Comptek Tech., LLC v Boldyn Networks Infrastructure US LLC

2025 NY Slip Op 32036(U)

June 6, 2025

Supreme Court, New York County

Docket Number: Index No. 650957/2023

Judge: Melissa A. Crane

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60M

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COMPTEK TECHNOLOGIES, LLC,

Plaintiff,

- v -

BOLDYN NETWORKS INFRASTRUCTURE US LLC,F/K/A ZENFI NETWORKS, LLC,

Defendant.

INDEX NO. 650957/2023

MOTION DATE 11/08/2024

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

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HON. MELISSA A. CRANE:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 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, 164, 165, 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, 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, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 259, 260, 261, 262, 263

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff Comptek Technologies, LLC (plaintiff or Comptek) brings this action against defendant Boldyn Networks Infrastructure US LLC, f/k/a Zenfi Networks, LLC (defendant or Boldyn) for breach of contract, unjust enrichment, and related causes of action in connection with the parties' development and deployment of certain technology to provide state-of-the-art 5G wireless access to residents of New York City for the City's Link5G program (LinkNYC). After Comptek allegedly failed to fulfill certain contractual obligations, Boldyn terminated Comptek's exclusivity to manufacture 1000 poles for the LinkNYC 5G network.

Boldyn now moves, pursuant to CPLR 3212, for summary judgment dismissing the amended complaint, and awarding it $1,617,972.37, plus pre-judgment interest, based on its counterclaims. Boldyn does not seek summary judgment for the parts of its first and second

counterclaims involving Comptek's purported liability for "remediation work" (defendant's mem opp at 10 [stating that Boldyn will wait for trial to seek its declaratory judgment and damages concerning remediation work]).

For the reasons set forth below, defendant's motion for summary judgment dismissing the amended complaint is granted, and defendant's motion for summary judgment on its counterclaims is partially granted in the amount of $1,478,332.73.

FACTS

Background

Comptek is a design and engineering firm that offers wireless poles, shrouds, and infrastructure solutions to meet wireless carrier requirements for small cell infrastructure deployments (amended complaint [NYSCEF Doc No. 40], ¶ 40). LinkNYC is an infrastructure project in New York City providing Wi-Fi service free of charge to city residents (*id.*, ¶ 44). In 2022, the LinkNYC program morphed into the Link5G kiosk program, that relied upon advertising and 5G cellular services for financial revenue. The Link5G program was considered "the next generation" kiosk (*id.*, ¶ 49).

In 2014, CityBridge—a New York-based consortium—was awarded the LinkNYC program. In June 2021, Boldyn invested $200 million in CityBridge (*id.*, ¶ 50). On April 9, 2020, Boldyn entered into a 10-year franchise agreement with the New York City Department of Information Technology and Telecommunications (DOITT) for the installation of 5G equipment on poles that would have to abide by City-mandated standards (*id.*, ¶ 51).

Plaintiff alleges that, to meet the franchise's requirements, Boldyn sought out Comptek to assist with developing Link5G because Boldyn lacked the necessary experience in the design, engineering, and production of the Link5G kiosks (*id.*, ¶ 52; *see also* dep of James Lockwood

[NYSCEF Doc No. 130], at 19:21-20:2). According to plaintiff, Boldyn also needed Comptek's technological experience to meet the standards the Public Design Commission (the PDC) required to secure requisite approval for the pole project (amended complaint, ¶ 52). The project would be launched with a "partner agreement," and a subsequent "supply agreement" would govern the eventual production program (*id*., ¶ 59).

Plaintiff further alleges that, although initially the program plan that Boldyn provided contemplated that Comptek would be able to complete its work in less than a month, ultimately, the time required "exceeded twenty-four months," and "tens of thousands of hours" (amended complaint, ¶ 52).

The Partner Agreement

On August 26, 2020, Comptek and Boldyn entered into the Partner Agreement (NYSCEF Doc No. 132) to address their respective intellectual property rights. Boldyn and Comptek agreed to share all rights to "Developed IP," without any limitations on either parties' use (*id*., §§ 3-4). Developed IP included anything "conceived or developed" by either party in connection with the Link5G Program (*id*., §§ 1.3, 1.5, 3, 4).

The Partner Agreement also explained the basis of the partnership, including the parties' "desire to jointly work together to design, develop, and manufacture, or have manufactured wireless kiosk communications infrastructure equipment" (*see id*. at 1, fourth WHEREAS clause). The parties agreed to "jointly and cooperatively conduct a Transaction" (*see id*. at 1, first WHEREAS clause), that was defined as "the development, design and fabrication of a custom solution for [Boldyn's] small cell infrastructure build program, such as for use in the [Boldyn] Field, to be jointly and cooperatively conducted by [Boldyn] and [Comptek]" (*see id*., § 1.5).

The Partner Agreement described each party's expertise and role in the partnership. Comptek was described as "experienced in design, development, and manufacturing vertical infrastructure for wireless equipment, including providing engineering, product management, design, development, and manufacturing services and consulting services" (*see id*. at 1, third WHEREAS clause). Boldyn was to "provide specifications, suggestions and/or requirements relating to desired communications infrastructure, and related know-how" (*see id*. at 1, second WHEREAS clause).

Pursuant to the Partner Agreement, the parties contemplated entering "statements of work" (*id*., § 1.5). More specifically, the parties agreed in Section 2.1 that:

> "The responsibilities for each Party with respect to the Transaction are set forth herein and in any written statements of work as Exhibits hereto. Each statement of work will be negotiated in good faith between the Parties and include specifications of the work to be performed by each Party. Any changes to the statement of work shall be made in writing, signed by both parties."

Otherwise, the Partner Agreement neither set deliverables, nor obligated Boldyn to compensate Comptek in any way (*see generally id*.).

Statement of Work

On April 16, 2021, the parties executed the Statement of Work (the SOW [NYSCEF Doc No. 133]). The SOW provided an initial scope of work and included a schedule of deliverables (*id*. at 1, *see also* Schedule A). It also set forth the parties' non-binding intention to negotiate a Supply Agreement to provide terms for the purchase and sale of Link5G Kiosks (*id*. at 1).

The SOW included an Initial Fee of $386,428 (*see id*., ¶ 2), that Boldyn paid, as set forth in the payment tracker Boldyn submitted (NYSCEF Doc No. 123). This was a spreadsheet Reamonn McKelvey, Boldyn's Group Vice President, maintained. The payment tracker includes three tabs, detailing all invoices for design work, long-lead components, and the production and

purchasing of the Link5G kiosks. The spreadsheet includes the dates and amounts of each payment to Comptek (McKelvey aff [NYSCEF Doc No. 122], ¶ 3).

