

ROBERT DAVID BAKER, INC.
Robert David Baker Esq. (87314)
1570 The Alameda, Suite 250
San Jose, CA 95126
(408) 251-3400 Telephone
(408) 251-3401 Facsimile
rbaker@rdblawnet

Attorney for Mothers Against Murder

SUPERIOR COURT OF THE STATE OF CALIFORNIA,

FOR THE COUNTY OF ALAMEDA

Mothers Against Murder,

Petitioners

vs.

California Victim Compensation Board,

Respondent, and Real Party in Interest.

CASE NO.: 21CV003220

**FOURTH AMENDED VERIFIED
PETITION FOR ORDINARY WRIT OF
MANDATE [CCP §1085(a)]**

INTRODUCTION

Petitioner Mothers Against Murder (“MAM”), is a California non-profit Public Benefit Corporation engaged in advocacy for the rights of victims of crime and their families. This writ of mandate challenges the California Victim Compensation Board’s (“CalVCB”) consistent and unlawful practice of failing to provide a statutory required “in-person” hearing to those persons whose application for victim compensation have been denied, in whole or in part, by staff recommendation, in violation of Cal. Govt. Code §13959(a);

MAM seeks an alternative writ of mandate compelling Real Party in Interest CalVCB to prospectively provide each applicant who contests a staff recommendation to deny their victim compensation claim, in whole or in part, be provided with an “in-person hearing which complies with the requirements of Govt. Code §13959; 2 CCR §§ 615.2 (4) & (6); 616.4; 617.1; and, 617.2;

1 **PARTIES**

2 1. MAM is a California non-profit Public Benefit Corporation and has standing to bring this
3 matter against CalVCB pursuant to the “public interest exception” to the requirement of Cal.
4 CCP § 1086 that a petitioner to a writ of mandate proceeding be beneficially interested in the
5 petition;

6 2. California Victim Compensation Board (CalVCB) is public agency of the State of
7 California charged with reducing the impact of crime on victims’ lives, and funded to reimburse
8 qualified victims of crime and their families with crime-related burial and other expenses
9 incident to criminal activity;

10 **JURISDICTION AND VENUE;**

11 3. This Court has jurisdiction pursuant to Cal. CCP §1085.

12 4. Venue is proper in Alameda County for MAM based on Cal. CCP § 393(b) because
13 Alameda County is the county from which some part of this lawsuit arose and is one of the
14 counties in which the effects of the administrative actions taken by CalVCB will have a direct
15 and substantial impact on those citizen-victims and their families if an alternative writ is not
16 issued;

17 5. Petitioner has exhausted all available administrative remedies;

18 **GENERAL ALLEGATIONS**

19 6. CalVCB is governed by the California Government Code, sections 13900, et seq., and is
20 charged with reducing the impact of crime on victims’ lives, and funded to reimburse qualified
21 victims of crime and their families with crime-related burial and other expenses incident to
22 criminal activity;

23 7. “MAM” is a California non-profit public benefit corporation operating for charitable and
24 public benefit purposes and organized under the California non-profit corporation laws. The
25 primary purpose of MAM is to advocate for victims of crime and their families by, *inter alia*,
26 advocating for victims of crime and their families to ensure that the rights of crime victims and
27 their families are fully implemented by California state and local agencies charged with assisting
28 victims of crime and their families, such as the CalVCB. A true and correct copy of the articles

1 of incorporation of MAM is attached hereto as **Exhibit A**. A true and correct copy of the bylaws
2 of MAM are attached hereto as **Exhibit B**. MAM has represented multiple crime victims and
3 their families before the CalVCB and before the courts. (Declaration of Margaret Petros, Chief
4 Executive Officer of MAM, **Exhibit C**);

5 8. Petitioner MAM has a clear, present and beneficial right as part of its stated mission as a
6 public advocacy organization for crime victims and their families to the relief requested herein,
7 to wit: to compel the CalVCB to provide crime victims and their families who contest the denial
8 of compensation through a staff recommendation with an “in-person” hearing pursuant to Govt.
9 Code §13959 (a);

