



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PARAG AGRAWAL, VIJAYA GADDE,)
and NED SEGAL,)

Plaintiffs,)

v.)

C.A. No. 2023-

TWITTER, INC.,)

Defendant.)

VERIFIED COMPLAINT FOR ADVANCEMENT

Plaintiffs Parag Agrawal, Vijaya Gadde, and Ned Segal (“Plaintiffs”), by and through their undersigned attorneys, upon knowledge as to themselves and their own actions and upon information and belief as to all other matters, allege as follows:

NATURE OF THE ACTION

1. This is an action to enforce Plaintiffs’ rights to advancement of expenses pursuant to (i) the Bylaws of Twitter, Inc. (“Defendant,” “Twitter,” or the “Company”), dated as of February 14, 2022 (the “Bylaws”) and (ii) the various Director & Officer Indemnification Agreements¹ entered into by the Company and

¹ Mr. Agrawal entered into a Director & Officer Indemnification Agreement with the Company on or about November 29, 2021 (“Agrawal Agreement”); Ms. Gadde entered into a Director & Officer Indemnification Agreement with the Company on or about October 1, 2013 (“Gadde Agreement”); and Mr. Segal entered into a Director & Officer Indemnification Agreement with the Company on or about August 25, 2017 (“Segal Agreement”) (collectively, the “Agreements”).

each Plaintiff. A true and correct copy of the Bylaws is attached hereto as **Exhibit A**. A true and correct copy of the Agrawal Agreement is attached hereto as **Exhibit B**.² A true and correct copy of the Gadde Agreement is attached hereto as **Exhibit C**. A true and correct copy of the Segal Agreement is attached hereto as **Exhibit D**.

2. Plaintiff Agrawal is the former Chief Executive Officer (“CEO”) of Twitter and a former member of the Company’s Board of Directors.

3. Plaintiff Gadde is the former Chief Legal Officer (“CLO”) of Twitter.

4. Plaintiff Segal is the former Chief Financial Officer (“CFO”) of Twitter.

5. Plaintiffs have incurred significant expenses, including but not limited to attorneys’ fees and costs, in connection with several proceedings in which Plaintiffs are involved by virtue of their former roles as officers of Twitter, and Plaintiffs accordingly are entitled to advancement of those fees and costs.

Capitalized terms not defined herein shall have the definitions set forth in the Agreements.

² The copy of the Agrawal Agreement in Plaintiffs’ possession is unsigned by the Company. Agrawal previously has requested from the Company all instruments signed by him relating to his employment, but the Company has yet to respond. Upon information and belief, the Company is in possession of a fully-executed copy of the agreement identical in substance to the copy appended hereto.

6. First, Agrawal, Gadde, and Segal are defendants in a putative class action securities lawsuit captioned *Baker v. Twitter, Inc., et al.*, No. 2:22-cv-06525 (MCS) (C.D. Cal.) (the “Securities Class Action”). Agrawal, Gadde, and Segal retained counsel and have defended themselves in the Securities Class Action, in which they were named by reason of their prior services as officers of the Company. Agrawal, Gadde, and Segal consequently have incurred Expenses, including attorneys’ fees, as defined in the Agreements, requiring advancement pursuant to the Bylaws and Agreements.

7. Second, while still working as officers of Twitter, Agrawal and Segal were contacted by federal authorities in connection with certain inquiries related to the Company (the “SEC and DOJ Inquiries”). Agrawal and Segal retained counsel, provided testimony to the SEC in 2022, and their counsel have continued to engage with federal authorities. Additionally, Agrawal received requests before and after he left Twitter to take measures to preserve certain documents, which likewise relate to his prior service as an officer of Twitter. Agrawal and Segal consequently have incurred Expenses, including attorneys’ fees, requiring advancement pursuant to the Bylaws and Agreements.