The SOW also included a Conditional Fee of $781,192, that was due if the parties did not enter into a Supply Agreement by September 30, 2021, and if, by that time, Boldyn had received all the necessary approvals:

> If the Work is provided in accordance with this SOW and reaches Acceptance and if [Boldyn] receives all approvals with respect to the Kiosk and its deployment by the NYC Department of Information Technology and Telecommunications, the NYC Franchise Commission Review Committee, the NYC Public Design Commission, the NYC Department of City Planning and other NYC agencies as necessary to comply with land use, environment and other laws or regulations and by other applicable governmental entities (collectively, such approvals, the 'Design Approvals'), and, **if in spite of the achieving both Acceptance and receiving all Design Approvals, [Boldyn and Comptek] do not enter into a Supply Agreement on or before September 30, 2021, then, in addition to the Initial Fee, as consideration for the Work, [Boldyn] will pay to [Comptek] a fee of $781,192.00**"

(SOW, § 2 [b] [emphasis added]).

Plaintiff acknowledges that those approvals were not received prior to September 30, 2021 (*see* Lockwood dep, at 141:8-9; *see also* dep of Mike Hoganson, Comptek's former CTO [NYSCEF Doc No. 131], at 313:23-25]). It is undisputed that, prior to the filing of the amended complaint, Comptek had never invoiced, nor otherwise requested, the Conditional Fee.

Comptek's Scope of Work Under the SOW

Comptek alleges that, between April and June 2021, the project was becoming increasingly complex, and that Boldyn forced it to take on additional scopes of work, all of which were outside the original scope of work Comptek agreed to when it entered into the Partner Agreement (amended complaint, ¶¶ 101-103, 113). Among other things, Comptek was required to expend significant time and resources on research, drawings, designs, full-scale models, procurement of long lead materials, and purchase of materials in anticipation of contracting (*id*., ¶ 115). Comptek

alleges that none of these expenses were initially contemplated by the parties, and that it fulfilled these responsibilities at its own expense, fully expecting to be compensated by Boldyn (*id.*). Comptek further alleges that the expanding complexity of the contract required additional scopes of work, that continued from August 2021 through October 2021 (*id.*, ¶¶ 121-123).

The Manufacturing Supply Agreement and Amendment No. 1

In January 2021, the parties began negotiating the Manufacturing Supply Agreement (the MSA, or Supply Agreement) (*see* 1/14/21 email attaching draft MSA [NYSCEF Doc No. 138]). These negotiations extended over a year, involving approximately 18 drafts (*see* NYSCEF Doc Nos. 138-157).

On March 30, 2022, the MSA (NYSCEF Doc No. 134) was executed. Among other things, the MSA confirmed the per-pole price (*id.*, § 5.1 [Boldyn "shall purchase the Goods from Comptek at the Price"]; *see also* price list attached as Exhibit B thereto]). Boldyn agreed to purchase, and Comptek was obligated to sell, only the kiosks identified in a Purchase Order (*id.*, § 3.1). The parties agreed to a per-pole price model (*id.*, exhibit B). The price was fixed for two years from the effective date of any Purchase Order issued during that period, unless a mutually agreed Change Order (*id.*, § 7.5) was executed *(id.*, § 5.1).

Pursuant to the MSA, Comptek was given an exclusive right to produce the first 1,000 kiosks (the Minimum Quantity Requirement) (*id.*, § 2.3). Thereafter, Boldyn could contract with any party (*id.* ["After (Boldyn) purchases one thousand (1,000) Kiosks from Comptek, (Boldyn) shall be free to purchase Kiosks from any Person."]). Comptek's exclusivity was contingent upon fulfilling certain conditions, such as ensuring sufficient capacity and safety stock for the Link5G kiosks, adhering to delivery timelines, and supplying goods that meet the agreed-upon standards:

> "The Minimum Quantity Requirement shall be effective if the following conditions are at all times satisfied throughout the Term: (a) Comptek shall maintain the

> capacity and availability to supply Kiosks at the quantities set forth in the Purchase Orders; (b) Comptek shall, at Comptek's expense and risk, maintain the Safety Stock; and (c) Comptek shall not be in material breach of this agreement. If, at any time, the foregoing conditions are not satisfied, then [Boldyn] shall be permitted to purchase Kiosks from any person. Without limitation of the foregoing, under no circumstance will [Boldyn] be obligated to purchase any quantity of Goods from Comptek except for the Quantity of goods set forth in a Purchase Order. If, during the Term, for one hundred (100) Kiosks in the aggregate Comptek either (y) fails to comply with the delivery obligations set forth in a purchase order or (z) provides Kiosks that constitute Nonconforming Goods under Section 4.6, then the Parties agree that the Minimum Quantity Requirement shall be null and void"

(*id*., § 2.3).

Nothing in the MSA unconditionally guaranteed that Boldyn would purchase, or be obligated to purchase, 1,000 poles.

The MSA also limited damages, barring: "INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND" (MSA, § 10.2 [emphasis in original]). Additionally, the potential liability of either party can "NOT EXCEED THE TOTAL FEES PAID TO COMPTEK BY [BOLDYN] UNDER THIS [SUPPLY] AGREEMENT" (*id*.). It is undisputed that Boldyn has paid Comptek approximately $8.5 million since executing the MSA (*see* Boldyn payment tracker).

The MSA further grants Boldyn a "non-exclusive, perpetual, worldwide, royalty-free right and license" to use such intellectual property rights (MSA, § 11) The MSA has a standard integration or merger clause, precluding the enforcement of any supposed prior agreements or understandings (MSA, § 16.6 ["This Agreement, including all applicable provisions of the Partner Agreement, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter"]).

On the same date that the MSA was executed, the parties entered into Amendment No. 1 of the Long Lead Component Purchase Agreement (Amendment No. 1 [NYSCEF Doc No. 136]). Under the Long Lead Component Purchase Agreement (NYSCEF Doc No. 135), Boldyn would pay for, and Comptek was obligated to procure, the components listed in any Purchase Order (Long Lead Component Purchase Agreement, § 1). The goal was to avoid delays in kiosk delivery due to the lack of timely component purchases. The price of each pole would then be reduced by the cost of any included Long Lead Components (*id.*, § 5 ["It is contemplated that Comptek will incorporate the Components into the Kiosks to be sold to [Boldyn] and reduce the price charged to [Boldyn] for such Kiosks by the price of the Components incorporated into such Kiosks as shall be set forth in the manufacturing supply agreement between the parties."]).

Under Amendment No. 1, in addition to the previously issued purchase order in the amount of $1,616,221.34, of which $242,574.8 had been paid (*see* Amendment No. 1, § 1), Boldyn committed to purchasing long lead items, at a value of $3,819,422.77, bringing the total amount for long lead components to $5,000,120.11 (*id.*, § 6). According to Lockwood, this investment took the place of the $5 million unrestricted investment that the parties had previously discussed, but which was not included in the agreement (Lockwood dep, at 130:20 - 131:6). Pursuant to the agreed invoices, Boldyn paid Comptek $4,284,111.44 for long lead items (the Long Lead Inventory Payments) (*see* Boldyn payment tracker).

