STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

JOHN LINDEMAN,

Plaintiff/Counter-Defendant,

v

ANGSTROM TUBULAR SOLUTIONS,
Defendant/Counter-Plaintiff,

Case No. 23-198745-CB
Hon. Victoria Valentine

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OPINION AND ORDER
REGARDING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(8) & (C)(10)
AND DEFENDANT'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(8) & (C)(10)

At a session of said Court held on
The 9th day of April 2024 in the
County of Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter comes before the Court on the parties' cross-motions for summary disposition under MCR 2.116(C)(8) and (C)(10). This Court has reviewed the pleadings, as well as each motion and response and Defendant's Reply Brief. Plaintiff chose not to file an optional reply brief. Oral argument was held on the motions on March 13, 2024.

I.

STATEMENT OF FACTS

Procedural History

Plaintiff's Complaint alleges breach of contract. Defendant filed a Counterclaim alleging Breach of Contract (Count I), Breach of Fiduciary Duty (Count II), and Unjust Enrichment (Count III). Plaintiff seeks dismissal of Counts I-III of Defendant's Counterclaim under MCR 2.116(C)(8) and (10) and seeks judgment in its favor under MCR 2.116(I)(2). Defendant, through its own Motion for Summary Disposition, seeks dismissal of Plaintiff's Complaint under MCR 2.116(C)(8) and (10). Defendant also seeks summary disposition in its favor on its Counterclaim under MCR 2.116(C)(10).

History of the Parties

The instant dispute arises out of an employment contract. Defendant hired Plaintiff via letter agreement dated March 16, 2021 and accepted by Plaintiff on March 17, 2021, as the Plant Manager for Defendant's Ortonville, Michigan, facility. [Defendant's Motion, p 3; Exh 1]. The letter agreement offer (the "Agreement") provided:

> Listed below are the particulars of our offer:
> Your base salary will be ($120,000 per year)
> You are eligible for an annual yearend bonus of from 10% and up to 50% of your base salary depending upon your personal performance as per below schedule:
> o 10% of Base Salary: ebitda-capex > 12%
> o 15% of Base Salary: ebitda-capex > 15%
> o 25% of Base Salary: ebitda-capex > 20%
> o Under all above stated schedules, customers score cards should stay Green.
> You will be eligible to participate in the Angstrom Automotive Group Health Benefits and 401(K) plan per company current policies. Current program matches 100% of each contributed dollar of the first 3% of eligible pay and 50% of each dollar between 3% and 5% of eligible pay. These programs are subject to change per company discretion.
> You will be eligible for three (3) weeks of vacation per year on accrual basis.

[Defendant's Motion, Exh 1].

As part of Plaintiff's compensation package, he had the opportunity to earn an annual bonus based on the profitability of the facility he managed and customer satisfaction. The profitability of the facility was measured by the earnings before interest, taxes, depreciation, and amortization, less the CAPEX, or Capital Expenditures, known as EBITDA (the "Sales Margin"). *Id.* If the Sales Margin was above certain thresholds, Plaintiff was eligible to receive a percentage of his base salary as a bonus. *Id.* The Agreement also contained the following language: "[u]nder all above stated schedules, customers score cards should stay Green." *Id.* On the above, the parties seemingly agree, however, on the following—which the Court attempts to organize chronologically—they do not.

Plaintiff's Raise

On August 9, 2021, Plaintiff's annual salary increased from $120,000 to $140,000, effective July 26, 2021 (Defendant's Motion, p 7; Plaintiff's Resp, Exh P). Defendant alleges that the additional pay was in exchange for Plaintiff taking on additional responsibility of managing a second facility in North Carolina (Defendant's Motion, p 7; Defendant's Motion, Exh 2, p 29; Defendant's Motion, Exh 3, pp 52-53). Plaintiff maintains that the raise was not conditioned on anything and had "[n]othing to do with Enforge" (Plaintiff's Response, p 4).

Plaintiff's involvement with the second plant lasted only a short time. In fact, only four days after his salary was officially increased, Defendant announced a new Plant Manager for the second plant (Plaintiff's Response, Exh Q). Defendant now contends that Plaintiff was overpaid because his salary should have returned to $120,000 when he stopped working at the second plant. Defendant contends that continuing to pay the increased salary was a mistake (Defendant's Motion, p 7). Defendant's only evidence regarding the raise is its own agent's testimony. However, Plaintiff presents separate emails from October and December 2022 between Defendant's

executives that show Defendant believed Plaintiff's salary to be $140,000 annually (Plaintiff's Response, Exh D and Exh J). Ultimately, Plaintiff was paid at the higher rate of $140,000 per year, from July 26, 2021, until his resignation in early 2023.

