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on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JACK MALLIS, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

BETTER EARTH, INC., a California
corporation; and DOES 1 through 25,

Defendants.

Case No.: 20STCV17207

*Assigned to Hon. William F. Highberger
SSC-10*

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Violation of Labor Code §§ 1194, 1197, 1197.1 (Failure to Pay Minimum Wages)
2. Violation of Labor Code §2802 (Failure to reimburse necessary expenditures)
3. Violation of Labor Code §§226.7 and 512(a) (Failure to Provide Meal and Rest Breaks)
4. Violation of Labor Code §226 (non-compliant wage statements)
5. Violation of Labor Code §§201 and 202 (Failure to Pay Unpaid Wages at Time of Discharge)
6. Violation of Business & Professions Code §§ 17200 *et seq.*
7. Recovery of Civil Penalties, Labor Code §§ 2698-2699.5

**Complaint filed: May 4, 2020
Jury Trial Demanded**

1 **PARTIES, JURISDICTION AND VENUE**

2 1. Plaintiff Jack Mallis is an individual and resident of Los Angeles County,
3 California. Plaintiff has worked for Defendants as a salesperson from July 2019 until April
4 2020.

5 2. Plaintiff is informed and believes and based upon such information and belief
6 alleges that Defendant Better Earth, Inc. is a corporation organized under the laws of the
7 state of California.

8 3. Plaintiff does not know the true names or capacities of the Defendants sued
9 herein as Does 1 through 25, inclusive, and, for that reason, said Defendants are sued under
10 such fictitious names. Plaintiff is informed and believes, and based thereon, alleges that each
11 of said fictitious Defendants are and were responsible in some manner for the injuries
12 complained of herein. Plaintiff will amend this Complaint to identify such fictitiously named
13 Defendants pursuant to Code of Civil Procedure Section 474 once their identities become
14 known.

15 4. The relief sought by Plaintiff on behalf of himself and the Class defined
16 below exceeds the minimal jurisdictional limits of the Superior Court and will be established
17 according to proof at trial. The Court has personal jurisdiction over each of the parties
18 because they are either citizens of this State, doing business in this State or otherwise have
19 minimum contacts with this State.

20 5. Venue is proper in this County. Defendant's principal place of business is
21 located in Los Angeles County.

22 6. Plaintiff is informed and believes and, based thereon, alleges that the
23 Defendants were at all times relevant hereto members of, and engaged in, a joint venture,
24 partnership, association or common enterprise, and acting within the course and scope of,
25 and in pursuance of, said joint venture, partnership, association or common enterprise.
26 Furthermore, Plaintiff is informed and believes and, based thereon, alleges that at all times
27 relevant hereto Defendants conspired together in, aided and abetted, contributed to, and/or
28 acted as agents or employees of each other with respect to, the commission of the acts

1 complained of herein. Defendants are therefore jointly and severally liable for the injuries
2 complained of herein.

3 **CLASS ALLEGATIONS**

4 7. Plaintiff brings this action pursuant to California Code of Civil Procedure
5 Section 382 on behalf of himself and the Class described below. The Class is comprised of
6 and defined as:

7 All persons who worked as salespersons for Defendants in California
8 at any time within the four years prior to the initiation of this action
9 until the date that the class is certified (hereinafter “the Class
10 period”), who were also classified by Defendants as independent
11 contractors while working for Defendants.

12 8. There exists a well-defined community of interest among the Class, and the
13 Class is readily ascertainable.

14 9. The members of the Class are so numerous that joinder of all members in a
15 single action would not be feasible or practical, and the amount of individual damages is not
16 large enough to make individual lawsuits by each class member practical or feasible.
17 Plaintiff is informed and believes and based upon such information and belief alleges that
18 there are in excess of 50 members of the Class.

19 10. Plaintiff’s claims are typical of the claims of the rest of the Class, and
20 Plaintiff will fairly and adequately represent the interests of the Class.