The Initial Purchase Order

Initially, Comptek was happy with the deal it had struck with Boldyn. In fact, just before the MSA was executed, Lockwood stated that the MSA was a "[r]eally huge contract for Comptek ... [holy] cow ... This [is] only NYC ... another holy cow" (3/30/22 Lockwood email [NYSCEF

Doc No. 158]). A congratulatory note was also sent to all Comptek employees (4/4/22 Lockwood email [NYSCEF Doc No. 159] [identifying April 15 as the first delivery date]).

As the MSA was being finalized, Lockwood requested a Purchase Order for 150 Kiosks (*see* Comptek cost proposal [NYSCEF Doc No. 160]). Boldyn issued the Purchase Order to Comptek and paid a 30% deposit (the Deposit) of $1,773,000, less the $100,000 deposit Boldyn had already paid (*see* purchase order [NYSCEF Doc No. 161]). Under the MSA, the Deposit was amortized across the delivery of 150 kiosks, with credits applied to the price of each individual kiosk according to the Credit Schedule outlined in Exhibit B, Table A of the Supply Agreement (*see* MSA at 35-36).

Comptek's Execution of Its Obligations Under the Contracts

Boldyn alleges that Comptek consistently delivered poor quality Link5G kiosks, and asserts that, from the beginning, Comptek struggled to deliver adequate designs and maintain production quality. As the project progressed, Comptek was unable to fulfill its delivery commitments or produce goods that met the required specifications. Comptek does not dispute this (*see* NYSCEF Doc No. 163 [an agreed punch list of actions to fix a series of pole deficiencies]; NYSCEF Doc No. 164 [11/11/21 email to Comptek detailing major design issues with the doors, human machine interface (HMI), upper shrouding]; NYSCEF Doc No. 165 [10/20/21 email from Lockwood apologizing for painting issues]; NYSCEF Doc No. 166 [1/18/22 Hoganson email detailing Comptek punch list of actions due to Comptek's design issues]; *see also* McKelvey Aff., ¶ 13 [Boldyn rejected second review of the Link5G pole due to issues with the shroud, door fitting, and water-ingress protection of the communications switch]).

Boldyn further alleges that, after executing the MSA, Comptek could still not remedy the quality issues already identified, maintain an adequate inventory of parts, or meet schedules agreed

to by the parties. Ultimately, in May 2022, it issued a stop work order in response to the persistent delays and quality issues (*see* NYSCEF No. 171). Boldyn presents the following evidence in support of these allegations:

- March 14, 2022: Rust develops on the Link5Gs (3/14/22 email from McKelvey to Hoganson [NYSCEF Doc No. 178]);

- March 29, 2022: A third iteration of the design still exhibited aesthetic deficiencies (McKelvy aff, ¶ 14);

- April 8, 2022: Comptek set a delivery schedule commencing April 22, 2024, committing to ship 8 poles per week until August 12, 2022 (4/8/22 email from Comptek [NYSCEF Doc No. 167]);

- April 13, 2022: A Boldyn visit to Colorado reveals that certain electrical design flaws were not being addressed (McKelvey aff, ¶ 13);

- April 25, 2022: A Comptek-produced kiosk had significant quality and maintenance issues, including that the doors could not be opened and closed consistently (4/26/22 email [NYSCEF Doc No. 195]);

- May 5, 2022: Comptek prepares a "post-mortem" analysis concerning its failure to meet the initial shipment date of April 22, 2024, in which it admits to overextending itself, and acknowledges numerous design and quality issues (power point presentation detailing missed deadlines and quality issues (NYSCEF Doc No. 169; *see also* Hoganson dep, at 266: 2-7 ["We did not meet that objective, that is right."]);

- May 9, 2022: Comptek acknowledges list of issues with four poles including problems with door fitting, color mismatching and the HMI [5/13/22 email from Comptek's project manager (NYSCEF Doc No. 172);

- May 12, 2022: Comptek fails to include independently metering power consumption capabilities (5/12/22 email from Hoganson [NYSCEF Doc No. 170] [stating that: "All I can say is—Sorry guys. In the hustle and bustle ... I forgot the last bits"]);

- May 20, 2022: The first article kiosk is not functional and is removed because of quality issues and missing design components (*see* NYSCEF Doc No. 202 [noting the shroud aesthetics and door latching issues remained unresolved]);

- May 23, 2022: Boldyn issued a stop work order after discovering severe corrosion and rust on the kiosk just four days post-installation, attributed to Comptek's failure

to apply necessary anti-corrosion treatments (5/13/22 email from Comptek [NYSCEF Doc No. 171]);

• June 20, 2022: Comptek sets revised delivery schedule, which Boldyn accepts (6/20/22 email chain between Comptek and Boldyn email [NYSCEF Doc No. 173]). Boldyn also communicated that the revised schedule must be met without any deficiencies (*id*. ["There can be no slippage what so ever ... slippage would be the quantity changes by 1 or more units or ship dates moves by a day or more . . . we can also have no quality issues with these units."]);

• June 30, 2024: Link5G pole had a peeling decal, requiring immediate correction (6/30/22 email from Comptek [NYSCEF Doc No. 174]);

• July 6, 2022: Boldyn removed a Comptek upper kiosk due to significant aesthetic and quality issues. The kiosk doors could not open (McKelvey aff, ¶ 17);

• July 8, 2022: Comptek proposed delaying shipments (that were already late) because they were missing the required HMIs, and Boldyn was required to find parts that Comptek had failed to order (7/8/22 email chain between Comptek and Boldyn [NYSCEF Doc No. 178]);

• July 18, 2022: Comptek admits to not placing necessary part purchase orders on time (7/18/22 email from Comptek [NYSCEF Doc No. 175] ["we have tripped ourselves in not having placed PO's in some cases when required to meet our production schedule."]);

• July 19, 2022: Comptek resets the production plan again (7/19/22 email from Comptek [NYSCEF Doc No. 176] [noting that Comptek has "struggled with the realization that we must reset our deliverable expectations in the short term to build inventory with our suppliers and get in front of material shortages()" and acknowledging that "Comptek has not consistently delivered on shipment commitments to (Boldyn)"]);

• July 20, 2022: Technicians on a site were unable to get a tablet to power on, and when technicians attempted to close and lock a door on the Link5G pole, the pole snapped (7/20/22 email from Comptek [NYSCEF Doc No. 177]);

• July 21, 2022: Boldyn purchases cameras from CityBridge because Comptek forgot to order them (7/21/22 email from Comptek [NYSCEF Doc No. 178]);

• July 22, 2022: Comptek informed Boldyn of a shortage of 911 buttons, a crucial safety component necessary for the kiosks, and admits to shipping poles without Power Units (7/21/22 email from Comptek [NYSCEF Doc No. 179] ["I learned only today that Pole 36 and 37 shipped . . . without Power Units"); *see also* 7/22/22 email from Comptek [NYSCEF Doc No. 180] [Comptek states "We agree, and there is no acceptable answer."]); and

> • August 2022: Boldyn encountered multiple issues with the kiosk poles, including malfunctioning hearing loops, improperly connected modem antenna cables, missing SIM cards, and inconsistently routed cables that hindered door closure. Additionally, the poles exhibited loose door latches and significant corrosion (8/23/22 email to Comptek [NYSCEF Doc No. 182]; 8/2/22 email from Comptek [NYSCEF Doc No. 183]).

