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23
24 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
25 **IN AND FOR THE COUNTY OF PIMA**

26 NO DESERT DATA CENTER; RYE
27 WHALEN; AND MERI SIAS,

28 Case No.

1 Plaintiffs,

2 v.

3 **COMPLAINT FOR ORIGINAL**
4 **STATUTORY**
5 **SPECIAL ACTION**
6 **(OPEN MEETING LAW)**

7 PIMA COUNTY, a political subdivision of
8 the State of Arizona; THE PIMA COUNTY
9 PLANNING AND ZONING
10 COMMISSION, by and through its Chair,
11 David Hook, in his official capacity,

12 Assigned to:

13 Defendants.

14
15 Plaintiffs No Desert Data Center, Rye Whalen, and Meri Sias submit this Complaint
16 for Statutory Special Action pursuant to A.R.S. § 38-431, *et seq.* (the “Open Meeting Law”)
17 or “OML”), A.R.S. § 12-2021, *et seq.*, and Ariz. R. Special Actions 1-10, and allege as
18 follows:

1

SUMMARY OF THE CASE

2 1. This case concerns a deliberate and material deception of the public in
3 violation of Arizona's Open Meeting Law relating to the rezoning of property owned by
4 Defendant Pima County ("County") for subsequent sale and development as a data center
5 campus.

6 2. From 2023 to early 2025, Pima County Staff ("Staff") secretly negotiated the
7 sale of 290.3 acres of County-owned land for \$20,875,000 to an undisclosed private buyer
8 for the construction of a 2,250,000 square foot data center campus, internally referred to as
9 "Project Blue."

10 3. From mid-2024 to early 2025, Staff had commissioned and received a formal
11 appraisal of the property, executed confidentiality agreements, and memorialized the
12 proposed transaction in a detailed term sheet setting out the purchase price, deposit,
13 payment terms, closing conditions (that included annexation into the City of Tucson),
14 construction phases, development deadlines, county requirements, reversion and purchase
15 options, and economic development incentives.

16 4. At this time, the property was zoned Rural Homestead ("RH"). To effectuate
17 the sale, Staff was required to apply to Defendant Pima County Planning and Zoning
18 Commission ("Commission") to amend Pima County's Comprehensive Plan and to rezone
19 the property to allow for data center development and use.

20 5. Staff therefore applied to the Commission to amend the Comprehensive Plan
21 and rezone the Property. The sole purpose of the application was to enable the sale and
22 development of the Property as a data center campus.

23 6. However, the agenda for the Commission's April 30, 2025, public meeting
24 failed to provide the public with notice that Staff's reason for seeking to amend the
25 Comprehensive Plan and rezone the property was to effectuate its sale of the property for
26 development as a data center campus.

27 7. On the contrary, Staff affirmatively misrepresented that the amendment and
28 rezoning were sought to provide "flexibility" for unspecified future uses. Indeed, Staff listed

1 a grab-bag of hypothetical and irrelevant potential uses for the rezoned property—including
2 office buildings, warehousing, coffee shops, or hotels. Buried deep in the documentation
3 was a single passing reference to a data center in fine print, sandwiched among other
4 uncontroversial, plausible “concepts,” thereby surrounding the truth with “a bodyguard of
5 lies” designed to deceive the public.

6 8. The agenda for the Commission’s April 30, 2025, meeting omitted the
7 dispositive fact that the rezoning was required to consummate an already-negotiated sale
8 for a data center campus.

9 9. By omitting the true purpose of the Comprehensive Plan amendment and
10 property rezoning, and by affirmatively portraying these actions as speculative and
11 generalized, Staff deprived the public of meaningful notice and an opportunity to exercise
12 their right to participate, in violation of the OML.

13 10. A notice and agenda must convey sufficient information for the public to
14 “discover and investigate further the background or specific facts of the decision.” *Karol v.*
15 *Bd. of Educ. Trs.*, 122 Ariz. 95, 98 (1979) (all emphasis added unless otherwise noted); *see*
16 A.R.S. § 38-431.09(A).

17 11. Any “misleading element inherent in” the notice given for a public meeting
18 “violates the Open Meeting Law.” *Thurston v. City of Phoenix*, 157 Ariz. 343, 345 (App. 1988).

