

STATE OF MICHIGAN

IN THE OAKLAND COUNTY CIRCUIT COURT

CONTINENTAL AUTOMOTIVE GMBH and
CONTINENTAL AUTOMOTIVE MEXICANA,
S. DE R.L. DE C.V.,

Plaintiffs,

Case No. 25-214269-CB

v.

Hon. Victoria A. Valentine

TOLEDO MOLDING & DIE, LLC and
TOLEDO MOLDING DE MEXICO S. DE RL CV,

Defendants.

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**OPINION AND ORDER REGARDING THE DEFENDANT'S MOTION FOR
SUMMARY DISPOSITION UNDER MCR 2.116(C)(7) and (8)**

At a session of said Court, held in the
County of Oakland, State of Michigan
August 27, 2025

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(7) and (8), which seeks dismissal of Plaintiffs' Complaint entirely, or,

alternatively, dismissing just Defendant Toledo Molding & Die, LLC from this lawsuit. Plaintiffs filed a Response to which Defendant filed a Reply. The Court has reviewed the parties' submissions and heard oral arguments. For the reasons below, the Court DENIES Defendant's Motion.

OPINION

I. BACKGROUND

A. FACTUAL OVERVIEW

Plaintiff Continental Automotive Mexicana, S. De R.L. De C.V. ("Continental Mexicana") is a Mexican company with its principal place of business in Silao, Mexico. Plaintiff Continental Automotive GmbH is a German company headquartered in Hanover, Germany. Defendant Toledo Molding & Die, LLC ("TMD LLC") is Delaware company with its principal place of business in Toledo, Ohio. Defendant Toledo Molding De Mexico S. De RL De CV ("TMD Mexico") is a Mexican company with its principal place of business in Guanajuato, Mexico.

Plaintiffs sell automotive parts to various manufacturing companies and suppliers. Defendants manufacture blow-molded components and parts for use in various industries, including automotive.

On July 20, 2012, Continental Automotive GmbH, the buyer, and TMD LLC, the seller, entered into a Strategic Supplier Contract ("SSC").¹ The SSC provides as follows:

Article 2. Scope of this SSC.

1. This SSC establishes the terms and conditions under which Continental may purchase and Supplier will provide Contract Products.

¹ Complaint, Exhibit 1.

2. The Parties shall enter into one or more Individual Agreements² in connection with one or more Contract Products. All Individual Agreements are part of this Agreement, and the terms and conditions set forth herein govern all Individual Agreements, unless the Parties expressly deviate from the terms herein by the process set forth below. If the terms and conditions of an Individual Agreement add to or conflict with this Agreement, the Individual Agreement will control, but

- (a) only with respect to the additional or conflicting terms,
- (b) only to the extent of the addition or conflict, and
- (c) only if the Parties expressly agree to deviate from this SSC and reflect that agreement by adding the following wording to each provision of an Individual Agreement deviating from this SSC:

“The following provision shall apply in expressed deviation to Article . . of the SSC...”

In all other circumstances, this SSC shall supersede any other communications, representations, negotiations, and agreements, whether oral or written, between the Parties prior to the effective date of this SSC or in the future related to the subject matter of this SSC or any related Individual Agreement.

Article 3. Parties to this Agreement.

1. This SSC shall apply to the Parties including the Participating Related Companies of the Parties.

2. Related Companies may accede to, become bound by, and avail themselves of the rights and remedies of this SSC by signing or otherwise entering an Individual Agreement. Such Participating Related Company shall then be bound mutatis mutandis as Continental and Supplier by the terms and conditions of this SSC as having entered into the SSC by itself.

3. For the avoidance of doubt, a Participating Related Company will not become jointly and severally liable for the obligations of any other Party or Participating Related Company.³

² In the SSC an “‘Individual Agreement’ shall mean any written agreement that establishes additional terms and conditions applicable to one or more Contract Products or that establishes project-specific terms and conditions, including, but not limited to, General Quality Agreements, Sourcing Agreements, Tooling Agreements, Yearly Pricing and Supply Agreement, Purchase Orders, delivery schedules, Individual Logistics Agreements, and Individual Development Agreements.” Complaint, Exhibit 1.

