

FEDERAL COURT

BETWEEN:

SHAUN RICKARD and KARL HARRISON

Plaintiffs

AND

HIS MAJESTY THE KING, THE MINISTER OF TRANSPORTATION AND THE

ATTORNEY GENERAL OF CANADA

Defendants

FURTHER AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

October 4, 2024

Issued by: _____

Federal Court of Canada
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FURTHER AMENDED CLAIM

1. The Plaintiffs claim the following:
 - a. Constitutional damages pursuant to Section 24(1) of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”), in the amount of \$1,000,000, exclusive of interest and costs, for breach of the Plaintiffs’ Section 6, 7, 12 and 15 rights and freedoms as guaranteed by the *Charter* as a result of government decision-making and ~~action~~ conduct that was rooted in negligence, bad faith and willfully blind to the ~~lack~~ absence of scientific evidence or disconfirming scientific evidence regarding the role, and, in particular, the unknown efficacy, of Covid-19 vaccination in reducing the risk of Covid-19 transmission and infection within the transportation sector or more broadly in the community;
 - b. Costs of this action in accordance with the *Federal Court Rules*, SOR/98-106; and,
 - c. Such further and other relief as counsel may advise and this Honorable Court deem just.

The Parties

2. The Plaintiff, Shaun Rickard, is an individual residing in Pickering, Ontario. Mr. Rickard is currently a Canadian citizen.
3. At all material times, Mr. Rickard was a Permanent Resident in Canada since 1999 and was in the process of obtaining his Canadian citizenship. Mr. Rickard did not received one of Canada’s authorized Covid-19 vaccines due to his deeply held beliefs about his right to control what he puts into his body; his right to make informed medical decisions concerning medical procedures; and his concern regarding the yet unknown safety profile of the Covid-19 vaccines

in a context where the evidence and science concerning the Covid-19 vaccines was still emerging, being studied and investigated.

4. The Plaintiff, Karl Harrison, is an individual and Canadian citizen residing in Vancouver, British Columbia. At all material times, Mr. Harrison did not receive one of Canada's authorized Covid-19 vaccines due to his deeply held beliefs about his right to control what he puts into his body; his right to make informed medical decisions concerning medical procedures; and his concern regarding the yet unknown safety profile of the Covid-19 vaccines in a context where the evidence and science concerning the Covid-19 vaccines was still emerging, being studied and investigated.
5. Both Mr. Rickard and Mr. Harrison hold dual citizenship with Canada and the United Kingdom, where they were both born.
6. The Attorney General is named as a Defendant as ~~this claim~~ the impugned conduct directly involves governmental decisions and actions made and implemented by the Federal Minister of Transportation and the bureaucracy that supports this Ministry.

The Vaccine Travel Mandate's Impact on the Plaintiffs

7. At the time of the pandemic, Mr. Rickard had an ailing father who lived in Southampton, Hampshire, England. Mr. Rickard's father, now deceased, was suffering from advanced Alzheimer's. Mr. Rickard would visit his father as often as he could to comfort him and spend time together in anticipation of his imminent passing.
8. Similarly, Mr. Harrison's mother, aged 90 years old, lives alone in Blackpool, England. Mr. Harrison and his mother share a very close relationship and Mr. Harrison makes a point of visiting his mother multiple times a year and helps care for her, when visiting.

9. Additionally, Mr. Harrison operates several businesses out of England, including a travel company, MagicBreaks. Through his business ventures, Mr. Harrison employs around 150 people in London. The nature of these businesses is such that he frequently travels to the UK, Ireland, Spain and other European countries for meetings with senior management and commercial partners.

The Prime Minister's Campaign Promise to Implement a Vaccine Mandate in the 2021 General Elections

10. In August 2021, during the Canadian general election, Prime Minister Justin Trudeau made a campaign pledge that if re-elected he would mandate that Canadians must be vaccinated against Covid-19 in order to board a plane, train or boat, that is for all federally – regulated transportation services. ~~Indeed,~~ this campaign pledge formed an official part of the Liberal Government's re-election platform, *Forward for Everyone*.
11. The federal election was held on September 20, 2021, and Mr. Trudeau was re-elected as Canada's Prime Minister.