8. Third, Gadde is a defendant, alongside the Company, in a lawsuit captioned *D’Ambly v. Exoo, et al.*, No. 2:20-cv-12880 (JMV) (D.N.J.) (the “D’Ambly Lawsuit”). Gadde retained counsel and has defended herself in the

D'Ambly Lawsuit, in which she was named by reason of her prior service as an officer of Twitter. Gadde consequently has incurred Expenses, including attorneys' fees, requiring advancement pursuant to the Bylaws and Agreements.

9. Fourth, Gadde received a subpoena from the House Committee on Oversight and Accountability of the 118th Congress to testify at a public hearing before Congress (the "Oversight Inquiry"). Gadde retained counsel and testified publicly in connection with the Oversight Inquiry, which relates to Gadde's prior service as an officer of Twitter. Gadde consequently has incurred Expenses, including attorneys' fees, requiring advancement pursuant to the Bylaws and Agreements.

10. The above-mentioned lawsuits and inquiries in Paragraphs 6 through 9 are collectively referred to as the "Proceedings."

11. As detailed more fully herein, the Bylaws and the Agreements obligate the Company to indemnify Plaintiffs and advance all Expenses incurred in connection with any Proceeding in which Plaintiffs are involved by reason of their Corporate Status.

12. Despite timely written demand along with documentation from Plaintiffs through their counsel, the Company has not advanced to Plaintiffs their Expenses actually and reasonably incurred related to the various Proceedings. Over two months after Plaintiffs' initial written demand, the Company offered only

a cursory acknowledgement of receipt, but still refused to acknowledge its obligations and to remit payment of any invoices. Defendant has breached the Agreements and contravened its Bylaws.

13. Plaintiffs seek an order (i) requiring the Company to advance all Expenses that Plaintiffs have incurred in connection with the Proceedings; (ii) requiring the Company to advance all Expenses incurred by Plaintiffs in connection with enforcing their rights to advancement pursuant to the Bylaws and Agreements; and (iii) declaring that Plaintiffs are entitled to advancement of any future attorneys' fees, costs, and expenses incurred in connection with the Proceedings.

PARTIES

14. Plaintiff Parag Agrawal is domiciled in California. Agrawal began working at the Company in 2011, and held various engineering positions until he was promoted to Chief Technology Officer in 2017. From November 2021 through October 2022, Agrawal served as Chief Executive Officer of Twitter and was a member of the Company's Board of Directors.

15. Plaintiff Vijaya Gadde is domiciled in California. Gadde began as a Director in the Company's Legal Department in 2011, before serving, at various points, as General Counsel, Secretary, head of communications, and eventually, Chief Legal Officer of the Company from February 2018 through October 2022.

16. Plaintiff Ned Segal is domiciled in California. From August 2017 through October 2022, Segal served as Chief Financial Officer of the Company.

17. Defendant Twitter, Inc. is a Delaware corporation, with its principal place of business in San Francisco, California.

JURISDICTION

18. This Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 8 *Del. C.* § 145(k). It likewise has personal jurisdiction over Defendant, a Delaware corporation.

FACTUAL BACKGROUND

A. Twitter's Bylaws Require Advancement and Indemnification

19. In accordance with Section 145 of the Delaware General Corporation Law ("DGCL"), Article IX of the Company's Bylaws provides Plaintiffs with broad indemnification and advancement rights.

20. Specifically, Article IX, Section 9.1 of the Bylaws mandates:

INDEMNIFICATION OF DIRECTORS AND OFFICERS IN THIRD PARTY PROCEEDINGS. Subject to the other provisions of this Article IX, the corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director or officer of the corporation, or is or was a director or officer of the corporation serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and

amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful.

Ex. A, Art. IX, § 9.1.

