

Judge Leighton

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THOMAS G. LANDRETH,

Plaintiff,

v.

UNITED STATES and QUINAULT INDIAN
TRIBE, et al.,

Defendants.

CASE NO. C20-5333RBL

**NOTICE OF MOTION AND
MOTION TO DISMISS FOR LACK
OF SUBJECT MATTER
JURISDICTION**

(Note on motion calendar for:
July 17, 2020)

Defendant United States of America, through its attorneys, Brian T. Moran, United States Attorney, and Brian C. Kipnis, Assistant United States Attorney, for the Western District of Washington, hereby move this Court, pursuant to Rules 12 (b)(1), F.R.Civ.P., for an order dismissing this action for lack of subject matter jurisdiction.

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1 This motion is made and based on the accompanying Memorandum of Points and
2 Authorities, the pleadings and papers filed herein, and such oral argument as the Court may
3 entertain.

4 DATED this 24th day of June, 2020.

5 Respectfully submitted,

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7 United States Attorney

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This action was filed by Thomas G. Landreth (“Landreth”), *in propria persona*, against defendants United States of America and the Quinault Indian Nation (“QIN”). Landreth, who own real property adjacent to Lake Quinault on the Olympic Peninsula, seeks relief against the United States and the QIN based on his contention that the claim of the United States and the QIN that the United States owns Lake Quinault, including the water, the submerged land thereunder, and the shore, (hereafter, “the disputed property”) in trust for the QIN, the beneficial owners thereof, is erroneous.

Landreth has styled his action as one that seeks to “quiet title” and to recover monetary damages for conversion. Notably, Landreth does not claim to have any ownership interest in the disputed property. Rather, he asserts that he holds certain riparian rights appurtenant to *his* property that have been infringed upon by the actions of the QIN. Landreth also appears to claim that the United States has a legal duty to protect him from what he views as unlawful actions of the QIN in interfering with his supposed rights. Finally, Landreth contends that he is entitled to monetary relief in the amount of \$250,000 from either the QIN, the United States, or both. While the precise outlines of the legal theories on which Landreth bases his claim for monetary relief are difficult to discern, he seems to be relying on the tort of conversion or rights he claims that are derived from various treaties with Indian Tribes entered into before the State of Washington’s admission to the Union.

Landreth has unsuccessfully litigated what are essentially the same claims three times before in three different courts. This particular lawsuit comes hard on the heels of the January 10, 2020, affirmance by the United States Court of Appeals for the Federal Circuit of a dismissal of Landreth’s virtually identical action by the U.S. Court of Federal Claims. *Landreth v. United States*, No. 1:18-cv-00476, 144 Fed. Cl. 52, 54–55 (July 24, 2019), *aff’d.*, 797 F. App’x 521, 522 (Fed. Cir. 2020). The complaint before this Court is essentially a repackaged version of the case that the U.S. Court of Federal Claims dismissed last year.

All of Landreth’s lawsuits, including the present one, have relied on the same basic premise, *to wit*, that the United States is not the titleholder, and the Quinault Tribe is not the beneficial owner,

1 of the disputed property.¹ Apparently, Landreth believes that the State of Washington owns the
 2 disputed real property. However, the State is not a party to this lawsuit and makes no such contention.

3 Notably, the present complaint does not allege any affirmative act by the United States
 4 (wrongful or otherwise) that did not occur nearly a century or more ago. Nevertheless, apparently
 5 believing that the United States has an affirmative duty to intervene on his behalf with the QIN in
 6 order to prevent the QIN from engaging in what Landreth perceives to be wrongful interferences with
 7 his rights *vis a vis* his use of the disputed property, Landreth's complaint appears to be accusing the
 8 United States of unlawful "inaction."

9 It is, of course, black letter law that the federal courts are courts of limited jurisdiction. As set
 10 forth herein, there is no subject matter jurisdiction in this Court to hear any of Landreth's claims.
 11 Moreover, as previously noted by the Federal Circuit, the United States is not responsible for any of
 12 the grievances set forth in his complaint.² Accordingly, the action should be dismissed.

