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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**  
12

13  
14 Coordination Proceeding  
Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding  
No. 4408

15 **ANTELOPE VALLEY**  
16 **GROUNDWATER CASES**

**Santa Clara Case No.**  
**1-05-CV-049053**  
The Honorable Jack Komar, Dept.17

17 **Included Actions:**

**JOINT OPPOSITION OF OVERLIERS  
TO WILLIS CLASS MOTION FOR  
AWARD OF ADDITIONAL COSTS  
AND ATTORNEY FEES**

18 Los Angeles County Waterworks District  
19 No. 40 vs. Diamond Farming Company, a  
corporation, Superior Court of California,  
20 County of Los Angeles, Case No.  
BC325201;

Date: April 1, 2016  
Time: 1:30 p.m.  
Dept.: TBD, San Jose

21 Los Angeles County Waterworks District  
22 No. 40 vs. Diamond Farming Company, a  
corporation., Superior Court of California,  
23 County of Kern, Case No. S-1500-CV-254-  
348;

24 Wm. Bolthouse Farms, Inc. vs. City of  
25 Lancaster, Diamond Farming Company, a  
corporation, vs. City of Lancaster, Diamond  
26 Farming Company, a corporation vs.  
Palmdale Water District, Superior Court of  
27 California, County of Riverside, Case Nos.  
RIC 353840, RIC 344436, RIC 344668.  
28

1 Cross-Defendants, State of California and State of California 50<sup>th</sup> District Agricultural  
2 Association (collectively, State of California), the City of Los Angeles, by and through its  
3 Department of Airports, Los Angeles World Airports (LAWA), the County Sanitation Districts  
4 of Los Angeles County Nos. 14 and 20 (LA County Sanitation), the Antelope Valley - East  
5 Kern Water Agency, U.S. Borax, Inc., WDS California II LLC, Antelope Valley Ground Water  
6 Agreement Association, Bolthouse Properties, LLC, Wm. Bolthouse Farms, Inc., Crystal  
7 Organic farms LLC, Diamond Farming Company, Granite Construction Company, Grimmway  
8 Enterprises, Inc., Lapis Land company, LLC, Tejon Rancorp, Craig Van Dam, Delmar D. Van  
9 Dam, Gary Van Dam, Gertrude J. Van Dam (collectively, "Overliers") submit this opposition  
10 to the Willis Class' Second Supplemental Motion for Attorneys' Fees, Reimbursement of  
11 Expenses, and Class Representative Incentive Award (Willis Class Motion).

12 I.

13 INTRODUCTION

14 To the extent the Willis Class Motion is directed against the Overliers, it should be  
15 denied, in its entirety, for each of the following reasons:

- 16 • Lack of proper notice (CRC, Rule 3.1112(d));  
17 • The Overliers are not "opposing parties" in the Willis Class Action (CCP section  
18 1021.5);  
19 • The Willis Class is not a "prevailing party" as against any party (subsequent to entry of  
20 the Willis Class Judgment); and,  
21 • The work performed and costs incurred by Willis Class attorneys were neither  
22 necessary, nor required.

23 For these and the other reasons stated herein, the Willis Class Motion for an award of  
24 costs and fees should be denied, in its entirety; in all events, an award of costs and/or attorney  
25 fees should not be assessed as against the Overliers, or any of them.

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**II.**

**THE NOTICE GIVEN IS PROCEDURALLY DEFECTIVE**

The combined “Notice of Motion and Motion” is procedurally defective. “A motion must: . . . (2) Name the parties to whom it is addressed; (3) Briefly state . . . the relief sought” (Cal. Rules of Ct., Rule 3.1112(d)). To the extent the Willis Class seeks an order from this Court awarding costs or attorneys’ fees against Overliers, the motion is defective and must be denied because the Willis Class failed to provide clear notice that an award of costs or fees is being sought against any particular and specifically identified and named Overlier.

