

[Exempt from fees pursuant to
Government Code Section 6103]

(Additional counsel on next page)

COUNTY OF ALAMEDA

Defendants.

[Verified Answer Required Pursuant to
Cal. Code. Civ. Proc 446]

1 ELIZABETH A. EGAN
District Attorney of the County of Fresno
2 MICHAEL C. BRUMMEL, SBN 236116
Deputy District Attorney
3 Consumer Protection Unit
929 L Street
4 Fresno, CA 93721
Telephone: (559) 488-3156
5 Facsimile: (559) 488-1852

6 Attorneys for Plaintiff,
People of the State of California
7

8 **PLAINTIFF, PEOPLE OF THE STATE OF CALIFORNIA**, based on information
9 and belief, alleges as follows:

10 **PARTIES**

11 1. EDMUND G. BROWN JR., the Attorney General of the State of California,
12 THOMAS J. ORLOFF, the District Attorney of the County of Alameda, and ELIZABETH A.
13 EGAN, the District Attorney of the County of Fresno, acting to protect the public as consumers
14 and as competitors from false and misleading advertising and from unlawful, unfair, and
15 fraudulent business practices, bring this action in the public interest in the name of THE
16 PEOPLE OF THE STATE OF CALIFORNIA (hereinafter "Plaintiff") and on the complaint and
17 request of the California Bureau of Automotive Repair, Department of Consumer Affairs.

18 **DEFENDANTS AND VENUE**

19 2. Defendants BE GLAD, INC.; M. I. GLAD, INC.; SO GLAD, INC.; ALLGLAD,
20 INC.; and MAURICE IRVING GLAD advertise and transact business within the County of
21 Alameda and elsewhere throughout the State of California. The business activities described
22 herein either have been, or are being carried on within the County of Alameda and elsewhere
23 throughout the State of California.

24 3. Defendant BE GLAD, INC., a California corporation, owns and operates
25 automotive repair facilities in California, known as Midas Auto Service Centers, registered under
26 the Automotive Repair Act of 1971. Defendant BE GLAD, INC., is the registered automotive
27 repair dealer for the facilities. At all times mentioned herein, said Defendant was and is engaged
28 in the business of diagnosing, repairing, adjusting, and servicing motor vehicles for the general

1 public, including repairing, servicing, or replacing of brake system parts or components.

2 Defendant BE GLAD INC.'s facilities are located in Modesto, Stanislaus County; Turlock,
3 Stanislaus County; Merced, Merced County; and Manteca, San Joaquin County.

4 4. Defendant M. I. GLAD, INC., a California corporation, owns and operates
5 automotive repair facilities in California, known as Midas Auto Service Centers, registered under
6 the Automotive Repair Act of 1971. Defendant M. I. GLAD, INC. is the registered automotive
7 repair dealer for the facilities. At all times mentioned herein, said Defendant was and is engaged
8 in the business of diagnosing, repairing, adjusting, and servicing motor vehicles for the general
9 public, including repairing, servicing, or replacing of brake system parts or components.

10 Defendant M. I. GLAD, INC.'s facilities are located in Clovis, Fresno County; Fresno, Fresno
11 County; San Leandro, Alameda County; Dublin, Alameda County; Fremont, Alameda County;
12 Hayward, Alameda County; Concord, Contra Costa County; and Walnut Creek, Contra Costa
13 County.

14 5. Defendant SO GLAD, INC., a California corporation, owns and operates
15 automotive repair facilities in California, known as Midas Auto Service Centers, registered under
16 the Automotive Repair At of 1971. Defendant SO GLAD, INC. is the registered automotive
17 repair dealer for the facilities. At all times mentioned herein, said Defendant was and is engaged
18 in the business of diagnosing, repairing, adjusting, and servicing motor vehicles for the general
19 public, including repairing, servicing, or replacing of brake system parts or components.

20 Defendant SO GLAD, INC.'s facilities are located in San Jose, Santa Clara County; and
21 Campbell, Santa Clara County.

22 6. Defendant ALLGLAD, INC., is, and at all times relevant herein was, the agent for
23 Defendants BE GLAD, INC.; M.I. GLAD, INC.; and SO GLAD, INC. and directly or indirectly
24 controls, conducts, manages, or directs said Defendants' business activities.