21 11. Common issues of fact and/or law predominate in this action over any
22 allegedly individual issues. Specifically, the following common questions of fact or law
23 predominate and make this action superior to individual actions:

24 (i) whether Plaintiff and the rest of the Class are entitled to recover
25 damages, penalties and other relief on the grounds that Defendants have used uniform
26 policies and procedures that have consistently violated California labor laws and regulations
27 and caused Plaintiff and the rest of the Class to suffer the same or similar injuries;
28

1 (ii) whether Defendants failed to pay class members for all hours worked
2 at no less than the applicable minimum wage, as required by Wage Order 9 and Labor Code
3 section 1197.

4 (iii) whether Defendants failed to provide wage statements containing all
5 of the information required by Labor Code section 226(a) and 226.2(a)(2);

6 (iv) whether Defendants failed to provide Plaintiff and the rest of the
7 Class with legally required meal and rest breaks, in violation of Labor Code Sections 226.7
8 and 512(a) and the applicable wage order;

9 (v) whether Defendants failed to indemnify the Class for all of the
10 necessary expenditures or losses incurred in direct consequence of the discharge of their
11 duties, or of their obedience to the directions of their employer, in violation of Labor Code
12 Section 2802; and

13 (vi) whether Defendants' practices constitute unfair, fraudulent, or illegal
14 business practices under Business and Professions Code Sections 17200 *et seq.*

15 12. California labor laws under which Plaintiff asserts the following causes of
16 action on behalf of himself and the rest of the Class are broadly remedial in nature. These
17 labor laws serve an important public interest in establishing minimum working conditions
18 and standards in California. They furthermore protect employees from exploitation by
19 employers who may seek to take advantage of their superior economic and bargaining power
20 in setting onerous terms and conditions of employment. The class action mechanism is a
21 particularly efficient and appropriate procedure to redress the injuries alleged herein. If each
22 employee in the Class was required to file an individual action, Defendants would be able to
23 use their superior financial and legal resources to gain an unfair advantage over each
24 individual class member. Moreover, requiring each class member to pursue an individual
25 action would also discourage the assertion of meritorious causes of action by employees
26 who would likely be disinclined to file such individual actions due to a justifiable fear of
27 retaliation and damage to their careers at subsequent employment.

13. In addition, even if feasible, individual actions by each Class member would create a substantial risk (i) of inconsistent or varying adjudications with respect to the claims of each Class member against Defendants, that in turn could establish potentially incompatible standards of conduct for Defendants, and/or (ii) of adjudications with respect to individual Class members that would, as a practical matter, be dispositive of the interests of the other Class members. Furthermore, the claims of each individual Class member are not sufficiently large enough to make it economically feasible to bring each Class member's claims on an individual basis.

GENERAL ALLEGATIONS

14. Plaintiff is informed and believes and, based thereon, alleges that during the Class Period, Plaintiff and the rest of the Class were employees of Defendants.

15. On information and belief, Plaintiff alleges that Defendants applied the same policies to all members of the proposed Class. As alleged below, these uniform policies, practices and procedures violated California's labor laws and constituted unfair, fraudulent or illegal business practices under Business & Professions Code Sections 17200 *et seq.*

FIRST CAUSE OF ACTION

FOR VIOLATION OF LABOR CODE SECTIONS 1194, 1197 AND 1197.1

16. Plaintiff re-alleges and incorporates herein by this reference each of the allegations set forth in Paragraphs 1-15, inclusive.

17. During the Class Period, Labor Code sections 1194, 1197 and 1197.1 and the applicable Wage Order applied to Defendants' employment of Plaintiff and the rest of the Class.

18. Section 1197 specifies the establishment of a minimum wage that must be paid to employees for each hour worked. Section 1194 gives an employee the right to recover any unpaid minimum wages from his or her employer.

19. During the Class Period, Defendant failed to always pay the minimum wage to Plaintiff and Class members for each hour that they worked for Defendants. Among other

1 things, Plaintiff and Class members were required to regularly participate in lengthy training
2 sessions, for which they received no compensation.

