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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Summons Iss. No Issy / Fee waived

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FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MATTHEW J. LOEWEN, a.k.a.
MATT LOEWEN, a.k.a. JAMES
MATTHEW LOEWEN, individually
and also d.b.a. Vehicle Stars, as
director or officer of 0803065 B.C.
Ltd, 0881046 B.C. Ltd, and ReadyPay
Services Inc., and as managing
member of Xavier Processing Services,
LLC;

0803065 B.C. LTD, a Canadian
corporation, also d.b.a. Auto Marketing
Group;

0881046 B.C. LTD, a Canadian
corporation, also d.b.a. Secure Auto
Sales;

READYPAY SERVICES, INC., a
corporation, and

XAVIER PROCESSING
SERVICES, LLC, a limited liability
company,

Defendants.

Case No. 12-CV-1207 MJP

COMPLAINT FOR
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF



12-CV-01207-CMP

1 Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint
2 alleges:

3 1. The FTC brings this action under Sections 13(b) and 19 of the
4 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b,
5 and the Telemarketing and Consumer Fraud and Abuse Prevention Act
6 (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, to obtain temporary,
7 preliminary, and permanent injunctive relief, rescission or reformation of
8 contracts, restitution, the refund of monies paid, disgorgement of ill-gotten
9 monies, and other equitable relief for Defendants’ acts or practices in
10 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation
11 of the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.
12

13 **JURISDICTION AND VENUE**

14 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
15 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c),
16 and 6105(b).

17 3. Venue is proper in this district under 28 U.S.C. § 1391(d) and
18 (c), and 15 U.S.C. § 53(b).
19

20 **PLAINTIFF**

21 4. The FTC is an independent agency of the United States
22 Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces
23 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or
24 deceptive acts or practices in or affecting commerce. The FTC also enforces
25 the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the
26 Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R.
27 Part 310, which prohibits deceptive and abusive telemarketing acts or
28

1 practices.

2 5. The FTC is authorized to initiate federal district court
3 proceedings, by its own attorneys, to enjoin violations of the FTC Act and
4 the TSR and to secure such equitable relief as may be appropriate in each
5 case, including rescission or reformation of contracts, restitution, the refund
6 of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C.
7 §§ 53(b), 56(a)(2)(A)-(B), 57b, 6102(c), and 6105(b).

8

9

DEFENDANTS

10 6. Defendant **Matthew Loewen** (“Loewen”) a/k/a Matt Loewen
11 a/k/a James Matthew Loewen, a resident of British Columbia, Canada, is the
12 sole owner and operator of Defendants **0803065 B.C. Ltd, 0881046 B.C.**
13 **Ltd, ReadyPay Services, Inc. and Xavier Processing Services, LLC.** In
14 addition to conducting business operations through these four entities,
15 Loewen does business as “Vehicle Stars,” which purports to be a Florida
16 corporate entity. At times material to this Complaint, acting alone or in
17 concert with others, Loewen has formulated, directed, controlled, had
18 authority to control, or participated in the acts and practices set forth in this
19 Complaint. In connection with the matters alleged herein, Loewen transacts
20 or has transacted business in this district and throughout the United States.

21 7. Defendant **0803065 B.C. Ltd**, also doing business as Auto
22 Marketing Group (“AMG”), is a Canadian limited liability company with its
23 principal place of business at 4769 222nd Street, #200, Langley, B.C. V2Z
24 3C1, Canada. Defendant AMG represents to consumers throughout the
25 United States and Canada that its business address is 7260 W. Azure Drive,
26 #140-762, Las Vegas, NV 89130-7999. Loewen is the President, Secretary,
27 and a Director of AMG. AMG is licensed as a telemarketer by the Province
28 of British Columbia. AMG transacts or has transacted business in this

1 district and throughout the United States. At times material to this
2 Complaint, acting alone or in concert with others, AMG has advertised,
3 marketed, distributed, or sold its services as an advertiser of used vehicles to
4 consumers throughout the United States.

5 8. Defendant **0881046 B.C. Ltd**, also doing business as Secure
6 Auto Sales ("Secure Auto"), is a Canadian limited liability company with its
7 principal place of business at 4769 222nd Street, #200, Langley, B.C. V2Z
8 3C1, Canada. Loewen is the president of Secure Auto and holds the British
9 Columbia business license for Secure Auto. Secure Auto is licensed as a
10 telemarketer by the Province of British Columbia. Secure Auto transacts or
11 has transacted business in this district and throughout the United States. At
12 times material to this Complaint, acting alone or in concert with others,
13 Secure Auto has advertised, marketed, distributed, or sold its services as an
14 advertiser of used vehicles to consumers throughout the United States.