10 9. MAM seeks an Alternative Writ of Mandate to compel CalVCB to perform its statutory
11 duty imposed by Govt. Code §13959 (a) provide “an in-person” hearing to those persons
12 contesting the denial of their application for victim compensation based on a staff
13 recommendation and to comply with regulations governing the “in-person” hearing;

14 **FIRST CAUSE OF ACTION**
15 **(Writ of Ordinary Mandate Cal. CCP § 1085)**

16 10. Petitioner MAM realleges and incorporates herein those allegations in paragraphs 1-9 as
17 if set forth hereinafter in their entirety;

18 11. Cal. Govt. Code § 13959(a), et seq. provides:

19 (a) The board shall grant a hearing to an applicant who contests a staff recommendation to
20 deny compensation in whole or in part.

21 (b) The board shall notify the applicant not less than 10 days prior to the date of the hearing.
22 Notwithstanding Section 11123, if the appeal that the board is considering involves either a
23 crime against a minor, a crime of sexual assault, or a crime of domestic violence, the board may
24 exclude from the hearing all persons other than board members and members of its staff, the
25 applicant for benefits, a minor applicant's parents or guardians, the applicant's representative,
26 witnesses, and other persons of the applicant's choice to provide assistance to the applicant
27 during the hearing. However, the board shall not exclude persons from the hearing if the
28 applicant or applicant's representative requests that the hearing be open to the public.

1 (c) At the hearing, the person seeking compensation shall have the burden of establishing, by
2 a preponderance of the evidence, the elements for eligibility under Section 13955.

3 (d) Except as otherwise provided by law, in making determinations of eligibility for
4 compensation and in deciding upon the amount of compensation, the board shall apply the law in
5 effect as of the date an application was submitted.

6 (e) (1)The hearing shall be informal and need not be conducted according to the technical
7 rules relating to evidence and witnesses. The board may rely on any relevant evidence if it is the
8 sort of evidence on which responsible persons are accustomed to rely in the conduct of serious
9 affairs, regardless of the existence of a common law or statutory rule that might make improper
10 the admission of the evidence over objection in a civil action. The board may rely on written
11 reports prepared for the board, or other information received, from public agencies responsible
12 for investigating the crime. If the applicant or the applicant's representative chooses not to appear
13 at the hearing, the board may act solely upon the application for compensation, the staff's report,
14 and other evidence that appears in the record.

15 (e) (2)The board shall allow a service animal to accompany and support a witness while
16 testifying at a hearing.

17 (f) Hearings shall be held in various locations with the frequency necessary to provide for
18 the speedy adjudication of the appeals. If the applicant's presence is required at the hearing, the
19 board shall schedule the applicant's hearing in as convenient a location as possible or conduct the
20 hearing by telephone.

21 (g) The board may delegate the hearing of appeals to hearing officers.

22 (h) The decisions of the board shall be in writing within six months of the date the board
23 received the appeal unless the board determines that there was insufficient information to make a
24 decision. If the board determines that there was insufficient information to make a decision, the
25 board shall notify the applicant in writing within six months of the date the board received the
26 appeal. Copies of the decisions shall be delivered to the applicant or to his or her representative
27 personally or sent to him or her by mail.

28 ///

1 (i) The board may order a reconsideration of all or part of a decision on written request of
2 the applicant. The board shall not grant more than one request for reconsideration with respect to
3 any one decision on an appeal for compensation. The board shall not consider any request for
4 reconsideration filed with the board more than 30 calendar days after the personal delivery or 60
5 calendar days after the mailing of the original decision.

6 (j) The board may order a reconsideration of all or part of a decision on its own motion, at
7 its discretion, at any time.

8 (k) Evidence submitted after the board has denied a request for reconsideration shall not be
9 considered unless the board chooses to reconsider its decision on its own motion.

10 “The board shall grant a hearing to an applicant who contests a staff recommendation to deny
11 compensation in whole or in part.” mandates that Respondent the CalVCB “shall grant a hearing
12 to an applicant who contests a staff recommendation to deny compensation in whole or in part.”