In addition to the foregoing unresolved issues, by August 2022, Comptek was attempting to renegotiate pricing, claiming that continuing the project was not financially viable. During a meeting on August 22, 2022, Comptek declared that without a significant price increase, it would be unable to continue the production of the kiosks (*see* NYSCEF Doc No. 196 ["Today, the expenses incurred by Comptek to manufacture the Link5G pole exceeds the income we receive"]). Comptek requested expedited payments and increased pricing for orders beyond 150 poles, along with additional support to purchase materials (*id.*). Comptek stressed the urgency of resolving these issues to avoid jeopardizing the project's deadlines and successful rollout (*id.*).

On August 23, 2022, Boldyn notified Comptek that it was no longer entitled to the Section 2.3 exclusivity, and that Comptek's exclusive right to supply up to 1000 poles to Boldyn was now "null and void" (*see* non-exclusivity letter [NYSCEF Doc No. 185]). Comptek did not dispute the basis for Boldyn's decision, but, instead, apologized (8/24/22 email from Lockwood [NYSCEF Doc No. 186] ["I acknowledge receipt of [Boldyn's] notice of cancellation of exclusivity and regret our organization's delivery issues leading up to this decision. Important to Comptek is supporting (Boldyn) as necessary to assure your success."]).

However, on August 31, 2022, Comptek renewed its request for more money (8/30/22 email from Lockwood [NYSCEF Doc No. 187]). Comptek sought $3,915,600 to cover cost increases for the initial 150 poles, funds for an additional purchase of 100 poles at a higher price, and an extra $2,309,300 for research and development costs (*id.*). Without its demands being met,

Comptek refused to fulfill the remaining balance of the 150 kiosk purchase order, declared the MSA to be null and void, and ceased pole production (*see* 9/16/22 email from Lockwood [NYSCEF Doc No. 188 [stating "(i)t was our intention to bring to your attention facts and circumstances surrounding the significant number of specification changes, delays in (Boldyn's) securing approval from PDC, subsequent extensive delays in securing design approvals from (Boldyn), delays in providing Comptek with the Supply Agreement, as well as the serious supply chain delays arising from the pandemic," and that "our current contract . . . failed to fully address the increased costs noted above"]; 10/14/22 letter from Lockwood [NYSCEF Doc No. 189] ["To ramp production back up at Comptek, there will be additional costs incurred for mobilization that will need to be absorbed by (Boldyn)."]; 10/6/22 letter from Comptek's counsel [NYSCEF Doc No. 190]).

Boldyn's Alleged Damages

Boldyn alleges that, between December 2020 and September 2022, Boldyn paid Comptek a total of $9,101,289.44 (*see* Boldyn payment tracker). Specifically, Boldyn has spent $8,539,311.44 related to the MSA, consisting of: 1) $561,978.00 in design fees; 2) $4,284,111.44 in long lead invoices; and 3) $4,255,200.00 for the kiosks for the production and purchase of the 98 Link5G kiosks that were delivered, including the $1,773,000.00 deposit on the first Purchase Order for 150 kiosks (McKelvey aff, ¶ 6). Boldyn further alleges that the entire deposit, however, was never credited back to Boldyn, because Comptek withdrew from the project after delivering only 98 of the 150 kiosks ordered, crediting only $3,199,778.71 in long lead credits, and $1,158,360.00 of the Deposit (*id.*, ¶ 8). According to Boldyn, because Comptek failed to deliver 150 kiosks, Boldyn has not benefitted from the long lead credits that it is entitled to in a total amount of $1,084,332.73, calculated by subtracting $3,199,778.71 (long lead credits that Comptek

applied on the first 98 kiosks) from $4,284,111.34 (total paid for long lead components) (*id.*, ¶ 9). Additionally, Boldyn has not benefitted from the portion of the Deposit allocated to the kiosks that Comptek failed to deliver—amounting to $614,640.00, which amount is calculated by subtracting $1,158,360.00 (deposit applied to the 98 kiosks delivered) from $1,773,000,000 (the Deposit) (*id.*, ¶ 10).

Thus, Comptek has an outstanding balance on long lead inventory payments and the Deposit in the amount of $1,698,972 (the result of $1,084,332.73 in long lead credits, and $614,640.00 of the Deposit, not being applied). According to Boldyn, the sum of these two amounts is then reduced by $220,640.00, reflecting the cost of the 8 kiosks that were not paid due to disputes at the time of delivery, resulting in a final damages amount of $1,478,332.73 caused by Comptek's abandonment of the remaining work on the initial PO for 150 kiosks (*id.*, ¶ 11).

Boldyn also alleges that Comptek failed to fully pay for goods delivered to it by Advantech SBC (Advantech), a third-party vendor, and had an outstanding balance of $139,639.64, which Boldyn paid to Advantech to resolve that balance (*see* 10/14/22 Lockwood email [NYSCEF Doc No. 191]). Boldyn claims that it is also owed this amount from Comptek.

Comptek's $10.3 Million Change Order

On September 15, 2022, Comptek issued a Change Order for $10.3 million to the Change Board pursuant to the requirements of the Supply Agreement. The Change Order set forth Comptek's expense estimates for Poles 1 through 150: $3.4 million in non-recurring engineering expenses; $3.4 million in non-recurring facility mobilization; and $3.5 million in recurring expenses (amended complaint, ¶ 285). The reason for the change was stated: "Reimbursement for non-recurring engineering/facility mobilization costs and incremental recurring expenses related

to cost and price impacts from schedule compression, supply chain, scope and labor shortages" (*id.*).

Subsequently, on October 17, 2022, Comptek issued three invoices for the Change Order in the amount of $10.3 million. These three invoices included an invoice for non-recurring engineering expenses (NRE) for $3.4 million, an invoice for non-recurring mobilization expenses (NME) for $3.4 million, and an invoice for $3.5 million in recurring expenses (*see* NYSCEF Doc Nos. 113-115).

According to Hoganson, the NRE costs included research and development for identifying and creating technologies, and for designing the pole with the specifications that Boldyn gave to Comptek, which involved Comptek's work to convert Boldyn's specifications into detailed specifications, data, and other criteria to create the poles (Hoganson aff, ¶ 7). These costs are considered non-recurring because they are not repeated once production begins (*id.*, ¶ 8). Throughout the project, Boldyn requested significant changes for Comptek, which then required Comptek to incur additional NRE costs because Comptek had to go back to the drawing board to adjust product designs, manufacturing processes, tooling, and supply chain logistics, all of which increased Comptek's costs (*id.*, ¶15). Hoganson asserts that, specifically, Comptek incurred design costs totaling $2,470,814, that included the cost of labor, only, for the design of the Link5G poles (*id.*, ¶ 17). Comptek also incurred engineering development costs totaling $1,008,680 (*id.*, ¶ 18).