25 7. Defendant MAURICE IRVING GLAD is, and at all times relevant herein was,
26 the Chief Executive Officer for Defendants BE GLAD, INC.; M. I. GLAD, INC.; SO GLAD,
27 INC.; and ALLGLAD, INC. and directly or indirectly controls, conducts, manages, or directs said
28 Defendants' business activities.

1 8. The true names and capacities of those defendants identified as DOES 1 through
2 50, inclusive, are unknown to Plaintiff, who therefore sues them under fictitious names. Plaintiff
3 will amend this complaint to allege the true names of these defendants when they have been
4 determined. Each of the fictitiously named defendants is responsible in some manner for the
5 conduct alleged herein.

6 9. As used herein, the term "Defendants" refers collectively to all Defendants,
7 including BE GLAD, INC.; M. I. GLAD, INC.; SO GLAD, INC.; ALLGLAD, INC.; MAURICE
8 IRVING GLAD; and DOES 1 through 50, and each of them.

9 10. Any reference made in this complaint to any act of any corporate defendant means
10 that the corporation or its officers, directors, agents, employees, managers, and representatives did
11 or authorized such acts while actively engaged in the management, direction, operation, or control
12 of the affairs of said corporate defendant and while acting within the course and scope of their
13 duties, employment, or agency.

14 11. Whenever in this complaint reference is made to any act of Defendants, such
15 allegations shall be deemed to mean the act of each defendant acting individually, jointly, and
16 severally.

17 **FIRST CAUSE OF ACTION**

18 **FALSE AND MISLEADING ADVERTISING**

19 (Business and Professions Code Section 17500, et seq.)

20 12. Plaintiff realleges and incorporates by reference as though set forth in full herein
21 Paragraphs 1 through 11, inclusive, of this Complaint.

22 13. Beginning on a date unknown to Plaintiff, but within three (3) years prior to the
23 initiation of this action, Defendants made or caused to be made and publicly disseminated untrue
24 or misleading statements, as defined by Business and Professions Code section 17500, which,
25 when made, were known, or by the exercise of reasonable care should have been known, by
26 Defendants to be untrue or misleading and which were made with the intent to induce members of
27 the public to purchase motor vehicle repairs, services, and retail products from Defendants'
28 automotive repair facilities. Said statements include, but are not limited to, the following:

1 A. Making untrue or misleading statements about the condition of vehicles to
2 justify the replacement of parts or completion of repairs or services which were not needed.

3 B. Making untrue or misleading statements that parts, replacements, repairs, or
4 services were needed when the parts, replacements, repairs, or services were not required as
5 represented.

6 C. Making untrue or misleading statements regarding the actual repairs or
7 services performed on a vehicle.

8 D. Making untrue or misleading statements that a certain part would be
9 installed in a vehicle when said part was not installed as represented.

10 E. Making and/or disseminating advertising, including but limited to:
11 banner/poster, television, newspaper, yellow pages, and Internet advertising with the intent not to
12 sell the advertised good and/or service at the price stated in the advertisement.

13 14. Violations of Business and Professions Code sections 17500 *et seq.* subject
14 Defendants to penalties of up to \$2,500 for each violation, and other equitable remedies as
15 appropriate.

16 **SECOND CAUSE OF ACTION**

17 **UNLAWFUL, UNFAIR, AND FRAUDULENT BUSINESS PRACTICES**

18 (Business and Professions Code section 17200, *et seq.*)

19 15. Plaintiff realleges and incorporates by reference as though set forth in full herein
20 Paragraphs 1 through 14, inclusive, of this Complaint.

21 16. Beginning on a date unknown to Plaintiff, but within four (4) years prior to the
22 initiation of this action, Defendants engaged in unfair competition as defined by Business and
23 Professions Code section 17200 by engaging in acts or practices which include, but are not
24 necessarily limited to, the following:

25 A. Making or authorizing written and oral statements which were untrue or
26 misleading and which were known or in the exercise of reasonable care should have been known
27 to be untrue or misleading, as more fully described in Paragraph 13, above, which is re-alleged
28 and incorporated herein by this reference as though set forth at length.