3 20. Accordingly, Plaintiff and the Class are entitled to recover all unpaid
4 minimum wages, plus interest and attorney's fees and liquidated damages under Labor Code
5 section 1194.2.

6 **SECOND CAUSE OF ACTION**

7 **FOR VIOLATION OF LABOR CODE SECTION 2802**

8 (Against all Defendants)

9 21. Plaintiff re-alleges and incorporates herein by this reference each of the
10 allegations set forth in Paragraphs 1-20, inclusive.

11 22. During the Class period, Labor Code Section 2802 applied to Defendants'
12 employment of Plaintiff and the rest of the Class and required employers such as Defendants
13 to reimburse their employees for all necessary expenditures or losses incurred by employees
14 in direct consequence of the discharge of their duties.

15 23. During the Class Period, Plaintiff and other Class members incurred expenses
16 as a necessary part of performing their duties for Defendants. Such expenses included,
17 without limitation, automobile expenses, insurance, supplies, equipment, internet and mobile
18 phone data.

19 24. Defendants have failed and refused to compensate Plaintiff and the Class for
20 all such expenses. Accordingly, Plaintiff and the rest of the Class are entitled to recover
21 from Defendants the cost of their reimbursable expenses, interest thereon, together with their
22 reasonable attorneys' fees and costs.

23 **THIRD CAUSE OF ACTION**

24 **FOR VIOLATION OF LABOR CODE SECTIONS 226.7(b) AND 512(a)**

25 **AND THE APPLICABLE IWC WAGE ORDER**

26 (Against all Defendants)

27 25. Plaintiff re-alleges and incorporates herein by this reference each of the
28 allegations set forth in Paragraphs 1-24, inclusive.

1 26. During the Class Period, Labor Code Sections 226.7(b) and 512(a) and the
2 applicable IWC Wage Order applied to Defendants' employment of Plaintiff and the rest of
3 the Class.

4 27. At all times relevant hereto, Labor Code Section 512(a) and the applicable
5 IWC Order also required Defendants, every time Plaintiff and the Class worked a period of
6 five (5) or more hours per day, to permit Plaintiff and the Class the opportunity to take a
7 thirty (30) minute uninterrupted meal break during which Plaintiff and the Class were and
8 are relieved of all duty. Furthermore, at all times relevant hereto, Labor Code Section
9 512(a) and the applicable IWC Wage Order provided that employers such as Defendants
10 could not require or permit an employee such as Plaintiff or a member of the Class to work a
11 period of more than ten (10) hours per day without providing the employee with a second
12 uninterrupted meal period of not less than thirty (30) minutes.

13 28. At all relevant times, the applicable IWC Wage Order provides that "[e]very
14 employer shall authorize and permit all employees to take rest periods, which insofar as
15 practicable shall be in the middle of each work period" and that the "rest period time shall be
16 based on the total hours worked daily at the rate of ten (10) minutes net rest per four (4)
17 hours or major fraction thereof" unless the total daily work time is less than three and one-
18 half (3 ½) hours.

19 29. At all times relevant hereto, Labor Code Section 226.7(b) provided that
20 employers such as Defendants could not require employees such as the Class members to
21 work during any meal or rest period mandated by an applicable order of the IWC.

22 30. At times during the Class period, Plaintiff and the rest of the Class were not
23 provided with any meal period at all, or were required by Defendants to work more than five
24 (5) hours per day before they were given the opportunity to take a thirty (30) minute
25 uninterrupted meal break and were and are relieved of all duty. Furthermore, at times during
26 the Class period, Plaintiff and the Class were required by Defendants to work more than ten
27 (10) hours per day without being provided with the opportunity to take a second meal period
28 of not less than thirty (30) minutes.

1 31. In addition, during the Class Period, Defendants failed to provide Plaintiff
2 and the rest of the Class with all of the required compliant rest periods in violation of Labor
3 Code Section 226.7(b) and the applicable IWC Wage Order.

