

**IN THE COURT OF CLAIMS OF OHIO
STATE OF OHIO**

CAITLYN WAITT)	CASE NO.
)	
Plaintiff,)	JUDGE:
)	
-vs-)	<u>COMPLAINT</u>
)	
KENT STATE UNIVERSITY)	(Jury Demand Respectfully
c/o Todd Diacon, President)	Requested)
Executive Offices, 2 nd Floor Library)	
Kent State University)	
800 E. Summit St)	
Kent, Ohio 44240)	
)	
Defendants.)	

CLASS ACTION COMPLAINT

Now comes Plaintiff, Caitlyn Waitt (“Plaintiff”), by and through her undersigned counsel, brings this class action against Defendant, Kent State University (the “University” or “Defendant”), and alleges as follows based upon information and belief, except as to the allegations specifically pertaining to her, which are based on personal knowledge:

NATURE OF THE ACTION

1. This is a class action lawsuit on behalf of all persons who paid tuition and/or fees to attend Kent State University for an in-person, hands-on education for the Spring 2020 semester, Summer 2020 semester, and any future semester, and had their course work moved to online learning. Such persons paid all or part of the tuition for this semester that ranged from approximately \$4,633.43 to \$9,071.43 for undergraduate students, and ranged from approximately \$5,073.30 to \$10,167.30 for graduate students; housing fees of approximately \$5,853 (if they lived in University housing); meal plans ranging from approximately \$516 to \$2,624; and mandatory fees for the semester including the University’s “General Fee” and “Enrollment Fee” (collectively,

the “Mandatory Fees”). Kent State University has not refunded any amount of the tuition or any of the Mandatory Fees, even though it canceled all face-to-face, in-person classes on March 10, 2020; implementing online distance learning starting on March 16, 2020. The University has also not refunded any amount of the housing or dining fees for students who were unable to move out prior to March 30, 2020.

2. Because of the University’s response to the Coronavirus Disease 2019 (“COVID-19”) pandemic, on or about March 16, 2020, the University also stopped providing any of the services or facilities the Mandatory Fee was intended to cover.

3. The University’s failure to provide the services which tuition and the Mandatory Fees were intended to cover since approximately March 10, 2020 is a breach of contract and breach of the covenant of good faith and fair dealing between the University and Plaintiff and the members of the Class and is unjust.

4. The University only provided pro-rated refunds to students for housing and dining who vacated their campus housing on or before March 30, 2020. Those students who did not move out of University housing until after March 30 should also be entitled to a pro-rated refund.

5. In short, Plaintiff and the members of the Class have paid tuition for a first-rate education and an on-campus, in-person educational experience, with all the appurtenant benefits offered by a first-rate university, and were provided a materially deficient and insufficient alternative, which constitutes a breach of the contracts entered into by Plaintiff and the Class with the University.

6. As to the Mandatory Fees, Plaintiff and the Class have paid fees for services and facilities which are simply not being provided; this failure also constitutes a breach of the contracts entered into by Plaintiff and the Class with the University.

7. Plaintiff seeks, for herself and Class members, the University's disgorgement and return of the pro-rated portion of its tuition, housing, dining, and Mandatory Fees, proportionate to the amount of time that remained in the Spring Semester 2020, and the entirety of the Summer 2020, and any future semesters when the University closed and switched to online distance learning or, in the case of housing and dining, for any members of the Class that moved out of University housing after March 30, 2020, a pro-rated portion of the housing and dining fee for the days left in the semester after they moved out.

PARTIES

8. Plaintiff, Caitlyn Waitt, is a citizen of the Commonwealth of Pennsylvania. She paid to attend the Spring 2020 semester at Kent State University as an undergraduate student, and at all times relevant to the causes of action herein, was enrolled at the University. Plaintiff paid out of state tuition for the Spring 2020 semester to enable her to obtain a full and fulsome, in-person, on-campus education experience, and enable her to participate in the activities and to utilize the services covered by the Mandatory Fees that she paid. She has not been provided a pro-rated refund of the tuition or the Mandatory Fees she paid.

