

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

NORTH STATE AUTOBAHN INC. d/b/a
North State Custom and GREGORY
COCCARO a/k/a Greg Coccaro, Jr.

Index No. 55511/2018

Plaintiff,

-against-

CELEBRITY AUTO OF WESTCHESTER,
LLC d/b/a Mercedes-Benz of Goldens
Bridge, and THOMAS MAOLI a/k/a Tom
Maoli,

Defendants.

**ANSWER, AFFIRMATIVE
DEFENSES AND
COUNTERCLAIM**

Defendant Celebrity Auto of Westchester, LLC d/b/a Mercedes-Benz of Goldens Bridge (“Celebrity”), and Thomas Maoli a/k/a Tom Maoli (“Maoli”) by way of Answer to the allegations in the Verified Complaint say as follows:

PARTIES

1. Except to state that North State Custom conducts business in the County of Westchester, New York, they are without sufficient information or knowledge to admit or deny the allegations contained in paragraph 1.

2. Except to state that Mr. Coccaro is shareholder and president of North State Custom, they are without sufficient information and/or knowledge to admit or deny the allegations contained in paragraph 2.

3. They admit the allegations contained in paragraph 3.

4. Except to state that Maoli has a place of business at Celebrity in Westchester County, New York, they deny the allegations contained in paragraph 4.

BACKGROUND

5. Except to state that North State Custom is an automobile body shop, they deny the allegations contained in paragraph 5.

6. They deny the allegations contained in paragraph 6.

7. Except to state that in or around 2017, Celebrity acquired a Mercedes Benz franchise located in and around Goldens Bridge, New York, they deny the allegations contained in paragraph 7.

THE UNDERLYING LAWSUIT

8. Except to state that North State Custom brought an action in the Supreme Court of New York, Westchester County against Celebrity and certain other defendants, bearing Index No. 67559/2017 (the “Underlying Lawsuit”), and the allegations in the Underlying Lawsuit speak for themselves, they deny the allegations contained in paragraph 8.

9. Except to state that the attachments speak for themselves, they deny the allegations contained in paragraph 9.

10. Except to state that the allegations in the Underlying Lawsuits speak for themselves, they deny the allegations contained in paragraph 10.

11. Except to state that the contents of any attachments speak for themselves, they deny the allegations contained in paragraph 11.

THE RESOLUTION OF THE UNDERLYING LAWSUIT

12. Except to state that the terms of any Stipulation of Settlement speak for themselves, they deny the allegations contained in paragraph 12.

13. Except to state that the contents of any attachment speak for themselves, they deny the allegations contained in paragraph 13.

14. Except to state that the contents of any attachment speak for themselves, they deny the allegations contained in paragraph 14.

**CELEBRITY AND TOM MAOLI'S MISREPRESENTATIONS
AND VIOLATIONS OF THE CONFIDENTIALITY PORTION
OF THE STIPULATION OF SETTLEMENT**

15. Except to state that Maoli is a member of Celebrity, they deny the allegations contained in paragraph 15.

16. Except to state that Celebrity approved a certain press release, the contents of which speak for themselves, they deny the allegations contained in paragraph 16.

17. Except to state that the contents of any attachments speak for themselves, they deny the allegations contained in paragraph 17.

18. Except to state that the contents of any Newswire Article speaks for themselves, they deny the allegation contained in paragraph 18.

19. Except to state that Celebrity issued a press release, they denied the allegations contained in paragraph 19.

20. Except to state that any publication speaks for itself, they deny the allegations contained in paragraph 20.

21. Except to state that any attachment speaks for itself, they deny the allegations contained in paragraph 21.

22. Except to state that the contents of any article speak for themselves, they deny the allegations contained in paragraph 22.

23. Except to state that Celebrity transmits certain emails in the ordinary course of operating its business, including the transmission of emails to customers, they deny the allegations contained in paragraph 23.

24. Except to state that Celebrity transmits certain emails in the ordinary course of operating its business, including the transmission of emails to customers, they deny the allegations contained in paragraph 24.