³ *Id.*

In their Complaint, Plaintiffs assert that the parties agreed to an exclusive venue of all disputes in Oakland County, Michigan.⁴ Annex 1 to the SSC, titled “*Addendum for the United States, Canada and Mexico*” applies to “all Contract Product purchased by a Continental entity (or manufactured, sold, delivered and/or provided by a Supplier) organized and existing under the laws of the United States, Canada or Mexico.”⁵ The Addendum states:

8. This SSC shall be considered as a contract made and to be performed in the State of Michigan. The parties agree that this SSC, all transactions and conduct related to this SSC, and all disputes and causes of action between the parties related thereto ... shall be governed exclusively by and construed in accordance with the laws of the State of Michigan...

9. Any actions or proceedings by Supplier against Continental shall be brought only in the state and federal courts sitting in Oakland County, Michigan and the U.S. District Court for the Eastern District of Michigan, respectively, and Supplier hereby waives any claim or defense respecting improper venue or lack of jurisdiction in any case brought in such court(s).⁶

On September 10, 2018, Plaintiff Continental Mexicana issued a purchase order (“PO”) to Defendant TMD Mexico for the manufacture and supply of certain automotive parts. The PO expressly incorporates, by reference, Continental’s Purchase Order Terms and Conditions, which state as follows:

33. STRATEGIC SUPPLIER CONTRACT: If Seller or any of its affiliates worldwide have signed a Strategic Supplier Contract (“SSC”), the parties expressly agree to deviate from the terms of the SSC under this Order (a/k/a an “Individual Agreement” under the SSC) such that the following provision shall apply in express deviation to Article 2(2) and/or Article 13.5.1 of the SSC: **this Order shall take precedent over the SSC to the extent the Terms are additional to the SSC.**⁷

The PO Terms and Conditions continue,

ADDENDUM FOR SELLERS FROM MEXICO: Notwithstanding anything else contained in this Order, the DEFINITIONS and Sections 8, 13, 14, 17, 22, 32,

⁴ Complaint, ¶ 8.

⁵ Complaint, Exhibit 1.

⁶ Complaint, Exhibit 1, Annex § D(8).

⁷ Complaint, Exhibit 5, § 33.

36, 37, 38, 39, 40, 44, 48, and 49 shall supersede, supplement, modify, replace or delete, as more specifically set out below, the applicable referenced Sections of the Terms only in respect of Products and/or Services shipped from Sellers organized and existing under the laws of Mexico to “Buyer” as such term is defined below:

Section 44 is replaced in its entirety with the following:

DISPUTES; GOVERNING LAW; LIMITATIONS PERIOD: This Order shall be considered as a contract made and to be performed at Mexico City, Mexico. The parties agree that this Order, all transactions and conduct related to this Order, and all disputes and causes of action between the parties related thereto (in contract, warranty, tort, strict liability, by statute, regulation or otherwise) shall be governed exclusively by and construed in accordance with the laws of Mexico City, Mexico, without regard to its conflicts of laws provisions . . . *In the event of litigation, the parties agree that the sole and exclusive venue for all disputes, claims, or causes of action, whether legal or equitable, shall be in the state or federal courts within the geographic bounds of Mexico City, and Seller irrevocably consents to the jurisdiction of such courts.*⁸

Pursuant to the issued PO, TMD Mexico began supplying Continental Mexicana with the requested parts (washer reservoir and neck) in 2018, until 2022, when Continental Mexicana transitioned the supply of said parts to another supplier, Grupo ABC.⁹ Plaintiffs purport there were numerous quality issues with the TMD parts from 2018 – 2021, including high scrap rates, low delivery volumes, and consistently past due shipments.¹⁰ Plaintiffs allegedly incurred significant freight charges, weekly, due to TMD Mexico’s inability to consistently deliver quality parts on time.¹¹ Subsequently in April 2022, being unable to resolve its production issues, Continental Mexicana sent a letter to TMD LLC regarding a negotiated early termination of the parties’ agreements and subsequent transfer of TMD Mexico’s sourcing of the PO parts to an alternate supplier, Grupo ABC.¹² On June 22, 2022, Continental Mexicana received a letter from

⁸ Complaint, Exhibit 5 Addendum pp 12, 15.