21. Article IX, Section 9.5 of the Bylaws further provides:

ADVANCE PAYMENT OF EXPENSES. Expenses (including attorneys' fees) actually and reasonably incurred by an officer or director of the corporation in defending any Proceeding shall be paid by the corporation in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this Article IX or the DGCL. Such expenses (including attorneys' fees) actually and reasonably incurred by former directors and officers or other employees and agents of the corporation or by persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

Id., Art. IX, § 9.5.

B. The Indemnification Agreements Require Advancement and Indemnification

22. To maintain Plaintiffs' services as officers of Twitter, the Company entered into the Agreements with Plaintiffs. *See supra* n.1. The terms of each of Plaintiffs' Agreements are substantially similar, and the specific provisions cited herein are identical across Agreements unless otherwise noted. Relevant excerpts

are provided from the Agrawal Agreement. Each of the Agreements is governed by Delaware law.

23. The preamble to each Agreement provides that its purpose is to afford indemnification and advancement rights to the “fullest extent permitted by applicable law,” and that the Company is obligating itself to afford such rights to ensure protection of and retain its officers. Ex. B at 1.

24. Section 1 of the Agreements, titled “Indemnity of Indemnitee,” sets forth the Company’s obligation to indemnify Plaintiffs “to the fullest extent permitted by law.” *Id.* § 1. This includes indemnification for all “Expenses” – defined to include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, and other obligations in a Proceeding. *Id.* § 14(e). “Proceeding” is broadly defined to include “any threatened, pending or completed action, suit . . . investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of the fact that Indemnitee is or was an officer or director of the Company” *Id.* § 14(g).

25. Section 5 of the Agreements, titled “Advancement of Expenses,” sets forth the Company’s advancement obligations. It states in part:

Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time prior to final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by an undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses.

Id. § 5.

26. In connection with the advancement of expenses, the Agreements require an undertaking by an indemnitee to repay any advanced amounts if it is ultimately determined that such indemnitee is not entitled to indemnification. *See id.*

27. The Agreements further state that if advancement of Expenses is not timely made pursuant to Section 5, Plaintiffs shall be entitled to an adjudication in an appropriate court of the State of Delaware. *Id.* § 8(a).

28. In the event any action is brought by Plaintiffs in order to enforce the Agreements, Plaintiffs also are entitled to be paid for any and all Expenses incurred in connection with such action. *Id.* § 8(d). The Agreements provide that Plaintiffs are not required to incur Expenses associated with enforcing their rights under the Agreements by litigation or other legal action, because the cost and

expense thereof would substantially detract from the benefits intended to be extended to Plaintiffs under the Agreements.

C. Plaintiffs Depart Twitter

29. On or about October 27, 2022, Elon Musk informed each of Agrawal, Gadde, and Segal that their employment with the Company was terminated as of the close of the merger by which Musk took control of the Company.

30. Section 11 of the Agreements provides that the Company’s obligation to indemnify and advance Expenses incurred by Plaintiffs remains in effect following Plaintiffs’ terminations, as the Company’s obligations “shall continue thereafter so long as Indemnitee shall be subject to any Proceeding . . . by reason of his Corporate Status, whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement.” *Id.* § 11; *see also id.* § 14(g) (providing that a “Proceeding” includes that in which Indemnitee “was, is or will be involved as a party or otherwise, by reason of the fact that Indemnitee is *or was* an officer or director of the Company”) (emphasis added).

D. Plaintiffs are Named in Proceedings

31. Agrawal and Segal were named as defendants in the Securities Class Action on or about September 13, 2022, while both still were officers of the Company. Gadde was named as a defendant in the Securities Class Action on or

about February 13, 2023, when plaintiffs in that action filed an Amended Class Action Complaint.