Bonus Eligibility

As stated above, the Agreement sets forth the ways in which Plaintiff could achieve an annual bonus.

Sales Margin (EBITDA)

Defendant maintains that Plaintiff's plant never hit the minimum Sales Margin required to become eligible for a bonus in either 2021 or 2022 (Defendant's Motion, p 5). Defendant supports this position with only its agent's testimony that the Sales Margin for 2021 was 5.96% (well below the minimum 12% required to become bonus eligible) and the Sales Margin for 2022 was lower than Plaintiff alleges. For 2022, Defendant does not specify what number should be used for the Sales Margin (Defendant's Motion, pp 5-6), and provides no documentary evidence to support the claim.

Plaintiff maintains that the Sales Margin for 2021 was 17.5% (Plaintiff's Response, p 5; Plaintiff's Response, Exh F], and the Sales Margin for 2022 was "greater than 20%." Plaintiff supports his position with the company's own financial documents [Plaintiff's Response, p 6; Plaintiff's Response, Exh I]. The Court acknowledges that Defendant repeatedly argued that the financial documents Plaintiff presents are not accurate because they were not yet finalized. But Defendant never produced any other financial statements and did not support their arguments with any documentary evidence.

Customer Scorecards

During the relevant period, Defendant's customer was General Motors ("GM"), "GM rates suppliers using a color coded score card . . . that reflects the supplier's performance in various areas as either 'green,' 'yellow,' or 'red'" [Defendant's Motion, p 2].

Defendant argues that Plaintiff's bonus eligibility for any given year was subject to two pre-conditions: (1) hitting a certain Sales Margin for that year (discussed above); and (2) maintaining a "green" customer scorecard for the same year (*Id.* at 3). Defendant argues that GM's scorecard for each year contained areas that were not green, so Plaintiff was not eligible for a bonus in either year. Defendant states that "[w]hether Plaintiff failed to achieve green scores in one category or three, the Agreement is clear: all score cards must be green" (Defendant's Motion, pp 4-5 (citations omitted)). However, the language in the Agreement does not speak to every scorecard, or any particular number of scorecards. It simply states: "customers score cards should stay Green."

Amendment/Waiver

The parties also contest whether Defendant can enforce the bonus requirement in the Agreement that the "customer[] score cards should stay Green." Plaintiff points to a conversation he had with Rajneesh Banga ("Mr. Banga"), who originally interviewed and hired Plaintiff, in which Plaintiff expressed concerns about the scorecard requirement (Plaintiff's Response, pp 3-4). As described above, the scorecards contain various categories or metrics, one of those metrics relates to financial reporting. *Id.* at 4. Plaintiff argues that this category was not green because the corporate office was required to submit financial data and reports which was not happening. *Id.* Plaintiff argues that he was responsible for plant level performance only. Plaintiff alleges that he grew concerned that his ability to earn a bonus would be jeopardized by Defendant's refusal to

comply with the customer's financial reporting requirements—a decision outside of his control. *Id.* Plaintiff maintains that he voiced his concern to Mr. Banga, that Defendant's action would preclude Plaintiff from receiving a bonus. *Id.* Mr. Banga allegedly responded to Plaintiff's concerns by saying, "don't worry about the scorecards, keep doing what we're doing." Plaintiff maintains that based on this conversation he "understood that the scorecards were no longer a consideration for his bonus eligibility." Plaintiff further alleges that none of Defendant's representatives ever mentioned scorecards, at least as they related to his bonus eligibility, to him again after this conversation. *Id.* Defendant denies that the conversation amounts to waiver of the requirement and points to Plaintiff's deposition testimony in which he admits that he was never presented with a writing that reflected that the scorecard requirement no longer applied. [Defendant's Motion, p 6; Defendant's Motion, Exh 7, p 23]. Neither party specifies when this alleged conversation occurred.

