SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JUDY H. KIM** **PART** **04**

Justice

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JOSE LUIS MELENDEZ PEDRAZA a/k/a JOSE LUIS MELENDEZ a/k/a JOSE L. PEDRAZA,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY, and ANGEL RIVERA,

Defendants.

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INDEX NO. 159366/2013

MOTION DATE 07/11/2023, 03/15/2024

MOTION SEQ. NO. 014 015

DECISION + ORDER ON MOTION

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ARMANDO ANTONIO MARTINEZ,

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY, LEMUEL GONZALEZ,

Defendants.

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INDEX NO. 153421/2017

MOTION DATE 07/11/2023, 03/15/2024

MOTION SEQ. NO. 005 006

The following e-filed documents, listed by NYSCEF document number (Motion 014 in the Pedraza Action) 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 569

were read on this motion to STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 015 in the Pedraza Action) 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 570

were read on this motion for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 005 in the Martinez Action) 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 247

were read on this motion to STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 006 in the Martinez Action) 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 248

were read on this motion for JUDGMENT - SUMMARY.

This action, *Jose Luis Melendez Pedraza v New York City Transit Authority et al* (the "Pedraza Action"), and the action *Armando Antonio Martinez v New York City Transit Authority et al*, pending in New York State Supreme Court, New York County under index number 153421/2017 (the "Martinez Action") have been consolidated for trial. The plaintiff in each action now moves to strike the respective defendants' answers while the defendants in each action move for summary judgment. As plaintiffs' motions to strike and defendants' motions for summary judgment are identical, all four motions are consolidated for disposition and are, for the reasons set forth below, denied.

FACTUAL BACKGROUND

Pedraza was struck by a southbound number 6 subway train in the Spring Street station on October 26, 2012, while Martinez was struck by a southbound 6 train at the same station on February 27, 2016. Pedraza brought this negligence action in 2013, alleging that the severe curvature of the tracks on the southbound approach into the Spring Street station limits a train operator's view of the tracks and that defendants were negligent in allowing trains to enter the Spring Street station at an unreasonable rate of speed given this line-of-sight limitation, and failing to conduct a study as to this issue. Martinez filed his negligence action in 2017, based upon substantially the same claims.

PROCEDURAL HISTORY

The Pedraza Action

On January 4, 2019, after trial in the Pedraza Action, a jury returned a verdict finding that Rivera, the train operator, was not negligent but that NYCTA "was negligent in failing to limit train speeds to 15 mph entering the Spring Street station southbound," and that this negligence was a substantial factor in causing the accident[1] (*see* Pedraza Action, NYSCEF Doc no. 515 [Verdict Sheet]). As pertinent here, NYCTA moved for a directed judgment in its favor or, alternatively, to set aside the jury verdict, arguing, inter alia, that its decision to allow trains to enter stations at "normal" speed was protected by the doctrines of qualified and governmental function immunity. In a decision and order dated September 11, 2019, the court (Nervo, J.) denied that motion (*see Pedraza v New York City Tr. Auth.*, 2019 NY Slip Op 32742[U], *19 [Sup Ct, NY County 2019], *revd* 203 AD3d 95 [1st Dept 2022]). The Appellate Division, First Department subsequently reversed Justice Nervo's order, vacated the judgment, and remitted the matter for a new trial, stating that "the trial court unreasonably curtailed the scope of testimony that [NYCTA]'s witnesses would be permitted to present in support of [NYCTA]'s position that liability was barred by qualified immunity" (*Pedraza v New York City Tr. Auth.*, 203 AD3d 95, 102 [1st Dept 2022]).

The Martinez Action

On October 4, 2019—after the jury verdict was delivered in the Pedraza Action but prior to the Appellate Division's vacatur of the judgment in that action—Martinez moved for partial summary judgment on the issue of NYCTA's liability, arguing that NYCTA was collaterally estopped by the verdict in the Pedraza Action from relitigating the question of its negligence.

[1] The MTA does not appear on the verdict sheet (NYSCEF Doc no. 515 [Verdict Sheet at p. 1]).