13 STATEMENT OF FACTS

14 Mr. Landreth is a part owner of certain recreational property that adjoins Lake Quinault.
 15 Dkt. # 1, pp. 5-7. The QIN, is a recognized Indian Tribe. *United States v. Washington*, 384 F.Supp.
 16 312, 374 (W.D. Wash.1974). As such, it is a "distinct, independent political communit[y], retaining
 17 [its] original natural rights" in matters of local self-government. *See Santa Clara Pueblo v.*
 18 *Martinez*, 436 U.S. 49, 55 (1978) (internal citations omitted).

19 On July 1, 1855, the United States and the Quinault Tribe entered into the Treaty of Olympia.
 20 12 Stat. 971 (treaty ratified March 8, 1859; proclaimed April 11, 1859). Article 2 of the Treaty
 21 states in pertinent part that, "[t]here shall be reserved, for the use and occupation of the tribes, a tract
 22 of land sufficient for their wants . . . to be selected by the President of the United States . . . and set

23

1 The other two prior cases are: (1) *North Quinault Properties, LLC, et al. v. Quinault Indian Nation, et al.*,
 24 Case No. 3:14-cv-06025-RBL, United States District Court for the Western District of Washington; (2) *N. Quinault*
 25 *Properties, LLC v. State of Washington*, Washington Superior Court, Thurston County, Case No: 15-2-01809-1, *aff'd*,
 197 Wash. App. 1056 (2017); and (3) *Landreth v. United States*, No. 1:18-cv-00476, 144 Fed. Cl. 52, 54-55 (July 24,
 2019), *aff'd*, 797 F. App'x 521, 522 (Fed. Cir. 2020).

26 2 *Landreth v. United States*, 797 F. App'x 521, 523 (Fed. Cir. 2020) ("Further, every act described in the complaint is
 27 alleged to have been committed by the Tribe, not by the United States, and the complaint fails to allege facts sufficient to
 establish responsibility of the United States for acts taken by the Tribe.")

1 apart for their exclusive use, and no white man shall be permitted to reside thereon without
 2 permission of the tribe.” *Id.* (Emphasis added). President Grant later established the territory for
 3 the Quinault Reservation by Executive Order, specifically setting aside a tract of land for “fish-
 4 eating Indians.” Executive Order, Quinaielt Reserve (Nov. 4, 1873). All of Lake Quinault is
 5 included within the Reservation. *Quinaielt Tribe of Indians v. United States*, 102 Ct. Cl. 822 (1945).

6 As alleged by Landreth’s complaint, in April 2013, and continuing, the QIN has taken certain
 7 acts that were fully consistent with its claimed ownership of the disputed property. *Id.* at p. 7.³
 8 Specifically, Landreth complains that the QIN has closed Lake Quinault to recreational use by all
 9 non-Quinaults. *Id.* Also, Landreth alleges that the QIN has ordered the removal of private docks
 10 and structures from the lake and lakeshore. *Id.* at p. 8. According to the complaint, this has resulted
 11 in a “taking” of Landreth’s rights as the owner of real property situated adjacent to Lake Quinault.
 12 *Id.* at p. 8, *ll.* 5-7.⁴

13 Landreth alleges that, on an undisclosed date, he complained to the Bureau of Indian Affairs
 14 about the actions of QIN, but that his complaint fell on deaf ears. *Id.* at p. 8, *ll.* 9-11.

15 The most recent affirmative acts on the part of federal actors of any kind that are alleged in
 16 the complaint occurred in 1938, when the north shore of Lake Quinault and the Upper Quinault
 17 River were transferred to the Olympic National Park, and in 1940, when the Olympic National Park
 18 accepted exclusive jurisdiction of the land within the park. *Id.* at p. 19, *ll.* 21-23-11; p. 20, *ll.* 14-16.
 19 Otherwise, except for their supposed toleration of the QIN’s “wrongful” conduct *vis a vis* Landreth,
 20 the United States is not alleged to have done anything at all improper in either this century or the
 21 last.

22 _____
 23 ³ Landreth’s complaint also alleges three prior instances of QIN assertions of ownership rights over Lake Quinault
 between 1929 and 1977. Dkt. # 1, p. 26, *ll.* 8-12.