9. Defendant is a "State university" as defined by Ohio Rev. Code § 3345.011 and, pursuant to such statute, is a "body politic and corporate." Defendant is located and has its principal place of business in Kent, Ohio.

JURISDICTION AND VENUE

10. Plaintiff restates each and every allegation set forth in the preceding paragraphs of this Complaint as if fully rewritten.

11. This Court has jurisdiction over this dispute, and venue is proper in this Court, pursuant to R.C. 2743.02(A) and R.C. 2743.03(A).

FACTS

12. Plaintiff restates each and every allegation set forth in the preceding paragraphs of this Complaint as if fully rewritten.

13. Plaintiff and Class Members paid for themselves or for full-time students to attend Kent State University Spring 2020 semester, including tuition, housing, and dining (if they lived on campus), and the Mandatory Fees. The Spring 2020 semester at the University began on or about January 13, 2020. The Spring 2020 semester ended on or around May 6, 2020.

14. Class Members paid for themselves or for full-time students to attend Kent State University Summer 2020 semester, including tuition and Mandatory Fees. The Summer 2020 semester began on or about May 14, 2020 and is scheduled to end on or about August 12, 2020.

15. Tuition costs at the University for the Spring and Summer 2020 semesters for a full-time student were as follows:

For Undergraduates

OHIO RESIDENT RATES					NON-OHIO RESIDENT RATES					
Hours	Instructional Fee	General Fee ¹	Career Services Fee	Total	Hours	Instructional Fee	General Fee ¹	Career Services Fee	Non-OH Res. Surcharge ³	Total
1	\$421.84	\$78.06	\$6.21	\$506.11	1	\$421.84	\$78.06	\$6.21	\$370.00	\$876.11
2	\$843.68	\$156.12	\$12.42	\$1,012.22	2	\$843.68	\$156.12	\$12.42	\$740.00	\$1,752.22
3	\$1,265.52	\$234.18	\$18.63	\$1,518.33	3	\$1,265.52	\$234.18	\$18.63	\$1,110.00	\$2,628.33
4	\$1,687.36	\$312.24	\$24.84	\$2,024.44	4	\$1,687.36	\$312.24	\$24.84	\$1,480.00	\$3,504.44
5	\$2,109.20	\$390.30	\$31.05	\$2,530.55	5	\$2,109.20	\$390.30	\$31.05	\$1,850.00	\$4,380.55
6	\$2,531.04	\$468.36	\$37.26	\$3,036.66	6	\$2,531.04	\$468.36	\$37.26	\$2,220.00	\$5,256.66
7	\$2,952.88	\$546.42	\$43.47	\$3,542.77	7	\$2,952.88	\$546.42	\$43.47	\$2,590.00	\$6,132.77
8	\$3,374.72	\$624.48	\$49.68	\$4,048.88	8	\$3,374.72	\$624.48	\$49.68	\$2,960.00	\$7,008.88
9	\$3,796.56	\$702.54	\$55.89	\$4,554.99	9	\$3,796.56	\$702.54	\$55.89	\$3,330.00	\$7,884.99
10	\$4,218.40	\$780.60	\$62.10	\$5,061.10	10	\$4,218.40	\$780.60	\$62.10	\$3,700.00	\$8,761.10
11	\$4,612.83	\$843.75	\$68.31	\$5,524.89	11	\$4,612.83	\$843.75	\$68.31	\$4,070.00	\$9,594.89
12-18 ²	\$4,633.43	\$857.57	\$74.52	\$5,565.52	12-18 ²	\$4,633.43	\$857.57	\$74.52	\$4,438.00	\$10,003.52

For Graduates

OHIO RESIDENT RATES			
Hours	Instructional Fee	General Fee ¹	Total
1	\$462.30	\$73.70	\$536.00
2	\$924.60	\$147.40	\$1,072.00
3	\$1,386.90	\$221.10	\$1,608.00
4	\$1,849.20	\$294.80	\$2,144.00
5	\$2,311.50	\$368.50	\$2,680.00
6	\$2,773.80	\$442.20	\$3,216.00
7	\$3,236.10	\$515.90	\$3,752.00
8	\$3,698.40	\$589.60	\$4,288.00
9	\$4,160.70	\$663.30	\$4,824.00
10	\$4,623.00	\$737.00	\$5,360.00
12-18 ²	\$5,073.30	\$809.70	\$5,883.00

