

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-9971

File: 20-612900; Reg: 22092298

7-ELEVEN, INC. and HARDIP SINGH,
dba 7-Eleven Store #17102F
5288 Francis Avenue
Chino, CA 91710,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Doris Hubel

Appeals Board Hearing: September 15, 2023
Sacramento, CA/Telephonic

ISSUED SEPTEMBER 19, 2023

Appearances: *Appellants:* Adam N. Koslin, of Solomon, Saltsman & Jamieson, as
counsel for 7-Eleven, Inc. and Hardip Singh, dba 7-Eleven Store
#17102F;

Respondent: Trisha Pal, as counsel for the Department of
Alcoholic Beverage Control.

OPINION

7-Eleven, Inc. and Hardip Singh, doing business as 7-Eleven Store #17102F
(appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹
suspending their license for ten days because their clerk sold an alcoholic beverage to a
police minor decoy, in violation of Business and Professions Code² section 25658(a).

¹ The decision of the Department, dated May 2, 2023, is set forth in the
appendix.

² All statutory references are to the Business and Professions Code unless
otherwise stated.

FACTS AND PROCEDURAL HISTORY

Appellants' off sale beer and wine was issued on January 17, 2020. There is no record of prior departmental discipline against the license.

On June 17, 2022, the Department filed a single-count accusation against appellants charging that, on October 22, 2021, appellants' clerk, Ashish Bhakti (the clerk), sold an alcoholic beverage to 18-year-old Jacob Lopez (the decoy). Although not noted in the accusation, the decoy was working for the Ontario Police Department (OPD) at the time.

At the administrative hearing held on January 25, 2023, documentary evidence was received, and testimony concerning the sale was presented by the decoy, OPD Officer Alejandro Gill,³ and appellant Hardip Singh.

Evidence established that OPD Corporal Acosta entered the licensed premises on October 22, 2021, and was followed shortly thereafter by the decoy. OPD Officer Gill entered immediately after the decoy. The decoy walked to the alcoholic beverage coolers and selected a can of Bud Light beer. He then walked to the sales counter and placed the beer can upon the counter.

The clerk scanned the Bud Light beer and asked the decoy for his identification, which the decoy handed him. The decoy handed the clerk his valid California driver's license, showing him to be 18 years old. The identification also had several indicators that the decoy was over the age of 21 years, such as a vertical orientation and a bold red strip which read, "AGE 21 IN 2024." (Exhibit 4.)

³ Although the decision refers to Officer Gill as "Officer Gil," we use the spelling from the reporter's transcript.

The clerk attempted to scan the decoy's identification and then handed the identification back to the decoy. The clerk then asked the decoy his age, to which the decoy replied truthfully that he was 18 years old. The clerk tapped the point-of-sale screen on his register and proceeded with the sale of alcohol to the decoy. After the decoy paid for the beer, he exited the premises. Officer Gill, who witnessed the sales transaction from approximately 15 to 20 feet away, exited the store after the decoy.

Officer Gill and the decoy re-entered the licensed premises and contacted the clerk. Officer Gill displayed his police badge and identified himself as a peace officer. Officer Gill informed the clerk of the sale to minor violation that he witnessed. The clerk acknowledged the sale to the decoy, and explained that he attempted to scan the decoy's identification but there was a malfunction with the point-of-sale system.

On March 7, 2023, the administrative law judge (ALJ) issued a proposed decision sustaining the count in the accusation and recommending a ten-day suspension of the license. Appellants filed a timely appeal contending that the Department has not proceeded in the manner required by law.

DISCUSSION

Appellants contend that the Department failed to proceed in the manner required by law. (Appellants' Opening Brief, pp. 6-7.) Specifically, appellants argue that the Department cannot impose discipline where it has not shown that such discipline is necessary to protect the public. (*Ibid.*) Appellants also claim that "[t]he blanket suspension imposed by the Decision targets the entire license rather than the one lax clerk identified" (*Id.* at p. 6.)