Mandatory Vaccination Formally Announced by the Prime Minister

12. Shortly after being re-elected as Prime Minister, on October 6, 2021, the Canadian Government announced it will require mandatory vaccination against Covid-19 for all travelers (a) departing from Canadian airports (b) boarding VIA and Rocky Mountaineer trains and (c) using federally regulated marine transportation (the “**Vaccine Mandates**”).
13. The Canadian Government introduced these unprecedented Vaccine Mandates under the pretext that vaccination would help to both limit the risk of spreading Covid-19 and prevent and mitigate against future Covid-19 outbreaks, however no scientific evidence was provided

to support that mandatory vaccination was, in fact, required to keep Canadians safe within the transportation system.

14. The Vaccine Mandates allowed Canadian travelers until November 30th, 2021, to comply with its requirements in order to access federally – regulated transportation services (i.e. to ensure that they had sufficient time to receive a the prescribed Covid-19 vaccine–vaccination regiment).

Implementation of the Vaccine Mandate through Interim Ministerial Orders

15. The Vaccine Mandates were implemented through a perpetual series of Interim Ministerial Orders (“**Vaccine MO**”) that were made pursuant to the *Aeronautics Act* (R.S.C., 1985, c. A-2) and the *Railway Safety Act* (R.S.C., 1985, c. 32 (4th Supp.)). The Vaccine MO’s were renewed repeatedly between November 2021 until they were suspended in June 2022.

16. Specifically, the Minister of Transportation relied on Section 4.71 (Aviation security regulations), 4.9 (Regulations respecting aeronautics) and 6.41(1) (Interim orders) of the *Aeronautics Act* as well as Section 4(4), 32.01 and 36 of the *Railway Safety Act* to enact and renew the Vaccine Mandates MOs.

17. The Plaintiffs plead, and the fact is, that neither of these legislations have been previously used to enforce or promote public health measures and objectives.

18. Section 4.71 of the *Aeronautics Act* deals with Aviation Security Regulations. It confers powers to implement regulations affecting the safety of air travel. Section 4.71(1), (2) provides as follows:

Aviation security regulations

4.71 (1) The Governor in Council may make regulations respecting aviation security.

Contents of regulations

(2) Without limiting the generality of subsection (1), regulations may be made under that subsection (a) respecting the safety of the public, passengers, crew members, aircraft and aerodromes and other aviation facilities;

19. Section 4.91(2) provides as follows:

Order must relate to safety

(2) The Minister may make an order under subsection (1) only if the Minister is of the opinion that the order is necessary for aviation safety or the safety of the public.

20. Section 6.41(1) of the *Aeronautics Act* concerns Interim Orders that may be made by the Minister. Its provides, in part, as follows:

Interim orders

6.41 (1) The Minister may make an interim order that contains any provision that may be contained in a regulation made under this Part

(a) to deal with a significant risk, direct or indirect, to aviation safety or the safety of the public;

21. The *Railway Safety Act* also contains several provisions intended to protect public safety in this mode of transport. Section 4(4) of the *Act* provides as follows:

Safe railway operations, etc.

(4) In determining, for the purposes of this Act, whether railway operations are safe railway operations, or whether an act or thing constitutes a threat to safe railway operations or enhances the safety of railway operations, regard shall be had not only to the safety of persons and property transported by railways but also to the safety of other persons and other property.

18. Section 32.01 of the *Railway Safety Act* enables the Minister to make Orders where there is a “threat to safe railway operations”:

Order — safe railway operations

32.01 If the Minister considers it necessary in the interests of safe railway operations, the Minister may, by order sent to a company, road authority or municipality, require the company, road authority or municipality to stop any activity that might constitute a threat to safe railway operations or to follow the procedures or take the corrective measures specified in the order, including constructing, altering, operating or maintaining a railway work.