15 9. Defendant **READYPAY SERVICES, INC.** ("ReadyPay") is a
16 Nevada corporation which has registered with the State of Nevada as having
17 an address at 2360 Corporate Circle, Suite 400, Henderson, Nevada.
18 Loewen is President, Secretary, Treasurer and Director of ReadyPay.
19 Loewen has used ReadyPay to process credit card transactions for his other
20 business operations including but not limited to credit card transactions
21 involving AMG, Secure Auto and Vehicle Stars. ReadyPay transacts or has
22 transacted business in this district and throughout the United States.

23 10. Defendant **XAVIER PROCESSING SERVICES, LLC**
24 ("Xavier") is a limited liability Nevada company which has registered with
25 the State of Nevada as having an address at 2360 Corporate Circle, Suite
26 400, Henderson, Nevada. Xavier also lists a business address at 36
27 Ambrose, Newport Beach, CA 92657. According to the State of Nevada,
28 Loewen is the only Managing Member of Xavier. Loewen uses Xavier to

1 process credit card transactions for AMG, Secure Auto, Vehicle Stars, and
2 his other businesses. Xavier transacts or has transacted business in this
3 district and throughout the United States.

4
5 **COMMON ENTERPRISE**

6 11. Collectively, Loewen, AMG, Secure Auto, Ready Pay and
7 Xavier (“Defendants”) have operated as a common enterprise while
8 engaging in the unlawful acts and practices alleged below. The corporate
9 defendants – AMG, Secure Auto, ReadyPay and Xavier – have conducted
10 the business practices described below through an interrelated network of
11 companies that have common ownership, officers, managers and business
12 functions. Because these corporate defendants have operated as a common
13 enterprise, each of them is jointly and severally liable for the acts and
14 practices alleged below. Defendant Loewen has formulated, directed,
15 controlled and/or had the authority to control, or participated in, the acts and
16 practices of each of the corporate defendants that constitute the common
17 enterprise. In the alternative, Defendants ReadyPay and Xavier assisted and
18 facilitated Defendants AMG and Secure Auto.

19
20 **COMMERCE**

21 12. At all times material to this Complaint, Defendants have
22 maintained a substantial course of trade or business in the offering for sale
23 and sale of goods or services via telephone in or affecting commerce, as
24 “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

25
26 **DEFENDANTS’ BUSINESS ACTIVITIES**

27 13. Defendants initiate outbound telemarketing calls to consumers
28 throughout the United States and Canada. Defendants’ telemarketers

1 identify themselves by a variety of d.b.a.'s.

2 14. Defendants contact consumers who have recently listed
3 vehicles for sale online on free listing sites like Craigslist, autotrader.com or
4 kijiji.ca. The purpose of Defendants' calls is to induce consumers to pay
5 money to Defendants in return for a promise of success in selling the
6 consumer's used vehicle.

7 15. In most cases, Defendants' telemarketers go on to say that they
8 have seen the consumer's online advertisement, and that their company
9 currently has a person seeking to buy a car of the exact make and model as
10 the one being advertised by the consumer.

11 16. Defendants represent to consumers that they are a financing
12 company that specializes in working with individuals with poor or bad credit
13 who want to buy a car. Defendants' telemarketers tell consumers that their
14 company helps those individuals locate suitable vehicles to purchase and
15 then provides the financing.

16 17. Defendants tell consumers that they provide a listing service on
17 their websites for people selling vehicles and that they also advertise on third
18 party websites.

19 18. Defendants tell consumers that they have located a buyer ready
20 to pay full asking price – or sometimes more – for the consumer's vehicle.
21 Defendants' telemarketers almost always tell consumers that they can help
22 the consumer sell his or her vehicle immediately.

23 19. Defendants claim that to be put in touch with the prospective
24 buyer and sell the vehicle, all the consumer is required to do is pay
25 Defendants a fee, typically \$399, to cover the cost of advertising and
26 marketing.

27 20. In some instances, Defendants claim that consumers have
28 undervalued their vehicle, that the prospective buyer located by Defendants

1 is willing to pay even more for the consumer's vehicle, and that this
2 additional amount will cover the fees paid to Defendants for services.