Defendants in the Martinez Action moved to amend their answer to add an affirmative defense of qualified immunity and to dismiss the complaint on that basis, among others.[2]

In a decision and order dated April 30, 2020, the court (Adams, J.) granted Martinez's motion for partial summary judgment on his negligence claim (*see Martinez v New York City Tr. Auth.*, 2020 NY Slip Op 31105[U], *2, *4 [Sup Ct, NY County 2020], *mod* 203 AD3d 87 [1st Dept 2022]). The Court also granted defendants' motion to amend their answer to assert a defense of qualified immunity but denied that branch of defendants' motion which sought to dismiss the complaint on that basis (*id.*). On appeal, the Appellate Division, First Department, modified Justice Adams's order to the extent that it denied Martinez's motion for partial summary judgment, on the grounds that the doctrine of collateral estoppel did not apply after the Appellate Division's reversal of the judgment in the Pedraza Action (*see Martinez v New York City Tr. Auth.*, 203 AD3d 87, 91 [1st Dept 2022]). The Appellate Division noted that Justice Adams properly denied defendants' motion for summary judgment based upon their asserted qualified immunity, as "it would be premature at this stage to hold as a matter of law that … [NYCTA's subway speed] studies entitle [NYCTA] to qualified immunity…" (*id.* at 92-93).

After the appellate decisions in *Pedraza* and *Martinez* were issued, the court in the Pedraza Action (Nervo, J.) issued a decision and order (the "2022 Order") granting plaintiffs' motion to consolidate these actions for joint trial and directed defendants to serve plaintiffs with documents related to NYCTA's speed policy underlying the qualified immunity defense and produce a witness with knowledge of those documents for an examination before trial (*see Pedraza v New York City Tr. Auth.*, 2022 NY Slip Op 31603[U], *4-6 [Sup Ct, NY County 2022]). Justice Nervo

[2] The Martinez Defendants also argued that: the governmental function immunity defense shielded NYCTA from challenges to its speed policy; NYCTA's speed policy conformed to accepted industry standards; and common-law principles allowed NYCTA to set its train speeds (NYSCEF Doc no. 68).

further directed that "to the extent that any party shall move for summary judgment, based solely upon discovery ordered herein, such motions shall be filed within 60 days of filing the [note of issue] or shall be deemed waived" (*id*. at *8).

THE PRESENT MOTIONS

Plaintiffs now move to strike defendants' answers on the grounds that defendants obstructed plaintiffs' deposition of Antonio Cabrera, P.E., a former NYCTA employee involved in setting its speed policy, and perpetrated a "fraud on the court" by asserting a defense of qualified immunity when no evidence in the record supports such a defense. Defendants oppose the motion, noting that they were unable to produce Cabrera because he suddenly retired after receiving a serious medical diagnosis but that he was, ultimately, deposed. Defendants reject plaintiffs' argument that it has no qualified immunity defense and argue that plaintiffs should be sanctioned for asserting such a baseless argument.

Defendants move for summary judgment, arguing that: (1) Pedraza's notice of claim failed to inform them of his claims concerning the speed of trains entering the station and line of sight issues resulting from the curve of the track; (2) they did not breach any duty to plaintiffs because NYCTA's speed policies are fully in accord with national industry standards and their duty to someone on the tracks without authorization was satisfied because the train operators activated the emergency brakes immediately upon seeing defendants on the tracks; and (3) plaintiffs' claims against NYCTA are barred by governmental function immunity and qualified immunity.

In support of their motions, defendants submit affidavits from: (1) Kenneth Korach, the president and CEO of a consulting firm that advises rail transit systems throughout the United States, who avers that none of the twelve heavy rail rapid transit systems in the United States "mandate a reduced speed of [fifteen miles-per-hour] for trains entering stations based solely upon