NON-OHIO RESIDENT RATES				
Hours	Instructional Fee	General Fee ¹	Non-OH Res. Surcharge ³	Total
1	\$462.30	\$73.70	\$463.00	\$999.00
2	\$924.60	\$147.40	\$926.00	\$1,998.00
3	\$1,386.90	\$221.10	\$1,389.00	\$2,997.00
4	\$1,849.20	\$294.80	\$1,852.00	\$3,996.00
5	\$2,311.50	\$368.50	\$2,315.00	\$4,995.00
6	\$2,773.80	\$442.20	\$2,778.00	\$5,994.00
7	\$3,236.10	\$515.90	\$3,241.00	\$6,993.00
8	\$3,698.40	\$589.60	\$3,704.00	\$7,992.00
9	\$4,160.70	\$663.30	\$4,167.00	\$8,991.00
10	\$4,623.00	\$737.00	\$4,630.00	\$9,990.00
12-18 ²	\$5,073.30	\$809.70	\$5,094.00	\$10,977.00

16. Plaintiff and the members of the Class paid all or part of the applicable tuition for the benefit of on-campus live interactive instruction and an on campus educational experience throughout the entire semester.

17. Housing at Kent State University for the Spring 2020 semester cost, on average, approximately \$5,853, and dining fees ranged from approximately \$516 to \$2,624. The members of the Class who lived on campus during the Spring 2020 semester paid the applicable cost for the benefit of on-campus housing and meals throughout the entire semester.

18. Plaintiff and the members of the Class paid the Mandatory Fees for the semester so they could benefit throughout the semester from the University’s facilities and in-person services, organizations, and recreation.

In Response to COVID-19, the University Closed Campus, Preventing Access to its Facilities, Services, Housing, and Dining, and Cancelled All In-Person Classes

19. On or about March 10, 2020, the University announced that it was ceasing all face to face in-person classes immediately, and that classes would resume on March 16, 2020, using remote online programs only. The University anticipated that face to face in-person classes would resume on April 13, 2020. This announcement strongly encouraged students not to return to campus following their extended Spring Break.

20. On or about March 10, 2020, the University cancelled all sports and events, discouraging large gatherings of people and students. The University also closed the Recreation and Wellness Center through April 13.

21. On or about March 13, 2020, the University extended remote online learning and cancelled all face to face in-person classes through the remainder of the Spring 2020 semester. The University subsequently extended remote online learning throughout the entire Summer 2020 semester.

22. In its March 13 announcement, the University informed students of the possibility of obtaining a refund for housing and dining if students were to vacate prior to March 30, 2020.

23. On or about March 16, 2020, the University announced that it was reducing on-campus operations, closing, and locking most of the facilities except those that it deemed necessary and essential.

24. On or about March 20, 2020, the University offered students the ability to switch from a traditional letter-grading system to a Pass/No Pass grading system.

25. In its March 20 announcement, the University postponed the in-person ceremony for the Spring 2020 graduates.

26. The University has not held any in-person classes since March 10, 2020. Classes that have continued since March 16, 2020 have only been offered in a remote online format with no in-person instruction or interaction.

27. In tacit acknowledgement that the online education system is substantially different and inadequate, the University allowed students to receive a “Pass/No Pass” grade rather than the traditional letter grading system.

28. On or about March 30, 2020, the University announced that refunds will be issued for parking, housing, and dining for those students who vacated by 5:00 p.m. on March 30. The refunds were to be issued by April 30, 2020.

The University’s Online Courses Are Subpar to In-Person Instruction, For Which Plaintiff and the Class Members Contracted with the University to Receive by Paying Tuition and Fees

29. Students attending the Kent State University’s Spring 2020 semester did not choose to attend an online institution of higher learning, but instead chose to enroll in the University’s in-person educational program.