25. Except to state that any attachment speaks for itself, they deny the allegations contained in paragraph 25.

26. They deny the allegations contained in paragraph 26.

27. They deny the allegations contained in paragraph 27.

28. Except to state that any email speaks for itself, they deny the allegations contained in paragraph 28.

29. Except to state that Celebrity issued a press release, they denied the allegations contained in paragraph 29.

30. Except to state that any article speaks for itself, they deny the allegations contained in paragraph 30.

31. Except to state that any attachment speak for itself, they deny the allegations contained in paragraph 31.

32. Except to state that any article speaks for itself, they deny the allegations contained in paragraph 32.

33. They deny the allegations contained in paragraph 33.

34. They deny the allegations contained in paragraph 34.

35. They deny the allegations contained in paragraph 35.

**AS AND FOR A FIRST CAUSE OF ACTION
BY NORTH STATE CUSTOM AGAINST CELEBRITY
(Breach of the Settlement Agreement)**

36. The defendants incorporate by reference their answers to the preceding paragraphs of the Complaint as if set forth herein at length

37. They deny the allegations contained in paragraph 37.

38. They deny the allegations contained in paragraph 38.

39. Except to state that plaintiffs have failed to plead a paragraph 39 in their Complaint, no response is required.

40. They deny the allegations contained in paragraph 40.

**AS AND FOR A SECOND CAUSE OF ACTION
BY NORTH STATE CUSTOM AGAINST DEFENDANTS
(Trade Libel)**

41. The defendants incorporate by reference their answers to the First Cause of Action of the Complaint as if set forth herein at length.

42. They deny the allegations contained in paragraph 42.

43. They deny the allegations contained in paragraph 43.

44. They deny the allegations contained in paragraph 44.

45. They deny the allegations contained in paragraph 45.

46. They deny the allegations contained in paragraph 46.

47. They deny the allegations contained in paragraph 47.

**AS AND FOR A THIRD CAUSE OF ACTION
BY NORTH STATE CUSTOM AGAINST DEFENDANTS
(Trade Libel)**

48. The defendants incorporate by reference their answers to the First and Second Causes of Action of the Complaint as if set forth herein at length.

49. They deny the allegations contained in paragraph 49.

50. They deny the allegations contained in paragraph 50.

**AS AND FOR A FOURTH CAUSE OF ACTION
BY NORTH STATE CUSTOM AGAINST DEFENDANTS
(Tortious Interference With Prospective Economic Advantage)**

51. The defendants incorporate by reference their answers to the First through Third Causes of Action of the Complaint as if set forth herein at length.

52. They deny the allegations contained in paragraph 52.

53. They deny the allegations contained in paragraph 53.

54. They deny the allegations contained in paragraph 54.

55. They deny the allegations contained in paragraph 55.

56. They deny the allegations contained in paragraph 56.

**AS AND FOR A FIFTH CAUSE OF ACTION
BY MR. COCCARO AGAINST CELEBRITY
(Breach of the Settlement Agreement)**

57. The defendants incorporate by reference their answers to the First through Fourth Causes of Action of the Complaint as if set forth herein at length.

58. They deny the allegations contained in paragraph 58.

59. They deny the allegations contained in paragraph 59.

60. They deny the allegations contained in paragraph 60.

**AS AND FOR A SIXTH CAUSE OF ACTION
BY MR. COCCARO AGAINST DEFENDANTS
(Trade Libel)**

61. The defendants incorporate by reference their answers to the First through Fifth Causes of Action of the Complaint as if set forth herein at length.

62. They deny the allegations contained in paragraph 62.

- 63. They deny the allegations contained in paragraph 63.
- 64. They deny the allegations contained in paragraph 64.
- 65. They deny the allegations contained in paragraph 65.
- 66. They deny the allegations contained in paragraph 66.
- 67. They deny the allegations contained in paragraph 67.

**AS AND FOR A SEVENTH CAUSE OF ACTION
BY MR. COCCARO AGAINST DEFENDANTS
(Trade Libel)**

- 68. The defendant incorporates by reference its answers to the First through Fifth Causes of Action of the Complaint as if set forth herein at length.
- 69. They deny the allegations contained in paragraph 69.
- 70. They deny the allegations contained in paragraph 70.