According to Hoganson, the NRM costs were associated with starting up the production facility, including preparing the facility and workforce for the Link5G poles, and establishing the supply chain for full-scale production. Comptek incurred NRM costs to make the production process operational. These are costs related to transitioning from a development project to stable production (*id.*, ¶ 20). These costs include expenses related to facility setup, equipment

installation, workforce training, and establishing logistic networks (*id*., ¶¶ 20-21). Hogan asserts that, specifically, Comptek incurred $3,421,182 in NRM costs related to manufacturing support equipment, development equipment, supplier development, project management, relocation expenses, furniture, facility improvements and deferred maintenance, staffing expenses, and project/process line start-up costs (*id*., ¶ 27).

Hoganson asserts that Comptek also incurred recurring costs, that include the ongoing expenses associated with pole production and are related to the standard cost structure for producing and delivering products on an ongoing basis (*id*., ¶¶ 28-30). The recurring expenses that Comptek incurred attributable to the Link5G Project include for example, raw materials, components, direct labor, engineering changes, supplier price variations, production volume, quality control, and supply chain management, among other things (*id*., ¶¶ 31-32). Because Boldyn directed Comptek to expedite the project, and continued to make changes to the pole design, the recurring costs continued to increase because Comptek could not secure long-term contracts with its suppliers, and incurred significant expedite fees (*id*., ¶¶ 34-35). Specifically, Comptek incurred more than $3.5 million in recurring costs in the form of materials costs due to the supply chain issues caused by the Covid-19 pandemic, labor cost increases due to the expedited nature of the project, and expedited shipping cost increases (*id*., ¶ 35).

Importantly, however, Comptek admits that the payments it is seeking are not reflected in any of the parties' agreements (*see* Hoganson dep, at 33:23-34:3, 164: 20-24; Lockwood dep, at 194: 9-19]).

Procedural History

In motion sequence no. 001, Boldyn moved for dismissal of the complaint (NYSCEF Doc No. 2). By order and decision dated November 16, 2023 (NYSCEF Doc No. 37), this court granted

the motion to the extent of dismissing the first cause of action for fraud, with prejudice, the second cause of action for breach of the Partner Agreement with leave to replead, the fourth cause of action for breach of the covenant of good faith and fair dealing with respect to the Partner Agreement, with prejudice, and the seventh cause of action for recission, with leave to replead (*id.* at 3).

Comptek then filed an amended complaint, in which it asserted the following causes of action: breach of the Partner Agreement (first cause of action); breach of the SOW (second cause of action); breach of the MSA (third cause of action); breach of the covenant of good faith and fair dealing with respect to the MSA (fourth cause of action); unjust enrichment (fifth cause of action); rescission of the MSA (sixth cause of action); and an accounting of the valuation of all profits or benefits arising out of all of Boldyn's alleged violations of the Partner Agreement and the MSA (seventh cause of action).

Boldyn answered the amended complaint (NYSCEF Doc No. 46), and, in a separate document entitled "Counterclaim" (NYSCEF Doc No. 47), asserted four counterclaims. In its first counterclaim for breach of the MSA, Boldyn alleges that it issued a purchase order for 150 kiosks, but that Comptek only delivered 98 kiosks (*id.*, ¶¶ 99-100). Boldyn alleges that Comptek breached the MSA by not fulfilling its obligations under the purchase order, and by refusing to perform and pay for the necessary remediation work related to the kiosks it did deliver (*id.*, ¶ 102).

In its second counterclaim, Boldyn seeks a declaratory judgment that Comptek must pay for the remediation work under the MSA (*id.*, ¶ 110).

In its third counterclaim for breach of the Long Lead Purchase Agreement, Boldyn alleges that Comptek has breached such agreement by refusing to return the components it does not own and were paid for by Boldyn (*id.*, ¶ 114).

In its fourth cause of action for unjust enrichment, Boldyn alleges that Comptek failed to pay for goods delivered to it by Advantech in the amount of $139,639.64, which Boldyn paid on Comptek's behalf, thereby enriching Comptek (*id*., ¶¶ 117-120).

Subsequently, in motion sequence no. 004, Comptek moved for summary judgment on its second cause of action for breach of the SOW, and fifth cause of action for unjust enrichment. By order and decision dated March 27, 2025 (NYSCEF Doc No. 264), this court denied the motion.

DISCUSSION

"'[T]he proponent of a summary judgment motion must make 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'" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993] [citation omitted]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden is a heavy one: the facts must be viewed in the light most favorable to the non-moving party and every available inference must be drawn in the non-moving party's favor (*Sherman v New York State Thruway Auth.*, 27 NY3d 1019, 1021 [2016]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad*, 64 NY2d at 853; *see also Lesocovich v 180 Madison Ave. Corp.*, 81 NY2d 982 [1993]).

The party opposing summary judgment has the burden of presenting evidence sufficient to raise triable issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *CitiFinancial Co. [DE] v McKinney*, 27 AD3d 224, 226 [1st Dept 2006]). Summary judgment may be granted only when it is clear that no triable issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]), and "is inappropriate in any case where there are material issues of fact in dispute or where more than one conclusion may be drawn from the established facts" (*Friends of Thayer Lake LLC v Brown*, 27 NY3d 1039, 1043 [2016]; *see also Sillman v Twentieth Century-Fox Film*

Corp., 3 NY2d 395, 404 [1957]; *Tronlone v Lac d'Amiante Du Quebec*, 297 AD2d 528, 528-529 [1st Dept 2002], *affd* 99 NY2d 647 [2003]).

New York courts routinely grant summary judgment where, as here, summary resolution may be determined as a matter of law based on the plain language of the operative contracts (*see Beal Sav. Bank v Sommer*, 8 NY3d 318, 324 [2007] ["Construction of an unambiguous contract is a matter of law, and the intention of the parties may be gathered from the four corners of the instrument and should be enforced according to its terms."]; *see e.g. 401 W. 14th St. Fee LLC v Mer du Nord Nordzee, LLC*, 34 AD3d 294, 295 [1st Dept 2005] ["Since interpretation of an unambiguous (contract) is involved, raising pure issues of law for the court, the motion court can properly determine the merits of the action at this juncture."] [internal citation omitted]; *1248 Assoc. Mezzii LLC v 12E48 Mezz II LLC*, 2020 WL 2569405, * 1, 2020 NY Misc LEXIS 5099, * 3 [Sup Ct, NY County 2020] ["sale of the pledged interests in this matter" is governed by "the parties' agreement"]).

Here, viewing the evidence in the light most favorable to Comptek, this court finds that Boldyn has established, prima facie, its entitlement to judgment as a matter of law dismissing the amended complaint.