curves in the roadbed entering stations or a corresponding limitation of the Train Operator's view of the roadbed ahead," and that it is not a "rail transit industry practice … [to] mandate a lowered speed limit for trains entering stations and stopping to account for a limitation on the train operator's line of sight, due to a track curve or any other cause of a limitation of the view of the track bed" and, finally, that he is "unaware of any operational basis, scientific evidence, or statistical analysis" for such a limitation (*see* Pedraza Action Doc No. 518 [Korach Aff. at ¶¶16, 18, 32, 34]); (2) Glenn Lunden, the former Deputy Chief of Rail Planning in NYCTA's Division of Operations, describing four separate studies conducted by NYCTA in 2000, 2009, 2011, and 2018, which concluded that the impact of slowing trains down to fifteen miles per hour or less as they approach and enter stations severely degrades subway service (*see* Pedraza Action Doc No. 519 [Lunden Aff. at ¶¶1, 14-15, 17, 22-23, 26, 28, 31, 33-35]); (3) Sandy Castillo, NYCTA's Assistant Chief Signals Officer, outlining how the Speed Policy Committee dictates that determinations of appropriate speeds for each section of track and subway station is governed by complex calculations involving track superelevation, curve radius, the resultant force of the weight of the vehicle, and the centrifugal force acting on the vehicle and that speed limit signs and signals are installed throughout the system where these calculations showed potential compromises in train safety and passenger comfort, which did not include the southbound Spring Street station (*see* Pedraza Action Doc No. 520 [Castillo Aff. at ¶¶1, 5-6, 12, 13, 19-20]); (4) William Marin, P.E., an engineer in NYCTA's Division of Track Engineering, attesting that there are over one hundred locations in the system where a train operator's line of site into the approach to a station is limited by a horizontal curve, as at the Spring Street Station (*see* Pedraza Action Doc No. 521 [Marin Aff. at ¶26]); (5) Dr. Alan Salzberg, a statistician, stating that his statistical analyses of incidents where subway trains struck someone on the tracks from 1987 through 2016, excluding suicides,

established that there was a one in thirty five million chance of someone being injured or killed as and the vast majority of such incidents occurred at stations with tracks that are straight, not curved (*see* Pedraza Action Doc No. 522 [Salzberg Aff. at ¶¶1, 6, 8-10]); and (6) Anthony A. Ragucci, a former train operator and current Train Service Supervisor, who attests that there is "no unique physical qualify to the Spring Street station that would make it particularly prone to trains striking an individual on the track bed" (*see* Pedraza Action Doc No. 523 [Ragucci Aff. at ¶15]).

In opposition, plaintiffs argue that these summary judgment motions violate the prohibition on successive summary judgment motions and Justice Nervo's 2022 Order because defendants submit affidavits from prior motions and recycle arguments previously made in connection with an unsigned order to show cause to dismiss the Pedraza Action and a motion to dismiss the Martinez Action. Plaintiffs further argue that these affidavits are inadmissible hearsay because the underlying records referenced by each affiant were not attached as exhibits and that, even setting this deficiency aside, they do not establish defendants' qualified immunity.

In reply, defendants maintain that the motions are properly limited to discovery directed by Justice Nervo in the 2022 Order and that the successive motions rule does not apply, particularly to its arguments regarding qualified immunity.

DISCUSSION

Plaintiffs' Motion to Strike

Plaintiffs' motions to strike defendants' answers is denied. The delay in Cabrera's deposition was not willful or contumacious but due to the fact that he was no longer under defendants' control (*see e.g. Harry Winston, Inc. v Eclipse Jewelry, Corp*., 215 AD3d 421, 422 [1st Dept 2023]). In any event, plaintiffs did ultimately depose Cabrera and have not established any prejudice from this delay (*see Nussbaum v D'Amico,* 29 AD3d 449, 449 [1st Dept 2006]

[motion to strike defendant's answer based upon delayed deposition properly denied where "delay was relatively brief and was not shown to have been prejudicial or to have been attributable to willful or contumacious flouting of the court's discovery directives"]).

Neither have plaintiffs established that defendants committed a fraud on the court. A "fraud upon the court requires a showing 'that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense'" (*CDR Créances S.A.S. v Cohen*, 23 NY3d 307, 321 [2014] [internal citation omitted]). Defendants' assertion that they are entitled to qualified immunity does not satisfy this standard, as this defense has applied in similar negligence actions against NYCTA (*see Santiago v New York City Tr. Auth*., 309 AD2d 847, 848 [2d Dept 2003], *lv denied* 1 NY3d 503 [2003]; *DeLeon v New York City Tr. Auth*., 305 AD2d 227, 228 [1st Dept 2003]; *Stevens v New York City Tr. Auth*., 288 AD2d 460, 461-462 [2d Dept 2001]; *Chase v New York City Tr. Auth*., 288 AD2d 422, 423-424 [2d Dept 2001]). In addition, qualified immunity has been identified as a potentially meritorious defense in this action by the Appellate Division (*see Pedraza*, 203 AD3d at 103 ["The evidence that the TA proffered, and that the trial court precluded, suggested that it may have been entitled to qualified immunity"]; *see also Martinez*, 203 AD3d at 93).

