

St.
IN 47130
54
06 (direct)
46 (cell)
[koverthawkins.com](mailto:john@koverthawkins.com)
[kawkaia.com](http://www.kawkaia.com)

Begin forwarded message:

From: john zeidler <izeidler63@gmail.com>
Subject: Re: Escape Evansville
Date: September 12, 2016 at 7:47:09 PM EDT
To: John Hawkins <john.hawkins@koverthawkins.com>
Cc: Holli Sullivan <holliasullivan@gmail.com>

<image1.JPG>
<image2.JPG>
<image3.JPG>

I request an administrative review and a stay of enforcement pending resolution of the administrative review

John Zeidler
812-454-3253

On Sep 12, 2016, at 5:16 PM, John Hawkins
<john.hawkins@koverthawkins.com> wrote:

If you could please send me a copy of the violation notice, along with the date that you actually received the notice, and include that you “request an administrative review and a stay of enforcement pending resolution of the administrative review”, then I can forward that request to DHS legal counsel.

This will preserve your appeal rights. You need to send this request to me immediately, as there is an 18 day time limit from the day you receive the violation notice.

In the meantime, the acting state building commissioner is checking into the violation and there may also be a relief path involving a variance. In any event, you want to preserve all your available options, so if you could please send

me the above information that will give me something I can give to the lawyers to stop the clock.

--
John A. Hawkins, AIA
630 Walnut St.
Jeffersonville, IN 47130
(812) 282-9554
(812) 913-4606 (direct)
(502) 645-1446 (cell)
<http://www.koverthawkins.com>
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On Sep 12, 2016, at 6:07 PM, john
zeidler <jzeidler63@gmail.com>
wrote:

Mr. Hawkins, my small business,
Escape Evansville has been deemed
to be included in a classification
entitled "special amusement
buildings" by the State of Indiana
and as such, we have received a
violation from the State Fire
Marshall. We believe that we do not
qualify as a "special amusement
building" and therefore ask for
immediate relief from this onerous
and extraordinary classification that
would essentially end our business.
Thank you for your consideration.

Sincerely,

John Zeidler
Escape Evansville
812-454-3253

**STATE OF INDIANA
BEFORE THE FIRE PREVENTION AND BUILDING
SAFETY COMMISSION**

IN RE:) **ADMINISTRATIVE CAUSE NO.**
)
ZEIDLER, J.) _____

ORDER GRANTING MOTION TO DISMISS

Comes now the Fire Prevention and Building Safety Commission and after carefully considering Respondent's Motion to Dismiss and Memorandum in Support of Respondent's Motion to Dismiss, now finds that said Motion shall be GRANTED.

IT IS THEREFORE ORDERED that Petitioner's request for administrative review is denied and Respondent's Motion shall be **GRANTED**.

To request reconsideration of this decision under Ind. Code § 4-21.5-3-7, a person must submit in writing a request for reconsideration that:

- (1) States facts demonstrating that the person filed a petition for review of an order under Ind. Code § 4-21.5-3-4, 5 or 6;
- (2) States facts demonstrating that the person was denied review without an evidentiary hearing; and
- (3) Is filed with the ultimate authority for the agency denying the review within: fifteen (15) days after this denial notice was served by personal service; or eighteen (18) days if this denial notice was served by United States mail.

A request for reconsideration must be sent by U.S. Mail or be personally served at:

Fire Prevention and Building Safety Commission
Attention: Beth Sutor, Secretary; or John Hawkins, Chairman
302 W. Washington St., Room W246
Indianapolis, IN 46204

Dated: _____

Beth Sutor, Secretary
Fire Prevention and Building Safety Commission

Distribution

John Zeidler
Petitioner
600 N. Weinbach Ave
Evansville, IN 47725

Justin Guedel
Attorney for Respondent
IN Department of Homeland Security
302 W. Washington St., Rm. E208
Indianapolis, IN 46204