32. The operative complaint in the Securities Class Action alleges, on behalf of a putative class of plaintiffs that purchased or otherwise acquired publicly traded Twitter securities, that the defendants, including Agrawal, Gadde, and Segal, violated federal securities law. *See generally* Corrected Am. Compl. (Dkt. 67), *Baker v. Twitter, Inc., et al.*, No. 2:22-cv-06525. Among other reasons, Agrawal, Gadde, and Segal were named as defendants in the lawsuit because they are alleged to have been directly involved in the dissemination of the allegedly false and misleading statements at issue in that case. *See id.* Their involvement in the Securities Class Action is by reason of their previous roles as officers of Twitter and accordingly Agrawal, Gadde, and Segal are entitled to advancement of Expenses incurred in connection therewith.

33. In or about July 2022, Agrawal and Segal were contacted by federal authorities in connection with certain inquiries related to the Company. Then again, in or about September 2022, and again after his departure from Twitter, Agrawal received requests from the SEC asking that he take measures to preserve certain documents pertaining to his work at the Company. Later in 2022, representatives of the U.S. Department of Justice contacted counsel for Agrawal and Segal regarding certain investigations related to the Company.

34. Because these SEC and DOJ Inquiries relate to the Company, Agrawal and Segal are involved by reason of their previous roles as officers of the Company and are entitled to advancement of Expenses incurred in connection therewith.

35. On or about September 21, 2020, while still an officer of the Company, Gadde was named as a defendant, alongside the Company, in the *D'Ambly* Lawsuit. Plaintiff in that action alleges that the named defendant “doxed” him as a white supremacist through use of defendant’s Twitter account. Compl. ¶ 1 (Dkt. 1), *D'Ambly v. Exoo, et al.*, No. 2-20-cv-12880. Gadde was named as a defendant in the lawsuit because she purportedly was “the sole decision maker and person authorized to permanently ban Twitter users.” *Id.* ¶ 7. Gadde’s involvement in the *D'Ambly* Lawsuit is by reason of her previous role as an officer of the Company and she is entitled to advancement of Expenses incurred in connection therewith.

36. On or about December 6, 2022, Gadde also received a letter from Representative James Comer, at that time the Ranking Member of the House Committee on Oversight and Reform, which requested her attendance at a public Committee hearing during the 118th Congress, purportedly “to assess Big Tech’s control of free discourse and information sharing,” following the release of the so-called “Twitter Files.” Representative James Comer, *Letter to Vijaya Gadde*,

House Committee on Oversight and Reform (Dec. 6, 2022),

[https://oversight.house.gov/wp-content/uploads/2022/12/2022-12-6-Letter-to-](https://oversight.house.gov/wp-content/uploads/2022/12/2022-12-6-Letter-to-Gadde-Twitter.pdf)

[Gadde-Twitter.pdf](https://oversight.house.gov/wp-content/uploads/2022/12/2022-12-6-Letter-to-Gadde-Twitter.pdf). Representative Comer explained that Gadde’s testimony was

necessary due to her recent role as Chief Legal Officer of the Company. *See id.*

Subsequently, on or about February 2, 2023, Gadde received a subpoena from the

House Committee on Oversight and Accountability to testify at a public

Congressional hearing titled “Protecting Speech from Government Interference

and Social Media Bias, Part 1: Twitter’s Role in Suppressing the Biden Laptop

Story.” Gadde’s involvement in the Oversight Inquiry was by reason of her

previous role as an officer of the Company, and she is entitled to advancement of

Expenses incurred in connection therewith.

37. Each of the Plaintiffs retained Sidley Austin LLP (“Sidley Austin”) to represent them in connection with the Proceedings described herein.

E. Twitter Breaches its Advancement Obligation

38. On or about January 13, 2023, Sidley Austin sent three letters by e-mail and Certified U.S. mail to the Company on Plaintiffs’ behalf, providing notice of Plaintiffs rights to indemnification and to demand advancement of Expenses.

The letters explained that Plaintiffs were involved in certain Proceedings by reason of the fact each Plaintiff was formerly an officer of the Company and confirmed that Plaintiffs had retained Sidley Austin to represent them in connection with the

Proceedings. A true and accurate copy of Agrawal's indemnification and advancement request is attached hereto as **Exhibit E**. A true and accurate copy of Gadde's indemnification and advancement request is attached hereto as **Exhibit F**. A true and accurate copy of Segal's indemnification and advancement request is attached hereto as **Exhibit G**.