19 12. At the time Staff prepared and published the agenda, Staff knew that the
20 construction of data center campuses across the nation has routinely provoked massive
21 public opposition due to data centers’ demands on a community’s resources—including
22 power and water; the risks to environment and public health, persistent noise disturbances,
23 visual blight, and the minimal number of long-term jobs created relative to their costs.
24 Notwithstanding this knowledge, and in order to avoid public opposition to the first step
25 required to effectuate this plan (*i.e.*, the rezoning of the property as a prerequisite its sale of
26 the land for use as a data center campus), Staff failed to include the application’s true
27 purpose in the Agenda, thereby misleading the public and concealing its intended course
28 of action.

1 13. The agenda for the Commission’s April 30, 2025, meeting violated the OML,
2 and the Commission’s actions – namely, its approval of Staff’s application to amend the
3 Comprehensive Plan and to rezone the property –must be declared null and void as a matter
4 of law. A.R.S. § 38-431.05(A).

PARTIES

6 14. Plaintiff No Desert Data Center Coalition (“NDDC”) is a voluntary coalition
7 of individuals, including Plaintiffs, affected by the actions of Defendants. NDDC’s
8 membership includes Pima County residents and property owners, including business
9 owners, union members, data scientists, medical professionals, Indigenous land advocates,
10 photographers, researchers, environmentalists, artists and writers, teachers and students,
11 parents and youth, community and labor organizers, and other concerned citizens. NDDC’s
12 mission is to protect the public interest by advancing transparency, accountability, and
13 informed decision-making on issues of critical concern, including public health, water
14 security, energy equity, sustainable economic development, tribal consultation and
15 sovereignty, and environmental impacts. NDDC is committed to ensuring that communities
16 in southern Arizona have access to accurate information and a meaningful voice in decisions
17 affecting the Project Blue data center and other extractive industries. NDDC brings this
18 action on behalf of its members, each of whom has standing as a member of the public
19 entitled to notice, access, and participation under A.R.S. §§ 38-431 *et seq.* NDDC’s
20 members are directly affected by Defendants’ violations and include individuals entitled to
21 attend, observe, and participate in the meetings at issue. *See* Declarations of Plaintiffs Meri
22 Sias, attached marked **Exhibit A**, ¶ 4; Declaration of Plaintiff John “Rye” Whalen, attached
23 marked **Exhibit B**, ¶ 4.

24 15. Plaintiff John “Rye” Whalen, a resident of Corona de Tucson, Pima County,
25 Arizona, acts in his personal capacity and as a member of Plaintiff NDDC. Mr. Whalen has
26 authority to bring this action pursuant to A.R.S. § 38-431.07(A) because his interests in
27 government transparency and accountability regarding Project Blue were directly harmed
28 by Defendant’s OML violations. Mr. Whalen is directly affected by Defendants’ violations

1 because he was entitled to attend, observe, and participate in the meetings at issue. *See Ex.*
2 **B.**

3 16. Plaintiff Meri Sias, a property owner and resident of Corona de Tucson, Pima
4 County, Arizona, acts in her personal capacity and as a member of Plaintiff NDDC. Ms.
5 Sias has authority to bring this action pursuant to A.R.S. § 38-431.07(A) because her
6 interest in the County's transparency and accountability regarding Project Blue has been
7 negatively impacted by the County's OML violations. Ms. Sias is directly affected by
8 Defendants' violations because she was entitled to attend, observe, and participate in the
9 meetings at issue. *See Ex. A.*

10 17. Plaintiffs have authority to bring this action pursuant to A.R.S. § 38-
11 431.07(A) because Defendants' OML violations have adversely affected Plaintiffs' interests
12 in governmental transparency and accountability with respect to the amendment and
13 rezoning of the property for use as a data center *See Welch v. Cochise Cty. Bd. of*
14 *Supervisors*, 251 Ariz. 519, 522, 526—27, ¶¶ 1, 25 (2021). Plaintiffs, therefore, have
15 standing to bring this special action based on their interests in government accountability and
16 transparency. *Id. at* 526--27, ¶¶ 24--25 As the Arizona Supreme Court has explained, public
17 accountability laws, such as the OML, “are remedial in nature” and should be “broadly
18 construed” to confer standing on any plaintiff within the zone of interests the statutes are
19 designed to protect. *Id. at* 526, ¶ 24. “Any hindrance to public access—most notably, for
20 the press and other watchdogs, upon which constituents like [plaintiff] regularly rely to keep
21 abreast of government operations—affects those to whom such access is guaranteed.” *Id. at*
22 527, ¶ 27. “In adopting Arizona’s public accountability laws, the legislature made clear its
23 desire that their provisions be broadly enforceable by all having an interest in the
24 transparency and accountability of those public agencies and officials that act on their
25 behalf.” *Id. at* 530, ¶ 41.