30. On its website, the University markets its on-campus experience as a benefit of enrollment, touting extensive on-campus or neighboring shopping, dining, recreation, clubs and organizations, health and wellness facilities, and other amenities:

**Rising College Town Of Kent:
Discover Kent State**

From restaurants to live music to museums and more, downtown Kent is a huge part of the university experience.

There’s plenty to see and do within easy walking distance of the Kent Campus. Follow the Lefton Esplanade to experience a city renaissance of new restaurants and specialty shops that have brought a renewed energy to Kent’s already vibrant downtown.



400+ Student Clubs And Organizations



**18 On Campus Dining Locations,
Including One Really Awesome Food
Truck**

RECREATION AND WELLNESS

Staying healthy is how we stay gold. That's why there's a fitness level for everyone in the Kent State family. At the Student Recreation and Wellness Center (SRWC), you'll find aquatics programs; outdoor basketball, tennis and sand volleyball courts; indoor climbing walls and an indoor track; and a schedule packed with group exercise classes. And there's more

31. The online learning options being offered to the University's students are sub-par in practically every aspect as compared to what the educational experience afforded Plaintiff and the members of the Class once was. During the online portion of the semester, the University principally posted power point presentations and reading assignments online, and the University's students were left to self-learn the materials. Therefore, there was a lack of classroom interaction among teachers and students and among students themselves in multiple arenas that is instrumental in interpersonal skill development, bonding, safety and all important networking. Further, the online formats being used by Kent State University do not require memorization or the development of strong study skills given the absence of any possibility of being called on in class and the ability to consult books and other materials when taking exams.

32. Students have been deprived of the opportunity for collaborative learning and in-person dialogue, feedback, and critique.

33. Further, the ability to change to a Pass/No Pass system provides an educational leniency that does not require the motivation or discipline that would be otherwise required under the usual in-person letter grading system.

34. Access to facilities such as libraries, laboratories, computer labs, and study rooms, are also integral to a college education, and access to the myriad activities offered by campus life fosters social development and independence, and networking for future careers, all substantial and materials parts of the basis upon which Kent State University can charge the tuition it charges, are not being provided.

35. The University has not made any refund of any portion of the tuition Plaintiff and the members of the Class paid for the Spring 2020 or Summer 2020 semester for the period it moved to subpar on-line distance learning.

36. Nor has the University refunded any portion of the Mandatory Fees it collected from Plaintiff and the members of the Class for the Spring 2020 semester even though it closed or ceased operating the services and facilities for which the Mandatory Fees were intended to pay for.

37. There are also members of the Class who were not able to move out prior to March 30, 2020, who should be entitled to a pro-rated portion of housing and dining after moving out.

38. Plaintiff and the Class members are therefore entitled to a pro-rated refund of the tuition and Mandatory Fees they paid for the Spring 2020 semester, Summer 2020 semester, and any future semesters, and any students who were unable to move out until after March 30, 2020 are entitled to a pro-rated refund of the housing and dining fees paid for the Spring 2020 semester for the remaining days of that semester after they left the campus.

CLASS ACTION ALLEGATIONS

39. Plaintiff brings this case individually and, pursuant to Rule 23 of the Ohio Rules of Civil Procedure, on behalf of the class defined as all persons who paid tuition, housing and dining (for those who lived on-campus) and/or the Mandatory Fees for a student to be enrolled at Kent State University during the Spring 2020 semester, Summer 2020 semester, and any future semester and had their class(es) were moved to online learning (the “Class”).

40. This action has been brought and may properly be maintained on behalf of the Class proposed herein under the criteria of Rule 23 of the Ohio Rules of Civil Procedure.

41. The requirements of Rule 23(a)(1) have been met. The Class is so numerous that joinder of all members is impracticable. Although the precise number of Class members is unknown to Plaintiff, the University has reported that approximately 40,817 students were enrolled in the Spring 2020 semester. The number of Summer 2020 students and future semester enrollment is unknown at this time. The identity of all such students is known to the University and can be identified through the University’s records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

42. The requirements of Rule 23(a)(2) have been met. There are questions of law and fact common to the members of the Class including, without limitation:

- a. Whether the University accepted money from Plaintiff and the Class members in exchange for the promise to provide an in-person and on-campus live education, as well as certain facilities and services throughout the Spring 2020 semester;