The Department argues in its Reply brief that the ten-day suspension is reasonable, and that appellants cannot escape responsibility by claiming that their

employee committed the violation. It is well-settled that licensees are responsible for the acts or omissions of their employees. (*Reimel v. Alcoholic Beverage Control Appeals Board* (1967) 252 Cal.App.2d 520, 522.)

The Board agrees with the Department that appellants' appeal lacks merit. The Department is empowered to discipline licensees for violations of law, and appellants have not cited any authority that the Department must affirmatively show that discipline is "necessary" to protect the public in each specific accusation. In fact, "both the California Supreme Court and [appellate courts] have held that a finding that a licensee has violated provisions of the Alcoholic Beverage Control Act is tantamount to a finding of injury to public welfare and morals." (*Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd.* (2005) 128 Cal.App.4th 1195, 1217 [27 Cal.Rptr.3d 766].)

The Board sees no error.

ORDER

The decision of the Department is affirmed.⁴

SUSAN A. BONILLA, CHAIR
 MEGAN McGUINNESS, MEMBER
 SHARLYNE PALACIO, MEMBER
 ALCOHOLIC BEVERAGE CONTROL
 APPEALS BOARD

⁴ This final order is filed in accordance with Business and Professions Code section 23088 and shall become effective 30 days following the date of the filing of this order as provided by section 23090.7.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code section 23090 et seq. Service on the Board pursuant to California Rules of Court (Rule 8.25) should be directed to: 400 R Street, Ste. 320, Sacramento, CA 95811 and/or electronically to: abcboard@abcappeals.ca.gov.

APPENDIX

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

**IN THE MATTER OF THE ACCUSATION
AGAINST:**

7-ELEVEN, INC. & HARDIP SINGH
7-ELEVEN STORE 17102F
5288 FRANCIS AVENUE
CHINO, CA 91710

OFF-SALE BEER AND WINE - LICENSE

Respondent(s)/Licensee(s)
Under the Alcoholic Beverage Control Act

RIVERSIDE DISTRICT OFFICE

File: 20-612900

Reg: 22092298

CERTIFICATE OF DECISION

It is hereby certified that, having reviewed the findings of fact, determination of issues, and recommendation in the attached proposed decision, the Department of Alcoholic Beverage Control adopted said proposed decision as its decision in the case on April 28, 2023. Pursuant to Government Code section 11519, this decision shall become effective 30 days after it is delivered or mailed.

Any party may petition for reconsideration of this decision. Pursuant to Government Code section 11521(a), the Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or if an earlier effective date is stated above, upon such earlier effective date of the decision.

Any appeal of this decision must be made in accordance with Business and Professions Code sections 23080-23089. The appeal must be filed within 40 calendar days from the date of the decision, unless the decision states it is to be "effective immediately" in which case an appeal must be filed within 10 calendar days after the date of the decision. Mail your written appeal to the Alcoholic Beverage Control Appeals Board, 400 R St, Suite 320, Sacramento, CA 95811. For further information, and detailed instructions on filing an appeal with the Alcoholic Beverage Control Appeals Board, see: <https://abcab.ca.gov> or call the Alcoholic Beverage Control Appeals Board at (916) 445-4005.

On or after June 12, 2023, a representative of the Department will contact you to arrange to pick up the license certificate.

Sacramento, California

Dated: May 2, 2023



Matthew D. Botting
General Counsel

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE ACCUSATION AGAINST:

7-Eleven, Inc. and Hardip Singh	}	File: 20-612900
Dbas: 7-Eleven Store 17102F	}	
5288 Francis Avenue	}	Reg.: 22092298
Chino, California 91710	}	
	}	License Type: 20
Respondents	}	
	}	Word Count: 8,164
	}	
	}	Kennedy Court Reporters
	}	Megan Mendoza, Court Reporter
	}	Fabian Schwin, Video Host
	}	
<u>Off-Sale Beer and Wine License</u>	}	<u>PROPOSED DECISION</u>

Administrative Law Judge D. Huebel, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter on January 25, 2023.

Erin Lovelace, attorney, represented the Department of Alcoholic Beverage Control (the Department).