26 18. Defendant Pima County is a political subdivision of the state of Arizona and
27 is a “public body” within the meaning of A.R.S. § 38-431(5) and (6) and is thus subject to
28 the OML.

19. Defendant the Pima County Planning and Zoning Commission is a county advisory commission and is a “public body” within the meaning of A.R.S. § 38-431(6). The Commission is sued by and through its Chair, David Hook, in his official capacity.

JURISDICTION AND VENUE

20. This Court has jurisdiction over this original special action pursuant to A.R.S. §§ 38-431.07(A), 12-2021, and Ariz. R. P. Spec. Act. 2.

21. Venue in Pima County is proper pursuant to A.R.S. § 38-431.07(A) and Ariz. R. P. Spec. Act. 6(a)(1) because the acts and omissions giving rise to these claims occurred in Pima County, Arizona. Plaintiffs reserve the right to request a change of venue pursuant to A.R.S. § 12-408.

FACTUAL ALLEGATIONS

a) From 2023 to 2025, Staff negotiated the sale of the Property to a secret buyer.

22. The County owned a 290.3-acre parcel of real property, southeast of the City of Tucson, near the Pima County Fairgrounds, Tax Parcel No. 305-01-009B (“the Property”).

23. In or around 2023 and 2024, Staff were approached by a potential buyer of the Property to build a data center campus for (at the time) Amazon Web Services (“Buyer”).

24. On or about June 21, 2024, Staff secured an appraisal for the Property at \$20,875,000.00 (“Appraisal”).

25. The Appraisal was based on certain assumptions, including that "Pima County is currently in negotiations with a buyer who intends to purchase the land to develop an industrial use."

26. On or about June 24, 2024, Staff signed a Non-Disclosure Agreement with the Buyer.

27. On September 26, 2024, Staff gave the Buyer a “right of exclusivity ... for the duration of the agreement.”

b) In February 2025, Staff had drafted a detailed sale term sheet.

28. On or about February 20, 2025, Staff presented an informational memorandum to the Pima County Administrator that included the Appraisal as well as a detailed term sheet for the sale of the Property to the Buyer, which Staff referred to as “Project Blue” (“Term Sheet”). See memorandum dated February 20, 2025 attached marked **Exhibit C**, pdf p. 95-101.

29. The Term Sheet set out in detail the negotiated purchase price, deposit, payment terms, closing conditions (including the requirement for annexation into the City of Tucson), construction phases, development deadlines, county requirements, reversion and purchase options, penalties, and economic development incentives.

30. The Term Sheet expressly provided that the Buyer had “the exclusive right to purchase” the Property, and Pima County agreed that it “shall not transfer the Property to any person or entity other than the Purchaser or its designee” during the due diligence period.

31. On or about February 24, 2025, the County Administrator sent an informational memorandum to the Pima County Board of Supervisors (“Board”), putting the Board on notice that, at some point in the future, “a zoning entitlement request” and a “sales-purchase agreement” would be “presented for Board of Supervisors consideration” to allow the sale to proceed. *See* memorandum dated February 24, 2025, attached marked **Exhibit D** (without its attachment, which was Ex. C above), p. 1.

c) The sale of the Property for data center development required rezoning approval.

32. At the time negotiations commenced, the Property was zoned Rural Homestead (RH).

33. For the sale of the Property to proceed, Staff needed to obtain an amendment to Pima County's Comprehensive Plan and a rezoning to allow for the Property's use as a data center campus.