Plaintiffs' argument that defendants' failure to produce a study passing on the specific risk underlying their claims—i.e., impediments to train operators' sight created by the curvature of the track at the Spring Street station—precludes their qualified immunity defense under the Court of Appeals' decision in *Turturro v City of New York*. 28 NY3d 469 (2016) was expressly rejected on appeal (*see Pedraza*, 203 AD3d at 104 ["there is no indication that, as it was in *Turturro*, the TA was on specific notice of the hazard identified by plaintiff so that it should have known to perform

a dedicated study of the issue"]). Accordingly, plaintiffs' motions to strike defendants' answers is denied. Defendants' request, in opposition, for sanctions is also denied.

Defendants' Motions for Summary Judgment

Finally, defendants' motion for summary judgment is denied. A party moving for summary judgment bears the burden of "mak[in] a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the moving party meets its prima facie burden, "the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for [its] failure so to do" (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

Almost all of defendants' arguments have already been considered and rejected by the trial court or Appellate Division over the course of these actions and must, therefore, be dismissed. Specifically, defendants' argument that this action should be dismissed pursuant to Public Authorities Law §1212(4) and General Municipal Law §0-e(2) because Pedraza's notice of claim "does not make any allegations which even remotely implicate NYCT[A]'s speed policy, the curve of the track or the train operator's line of sight," was rejected by Justice Nervo in his September 11, 2019 decision and order, in which he concluded that the notice of claim's allegation that "the defendants were negligent in allowing the train to enter the station at 'an unreasonable, unsafe and/or excessive rate of speed'" sufficiently put defendants on notice that "speed … [was] a component of his claim" (*Pedraza v New York City Tr. Auth.*, 2019 NY Slip Op 32742[U], 9 [Sup Ct, NY County 2019], *judgment revd on other grounds, appeal dismissed*, 2022 NY Slip Op 00255 [1st Dept 2022]). As the Appellate Division's reversal of this decision did not address this determination, it remains the law of the case (*See Glassman v ProHealth Ambulatory Surgery Ctr.*,

Inc., 96 AD3d 799, 801 [2d Dept 2012] [prior decision of Appellate Division, Second Department remained law of the case to the extent not reversed on appeal]; *see also Borek v Seidman*, 231 AD3d 465, 468 [1st Dept 2024]. Even if it was not the law of the case, this court finds Justice Nervo's reasoning persuasive.

Defendants' argument that they did not breach any duty to plaintiffs because NYCTA's speed policies are in accord with national industry standard and the train operators complied with their duty "to activate the emergency brakes immediately upon realizing there is someone on the tracks" (NYSCEF Doc no. 525 [Memo of Law at p. 9]) is entirely undermined by the Appellate Division's conclusion that Pedraza made out a prima facie claim of negligence at trial (*see Pedraza*, 203 AD3d at 99 [plaintiff established through expert testimony "that it was negligent for the TA not to take into account the impairment of a train operator's ability to see what was ahead of him in determining appropriate speeds at train stations with curved tracks"]) and that NYCTA was not entitled to summary judgment in the Martinez Action under common-law liability principles (*see Martinez*, 203 AD3d at 93). This remains the law of the case on remand (*see Matter of New York Civ. Liberties Union v New York State Off. of Ct. Admin.*, 231 AD3d 549, 550 [1st Dept 2024]; *see also Fleet Credit Corp. v Cabin Serv. Co.*, 210 AD2d 57, 57 [1st Dept 1994] [trial court is "without authority to modify or vacate an order of the Appellate Division"]).

Defendants' argument that they are entitled to governmental function immunity has also been rejected by the Appellate Division (*see Pedraza*, 203 AD3d at 104 ["we conclude that [NYCTA] is not entitled under any circumstances to the shield of governmental function immunity"]; *Martinez*, 203 AD3d at 93 ["we reject the TA's claim that it is entitled to governmental function immunity"]). Although defendants argue that the Appellate Division's remand of the Martinez Action for additional discovery and Justice Nervo's consolidation of the

Martinez Action and Pedraza Action has created a new evidentiary record such that this court may independently address this issue, they do not identify any evidence in the record that permits this court to deviate from the Appellate Division's conclusion.[3]