**AS AND FOR AN EIGHTH CAUSE OF ACTION
BY MR. COCCARO AGAINST DEFENDANTS
(Tortious Interference With Prospective Economic Advantage)**

- 71. The defendant incorporates by reference its answers to the First through Seventh Causes of Action of the Complaint as if set forth herein at length.
- 72. They deny the allegations contained in paragraph 72.
- 73. They deny the allegations contained in paragraph 73.
- 74. They deny the allegations contained in paragraph 74.
- 75. They deny the allegations contained in paragraph 75.
- 76. They deny the allegations contained in paragraph 76.

WHEREFORE, Defendants demand judgment against plaintiffs North State Autobahn Inc. d/b/a North State Custom and Gregory Coccaro a/k/a Greg Coccaro, Jr., jointly and

severally, dismissing the Verified Complaint with prejudice, together with costs of suit and such other and further relief as the Court deems equitable and just.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, in that they fail to state a claim upon which relief may be granted.

Second Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.

Third Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

Fourth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

Fifth Affirmative Defense

Plaintiffs' claims are barred because Defendants owe no duty to Plaintiffs.

Sixth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by reason of Plaintiffs' own fraudulent conduct.

Seventh Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

Eighth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by reason of plaintiffs' own negligence or other wrongful, unlawful or unpermitted conduct.

Ninth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by reason of the course of conduct of third parties over whom Defendants had no control.

Tenth Affirmative Defense

Plaintiffs' claims are barred, in whole or in part, by virtue of their failure to mitigate the alleged damages sustained.

Eleventh Affirmative Defense

Plaintiffs' claims are barred because Defendants neither had a legal duty to Plaintiffs, nor did Defendants violate or breach any legal duty to Plaintiffs.

Twelfth Affirmative Defense

At all times relevant thereto, Defendants complied with all applicable laws, regulations and/or standards.

Thirteenth Affirmative Defense

Defendants' actions were not the proximate cause of any damages suffered by Plaintiffs.

Fourteenth Affirmative Defense

Plaintiffs' claims are barred by reason of novation.

Fifteenth Affirmative Defense

Plaintiffs' claims are barred based upon plaintiffs' own breach of contract.

Sixteenth Affirmative Defense

Plaintiffs' claims are barred and/or diminished by the doctrines of set-off and recoupment.

Seventeenth Affirmative Defense

Plaintiffs' claims are barred for lack of personal jurisdiction over the individual defendants.

Eighteenth Affirmative Defense

Plaintiffs' claims are barred for failure of consideration.

WHEREFORE, Defendants demand judgment dismissing the Complaint with prejudice, together with costs of suit and such other and further relief as the Court deems equitable and just.

VERIFIED COUNTERCLAIM

Defendants/Counterclaimants Celebrity Auto of Westchester, LLC d/b/a Mercedes-Benz of Goldens Bridge, and Thomas Maoli, a/k/a Tom Maoli, by and through its counsel Fox Rothschild LLP (Marc J. Gross, appearing), hereby asserts the following Counterclaim against North State Autobahn Inc. d/b/a North State Custom and Gregory Coccaro a/k/a Greg Coccaro, Jr., and alleges as follows:

PARTIES

1. Defendants/Counterclaimants Auto of Westchester, LLC d/b/a Mercedes-Benz of Goldens Bridge ("Celebrity") and Thomas Maoli a/k/a Tom Maoli ("Maoli") is a New Jersey limited liability company that conducts business in Westchester County, New York.

2. Counterclaim Defendant North State Autobahn, Inc. d/b/a/ North State Custom ("North State") is a New York corporation that conducts business in Westchester County, New York.

3. Counterclaim Defendant Gregory Coccaro, Jr. ("Coccaro"), is a citizen of the State of New York with a business address of 114 Green Lane, Bedford Hills, NY 10507.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this action and of the parties pursuant to Section 301 of the New York Civil Practice Law and Rules ("CPLR").

5. Venue is proper in this County because the defamatory and libelous statements were made in this County and caused injury to Celebrity in this County.