34. Therefore, on or about April 14, 2025, Staff submitted an application to

1 rezone the Property (“Application”). A copy of the Application is attached marked **Exhibit**
2 **E.**

3 35. The Application requested a “Specific Plan Rezoning” to change its zoning
4 from RH (AE) (Rural Homestead – Airport Environs) and the RH (Rural Homestead) to the
5 SP (AE) (Specific Plan – Airport Environs) and the SP (Specific Plan) zones.

6 36. The Application also requested a “Comprehensive Plan Amendment” from
7 Resource Sensitive (RS) and Military Airport (MA) to the Planned Development
8 Community (PDC) land use designation.

9 37. The sole purpose of the Application was to be able to carry out the sale of the
10 Property to the Buyer for use as a data center campus pursuant to the aforementioned Term
11 Sheet.

12 **d) The agenda for the Commission meeting on April 30, 2025, did not give**
13 **notice that Staff was in advanced negotiations to sell the Property for use**
14 **as a data center**

15 38. In the agenda prepared for the Commission’s April 30, 2025 public meeting
16 (“Agenda”), Item No. 6, gave notice that “Pima County requests a comprehensive plan
17 amendment and specific plan rezoning for approximately 290.3 acres” (setting forth the
18 requested rezoning and Comprehensive Plan amendments outlined above) and identified
19 the location and address of the Property. *See* Agenda, attached marked **Exhibit F**, p. 2, Item
20 No. 6. (The Agenda is also available on Pima County’s website at
21 <https://content.civicplus.com/api/assets/9d9ad861-b445-4bfc-b5ae-4cd2f42c2efe>.)

22 39. The Agenda included two attachments: a “Staff Report” dated April 14, 2025
23 (“Report”) and a “Specific Plan” dated April 2025 (“Specific Plan”). The Report and
24 Specific Plan are attached marked **Exhibits G** and **H** respectively. The Report and Specific
25 Plan can also be accessed on the website link above.

26 40. The Report described the “proposed use” of the Property, stating that “Pima
27 County is requesting a flexible specific plan for larger scale manufacturing, logistics,
28 industrial and employment centers.” Ex. G, p. 1.

1 41. The Report also identified the “Applicant’s Stated Reason” for their
2 application to amend and rezone as follows: “Over the years, site selectors have inquired
3 regarding the availability of land, … for large employment, industrial or manufacturing
4 centers and the Pima County Southeast Regional Park (SERP) contains surplus lands that
5 would be appropriate for these types of larger manufacturing, logistics, industrial and
6 employment centers because the property is located near the recently reconstructed
7 Houghton Road and Interstate 10 interchange and is in close proximity to other regional
8 business and industrial hubs.” Ex. G, p. 1.

9 42. The Report explained that “The 290.3-acre flexible specific plan proposes
10 office, business or corporate centers, light industrial uses such as research and development,
11 laboratory testing, assembly productions and manufacturing, wholesale business,
12 warehousing and storage for specific industries listed within the plan. Additional limited
13 uses conforming to the CB-1 (Local Business) zone are proposed such as retail, convenience
14 store, coffee shop, banking and financial, hotel and motel, to name a few.” Ex. G, p. 5.

15 43. The Report did not state that the purpose of the Application was to sell the
16 Property for use as a data center campus, nor that, at the time, Staff was in the advanced
17 stages of negotiating such a sale, as evidenced by the Term Sheet.

18 44. On the contrary, Staff misled the public, including Plaintiffs that Staff had no
19 current plans for the Property, giving notice that its purpose was “flexibility” for uses such
20 as those set out in ¶ 42 above. Ex. G, p. 1. Absent from this list is the intended use of the
21 Property as a data center campus, and the fact that negotiations with the Buyer were well
22 underway.

23 45. More egregiously, the Specific Plan went so far as to include phony
24 “potential” plans for the property. Buried deep in the Specific Plan were three “illustrative
25 examples” of possible uses for the Property, which were called “potential development
26 scenarios,” that were “conceptual only.” Ex. G, pp. II-2, II-5. These “conceptual” examples
27 included (1) warehousing, business park, and light industrial; (2) manufacturing and
28 warehousing, biomedical research and development, and corporate headquarters buildings;

1 and (3) in minute print, logistics/administrative buildings and data center buildings. Ex. G,
2 pp. II-7, II-8 and II-9.