22. Section 36(1) of the *Railway Safety Act* provides the Minister with the power to require a company to provide information necessary for Orders made under the *Act*:

Power to require information

36 (1) The Minister may order that a company provide, in the specified form and within the specified period, information or documents that he or she considers necessary for the purposes of ensuring compliance with this Act and with the regulations, rules, orders, standards and emergency directives made under this Act.

23. The Plaintiffs plead, and the fact is, that the Minister of Transportation has never before used these or other provisions within the above referenced legislation to require a medical procedure as a pre-condition to accessing federally regulated transportation services. Put differently, the Vaccine Mandates were truly unprecedented in Canadian history.

24. The first Vaccine MO, with respect to aviation, was implemented on October 30, 2022, officially titled, “Interim Order for Civil Aviation Respecting Requirements Related to Vaccination Due to COVID-19”. These Vaccine MOs were renewed by the Minister for a total of 79 times, until they were finally suspended on June 20, 2022.

25. In repealing the (most recent) Vaccine MO, the Minister declared that the “Interim Order is no longer required to deal with a significant risk, direct or indirect, to aviation safety or the safety of the public”. No particular evidence was provided to substantiate this significant change in government policy that justified the sudden suspension of the Vaccine MO’s.

~~The impugned MOs were enacted between October 2021 until June 20, 2022, after which the impugned MOs were suddenly “suspended”.~~

Vaccine Mandate's Impact on the Plaintiffs' Section 6, 7, 12 and 15 Charter Rights

26. The Vaccine Mandates, as implemented and renewed through the Vaccine MOs, violated several of the Plaintiffs' rights under the Charter, in a manner that was not demonstrably justifiable.
27. The Vaccine Mandates, as implemented through the Vaccine MOs, violated the Plaintiffs' Mr. Harrison's Section 6 Charter Mobility Rights. By making vaccination a precondition of travel, Mr. Harrison unable to board an airplane to leave Canada and fly to the United Kingdom. As such, Mr. Harrison's international movement was restricted such that it was not realistically possible for him to leave Canada for Europe or elsewhere, considering the modern realities of travel.
28. With respect to Mr. Rickard, his right to leave Canada to visit the United Kingdom, where he holds citizenship, is a breach of his rights under Section 19(2) of the Immigration and Refugee Protection Act (S.C.2001, c.27) and associated jurisprudence as well as a breach of his international mobility rights as contained in Article 12 of the International Convention on Civil and Political Rights. Mr. Rickard pleads, and the fact is, that Canada is a signatory to the International Convention on Civil and Political Rights and, therefore, must be observed and upheld by Canadian courts and adhered to by the Canadian Government.
29. The Plaintiffs plead that the effect of the Vaccine Mandates was such that it denied their right to visit the United Kingdom – despite having the right to do so as citizens of the United Kingdom.

- ~~30. The Vaccine Mandates, as implemented through the Vaccine MOs, violated the Plaintiff's-s' Section 7 right to liberty. By forcing these Plaintiffs to choose between undertaking an irreversible medical treatment as a precondition for any or subjecting themselves to a medical procedure they did not want and had concerns about in order to exercise their right to travel beyond Canada and within Canada, through federally regulated transportation, the Plaintiffs' decision-making concerning their personal autonomy was compromised undermining their dignity and independence as human beings in a democratic society and their independence.~~
31. The Plaintiffs further plead that their violation of Section 7 liberty rights was not in accordance with the principles of fundamental justice as the Vaccine Mandates were arbitrary and grossly disproportionate for reasons identified hereafter.
32. The Vaccine Mandates, as implemented through the Vaccines MOs, also violated Section 15 of the Charter which guarantees equality rights under Canadian law.
- ~~33. As a result of Vaccine Mandates, the Plaintiffs were unable to travel within Canada or outside of Canada until June 20, 2022 using federally regulated transportation.~~
- ~~34. During this time, both Plaintiffs were confronted with an option to either receive an irreversible medical treatment, against their will and conscience, or forego any travel beyond Canada or within Canada using federally regulated transportation.~~
35. The Plaintiffs plead that, on its face, the Vaccine MOs were discriminatory by segregating Canadians, including these Plaintiffs into identifiable categories of the "vaccinated" and "unvaccinated". This distinction was discriminatory as it prejudiced the rights of these Plaintiffs to access and make use of federally regulated transportation services putting them at a disadvantage and withholding a benefit that was available to vaccinated Canadians. Consequently, this perpetuated an unsubstantiated and prejudicial and scientifically

unsubstantiated stereotype or generalized perception that unvaccinated Canadians, like these Plaintiffs, posed some higher risk of Covid-19 transmission or infection within the transportation system.