⁹ Complaint ¶¶ 29, 42.

¹⁰ Complaint ¶¶ 30, 32.

¹¹ Complaint ¶ 34.

¹² Complaint ¶¶ 36-37, Exhibit 7.

TMD Mexico unilaterally terminating its production of the PO parts effective June 30, 2022.¹³

Continental then “scrambled to transition supply of parts to Grupo ABC.”¹⁴

B. PROCEDURAL HISTORY

Plaintiffs filed the instant action against TMD LLC and TMD Mexico, for breach of contract (Count I) and promissory estoppel (Count II), seeking monetary damages for the costs incurred by Continental because of their forced, last-minute transition to Grupo ABC for supply of the respective automotive parts. Continental allegedly incurred the following costs as a result of the sourcing transition to Grupo ABC: (i) part bank build by new supplier; (ii) tooling modifications; (iii) design testing and prototype part production; (iv) Grupo ABC price increases for the parts; and (v) other associated costs.

Defendant TMD LLC now moves for summary disposition in its favor under MCR 2.116(C)(7) for both Counts I and II, or alternatively, dismissal of just TMD LLC as a party from the lawsuit under MCR 2.116(C)(8).

II. STANDARDS OF REVIEW

MCR 2.116(C)(7) provides for summary disposition where a claim is barred by an agreement to litigate in another forum. The Court of Appeals has explained the standard of review:

Under MCR 2.116(C)(7) . . . this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in the light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff’s claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate.

¹³ Complaint ¶ 38, Exhibit 8.

¹⁴ Complaint ¶ 40.

RDM Holdings, LTD v Continental Plastics Co, 281 Mich App 678, 687 (2008) (citations omitted.)

If the pleadings show that a party is entitled to judgment as a matter of law, or if the proofs show that there is no genuine issue of material fact, the trial court “must enter judgment without delay.”

Gortney v Norfolk & Western Railway Co, 216 Mich App 535, 539 (1996).

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp*, 182 Mich App 758, 763 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603; (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360 (1991). Exhibits attached to pleadings may be considered under MCR 2.116(C)(8) because they are part of the pleadings pursuant to MCR 2.113(C). *El-Khalil*, 504 Mich at 163.

“All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant.” *Maiden v Rozwood*, 461 Mich 109, 119 (1999); *Wade v Dep’t of Corrections*, 439 Mich 158, 162 (1992). Unless the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery, the motion should be denied. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dep’t of Transportation*, 456 Mich 331, 337 (1998).

III. ANALYSIS

A. ARGUMENTS

Defendant TMD LLC argues the case should be dismissed because it was filed in the wrong forum. Specifically, TMD LLC asserts the relevant contract is the PO, and pursuant to the clear

and unambiguous mandatory and exclusive forum-selection clause in the PO Terms and Conditions, this case should be dismissed and brought in Mexico City, Mexico. Additionally, TMD LLC argues that it is not a party to the PO, and it did not manufacture or supply the Parts. Therefore, Defendant TMD LLC contends it is not a proper party to the lawsuit, and in the event the case is not dismissed pursuant to the forum selection clause, minimally it should be dismissed as a party to the lawsuit.

Plaintiffs argue that Defendant TMD LLC's motion for summary disposition should be denied because Oakland County Circuit Court is the proper venue, pursuant to the forum-selection clause contained in the controlling contract between the parties, namely the SSC, which expressly mandates that the exclusive venue for this dispute is Oakland County Circuit Court. Moreover, Plaintiffs argue they have sufficiently stated a claim for breach of contract and promissory estoppel against both Defendants, TMD LLC and TMD Mexico.