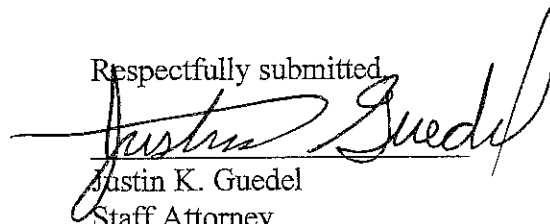
**STATE OF INDIANA
BEFORE THE FIRE PREVENTION AND BUILDING
SAFETY COMMISSION**

IN RE:) **ADMINISTRATIVE CAUSE NO.**
)
ZEIDLER, J.) _____

RESPONDENT'S MOTION TO DISMISS

The Indiana Department of Homeland Security, through counsel, respectfully requests the Fire Prevention and Building Safety Commission to dismiss Petitioner's request for administrative review. Petitioner's request was untimely and improperly served. Respondent's Memorandum in Support of this Motion is filed contemporaneously herewith, and establishes that Petitioner's request for administrative review should be denied.

Respectfully submitted



Justin K. Guedel
Staff Attorney

IN Department of Homeland Security
302 W. Washington St., Rm. E208
Indianapolis, IN 46204
(317) 234-9515
jguedel@dhs.in.gov

STATE OF INDIANA
BEFORE THE FIRE PREVENTION AND BUILDING
SAFETY COMMISSION

IN RE:) ADMINISTRATIVE CAUSE NO.
)
ZEIDLER, J.) _____

RESPONDENT’S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Petitioner’s request administrative review should be denied. Petitioner’s request for administrative review was not filed within the fifteen (15) day time limit required by statute, nor was it properly served upon the ultimate authority. In order for an individual to qualify for administrative review of an order issued under I.C. 4-21.5-3-6 they must, among other things, file with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given notice of the order. I.C. 4-21.5-3-7. Here, Petitioner was given notice of the order on August 24th, 2016, when he was personally served by Jason Buchanan, a Code Official employed by the Indiana Department of Homeland Security, Fire & Building Safety Division. Petitioner made his request for administrative review, by email, on September 12, 2016, outside of the fifteen (15) day requirement. Not only did Petitioner fail to file for administrative review within the fifteen (15) day requirement, he also failed, to date, to serve his request for administrative review by United States mail or personal service, as required by I.C. 4-21.5-3-1(c)(2). This improper service rendered his request for administrative review insufficient. Therefore, as the request for administrative review was not made within fifteen (15) days, and was served improperly, it should be denied.

Factual Background

On August 24, 2016, Jason Buchanan (**Mr. Buchanan**), a Code Official employed by the Indiana Department of Homeland Security, Fire & Building Safety Division, inspected a property

located at 600 N. Weinbach Ave Evansville, IN 47725. *See* Exhibit 1, Affidavit of Service. Upon inspection, Mr. Buchanan found a number of violations associated with the property. *Id.* Following the inspection, Mr. Buchanan went to his vehicle to draft, and print off, two copies of a five-page Fire and Building Code Enforcement Inspection Report Order (the “**Order**”). *Id.* Mr. Buchanan then hand-delivered one copy of the Order to Petitioner, and explained the meaning of the Order, including the section covering appeal rights, to Petitioner. *Id.* Petitioner signed the second copy of the Order, in Mr. Buchanan’s presence, acknowledging his receipt of the Order on August 24, 2016. *Id.* On September 12, 2016, Petitioner sent an email to John Hawkins, Chairman of the Indiana Fire Prevention & Building Safety Commission, requesting administrative review. *See* Exhibit 2, Petition for Review.

Analysis

Indiana Code 4-21.5-3-7 provides requirements a person must comply with in order to qualify for administrative review of agency orders. The timely filing of a request for administrative review is one of these requirements. *See* I.C. 4-21.5-3-7(a)(3). To qualify for review of [an] . . . order . . . , a person must petition for review in a writing that . . . is filed . . . with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given notice of the order.” *Id.*

Indiana Code 4-21.5-3-2 provides the method for computing timeliness of requests for administrative review.

In computing any period of time . . . the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the computed period is to be included unless it is: (1) a Saturday; (2) a Sunday; (3) a legal holiday under a state statute; or (4) a day that the office in which the act is to be done is closed during the regular business hours. . . . A period of time . . . that commences when a person is served with a paper . . . commences with respect to a particular person on the earlier of the date that: (1) the person is personally served with the notice; or (2) a notice for the person is deposited in the United States mail.