36. The Plaintiffs plead, and the fact is, that, at all material times, there was no scientific and epidemiological evidence to suggest that unvaccinated Canadians possessed a heightened health safety profile than vaccinated Canadians.

37. As a result of their personal medical choice to forego vaccination against Covid-19, the Plaintiffs were effectively identified as belonging to a new, segregated class of Canadians who could not travel by plane or train. Consequently, for a period of seven (7) months, the Plaintiffs could not visit their respective parents, who reside in the United Kingdom, and who are both in poor health and aging. Additionally, Mr. Harrison could not travel to the UK to attend to his businesses.

38. The Plaintiffs further plead that the status of being vaccinated against Covid-19 is medically irreversible and, further, receiving a Covid-19 vaccine to travel would have significantly undermined their sincerely held sense of dignity, worth and personal autonomy while also requiring the Plaintiffs to disregard their genuine concerns about the vaccine's safety and efficacy.

39. The Plaintiffs further plead that the consequences for refusing a Covid-19 vaccine – namely being denied access to and use of federally regulated transportation to leave Canada and visit the United Kingdom – amounted to cruel and unusual punishment in breach of Section 12 of the *Charter*.

40. In particular (i) revoking mobility rights for unvaccinated Canadians is cruel and unusual treatment; (ii) absent Covid-19, the Plaintiffs would have every right to access and use

federally regulated transportation and, therefore, leave Canada (iii) the Government's decision to deny these Plaintiffs the ability to access transportation was degrading and dehumanizing and grossly disproportionate to what would have been appropriate in the circumstances having regard to the available scientific understanding of both the Covid-19 vaccine's efficacy and non-pharmacological alternatives to vaccination.

The Canadian Government knew the Vaccine Mandate, which is a Prima Facie Charter Breach, had no Empirical Scientific or Epidemiological Basis

The Canadian Government's Vaccine Mandate was Grossly Negligent and Implemented in Bad Faith

41. The Plaintiffs plead that the Vaccine Mandates were not implemented to protect public safety in the transportation system, but rather ~~implemented~~ to fulfil the Prime Minister's political pledge that was expressly made during the general election period – and formally incorporated into the campaign platform of the Liberal Party as a wedge issue at the time of the 2021 general election.
42. The Plaintiffs plead that the Vaccine Mandate, as a piece of policy, was unsupported by any cognizant scientific basis. Further, it was not recommended by Public Health Agency of Canada or by Health Canada.
43. Alternatively, Additionally, the Plaintiffs plead that the Federal Government restricted Canadians' access and use of the federally regulated transportation sector in order to enhance its own, desired public health objective of achieving mass vaccination among Canadians while being willfully blind or without any due regard as to: (a) the efficacy (or lack thereof) of this policy and (b) suitable alternatives that would not require Canadians to effectively undergo ~~an effectively compelled~~ what is still an experimental medical procedure, namely vaccination.

44. The Plaintiffs further plead that the decision, implementation and continuation of the Vaccine Mandates was made in a manner that was clearly wrong, grossly negligent and rooted in bad faith.