3 46. In other words, the Agenda concealed the true purpose of the Application in
4 a “bodyguard of lies” to obscure the Property’s intended use as a data center campus.

5 47. At the time the Agenda was prepared, Staff were certainly aware that
6 proposals to construct data center campuses consistently provoked significant public
7 opposition. Such opposition arises from the substantial burden data centers place on a
8 community resources, including energy and water; their environment and public health
9 risks; their persistent sound disturbances; their adverse aesthetic effects; and their minimal
10 long-term employment relative to these costs. To avoid this anticipated public opposition,
11 Staff omitted the purpose for the Application, thereby misleading the public and obstructing
12 informed public participation.

13 48. On April 30, 2025, the Commission approved Staff’s Application.

14 49. Plaintiffs and NDDC’s members own property and/or reside within Pima
15 County, and are deeply concerned that the new data center will negatively impact and
16 degrade their quality of life, their electricity rates, deplete and potentially contaminate their
17 groundwater and other water resources, lower their property values, and scar the scenic
18 landscape. *See Ex. A, ¶ 1, 6; Ex. B, ¶ 1, 6.*

19 50. Because of these types of concerns, Plaintiffs and other NDDC members
20 follow the news regarding proposed activity by the County that might impact them. *See Ex.*
21 *A, ¶ 9; Ex. B, ¶ 9.*

22 51. If Plaintiffs had been aware of the true purpose of the County’s application to
23 rezone the property at issue in this lawsuit, they would have taken action to voice their
24 concerns and opposition to the development of a data center on the property, including
25 submitting written comments to the Commission and appearing at its meeting on April 30,
26 2025. *See Ex. A, ¶ 10; Ex. B, ¶ 10.*

27 52. However, because the agenda for the Commission’s meeting did not mention
28 Project Blue or give any notice that the County was in the process of selling its property to

1 be developed as a data center, Plaintiffs only learned of the true purpose of the County's
2 application to rezone the property three months after the Commission's April 30, 2025,
3 meeting, in about July 2025. *See Ex. A, ¶ 11; Ex. B, ¶ 11.*

4 53. After Plaintiffs learned about the use of the property as a data center, they
5 attended public meetings of both the County and the City of Tucson, which was deciding
6 whether to annex the Property into the City. *See Ex. A, ¶ 12; Ex. B, ¶ 12.*

7 54. At its meeting on August 6, 2025, the Tucson Mayor and City Council
8 unanimously directed City staff to end negotiations on Project Blue and to rescind the City's
9 intent to annex the land for the development as a data center. Opposition by Plaintiffs and
10 other members of the community was likely a contributing factor in the City's refusal to
11 approve the annexation of the property. *See Ex. A, ¶ 13-14.*

12 55. On June 17, 2025, in reliance on the Commission's approval of the
13 Application, the Pima County Board of Supervisors upheld the Comprehensive Plan
14 amendment and rezoning of the Property, as a prerequisite to its contemporaneous approval
15 of the sale of the Property to the Buyer, subject to almost identical terms and conditions set
16 out in the Term Sheet.

17 **CLAIMS FOR RELIEF**

18 **COUNT I**

19 **Violation of OML**

20 56. Plaintiffs reallege paragraphs 1-55.

21 57. The OML provides that "meetings of any public body shall be public
22 meetings," and "legal action of public bodies shall occur during a public meeting." A.R.S. §
23 38-431.01(A).

24 58. The OML is designed "to open the conduct of the business of government to
25 the scrutiny of the public and to ban decision-making in secret." *Welch v. Cochise Cty. Bd.*
of Supervisors, 251 Ariz. 519, 526, ¶ 25 (2021) (internal citation omitted).

26 59. "It is the public policy of this state that meetings of public bodies be
27 conducted openly . . ." and a court "shall construe [the OML] in favor of open and public
28 meetings." A.R.S. § 38-431.09(A).

1 60. The enforcement provisions of the OML must be read “broadly to effectuate
2 the legislature’s purpose in enacting them.” *Welch*, 251 Ariz. at 526, ¶ 24 (citation omitted).

3 61. The OML mandates that public bodies must give notice of public meetings,
4 including an agenda of the “specific matters to be discussed, considered or decided at the
5 meeting.” A.R.S. § 38-431.02(A)(l), (G)-(H).