**III.**

**THE OVERLIERS ARE NOT “OPPOSING PARTIES” IN THE WILLIS’ CLASS ACTION**

Under CCP section 1021.5, the court may only award attorney fees to a successful party against one or more “opposing parties.” In *Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151 (“*Mejia*”), the Court of Appeal explained that the term “opposing party,” as used in this statute, is a person “by or against whom a suit is brought” (156 Cal.App.4th at 160). The Willis Class’ Second Amended Class Action Complaint for Damages and Equitable Relief did not name as defendants, or bring suit against, any of the Overliers, and none of them has ever been put on notice of any claim by the Willis Class. Consequently, for the purpose of the Willis Class Motion, the Overliers are not “opposing parties.” As a result, the Overliers cannot be held liable for any costs or fees incurred by the Willis Class.

Nor are the Overliers real parties in interest in the Willis Class Action. That class action was filed to defeat the Public Water Suppliers’ prescriptive claims against Class members. The Overliers have had no direct or, indeed, any interest in the Public Water Suppliers’ prescriptive claims against members of the Willis Class, or any ability to control that litigation.

The Court’s February 19, 2010 Consolidation Order also effectively bars the relief requested by Willis, stating, “Costs and fees could only be assessed for or against parties who were involved in particular actions” (Consolidation Order, filed February 24, 2010, page 3, lines 13-14, underscoring added; Exhibit 3 hereto.)

1 IV.

2 NOTWITHSTANDING CONSOLIDATION OF VARIOUS ACTIONS, OVERLIERS  
3 ARE NOT SUBJECT TO IMPOSITION OF COSTS AND FEES IN ACTIONS TO  
4 WHICH THEY ARE NOT PARTIES

5 Parties to consolidated cases do not become a single party for the purposes of a cost  
6 award in one of the consolidated cases (*Weck v. Los Angeles County Flood Control Dist.* (1948)  
7 89 Cal.App.2d 278, 282-283 [treating prevailing consolidated co-defendants separately for  
8 purposes of awarding costs on appeal]). In *Golf West of Kentucky, Inc. v. Life Investors, Inc.*  
9 (“*Golf West*”), the Court of Appeal explained that:

10 ... to impose joint and several liability on litigants who elect to consolidate their actions  
11 is to penalize parties for promoting judicial economy. There is no reason in logic or law  
12 to place litigants in a position of having to choose between prosecuting their actions  
13 individually, or consolidating their claims and potentially being held jointly and  
14 severally liable for costs, which may amount to a substantial sum.

15 (89 Cal.App.2d, at 318-319, underscoring added.)

16 If provided for by contract or statute, attorney fees are costs that can be awarded to a  
17 prevailing party (Code Civ. Proc. § 1033.5(a)(10)). Therefore, the Court of Appeal’s decisions  
18 in *Weck* and *Golf West*, clearly apply to attorney fee awards in consolidated cases. Accordingly,  
19 under *Weck* and *Golf West*, the Willis Class may not seek fees and costs from the landowners  
20 who were not parties to the Willis Class Action. As recognized in the Court’s Consolidation  
21 Order, the Overliers became parties to these consolidated actions only because the Public Water  
22 Suppliers filed a complaint against them, and they cannot be held responsible for costs and fees  
23 incurred in a separate action, including the Willis’ Class Action.

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V.

**THE WILLIS CLASS PREVIOUSLY ACKNOWLEDGED FEES SHOULD NOT BE ASSESSED AGAINST THE OVERLIERS**

In its March 15, 2011, "Response to Los Angeles County Waterworks District No. 40's Brief re Equitable Apportionment of Willis Class Fee Award," the Willis Class acknowledged that:

"Willis affirms that she only sought fees from the Defendant Public Water Suppliers ("Defendants") and related entities that have asserted claims to prescriptive rights vis-a-vis the Willis class. **Those are the only parties directly adverse to the Class in this litigation, and the only parties against whom fees may properly be awarded under Section 1021.5 of the Code of Civil Procedure.** The landowners are not analogous to the 'real parties in interest' as to whom the courts have imposed responsibility for such fees."

