a manner that renders them

with a *Ballard Square Condo Owners Ass'* so this Court should not grant review pursuant to RAP 13.4(b)(1).

C. The Decision properly affirmed that Tahraoui was ineligible for relocation benefits following the eminent domain proceeding.

Tahraoui alleges that the Decision conflicts with prior decisions of this Court and the Court of Appeals because the Decision affirmed that the County had no duty to provide relocation benefits under 49 C.F.R. § 24 and WAC 468 (the “Relocation Regulations”) at the time of the unlawful detainer proceeding. *See* Petition at pg. 22. There is no conflict because these allegations are factually wrong and legally incorrect.

The Petition is factually wrong, because the County did continue to discretionarily provide relocation benefits even though Tahraoui were ineligible as an “unlawful occupant”. Decision, pg. 9-10. Tahraoui’s allegations are legally incorrect

meaningless or superfluous. It is Tahraoui’s interpretation of the regulations, not the Decision, that would render the regulation’s language meaningless or superfluous.

because Tahraoui was an “unlawful occupant” ineligible for relocation benefits at the time the County commenced its unlawful detainer proceeding. The Decision correctly affirmed that the Relocation Regulations no longer applied to Tahraoui. Decision at 9-10.

Tahraoui invokes various prior decisions of this Court and the Court of Appeals in the argument section of the Petition but cites to most of those cases only for basic rules of statutory construction.² However, Tahraoui does allege that the Decision conflicts with a few of holdings of this Court and the Court of Appeals. However, a closer examination of the cases cited by Tahraoui demonstrate that the Decision does not conflict with any of them.

Tahraoui’s first alleged conflict between the Decision and a decision of this Court relates to the standard of review set

² *Gildon v. Simon Prop. Grp., Inc.*, 158 Wn.2d 483, 494, 145 P.3d 1196 (2006) (“The court abuses its discretion if its decision was reached by applying the wrong legal standard”).

forth in the Decision. Petition at pg. 23. Tahraoui argues that the standard of review in the Decision conflicts with the decision of this Court in *Mountain Park Homeowners Ass'n, Inc. v. Tydings*, 125 Wn.2d 337, 883 P.2d 1383 (1994). It does not.

In *Mountain Park*, this Court affirmed a Court of Appeals decision reversing a grant of summary judgment and remanding the case for trial. *Mountain Park*, 125 Wn.2d at 339. In granting discretionary review, this Court stated the well-established rule that when reviewing a summary judgment order, the appellate court engages in the same inquiry as the trial court and reviews questions of law de novo. *Id.* at p.341.

Here, the Court of Appeals was not reviewing a trial court order granting or denying a motion for summary judgment, but rather the trial court's denial of Tahraoui's motion for reconsideration of the trial court's order on revision. The Court of Appeals properly applied the abuse of discretion

standard, which is the correct standard for review of a trial court decision to grant or deny reconsideration. *See Rivers v. Washington State Conference of Mason Contractors*, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002) (“A motion for reconsideration ... [is] to be decided by the trial court in exercise of its discretion and its decision will be overturned only if the court abused its discretion.”); *see also River House Dev. Inc. v. Integrus Architecture, P.S.*, 167 Wn. App. 221, 231, 272 P.3d 289 (2012) (citing *Rivers*). The Decision did not conflict with the unrelated standard of review in *Mountain Park*.

Tahraoui also argues that the Court of Appeals erred by affirming the trial court’s determination that his affirmative defenses could not be resolved in an unlawful detainer action because it never made a de novo determination that the affirmative defenses were not related to the issue of possession. Petition at pg. 25. Tahraoui alleges that the Court of Appeals’

failure to make this determination conflicts with the holding in *First Union Mgmt., Inc. v. Slack*, 36 Wn. App. 849, 679 P.2d 936 (1984).³ Tahraoui is mistaken.⁴ The Decision does not conflict with the Court of Appeals holding in *First Union*.