13 12. Cal. 2 CCR § 617.1 mandates that hearings on denials of applications for compensation
14 “shall be open to public observation, unless otherwise provided by law.” Cal. 2 CCR § 616.4
15 provides that a notice of hearing on the denial of application for compensation by staff given ten
16 days before the start of the hearing, providing an applicant the date, time, and location of the
17 hearing, and notice whether the hearing will be “informal,” and information about requesting a
18 copy of the hearing procedures;

19 13. CalVCB has consistently and unlawfully failed to perform its mandatory duty pursuant to
20 Cal. Govt. Code § 13959(a) and its regulations by its refusal to provide “in-person” hearings to
21 those persons whose application for victim compensation has been denied by staff. (See, **Exhibit**
22 **C**),

23 14. This practice is widespread throughout California counties;

24 15. Therefore, MAM requests that an Alternative Writ of Mandate issue compelling the
25 CalVCB to prospectively provide an “in-person” hearing to those persons who have been denied
26 victim compensation based on staff recommendation as mandated by Cal. Gov. Code § 13959(a)
27 and to comply with the notice requirements as set forth in the California Code of Regulations.

28 ///

1 WHEREFORE, PETITIONER MAM PRAYS FOR RELIEF AS SET FORTH BELOW.

2 **SECOND CAUSE OF ACTION**
3 **(Declaratory Relief)**

4 16. Petitioner MAM realleges and incorporates herein those allegations in paragraphs 1-15 as
5 if set forth hereinafter in their entirety;

6 17. An actual controversy has arisen between the parties regarding the interpretation of Cal.
7 Gov. Code § 13959(a), to wit: whether the requirement of a “hearing” as set forth in Cal. Codes
8 13959(a) means an actual “in-person hearing” or allows some other alternative not amounting to
9 an actual “in-person” hearing. A further controversy has arisen with respect to whether
10 California Code of Regulations 2 CCR §§ 615.2(4) & (6); 616.4; 617.1 and, 617.2 must be
11 complied with by CalVCB with respect to the hearing set forth in Cal. Gov. Code § 13959(a);

12 18. A true interpretation of the term “hearing” as set forth in Cal. Gov. Code § 13959(a) is
13 an “in-person” hearing.

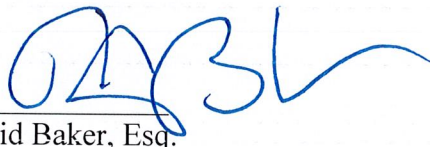
14 WHEREFORE, PETITIONER PRAYS AS FOLLOWS:

- 15 1. Under the First Cause of Action, that an Alternative Writ of Mandate issue
16 commanding CalVCB to prospectively provide an “in-person” hearing to all persons
17 who contest a staff recommendation to deny victim compensation in whole or in part,
18 and commanding CalVCB to comply with California Code of Regulations, 2 CCR §§
19 615.2(4) & (6); 616.4; 617.1; and, 617.2 with respect to the hearing under Cal. Gov.
20 Code § 13959(a) .
- 21 2. Under the Second Cause of Action a declaration of the court that the term “hearing”
22 in Cal. Gov. Code § 13959(a) means an actual ”in-person hearing” and not an
23 alternative not amounting to an actual “in-person” hearing;
- 24 3. Under the Second Cause of Action a declaration of the court that California Code of
25 Regulations, 2 CCR §§ 615.2(4) & (6); 616.4; 617.1; and, 617.2 must be complied
26 with for the “hearing” referred to in Cal. Gov. Code § 13959(a);
- 27 4. For an evidentiary hearing;

- 1 5. For attorney fees according to the California Private Attorney General theory based
2 on the due process clause of the California Constitution pursuant to *Serrano v. Priest*
3 (1977) 20 Cal.3d 25;
4 6. For costs of suit;
5 7. For any other further relief as this court deems proper and appropriate in the interests
6 of justice.

7 Respectively submitted

8 Dated: November 16, 2022

9 

10 _____
11 Robert David Baker, Esq.