45. In particular, the Minister of Transportation and the Public Health Agency of Canada and supporting agencies and organizations failed and neglected to:

- a. Conduct any investigation, study, review, or analysis as to the risk and risk profile that Covid-19 specifically presented to the transportation sector, including having regard to (a) existing protective measures in place against Covid-19 during the relevant time period and (b) risk of Covid-19 transmission within the transportation system (i.e. airports, airplanes etc.) despite the obvious relevance this information would have in implementing a mandatory vaccine policy;
- b. Implement any ~~system, whatsoever,~~ mechanism by which to monitor and review the effectiveness of Covid-19 vaccination within the transportation sector on an on-going basis, or at all during the time in which the Vaccine Mandates were in place and renewed on a periodic basis;
- c. Investigate and ~~E~~evaluate the vaccine's purported protection against Covid-19 transmission;
- d. Investigate, ~~E~~evaluate and consider the protection against infection and transmission of Covid-19 that was afforded by alternative, Non-Pharmaceutical Interventions, including masking, negative PCR testing as well as natural immunity;
- e. Establish a cogent, intelligible and transparent method of analyzing the unique risk of infection and transmission for different Covid-19 variants during the time period that the Vaccine Mandates were ~~maintained~~ implemented and renewed;

- f. Establish *any* framework or criteria for decision-making with respect to extending the ~~Vaccine Mandates~~ Vaccine MOs for such time as it was in force and effect;
- g. Consider, study, monitor and understand the anticipated effects of the proposed Vaccine Mandates within a broader, epidemiological context to assess the risk of Covid-19 transmission and/or an outbreak of Covid-19 within the transportation sector as compared to the same risk within the community, generally.
- h. Ignored or trivialized the medical/scientific evidence as to the ineffectiveness (and therefore the utility and appropriateness) of the Covid-19 vaccines, namely waning immunity, on reducing or stopping the transmission of Covid-19.

46. Furthermore, the Plaintiffs state that the Public Health Agency of Canada never recommended or advised to the Minister of Transportation and Transport Canada to implement a vaccine mandate for travel. In fact, in the weeks and days leading to the Government's announcement of the Vaccine Mandate, members within the Government were actively seeking a public health *justification* to support ~~their~~ the political decision to implement a ~~the~~ Vaccine Mandate.

~~47. The Plaintiffs also state that~~ The Government was willfully blind, reckless, or and acted in bad faith in developing the scope of the Vaccine Mandate, for those reasons listed in paragraph 36 19(a). ~~In fact, the team within the Ministry of Transportation that was responsible for its policy development and implementation did not even include a medical doctor or an epidemiologist who might have advised as to the initial and continued scientific justification, or lack thereof, for various aspects of the Vaccine Mandates.~~

48. In fact, the Plaintiffs plead that the Government had multiple opportunity to assess and evaluate the efficacy of the Vaccine Mandates each time the Vaccine MO's were renewed, but failed to do so in order to aggressively promote an agenda to achieve mass vaccination among

Canadians despite no demonstrable evidence that this would improve public safety within the transportation system or more broadly within the local community.

49. Similarly, the Canadian Government was grossly negligent, willfully blind ~~or~~ and acted in bad faith in maintaining the Vaccine Mandate despite ~~knowing~~ having scientific evidence that the Covid-19 vaccine provided imperfect and time – limited protection against infection from Covid-19 and despite having little to no scientific certainty as to the vaccine’s impact on the transmission of Covid-19 between infected and non-infected individuals, especially in different settings within the transportation system.
50. The Government acted in bad faith by withholding information that the risk of Covid-19 vaccination were still unknown, yet publicly declaring them to be “safe”.
51. The Government acted in bad faith by neglecting to conduct periodic studies of vaccination efficacy and effectiveness (particularly within the transportation system) before it renewed each Vaccine MO.
52. In light of the foregoing, the Canadian Government, including the Minister of Transportation and the individuals involved with developing and implementing the Vaccine Mandates acted in a manner that was negligent and willfully blind with respect to relevant scientific and epidemiological facts and data known to them at that time. Accordingly, the decision to both enact the several impugned MOs and maintain these MOs until June 20, 2022, was an act of bad faith by the Defendant.