In *First Union*, the commercial landlord (First Union) filed an unlawful detainer action, and its commercial tenant (Slack) filed an answer and five counterclaims. *First Union Mgmt., Inc.*, 36 Wn. App. at 849. Judgment was entered for First Union and for Slack on its counterclaims for damages, leaving Slack with a net judgment of \$50,433.23. *Id.* at 853. First Union appealed, and Division II held that the trial court lacked subject matter jurisdiction to consider Slack's counterclaims, *Id.* at 855, confirming that counterclaims are permitted in unlawful detainer actions "only when the counterclaim is based on facts which excuse a tenant's breach."

³ The phrase "de novo" appears nowhere in the *First Union* decision.

⁴ As with every other case cited in the Petition, Tahraoui fails to describe the facts or analyze the legal issues in *First Union*.

Id. at 854 (quotations marks, citations omitted).

The Decision does not conflict with *First Union* because Tahraoui's affirmative defenses were not based on facts which excused any alleged breach by them. Further, King County did not allege that Tahraoui breached any condition of the lease. Rather, the County commenced its unlawful detainer action because Tahraoui was an "unlawful occupant" who, by the time of the show cause hearing in March of 2021, had illegally occupied the County's warehouse for more than 15 months. Decision at pgs. 3-4. If anything, the Decision harmonizes with *First Union* because in both cases the Courts of Appeals determined that the tenant's claims (whether counterclaims or affirmative defenses) were not necessary to determine the right of possession. *First Union Mgmt., Inc.*, 36 Wn. App. at 854.

Tahraoui also claims that the Decision conflicts with *Pham v. Corbett*, 187 Wn. App 816, 828, 351 P.3d 214 (2015). Petition, p. 26. In *Pham*, Division I affirmed an unlawful

detainer proceeding in which the tenants raised affirmative defenses and counterclaims that related directly to the issue of possession and, if proved, would excuse their breach of the lease. *Pham*, 187 Wn. App. at 826.

Division I acknowledged that counterclaims are not generally considered in an unlawful detainer action unless “resolution of the counterclaim is ‘necessary to determine the right of possession.’” *Id.* (citing *First Union Mgmt., Inc.*, 36 Wn. App. at 854). But *Pham* dealt with a residential lease and the question whether the residential tenants could counterclaim against their landlord for breaches of residential lease warranties, including a claim for relocation benefits necessitated by the landlord’s breach of the warranty of habitability.

The Decision does not conflict with *Pham* for several reasons. First, the holding in *Pham* is controlling only as to residential tenancies regulated by the Washington Residential

Landlord Tenant Act codified at chapter 59.18 RCW, not commercial tenancies. Here, the lease was a commercial one, and was appropriated to the County more than 15 months before the unlawful detainer proceeding. Decision at pgs. 3-4.

Second, *Pham* addressed residential-tenant relocation benefits available pursuant to RCW 59.18.085, not the separate relocation benefits authorized by the Relocation Regulations. *Pham*, 187 Wn. App. at 824-826. Relocation rights under RCW 59.18.085 were not at issue in the Decision. Third, Tahraoui’ affirmative defenses were not necessary to determine whether he had the right of possession—those defenses concerned separate concerns regarding retaliation and failure to provide statutory relocation benefits, not “facts that would excuse a tenant’s breach.” *See Pham*, 187 Wn. App. at 826.

Finally, Tahraoui’s right of possession in the unlawful detainer proceeding was not intertwined with relocation benefits pursuant to the Relocation Regulations because

Tahraoui had been an “unlawful occupant” for more than fifteen months and was ineligible for those relocation benefits when the show cause hearing occurred. *See* Decision, pg. 8-10. For the reasons set forth above, the Decision does not conflict with the holding in *Pham*.