1 B. Making untrue or misleading statements regarding the actual repairs or
2 services performed on a vehicle.

3 C. Making or authorizing false and misleading guarantees or warranties on
4 motor vehicle repairs or services and retail products in violation of Business and Professions Code
5 section 9884.7, subdivision (a)(1), and California Code of Regulations, title 16, section 3376,
6 including, but not limited to, the following:

7 i. Failing to conspicuously and clearly disclose in writing the nature
8 and extent of guarantees or warranties.

9 ii. Failing to conspicuously and clearly disclose in writing a
10 description of all parts, characteristics, or properties covered by or excluded from a particular
11 guarantee or warranty.

12 iii. Failing to conspicuously and clearly disclose in writing what must
13 be done by a claimant before the guarantor or warrantor will fulfill his or her obligation.

14 iv. Failing to conspicuously and clearly disclose in writing the manner
15 in which Defendants would perform under the guarantee or warranty, and/or all conditions and
16 limitations on the guarantee or warranty.

17 D. Publishing, uttering, or causing to be published and uttered, and making
18 false and misleading statements and advertisements which were known to be false or misleading,
19 or by the exercise of reasonable care should have been known to be untrue or misleading, as more
20 fully described in Paragraph 13, above, in violation of Business and Professions Code section
21 9884.7, subdivision (a)(4).

22 E. Making false and misleading written and oral statements regarding the
23 condition of vehicles in order to induce members of the public to purchase motor vehicle repairs
24 or services and retail products which were not needed, then selling said unnecessary repairs or
25 services and retail products to the public, in violation of Business and Professions Code section
26 9884.7, subdivision (a)(4).

27 ///

28 ///

1 F. Obtaining payment from customers for motor vehicle repairs or services
2 that were not performed and retail products that were not provided, in violation of Business and
3 Professions Code section 9884.7, subdivision (a)(4).

4 G. Withholding or inserting information in an estimate, invoice, or work order
5 for motor vehicle repairs or services which caused said document to be false or misleading, or had
6 the tendency or effect to mislead or deceive customers, prospective customers, or the public, in
7 violation of California Code of Regulations, title 16, section 3373.

8 H. Advertising motor vehicle repairs or services and retail products at prices
9 which were misleading in that Defendants did not intend to sell the advertised repairs or services
10 and retail products at the advertised prices, but intended to entice members of the public into more
11 costly transactions, in violation of California Code of Regulations, title 16, section 3372.1,
12 subdivision (a).

13 I. Willfully departing from or disregarding accepted trade standards for good
14 and workmanlike repair of a motor vehicle without the consent of the owner or his or her duly
15 authorized representative, in violation of Business and Professions Code section 9884.7,
16 subdivision (a)(7).

17 J. Failing to give to customers a written estimated price for labor and parts
18 necessary for a specific job, in violation of Business and Professions Code section 9884.9,
19 subdivision (a).

20 K. Failing to obtain and/or properly document customers' authorization before
21 commencing additional repair work on a motor vehicle and accruing charges, in violation of
22 Business and Professions Code section 9884.9, subdivision (a), and California Code of
23 Regulations, title 16, section 3353, subdivision (c).

24 L. Failing to obtain and/or properly document customers' oral or written
25 consent at some time after it was determined the estimated price was insufficient and before the
26 work which was not estimated was done or the parts not estimated were supplied, in violation of
27 Business and Professions Code section 9884.9, subdivision (a), and California Code of
28 Regulations, title 16, section 3353, subdivision (c).

1 M. Failing to give to customers copies of documents requiring the customer's
2 signature, as soon thereafter as the document was signed, in violation of Business and Professions
3 Code section 9884.7, subdivision (a)(3).

4 N. Failing to describe on invoices all service work done and parts supplied, in
5 violation of Business and Professions Code section 9884.8.

6 O. Failing to provide a copy of the invoice to customers which showed the
7 dealer's registration number and the corresponding business name and address, described all
8 service work and warranty work done, and separately identified each part in a manner customers
9 could understand, in violation of California Code of Regulations, title 16, section 3356,
10 subdivision (a).

11 P. Failing to deliver a legible copy of the written guarantee or warranty to
12 customers with the invoice itemizing the parts, components, and labor represented to be covered
13 by such guarantee, in violation of California Code of Regulations, title 16, section 3376.

14 Q. Causing or allowing customers to sign work orders which did not include
15 the motor vehicles' odometer reading at the time of repair, in violation of Business and
16 Professions Code section 9884.7, subdivision (a)(2).