The Vaccine Mandates were not Justified by Section 1 of the Charter

53. The Plaintiffs plead that the Charter – infringing Vaccine Mandate is not saved by Section 1 of the Charter.
54. The Vaccine Mandates, as implemented through the Vaccine MOs do not meet the proportionality requirement under the Oakes test. The Plaintiffs plead those alternative measures – including, but not limited to, masking and recognizing natural immunity – would equally serve the Government’s stated objective of protect public safety within the transportation system. The singular requirement for vaccination to access transportation services was a grossly disproportionate and unnecessary means to meet the Government’s stated objective.
55. The Plaintiffs plead that the Vaccine Mandates also lacked a rational connection to the Government’s objective; the Government lacked the scientific evidence that Covid-19 vaccination meaningfully reduced the risk of transmitting Covid-19 in a transportation contact. Put differently, there was no causal link between Covid-19 vaccination and a reduction in the onward transmission of Covid-19.
56. The Plaintiffs plead that the Vaccine Mandates, as implemented through the Vaccine MOs, offended the “minimal impairment” requirement. The Government had alternative and equally effective measures to ensure public safety against Covid-19 within the transportation context, which it ignored. There were, in fact, less right-impairing means of achieving their objective in a real and substantial matter, including by recognizing natural immunity to Covid-19 infections and implementing non-pharmacological intervention such as testing, masking, and temperature checks all of which were, inexplicably, deemed inadequate.

57. The Plaintiffs plead the Government fundamentally failed to carefully tailor the Vaccine Mandates to its objectives and significantly and unnecessarily impaired the rights of these Plaintiffs beyond what was reasonably necessary having regard to the know science at the time concerning both the Covid-19 vaccines and the Covid-19 virus. Indeed, the Government showed a complete disregard in assessing credible alternatives to vaccinations that would minimally (or not at all) impair Charter rights while achieving reasonable safety within the transportation sector.

Section 24(1) Charter Damages are Just and Appropriate in the Circumstances

58. The Plaintiffs state that, in light of the foregoing, the manner in which the Defendant introduced and maintained the Vaccine Mandates through repeatedly renewing the Vaccine MOs notwithstanding the lack of scientific justification for doing so at each renewal, amounts to a clear disregard for the *Charter* rights and freedoms of these Plaintiffs and, indeed, of all Canadians.

59. The Government's strategic disregard for (a) disconfirming scientific evidence challenging the efficacy of Covid-19 vaccination together with the known waning and short-term efficacy of vaccination (b) lack of recommendation from public health about the need for vaccination as a pre-condition for travel (c) its own admission that the risks of the Covid-19 vaccination were yet unknown and little understood and (d) lack of intelligible criteria against which the decision to continue to discontinue the Vaccine MOs could be made and (e) the absence of any scientific studies that considered the efficacy of Covid-19 vaccine against each Covid-19 variant, highlight the fact that the decision to implement and maintain the Vaccine MOs was made in bad faith and in a grossly negligent manner.

60. Furthermore, the *Charter* – infringing Vaccine Mandates diminished public faith in the efficacy of the *Charter's* protection of fundamental rights and freedoms.

61. In light of the foregoing, an award of constitutional damages pursuant to Section 24(1) of the *Charter* is functionally justified in the circumstances. In particular, such an award would:

- a. compensate the Plaintiffs for their humiliation, indignity and inability to travel, at all, using federally regulated transportation in order to visit their ailing parents;
- b. vindicate their *Charter* rights and freedoms that were breached; and,
- c. deter similar, unjustifiable and politically-motivated policies which prima facie breach the *Charter* rights and freedoms of Canadians.

62. The Plaintiffs plead and rely upon the following:

- a. *Canadian Charter of Rights and Freedoms*, s. 6, 7, 12, 15, 25(1), Part 1 of the Constitution Act, 1982;
- b. *Immigration and Refugee Protection Act*, S.C. 2001, c. 27;
- c. Article 12 of the *International Convention on Civil and Political Rights*; and,
- d. *Federal Court Rules (SOR/98-106)*, Rules 75, 200, and 201.

63. The Plaintiff proposes that this action be tried in Toronto, Ontario at ~~Ottawa~~, Ontario.

~~November 28, 2023~~

~~June 3, 2024~~

October 4, 2024

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SOR/2021-150, s. 12