Tahraoui also claims that the Decision conflicts with *Sherwood Auburn LLC v. Pinzon*, 24 Wn. App. 2d 664, 521 P.3d 212 (2022). Petition, p 27. In that case, Division I addressed the interplay between state-law notice requirements for an unlawful detainer proceeding regarding a residential lease, and separate notice requirements imposed by a federal statute, the CARES Act. At the show cause hearing, the superior court commissioner determined that the landlord had complied with state notice requirements as well as CARES Act notice requirements. *Id.* at 669. A superior court judge denied the tenants’ motion to revise the commissioner’s order, and the tenants appealed. *Id.*

On appeal, Division I ruled that the landlord had failed to comply with CARES Act notice requirements. *Id.* at 670, 681-82. The court extensively addressed the relationship between CARES Act and state-law notice requirements. *See Id.* at 672-679. Nowhere did Division I address the right of possession, or affirmative defenses, or relocation benefits. And the CARES Act notice requirements were not at issue in the Decision or the unlawful detainer proceeding below. *Sherwood Auburn* has no bearing whatsoever on the Decision.

D. The Decision correctly affirmed that the Writ survived Tahraoui’s stay of execution.

Tahraoui invokes various prior decisions of this Court and the Court of Appeals to support his allegation that the Decision incorrectly upheld the Writ of Restitution (“Writ”) after more than 20 days elapsed between the time the Writ was issued and the time it was returned. Petition, p.29-30. But Tahraoui cites those cases for basic rules of statutory

construction⁵; and he overlooks this Court’s decision in *State ex rel. Barnes v. Superior Court for Kitsap Cnty.*, 96 Wash. 581, 585–86, 165 P. 493 (1917), which directly supports the Decision.

In that case, the defendants in possession gave a bond and retained possession, by which they “suspended and held in abeyance” the writ of restitution; and when those defendants subsequently lost their right of possession, the writ of restitution “instantly revived and could be enforced.” *Id.* This Court wrote:

“Nor is there any merit in the contention ... that the writ of restitution ... lost its force and vitality because of the passage of more than 20 days after its issuance. *The 20-day provision in the statute ... is merely a provision that the sheriff shall return*

⁵ *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002) (the meaning of a statute is a question of law reviewed de novo); *State v. McCraw*, 127 Wn.2d 281, 288, 898 P.2d 838 (1995) (“In judicial interpretation of statutes, the first rule is ‘the court should assume that the legislature means exactly what it says. Plain words do not require construction.’”); *Wilson v. Daniels*, 31 Wn.2d 633, 643, 198 P.2d 496 (1948) (Holding that “since unlawful detainer statutes are in derogation of the common law, they must be strictly construed in favor of the tenant.”)

the writ with his doings thereon within 20 days after its date. The life of the writ endured until the final determination of the right of possession of the premises. Id. (emphasis added).

Here, Tahraoui sought and received a stay, and the Decision correctly determined that the Writ was timely returned followed the expiration of that stay, consistent with this Court's decision in *State ex rel. Barnes v. Superior Court for Kitsap Cnty.*⁶

E. The Decision did not err in reserving King County's other claims for another day.

Tahraoui alleges that the Decision erred in preserving other King County claims for further proceedings. Petition at 33; *see also* Decision at p.14 footnote 5. Tahraoui seems to think that the Decision's effect was to keep those claims alive within the unlawful detainer proceeding, which was completed

⁶ Further, the entire unlawful detainer process at chapter 59.12 RCW would be jeopardized if a tenant unlawfully in possession could elect to stay a writ of restitution, and then use their own stay to challenge or defeat that writ on appeal. This sort of bootstrapping cannot be the law.

and closed. *Id.* at p.34-35. But that is not what the Decision said.

1. The Decision properly affirmed the trial court decision to reserve King County’s other claims.

The Decision correctly affirmed the trial court’s decision that King County could, potentially, bring a separate action to address other claims not resolved by the unlawful detainer proceeding—the same option Tahraoui has regarding his claims. *See* Decision, p.13 (“Issues unrelated to possession cannot be resolved in an unlawful detainer action and must be addressed in a civil action.”) (*Citing Angelo Prop. Co., LP v. Hafiz*, 167 Wn. App. 789, 809, 274 P.3d 1075 (2012)). This is the norm in an unlawful detainer action. *See, e.g., Munden v. Hazelrigg*, 105 Wn.2d 39, 711 P.2d 295 (1985) (“to protect the summary nature of the unlawful detainer proceedings, other claims, including counterclaims, are generally not allowed.”). The Decision did not conflict with prior decisions of this Court in affirming the decision to leave those issues for another day.