Recission (Sixth Cause of Action)

In its sixth cause of action for recission of the MSA, Comptek alleges that Boldyn "breached Section 2.3 of the [MSA], the provision giving Comptek the exclusive right to manufacture up to 1,000 Poles" "in order to contract with other suppliers such as Raycap [a Comptek competitor] ... to lower its costs and advance its acquisition by BAI [Communications Group]" (amended complaint, ¶¶ 393, 394). Comptek further alleges that Boldyn's "willful and material breach of Comptek's exclusive right to manufacture and deliver to Comptek up to 1,000

Poles was so substantial and fundamental as to strongly tend to defeat Comptek's purpose in entering into the Agreement," (*id.*, ¶ 395). Comptek seeks rescission on this basis.

Rescission is a "rarely used equitable tool" (*MBIA Insurance Corp. v Countrywide Home Loans, Inc.*, 105 AD3d 412, 413 [1st Dept 2013]; *accord U.S. Bank Natl. Assn. v DLJ Mortg. Cap., Inc.*, 42 Misc 3d 1213[A], 2014 NY Slip Op 50029[U], * 4 [Sup Ct, NY County], *affd* 121 AD3d 535 [1st Dept 2014]). Indeed, rescissory damages are generally available only where rescission is impracticable, and there are no alternative legal remedies (*MBIA Ins. Corp.*, 105 AD3d at 413; *see also Alper v Seavey*, 9 AD3d 263, 264 [1st Dept 2004] ["Generally, rescission is available where a party lacks a 'complete and adequate remedy at law and where the status quo may be substantially restored.'"] [citation omitted]; *Sabby Healthcare Master Fund Ltd. v Microbot Medical Inc.*, 2018 NY Slip Op 32429[U], ** 2 [Sup Ct, NY County 2018] ["Rescission 'should be granted only when a party's breach is material and willful, or if not willful, so substantial and fundamental as to strongly tend to defeat the object of the parties in making the contract.'"] [citation omitted]). This standard has not been met here.

First, Comptek cannot both seek to rescind the MSA, and seek $30 million under its terms. "[I]it is well settled that a party may not simultaneously seek performance and rescission of a contract" (*Assured Guar. Mun. Corp. v DB Structured Prods., Inc.*, 44 Misc 3d 1206[A], 2014 NY Slip Op 51043[U], * 7 [Sup Ct, NY County 2014]). Because Comptek commenced this action to enforce its contractual rights, it has "[a]s a result, forfeited a claim to rescission or rescissory damages" (*id.*).

Moreover, because Comptek is seeking $30 million under the MSA, an adequate remedy at law exists (*see Lantau Holdings Ltd. v General Pac. Group Ltd.*, 163 AD3d 407, 409 [1st Dept 2018] ["Here, Lantau seeks monetary damages for its breach of contract claim and has an adequate

remedy at law"]; *610 Park 8E LLC v Best & Co. Constr. Servs., LLC*, 65 Misc 3d 1226[A], * 3 [Sup Ct, NY County] [stating "since there is a remedy of monetary damages for breach of contract, the equitable remedy of rescission must be dismissed"]).

Finally, it is undisputed that Boldyn has spent over $9 million for the 98 Link5G kiosks that Comptek delivered (*see* McKelvey aff, ¶ 5 ["Throughout the course of the relationship Boldyn paid Comptek a total of $9,101,289.44"]; *see also* Boldyn payment tracker]). Thus, returning the parties to their status quo is not possible (*see Lantau Holdings Ltd.*, 163 AD3d at 409 [denying rescission on the ground that, inter alia, "the status quo cannot be substantially restored, as some of the stock has been sold already"]; *accord Unger v Ganci*, 200 AD3d 1604, 1606 [4th Dept 2021] ["In this case, rescission is unavailable because the status quo cannot be substantially restored."]).

Accordingly, the sixth cause of action for rescission is dismissed.

Breach of the Partner Agreement (First Cause of Action)

In the amended complaint, Comptek alleges several breaches of the Partner Agreement. In order to recover on this breach of contract claim, Comptek must establish that: (1) an enforceable contract existed; (2) Comptek performed under that contract; (3) Boldyn breached that contract; and (4) Boldyn's breach resulted in damages (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]). Moreover, "'a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms'" (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro, "Robobank Intl." NY Branch*, 25 NY3d 485, 493 [2015], quoting *Greenfield v Philles Records*, 98 NY2d 562, 569 [2002]; *see also Ellington v EMI Music, Inc.*, 24 NY3d 239, 244 [2014]). The "[i]nterpretation of unambiguous contract is a question of law and a proper function of the court on a motion for summary judgment" (*301 E. 60th St. LLC v Competitive Solutions. LLC*, 217 AD3d 79, 84 [1st Dept 2023]). It is fundamental that a contract

is construed in accord with the parties' intent, and the best evidence of the parties' intent is "what they say in their writing" (*Greenfield*, 98 NY2d at 569 [internal quotation marks omitted]; *accord Modern Art Servs., LLC v Financial Guar. Ins. Co.*, 161 AD3d 618, 619–20 [1st Dept 2018]).

Under the plain terms of the Partner Agreement, Comptek is unable to identify either a breach of such agreement or resulting damages from such alleged breach.

First, Comptek alleges that "Section 6.1 of the Partner Agreement required [Boldyn] to use Confidential Information received from Comptek 'solely for the purposes of the intended cooperation in the Transaction,' to 'keep it confidential and not disclose it to third parties, directly or indirectly, orally or in writing or in any other way, and to "hold all Confidential Information of a Disclosing Party in trust and confidence,'" and that section 6.1.1 provides that Boldyn "agreed 'to be responsible for any disclosure or use of Confidential Information' in violation of the Partner Agreement" (amended complaint, ¶¶ 340, 342). Comptek then alleges that Boldyn breached both these sections of the Partner Agreement "by disclosing 'Confidential Information' as defined in the Partner Agreement and the Supply Agreement, including but not limited to, Comptek's intellectual property, to BAI, Raycap and other third parties, without the knowledge or authorization of Comptek" (*id.*, ¶ 344). Comptek asserts that it has "suffered significant monetary damages" as a result of such disclosure (*id.*, ¶ 349).

In making these allegations, Comptek relies on a series of transmittal emails from Raycap, a competitor of Comptek, to Evo-Lite Advanced Luminous Solutions (Evo-Lite), a lighting specialist, seeking a quote to procure components, and attaching two drawings in PDF format, named "40654 LinkNYC" and "40655 LinkNYC" (amended complaint, ¶¶ 271-274). Comptek conclusorily alleges that "the request for a quote sent by Raycap to Evo-Lite to procure components could only have been for the Link5G project. It is therefore beyond doubt that the

drawings attached to [Raycap's] email constituted Confidential Information as defined in the Partner Agreement and the Supply Agreement, or was derived from such Confidential Information, which belonged to Comptek" (*id*., ¶ 275).