- b. Whether Defendant breached its contracts with Plaintiff and the members of the Class by failing to provide them with an in-person and on-campus live education after March 10, 2020;
- c. Whether Defendant breached its contracts with Plaintiff and the members of the Class by failing to provide the services and facilities to which the Mandatory Fees pertained after mid-March 2020;
- d. Whether Defendant breached its contracts with members of the Class by failing to issue pro rata refunds of fees paid for University housing and dining for students who could not vacate prior to March 30, 2020;
- e. Whether Defendant intentionally interfered with the rights of the Plaintiff and the Class when it moved all in-person classes to a remote online format, cancelled all on-campus events, strongly encouraged students to stay away from campus, and discontinued services for which the Mandatory Fees were intended to pay, all while retaining the tuition, housing, dining and Mandatory Fees paid by Plaintiff and the Class; and
- f. The amount of damages and other relief to be awarded to Plaintiff and the Class members.

43. The requirements of Rule 23(a)(3) have been met. Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff and the other Class members each contracted with Defendant for it to provide an in-person and on-campus live education for the tuition they paid, on-campus housing and dining options (for those who lived on-campus), and the services and facilities for the Mandatory Fees that they paid, that the University stopped providing in mid-March.

44. The requirements of Rule 23(a)(4) have been met. Plaintiff is an adequate class representative because her interests do not conflict with the interests of the other Class members who she seeks to represent, Plaintiff has retained competent counsel who are experienced in complex class action litigation, and Plaintiff intends to prosecute this action vigorously. Class members' interests will be fairly and adequately protected by Plaintiff and her counsel.

45. Class certification of Plaintiff's claims is also appropriate pursuant to Rule 23(b)(3) because the above questions of law and fact that are common to the Class predominate over questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. The damages or financial detriment suffered by individual Class members are relatively small compared to the burden and expense of individual litigation of their claims against the University. It would, thus, be virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs committed against them. Furthermore, individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances.

FIRST CLAIM FOR RELIEF

BREACH OF CONTRACT (On Behalf of Plaintiff and the Class)

46. Plaintiff repeats and re-alleges the factual allegations above as if fully alleged herein.

47. Plaintiff brings this claim individually and on behalf of the members of the Class.

48. By paying the University tuition, housing and dining (if living on-campus), and the Mandatory Fees for the Spring 2020 semester, the University agreed to, among other things, provide an in-person and on-campus live education, University housing and dining options, as well as the services and facilities to which the Mandatory Fees they paid pertained throughout the Spring 2020 semester. As a result, Plaintiff and each member of the Class entered into binding contract with the University.

49. The University has failed to provide this contracted for in-person and on-campus live education, University housing and dining options, as well as the services and facilities to which the Mandatory Fees pertained throughout the Spring 2020 semester, yet has retained monies paid by Plaintiff and the Class for a live in-person education and access to these housing, dining, services and facilities during the entire Spring 2020 semester. Plaintiff and the members of the Class have therefore been denied the benefit of their bargain.

50. Plaintiff and the members of the Class have suffered damage as a direct and proximate result of the University's breach in the amount of the pro-rated portion of the tuition and Mandatory Fees they each paid during the remainder of the Spring 2020 semester, Summer 2020 semester, and any future semesters, as well as any unused housing and meal plans for those Class members who moved out after March 30, 2020.

51. The University should return such portions to Plaintiff and each Class Member.

SECOND CLAIM FOR RELIEF

UNJUST ENRICHMENT
(On Behalf of Plaintiff and the Class)

52. Plaintiff repeats and re-alleges the factual allegations above, as if fully alleged herein.

53. Plaintiff brings this claim individually and on behalf of the members of the Class in the alternative to the First Claim for Relief.

54. Plaintiff and members of the Class conferred a direct, monetary benefit on the University in the form of tuition, housing and dining (if living on-campus), and Mandatory Fees paid for the benefit of an in-person and on-campus live education, University housing and dining options, and the services and facilities to which the Mandatory Fees pertained. The payment of tuition and Mandatory Fees for the Spring 2020 semester were intended to provide these benefits to Plaintiff and the members of the Class throughout the Spring 2020 semester. Similarly, the payment of University housing and dining fees for the Spring 2020 semester conferred a benefit on the University that was intended to provide housing and dining for such students throughout the Spring 2020 semester.