24 ⁴ It is not entirely clear in what sense Landreth is using the term “taking.” As a Constitutional matter, however,
 Landreth’s claim that he suffered a Fifth Amendment taking was rejected by the United States Court of Federal Claims.
 25 *Landreth v. United States*, No. 1:18-cv-00476, 144 Fed. Cl. 52, 54–55 (July 24, 2019), *aff’d.*, 797 F. App’x 521, 522
 (Fed. Cir. 2020). And, in any event, if it is Landreth’s purpose to reassert a Fifth Amendment taking claim in this Court,
 26 because of the amount sought by Landreth, the Court of Federal Claims has exclusive jurisdiction. *See Lexington Ins.*
Co. v. United States, No. 3:20-CV-05038-RBL, 2020 WL 3000777, at *3 (W.D. Wash. June 4, 2020). Regardless, the
 27 interests of justice weigh in favor of a dismissal of this claim rather than a transfer to the U.S. Court of Federal Claims.
 See footnote 12, *infra*.

ARGUMENT

I. AN APPLICABLE STATUTORY WAIVER OF SOVERIGN IMMUNITY IS REQUIRED IN ORDER TO SUE THE UNITED STATES IN A UNITED STATES DISTRICT COURT

Where a claim is asserted against the United States, the question of subject matter jurisdiction is inextricably tied to the doctrine of sovereign immunity. *See, Roberts v. United States*, 498 F.2d 520, 525 (9th Cir. 1974), *cert. denied*, 419 U.S. 1070 (1974) (axiomatic that a congressional waiver of sovereign immunity is a prerequisite to any suit brought against the United States). And any action against the United States begins with the “assumption that no relief is available.” *Tucson Airport Authority v. General Dynamics Corp.*, 136 F.3d 641, 644 (9th Cir. 1988). It is, therefore, the burden of any party advancing a claim against the United States to plead and prove that a statutory waiver of sovereign immunity exists. If the claimant fails to carry that burden, the Court has no jurisdiction to entertain the claim. *See, Holloman v. Watt*, 708 F.2d 1399, 1401 (9th Cir. 1983), *cert. denied*, 466 U.S. 958 (1984).⁵

II. THERE IS NO SUBJECT MATTER JURISDICTION UNDER THE QUIET TITLE ACT TO HEAR LANDRETH’S CLAIMS AGAINST THE UNITED STATES

For a host of reasons, this Court lacks subject matter jurisdiction to hear Landreth’s claims under the “Quiet Title Act” or “QTA,” 28 U.S.C § 2409a. Notably, Landreth make no claim that he holds legal title to the land in question. Consequently, he is not requesting that title to the disputed land be quieted in his ownership. Rather, it appears that he is interested in having this Court declare that title to the disputed land is held by the State of Washington.

The Supreme Court has squarely held that such a claim is not a “quiet title action” within the contemplation of the QTA. *Match-E-Be-Nash-She-Wish Band of Pottawatommi Indians v. Patchak*, 567 U.S. 209, 215-225 (2012). As held by the Court, where (as here) the claimant is merely disputing the Government’s title, but does not claim adverse title in himself or herself, the QTA does

⁵ Although Landreth has asserted elsewhere that the statute providing general subject matter jurisdiction for federal questions, 28 U.S.C. § 1331, also provides the necessary waiver of sovereign immunity, he is incorrect. *See Dunn & Black, P.S. v. United States*, 492 F.3d 1084, 1088 n.3 (9th Cir. 2007).

1 not provide the means, *via* its waiver of sovereign immunity, to bring an action against the United
2 States. *Id.* Referring to the claim of the plaintiff, Patchak, in the case before it, the Court said:

3 As we will explain, the QTA—whose full name, recall, is the Quiet Title Act—concerns
4 (no great surprise) quiet title actions. And Patchak’s suit is not a quiet title action, because
5 although it contests the Secretary’s title, it does not claim any competing interest in the
Bradley Property.