EXHIBIT A

2568390

**ARTICLES OF INCORPORATION
OF
MOTHERS AGAINST MURDER**

FILED ✓
in the office of the Secretary of State
of the State of California

DEC 05 2003

Kevin Shelley
KEVIN SHELLEY, SECRETARY OF STATE

I.

The name of this corporation is Mothers Against Murder.

II.

A. This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public and charitable purposes.

B. The primary purpose of this corporation is to further charitable, scientific, and educational endeavors.

III.

The name and address in the State of California of this corporation's initial agent for service of process is:

Roger V. Smith
425 Grant, #27
Palo Alto, CA 94306

IV.

This corporation is organized and operated exclusively for charitable purposes within the meaning of Internal Revenue Code section 501(c)(3).

V.

No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall

not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of or in opposition to any candidate for public office.

VI.

Notwithstanding any other provision of these Articles, the corporation shall not carry on any activities not permitted to be carried on by (a) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (or the corresponding section of any future tax code) or (b) a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code (or the corresponding section of any future federal tax code).

VII.

The property of this corporation is irrevocably dedicated to public and charitable purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer, or member thereof or to the benefit of any private person. Upon the dissolution or winding up of the corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for public and charitable purposes and which has established its tax exempt status under Internal Revenue Code section 501(c)(3).

Dated: 12-1-03



Roger V. Smith, Incorporator

EXHIBIT B

BYLAWS OF MOTHERS AGAINST MURDER

A California Non-Profit Corporation

ARTICLE 1

NAME OF ORGANIZATION

The name of this Corporation is Mothers Against Murder. It shall be a non-profit corporation organized under the Non-Profit Corporation Law of the State of California for charitable and public purposes.

ARTICLE 2

OFFICES, REGISTERED AGENT

2.1 - The office of the corporation shall be located in Santa Clara County, California. The Board of Directors may designate the specific address for the principal office of the corporation. The Board of Directors may change the location of the principal. The Corporation may have such other offices, either within or without the State of California, as the Board of Directors may determine or as the affairs of the Corporation may require.

2.2 – The Corporation shall have and continuously maintain in the State of California a registered office and a registered agent whose office is identical with such registered office. The registered office may be, but need not be, identical with the principal office in the State of California, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE 3

PURPOSES

The primary objectives and purposes of this Corporation shall be:

- i. to passionately advocate and be a voice for families of murder victims.
- ii. to support and advocate for victims of crimes.
- iii. to ensure that the rights of crime victims are not ignored within the criminal justice system and to bring about a fairer, more balanced system.
- iv. to bring awareness, education, training, crisis intervention, media preparation and intervention to reduce and prevent crimes in our communities.
- v. to participate in any other such activities in furtherance of the general purposes of the Corporation.

ARTICLE 4

MEMBERSHIP

The Corporation shall not have any members except; the persons constituting its Board of Directors will be the members of the corporation and will exercise all the rights and powers of members.

ARTICLE 5 BOARD OF DIRECTORS

5.1 – General Powers. The Board of Directors shall have exclusive control and power to manage the activities, property and affairs of the Corporation. Directors need not be residents of the State of California.

5.2 – Number, Tenure and Qualifications. The number of directors shall be at least three(3) and not more than eleven (11). Each director shall hold office until his or her successor is elected and duly qualified or until the director's death or resignation.

5.3 – Election of Directors. Initial directors of the Company shall be elected by the Incorporator of the Company. Thereafter, directors shall be designated to serve on the Board of Directors by vote of a majority of the directors then serving on the Board of Directors.

5.4 – Duties. It shall be the duty of the Directors to:

(a) Perform any and all duties imposed on them collectively or individually by the Corporation's Articles of Incorporation, these Bylaws, and the Non-Profit Corporation Law of the State of California;

(b) Supervise all officers, agents, and employees of the corporation to assure their duties are performed properly.

5.5 – Resignation. Any Director may resign at any time by giving written notice to the President or the Secretary.