17 R. Advertising goods or services with intent not to sell them as advertised, in
18 violation of Civil Code section 1770, subdivision (a)(9).

19 S. Representing that a part, replacement, or repair or service is needed when it
20 is not, in violation of Civil Code section 1770, subdivision (a)(15).

21 T. Representing that the subject of a transaction has been supplied in
22 accordance with a previous representation when it has not, in violation of Civil Code section
23 1770, subdivision (a)(16).

24 U. Representing, in violation of Civil Code section 1770, subdivision (a)(5),
25 that goods or services have uses or benefits which they do not have.

26 V. Violating California Code of Regulations, title 16, section 3371, by
27 publishing, uttering, making, or causing to be published, uttered or made any false or misleading

28 ///

1 statement or advertising which is known to be false or misleading or which, by the exercise of
2 reasonable care, should be known to be false or misleading.

3 W. Advertising of automotive services that was misleading in that the
4 advertisement had the capacity to mislead the public as to the extent that anticipated parts, labor
5 or other services were included in the advertised price, in violation of California Code of
6 Regulations, title 16, section 3372.1, subdivision (b).

7 X. Advertising of automotive services that was misleading in that the
8 Defendants knew or should have known that the advertised service could not usually be
9 performed in a good and workmanlike manner without additional parts, service or labor, in
10 violation of California Code of Regulations, title 16, section 3372.1, subdivision (d).

11 Y. Violating California Code of Regulations, title 16, section 3375,
12 publishing, uttering, making, or causing to be published advertisements that contain false or
13 misleading representation concerning the nature, extent, duration, terms or cost of a guarantee of a
14 motor vehicle part or component or repair service. Violating Code of Federal Regulations, title
15 16, section 239.4 for advertising a lifetime guarantee by failing to disclose with clarity and
16 prominence the term "lifetime" as used in the advertisements.

17 Z. Failing to comply with the provisions of Division 3, Chapter 20.3 of the
18 Business and Professions Code (sections 9880 through 9889.68) or regulations adopted pursuant
19 to it, in violation of Business and Professions Code section 9884.7, subdivision (a)(6).

20 AA. Violating Business and Professions Code section 17500, as more fully
21 described in Paragraph 13.

22 17. Violations of Business and Professions Code sections 17200 *et seq.* subject
23 Defendants to penalties of up to \$2,500 for each violation, and other equitable remedies as
24 appropriate.

25 ///

26 ///

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF INJUNCTION PROHIBITING UNFAIR COMPETITION**

3 (Business and Professions Code section 17207)

4 18. Plaintiff realleges and incorporates by reference as though set forth in full herein
5 Paragraphs 1 through 17, inclusive, of this Complaint.

6 19. On June 30, 1989, the Alameda County Superior Court in *People v. M. I. Glad,*
7 *Inc., et al.*, Case Numbers H120168-4 and H120169-3, issued a Final Judgment permanently
8 enjoining and restricting Defendant M. I. Glad, Inc. and its successors, agents, representatives and
9 employees, and all persons who acted in concert or in participation with them or any of them with
10 actual or constructive knowledge of the Final Judgment, from directly or indirectly engaging in
11 certain business practices. The Final Judgment was issued, in part, pursuant to Business &
12 Professions Code sections 17203 and 17535. A true and correct copy of said Final Judgment is
13 attached hereto as Exhibit "A" and incorporated herein by this reference.

14 20. Beginning on a date unknown to Plaintiff, but within four (4) years prior to the
15 initiation of this action Defendants violated the Court's permanent injunction by undertaking the
16 activities more fully described in Paragraphs 13 and 16, above, which are re-alleged and
17 incorporated herein by this reference as though set forth at length.

18 21. Plaintiff is informed and believes and thereon alleges that Defendants violated the
19 Court's permanent injunction by engaging in the following additional practices:

20 A. Failing to write on the customer's copy of the invoice, or on a separate
21 inspection sheet attached to the invoice, the results of the inspection and the basis, if any, for
22 determining the customer's vehicle is in need of brake system repairs.

23 B. Failing to check brake rotors for cracks, and failing to determine whether
24 rotor surfaces were scored or rust pitted and failing to determine whether rotor lateral runout
25 ("wobble") exceeds O.E.M. specifications prior to machining the rotors.