39. On or about January 20, 2023, Sidley Austin sent by e-mail and Certified U.S. Mail undertakings signed by each Plaintiff. A true and accurate copy of Agrawal's undertaking is attached hereto as **Exhibit H**. A true and accurate copy of Gadde's undertaking is attached hereto as **Exhibit I**. A true and accurate copy of Segal's undertaking is attached hereto as **Exhibit J**.

40. On or about March 3, 2023, Sidley Austin sent another letter by e-mail and Certified U.S. mail to the Company on behalf of Plaintiffs to reiterate Plaintiffs' rights to indemnification and repeat demands for the timely advancement of Expenses (the "Follow-Up Advancement Demand"). The Follow-Up Advancement Demand additionally requested that the Company "either immediately provide advancement of fees incurred to date or reply with a statement of any bases on which the Company anticipates denying advancement to, or indemnification of, our clients." A true and correct copy of the Follow-Up Advancement Demand is attached hereto as **Exhibit K**.

41. In connection with the Follow-Up Advancement Demand, Sidley Austin outlined the Expenses incurred by Plaintiffs in the Proceedings and included documentation reasonably evidencing such Expenses, namely detailed invoices with certain redactions made to protect information subject to attorney-client privilege, the work product doctrine, or other applicable privileges and protections.

42. On or about March 17, 2023, over two months after Plaintiffs' initial demand, outside counsel for the Company responded it was "in receipt" of Plaintiffs' various correspondence. The Company's counsel did not acknowledge its obligation to advance Plaintiffs' Expenses. A true and correct copy of the March 17, 2023 e-mail is attached hereto as **Exhibit L**.

43. On or about March 23, 2023, Sidley Austin responded to outside counsel for the Company, reiterating Plaintiffs' rights to timely advancement of their Expenses, and requesting to meet and confer. Sidley Austin's March 23, 2023 letter enclosed additional documentation reasonably evidencing Expenses incurred by Plaintiffs since the time of the Follow-Up Advancement Demand. A true and correct copy of the March 23, 2023 letter is attached hereto as **Exhibit M**.

44. Pursuant to Section 5 of the Agreements, the Company must advance all Expenses incurred by Plaintiffs "within thirty (30) days after the receipt by the Company of a statement . . . requesting such advance or advances." Ex. B § 5.

The Company has acknowledged receipt of Plaintiffs' letters, including the Follow-Up Advancement Demand, but as of the date of this Complaint has yet to advance to Plaintiffs their Expenses.

45. As of the date of this Complaint, Sidley Austin has provided invoices to the Company, directly and/or via its counsel, which reasonably evidence that Plaintiffs have incurred Expenses in excess of \$1 million, all of which is required to be advanced to Plaintiffs.

46. Agrawal, Gadde, and Segal's Expenses incurred in the Securities Class Action are reasonable in light of their status as defendants and the time spent (among other things): (i) investigating factual allegations; (ii) researching legal theories; (iii) developing a defense; and (iv) planning and preparing motion to dismiss and other legal briefing.

47. Agrawal and Segal's Expenses incurred in the SEC and DOJ Inquiries are reasonable in light of the time spent (among other things): (i) identifying documents subject to retention requests and (ii) corresponding with federal agency staff.

48. Gadde's Expenses incurred in the *D'Ambly* Lawsuit are reasonable in light of her status as a defendant and the time spent (among other things): (i) investigating factual allegations; (ii) researching legal theories; (iii) developing a defense; and (iv) planning and preparing motion to dismiss briefing.