B. FORUM SELECTION AGREEMENT

“It is undisputed that Michigan’s public policy favors the enforcement of contractual forum-selection clauses and choice-of-law provisions.” *Turcheck v Amerifund Fin, Inc*, 272 Mich App 341, 345 (2006). “[W]hen presented with a contractual forum-selection clause, a court’s first step is to ‘determine the threshold issue whether a party is bound by a contract, and, accordingly, any forum selection and choice-of-law provision in the contract.’” *Barshaw v Allegheny Performance Plastics, LLC*, 334 Mich App 741, 748 (2020), quoting *Turcheck*, 272 Mich App at 346 n. 2. “When the action has been filed in Michigan, Michigan courts have the initial jurisdiction

to make this determination. *Id.*¹⁵ As our Court of Appeals has explained, “[a]lthough a valid forum-selection clause does not divest the Michigan courts of personal jurisdiction over the parties, it evinces the parties’ intent to forgo personal jurisdiction in Michigan and consent to exclusive jurisdiction in another forum.” *Turcheck*, 272 Mich App at 344.

First, the Court must determine what forum selection provision applies to this case.

On July 20, 2012, Continental Automotive GmbH and TMD LLC agreed to the terms of a Strategic Supplier Contract (“SSC”). The SSC is effectively the principal agreement under which Continental may purchase and Supplier TMD will sell contracted products. Furthermore, the SSC applies to the parties (Continental Automotive GmbH and TMD LLC), and “Participating Related Companies of the Parties.”¹⁶ The SSC states:

Related Companies may accede to, become bound by, and avail themselves of the rights and remedies of this SSC by signing or otherwise entering an Individual Agreement.¹⁷ Such Participating Related Company shall then be bound mutatis mutandis as Continental and Supplier by the terms and conditions of this SSC as having entered into the SSC by itself.¹⁸

The SSC includes an “Addendum for the United States, Canada, and Mexico” that contains a choice of law provision applying Michigan law and a mandatory venue selection provision that requires all disputes be brought in courts in Oakland County, Michigan. The SSC also states that TMD LLC “waives any claim or defense respecting improper venue or lack of jurisdiction in any case brought in [Oakland County, Michigan].”¹⁹

¹⁵ “[A] forum-selection clause may be considered separately from any choice-of-law provision in the contract. In such cases, the Michigan court in which the action has been filed shall apply Michigan law in determining the effect of the forum-selection clause.” *Barshaw*, 334 Mich App at 755.

¹⁶ Complaint, Exhibit 1, Article 3.

¹⁷ ““Individual Agreement” shall mean any written agreement that establishes additional terms and conditions applicable to one or more Contract Products or that establishes project-specific terms and conditions, including, but not limited to, General Quality Agreements, Sourcing Agreements, Tooling Agreements, Yearly Pricing and Supply Agreement, *Purchase Orders*, delivery schedules, Individual Logistics Agreements, and Individual Development Agreements.” Complaint, Exhibit 1, Article 1, Section 11.

¹⁸ Complaint, Exhibit 1, Article 3.

¹⁹ Complaint, Exhibit 1, Annex 1, Section 9.

Subsequent to execution of the SSC, Defendant TMD LLC and Plaintiff Continental Automotive GmbH entered into a Sourcing Agreement for the respective automotive parts, which expressly affirmed the terms of the governing SSC.²⁰

Thereafter, Plaintiff Continental Automotive Mexicana issued a PO to Defendant TMD Mexico for the respective parts.²¹ The PO incorporates by reference, Continental's "Purchase Order Terms and Conditions."²² Section 44 of the Terms and Conditions contains a choice of law provision applying Michigan law and a mandatory venue selection provision that requires all disputes to be brought in state or federal courts within the geographic bounds of the U.S. District Court for the Eastern District of Michigan.²³ But, in the PO Terms and Conditions "*Addendum for Sellers from Mexico*," the choice of law is Mexico and the sole and exclusive venue is "state or federal court within the geographic bonds of Mexico City."²⁴ However, there is no need to decide between the two conflicting forum selection provisions in the PO Terms and Conditions, as Section 33 expressly states:

STRATEGIC SUPPLIER CONTRACT: If Seller or any of its affiliates worldwide have signed a Strategic Supplier Contract ("SSC"), the parties expressly agree to deviate from the terms of the SSC under this Order (a/k/a an "Individual Agreement" under the SSC) such that the following provision shall apply in express deviation to Article 2(2) and/or Article 13.5.1 of the SSC: this Order shall take precedent over the SSC to the extent the Terms are **additional** to the SSC.²⁵

The PO Terms and Conditions Addendum provision that states the exclusive forum for related litigation is Mexico City simply cannot take precedent over the SSC mandatory forum selection

²⁰ Complaint, Exhibit 3.

²¹ Complaint, Exhibit 4.

²² Complaint, Exhibit 5.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

provision, as the terms are conflicting, not “additional.” Consequently, the PO Terms and Conditions may only deviate from the SSC to the extent they are additional terms to the SSC, not if they are different terms from the SSC. Therefore, the SSC forum selection provision requiring all disputes to be brought in courts in Oakland County, Michigan applies.²⁶

Determining whether the forum selection clause applies does not end the analysis, however. Pursuant to MCL 600.745, a binding forum selection clause mandating the case be litigated in another state may be set aside in limited circumstances. Specifically, MCL 600.745(3) provides:

If the parties agreed in writing that an action on a controversy shall be brought only in another state and it is brought in a court of this state, the court shall dismiss or stay the action, as appropriate, unless any of the following occur:

- (a) The court is required by statute to entertain the action.
- (b) The plaintiff cannot secure effective relief in the other state for reasons other than delay in bringing the action.
- (c) The other state would be a substantially less convenient place for the trial of the action than this state.
- (d) The agreement as to the place of the action is obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means.
- (e) It would for some other reason be unfair or unreasonable to enforce the agreement.

²⁶ At oral argument, on August 20, 2025, the Parties conceded that the PO Terms and Conditions (submitted by both Plaintiffs and Defendants as Exhibits in their pleadings) are dated November 1, 2020 [see Exhibit 5 of Defendants’ Motion for Summary Disposition, filed on June 18, 2025]. Yet, the PO subject of this litigation and dispositive motion, PO # 4700011344 [see Exhibit 4 of Defendants’ Motion for Summary Disposition] was issued on September 10, 2018 – a date preceding the PO Terms and Conditions effective date. Therefore, this Court does not have a copy of the PO Terms and Conditions in effect at the time PO # 4700011344 was issued. Accordingly, the Court cannot opine with certainty what the PO Terms and Conditions in effect at the respective time mandate regarding forum selection. Nevertheless, this Court would reach the same result, even if the PO Terms and Conditions were disregarded due to their ineffectivity at the time of PO issuance: the remaining governing contract, the SSC, applies and it expressly requires the Parties to bring this action “in the state and federal courts sitting in Oakland County, Michigan and the U.S. District Court for the Eastern District of Michigan.” [Exhibit 1 of Defendants’ Motion for Summary Disposition, pp 20-21.]

Therefore, unless one of the statutory exceptions applies, Michigan courts will enforce a forum-selection clause as written. *Turcheck*, 272 Mich App at 348. A party seeking to avoid a contractual forum-selection clause bears a heavy burden of showing that the clause should not be enforced. *Id.* Accordingly, the party seeking to avoid the forum-selection clause bears the burden of proving that one of the statutory exceptions of MCL 600.745(3) applies. *Id.* “Where the inconvenience of litigating in another forum is apparent at the time of contracting, that inconvenience is part of the bargain negotiated by the parties.” *Id.* at 350.