(Willis Class "Response," at page 2, lines 3-9; Exhibit 2 hereto, emphasis added.)<sup>1</sup>

VI.

**THE JUDGMENT BARS WILLIS FROM RECOVERING FEES AND COSTS**

The Willis Class Motion is barred by Paragraph 20.11 of the Judgment which provides that, "Except subject to any existing court orders, each Party shall bear its own costs and attorneys fees arising from the Action." The Willis Class did not object to this provision of the Judgment and is bound thereby. (See *Hydratec, Inc. v. Sun Valley 260 Orchard & Vineyard Co.* (1990) 223 Cal.App.3d 924, 927.)

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<sup>1</sup> Further acknowledging this fact, the Willis Class' [Proposed] Order Awarding Plaintiffs' Counsel Attorneys' Fees and Reimbursement of Expenses" requests an Order that: "C. The attorneys' fees awarded and reimbursement of litigation costs and expenses shall be paid by the Public Water Suppliers . . ." (underscoring added). The proposed Order does not request payment of costs and fees by any landowner party.

VIII.

THE WILLIS CLASS IS NOT A "PREVAILING PARTY"

The Willis Class Motion acknowledges that the applicable statute provides that "prevailing party" status is achieved only where a party's efforts "contributed in a significant way" to changing "benchmark conditions" in that party's favor (Willis Class Motion, page 4, line 23 to page 5, line 2). On May 13, 2011, the Willis Class Judgment was entered. Thereafter, the efforts of the Willis Class' attorneys did not "[contribute] in a significant way" to achieving any additional benefit or right for the Willis Class, and in fact. In fact, the subsequent efforts of the Willis Class' attorneys did not result in any additional benefit or right for the Class and, instead, resulted in substantial additional time and expense to the settling parties.

In this regard, the "benchmark conditions" were not changed one iota in favor of the Willis Class as a result of its attorneys' efforts and their numerous unmeritorious objections and motions. In its May 6, 2011, Order awarding attorney fees and costs against the Public Water Suppliers, the court noted that the Willis Class had already achieved by that date those same benefits which it now enjoys, to wit:

As for the benefit conferred, although the Willis Class did not recover any monetary payment, it was successful in achieving a significant benefit by preventing the Public Water Suppliers from proceeding on their prescription claims and by maintaining certain correlative rights to the reasonable and beneficial use of water underlying their land. (May 6, 2011 Order, page 5, lines 14-18; Exhibit 4.)

The May 13, 2011 Willis Class Judgment, in pertinent part, provides:

19. The Settling Defendants and their heirs, executors, administrators, successors, and assigns are hereby permanently barred and enjoined from instituting, commencing, prosecuting, or continuing to prosecute, either directly or indirectly, any Released Claim against any of the Class Members in any forum . . .

. . .

20. . . . In addition, without affecting the finality of this Judgment, the Court retains jurisdiction over the parties for the purposes of incorporating and merging this Judgment

1 into a physical solution or other Judgment that may ultimately be entered in the  
2 Consolidated Actions. . . .

3 (Exhibit 5.)

4 Not satisfied with that result, the Willis Class sought to modify or eliminate provisions  
5 of the final Judgment and Physical Solution, to obtain additional benefits and rights for itself,  
6 and to hold the Public Water Suppliers responsible for allegedly breaching the Stipulation upon  
7 which the Willis Class Judgment is based. This is demonstrated in the Willis Class' Phase  
8 VI/Physical Solution Trial Brief, filed September 22, 2015, wherein the Willis Class made  
9 numerous unmeritorious arguments:

