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Attorneys for Plaintiff JOSE ZAVALA DIAZ,
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

JOSE ZAVALA DIAZ, on behalf of himself
and other aggrieved employees,

Plaintiff,

vs.

DIAMOND JIM'S CASINO; WIZARD
GAMING, INC.; and DOES 1 to 100, inclusive,

Defendants.

Case No.: BCV-22-101947

PAGA ACTION

**PLAINTIFF JOSE ZAVALA DIAZ'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTION 2698, et seq.**

COME NOW Plaintiff JOSE ZAVALA DIAZ ("Plaintiff"), who alleges and complains
against Defendants DIAMOND JIM'S CASINO; WIZARD GAMING, INC.; and DOES 1 to 100,
inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code § 2698, et seq.
("PAGA"). representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly, non-
exempt employees, in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendant's failure to pay wages for all
hours worked at the employees' minimum wage rate or overtime rate, failure to provide all legally

1 required and/or legally compliant meal and rest periods, failure to timely pay earned wages during
2 employment, failure to provide complete and accurate wage statements, and failure to timely pay
3 all unpaid wages following separation of employment. Plaintiff seeks on a representative basis,
4 following notice to the Labor and Workforce Development Agency, civil penalties, reasonable
5 attorney's fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff,
6 the State of California, and others aggrieved.

7 **II. JURISDICTION AND VENUE**

8 2. This Court has jurisdiction over Plaintiff and the Class Members' claims because
9 Plaintiff's lawsuit seeks damages in excess of \$25,000 and Defendants employed class members
10 and injuries occurred in locations in California including but not limited to Kern County, at 118
11 20th St. W., Rosamond, CA 93560.

12 **III. PARTIES**

13 3. Plaintiff brings this action as a representative of the Labor and Workforce
14 Development Agency on behalf of himself and other current and former employees subject to
15 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
16 filed include current, former and/or future employees of Defendants who worked, work, or will
17 work for Defendants as non-exempt hourly employees in California. At all times mentioned
18 herein, the currently named Plaintiff is and was domiciled and a resident and citizen of California
19 and was employed by Defendants in an hourly position at Defendants' location in Rosamond from
20 approximately November 2019 until his termination on or about September 3, 2021.

21 4. Plaintiff is informed and believes and thereon alleges that Defendant DIAMOND
22 JIM'S CASINO is authorized to do business within the State of California and is doing business in
23 the State of California and/or that Defendants DOES 1-25 are, and at all times relevant hereto
24 were persons acting on behalf of Defendant DIAMOND JIM'S CASINO in the establishment of,
25 or ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
26 DIAMOND JIM'S CASINO operates in Kern County and employed Plaintiff and aggrieved
27 employees in Kern County, including but not limited to, at 118 20th Street West, Rosamond, CA
28 93560.

1 5. Plaintiff is informed and believes and thereon alleges that Defendant WIZARD
2 GAMING, INC. is authorized to do business within the State of California and is doing business
3 in the State of California and/or that Defendants DOES 26-50 are, and at all times relevant hereto
4 were persons acting on behalf of Defendant WIZARD GAMING, INC. in the establishment of, or
5 ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
6 WIZARD GAMING, INC. operates in Kern County and employed Plaintiff and aggrieved
7 employees in Kern County, including but not limited to, at 118 20th Street West, Rosamond, CA
8 93560.

9 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
10 through 75 are corporations, or are other business entities or organizations of a nature unknown to
11 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
12 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
13 working conditions of employment of Plaintiff and aggrieved employees.

14 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 76
15 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
16 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
17 supervisor, independent contractor and/or employee of each defendant who violated or caused to
18 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
19 the Industrial Welfare Commission's wage orders regulating hours and days of work.

20 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
21 sues said defendants by said fictitious names, and will amend this complaint when the true names
22 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
23 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
24 named defendants is in some manner responsible for the events and allegations set forth in this
25 complaint.

26 9. Plaintiff makes the allegations in this complaint without any admission that, as to
27 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
28 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

3 **GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.**

4 **(Against all Defendants)**

5 10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

6 11. During the period beginning one-year period preceding the sending of the initial
7 notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204,
8 226, 226.7, 510, 512, 1194, 1197, 1198, and the applicable Wage Orders.

9 12. Specifically, Defendants have committed the following violations of California
10 Labor Code:

11 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
12 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
13 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
14 which includes all time that an employee is under control of the employer and all time the
15 employee is suffered and permitted to work. This includes the time an employee spends, either
16 directly or indirectly, performing services which inure to the benefit of the employer.

17 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
18 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
19 Wage Orders.

20 15. In this case, Plaintiff and other current and former aggrieved California-based
21 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
22 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
23 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
24 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
25 not limited to, “rounding” down or “shaving” Plaintiff’s and other current and former aggrieved,
26 California-based, hourly non-exempt employees’ total daily hours at the time of their clock-in and
27 clock-out to the nearest quarter of an hour, to the benefit of Defendants.