2022 Bonus

In December 2022, before year-end financials were complete, Plaintiff received an advanced bonus for that same year (Defendant's Motion, p 6). Defendant describes this as an "advance on [a] potential bonus to be earned," essentially a "placeholder" Plaintiff would only be able to keep if the scorecards were green for all of 2022. *Id.* at 6-7. Plaintiff maintains that none of Defendant's representatives ever suggested that this bonus was conditional (Plaintiff's Response, p 6). Plaintiff further maintains that he was underpaid, as the Sales Margin for 2022 was greater than 20%, high enough to entitle him to 25% of his base pay. *Id.*

Vacation Accrual

The Agreement provides that Plaintiff "will be eligible for three (3) weeks of vacation per year on accrual basis" (Defendant's Motion, Exh 1). In early January 2023, shortly before Plaintiff

resigned, he requested to take two weeks of vacation (Plaintiff's Motion, p 4; Plaintiff's Motion, Exh C; Defendant's Motion, Exh 21). Plaintiff received written permission to take one week of vacation (Plaintiff's Response, p 17; Plaintiff's Response, Exh C, p 94). Defendant claims that Plaintiff took two weeks off (Defendant's Response, p 9). Defendant further claims that at the time he requested the vacation, Plaintiff had only accrued 0.0576 weeks' worth of vacation (Defendant's Response, pp 9-10), but provides no documents to support the contention or explanation as to how the time was calculated. Defendant maintains that Plaintiff essentially "borrowed" from his unaccrued vacation time, and—as he left Defendant's employ before he had worked long enough to accrue vacation time to make up the days he had already used—he now owes Defendant for the "borrowed," unaccrued vacation days that he took. Plaintiff maintains that he took only one week off, as was approved and that he was told that he could take his vacation any time he wanted (Plaintiff's Response, p 17). Plaintiff further maintains that he was "never told that his taking vacation time was contingent on him remaining employed, or on anything." *Id.*

Ultimately, Plaintiff maintains that he is owed a bonus for 2021 ($21,000) and the unpaid portion of his bonus for 2022 ($17,000) and seeks judgment for $38,000. Defendant insists that Plaintiff is not owed any further compensation. Rather, Defendant maintains that Plaintiff must return the difference of the higher salary they he was allegedly overpaid after he abandoned his effort to manage the second facility (more than $25,000), return the "advance" he was paid in December 2022 ($18,000), and return the vacation-pay he received for vacation days he took without accruing sufficient time and which he did not replenish before resigning (more than $5,000).

II.
STANDARDS OF REVIEW

MCR 2.116(C)(8)

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc,* 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp*, 182 Mich App 758 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf,* 494 Mich 595, 603 (2013); *Parkhurst Homes, Inc* v *McLaughlin*, 187 Mich App 357 (1991). Exhibits attached to pleadings may be considered under MCR 2.116(C)(8) because they are part of the pleadings pursuant to MCR 2.113(C). *Id.* at 163. Matters of public record may also be considered. MCR 2.113(C)(1)(a). See also *Dalley v Dykema Gossett,* 287 Mich App 296, 301 n 1 (2010) (court documents are matters of public record that may be considered on a motion under MCR 2.116[C][8]).

"All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119 (1999); *Wade v Dep't of Corrections*, 439 Mich 158, 162 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes*, 187 Mich App 357; *Spiek v Dept of Transportation*, 456 Mich 331, 337 (1998).

"[T]he mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395 (1994).

MCR 2.116(C)(10)

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. See, e.g., MCR 2.116(G)(3)(b); *Quinto v Cross & Peters Co*, 451 Mich 358, 362 (1996). Accordingly, "[i]n evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden v Rozwood,* 461 Mich 109, 119-120 (1999); MCR 2.116(C)(10); MCR 2.116(G)(4); *Quinto*, 451 Mich at 358. The moving party "must specifically identify the issues" as to which it "believes there is no genuine issue" of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4).

Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Quinto*, 451 Mich at 361. If the moving party properly supports its motion, the burden "then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id.* at 362. If the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4). See also *Meyer v City of Center Line*, 242 Mich App 560, 575 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116[C][10]).

In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. A reviewing court may not employ a standard citing mere possibility or promise in granting or denying the motion, *Maiden*, 461 Mich at 121-120 (citations omitted), and may not weigh credibility or resolve a material factual dispute in deciding the motion. *Skinner v*

Square D Co, 445 Mich 153, 161 (1994). Rather, summary disposition pursuant to MCR 2.116(C)(10) is appropriate if, and only if, the evidence, viewed most favorably to the non-moving party fails to establish any genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362, citing MCR 2.116(C)(10) and (G)(4); *Maiden*, 461 Mich at 119-120 (1999). A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160 (2019) (citation omitted). Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362-363.