49. Gadde's Expenses incurred in the Oversight Inquiry are reasonable in light of her status as a witness and the time spent (among other things): (i) corresponding with Congressional Committee staff; (ii) researching legal obligations surrounding Congressional testimony; (iii) researching facts and legal theories related to the subject of the inquiry; (iv) reviewing documents within the scope of the inquiry; (v) preparing and editing hearing preparation materials; (vi) managing compliance with Congressional schedules and rules for hearings; and (vii) preparing for testimony.

50. Plaintiffs have performed all of their obligations under Section 145 of the DGCL, the Bylaws, and the Agreements.

51. Defendant has breached its obligations under Section 145 of the DGCL, the Bylaws, and the Agreements by refusing to advance Plaintiffs' Expenses.

**COUNT I:
Advancement/Breach of Contract**

52. Plaintiffs repeat and re-allege the above Paragraphs as if fully set forth herein.

53. Defendant, in Article IX of the Bylaws, agreed to advance to current and former officers and directors of the Company all Expenses (including attorneys' fees) actually and reasonably incurred in connection with any Proceeding.

54. In addition, pursuant to the terms of the Agreements, Defendant is required to advance to Plaintiffs all Expenses incurred in connection with the Proceedings within 30 days of Plaintiffs' demands.

55. The Agreements are valid and binding contracts between Defendant and Plaintiffs.

56. To date, Plaintiffs have incurred substantial Expenses and continue to incur substantial Expenses, which Defendant is obligated to advance.

57. Plaintiffs submitted notice and demand for advancement of Expenses to Defendant, via e-mail and Certified U.S. Mail on January 13, 2023 and again on March 3, 2023. Plaintiffs submitted invoices for Expenses incurred in connection with the Proceedings to Defendant on March 3, 2023 via e-mail and Certified U.S. Mail. Plaintiffs submitted additional invoices for Expenses incurred in connection with the Proceedings to Defendant's counsel, per its request, on March 23, 2023 via e-mail.

58. Defendant has breached the Agreements and contravened the Bylaws by not advancing Plaintiffs' Expenses. Defendant is liable for this amount and future amounts incurred in connection with the Proceedings.

COUNT II:
**Claim for an Award of Expenses (Including Attorneys' Fees) Incurred in
Connection with Prosecuting this Verified Complaint**

59. Plaintiffs repeat and re-allege the above Paragraphs as if fully set forth herein.

60. Plaintiffs have incurred and will continue to incur Expenses, including but not limited to attorneys' fees and costs, in enforcing their rights to advancement.

61. Under Delaware law, Plaintiffs are entitled to their Expenses, including but not limited to attorneys' fees and costs, incurred in enforcing their rights to advancement.

62. In addition, under the terms of the Agreements, Plaintiffs are entitled to an award of any and all Expenses incurred in bringing an action to enforce the terms thereof.

63. Defendant is liable for those Expenses incurred on Plaintiffs' behalf in connection with initiating and prosecuting this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order:

a. Declaring that Defendant has breached Plaintiffs' rights under the Company's Bylaws and the Agreements;

b. Declaring that Plaintiffs are entitled to advancement from Defendant of all future Expenses (including costs and attorneys' fees) incurred in connection with the Proceedings, and entry of an order consistent with *Danenberg v. Fittracks, Inc.*, 58 A.3d 991 (Del. Ch. 2012);

c. Declaring that Plaintiffs are entitled to an award from Defendant all future Expenses (including costs and attorneys' fees) incurred in connection with this action;

d. Ordering Defendant to immediately advance to Plaintiffs the full amount of all unpaid Expenses (including costs and attorneys' fees) incurred in connection with the Proceedings from the date of this Court's judgment until the final disposition of the Proceedings, together with pre- and post-judgment interest on such amounts;

e. Ordering Defendant to timely pay Plaintiffs the full amount of all Expenses (including costs and attorneys' fees) incurred in connection with this action; and

f. Granting such further relief as the Court deems just and proper.

FRIEDLANDER & GORRIS, P.A.

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