... If a notice is served through the United States mail, three (3) days must be added to a period that commences upon service of that notice.

I.C. 4-21.5-3-2.

Indiana Code 4-21.5-3-1 provides the required method of service for, among other things, orders and filings with the ultimate authority. Subsection (c) of 4-21.5-3-1 provides that a petition for review of an agency action under I.C. 4-21.5-3-7 shall be served by United States mail or personal service.

Petitioner did not file his request for administrative review within the fifteen (15) day time period required by statute.

Petitioner does not qualify for administrative review as his request was untimely. A person has fifteen (15) days to file for administrative review – eighteen (18) if served by mail. Here, Petitioner was not served by United States mail, but was personally served with the Order on August 24th, 2016. As Petitioner was personally served, his request for administrative review was required to be filed within fifteen (15) days – by Thursday September 8th, 2016. Petitioner did not file his request for administrative review until September 12th, 2016, and is therefore untimely.

Petitioner's request for administrative review was not properly served.

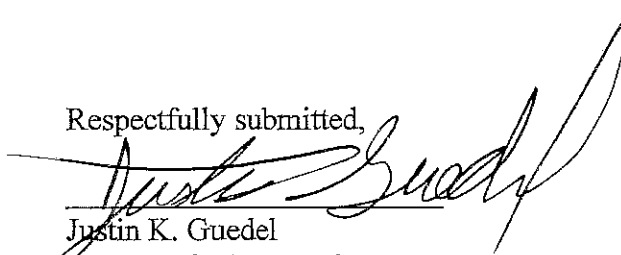
Petitioner's request for administrative review was not properly served. Requests for administrative review are required to be served by United States mail or personal service. *See* I.C. 4-21.5-3-1(c)(2). Here, Petitioner submitted his requests for administrative review by email. Email is not a permitted method of service, and therefore Petitioner's request for administrative review should be denied as it was not properly served upon the ultimate authority within the fifteen (15) day time limit.

Conclusion

In conclusion, Petitioner's request for administrative review should be denied. Petitioner's request for administrative review was not filed within the fifteen (15) day time limit required by statute, nor was it properly served upon the ultimate authority.

Date: 9/21/16

Respectfully submitted,


Justin K. Guedel

Attorney for Respondent

IN Department of Homeland Security

302 W. Washington St., Rm. E208

Indianapolis, IN 46204

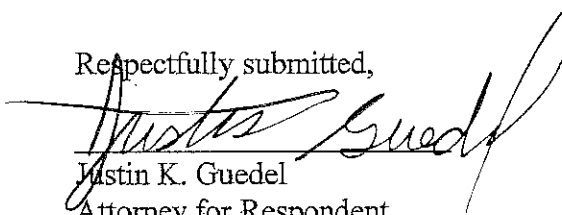
(317) 234-9515

jguedel@dhs.in.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of Respondent's Motion to Dismiss and Respondent's Memorandum in Support of Motion to Dismiss was served upon Petitioner, by either personal service, email or by depositing it prepaid in the United States First Class Mail on the same date of the filing of this motion.

Respectfully submitted,



Justin K. Guedel

Attorney for Respondent

IN Department of Homeland Security

302 W. Washington St., Rm. E208

Indianapolis, IN 46204

(317) 234-9515

jguedel@dhs.in.gov

AFFIDAVIT OF SERVICE

Comes now, Jason Buchanan, and affirms under the penalties for perjury that the following information is true and accurate.

1. I, Jason Buchanan, am more than eighteen (18) years of age, and have personal knowledge of the facts herein.
2. I am employed by the Indiana Department of Homeland Security, as a Code Official with the Fire & Building Safety Division.
3. On August 24th, 2016, I inspected a property located at 600 N. Weinbach Ave Evansville, IN 47725, identification number AE8232174.
4. On August 24th, 2016, immediately following the inspection, I printed off two copies of a five-page Fire and Building Code Enforcement Inspection Report Order, which contained a list of violations on pages one (1) through four (4) and appeal rights on page five (5). A copy of this Inspection Report Order is attached to this Affidavit as Exhibit A.
5. On August 24th, 2016, I hand-delivered one copy of this report to John Zeidler, to keep for his records, and retained a second copy of this report which was signed by Mr. Zeidler in my presence.