4 32. Accordingly, pursuant to Labor Code Section 226.7(c), Plaintiff and the rest
5 of the Class are entitled to recover from Defendants one additional hour of pay at the Class
6 members' regular rate of compensation for each work day that a compliant meal or rest
7 period was required, but not provided.

8 **FOURTH CAUSE OF ACTION**

9 **FOR VIOLATIONS OF LABOR CODE SECTION 226**

10 33. Plaintiff re-alleges and incorporates herein by this reference each of the
11 allegations set forth in Paragraphs 1-32, inclusive.

12 34. During the Class period, Labor Code Section 226(a) applied to Defendants'
13 employment of Plaintiff and the rest of the Class. At all times relevant hereto, Labor Code
14 Section 226(a) required that employers such as Defendants furnish to their employees, semi-
15 monthly or at the time of each payment of wages, an accurate itemized statement in writing
16 showing: "(1) gross wages earned, (2) total hours worked by the employee, . . . (4) all
17 deductions, provided that all deductions made on written orders of the employee may be
18 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
19 period for which the employee is paid, (7) the name of the employee and only the last four
20 digits of his or her social security number or an employee identification number other than a
21 social security number, (8) the name and address of the legal entity that is the employer . . .
22 and (9) all applicable hourly rates in effect during the pay period and the corresponding
23 number of hours worked at each hourly rate by the employee."

24 35. Plaintiff is informed and believes and, based thereon, alleges that during the
25 Class Period Defendants knowingly and intentionally failed to provide such accurate
26 itemized wage statements to Plaintiff and the members of the Class. Plaintiff and the rest of
27 the Class suffered injury as a result of Defendants' failure to comply with Labor Code
28 Section 226(a).

1 36. Accordingly, pursuant to Labor Code Section 226(e), Plaintiff and each
2 member of the Class are entitled to recover from Defendants the greater of their actual
3 damages or fifty dollars (\$50) for the initial violation of Labor Code Section 226(a) and one
4 hundred dollars (\$100) for each subsequent violation during the applicable limitations
5 period, up to a maximum of \$4,000 per Class member or the then applicable legal rates at
6 the time of adjudication, plus their reasonable attorneys' fees and costs.

7 **FIFTH CAUSE OF ACTION**

8 **FOR VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

9 37. Plaintiff re-alleges and incorporates herein by the reference each of the
10 allegations in Paragraphs 1-36, inclusive.

11 38. During the Class period, Labor Code Sections 201 and 202 applied to
12 Defendants' employment of Plaintiff and the rest of the Class. At all times relevant hereto,
13 Labor Code Section 201 provided that, if an employer such as Defendants discharged an
14 employee such as a member of the Class, the wages earned and unpaid at the time of
15 discharge were due and payable immediately.

16 39. Furthermore, at all relevant times Labor Code Section 202 provided and
17 provides that, if an employee such as a member of the Class voluntarily leaves his or her
18 employment, the wages earned and unpaid must be paid by the employer within seventy-two
19 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice
20 of his or her intention to leave, in which case the employee is entitled to receive his or her
21 wages immediately at the time of quitting.

22 40. Plaintiff and other members of the Class left their position of employment at
23 Defendants' business during the Class period. However, Defendants willfully did not pay
24 Plaintiff and the Class all of the wages that were due to them within the time required by
25 sections 201 and 202. Defendants therefore violated Labor Code Section 201 and 202.

26 41. During the Class period, Labor Code Section 203 provided that, if an
27 employer such as Defendants fails to pay any wages of an employee who is discharged or
28 who quits, the wages of the employee shall continue as a penalty from the due date thereof

1 at the same rate until paid or until an action therefore is commenced, but the wages shall not
2 continue for more than thirty (30) days. Accordingly, Plaintiff and the members of the Class
3 who were discharged or who quit during the Class period are entitled to receive their wages
4 for each day they were not paid, at their regular rate of pay, up to a maximum of thirty (30)
5 days, plus interest, costs and reasonable attorneys' fees.