6 *Id.* at 217.⁶ Here, Landreth does not contend that he holds an adverse claim of title to the disputed
7 land. Accordingly, the QTA provides no jurisdictional support for the filing of his lawsuit here.⁷

8 However, even if Landreth were to claim an ownership stake in the disputed land, he still
9 would be unable to invoke the subject matter jurisdiction of this Court under the QTA. The QTA
10 provides as follows:

11 The United States may be named as a party defendant in a civil action under this section to
12 adjudicate a disputed title to real property in which the United States claims an interest,
13 other than a security interest or water rights. *This section does not apply to trust or
restricted Indian lands . . .*

14 28 U.S.C. § 2409a(a) (1978) (emphasis added). In other words, the QTA waives sovereign
15 immunity where the United States has an interest in disputed property, *unless* the property is “trust
16 or restricted Indian land.” *State of Alaska v. Babbitt*, 38 F.3d 1068 1072 (9th Cir. 1994); *and see*
17 *United States v. Mottaz*, 476 U.S. 834, 843 (1986).

18 The object of Landreth’s so-called “quiet title claim” is to challenge the United States’ claim
19 that it is the title owner of the disputed land and holds the same as Indian trust land. Accordingly,
20

21 ⁶ The Court quoted favorably its earlier opinion in *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*,
22 545 U.S. 308 (2005), for the proposition that “the facts showing the plaintiffs’ title . . . are essential parts of the
plaintiffs’ [quiet title] cause of action.” *Id.* at 315 (internal quotation omitted).

23 ⁷ It appears that it is Landreth’s contention that the disputed property became the property of the State of Washington
24 upon its admission to the Union, although the State has not appeared in this lawsuit to advance such a claim. Moreover,
the history of the Quinault Reservation belies that assumption. In 1873, the reservation’s boundaries were redrawn so as
25 to include the whole of Lake Quinault and its fisheries within the reservation in order to protect these fisheries from
encroachment by non-Indians. *The Quinaielt Tribe of Indians v. United States*, 102 Ct. Cl. 822, 825 (1945). The
26 Secretary of the Interior had noted in 1872 the need for additional fisheries for the Indians of the reservation and
recommended expansion to include the lake to meet this need, *see* 1 Report of the Secretary of the Interior, reprinted in
27 H.R. Exec. Doc. No. 1, 42d Cong., 3d Sess. 723-725 (1872), and the lake was included in response to this
recommendation. The background of this expansion thus clearly supplies the manifestation of intent required to
overcome the presumption of retention for the future state.

1 the QTA's waiver of sovereign immunity does not encompass the claim that Landreth is attempting
2 to assert against the United States.⁸

3 Additionally, also as a matter of subject matter jurisdiction, Landreth's QTA claim is
4 untimely. The QTA contains the following statute of limitations:

5 Any civil action under this section . . . shall be barred unless it is commenced within twelve
6 years of the date upon which it accrued. Such action shall be deemed to have accrued on
7 the date the plaintiff or his predecessor in interest knew or should have known of the claim
of the United States.

8 28 U.S.C. § 2409a(g). This provision constitutes a jurisdictional limitation upon the exercise of the
9 waiver of sovereign immunity the statute creates. *See, Block v. North Dakota ex rel. Bd. of*
10 *University and School Lands*, 461 U.S. 273, 287 (1983). Landreth's complaint alleges three
11 instances between 1929 and 1977, of conduct by the QIN, wholly consistent with the Tribe's
12 beneficial ownership of the disputed property, which should have been sufficient to cause Landreth
13 or his predecessors to inquire about the United States' claim of ownership and to file a QTA claim.
14 Dkt. # 1, p. 26, ll. 8-12. Because Landreth's QTA claim was not filed within twelve years of those
15 activities, Landreth's quiet title action is also time-barred. *See Kingman Reef Atoll Investments,*
16 *L.L.C. v. United States*, 541 F.3d 1189, 1197 (9th Cir. 2008) (internal quotation omitted) ("The
17 crucial issue in the statute of limitations inquiry is whether the plaintiff had notice of the federal
18 claim, not whether the claim itself is valid.")⁹

19 For the foregoing reasons, the Court is without subject matter jurisdiction to hear Landreth's
20 claim under the Quiet Title Act.