FACTUAL ALLEGATIONS

6. Celebrity is a Mercedes-Benz automobile dealership and a registered, authorized and licensed New York repair shop. Specifically Celebrity has the following registrations with the New York State Department of Motor Vehicles: (i) Retail Motor Vehicle Dealer (New); (ii) Public Inspection Station; and (iii) licensed Repair Shop.

7. North State is an automobile collision repair shop located in Bedford Hills, New York.

8. Coccaro is the President and owner of North State.

9. In or about May, 2017, a dispute arose between North State and Celebrity, regarding the manner in which Coccaro would be billed for parts used in his autobody operation for work performed for Celebrity Customers.

10. As a result of the dispute, Celebrity exercised its lawful right to terminate its sponsorship of North State as a facility in the Mercedes-Benz Certified Collision Repair Program.

11. Upon information and belief, North State sought to undermine and avoid the lawful and rightful termination by, among other things, communicating directly with Mercedes Benz USA, LLC ("MBUSA"), as well as communications with third parties.

12. On or about October 18, 2017, North State filed a complaint in the Supreme Court of New York, Westchester County against Celebrity, Mercedes Benz USA, LLC and S&L Collision Center, LLC (another collision repair shop that retained its certification from Celebrity) (the "Underlying Lawsuit").

13. In the Complaint, North State falsely claims that “Celebrity is not a registered authorized repair shop.”

14. In the Complaint, North State falsely claims that Celebrity demanded “kick-backs” from North State.

15. In the Complaint, North State falsely claims that Celebrity violated 11 NYCRR 216.7(b)(2) and 11 NYCRR 216.7(b)(19)(ii).

16. 11 NYCRR 216.7(b)(2) and 11 NYCRR 216.7(b)(19)(ii) only applies to insurers and Celebrity is not an insurer.

17. North State contends that 11 NYCRR 216.7(b)(2) and 11 NYCRR 216.7(b)(19)(ii) prevent an insurer from negotiating a repair with an unauthorized repair shop – but that could have no bearing on Celebrity because Celebrity is a licensed, authorized repair shop.

18. The Complaint is verified by Coccaro.

19. North State and Coccaro published the false and damaging statements in the Complaint to third parties, when they provided interviews to the press and repeated the false allegations contained in the Complaint.

20. Separately, on or about October 18, 2017 North State and Coccaro issued a press-release to the Collision Repair Industry (“Press Release”).

21. In the Press Release, North State and Coccaro falsely stated that Celebrity “conspired to demand ‘kick-backs’ and other concessions” from North State.

22. In the Press Release, North State and Coccaro falsely claimed that Celebrity violated New York law because it is not a licensed facility.

23. North State and Coccaro also reference North State’s lawsuit against Mercedes-Benz USA and Celebrity and state their intent to make “a significant impact on the collision repair

industry”. Unquestionably, North State and Coccaro have admitted that their filing of and pursuit of legal process through their lawsuit is for an ulterior motive.

24. On or about October 20, 2017, Coccaro gave an interview to Repairer Driver News. During the interview, Coccaro not only repeated the false allegations in the Complaint after the issuance of process, but also falsely stated that Celebrity engaged in other unlawful activity by requesting that North State pay a “flat out mafia style bribe.”, i.e. that by clear implication Celebrity was engaging in unlawful activity and participating in organized crime.

25. North State and Coccaro made their false and damaging statements intentionally or in reckless disregard for the truth in that a simple review of the New York State, Division of Motor Vehicle’s website would have revealed that Celebrity operates a licensed, registered and fully approved repair shop.

26. Clearly, North State and Coccaro had no basis to make the false and damaging, statements that they willfully made to third parties regarding Celebrity’s business and its practices.

27. Accordingly, Celebrity filed a Counterclaim in the Underlying Lawsuit.

28. Ultimately, the parties, including North State and Coccaro, agreed to settle the Underlying Lawsuit.

29. The Stipulation of Settlement included a confidentiality provision, prohibiting the disclosure of settlement terms.

30. Unfortunately, on or before April 3, 2018, North State and Coccaro intentionally and willfully violated the confidentiality provision in the Stipulation of Settlement and disclosed a material term of settlement during an interview with Repair Driven News.