6 **SIXTH CAUSE OF ACTION**
7 **FOR VIOLATION OF BUSINESS AND PROFESSIONS CODE**
8 **SECTIONS 17200 *ET SEQ.***

9 (Against all Defendants)

10 42. Plaintiff re-alleges and incorporates herein by this reference each of the
11 allegations in Paragraphs 1-41, inclusive.

12 43. During the Class period, Defendants' practices, as alleged above, have been
13 and continue to be unfair, fraudulent and illegal, and harmful to Plaintiff, the rest of the
14 Class and the general public. Defendants' above-alleged practices constitute violations of
15 Business and Professions Code Sections 17200 *et seq.* Specifically, a practice that violates
16 any state law or regulation may constitute the basis of an unlawful business practice
17 prohibited by Business and Professions Code Sections 17200 *et seq.*

18 44. Among other things, the following practices of Defendants, as alleged
19 above, constitute unfair business practices:

20 a. Defendants' failure to pay Plaintiff and Class members at the
21 applicable minimum wage for all hours worked.

22 b. Defendants' failure to provide legally-required meal and rest breaks,
23 as required by Labor Code Sections 226.7(b) and 512(a) and the applicable IWC order and
24 to compensate Plaintiff and Class members for such non-compliant breaks, as required by
25 Labor Code section 226.7(c).

26 c. Defendants' failure to reimburse Plaintiff and the Class for their
27 reimbursable expenses as required by Labor Code Section 2802.

1 45. Accordingly, pursuant to Business and Professions Code Section 17200
2 *et seq.*, Plaintiff and the rest of the Class are entitled to restitution of wages and other
3 property held by Defendants during the Class Period.

4 46. Plaintiff meets the standing requirements for seeking relief pursuant to
5 Business and Professions Code Section 17203, in that he has suffered an injury in fact and
6 has lost money as a result of Defendants' policies, practices and procedures, as more fully
7 set forth elsewhere in this pleading.

8 **SEVENTH CAUSE OF ACTION**

9 **RECOVERY OF CIVIL PENALTIES, LABOR CODE §§ 2698-2699.5**

10 (Against all Defendants)

11 47. Plaintiff re-alleges and incorporates herein by this reference each of the
12 allegations in Paragraphs 1-46, inclusive.

13 48. Plaintiff brings this claim on behalf of the Labor and Workforce
14 Development Agency ("LWDA") under the Private Attorneys General Act of 2004
15 ("PAGA"), California Labor Code §§ 2698-2699.5. In pursuing his PAGA claim, Plaintiff
16 represents the same legal right and interest as state labor law enforcement agencies. PAGA
17 permits Plaintiff to recover civil penalties that otherwise would have been assessed and
18 collected by the LWDA and other state agencies.

19 49. Plaintiff has complied with the notice requirements of Labor Code section
20 2699.3. On May 6, 2020, Plaintiff's representatives notified the LWDA of the Labor Code
21 violations alleged herein. The LWDA had not responded to Plaintiff's initial notice.
22 Pursuant to section 2699.3(a)(2)(A), Plaintiff is now entitled to recover civil penalties for
23 Defendant's violations.

24 50. As alleged herein, such violations include:

- 25 a. Violation of Labor Code § 1194, 1197 and 1197.1
- 26 b. Violation of Labor Code § 2802
- 27 c. Violation of Labor Code §§ 226.7 and 512(a)
- 28 d. Violation of Labor Code §226

1 e. Violation of Labor Code §§201 and 202

2 51. Accordingly, on behalf of all aggrieved employees, Plaintiff seeks recovery
3 of civil penalties owed by Defendant as result of such violations pursuant to Labor Code
4 section 2699.

5 52. Additionally, due to Defendant's conduct in willfully treating employees as
6 independent contractors, Defendant is liable for penalties pursuant to California Labor Code
7 section 226.8, in addition to any other penalties or fines permitted by law.