26 B. Using scare tactics or false or misleading representations to persuade or
27 induce customers to purchase any goods or services.

28 ///

1 C. Failing to give a copy of the injunctive provisions of the Final Judgment to
2 each and every present and future mechanic, shop manager, and shop supervisor of defendants and
3 instruct such persons to read such document.

4 D. Failing to concurrently obtain from said persons, particularly those persons
5 who have contact with and make representations regarding necessary repairs to members of the
6 public, a signed and dated copy of the injunctive provisions acknowledging their receipt and
7 understanding of the Final Judgment.

8 22. Violations of the Court's order constitute intentional violation of an injunction
9 within the meaning of Business and Professions Code section 17207 and subject Defendants to
10 penalties of up to \$6,000 per violation per day, and other equitable remedies as appropriate.

11 **FOURTH CAUSE OF ACTION**

12 **VIOLATION OF INJUNCTION**

13 (Business and Professions Code section 17535.5)

14 23. Plaintiff realleges and incorporates by reference as though set forth in full herein
15 Paragraphs 1 through 22, inclusive, of this Complaint.

16 24. Beginning on a date unknown to Plaintiff, but within four (4) years prior to the
17 initiation of this action Defendants violated the Final Judgment by undertaking the activities more
18 fully described in Paragraphs 13 and 16, above, which are re-alleged and incorporated herein by
19 this reference as though set forth at length.

20 25. Plaintiff is informed and believes and thereon alleges that Defendants violated the
21 Court's permanent injunction by engaging in the following practices:

22 A. Defendants advertised in a manner that violated and was inconsistent with
23 section 17500 of the Business and Professions Code as described in Paragraph 13, above, which is
24 re-alleged and incorporated herein by this reference as though set forth at length.

25 B Defendants advertised in a manner that violated and was inconsistent
26 with the section 9884.7 of the Business and Professions Code as described in Paragraph 16,
27 subsection (D), above, which is re-alleged and incorporated herein by this reference as though set
28 forth at length.

1 C Defendants advertised in a manner that violated and was inconsistent with
2 the regulations codified at Title 16, California Code of Regulations Sections 3371, 3372.1, and
3 3375 as described in Paragraph 16, subsections (H), (W), (X) and (V) above, which are re-alleged
4 and incorporated herein by this reference as though set forth at length.

5 26. Violations of the Court's order constitute intentional violation of an injunction
6 within the meaning of Business and Professions Code section 17535.5 and subject Defendants to
7 penalties of up to \$6,000 per violation per day, and other equitable remedies as appropriate.

8 **PRAYER**

9 WHEREFORE, PLAINTIFF PRAYS FOR THE FOLLOWING:

10 1. That pursuant to Business and Professions Code sections 17203 and 17535, and the
11 Court's inherent equity powers, Defendants, and each of them, and their directors, officers,
12 employees, agents, successors, assignees, and representatives and all persons, corporations, or
13 other entities acting under, by, through, or on behalf of Defendants, or acting in concert or
14 participation with or for them, be permanently enjoined and restrained from directly or indirectly
15 engaging in any of the following acts and practices while engaging in and attempting to sell any
16 automotive repair services and retail products to The People of the State of California:

17 A. Making any oral or written representations in violation of Business and
18 Professions Code section 17500, including, but not limited to, those representations set forth in
19 the First Cause of Action, as set forth above; and

20 B. Engaging in unfair competition in violation of Business and Professions
21 Code section 17200, including, but not limited to, those acts set forth in the Second Cause of
22 Action, as set forth above.

23 C. Violating the terms of the Final Judgment including, but not limited to,
24 those acts set forth in the Third and Fourth Causes of Action, as set forth above.