31. Thereafter, North State and Coccaro filed a Verified Complaint in the Supreme Court of New York, contending that Celebrity and Maoli had disclosed confidential settlement terms, when they had not, among other claims, and seeking injunctive relief.

32. Accordingly, Celebrity and Maoli bring this Counterclaim to obtain relief.

First Cause of Action
(Breach of Contract)

33. Celebrity repeats the preceding allegations of this Counterclaim as if set forth fully herein at length.

34. North State and Coccaro agreed not to disclose and to keep confidential the terms of settlement in the Underlying Lawsuit.

35. North State and Coccaro breached their agreement by disclosing confidential settlement terms to Repair Driven News, which published such terms in the public domain.

36. As a direct and proximate result of North State's and Coccaro's breach of contract, Celebrity and Maoli have suffered and continue to suffer irreparable harm and damages of a sum believed to be not less than \$5 million.

WHEREFORE, Defendant/Counterclaimant Celebrity Auto of Westchester LLC Mercedes-Benz of Goldens Bridge, demands judgment against plaintiffs North State Autobahn Inc. d/b/a North State Custom and Gregory Coccaro a/k/a Greg Coccaro, Jr., jointly and severally for specific performance, or alternatively rescission, for compensatory and punitive damages, attorneys' fees, costs of suit and such other and further relief as the Court deems equitable and just.

Second Cause of Action
(Defamation – Against North State and Cocco)

37. Celebrity repeats the preceding allegations contained in the First Count of this Counterclaim as if set forth fully herein at length.

38. Under information and belief, and after entering into the Stipulation of Settlement, North State and Cocco made defamatory and slanderous statements of fact with respect to Celebrity, including, but not limited to, the statements that Celebrity is not licensed, Celebrity violated New York law, Celebrity demanded so-called “kick-backs” and Celebrity requested a “flat out mafia style bribe” i.e. is participating in organized crime.

39. North State and Cocco communicated such claims to third parties other than Celebrity, with the intent of lowering Celebrity’s general reputation in the community and/or deterring third parties from associating with Celebrity.

40. North State and Cocco published their false statements as statements of fact with negligence, actual knowledge of and/or in reckless disregard of their falsity.

41. As a direct and proximate result of North State’s and Cocco’s defamation and slander, Celebrity has suffered damages.

WHEREFORE, Defendant/Counterclaimant Celebrity demands judgment against North State and Cocco, jointly and severally, for compensatory, consequential and punitive damages, interest, attorney’s fees, costs of suit and such other and further relief as the Court deems equitable and just.

Third Cause of Action
(Trade Libel – Against North State and Cocco)

42. Celebrity repeats the preceding allegations contained in the First through Second Counts of the Counterclaim as if set forth fully herein at length.

43. Upon information and belief, in connection with disclosing confidential settlement terms, North State and Coccaro engaged in the publication of certain material, and made derogatory and disparaging comments concerning Celebrity, its business practices and its services of a kind calculated and intended to prevent others from dealing with or conducting business with Celebrity, or to otherwise interfere adversely with Celebrity's business relations with others.

44. North State and Coccaro's publication of such material constituted communications to third parties that were false and played a material and substantial part in leading others and/or constituting a proximate cause for others to cease dealing with or not to deal with Celebrity.

45. North State and Coccaro's communications were false and such false statements were made intentionally and with malice.

46. As a direct and proximate result of North State and Coccaro's unlawful conduct, as set forth above, Celebrity has suffered and will continue to suffer irreparable harm, special damages and damages.

WHEREFORE, Defendant/Counterclaimant Celebrity demands judgment against North State and Coccaro, jointly and severally, for compensatory, consequential and punitive damages, interest, attorney's fees, costs of suit and such other and further relief as the Court deems equitable and just.

Fourth Cause of Action
(Abuse of Process Against North State and Coccaro)

47. Celebrity repeats the preceding allegations contained in the First through Third Counts of the Counterclaim as if set forth fully herein at length.