- 10 • "The stipulation and proposed physical solution ("SPPS") . . . fails to incorporate the  
11 groundwater rights of the Willis Class, violates California and Federal law including the  
12 Willis Class' due process rights, and is not fair and equitable to the Willis Class" (Brf.,  
13 2:2-6);
- 14 • "[T]erms of the SPPS are directly contradicted by the Willis Judgment" (Brf., 3:16);
- 15 • "[T]he SPPS modifies and abrogates the correlative water rights of the Willis Class from  
16 the NSY" (Brf., 6:1-2);
- 17 • "[U]nder the SPPS, the Public Water Suppliers have been allocated a portion of the  
18 NSY that is far greater than the 15% they agreed to in the Willis Judgment. It does so  
19 by transferring any unused Federal Reserve rights to the Public Water Suppliers" (Brf.,  
20 6:21-23);
- 21 • "[T]he SPPS imposes a legal and financial impediments [sic] on the right of the Willis  
22 Class members to pump in the future which regulations effectively extinguishes their  
23 right to pump in the future" (Brf., 7:16-18; 8:25-28); and
- 24 • The Public Water Supplier breached their agreement with the Willis Class (Brf., 10:27-  
25 11:12; 13:4-5).

26 (Exhibit 6.)

27 Based on those numerous arguments, the Willis Class' attorneys sought to: (a) reduce  
28 the stipulating parties' NSY allocations; (b) establish for the Willis Class a specific and

1 substantial NSY allocation; (c) eliminate Willis Class responsibility for payment of replacement  
2 assessment; (d) eliminate the transfer and carryover provisions in the proposed Physical  
3 Solution; (e) eliminate the conditions and administrative procedures governing Willis Class'  
4 entitlement to pump groundwater; (f) eliminate PWS' right to unused Federal Reserved Right  
5 entitlement; and (g) otherwise hold the PWS responsible for allegedly breaching their  
6 agreement/stipulation with the Willis Class.

7 The Court rejected all of these arguments. The Willis Class attorneys accomplished  
8 nothing more than that which was already accomplished in the 2011 Judgment and in the  
9 proposed final Judgment and Physical Solution.<sup>2</sup> The Willis Class attorneys did not succeed in  
10 changing the proposed final Judgment and Physical Solution to their clients' advantage, in any  
11 respect or at all.

12 It is also important to note that in numerous court hearings after entry of the 2011 Willis  
13 Class Judgment, the Court repeatedly observed that the Willis Class' correlative rights would  
14 not be extinguished by the Physical Solution -- and they were not. Nonetheless, Willis Class  
15 counsel refused to accept the Court's representations and, instead, pushed forward with one  
16 unnecessary and unmeritorious pleading after another.<sup>3</sup>

## 17 VIII.

### 18 THE WILLIS CLASS MISCHARACTERIZES THE JUDGMENT

19 The Willis Class also mischaracterizes the Judgment and Physical Solution, by arguing  
20 repeatedly that, by and through the Judgment and Physical Solution, the stipulating parties  
21 "obtained" water rights to which they did not already have a right, e.g., "it would be fair and  
22 reasonable to assess all parties who *obtained* water rights under the Physical solution" (Willis  
23

24 <sup>2</sup> Indeed, Willis Class counsel continue to argue that, "The Class was forced to oppose  
25 the SPPS, as it was inconsistent with the Willis Class Judgment because it abrogated the correlative  
26 water rights of the Class to share in the Native Safe Yield of the Basin" (Kalfayan Supporting Dec.,  
27 5:12-14). This argument flies directly in the face of the Court's specific findings that (1) the SPPS is  
consistent with the Willis Class Judgment, and (2) the Willis Class' correlative rights are not  
abrogated or extinguished, but, instead, are fully preserved therein.

28 <sup>3</sup> Finally, it bears noting that Willis, having filed notice of appeal, essentially concedes that it  
is not a prevailing party.