In the present case, enforcement of the Michigan forum selection clause is warranted because any inconvenience was part of the bargain between the parties. The convenience or inconvenience of litigating in Michigan was self-evident at the time the parties entered the Strategic Supplier Contract. There is no evidence that enforcing the Michigan forum selection clause would be “unreasonable” under exception MCL 600.745(e), substantially “inconvenient” under exception MCL 600.745(c), or that the parties cannot secure effective relief in Michigan thereby invoking exception MCL 600.745(b).

Moreover, assuming arguendo, the Court were to find that there is an ambiguity between the competing venue provisions in the various agreements, the Court would still deny Defendant TMD LLC’s Motion for Summary Disposition to appropriately permit discovery to proceed on the issue of the controlling contractual forum selection provisions.

C. MCR 2.116(C)(8) APPLICATION TO DEFENDANT TMD LLC

Under Michigan law, the elements of a breach of contract claim are: (1) the existence of a contract between the parties, (2) the terms of the contract require performance of certain actions, (3) a party breached the contract, and (4) the breach caused the other party injury. *Webster v*

Edward D Jones & Co, LP, 197 F3d 815, 819 (6th Cir 1999). Accordingly, to state a viable claim for breach of contract, Plaintiffs must allege (i) a contract existed between the parties, (ii) the terms of the contract required performance of certain actions, (iii) Defendant TMD LLC breached the contract; and (iv) the breach caused Plaintiffs injury.

Plaintiffs allege it executed various contracts with Defendant TMD LLC, namely the SSC, the Sourcing Agreement, and various Project Agreements, that required performance of various actions.²⁷ Defendant TMD Mexico is a party to the PO, under which the respective automotive parts were sourced.²⁸ Markedly, the definition of “Seller” in the PO Terms and Conditions identifies the Seller as “the entity on the face of this Order supplying Products and/or Services, its affiliates and subsidiaries[.]”²⁹ This language seemingly renders Defendant TMD LLC a party to yet another contract between the parties – the PO – and poignantly, the agreement Defendant TMD LLC argues is the central, dispositive contract between the parties. Plaintiffs allege that Defendants breached those agreements by failing to consistently deliver quality automotive parts on time.³⁰ Lastly, Plaintiffs allege Continental incurred significant costs because of Defendants’ (TMD Mexico and TMD LLC) inability to source quality parts on time.³¹ The allegations set forth in the Complaint are sufficient to state a claim for breach of contract against both Defendants TMD Mexico and TMD LLC. Accepting all factual allegations set forth by Plaintiffs as true, as well as any reasonable inferences and conclusions that can be drawn from the facts, Plaintiffs have satisfactorily alleged a claim for breach of contract against both Defendants. *Maiden*, 461 Mich at 119.

²⁷ Complaint, ¶¶ 11, 23.

²⁸ Complaint, Exhibit 4.

²⁹ Complaint, Exhibit 5.

³⁰ Complaint, ¶¶ 30-33.

³¹ Complaint, ¶¶ 34-35, 41.

To assert a claim for promissory estoppel, a plaintiff must allege: “(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisor, and (3) that in fact produced reliance or forbearance of the nature in circumstances such that the promise must be enforced if injustice is to be avoided.”

Novak v Nationwide Mut Ins Co, 235 Mich App 675, 686-87 (1999).

Plaintiffs have alleged (i) that Defendants (both TMD LLC and TMD Mexico) promised that they would deliver the respective automotive parts; (ii) that Defendants broke their promises; and (iii) the broken promises resulted in Plaintiffs incurring monetary damages.³² Therefore, Plaintiffs have sufficiently alleged a claim for promissory estoppel against Defendants TMD LLC and TMD Mexico.

³² Complaint, ¶¶ 53-58.

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that Defendant TMD LLC's Motion for Summary Disposition under MCR 2.116(C)(7) is **DENIED** as to Count I and Count II of Plaintiffs' Complaint;

IT IS FURTHER ORDERED that Defendant TMD LLC's Motion for Summary Disposition under MCR 2.116(C)(8) is **DENIED** as to Count I and Count II of Plaintiffs' Complaint;

IT IS SO ORDERED.



/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 8/27/25