48. North State and Coccaro have instituted a law suit for an ulterior motive, for a purpose other than that which it was designed to accomplish, and have taken further action after the issuance of process, representing a perversion of the legitimate use of process.

49. As a direct and proximate result of North State's and Coccaro's abuse of process, Celebrity has suffered and continues to suffer irreparable harm and damages.

WHEREFORE, Defendant/Counterclaimant Celebrity demands judgment against North State and Coccaro, jointly and severally, for compensatory, consequential and punitive damages, interest, attorney's fees, costs of suit and such other and further relief as the Court deems equitable and just.

Fifth Cause of Action
(Tortious Interference with Prospective Economic Advantage)

50. Celebrity repeats the preceding allegations contained in the First through Third Counts of the Counterclaim as if set forth fully herein at length.

51. By intentionally, willfully and maliciously, interfering with Celebrity's business by and through their publication of false statements to third parties, North State and Coccaro have tortuously interfered with Celebrity's prospective economic advantage.

52. North State's and Coccaro's conduct was willful, intentional and with malice for the purpose of enriching themselves and at the expense of Celebrity.

53. As a direct and proximate result of North State's and Coccaro's tortious interference with Celebrity's prospective economic advantage, Celebrity has suffered and continues to suffer irreparable harm and damages.

WHEREFORE, Defendant/Counterclaimant Celebrity demands judgment against North State and Coccaro, jointly and severally, for compensatory, consequential and punitive damages, interest, attorney's fees, costs of suit and such other and further relief as the Court deems equitable and just.

Sixth Cause of Action
(False Light Against North State and Coccaro)

54. Celebrity repeats the preceding allegations contained in the First through Fifth Counts of the Counterclaim as if set forth fully herein at length.

55. Upon information and belief and after entering into the Stipulation of Settlement in the Underlying Lawsuit, North State and Coccaro have repeatedly and falsely claimed that Celebrity was operating as an unlicensed repair shop, and/or engaging in unlawful activity by paying “kick backs” and/or a “flat out mafia style bribe”, among other statements as aforesaid, such statements were and are objectionable to ordinary reasonable persons under the circumstances.

56. Indeed, North State and Coccaro published such statements with knowledge of their falsity and/or in reckless disregard as to their falsity.

57. Thus, North State and Coccaro published to third parties certain false facts that are and/or would be highly offensive to reasonable persons and placed Celebrity in a false light.

58. As a direct and proximate result of North State’s and Coccaro’s unlawful conduct, as aforesaid, Celebrity has suffered and continues to suffer irreparable harm and damages.

WHEREFORE, Defendants/Counterclaimants Celebrity Auto of Westchester, LLC d/b/a Mercedes-Benz of Goldens Bridge and Thomas Maoli a/k/a Tom Maoli demand judgment against North State and Coccaro, jointly and severally, for compensatory, consequential and punitive damages, interest, attorney’s fees, costs of suit and such other and further relief as the Court deems equitable and just.

FOX ROTHSCHILD LLP

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a/k/a Tom Maoli

DATED: April 19, 2018

RESERVATION OF SEPARATE AND AFFIRMATIVE DEFENSES

Defendants/Counterclaimants Celebrity Auto of Westchester, LLC d/b/a Mercedes-Benz of Goldens Bridge and Thomas Maoli a/k/a Tom Maoli reserve their right to assert other additional defenses, cross-claims, and third-party claims not asserted herein of which it becomes aware through discovery or other investigations as may be necessary or appropriate in the future.

FOX ROTHSCHILD LLP

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Westchester, LLC d/b/a Mercedes-Benz
of Goldens Bridge and Thomas Maoli
a/k/a Tom Maoli

DATED: April 19, 2018

VERIFICATION OF PLAINTIFF THOMAS MAOLI

Thomas Maoli, of full age, hereby verifies as follows:

1. I am the President of Celebrity Auto of Westchester, LLC d/b/a Mercedes-Benz of Goldens Bridge.

2. I have reviewed the foregoing Verified Counterclaim, and every factual allegation contained therein is true to the best of my knowledge and belief.

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.



THOMAS MAOLI

Dated: 4/19/18