2. The Decision does not conflict with the Court of Appeals holding in *Bank of Am., N.A. v. Owens*.

Tahraoui quotes one sentence out of context from *Bank of Am., N.A. v. Owens*, 177 Wn. App. 181, 189, 311 P.3d 594 (2013) to prop up his claim that the trial court improperly reserved the County's claims to a later proceeding. Petition, pg. 35. But *Owens* was not an unlawful detainer case at all; rather, it dealt with a marital dissolution, coupled with a bankruptcy and a debt collection. *See Owens*, 177 Wn. App. at 185. And *Owens* addressed a trial court's obligation to apply the law of the case upon remand from this Court. *Id.* at 191 ("the trial court's ruling on remand thwarted the Supreme Court's direction[.]"). The Decision does not address that issue.

Further, Tahraoui's cherry-picked sentence from *Owens* relates to a claim that was raised upon remand from this Court, after that case had worked its way through the entire appellate process and back to the trial court. *Id.* at 193. Whereas here, the Decision merely affirmed a decision to reserve the County's

other claims—and Tahraoui’s affirmative defenses—for a separate, future civil action from the outset. *Owens* is inapposite and has no bearing on the Decision. For all these reasons, there is no conflict warranting review under RAP 13.4(b)(2).

Tahraoui also argues that the Decision’s affirmation of the trial court decision to preserve King County’s other claims for relief conflicts with the holding in *Matter of Marriage of Leslie*, 112 Wn.2d 612, 613-21, 772 P.3d 1013 (1989). Petition, pg. 36. But *Marriage of Leslie* addressed issues not presented by the Decision.

Marriage of Leslie required this Court to address a default judgment that granted relief in excess of the relief requested in the complaint. See *Matter of Marriage of Leslie*, 112 Wn.2d at 620. This Court ruled that the default order was void to the extent that it awarded excess relief. *Id.*

In contrast, here King County sought the Writ to evict Tahraoui from the Property, and the trial court duly granted the

requested relief. Decision at pg. 4. Unlike *Marriage of Leslie*, neither the Decision nor the trial court below presumed to award King County any relief beyond that which the County initially sought. As a result, the Decision does not conflict with the holding of *Matter of Marriage of Leslie*.⁷ For all these reasons, review is not warranted under RAP 13.4(b)(1).

F. Tahraoui raises no constitutional issue requiring this Court's review.

The Petition perfunctorily asserts that the Decision raises a constitutional issue because the Decision affirmed the trial court decision to preserve the County's other claims for a separate civil action apart from the unlawful detainer proceeding. Petition, at p.35. But the Petition does not identify what federal or state constitutional provision might be at issue

⁷ Indeed, *Marriage of Leslie* went on to uphold Division II's ruling that affirmed the trial court's subsequent modified order, entered after proper hearings and briefing. *Matter of Marriage of Leslie*, 112 Wn.2d at 621. To that extent, the Decision harmonizes with *Marriage of Leslie*, because the Decision similarly affirmed the trial court's decision on the record after a show cause hearing and related briefing.

and does not cite to any to binding legal authority in support of his claim. Accordingly, this Court need not review Tahraoui's claim. *McKee v. Am. Home Products, Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045 (1989); *Regan v. McLachlan*, 163 Wn. App. 171, 178, 257 P.3d 1122, 1126 (2011) (Court will not address issues raised without proper citation to legal authority.); RAP 10.3(a)(6).

G. Tahraoui raises no issues of substantial public interest.

Tahraoui allege three issues were raised in the Decision that this Court should review because they are matters of continuing and substantial public interest. Tahraoui is mistaken as to all three issues.

In assessing whether an issue qualifies as a matter of continuing and substantial public interest, the Court evaluates three factors: (1) whether the issue is of a public or private nature, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of

future recurrence of the question. *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 796, 225 P.3d 213 (2009). The issues Tahraoui argue should be reviewed pursuant to RAP 13.4(b)(4) are not matters of continuing and substantial public interest.

1. Tahraoui' first alleged issue of continuing and substantial public interest does not meet the standards set forth in Satomi.