5.6 – Vacancies. If the office of any Director shall become vacant by reason of death, resignation, disability, or for other cause, the remaining members of the Board, even if less than a quorum, shall elect a successor(s).

5.7 – Compensation. Directors shall serve without compensation, except that, subject to approval of the Board of Directors, they may be allowed to reasonable compensation for extraordinary services, a fixed sum, and reasonable advancement for reimbursement for expenses incurred in the performance of duties related to the Corporation's work; but nothing contained herein shall be construed to preclude any director from serving the Corporation in any othe capacity and receiving compensation therefor.

5.8 – Committees. The Board may designate one (1) or more standing committees. Such committee(s) shall consist of at least one (1) or more Directors and shall have such powers and duties, as the Board deems desirable.

5.9 – Regualr Meetings. A regular annual meeting of the Board of Directors shall be held each year, at such date, time and place as the Board of Directors shall decide. They shall be held at such time and place as may be set forth in the notice thereof, provided that at least three (3) days' advance notice (in writing or otherwise) of every meeting shall be given to each Director.

5.10 – Special Meetings. Special meetings of the Board of Directors may be called by the Chairperson, the President, any Vice President, the Secretary, or any two directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within or without the State of California, as a place for holding any special meeting of the Board of Directors.

5.11 – **Telephonic Meetings.** Directors may participate in a meeting through use of conference telephone, electronic video screen or similar communications equipment.

5.12 – **Action by the Board of Directors Without a Meeting.** Any action required at law to be taken at a meeting of the Board of Directors, or any action which may be taken at a meeting of the Board of Directors, may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the directors.

5.13 – **Limitation of Liability.** Board of directors shall not be liable for bodily injury and property damage, if the claim for such damages arises from an act committed in good faith and without willful or wanton negligence in the course of an activity carried on to accomplish the purposes of the corporation

ARTICLE 6 CONTRACTS, CHECKS, DEPOSITS AND FUNDS

6.1 – **Contracts.** The Board of Directors may authorize any officer or officers, agent or agents of the Corporation, in addition to officers so authorized by these Bylaws, to enter into any Contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

6.2 - **Checks, Drafts, etc.** All checks, drafts or orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by the Board of Directors.

6.3 - **Deposits.** All funds of the Company shall be, deposited from time to time to the credit of the Company in such banks, trust companies or other depositories as the Board of Directors may select.

6.4 - **Gifts.** The Board of Directors may accept on behalf of the Company any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Corporation.

ARTICLE 7 BOOKS AND RECORDS

7.1 – The Corporation shall keep correct and complete books and records of accounts. The financial records and all other corporate records, and the minutes of all meetings of the Board of Directors and all other committees of the Corporation shall be kept at the principal office of the Corporation, and shall be open to inspection upon oral or written request of any director.

7.2 – The Board of Directors shall cause an annual report to be furnished not later than 120 days after the close of the Corporation’s fiscal year to all directors of the Corporation.

ARTICLE 8 AMENDMENTS TO BYLAWS

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the approval of the Board of Directors. However, in no event may any amendments be made which would affect the corporation's qualification as a tax-exempt organization pursuant to Section 501 (c)(3) of the Code or corresponding section of any future federal tax code.

ARTICLE 9 GENERAL PROVISIONS

9.1 – **Corporate Seal.** The Board of Directors may authorize a corporate seal, which shall have inscribed thereon the name of the corporation and the state and year of incorporation.

9.2 – **Fiscal Year.** The fiscal year of the Corporation shall end on the last day of Decemeber in each year unless otherwise determined by the Board.

9.3 – **Indemnification.** The Corporation shall indemnify each of its Trustees and Officers, or former Trustees and officers, or any person who may have served at the request of the Corporation as a Trustee or officer, to the fullest extent permitted by law.

ARTICLE 10 NON-DISCRIMINATION

The corporation shall not discriminate against any person in any manner based on sex, race, age, religion, handicap or ethnic origin.