6 62. The notice and agenda must “contain such information as is reasonably
7 necessary to inform the public of the matters to be discussed or decided.” A.R.S. § 38-
8 431.09(A).

9 63. Although the notice and agenda for a public meeting need not provide “every
10 detail of the recommended decision on which a vote is about to occur,” the public body
11 must convey sufficient information for the public to “discover and investigate further the
12 background or specific facts of the decision.” *Karol v. Bd. of Educ. Trs.*, 122 Ariz. 95, 98
13 (1979).

14 64. An agenda must be accurate because any “misleading element inherent in the
15 notice given” for a public meeting violates the Open Meeting Law. *Thurston v. City of Phoenix*,
16 157 Ariz. 343, 345 (App. 1988); *Carefree Improvement Ass'n v. Scottsdale*, 133 Ariz. 106, 112
17 (App. 1982).

18 65. Defendants cannot invoke a non-disclosure agreement to justify secrecy in its
19 internal deliberations concerning Project Blue. Although the OML permits a public body to
20 convene in executive session under nine narrowly defined circumstances, *see A.R.S. § 38-
21 431.03(A)(1)–(9)*, those exceptions are strictly construed by the courts in favor of
22 transparency and open deliberation. *Desert Mountain Energy Corp. v. City of Flagstaff*, 259
23 Ariz. 346, 566, ¶22 (App. 2025) (citing *Johnson v. Tempe Elementary Sch. Dist. No. 3
24 Governing Bd.*, 199 Ariz. at 567, 569, ¶14).

25 66. “Any legal action transacted by a public body in violation of the open-meeting
26 law is null and void by default.” *Welch*, 251 Ariz. at 529, ¶ 34; A.R.S. § 38-431.05(A).

27 67. For all the reasons set out above, the Agenda failed to provide adequate notice
28 of the purpose of the County’s Application that was considered by the Commission at its

1 April 30, 2025, hearing, in violation of A.R.S. § 38-431.02(A).

2 68. For all the reasons set out above, the Agenda misled the public regarding the
3 purpose of the County's Application that was considered by the Commission at its April 30,
4 2025, hearing, in violation of A.R.S. § 38-431.02(A).

5 69. The Agenda did not convey sufficient information for the public to "discover
6 and investigate further the background or specific facts of the decision" including that the
7 County was in the advanced stages of selling the Property for use as a data center campus.
8 *See Karol*, 122 Ariz. 98.

9 70. The Agenda included "misleading elements" that did in fact mislead the public
10 to believe that the County had no immediate plans for the Property and was not in the
11 advanced stages of selling the Property for use as a data center campus. *Thurston*, 157 Ariz.
12 345.

13 71. During the meeting, members of the Commission discussed, deliberated and
14 decided matters not properly noticed on the Agenda.

15 72. The Agenda's omissions and misrepresentations were material to the
16 Commission's legal action.

17 73. Defendants' actions deprived the public, including Plaintiffs, of the
18 transparency required by law and prejudiced Plaintiffs and other members of the public.

19 74. Through these actions and omissions, the County deprived the public,
20 including Plaintiffs, of their statutory right to notice that the requested Comprehensive Plan
21 amendment and rezoning of the Property were intended to facilitate the sale of the Property
22 for the development of a data center campus.

23 75. The Agenda violates the OML, rendering the decision of the Commission on
24 April 30, 2025, approving the Application null and void. *See Welch*, 251 Ariz. 522, ¶ 2;
25 A.R.S. § 38-431.05(A).

26 **PRAYER FOR RELIEF**

27 WHEREFORE Plaintiffs respectfully request that this Court issue an order as follows:

28 A. Declaring that Item 6 on the Agenda violated the Open Meeting Law;

B. Declaring null and void the Commission's approval of Item 6 on the Agenda, namely, the Commission's approval of the Application;

C. Directing the Defendants to pay the Plaintiffs' reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12-341, 12-348, 12-2030, 38-431.07(A), or any other applicable provision of law or equitable principle, including the attorney general doctrine; and

D. For such other and further relief as the Court deems just and proper.

DATED this 13th day of January 2026.

HOFMEYR LAW, PLLC

/s/ Adriane J. Hofmeyr

Adriane J. Hofmeyr

ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST

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