Summary disposition under MCR 2.116(I)(2) may be granted "if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law." *Washurn v Michailoff*, 240 Mich App 669, 672 (2000). Relief under MCR 2.116(I)(2) is not available when a response exceeds the scope of the moving party's motion and is, therefore, not responsive to the motion. *Church Mut Ins Co v Consumers Energy Co*, unpublished per curiam opinion of the Court of Appeals, issued Oct 30, 2003 (Docket No. 240571), p 3.

III.
PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION AGAINST DEFENDANT'S COUNTERCLAIMS

Defendant's Breach of Contract Claim

Plaintiff seeks summary disposition against Defendant's counterclaim for Breach of Contract (Count 1) under MCR 2.116(C)(10). Plaintiff first argues that summary disposition is proper because one of the Defendant's representatives "testified that there were no such breaches

[of contract] by Plaintiff . . . .” [Plaintiff’s Motion, p 4]. However, this is a conclusion of law, and alone is insufficient to warrant summary disposition under MCR 2.116(C)(10).

Plaintiff, as the moving party bears the burden to establish that there remains “no genuine issue[s] as to any material fact. MCR 2.116(C)(10). However, from the record before the Court, there are factual disagreements over how the parties calculate EBITDA to arrive at the Sales Margin, how the scorecard requirement operated, whether the scorecard requirement was amended or waived, whether the salary raise was conditional, and how much vacation Plaintiff did or did not take. This Court cannot determine the facts of this matter without weighing credibility, which is not permitted on summary disposition. *Skinner v Square D Co*, 445 Mich 153, 161 (1994) (Instructing that trial courts may not weigh credibility or resolve material factual disputes in deciding a motion under MCR 2.116(C)(10)).

Plaintiff requests this Court limit Defendant’s ability to recover the allegedly overpaid salary to the six (6) month period set forth by MCL 408.477(4). But the provision Plaintiff relies on relates to deducting overpayments directly from an employee’s wages. MCL 408.477(4) (emphasis added). The statute does not apply in this case because Defendant no longer employs Plaintiff and does not have the ability to deduct the overpayment from Plaintiff’s wages. Defendant argued this made the provision inapplicable. Plaintiff made no attempt to respond to that argument. Accordingly, Plaintiff’s request to limit the damages to six months is denied.

Because there are genuine issues of material facts, summary disposition of the breach of contract claims is not warranted under MCR 2.116(C)(10).

Defendant moves through its response for the Court to grant summary disposition in Defendant’s favor pursuant to MCR 2.116(I)(2) on its breach of contract claim. However, because

there are genuine issues of material fact, Defendant's request for judgment under MCR 2.116(I)(2) is denied.

Defendant's Breach of Fiduciary Duty Claims

Plaintiff seeks summary disposition as to Defendant's counterclaim for breach of fiduciary duty under MCR 2.116(C)(8). "A claim of breach of fiduciary duty 'sounds in tort'" *Highfield Beach at Lake Michigan v Sanderson*, 331 Mich App 636, 666 (2020). "To establish a claim for breach of fiduciary duty, a plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty, and (3) damages caused by the breach of duty." *Id.*

Defendant claims that Plaintiff "breached his fiduciary duty to [Defendant] by failing to report and return the unearned compensation, bonus, and vacation" [Defendant's Response, p 12]. Defendant argues broadly that Plaintiff's "failure to return these amounts constitutes a breach of his fiduciary duty." *Id.* at 13. Plaintiff argues that Defendant "is trying to convert a claim for breach of contract into a claim for breach of fiduciary duty (Plaintiff's Motion, p 6). Plaintiff maintains that a "party may not bring a tort claim where the legal duty breached arises out of a contracted promise." *Id.* In its response, Defendant failed to respond in any way to Plaintiff's argument. Defendant's response is merely a recitation of law relative to fiduciary duties, and it does not address the issue.

In *Rinaldo's Const Corp v Michigan Bell Telephone Co*, 454 Mich 65 (1997), our Supreme Court considered whether an action in tort may arise out of a contractual promise. In *Rinaldo*, the Court weighed whether an "action in tort may arise out of a contractual promise" *Rinaldo*, 454 Mich at 83.

The Court explained, "'[a]s a general rule, there must be some active negligence or misfeasance to support a tort … [t]here must be some breach of duty distinct from breach of

contract.'" *Id.* (citation omitted). The Court further explained, "the threshold inquiry is whether the plaintiff alleges violation of a legal duty separate and distinct from the contractual obligation." *Id.* at 84. "Or as Prosser puts it … 'if a relation exists which would give rise to a legal duty without enforcing the contract promise itself, the tort action will lie, otherwise not" *Id.* at 84 (citation omitted). Accordingly, a party seeking to sustain both tort and contract claims must allege "separate and distinct" legal duties to support both the tort and contract claims.