However, Comptek admits that it cannot identify the confidential information allegedly disclosed, or that it ever asked for such allegedly confidential information to be returned (*see* Hoganson dep [NYSCEF Doc No. 131], at 33:7-14 [stating with respect to confidential information: "I'm not aware of any"]; *id*. at 30:3-12 [admitting that Comptek never requested that any confidential information be returned]).

Moreover, in opposition to the motion, Comptek fails to present any competent evidence that Boldyn breached the confidentiality provisions of the Partner Agreement, other than repeating the conclusory allegations in the complaint, and referencing the emails between Evo and Raycap (*see Fein v Cook*, 153 AD3d 1168, 1169 [1st Dept 2017] [finding that "conclusory allegations ... are insufficient to defeat summary judgment"]; *accord Nelson v Lighter*, 179 AD3d 933, 934 [2d Dept 2020]).

To the extent that Comptek is referring to intellectual property related to the Link5G kiosks, Comptek's claim is devoid of merit. The Partner Agreement defined Developed IP as (among other things) "anything conceived or developed" in connection with the Link5G project (Partner Agreement, § 1.3). The Partner Agreement provided that each party will "jointly own equal, undivided shares of all Developed IP" (*id*., § 3.2). Boldyn's use of Developed IP was unrestricted (*id*., §3.2 ["each Party has the right to use and exploit the Developed IP, including to use, make, have made, sell, offer for sale, import, and export products developed and resulting from the Transaction, in any field or territory without approval of or accounting to the other Party"]). These rights were actually exclusive (meaning Comptek could not provide similar rights to parties other

than Boldyn) within the Boldyn Field, which included New York City, during the term of the Partner Agreement, and for 15 years thereafter (*id*., § 4.4 ["The Parties agree that [Boldyn] shall have exclusive rights to the Developed IP within the [Boldyn] Field during the term of this Agreement and for a term of 15 years after termination of this Agreement"]).

Accordingly, pursuant to the unambiguous terms of the Partner Agreement, any intellectual property related to the Link5G project was not confidential to Comptek because Boldyn possessed equal rights to it, meaning the right to use such intellectual property, including disclosing it to other parties, as it determined necessary and appropriate. Further, in the MSA, Boldyn was given a "perpetual, worldwide, royalty-free, right and license" to all IP related to the Link5G project (MSA, § 11).

By neither identifying the disclosed confidential information, nor addressing Boldyn's intellectual property and other rights, Comptek fails to satisfy its burden to raise a genuine issue of material fact.

Comptek also alleges that Boldyn breached Section 5.1 of the Partner Agreement by entering into so-called "conflicting" obligations (*see* plaintiff's opposition [NYSCEF Doc No. 257], at 11; amended complaint, ¶ 339 [claiming that contracts with CityBridge and BAI were in conflict with Boldyn's obligations under the Partner Agreement]). Comptek fails, however, to explain this so-called conflict, or offer any evidence, other than conclusory allegations, regarding how these transactions conflicted with, or even impacted the Partner Agreement or the MSA. Comptek similarly fails to substantiate its claim that the BAI transaction led Boldyn to reduce costs or withhold payments from Comptek.

Comptek further claims that Boldyn breached Section 2.1 of the Partner Agreement "by failing to abide by its responsibilities to Comptek to ... provide subsequent statements of work

setting forth to the specifications of the work to be performed by Comptek" (amended complaint, ¶ 336; *see also* plaintiff's opposition, at 11). However, a plain reading of the contract demonstrates that section 2.1 requires only that "each statement of work will be negotiated in good faith" (Partner Agreement § 2.1). Moreover, Comptek offers no evidence that it even sought additional statements of work, much less that Boldyn failed to negotiate in good faith.

Finally, plaintiff must prove damages as a necessary element of its breach of contract claim (*see Kelly v Bensen*, 151 AD3d 1312, 1314 [3d Dept 2017] [internal quotation marks and citation omitted] [failure to provide proof of damages "is fatal to a cause of action for breach of contract"]; *accord Acranom Masonry, Inc. v Wenger Constr. Co.*, 2019 WL 3798047, *15, 2019 US Dist LEXIS 136429 [ED NY 2019]; *Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010] [the elements of breach of contract claim "include ... resulting damages"]).

Damages must be caused by a breach, such as money agreed to be paid under the contract (*MUFG Union Bank, N.A. v Axos Bank*, 196 AD3d 442, 444 [1st Dept 2021]). "[C]ontract damages are intended to place the injured party in the same position as if there had been no breach" (*Wu v Sabrina Balsky Interior Designs*, 201 AD3d 541, 542 [1st Dept 2022]). Reliance damages are expenditures made by a plaintiff in performance that it might expect to recover when the contract is fully performed (*Keifer v Sony Music Ent., Inc.*, 8 AD3d 107, 108 [1st Dept 2004]). Reliance damages are not present if the defendant can show that, had the contract been fully performed, plaintiff would not have been able to recover its cost of performance (*St. Lawrence Factory Stores v Ogdensburg Bridge & Port Auth.*, 121 AD3d 1226, 1127 [3d Dept 2014]).

Comptek argues, in a wholly conclusory manner, that certain claimed expenses and costs are direct damages flowing from Boldyn's breach of the Partner Agreement (plaintiff's opposition, at 8). However, Comptek alleges only a series of damages that are unrelated to the alleged breach

of the Partner Agreement, claiming that is entitled to $3.8 million in engineering costs, $4.4 million in mobilization costs, a $5 million unrestricted cash investment, and $7.5 million for a long-term production facility lease (amended complaint, ¶¶ 345-346). These claimed damages, however, are not addressed within the terms of the Partner Agreement, that lacks any obligations to perform any work, or make any payments to Comptek (*see* Partner Agreement; *see also* Hoganson dep at 34:25-35:6 ["Q: where in the exhibit ... does it say anything about you being paid ... A: ... I don't believe (it) says anything about that."]).

In addition, rather than direct damages, these damages are more properly characterized as reliance damages, that the Partner Agreement expressly bars (*see* Partner Agreement, § 7.3 [broadly barring indirect, special, or consequential damages]). Moreover, even if Comptek had been allowed to produce and sell the entire 1,000 pole exclusively, none these amounts would be owed (*see* Hoganson dep at 207:7-17 [when asked whether Comptek would have received these amounts if it maintained the exclusivity, Hoganson stated, "I don't think so"]).

Finally, the court notes that Comptek fails to provide any support for its contention that Boldyn is obligated to compensate it for the nonrecurring engineering and mobilization costs and the $7.5 million lease under the Partner Agreement. Likewise, with respect to the claimed $5 million unrestricted investment, Comptek concedes that, although this a provision was initially included in several drafts of the MSA, it was subsequently removed from the final draft and replaced with credits for the purchase of long lead components (*see* Lockwood dep, at 130:20-131:6).

Accordingly, the first cause of action for breach of the Partner Agreement is dismissed.