28 16. In addition, since the start of the COVID-19 Pandemic, Defendants maintained

1 policies and procedures requiring Plaintiff and other current and former aggrieved California-
2 based hourly non-exempt employees to arrive at least fifteen (15) minutes prior to the start of their
3 shifts, lineup and wait to undergo, and undergo medical screenings (e.g. temperature checks,
4 medical questionnaires, etc.) prior to being permitted to clock in for the start of their shifts.

5 17. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
6 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
7 control without paying wages for that time. This resulted in Plaintiff and other current and former
8 aggrieved California-based hourly non-exempt employees working time for which they were not
9 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
10 Wage Order.

11 18. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
12 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
13 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
14 which includes all time that an employee is under control of the employer and all time the
15 employee is suffered and permitted to work. This includes the time an employee spends, either
16 directly or indirectly, performing services that inure to the benefit of the employer.'

17 19. Labor Code sections 510 and 1194 require an employer to compensate employees a
18 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
19 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

20 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
21 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
22 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
23 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
24 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
seventh day of a workweek shall be compensated at the rate of no less than twice the
regular rate of pay of an employee.

25 Labor Code section 510.

26 20. In this case, Defendants failed to pay Plaintiff and other current and former
27 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
28 worked due to Defendants' policies, practices, and/or procedures including, but not limited, to

1 Defendants' policies, practices, and/or procedures including, but not limited to, "rounding" down
2 or "shaving" Plaintiff's and other current and former aggrieved, California-based, hourly non-
3 exempt employees' total daily hours at the time of their clock-in and clock-out to the nearest
4 quarter of an hour, to the benefit of Defendants.

5 21. In addition, since the start of the COVID-19 Pandemic, Defendants maintained
6 policies and procedures requiring Plaintiff and other current and former aggrieved California-
7 based hourly non-exempt employees to arrive at least fifteen (15) minutes prior to the start of their
8 shifts, lineup and wait to undergo, and undergo medical screenings (e.g. temperature checks,
9 medical questionnaires, etc.) prior to being permitted to clock in for the start of their shifts.

10 22. The foregoing policies, practices, and/or procedures resulted in time during each
11 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
12 employees were under the control of Defendants but were not compensated. To the extent that the
13 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
14 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
15 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
16 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
17 sections 510 and 1194 and the applicable Wage Order.

18 23. **Failure to pay wages to hourly non-exempt employees for workdays that**
19 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
20 current and former aggrieved California-based hourly non-exempt employees regularly worked
21 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

22 24. California law requires an employer to authorize or permit an employee an
23 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
24 all duties and the employer relinquishes control over the employee's activities prior to the
25 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 10 at §11; *Brinker*
26 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
27 employee for a work period of more than ten (10) hours per day without providing the employee
28 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh

1 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
2 shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal
3 period is only permitted when: (1) the nature of the work prevents an employee from being
4 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

5 25. If an employer fails to provide an employee a meal period in accordance with the
6 law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay
7 for each workday that a legally required and compliant meal period was not provided. Labor Code
8 section 226.7; Wage Order 10 at §11.

9 26. In this case, Defendants failed to authorize or permit legally required and compliant
10 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
11 exempt employees due to Defendants’ policies, practices, and/or procedures, including but not
12 limited to: (1) “rounding” down or “shaving” Plaintiff’s and other current and former aggrieved
13 California-based hourly non-exempt employees’ meal periods to the nearest quarter-of-an-hour,
14 causing Defendants to fail to provide uninterrupted, duty-free, thirty (30) minute meal periods; (2)
15 requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt
16 employees to remain on-duty and to remain on Defendants’ premises during meal periods; and (3)
17 failing to provide Plaintiff and other current and former aggrieved California-based hourly non-
18 exempt employees with a second uninterrupted, duty-free, thirty (30) minute meal period for work
19 shifts lasting over ten (ten) hours, as required by law.

20 27. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
21 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
22 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
23 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
24 employees did not receive legally required and compliant meal periods, in violation of Labor Code
25 section 226.7.

26 28. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
27 and other current and former aggrieved California-based hourly non-exempt employees not
28 receiving wages to compensate them for workdays during which Defendants did not provide them

1 with meal periods in compliance with California law.

2 29. **Failure to pay wages to hourly non-exempt employees for workdays that**
3 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
4 current and former aggrieved California-based hourly non-exempt employees regularly worked
5 shifts of more than three-and-a-half (3.5) hours.

6 30. California law requires every employer to authorize and permit an employee a rest
7 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
8 Code section 226.7; Wage Order 10 at §12. Under California law, “[e]mployees are entitled to 10
9 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
10 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
11 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
12 section 226.7; Wage Order 10 at §12. Rest periods, insofar as practicable, shall be in the middle of
13 each work period. Wage Order 10 at §12. Additionally, the rest period requirement “obligates
14 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
15 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
16 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

17 31. If the employer fails to authorize or permit a required rest period, the employer
18 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
19 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
20 Wage Order 10 at § 12.