3 21. If the consumer expresses any trepidation about Defendants'
4 abilities to facilitate the sale of the consumer's vehicle, or the existence of
5 the waiting buyer, Defendants offer consumers the opportunity to purchase
6 "refund insurance" for an additional payment of only \$99.

7 22. Defendants claim that by paying the additional \$99, a consumer
8 is guaranteed to receive a full refund of the initial fee if the consumer's
9 vehicle is unsold at the end of 90 days.

10 23. When Defendants describe their refund policy to prospective
11 customers, they never mention the existence of any prerequisites – other
12 than having paid the additional \$99 – in order for a consumer to receive a
13 full refund of the initial fee from the Defendants.

14 24. Defendants often remind consumers that they will also be
15 listing the consumer's vehicle on Defendants' website in case the waiting
16 buyer falls through.

17 25. In their telephone solicitations, on their various web sites, and
18 in emails to consumers, Defendants represent, directly or by implication,
19 that their program is virtually risk-free.

20 26. Consumers who agree to enroll are transferred to another
21 representative who takes their payment information. Most payments are
22 made by credit card. Some consumers have made payments using PayPal.

23 27. Based on Defendants' representations, when the consumer
24 hangs up the phone he or she anticipates an almost immediate phone call
25 from Defendants to set up a meeting with the waiting buyer.

26 28. Instead, consumers typically receive an email from Defendants
27 listing a series of additional steps that consumers must take to complete their
28 enrollment in Defendants' program. These include uploading photos of their

1 vehicle and reviewing advertisements drafted by Defendants. These
2 additional steps were not disclosed prior to the consumers providing
3 Defendants with their payment information.

4 29. Consumers who do not complete all the enrollment steps are not
5 eligible for a refund even if they have paid the additional \$99 to Defendants
6 and their vehicle is unsold after 90 days.

7 30. Some consumers who have provided payment information to
8 Defendants and had their credit cards charged are never contacted by
9 Defendants again unless the consumer contacts Defendants directly.

10 31. Contrary to the representations of the telemarketers, after a
11 consumer pays money to Defendants, Defendants do not arrange meetings
12 with any prospective buyers.

13 32. When the promised buyer fails to materialize, consumers often
14 try to reach the sales staff to find out what has happened to the buyer.
15 Typically, consumers find it impossible or extremely difficult to speak to the
16 original salesperson who enrolled them in the program. They are often told
17 that their sales representative is out of the office or on another line or they
18 are promised that the sales representative will call back later. But the return
19 call never comes.

20 33. Consumers who wait out the 90 day period and then try to
21 obtain a refund are typically unsuccessful.

22 34. Contrary to the original representations to consumers,
23 Defendants' refund process is elaborate and intricate and stymies any
24 attempt by a consumer to obtain any refund. The conditions a consumer
25 must meet include the following:

- 26 a. A consumer may apply for a refund only during a seven
27 day window after the expiration of the 90 day term of the
28 contract;

- 1 b. A consumer's request for a refund must be accompanied
2 by proof of ownership of the vehicle as issued by a State
3 or Provincial authority; and
4 c. A consumer's request for refund must be notarized and
5 sent to Defendants via certified mail.

6 If any condition is not met, the request for refund is denied. None of these
7 conditions were disclosed to consumers before consumers paid money to
8 Defendants.

9 35. Even consumers who submit all necessary documentation in a
10 timely fashion do not receive refunds.

11 36. Consumers often receive a form letter denying their claim for a
12 refund stating that they were missing documentation or were untimely when
13 in fact the submissions were timely and complete.

14 37. Upon receipt of the rejection letter, some consumers resubmit
15 their claim. Consumers who resubmit their claim typically hear nothing in
16 return for weeks. When these consumers call to inquire about the status of
17 their refund, Defendants assert that the refund is in processing or on
18 someone's desk or that "the check is in the mail."

19 38. Some consumers who cannot obtain a refund from Defendants
20 file a dispute with their credit card company over the charges.

21 39. In many cases, by the time consumers have complied with the
22 refund procedure yet failed to obtain a refund on their own, the time for
23 disputing a charge on their credit card has expired. The consumer's request
24 for a refund is simply refused by the credit card issuer as untimely.

25 40. In other cases where Defendants are contacted by the credit
26 card issuers, the request for a refund is eventually denied. Defendants point
27 to their refund policy and assert that the problem is that consumers have not
28 complied with the procedure for obtaining a refund.