Anna Huffman, attorney, represented Respondents, 7-Eleven, Inc. and Hardip Singh.

The Department seeks to discipline the Respondents' license on the grounds that, on or about October 22, 2021, the Respondents-Licensees' agent or employee, Ashish Bhakti, at said premises, sold, furnished, gave or caused to be sold, furnished or given, an alcoholic beverage, to-wit: Bud Light beer, to Jacob Lopez, an individual under the age of 21, in violation of Business and Professions Code section 25658(a).¹ (Exhibit 1.)

Oral evidence, documentary evidence, and evidence by oral stipulation on the record was received at the hearing. The matter was argued and submitted for decision on January 25, 2023.

FINDINGS OF FACT

1. The Department filed the accusation on or about June 17, 2022.

¹ All statutory references are to the Business and Professions Code unless otherwise noted.

2. The Department issued a type 20, off-sale beer and wine license to the Respondents for the above-described location on January 17, 2020 (the Licensed Premises).
3. There is no record of prior departmental discipline against the Respondents' license.
4. Jacob Lopez (hereinafter referred to as the decoy or decoy Lopez) was born on August 18, 2003. On October 22, 2021, he was 18 years old. On that date he served as a minor decoy in an operation conducted by the Ontario Police Department (hereinafter Ontario PD).
5. Decoy Lopez appeared and testified at the hearing. On October 22, 2021, he was 5'7" tall and weighed approximately 178 pounds. He wore a white t-shirt underneath a long-sleeved grey Nike sweater, black pants, and purple Nike shoes. His hair was in a low, buzz cut. (Exhibits 2 and 5.) His appearance at the hearing was similar, except that he wore a black t-shirt, blue jeans, and white shoes. His hair was longer and styled in a left comb-over. He was 5'9" tall and weighed 163 pounds. Decoy Lopez has a very youthful appearance, both in the photographs taken of him on the day of the operation and at the hearing.
6. On October 22, 2021, Ontario PD Corporal Acosta entered the Licensed Premises, followed shortly thereafter by decoy Lopez. Ontario PD Officer Gil entered immediately after the decoy. Corporal Acosta and Officer Gil both entered the Licensed Premises in a plain clothes capacity, posing as customers. Decoy Lopez walked to the alcoholic beverage coolers and selected a can of Bud Light beer. (Exhibit 3.) He then walked to the sales counter and placed the beer can upon the counter. A male clerk, who was later identified as Ashish Bhakti (hereinafter referred to as clerk Bhakti or the clerk), stood behind the sales counter and assisted the decoy. Clerk Bhakti scanned the Bud Light beer and asked the decoy for his identification (ID), which the decoy handed to him. Decoy Lopez had on his person his valid California Driver License, which has a vertical orientation (to indicate he is or may be under 21), depicts his correct date of birth and includes a bold, red stripe which reads, "AGE 21 IN 2024." (Exhibit 4.) Clerk Bhakti attempted to scan the ID along the point of sale (POS), and then handed the ID back to the decoy. Clerk Bhakti asked the decoy his age. Decoy Lopez truthfully replied that he was 18 years old. Clerk Bhakti tapped the POS screen and proceeded with the sale of alcohol to the decoy. Decoy Lopez gave \$10 to clerk Bhakti, who gave the decoy change. Decoy Lopez took the change, the Bud Light beer can and exited the premises. Officer Gil witnessed the sales transaction from approximately 15 to 20 feet away, with a clear, unobstructed direct line of sight of the clerk and decoy. Officer Gil exited the premises after the decoy.
7. Officer Gil and decoy Lopez re-entered the Licensed Premises. Officer Gil made contact with clerk Bhakti, displayed his police badge and identified himself as an officer

with the Chino PD. Officer Gil informed clerk Bhakti of the sale to minor violation that he witnessed. Clerk Bhakti acknowledged the sale of alcohol to the decoy. Officer Gil asked the clerk if he asked for the decoy's ID, to which clerk Bhakti said he did. Clerk Bhakti said he attempted to scan the decoy's ID on the POS and claimed there was a malfunction with the POS system, so he overrode the screen prompt and proceeded with the sale of alcohol.