21 32. In this case, Defendants failed to authorize or permit all legally required and
22 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
23 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
24 limited to: (1) requiring Plaintiff and other current and former aggrieved California-based hourly
25 non-exempt employees to remain on-duty and to remain on Defendants’ premises during rest
26 periods; and (2) failing to provide Plaintiff and other current and former aggrieved California-
27 based hourly non-exempt employees with a third uninterrupted, duty-free, ten (10) minute rest
28 period for work shifts lasting over ten (ten) hours, as required by law.

1 33. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
2 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
3 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
4 workday they did not receive legally required and compliant rest periods, , in violation of Labor
5 Code section 226.7.

6 34. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
7 and other current and former aggrieved California-based hourly non-exempt employees not
8 receiving wages to compensate them for workdays in which Defendants did not provide them with
9 rest periods in compliance with California law.

10 35. **Failure to timely pay earned wages during employment:** In California, wages
11 must be paid at least twice during each calendar month on days designated in advance by the
12 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
13 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
14 16th and the 26th day of that month and wages earned between the 16th and the last day,
15 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
16 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
17 paid within seven (7) calendar days following the close of the payroll period in which wages were
18 earned. Labor Code section 204(d).

19 36. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
20 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
21 exempt employees' earned wages (including minimum wages, overtime wages, meal period
22 premium wages and/or rest period premium wages), in violation of Labor Code section 204.
23 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
24 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
25 their earned wages within the applicable time frames outlined in Labor Code section 204.

26 37. **Failure to provide complete and accurate wage statements:** Labor Code section
27 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
28 employee his or her wages, the employer must "furnish each of his or her employees ... an

1 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
2 employee, except for any employee whose compensation is solely based on a salary and who is
3 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
4 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
5 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
6 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
7 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
8 name of the employee and his or her social security number, (8) the name and address of the legal
9 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
10 the corresponding number of hours worked at each hourly rate by the employee.”

11 38. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
12 and other current and former aggrieved California-based hourly non-exempt employees all wages
13 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
14 period premium wages) rendered Plaintiff’s and other current and former aggrieved California-
15 based hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code
16 section 226.

17 39. **Failure to pay employees all wages due at time of termination/resignation:** An
18 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
19 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
20 hours of resignation (Labor Code section 202).

21 40. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
22 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
23 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
24 and/or rest period premium wages), Defendants failed to pay those employees timely after each
25 employee’s termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

26 41. Defendants’ violations of Wage Order 10 constituted violations of Labor Code
27 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

28 42. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved

1 employee, on behalf of himself or herself and other current or former employees, to bring a civil
2 action to recover civil penalties against all Defendants pursuant to the procedures specified in
3 Labor Code section 2699.3.

4 43. Plaintiff has complied with the procedures for bringing suit specified in Labor
5 Code section 2699.3. On January 24, 2022, Plaintiff filed notice with LWDA and provided notice
6 to Defendants by certified mail which provided notice of the specific provisions of the Labor Code
7 alleged to have been violated, including the facts and theories to support the violations alleged.

8 44. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
9 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
10 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
11 parties notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate
12 Plaintiff's claims.

13 45. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
14 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,
15 512, 1194, 1197, 1198, during the Civil Penalty Period in the following amounts:

16 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, and
17 1198; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
18 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
19 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

20 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
21 for each employee for each pay period for the initial violation, and for each subsequent violation,
22 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
23 established by Labor Code section 226.3].

24 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
25 employee for each pay period for the initial violation, and for each subsequent violation, one
26 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
27 established by Labor Code section 558] and any unpaid wages.

28 d. For violations of Labor Code section 1194 and 1197, one hundred dollars

1 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
2 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
3 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

4 46. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
5 reasonable attorney's fees and costs in connection with his claims for civil penalties

6 **PRAYER FOR RELIEF**

7 **WHEREFORE, PLAINTIFF, ON HIS BEHALF AND ON OTHER AGGRIEVED PRAYS**
8 **AS FOLLOWS:**

9 **ON THE FIRST CAUSE OF ACTION:**

10 1. That the Defendants be found to have violated the provisions of the Labor Code
11 and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

12 2. For any and all legally applicable penalties during the relevant statute of limitations
13 subject to any permissible tolling, including but not limited to that recoverable under California
14 Labor Code, including but not limited to sections 2699(f).

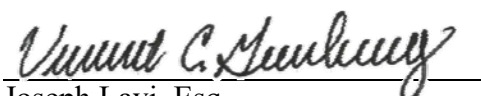
15 3. For attorneys' fees and costs of suit, including but not limited to that recoverable
16 under California Labor Code section 2699(g); and,

17 4. For such and other further relief, in law and/or equity, as the Court deems just or
18 appropriate

19
20 Dated: August 2, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

21
22 By:



Joseph Lavi, Esq.
Vincent C. Granberry, Esq.

23 William Tran, Esq.
24 Attorneys for Plaintiff

25 JOSE ZAVALA DIAZ

26 on behalf of himself and current and former
27 aggrieved employees
28