21 _____
22 8 It is not required that the United States be put to the burden of proving its title for purposes of this motion. *State of*
23 *Alaska v. Babbitt*, 38 F.3d 1068, 1073 (9th Cir. 1994). It is enough that the United States has a colorable claim and "has
24 chosen to assert its immunity on behalf of land of which the government declares that it is the trustee for Indians." *Id.*
(quoting *Wildman v. United States*, 827 F.2d 1306, 1309 (9th Cir.1987)). The very premise of Landreth's complaint is
that the United States is wrongfully claiming that it is trustee-owner and the Quinault Tribe is the beneficiary-owner of
the disputed property. However, if the Court requires more proof of the *bona fides* of the United States' claim to the
disputed property it will make more evidence available.

25 9 The alleged actions of the QIN were sufficient in and of themselves to start the clock running on the QTA's statute of
26 limitations. However, the ownership of this land by the United States and the QIN has been a matter of public record
27 since well before that time. Thus, the running of the QTA's statute of limitations actually began to run long before the
alleged events. *See State of Cal. ex rel. State Land Comm'n v. Yuba Goldfields, Inc.*, 752 F.2d 393, 396 (9th Cir. 1985)
(record notice sufficient to start QTA's statute of limitations).

1 III. LANDRETH'S CONVERSION CLAIM MUST ALSO BE DISMISSED FOR
2 LACK OF SUBJECT MATTER JURISDICTION

3 Although less fleshed out by the allegations of his complaint, Landreth's complaint also
4 purports to bring a claim based on the tort of conversion against the United States and seeks to
5 recover \$250,000 in damages. Dkt. # 1, p. 27, ll. 23-24.¹⁰ As in the case of his QTA claim, this
6 claim should be dismissed for lack of subject matter jurisdiction upon motion of the United States.

7 Under Washington law, conversion is a tort. *Washington State Bank v. Medalia Healthcare*
8 *L.L.C.*, 96 Wash. App. 547, 554 (1999). Specifically, it is "the act of wilfully interfering with any
9 chattel, without lawful justification, whereby any person entitled thereto is deprived of the
10 possession of it." *Id.* (Internal citations omitted).

11 Assuming for purposes of argument that facts constituting the tort of conversion have been
12 alleged, because conversion is a common law tort, exclusive jurisdiction is conferred upon this Court
13 by the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b); 2671-2680; *and see Brown v.*
14 *Bode Constr.*, No. 16-CV-01148-JSC, 2016 WL 1588382, at *3 (N.D. Cal. Apr. 20, 2016).
15 However, a jurisdictional prerequisite to the filing of an action under the FTCA is the presentation of
16 a proper administrative claim to the appropriate federal agency within the statute of limitations and a
17 denial thereof by the agency or the passage of six months without action on the claim. 28 U.S.C.
18 § 2675(a); *Brady v. United States*, 211 F.3d 499, 502 (9th Cir. 2000).

19 Landreth's complaint does not allege that he has presented an administrative claim to an
20 appropriate federal agency claiming \$250,000 based on an alleged conversion, nor does he allege
21 that such a claim was denied by the agency before he filed this lawsuit, nor does it otherwise appear
22 in the record that this jurisdictional prerequisite has been met. Under such circumstances, it is
23 necessary to dismiss Landreth's conversion claim against the United States. *Carlson v. Johnson*,
24 No. C06-146JLR, 2006 WL 995265, at *1 (W.D. Wash. Apr. 12, 2006) (*citing Meridian Int'l*
25 *Logistics, Inc. v. United States*, 939 F.2d 740, 743 (9th Cir.1991)).

26 ¹⁰ To the extent that Landreth is alleging a claim for damages under the 1855 Treaty of Olympia, that claim was already
27 rejected by the U.S. Court of Appeals for the Federal Circuit in *Landreth v. United States*, 797 F.App'x 521, 524
(Fed. Cir. 2020), and he is bound by that judgment. No waiver of sovereign immunity provides for its assertion in this
28 Court.