8. Officer Gil asked decoy Lopez to identify the person who sold him the beer. Decoy Lopez pointed at clerk Bhakti and identified clerk Bhakti as the clerk who sold him the Bud Light beer. Decoy Lopez and clerk Bhakti were approximately three to five feet apart at the time of this identification. A photograph of decoy Lopez and clerk Bhakti was taken after the face-to-face identification, with the decoy holding the Bud Light beer can in his right hand and his California Driver License in his left hand, with clerk Bhakti standing to the decoy's left and looking in the direction of the items in the decoy's hands. (Exhibit 5.)

9. Officer Gil asked clerk Bhakti to scan the Bud Light beer can again through the cash register. Clerk Bhakti complied and a yellow POS screen prompt appeared. Officer Gil took a photograph of the screen prompt which read, "ID 30 AND UNDER. MUST BE 21 TO PURCHASE 1. PICTURE ON THE ID MUST MATCH THE CUSTOMER 2. SCAN OR SWIPE ID OR 3. BIRTHDATE IS ON OR BEFORE 10-22-00 PRESS MANUAL ENTER." There were three buttons at the bottom of the yellow screen prompt which read, "MANUAL ENTER," "VISUAL ID" and "EXIT." (Exhibit 6).

10. Clerk Bhakti did not appear at the hearing.

11. Decoy Lopez appeared his age at the time of the decoy operation, having a youthful appearance. Based on his overall appearance, i.e., his physical appearance, dress, poise, demeanor, maturity, and mannerisms shown at the hearing and in the photographs taken of him during the said decoy operation, as well as his appearance and conduct in front of clerk Bhakti at the Licensed Premises on October 22, 2021, decoy Lopez displayed the appearance which could generally be expected of a person under 21 years of age under the actual circumstances presented to the clerk. At the hearing, decoy Lopez appeared very youthful.

12. Hardip Singh appeared and testified at the hearing. Mr. Singh described himself as the franchisee of the Licensed Premises. He trains all the employees with 7-Eleven's University Come of Age Training which takes approximately two to three hours, covering approximately 20 to 30 topics. Age-restricted merchandise sales is included in the training. After completing the Come of Age training employees take a test, which they must pass. If they pass the test, they receive a certificate of completion. Mr. Singh maintains records of the training certificates. Prior to October 22, 2021, each employee

received this training upon being hired, including clerk Bhakti. The Respondents provided at the hearing a copy of five pages of their employee handbook, including the cover page, pages 3 and 4 of the table of contents, page 41 and the signature page. (Exhibits A1-A5.) Page 41 states that the policy on age-restricted sales, requires employees must check the ID of anyone who looks under 35 years of age. The employee must check the expiration date, verify that the picture on the ID matches the customer, and inspect the ID for signs of fraud. The policy states, “No Exception: If Customer is Under age/No ID, Expire ID, then DO NOT SELL AGE RESTRICTED ITEM, REFUSE THE SALE, OR YOU WILL BE IMMEDIATELY TERMIANTE [sic].” (Exhibit A4.)

13. Clerk Bhakti had been working for the Respondents for approximately one year prior to October 22, 2021. After selling alcohol to decoy Lopez clerk Bhakti was not terminated per Respondents’ policy. Instead, he received a week’s suspension and a written final warning on October 23, 2021, that if he sold alcohol to a minor again his employment would be terminated. (Exhibit A-6.) Clerk Bhakti had to complete the 7-Eleven University Come of Age Training again. Mr. Singh also sat with clerk Bhakti and conducted one-on-one training with him to see if he had any questions or if he did not understand anything, in which case he would be trained again. Mr. Singh has never seen the POS scanner malfunction, as clerk Bhakti claimed on October 22, 2021. The POS scanner has not since then malfunctioned either. The Respondents did not terminate clerk Bhakti because there was a shortage of employees due to the COVID-19 Pandemic. Mr. Singh was already working 16-to-18-hour shifts at the Licensed Premises, and felt he had no other choice but to bring clerk Bhakti back to work after his week suspension. The Licensed Premises is open 24 hours a day, seven days a week. The Respondents are required to have an employee work each shift during those 24 hours. If the Respondents do not have an employee working at the Licensed Premises, they would be in breach of their contract.