8 **PRAYER**

9 WHEREFORE, Plaintiff prays for judgment on behalf of himself and the rest of the
10 Class against all Defendants, as follows:

11 **ON THE FIRST CAUSE OF ACTION**

- 12 1. For unpaid minimum wages;
13 2. For prejudgment interest; and
14 3. For reasonable attorneys' fees and costs under Labor Code Section 218.5.

15 **ON THE SECOND CAUSE OF ACTION**

- 16 1. For unreimbursed expenses incurred by Plaintiff and the Class;
17 2. For prejudgment interest;
18 3. For reasonable attorneys' fees and costs under Labor Code Section 2802.

19 **ON THE THIRD CAUSE OF ACTION**

- 20 1. For unpaid wage premiums for failing to provide compliant meal periods
21 and/or rest periods;

- 22 2. For prejudgment interest; and
23 3. For reasonable attorneys' fees and costs under Labor Code Section 218.5.

24 **ON THE FOURTH CAUSE OF ACTION**

- 25 1. For damages under Labor Code Section 226(e) for the failure to provide
26 accurate wage statements in accordance with Labor Code §226(a);
27 2. For reasonable attorneys' fees under Labor Code Section 226(e).

1 **ON THE FIFTH CAUSE OF ACTION**

2 1. For the wages of each Class member who is no longer employed by
3 Defendant at their regular daily rate up to a maximum of thirty (30) days;

4 2. For prejudgment interest; and

5 3. For reasonable attorneys' fees.

6 **ON THE SIXTH CAUSE OF ACTION**

7 1. For restitution of all unpaid wages, overtime and other monies withheld from
8 Plaintiff and the rest of the Class as a result of Defendants' unfair, unlawful or fraudulent
9 business practices;

10 2. For reasonable attorneys' fees and costs under Code of Civil Procedure
11 Section 1021.5.

12 **ON THE SEVENTH CAUSE OF ACTION**

13 1. For civil penalties;

14 2. For prejudgment interest;

15 3. For reasonable attorney's fees and costs pursuant to California Labor Code
16 section 2699(g)

17 **ON ALL CAUSES OF ACTION**

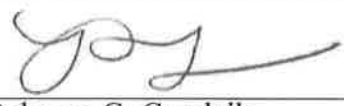
18 1. For certification of the First through Sixth Causes of Action as a class action;

19 2. For attorneys' fees and costs pursuant to Civil Procedure Section 1021.5, the
20 "common fund" theory, the "substantial benefit" theory and/or any other applicable theory
21 or doctrine; and,

22 3. For such further relief as the Court may deem appropriate.

23 DATED: September 14, 2020

GUNDZIK GUNDZIK HEEGER LLP

24 By: 

25 Rebecca G. Gundzik

26 Attorneys for Plaintiff Jack Mallis,
27 individually, on behalf of all others similarly
28 situated

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

DATED: September 14, 2020

GUNDZIK GUNDZIK HEEGER LLP



By: _____
Rebecca G. Gundzik
Attorneys for Plaintiff Jack Mallis,
individually, on behalf of all others similarly
situated

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423.

On September 14, 2020, I served the following document described as

- **FIRST AMENDED CLASS ACTION COMPLAINT**

on the interested parties in this action:

(X) by serving () the original (X) true copies thereof as follows:

Please see attached service list

(XX) BY MAIL

I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

() BY FACSIMILE TRANSMISSION

I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (818) 918-2316. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.

() BY OVERNIGHT DELIVERY

Said document was placed in an envelope designated by the express service center and placed for collection in a box regularly maintained by said carrier with whom we have a direct billing account, to be delivered to the office of the addressee listed above on the next business day.

(XX) BY ELECTRONIC TRANSMISSION

I caused the above-described document to be electronically served to the names and email addresses listed on the Service List attached hereto.

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

() FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(X) EXECUTED on September 14, 2020, at Sherman Oaks, California.



Nicole Salazar

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