1 41. Defendants ReadyPay and Xavier, both of which were
2 established by Loewen, are payment processors.

3 42. Defendants ReadyPay and Xavier process credit and debit card
4 charges on behalf of Defendants.

5 43. Defendants ReadyPay and Xavier provide Defendants
6 indispensable access to the United States banking system.

7 44. Loewen is the mastermind behind the Auto Marketing Group
8 scheme. Among other things, Loewen formed and is an officer of each
9 corporate Defendant. Loewen negotiates and signs contracts on behalf of
10 each corporate Defendant, including arranging and paying for web sites and
11 mail drops. Loewen interacts with regulators on behalf of the corporate
12 defendants. Loewen has used his personal credit card to pay for web sites
13 and domain names used by the various Defendants. Loewen personally
14 established the Florida mail drop used by Vehicle Stars in its interactions
15 with consumers throughout the United States and Canada. Loewen uses or
16 has used each of the corporate Defendants to operate his international
17 enterprise marketing products, programs, and services by telemarketing and
18 over the Internet.

19 45. Defendant Loewen controls and directs all of the Corporate
20 Defendants and has personal knowledge of the Corporate Defendants'
21 practices described above. Hence, each Corporate Defendant is also aware of
22 the other Corporate Defendants' business practices. As a result, Defendants
23 ReadyPay and Xavier have provided payment processing services to
24 Defendants AMG and Secure Auto while either knowing or consciously
25 avoiding knowing that Defendants AMG and Secure Auto engaged in
26 deceptive business practices.

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VIOLATIONS OF THE FTC ACT

46. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. 15 U.S.C. § 45(a).

COUNT I
Deceptive Sales Practices
Against All Defendants

47. In connection with the advertising, marketing, promotion, offering for sale, or sale of used vehicle resale services, Defendants have represented, directly or indirectly, expressly or by implication, that:

- a. Defendants have identified a buyer for the consumer's vehicle and will put the consumer in contact with the buyer if the consumer pays Defendants' fee;
- b. Consumers who purchase Defendants' used vehicle resale services are highly likely to be successful in selling their vehicle within 90 days of enrollment in Defendants' program; and
- c. Defendants will refund the full amount of the initial fee paid by the consumer if the consumer purchases a \$99 refund insurance policy and the vehicle remains unsold 90 days after enrollment.

48. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 47 of this Complaint:

- a. Defendants have not identified a buyer for the consumer's vehicle and do not put the consumer in contact with the buyer if the consumer pays Defendants' fee;

- 1 b. Consumers who purchase Defendants' used vehicle
- 2 resale services are not highly likely to be successful in
- 3 selling their vehicle within 90 days of enrollment in
- 4 Defendants' program; and
- 5 c. Defendants do not refund the full amount, or any amount,
- 6 of the initial fee paid by the consumer if the consumer
- 7 purchases a \$99 refund insurance policy and the vehicle
- 8 remains unsold 90 days after enrollment.

9 49. Therefore, Defendants' representations as set forth in Paragraph
10 47 of this Complaint are false and misleading and constitute deceptive acts
11 or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

12
13 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

14 50. Congress directed the FTC to prescribe rules prohibiting
15 abusive and deceptive telemarketing acts or practices pursuant to the
16 Telemarketing Act, 15 U.S.C. §§ 6101-6108, which resulted in the adoption
17 of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. part 310.

18 51. Defendants are "seller[s]" or "telemarketer[s]" engaged in
19 "telemarketing" as defined by the TSR, 16 C.F.R. § 310.2(aa), (cc), and (dd).

20 52. The TSR prohibits sellers and telemarketers from making any
21 false or misleading statement to induce any person to pay for goods or
22 services. 16 C.F.R. § 310.3(a)(4).

23 53. Under the TSR if a seller makes a representation about a refund
24 policy, the seller must disclose in a clear and conspicuous manner all of the
25 material terms and conditions of such policy before the consumer pays for
26 the goods or services. 16 C.F.R. § 310.3(a)(1)(iii).

27 54. The TSR prohibits sellers and telemarketers from
28 misrepresenting, directly or by implication, in the sale of goods or services,

1 any material aspect of the performance, efficacy, nature, or central
2 characteristics of the goods or services that are the subject of a sales offer.
3 16 C.F.R. § 310.3(a)(2)(iii).