25 2. That this Court assess a civil penalty in the amount of TWO THOUSAND FIVE
26 HUNDRED DOLLARS (\$2,500) against Defendants for each violation of Business and
27 Professions Code section 17500 pursuant to section 17536, as proven at trial, but in an amount no
28 less than \$1,000,000.00;

1 3. That this Court assess a civil penalty in the amount of TWO THOUSAND FIVE
2 HUNDRED DOLLARS (\$2,500) against Defendants for each violation of Business and
3 Professions Code section 17200 pursuant to section 17206, in an amount according to proof as
4 proven at trial, but in an amount no less than \$1,000,000.00;

5 4. That this Court assess a civil penalty in the amount of SIX THOUSAND
6 DOLLARS (\$6,000) for each violation of the injunction set forth in Alameda County Superior
7 Court Case Numbers H120168-4 and H120169-3, for violation thereof pursuant to Business and
8 Professions Code section 17207, as proven at trial, but in an amount no less than
9 \$110,000,000.00;

10 5. That this Court assess a civil penalty in the amount of SIX THOUSAND
11 DOLLARS (\$6,000) for each violation of the injunction set forth in Alameda County Superior
12 Court Case Numbers H120168-4 and H120169-3, for violation thereof pursuant to Business and
13 Professions Code section 17535.5, as proven at trial, but in an amount no less than
14 \$110,000,000.00;

15 6. That Plaintiff recover its costs of suit;

16 7. That Defendants be required to pay the California Bureau of Automotive Repair,
17 Department of Consumer Affairs, its reasonable expenses in the investigation and prosecution of
18 this action pursuant to Business and Professions Code sections 17206, subdivision (e) and 17536,
19 subdivision (d);

20 8. That Defendants be ordered to disgorge any unlawful profits pursuant to Business
21 and Professions Code sections 17203, 17535, and the laws of the State of California;

22 9. That Defendants be ordered to make restitution to all victims according to proof;
23 and

24 10. That Plaintiff have such other and further relief as the nature of the case may
25 require and the Court deems just and proper.

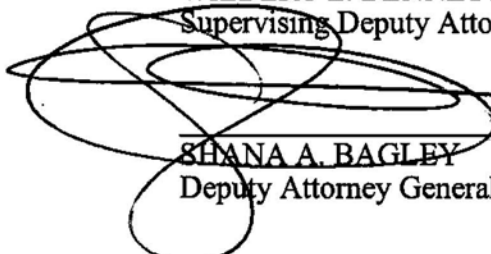
26 ///

27 ///

28 ///

1 DATED: June 29, 2009

2
3 EDMUND G. BROWN JR.
Attorney General of the State of California
4 ALFREDO TERRAZAS
Senior Assistant Attorney General
5 WILBERT E. BENNETT
Supervising Deputy Attorney General

6
7  SHANA A. BAGLEY
8 Deputy Attorney General

9
10 THOMAS J. ORLOFF,
District Attorney of the County of Alameda

11
12 SCOTT D. PATTON
13 Deputy District Attorney

14
15 ELIZABETH A. EGAN,
District Attorney of the County of Fresno

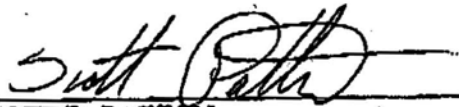
16
17 MICHAEL C. BRUMMEL
18 Deputy District Attorney

1 DATED: June 29, 2009

2
3 EDMUND G. BROWN JR.
Attorney General of the State of California
4 ALFREDO TERRAZAS
Senior Assistant Attorney General
5 WILBERT E. BENNETT
Supervising Deputy Attorney General
6

7
8 SHANA A. BAGLEY
Deputy Attorney General

9
10 THOMAS J. ORLOFF,
District Attorney of the County of Alameda

11
12 
13 SCOTT D. PATTON
Deputy District Attorney

14
15 ELIZABETH A. EGAN,
District Attorney of the County of Fresno

16
17 MICHAEL C. BRUMMEL
Deputy District Attorney
18
19
20
21
22
23
24
25
26
27
28

1 DATED: June 29, 2009

2
3 EDMUND G. BROWN JR.
Attorney General of the State of California
4 ALFREDO TERRAZAS
Senior Assistant Attorney General
5 WILBERT E. BENNETT
Supervising Deputy Attorney General
6

7
8 SHANA A. BAGLEY
Deputy Attorney General

9
10 THOMAS J. ORLOFF,
District Attorney of the County of Alameda
11

12
13 SCOTT D. PATTON
Deputy District Attorney

14
15 ELIZABETH A. EGAN,
District Attorney of the County of Fresno

16 Michael C. Brummel
17 MICHAEL C. BRUMMEL
Deputy District Attorney

18 by *Alan Yengozan*
19 *Deputy District*
20 *Attorney*
21
22
23
24
25
26
27
28