The Decision declared that Tahraoui's lease was terminated by its terms upon the appropriation of Tahraoui's leasehold. Decision, pgs. 6-8. Tahraoui states that this Court has a legal and moral obligation to grant review and correct the injustice because it erodes the public trust and confidence in the judiciary in the State of Washington. Tahraoui argues that there is a substantial public interest in making sure that pro se litigants are treated fairly before the Court. Petition, pg. 3.

The termination of Tahraoui's lease is an issue of a private, not public, nature. As a result, the likelihood of a future recurrence of the question is low and there is no need for an

authoritative determination for the future guidance of public officers. Compare with *Eyman v. Ferguson*, 7 Wn. App. 2d 312, 322-323, 433 P.3d 863 (2019) (Content of a ballot measure was an issue of a public nature because it applied to all citizens in the State of Washington), and *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005) (The Court of Appeals holding had the potential to affect every sentencing proceeding in Pierce County after November 26, 2001, where a DOSA sentence was or is at issue.)

The lease in this case had only two parties, Tahraoui and the County, and its language was specific to a lease of a portion of the Property, so the likelihood of future recurrence of the question is low. Moreover, since the lease was appropriated to the County, there is no need for an authoritative determination for the future guidance of public officers. As a result, the Court should not review the termination of Tahraoui's leasehold as it is not a matter of continuing and substantial public interest.

2. The Court of Appeals' determination that the return of the Writ of Restitution complied with the applicable statutes is not a matter of continuing and substantial public interest.

Tahraoui alleges that the Court of Appeals' interpretation of RCW 59.12.090 and RCW 59.12.100 is a matter of continuing and substantial public interest because the interpretation of those two statutes affects every tenant in this state.⁸ Without conceding that the Court of Appeals' decision was of a public nature and the likelihood of future recurrence of the question, review of the decision is still not necessary.

Existing precedent already provides an authoritative determination for the future guidance of public officers. *See State ex rel. Barnes v. Superior Court for Kitsap Cnty.*, 96 Wash. 581, 585–86, 165 P. 493 (1917) (“Nor is there any merit in the contention ... that the writ of restitution ... lost its force and vitality because of the passage of more than 20 days after

⁸ The provisions of RCW 59.18.363 through .410 set forth the unlawful detainer provisions for residential tenants.

its issuance. The 20-day provision in the statute ... is merely a provision that the sheriff shall return the writ with his doings thereon within 20 days after its date. The life of the writ endured until the final determination of the right of possession of the premises.”) As a result, the Court should not review the issuance of the Writ as it is not a matter of continuing and substantial public interest.

3. Tahraoui’s allegation that the County’s alleged failure to pay relocation benefits constitutes an affirmative defense which the Court should have allowed him to present during the show cause hearing is not a matter of continuing and substantial public interest.

Tahraoui’ claim that the County failed to pay relocation benefits is contradicted by the facts established by the record and set forth in the Decision: “To aid him in securing the new facility, King County made an advance payment to Tahraoui of \$41,250 prior to executing the new lease, and a second payment of \$41,250 to Tahraoui before he had made any improvements to the new facility.” Decision at pgs. 3-4. The County made

these payments to Tahraoui six months prior to the Show Cause hearing. *Id.*

The County made the relocation payments to Tahraoui to allow him to relocate from the Property and to execute a lease for a new warehouse in Chehalis. This transaction was a private issue between two parties. The decision of the County to pay relocation payments authorized by the Relocation Regulations language was specific to the facts in this case, so the likelihood of future recurrence of the question is low. As a result, there is no need for an authoritative determination for the future guidance of public officer. As a result, the Court should not accept review of this case, because the County's payment of relocation benefits to Tahraoui is not a matter of continuing and substantial public interest.

IV. CONCLUSION

Because this case does not implicate any of the considerations set forth in RAP 13.4(b), the Court should deny discretionary review.

I certify that this answer contains 4374 words, in compliance with RAP 18.17(c).

DATED this 13th day of April, 2023.

Respectfully submitted,

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Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,653-1
Appellate Court Case Title: King County v. Abdulhafid Tahraoui, et al.

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