14. Mr. Singh said that prior to October 22, 2021, when an age-restricted product was scanned in the Respondents’ POS system, a yellow screen appeared providing the clerk with three options, to scan or swipe the ID in the POS, enter the customer’s date of birth in the POS, or press a Visual ID check button. The Visual ID button served to override the safety protocol of the POS to enable the sales of age-restricted merchandise, by merely pressing the Visual ID button to proceed with the sale, without scanning the ID or entering the birthdate into the POS. At some point after October 22, 2021, the Respondents removed the Visual ID button to prevent future sales of alcoholic beverages to minors.

15. To ensure employees comply with the training they receive the Licensed Premises participates in a secret shopper program once monthly, where an undercover shopper attempts to purchase age-restricted merchandise and if a clerk asks for their ID the secret shopper gives the clerk a green card. If the clerk does not ask for ID, the secret shopper

hands the clerk a red card. Mr. Singh produced at the hearing photocopies of the green cards Respondents' employees received. (Exhibits B1 and B2.) A secret shopper visited the Licensed Premises sometime during the week of January 15 through the 21, 2023.

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution and section 24200(a) provide that a license to sell alcoholic beverages may be suspended or revoked if continuation of the license would be contrary to public welfare or morals.
2. Section 24200(b) provides that a licensee's violation, or causing or permitting of a violation, of any penal provision of California law prohibiting or regulating the sale of alcoholic beverages is also a basis for the suspension or revocation of the license.
3. Section 25658(a) provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.
4. Cause for suspension or revocation of the Respondents' license exists under Article XX, section 22 of the California State Constitution and sections 24200(a) and (b) on the basis that on October 22, 2021, the Respondents-Licensees' employee, clerk Ashish Bhakti, inside the Licensed Premises, sold an alcoholic beverage, to-wit: a can of Bud Light beer, to Jacob Lopez, a person under the age of 21, in violation of Business and Professions Code section 25658(a). (Findings of Fact ¶¶ 1-11.)
5. The Respondents argued the decoy operation at the Licensed Premises failed to comply with rules 141(b)(2) and 141(b)(5)² and, therefore, the accusation should be dismissed pursuant to rule 141(c).
6. With respect to rule 141(b)(2), the Respondents argued decoy Lopez did not have the appearance of someone under the age of 21 because of certain factors including that his appearance at the hearing was different because he had grown taller, lost weight, had facial hair, had a different hair style, and was not wearing the same clothes that he wore on the day of the operation.
7. This argument is rejected. Rule 141(b)(2) provides that "the decoy shall display the appearance which could generally be expected of a person under 21 years of age, under the actual circumstances presented to the seller of alcoholic beverages *at the time of the alleged offense.*" (Emphasis added.) There was nothing about decoy Lopez' appearance, height, weight or clothing which made him appear older than his actual age. In fact, the

² All rules referred to herein are contained in title 4 of the California Code of Regulations unless otherwise noted.

photographs taken of decoy Lopez on the day of the operation depict a youthful person who appeared his age, 18. At the hearing decoy Lopez had a very youthful appearance. In other words, decoy Lopez had the appearance generally expected of a person under the age of 21. (Findings of Fact ¶¶ 5 and 11.)