1 Class Motion, page 14, lines 9-12; page 15, lines 10-11, and lines 14-16). To the contrary,  
2 however, each stipulating party established its water right through the Phase IV “prove-up,” and  
3 thereafter agreed to accept very significant *limitations and reductions* thereto, as set forth in  
4 the Judgment and Physical Solution. Therefore, contrary to the Willis Class assertion, the  
5 stipulating parties did not “obtain” any benefit or right which they did not already have before  
6 the final judgment was entered. Instead, each stipulating party agreed to accept significant  
7 reductions in its established correlative water rights.

## 8 IX.

### 9 ADDITIONAL WILLIS CLASS PARTICIPATION WAS NOT REQUIRED

10 The Willis Class also argues that, “The parties could not have reached a physical  
11 solution without the participation of the Willis Class as a party. The Court could not have  
12 entered a judgment without the participation of the Willis Class.” (Willis Class Motion, p. 6,  
13 lines 6-8.)

14 All “required” participation by the Willis Class was complete on May 13, 2011, when  
15 the Court entered its Final Judgment Approving Willis Class Action Settlement. Thereafter,  
16 nothing more was “required” of the Willis Class to confer jurisdiction upon the Court to enter  
17 a final Judgment and Physical Solution in these Consolidated Actions, and to satisfy all  
18 requirements of the McCarran Amendment. As the Court noted in its May 6, 2011, Order  
19 awarding attorney fees and costs against the Public Water Suppliers:

20 By virtue of the Willis Class Action (and the Woods Class Action), the Court is able to  
21 adjudicate the claims of virtually all groundwater users in the entire Antelope Valley  
22 which adheres to the benefit of every resident and property owner in the adjudication  
23 area. Without virtually all such users as part of the adjudication, the Court could not  
24 have complied with the McCarran Amendment which was necessary to maintain  
25 jurisdiction over the federal government (purportedly the largest land owner and a very  
26 large water user) which was necessary to adjudicate all correlative rights in the basin.  
27 (May 6, 2011, Order, Exhibit 4, page 5, lines 18-24.)  
28

Therefore, the “required” participation by the Willis Class in these proceedings was, for all practical purposes, complete as of May 13, 2011, when the Willis Class Judgment was entered. Although additional participation by the Willis Class was allowed, it was not “required.”

**X.**

**THE WILLIS CLASS MOTION IS PROCEDURALLY DEFECTIVE AND SHOULD BE DENIED**

The Willis Class claim for \$105,107.62 in recoverable costs also was waived when it failed to timely file the required Memorandum of Costs. “A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of mailing of the notice of entry of judgment . . .” (Cal. Rules Ct., Rule 3.1700(a)(1)). The Willis Class did not file a Memorandum of Costs within 15 days after the December 28, 2015, filing and posting of Notice of Entry of Judgment (see Website posting #11021). Indeed, the Willis Class has never filed a Memorandum of Costs. Failure to comply with Rule 3.1700(a)(1) is fatal to the Willis Class claim for costs. (See *Hydratec, Inc. v. Sum Valley 260 Orchard & Vineyard Co.* (1990) 223 Cal.App.3d 924, 928-929 [“if the claimant fails to present a cost bill, a waiver of the right to costs results. The time provisions relating to the filing of a memorandum of costs, while not jurisdictional, are mandatory.”])

XI.

## CONCLUSION


The Willis Class Motion is procedurally improper, barred by the Consolidation Order and the final Judgment. Furthermore, the Willis Class is not a prevailing party, and efforts of its legal counsel were unnecessary, unmeritorious, and counter-productive to the final Judgment. For these and the other reasons stated above, the Overliers respectfully submit that the Willis Class motion for an award of additional costs and attorney fees should be denied, in its entirety.

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1 Dated: March 14, 2016

BRUNICK, MCELHANEY & KENNEDY

By:   
William J. Brunick/Leland P. McElhane  
Attorneys for Cross-Complainant,  
ANTELOPE VALLEY-EAST KERN  
WATER AGENCY

6 Dated: March 14, 2016

OFFICE OF THE ATTORNEY GENERAL  
STATE OF CALIFORNIA

By:   
Marilyn Levin/Noah Golden-Krasner  
Attorneys for the State of California,  
Santa Monica Mountains Conservancy,  
and State of California 50<sup>th</sup> District  
Agricultural Association

12 Dated: March \_\_, 2016

ELLISON, SCHNEIDER & HARRIS L.L.P.