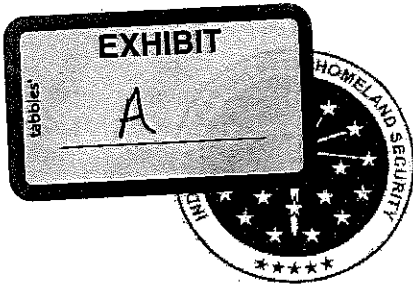
I affirm under the penalty for perjury that the foregoing statements are true and accurate to the best of my knowledge and belief.

Date: _____

9/19/16

Signature: _____

Jason Buchanan



FIRE AND BUILDING CODE ENFORCEMENT INSPECTION REPORT ORDER

DIVISION OF FIRE AND BUILDING SAFETY
INDIANA DEPARTMENT OF HOMELAND SECURITY
302 WEST WASHINGTON STREET, RM E241
INDIANAPOLIS, IN 46204
TELEPHONE: 317-232-2222
WEB ADDRESS: WWW.IN.GOV/DHS

Identification Number AE8232174	Name of the facility ESCAPE	County VANDERBURGH
Address of Property 600 N WEINBACH AVE EVANSVILLE 47725	Name of the Contact JOHN ZEIDLER	Telephone Number (812) 454-3252
Email JZEIDLER63@GMAIL.COM	Inspection Date 08/24/2016	
Inspection Category UNFILED AE PERMIT	Inspection Type INITIAL	Inspection Status: VIOLATION
Name of the inspector JASON BUCHANAN	Phone: 3174734542	
Email: jbuchanan@dhs.in.gov		

Violations

VIO-LATION NUMBER	RULE OR INDIANA CODE SECTION VIOLATED	DESCRIPTION OF VIOLATION	DATE BY WHICH VIOLATION MUST BE CORRECTED
1	IC 22-14-3-5	<p>Operation without permit or special event endorsement; infraction Sec. 5. (a) This section applies to the following:</p> <p>(1) Each person who has control over the performance of an amusement or entertainment described in IC 22-12-1-23.</p> <p>(2) Each person who has control over a regulated place of entertainment.</p> <p>(b) A person described in subsection (a) commits a Class C infraction if:</p> <p>(1) a regulated place of amusement or entertainment is used for an amusement or entertainment described in IC 22-12-1-23; and</p> <p>(2) no regulated place of amusement or entertainment permit or special event endorsement issued under this chapter covers the conditions at the regulated place of amusement or entertainment that affect fire and explosion safety.</p> <p><u>Facility offers entertainment that requires a amusement and entertainment permit.</u></p>	09/26/2016
2	Sec. 605.4.2 2014 Edition IFC 675 IAC 22-2.5	<p>Relocatable power taps shall be directly connected to a permanently installed receptacle.</p> <p><u>Surge protector was being powered by a surge protector.</u></p>	09/26/2016
3	Sec. 404.3.1 2014 Edition IFC 675 IAC 22-2.5	<p>Fire evacuation plans shall include the following:</p> <ol style="list-style-type: none"> 1. Emergency egress or escape routes and whether evacuation of the building is to be complete or, where approved, by selected floors or areas only. 2. Procedures for employees who must remain to operate critical equipment before evacuating. 3. Procedures for assisted rescue for persons unable to use the general means of egress unassisted. 4. Procedures for accounting for employees and occupants after evacuation has been completed. 5. Identification and assignment of personnel responsible for rescue or emergency medical aid. 	09/26/2016