EXHIBIT C

1 **ROBERT DAVID BAKER, INC.**
2 **Robert David Baker Esq. (87314)**
3 **1570 The Alameda, Suite 250**
4 **San Jose, CA 95126**
5 **(408) 251-3400**
6 **rbaker@rdblawnet**

7 **Attorney for Mothers Against Murder**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**

9 **FOR THE COUNTY OF ALAMEDA**

10 **Mothers Against Murder**

11 **Petitioner,**

12 **vs.**

13 **California Victim Compensation Board,**

14 **Respondent and Real Party in Interest.**

15 **CASE NO.: 21CV003220**

16 **DECLARATION OF MARGARET**
17 **PETROS IN SUPPORT OF FOURTH**
18 **AMENDED PETITION FOR WRIT OF**
19 **MANDAMUS**

20 **DECLARATION OF MARGARET PETROS**

21 **I, MARGARET PETROS, DECLARE:**

- 22 1. If called to testify, could testify to the following facts based upon my own personal
23 knowledge, and to those matters testified to on information and belief, I believe them to
24 be true to the best of my personal knowledge and belief;
- 25 2. My address is 20 Los Altos Avenue, Los Altos, California 94022;
- 26 3. I am the Executive Director of Mothers Against Murder ("MAM");
- 27 4. Mothers Against Murder is a California non-profit public benefit corporation
28 incorporated on December 5, 2003. Mothers Against Murder is in good standing with the
California Secretary of State;

1 5. The primary objective and purpose of MAM is to passionately advocate and be a voice
2 for crime victims and their families to ensure that their rights under California law are not
3 ignored within the justice system and to bring about a fairer, more balanced system; to promote
4 awareness, education, training, crises intervention, media preparation, and intervention to reduce
5 and prevent crime in our communities; and, to participate in any other related activities in
6 furtherance of the general purpose of Mothers Against Murder;

7 6. Through MAM I have advocated for victims of crimes in multiple court settings, such as
8 sentencing, restitution hearings, and have been recognized on those occasions as the authorized
9 representative of the crime victim and their families pursuant to Marsy's law, California
10 Constitution Article I, § 28. I have also been recognized as an authorized representative on
11 multiple occasions before the California Victim Compensation Board pursuant to California
12 Govt. Code § 13952(d)(1)(A);

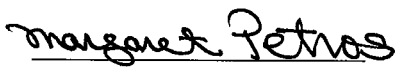
13 7. I have been a professional Victim Advocate for approximately thirty-seven years. In
14 1985, while in college, I began volunteering for the National Conference for Community and
15 Justice, a non-profit corporation that was contracted to manage the Santa Clara County Victim
16 Witness Program. After graduating from college, I worked at at SCCVW in a supervisory
17 position responsible, carrying out multiple tasks related to process application and make
18 decisions on the approval and/or denial of victim compensation as an adjunct to the California
19 state Victim Compensation Board.

20 8. I worked at SCCVW until 2008 and I became the Executive Director of Mother's Against
21 Murder in 2009. Through these organization I have assisted thousands of victims for their claims
22 for victim, and I have gained an extensive knowledge of the workings of the California Victim
23 Compensation Board. I attended board meetings of the California Victim Compensation Board
24 and worked with its Executive members on a monthly basis. I became intimately familiar with
25 the claim processing practices of the California Victim Compensation Board;

26 9. Based on my work with the California Victim Compensation Board as set forth above, it
27 is my opinion that an applicant for victim compensation whose application is denied by staff is
28 entitled to an in-person hearing before the Board. It is also my opinion that the California Victim

1 Compensation Board is evading the requirement of an “in-person” hearing by the use of what is
2 known as a “no hearing letter,” which is issued by staff to the applicant to deny the application
3 for victim compensation without an “in-person” hearing.

4 I declare under penalty of perjury the foregoing is true and correct to the best of my personal
5 knowledge, and as to those matters stated on information and belief, I believe them to be true
6 based upon the best of my personal knowledge and belief. This declaration is executed at San
7 Jose, California, on November 16, 2022.

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10 Margaret Petros
11 Executive Director MAM
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