By: \_\_\_\_\_  
Christopher M. Sanders  
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Districts of Los Angeles County  
Nos. 14 and 20

17 Dated: March \_\_, 2016

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23 Dated: March \_\_, 2016

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By: \_\_\_\_\_  
William M. Sloan  
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Ground Water Agreement Association

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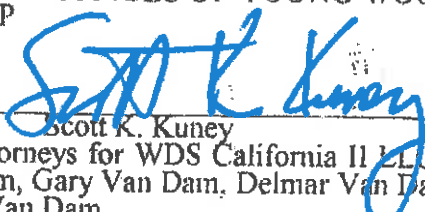
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1 Dated: March 14, 2016

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By   
Scott K. Kuney  
Attorneys for WDS California II LLC, Craig Van  
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6 Dated: March \_\_, 2016

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11 Dated: March \_\_, 2016

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6 Dated: March 4, 2016  
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Crystal Organic Farms LLC.

Dated: March 14<sup>th</sup>, 2016

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Richard Zimmer  
Attorneys for Bolthouse Properties, LLC, Wm.  
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LAW OFFICES OF YOUNG WOOLDRIDGE,  
LLP

2  
3 By \_\_\_\_\_

4 Scott K. Kuney  
Attorneys for WDS California II LLC, Craig Van  
5 Dam, Gary Van Dam, Delmar Van Dam, Gertrude  
J. Van Dam

6 Dated: March \_\_, 2016

LEBEAU-THELEN, LLP

7  
8 By \_\_\_\_\_

9 Bob Joyce  
Attorneys for Grimmway Enterprises, Inc., Lapis  
10 Land Company, LLC, Diamond Farming Company,  
Crystal Organic Farms LLC,

11 Dated: March \_\_, 2016

CLIFFORD & BROWN

12  
13 By \_\_\_\_\_

14 Richard Zimmer  
Attorneys for Bolthouse Properties, LLC, Wm.  
15 Bolthouse Farms, Inc.,

16 Dated: March 14, 2016

KUHS & PARKER

17  
18 By 15/ \_\_\_\_\_

19 Robert Kuhs  
Attorneys for Granite Construction Company and  
Tejon Ranchcorp

20 Dated: March 15, 2016

BROWNSTEIN HYATT FARBER SCHRECK  
LLP

22  
23 By 15/ \_\_\_\_\_

24 Michael T. Fife  
Attorneys for the Antelope Valley Ground Water  
25 Agreement Association  
26  
27  
28

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA }  
3 COUNTY OF SAN BERNARDINO }


4 I am employed in the County of the San Bernardino, State of California. I am over  
5 the age of 18 and not a party to the within action; my business address is 1839 Commercenter  
West, San Bernardino, California 92408-3303.

6 On March 15, 2016, I served the foregoing document(s) described as: **JOINT**  
7 **OPPOSITION OF OVERLIERS TO WILLIS CLASS MOTION FOR AWARD OF**  
**ADDITIONAL COSTS AND ATTORNEY FEES** in the following manner:

8 ■ **BY ELECTRONIC SERVICE AS FOLLOWS** by posting the document(s)  
9 listed above to the Santa Clara website in the action of the *Antelope Valley Groundwater*  
10 *Litigation*, Judicial Council Coordination Proceeding No. 4408, Santa Clara Case No. 1-05-  
CV-049053.

11 X (STATE) I declare under penalty of perjury under the laws of the State of California  
12 that the above is true and correct.

13 Executed on March 15, 2016, at San Bernardino, California.

14   
15 \_\_\_\_\_  
16 P. Jo Anne Quihuis  
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