55. The University has retained the full benefit of the tuition and Mandatory Fee payments by Plaintiff and the members of the Class for the Spring 2020 semester, Summer 2020 semester, and any future semesters, yet has failed to provide the quality of education and services and facilities for which tuition and the Mandatory Fees were paid, including those for an in-person and on-campus live education, and access to the University's services and facilities. In addition, the University has retained the full benefit of the housing and dining fees paid by those Class members who were unable to move out prior to March 30, 2020.

56. The University's retention of the portion of the tuition and Mandatory Fees during the period of time the University has been closed, and Plaintiff and the members of the Class have been denied an in-person and on-campus live education and access and the services and facilities for which the Mandatory Fees were paid, is unjust and inequitable under the circumstances.

Similarly, the University's retention of the portion of the value of housing and dining fees following the mandatory vacating of Class members is also unjust and inequitable.

57. Accordingly, the University should return the prorated portion of the tuition and Mandatory Fees that Plaintiff and the Class members each paid during remainder of the Spring 2020 semester, as well as any unused housing and meal plans for those who were unable to move out of University housing by March 30, 2020.

THIRD CLAIM FOR RELIEF

CONVERSION

(On Behalf of Plaintiff and the Class)

58. Plaintiff repeats and re-alleges the factual allegations above, as if fully alleged herein.

59. In the alternative to the First Claim For Relief, Plaintiff brings this claim individually and on behalf of the members of the Class.

60. Plaintiff and members of the Class have a right to the services, facilities, housing, dining, and face to face instruction that was supposed to be provided in exchange for their payments of tuition and Mandatory Fees to the Universities.

61. The University intentionally interfered with the rights of the Plaintiff and the Class when it moved all in-person classes to a remote online format, cancelled all on-campus events, strongly encouraged students to stay away from campus, and discontinued services for which the Mandatory Fees were intended to pay, all while retaining the tuition, housing, dining and Mandatory Fees paid by Plaintiff and the Class.

62. Class members demanded the pro-rata return of their tuition, housing, dining and Mandatory Fees for the period of time in the semester when the Universities switched to remote

online learning, encouraged students to stay off campus, and stopped providing the services for which the Mandatory Fees were intended to pay.

63. The University's retention of the tuition, housing, dining and Mandatory Fees paid by Plaintiff and the Class without providing the services for which they paid, deprived Plaintiff and Class of the benefits for which the tuition and Mandatory Fees were paid.

64. The University's interference with the services for which Plaintiff and the Class paid harmed Plaintiff and the Class in that the University have retained monies that rightfully belong to the Plaintiff and Class.

65. Plaintiff and the Class are entitled to the return of the pro-rated amounts of tuition and Mandatory Fees for the remainder of the Spring 2020 semester, Summer 2020 semester, and any future semesters, when in-person and on-campus live education, and access to the University's services and facilities were unavailable. Similarly, Plaintiff and the Class are entitled to the return of the pro-rated amount of housing dining if they moved out after March 30, 2020.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that judgment be entered in favor of Plaintiff and the Class against Defendant as follows:

- a. For an order certifying the Class under Rule 23 of the Ohio Rules of Civil Procedure and naming Plaintiff as representative of the Class and Plaintiff' attorneys as Class Counsel to represent the Class;
- b. For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- c. For compensatory damages in an amount to be determined by the trier of fact;

- d. For an order of restitution and all other forms of equitable monetary relief;
- e. Awarding Plaintiff' reasonable attorneys' fees, costs, and expenses;
- f. Awarding pre- and post-judgment interest on any amounts awarded;
and,
- g. Awarding such other and further relief as may be just and proper.

JURY DEMAND

In accordance with R.C. 2743.11 and Rule 38(B) of the Ohio Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on any and all issues in this action so triable.

Dated: June 17, 2020

Respectfully submitted,

THE LAW OFFICES OF SIMON & SIMON

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