		<p>6. The preferred and any alternative means of notifying occupants of a fire or emergency.</p> <p>7. The preferred and any alternative means of reporting fires and other emergencies to the fire department or designated emergency response organization.</p> <p>8. Identification and assignment of personnel who can be contacted for further information or explanation of duties under the plan.</p> <p>9. A description of the emergency voice/alarm communication system alert tone and preprogrammed voice messages, where provided.</p> <p><u>Fire evacuation plan was not available.</u></p>	
4	Sec. 406.2 2014 Edition IFC 675 IAC 22-2.5	<p>Employees shall receive training in the contents of fire safety and evacuation plans and their duties as part of new employee orientation and at least annually thereafter. Records shall be kept and made available to the fire code official upon request.</p> <p><u>Employee training documentation on the contents of the emergency fire and evacuation plan was not available.</u></p>	09/26/2016
5	2014 Edition IBC 675 IAC 13-2.6 Sec. 411.3	<p>Automatic fire detection. Special amusement buildings shall be equipped with an automatic fire detection system in accordance with Section 907.</p> <p><u>Facility does not have required automatic fire detection system.</u></p>	09/26/2016
6	Sec. 807.1 2014 Edition IFC 675 IAC 22-2.5	<p>In occupancies in Groups A, E, I and R-1, and dormitories in Group R-2, curtains, draperies, hangings and other decorative materials suspended from walls or ceilings shall meet the flame propagation performance criteria of NFPA 701 in accordance with Section 807.2 or be noncombustible.</p> <p>Exceptions:</p> <p>1. Curtains, draperies, hangings and other decorative materials suspended from walls of sleeping units and dwelling units in dormitories in Group R-2 protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1 and such materials are limited to not more than 50 percent of the aggregate area of walls.</p> <p>2. Decorative materials, including, but not limited to, photographs and paintings in dormitories in Group R-2 where such materials are of limited quantities such that a hazard of fire development or spread is not present.</p> <p>In Groups I-1 and I-2, combustible decorative materials shall meet the flame propagation criteria of NFPA 701 unless the decorative materials, including, but not limited to, photographs and paintings, are of such limited quantities that a hazard of fire development or spread is not present. In Group I-3, combustible decorative materials are prohibited.</p> <p>Fixed or movable walls and partitions, paneling, wall pads and crash pads, applied structurally or for decoration, acoustical correction, surface insulation or other purposes, shall be considered interior finish if they cover 10 percent or more of the wall or of the ceiling area, and shall not be considered decorative materials or furnishings.</p> <p>In Group B and M occupancies, fabric partitions suspended from the ceiling and not supported by the floor shall meet the flame propagation performance criteria in accordance with Section 807.2 and NFPA 701 or shall be noncombustible.</p> <p><u>Documentation that hangings met the criteria of NFPA 701 was not available.</u></p>	09/26/2016
7	Sec. 404.3.2 2014 Edition IFC	<p>Fire safety plans shall include the following:</p> <p>1. The procedure for reporting a fire or other emergency.</p>	09/26/2016