8. With respect to rule 141(b)(5) Respondents argued the decoy did not place clerk Bhakti on notice of the face-to-face identification. This argument is rejected. Rather, as the court of appeal in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (Garfield Beach CVS, LLC)*³ makes clear, compliance with rule 141(b)(5) must be determined based on the totality of the circumstances. In *Garfield Beach CVS*, the decoy identified the seller from a distance of approximately 10 feet. With the decoy beside her, the officer then contacted the clerk and explained the violation to her. Finally, the decoy and the clerk stood next to each other while a photo was taken. At no point did the clerk dispute the sale; instead, she said that she was sorry.⁴ In the words of the court of appeal, the clerk “had ample opportunity to observe the minor and to object to any perceived misidentification. The rule requires identification, not confrontation. The identification here meets the letter and the spirit of Rule 141.”⁵

9. *Garfield Beach CVS* is directly on point with the facts in the matter at hand. Decoy Lopez pointed directly at and identified clerk Bhakti at a distance of three to five feet, then stood next to clerk Bhakti while holding the beer he purchased from the clerk, and a photograph was taken of the two of them. In fact, in the photograph, clerk Bhakti is looking in the direction of the beer can in the decoy’s hand. Clerk Bhakti did not dispute the sale to the decoy, but in fact acknowledged it. (Findings of Fact ¶¶ 7 and 8.) Under the totality of the circumstances, there was a valid face-to-face identification under rule 141(b)(5).

10. Except as set forth in this decision, all other allegations in the accusation and all other contentions of the parties’ lack merit.

PENALTY

The Department requested the Respondents’ license be suspended for a period of 15 days, pursuant to the standard penalty set forth in rule 144 for first time violations. The Department argued that any mitigation is offset by the following aggravating factors: (1) the clerk’s failure to stop the sales transaction after being handed a driver license with multiple indicators that the owner is a minor, including the vertical format and bold red stripe reading, “AGE 21 IN 2024,” (2) decoy Lopez informing the clerk he is 18 years old, (3) the clerk overrode the POS prompt to enable the sale of alcohol despite the

³ 18 Cal. App. 5th 541, 226 Cal. Rptr. 3d 527 (2017).

⁴ *Id.* at 543, 226 Cal. Rptr. 3d at 528.

⁵ *Id.* at 547, 226 Cal. Rptr. 3d at 531.

foregoing factors, and (4) the Respondents failed to follow their own policy and terminate clerk Bhakti but instead gave him a warning.

The Respondents recommended a five-day penalty, all-stayed, or in the alternative an all-stayed penalty whichever penalty is established. Respondents argued for the following mitigating factors: (1) Mr. Singh suspended clerk Bhakti for one week and issued him a final warning, (2) clerk Bhakti was retrained on Respondents' age-restricted policy. Mr. Singh sat one-on-one with clerk Bhakti to review the policy and ensure he understood the it, (3) the Respondents removed the Visual ID override button from their POS system to prevent their clerks from overriding their safety protocol for age-restricted sales.

In assessing an appropriate measure of discipline, the Department's penalty guidelines are in California Code of Regulations, Title 4, Division 1, Article 22, section 144, commonly referred to as rule 144. Under rule 144, the presumptive penalty for a first violation of selling or furnishing an alcoholic beverage to a minor in violation of section 25658 is a 15-day license suspension. Rule 144 also permits imposition of a revised penalty based on the presence of aggravating or mitigating factors.

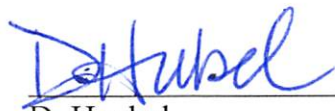
Some mitigation is warranted for Respondents' documented training and positive action to correct the problem. Respondents removed the Visual ID override button from their POS system to prevent another clerk from bypassing the safety protocol and selling alcohol to a minor as clerk Bhakti did. Mr. Singh sat down with and retrained clerk Bhakti. Clerk Bhakti was suspended for a week and issued a final warning. It is understandable the Respondents were not in a position to fire clerk Bhakti because they would suffer a breach of their contract, which requires they have employees working shifts that cover the 24 hours the Licensed Premises is open and operating. The penalty guidelines do not require termination of an employee. Aggravating factors include decoy Lopez' youthful appearance and his stated age when asked by clerk Bhakti.

The penalty recommended herein complies with rule 144.

ORDER

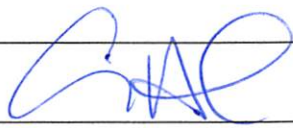
The Respondents' off-sale beer and wine license is hereby suspended for a period of 10 days.

Dated: March 7, 2023



D. Huebel
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____

By: 
Date: <u>04/28/23</u>