Here, Defendant's Counterclaim is simply its breach of contract claim repeated. Both the breach of contract claim and the breach of fiduciary duty claim are premised on Plaintiff retaining compensation not authorized by the Agreement. Accordingly, the Defendant's claim for breach of fiduciary duty does not allege a violation of a legal duty "separate and distinct" from the contractual obligation and therefore must fail. *Rinaldo*, 454 Mich at 84. Summary disposition is warranted under MCR 2.116(C)(8).

Defendant's Unjust Enrichment Claim

Plaintiff argues that Defendant's unjust enrichment claim must also fail because an express contract bars a claim of unjust enrichment (Plaintiff's Motion, p 7). Defendant argues that its unjust enrichment claim is argued as an "alternative theory of recovery" and is not barred (Defendant's Response, p 14). The court rules do all for alternative theories of recovery.

Plaintiff's position is that because a contract exists that provides for salary, bonuses, and vacation time, Defendant's unjust enrichment claim is barred. However, Defendant frames it more narrowly; arguing that because the Agreement contains no terms on overpayment or recovery of unearned benefits the express contract does not act to bar its claim of unjust enrichment "because the Agreement does not expressly cover recoupment of payments."

The Court of Appeals has instructed:

> The elements of a claim for unjust enrichment are: (1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to plaintiff because of the retention of the benefit by defendant. In such instances, the law operates to imply a contract in order to prevent unjust enrichment. However, a contract will be implied only if there is no express contract covering the same subject matter.

Barber v SMH (US), Inc., 202 Mich App 366, 375 (1993) (citations omitted).

Though they disagree on its terms, scope, and effect, neither party disputes the existence of a contract. However, as the Agreement does not address the subject matter of overpayment, or recovery of the same, or the use of unaccrued vacation, it is premature to dismiss Defendant's claim for unjust enrichment. In *Barber* and its progeny, the claims of unjust enrichment were barred where the contract covered the same subject matter as was raised by the claim of unjust enrichment. *See Barber*, 202 Mich 366; *Gass v Hadley*, unpublished per curiam opinion of the Court of Appeals, issued September 2, 2021 (Docket No. 3977187), p 11. Here, the Agreement is silent on the relevant subject matter of Defendant's unjust enrichment claim. Accordingly, summary judgment is not warranted under MCR 2.116(C)(8).

III.
DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

Defendant first moves for summary disposition against Plaintiff's claim for breach of contract under MCR 2.116(C)(8). A party asserting a breach of contract claim must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach. *Miller-Davis co v Ahrens Constr, Inc*, 495 Mich 161, 178 (2014). A plaintiff may recover in a breach of contract action when it proves that the defendant's breach was the proximate cause of the harm the plaintiff suffered. *Chelsea Inv Group LLC v City of Chelsea*, 288 Mich App 239, 254 (2010).

Defendant argues that the scorecard requirement is a clear and unambiguous condition precedent, and that summary disposition is proper under MCR 2.116(C)(8) because Plaintiff failed to meet the condition.

Defendant argues that the word "should" requires the condition be fulfilled. Accepting that as true, then to receive a bonus the "customers score cards should stay Green." Defendant argues that the Agreement is clear and unambiguous that all scorecards must be green to earn a bonus, preventing the claim. But the language does not state that every scorecard must be green, as Defendant argues, because the language used does not evidence a requirement for all customers score cards to be green. There is no use of the word "all," "shall," "required," or any other word typically associated with mandatory requirements.

This Court must view the facts in the light most favorable to the non-moving party in reviewing a motion under MCR 2.116(C)(8). In that view, Plaintiff has stated a claim for breach of contract. Accordingly, summary disposition under MCR 2.116(C)(8) is not warranted.

Defendant requests for summary disposition in its favor on Plaintiff's breach of contract claim under MCR 2.116(I)(2), and request for summary disposition of its own claims under MCR 2.116(C)(10) are denied for the reasons set forth in the substantive sections on those claims above.

IV. CONCLUSION

Plaintiff summary disposition as to Defendant's counterclaim for breach of fiduciary duty under MCR 2.116(C)(8) is GRANTED.

All other relief requested is DENIED.

It is so Ordered.

This is not a final order and does not close the case.

4/9/24