1 IV. LANDRETH HAS NOT ALLEGED A CLAIM WITHIN THE SUBJECT MATTER
2 JURISDICTION OF THE COURT UNDER THE ADMINISTRATIVE
3 PROCEDURE ACT

4 Landreth does not mention the Administrative Procedure Act (APA) in his complaint. While
5 the APA does not provide a waiver of sovereign immunity for monetary relief, it does sometimes
6 afford subject matter jurisdiction to review the legality of *actions* taken by federal agencies within
7 the coverage of the applicable statute of limitations. *See* 5 U.S.C. §§ 701-706 *et seq*; *and see*
8 *Rattlesnake Coal. v. U.S. E.P.A.*, 509 F.3d 1095, 1104–05 (9th Cir. 2007) (“The APA applies to
9 waive sovereign immunity only after final agency action. 5 U.S.C. § 704.”).¹¹

10 Landreth does not allege that he has been adversely affected by any action taken by any
11 federal agency within the last six years. Indeed, the U.S. Court of Appeals for the Federal Circuit
12 observed in regard to Landreth’s complaint in the U.S. Court of Federal Claims that “every act
13 described in the complaint is alleged to have been committed by the Tribe, not by the United
14 States . . .” *Landreth v. United States*, 797 F. App’x 521, 523 (Fed. Cir. 2020). The very same is
15 true here.

16 Indeed, the only “wrongful” conduct of the United States alleged in the complaint is the
17 United States’ supposed failure to take some kind of action to restrain the QIN from violating
18 Landreth’s supposed rights. Dkt. # 1, p. 8, *ll.* 9-11. Importantly, in alleging that the United States
19 has acted wrongfully by failing to act to stop the QIN from taking actions that Landreth says he
20 complained about, Landreth’s complaint is devoid of any allegation that points to a mandatory,
21 nondiscretionary legal duty that the United States owes to Landreth to intervene on his behalf with
22 the QIN. Without such a showing, Landreth cannot demonstrate that his claim falls within the
23 sovereign immunity waiver provided by the APA. *Norton v. S. Utah Wilderness All.*, 542 U.S. 55,
24 63 (2004) ([“A] claim under [5 U.S.C.] § 706(1) can proceed only where a plaintiff asserts that an
25 agency failed to take a discrete agency action that it is required to take.”); *and see Gros Ventre Tribe*
26 *v. United States*, 469 F.3d 801, 814 (9th Cir. 2006).

27 ¹¹ The six year statute of limitations set forth in 28 U.S.C. § 2401(a) applies to actions brought under the APA. *Wind*
River Min. Corp. v. United States, 946 F.2d 710, 713 (9th Cir. 1991).

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In summary, nothing in Landreth’s complaint alleges a claim within the APA’s waiver of sovereign immunity.

V. LANDRETH’S MISCELLANEOUS MONETARY CLAIMS ARE WITHIN THE EXCLUSIVE JURISDICTION OF THE COURT OF FEDERAL CLAIMS

Landreth appears to be asserting a variety of miscellaneous claims for monetary relief, for which he seeks monetary relief of \$250,000. Lacking any other identifiable statutory waiver of sovereign immunity, those claims are cognizable, if at all, under the exclusive subject matter jurisdiction of the U.S. Court of Federal Claims pursuant to the so-called Tucker Act. 28 U.S.C. § 1491. (It was presumably based on third-party advice that Landreth decided to pursue his ultimately unsuccessful lawsuit in the U.S Court of Federal Claims.)

Those monetary claims cannot be heard in this Court because the subject matter jurisdiction of the Court of Federal Claims is exclusive for claims that exceed \$10,000. *Lexington Ins. Co. v. United States*, No. 3:20-CV-05038-RBL, 2020 WL 3000777, at *3 (W.D. Wash. June 4, 2020).¹²

¹² Given that the United States Court of Federal Claims has already heard and dismissed Landreth’s claims in a decision affirmed by the U.S. Court of Appeals for the Federal Circuit, the United States submits that it would not be in the “interests of justice” to transfer these claims back to the Claims Court but that, instead, they should be dismissed. *See* 28 U.S.C. § 1406.

CONCLUSION

For the foregoing reasons, defendant United States of America respectfully requests that its motion be granted and that Plaintiff’s action be dismissed for lack of subject matter jurisdiction.

DATED this 24th day of June 2020.

Respectfully submitted,

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