Defendants' motion for summary judgment based on qualified immunity is also denied. Defendants note, correctly, that NYCTA generally enjoys qualified immunity regarding its speed policy (*see Santiago*, 309 AD2d at 848; *DeLeon*, 305 AD2d at 228; *Chase*, 288 AD2d at 423). However, the Appellate Division has previously concluded that the question of whether NYCTA is entitled to qualified immunity under the circumstances presented here is a question for the jury, and nothing in the record provides a basis for a contrary conclusion. Specifically, defendants' submissions,[4] like the affidavits previously submitted on their motions to dismiss the Pedraza Action (*Pedraza* 203 AD3d at 100) and Martinez Action, "[refer] to studies that … [NYCTA's] Speed Policy Committee had undertaken years before to set appropriate subway speeds throughout the system" but only "allude[] to the fact that those studies took into consideration areas in the system that had curved sections of track," and are therefore insufficient to establish that sight limitations created by track curvature was adequately considered during that process (*Martinez*, 203 AD3d at 92). Accordingly, "it cannot be concluded on this record that the studies involved the specificity seemingly required by *Turturro*" (*Martinez* 203 AD3d at 92), and the question of "whether it was reasonable for [NYCTA] to rely on [its speed] studies, without having to conduct

[3] In light of the denial of defendants' motions, the Court declines to extensively address plaintiffs' arguments that these motions violate the bar on successive summary judgment motions or are precluded by Justice Nervo's May 16, 2022 order, except to note that it is unpersuaded by either argument (*see Maggio v 24 W. 57 APF, LLC*, 134 AD3d 621, 626 [1st Dept 2015] [defendants "were sufficiently justified in bringing the second motion because the court's original order could fairly be interpreted as authorizing it, without leave, at the close of discovery"]).

[4] Contrary to plaintiff's claim, defendants filed the documents referenced in these affidavits, though only in hard copy (NYSCEF Doc Nos. 560-563).

specialized studies of the curved stations within the system" must be left for the jury (*Pedraza*, 203 AD3d at 104).

In addition, NYCTA has not established that it satisfied its continuing duty to review its plan in light of its actual operation (*see Friedman*, 67 NY2d at 284) as defendants do not dispute that there were sixteen incidents where persons on the tracks at the Spring Street station were struck by passing trains between 1987 and 2016, with six of those incidents taking place on the southbound side (*see e.g. Langer v Xenias*, 134 AD3d 906, 907-08 [2d Dept 2015]). Whether these incidents provided notice of the specific hazard identified by plaintiff such that NYCTA should have subsequently studied this specific issue remains a question of fact. To the extent NYCTA asserts that it has studied or implemented measures to prevent persons from entering the track bed, those measures were undertaken after Pedraza's accident, were never implemented, or do not pass on the same risk underlying plaintiffs' claims.

Accordingly, it is

ORDERED that Jose Luis Melendez's motion to strike the answer of defendants New York City Transit Authority, Metropolitan Transportation Authority, and Angel Rivera (motion sequence 014 in the Pedraza Action) is denied and it further

ORDERED that Armando Antonio Martinez's motion to strike the answers of defendants New York City Transit Authority, Metropolitan Transportation Authority, and Lemuel Gonzalez (motion sequence 005 in the Martinez Action) is denied; and it further

ORDERED that defendants New York City Transit Authority, Metropolitan Transportation Authority, and Angel Rivera's motion for summary judgment (motion sequence 015 in the Pedraza Action) is denied; and it is further

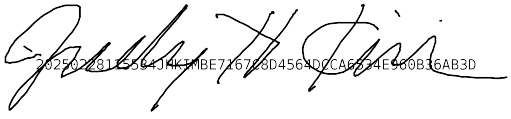
ORDERED that New York City Transit Authority, Metropolitan Transportation Authority, and Lemuel Gonzalez's motion for summary judgment (motion sequence 006 in the Martinez Action) is denied; and it is further

ORDERED that defendants' motions to bifurcate the trial of these actions (motion sequence 016 in the Pedraza Action and motion sequence 007 in the Martinez Action) is respectfully referred to the judge assigned to try these actions; and it is further

ORDERED that plaintiffs shall, within ten days of the date of this decision and order, serve a copy of this decision and order, with notice of entry, upon defendants as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "EFiling" page on this court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



2/28/2025
DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:		**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**