4 55. The TSR also prohibits sellers and telemarketers from
5 misrepresenting, directly or by implication, in the sale of goods or services,
6 any material aspect of the nature or terms of the seller's refund, cancellation,
7 exchange, or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv).

8 56. Under the TSR, it is a deceptive telemarketing act or practice
9 for a person to provide substantial assistance or support to any seller or
10 telemarketer when that person knows or consciously avoids knowing that the
11 seller or telemarketer is engaged in any act or practice that violates §§
12 310.3(a), (c) or (d) or § 310.4. 16 C.F.R. § 310.3(b).

13 57. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.
14 § 6102(c) and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a
15 violation of the TSR constitutes an unfair or deceptive act or practice in or
16 affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. §
17 45(a).

18
19 **COUNT II**

20 **Misrepresenting Material Aspects of Service**
21 **Against All Defendants**

22 58. In the course of telemarketing their goods and services,
23 Defendants have made false or misleading statements, directly or by
24 implication, to induce consumers to pay for goods or services, including but
25 not limited to, misrepresentations that:

- 26 a. Defendants have identified a buyer for the consumer's
27 vehicle and will put the consumer in contact with the
28 buyer if the consumer pays Defendants' fee;

COUNT IV

**Assisting and Facilitating
Against Defendants ReadyPay and Xavier**

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4 63. Defendants ReadyPay and Xavier have provided substantial
5 assistance or support, including but not limited to payment processing, to
6 Defendants AMG and Secure Auto when Defendants ReadyPay and Xavier
7 knew or consciously avoided knowing that Defendants AMG and Secure
8 Auto were misrepresenting, directly or by implication, or failing to disclose
9 truthfully in a clear and conspicuous manner, material information in the
10 sale of their goods or services in violation of the TSR, 16 C.F.R §§
11 310.2(a)(4), 310.3(a)(1)(iii), 310.3(a)(2)(iii), and 310.3(a)(2)(iv).

12 64. Defendants ReadyPay and Xavier's substantial assistance or
13 support, as described in Paragraph 63 of this Complaint, is a deceptive
14 telemarketing act or practice that violates the TSR, 16 C.F.R.
15 § 310.3(b).

16
17 **CONSUMER INJURY**

18 65. Consumers have suffered and will continue to suffer substantial
19 injury as a result of Defendants' violations of the FTC Act and the TSR. In
20 addition, Defendants have been unjustly enriched as a result of their
21 unlawful acts or practices. Absent injunctive relief by this Court,
22 Defendants are likely to continue to injure consumers, reap unjust
23 enrichment, and harm the public interest.

24
25 **THIS COURT'S POWER TO GRANT RELIEF**

26 66. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this
27 Court to grant injunctive and such other relief as the Court may deem
28 appropriate to halt and redress violations of any provision of law enforced

1 by the FTC. The Court, in the exercise of its equitable jurisdiction, may
2 award ancillary relief, including rescission or reformation of contracts,
3 restitution, the refund of monies paid, and the disgorgement of ill-gotten
4 monies, to prevent and remedy any violation of any provision of law
5 enforced by the FTC.

6 67. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of
7 the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant
8 such relief as the Court finds necessary to redress injury to consumers
9 resulting from Defendants' violations of the TSR including the rescission or
10 reformation of contracts, and the refund of monies paid.

11
12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the
14 FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing
15 Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests
16 that the Court:

17 A. Award Plaintiff such preliminary injunctive and ancillary relief
18 as may be necessary to avert the likelihood of consumer injury during the
19 pendency of this action and to preserve the possibility of effective final
20 relief, including, but not limited to, temporary and preliminary injunctions
21 and an order freezing assets;

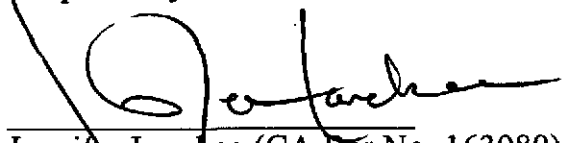
22 B. Enter a permanent injunction to prevent future violations of the
23 FTC Act and the TSR by Defendants;

24 C. Award such relief as the Court finds necessary to redress injury
25 to consumers resulting from Defendants' violations of the FTC Act and the
26 TSR, including, but not limited to, rescission or reformation of contracts,
27 restitution, the refund of monies paid, and the disgorgement of ill-gotten
28 monies; and

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D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,



Dated: 13 July 2012

Jennifer Larabee (CA Bar No. 163989)
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