	675 IAC 22-2.5	<p>2. The life safety strategy and procedures for notifying, relocating or evacuating occupants, including occupants who need assistance.</p> <p>3. Site plans indicating the following:</p> <p>3.1. The occupancy assembly point.</p> <p>3.2. The locations of fire hydrants.</p> <p>3.3. The normal routes of fire department vehicle access.</p> <p>4. Floor plans identifying the locations of the following:</p> <p>4.1. Exits.</p> <p>4.2. Primary evacuation routes.</p> <p>4.3. Secondary evacuation routes.</p> <p>4.4. Accessible egress routes.</p> <p>4.5. Areas of refuge.</p> <p>4.6. Exterior areas for assisted rescue.</p> <p>4.7. Manual fire alarm boxes.</p> <p>4.8. Portable fire extinguishers.</p> <p>4.9. Occupant-use hose stations.</p> <p>4.10. Fire alarm annunciators and controls.</p> <p>5. A list of major fire hazards associated with the normal use and occupancy of the premises, including maintenance and housekeeping procedures.</p> <p>6. Identification and assignment of personnel responsible for maintenance of systems and equipment installed to prevent or control fires.</p> <p>7. Identification and assignment of personnel responsible for maintenance, housekeeping and controlling fuel hazard sources.</p> <p><u>Facilities fire safety plan was lacking 1-3.3</u></p>	
8	Sec. 906.2 2014 Edition IFC 675 IAC 22-2.5	<p>Portable fire extinguishers shall be selected, installed and maintained in accordance with this section and NFPA 10.</p> <p>Exceptions:</p> <p>1. The travel distance to reach an extinguisher shall not apply to the spectator seating portions of Group A-5 occupancies.</p> <p>2. Thirty-day inspections shall not be required and maintenance shall be allowed to be once every three years for dry-chemical or halogenated agent portable fire extinguishers that are supervised by a listed and approved electronic monitoring device, provided that all of the following conditions are met:</p> <p>2.1. Electronic monitoring shall confirm that extinguishers are properly positioned, properly charged and unobstructed.</p> <p>2.2. Loss of power or circuit continuity to the electronic monitoring device shall initiate a trouble signal.</p> <p>2.3. The extinguishers shall be installed inside of a building or cabinet in a noncorrosive environment.</p> <p>2.4. Electronic monitoring devices and supervisory circuits shall be tested every three years when extinguisher maintenance is performed.</p> <p>2.5. A written log of required hydrostatic test dates for extinguishers shall be maintained by the owner to verify that hydrostatic tests are conducted at the frequency required by NFPA 10.</p> <p>3. In Group I-3, portable fire extinguishers shall be permitted to be located at staff locations.</p> <p><u>Extinguisher on West end has not been maintained in the past year.</u></p>	09/26/2016
9	Sec. 1008.1.8.5 2008 Edition IBC 675 IAC 13-2.5	<p>The unlatching of any door or leaf shall not require more than one operation.</p> <p>Exceptions:</p> <p>1. Places of detention or restraint.</p> <p>2. Where manually operated bolt locks are permitted by Section 1008.1.8.4.</p> <p>3. Doors with automatic flush bolts as permitted by Section 1008.1.8.3, Exception 3.</p> <p>4. Doors from individual dwelling units and sleeping units of Group R</p>	09/26/2016

		occupancies as permitted by Section 1008.1.8.3, Exception 4. <u>South-West and North-West exits required more than one motion to operate.</u>	
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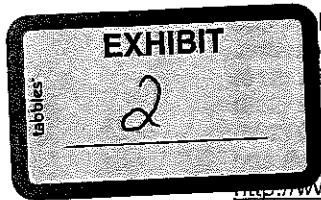
Facility Id	Received By Name	Signature and Date
AE8232174		

APPEAL RIGHTS

Please be advised that if you desire administrative review of this Order and **this Order was delivered by hand**, you must file a written petition for review with the Fire Prevention and Building Safety Commission at 302 West Washington Street, Rm. W246, Indianapolis, IN 46204, identifying the violations for which you seek review no later than 15 calendar days from the hand delivery date of this Order unless such date is a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours, in which case the deadline would be the first calendar day thereafter that is not a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours. If you do so, your petition for review will be granted and an administrative proceeding will be conducted by an administrative law judge appointed by the Fire Prevention and Building Safety Commission. If you do not file a petition for review, this Order will be **FINAL** and you **MUST** comply with its requirements.

Please be advised that if you desire administrative review of **this Order and this Order was delivered by first class U.S. mail**, you must file a written petition for review with the Fire Prevention and Building Safety Commission at 302 West Washington Street, Rm. W246, Indianapolis, IN 46204, identifying the violations for which you seek review no later than 18 calendar days from the mailing date of this Order unless such date is a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours, in which case the deadline would be the first calendar day thereafter that is not a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours. If you do so, your petition for review will be granted and an administrative proceeding will be conducted by an administrative law judge appointed by the Fire Prevention and Building Safety Commission. If you do not file a petition for review, this Order will be **FINAL** and you **MUST** comply with its requirements.

Please be further advised that you may request an opportunity to informally discuss this Order prior to filing a petition for review. Such informal discussion, or a request therefor, does not extend the deadline for filing a petition for review and, therefore, any request for an informal discussion should be made promptly, preferably by telephone, upon receipt of this Order.



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John Zeidler
Escape Evansville
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