Breach of Contract Under the SOW for the Conditional Fee (Second Cause of Action)

In its second of action, Comptek asserts a claim for breach of section 2 (b) of the SOW. This provision provides that Boldyn would pay Comptek a Conditional Fee in the amount of $781,192 if the parties did not enter into the MSA prior to September 30, 2021, and if the work Comptek was to provide, in accordance with the SOW, received the necessary design approvals (amended complaint, ¶¶ 351-360; *see* SOW § 2 [b] [unambiguously stating that the Conditional Fee is owed only if Boldyn receives "all approvals with respect to the Kiosk and its deployment"]).

It is undisputed that the parties did not enter into the MSA prior to September 30, 2021. However, despite Comptek's arguments to the contrary (plaintiff's opposition, at 18), Boldyn did not receive the necessary design approvals by the deadline, meaning the Conditional Fee was never owed. Final approval from the PDC was achieved by (at the earliest) June 13, 2022, after September 30, 2021, the trigger date for the Conditional Fee (*see* email from DOITT confirming design approval for Link5G poles [NYSCEF No. 198]). Indeed, Comptek admits that Boldyn did not have final PDC approval by September 30, 2021 (Hoganson dep, at 313:23-25 ["Q: But PDC approval was not achieved by September 30, 2021, right? A: Correct."]; Lockwood dep, at 141:8-9 ["I don't think the PDC approval happened until June of 2022."]).

The court rejects Comptek's argument that it "would be entitled to the 'Conditional Fee' of $781,192 as long as [Boldyn] received all required approvals, period" (plaintiff's opposition, at 14). Under the explicit and unambiguous terms of the SOW, for the Conditional Fee to be owed, all approvals had to be obtained by a date certain. Given that it is undisputed that the parties did not enter into the MSA by September 30, 2021, and that Boldyn did not have all of its approvals by that date, Comptek is not entitled to the Conditional Fee of $781,192.00 under the express provisions of the SOW (*Kolbe v Tibbetts*, 22 NY3d 344, 353 [2013] [contracts are enforced

according to the plain meaning of their terms]). As the court explained at page 6-7 of the 3/27/2025 Transcript, the language "if in spite of achieving both acceptance and approvals" presupposes that design approvals will be in place before the supply agreement on September 30, 2021."

Thus, the court dismisses the second cause of action.

Breach of the MSA (Third Cause of Action)

Comptek alleges that Boldyn breached the MSA by terminating Comptek's 1,000 pole exclusivity (amended complaint, ¶ 363). However, termination was permitted under the unambiguous provisions of section 2.3 of the MSA:

> "The Minimum Quantity Requirement shall be effective if the following conditions are at all times satisfied throughout the Term: (a) Comptek shall maintain the capacity and availability to supply Kiosks at the quantities set forth in the Purchase Orders; (b) Comptek shall, at Comptek's expense and risk, maintain the Safety Stock; and (c) Comptek shall not be in material breach of this Agreement. If, at any time, the foregoing conditions are not satisfied, then [Boldyn] shall be permitted to purchase Kiosks from any Person."

Boldyn argues that Comptek received over $9 million but that Comptek failed to fulfill its contractual obligations under the MSA. As a result, it terminated Comptek's exclusivity to manufacture 1,000 poles for the NYC LINK5G network, as it was permitted to do under the MSA. In support of this argument, Boldyn presents documentary evidence that Comptek provided substandard poles, with inadequate designs, such as improper door fittings, defects in shrouds, HMI malfunctions, no 911 emergency buttons, and lacking the anti-corrosion treatment (*see e.g.* NYSCEF Doc Nos. 163-166; *see also* McKelvey aff, ¶ 13). Boldyn also presents evidence that Comptek failed to address several quality issues, could not maintain the proper inventory of parts, and did not meet the agreed schedules (*see e.g.* NYSCEF Doc Nos. 167, 169-183, 195-196).

Indeed, Comptek acknowledged these issues several times, including in a post-mortem analysis produced after missing its April 22 shipping deadline. It admitted to unresolved issues,

including problems with door fabrication quality, shroud fit, and paint consistency (*see* post-mortem power point presentation [NYSCEF Doc No. 169]). Moreover, Boldyn reported additional defects on May 9, 2022, including issues with door fitting and color mismatch (*see* NYSCEF Doc Nos. 172, 192), and issued a stop-work order on May 23 to halt manufacturing until the defects were resolved (*see* NYSCEF Doc No. 171]). Despite this, further corrosion was noted just five days after deployment (*see* NYSCEF Doc No. 193 ["This is a very serious quality issue and no further production should continue."]). Comptek openly admits to the corrosion explaining its "poor performance" (*see* NYSCEF Doc No. 194).

Comptek continued to struggle with delays and quality control, sending a revised delivery schedule on June 20 and another on July 19, despite previous assurances that there would be no more quality issues or deviations from the schedule (*see* NYSCEF Doc Nos. 173, 176). Comptek continued to send incomplete poles and failed to purchase necessary components, leading to ongoing issues with corrosion and functionality through August (*see* NYSCEF Doc No. 180). On July 22, 2022 Comptek admitted there was "no acceptable answer" for its shortcomings (*see* NYSCEF Doc No. 181).

After months of issues and delays, Boldyn provided notice that the Section 2.3 exclusivity was no longer in place (*see* non-exclusivity letter). In response, Comptek did not deny these issues, stating "I acknowledge receipt of [Boldyn's] notice of cancellations of exclusivity and regret our organization's delivery issues leading up to this decision" (*see* NYSCEF Doc No. 186).

Accordingly, this court finds that these undisputed facts provided a clear basis to for Boldyn terminate Comptek's exclusivity, under the plain terms of section 2.3 of the MSA, and that thus, Boldyn did not breach the MSA.

Moreover, even if Comptek could raise an issue of fact as to Boldyn's breach of the MSA, Comptek fails to allege any recoverable damages. Comptek only alleges damages in the form of lost profits, i.e., "loss of revenue in connection with any Poles [Boldyn] has ordered, or may order, from another vendor, up to the first 1,000 Poles [Boldyn] has ordered or may order" (amended complaint, ¶ 369). Comptek further alleges that it "was projected to earn at least approximately $86.4 million in revenue for production and delivery of 1,000 Poles and related components, if such Poles were to be ordered," and that its "expected profit from this project would have been at least 11% of such revenue, implying an EBITDA loss to Comptek of approximately $9.5 million over the life of the project" (*id*.).

New York has a "relatively demanding standard for an award of lost profits" (*Kidder, Peabody & Co., Inc. v IAG Intl. Acceptance Group N.V.*, 28 F Supp 2d 126, 131 [SD NY 1998], *affd* 205 F3d 1323 [2d Cir 1999]), and applies a near per se rule rejecting plaintiffs' attempts to collect purported lost profits from a business venture or product with no prior track record to support claims of future success:

> "First, it must be demonstrated with certainty that such damages have been caused by the breach and, second, the alleged loss ***must be capable of proof with reasonable certainty***. In other words, the damages ***may not be merely speculative, possible or imaginary, but must be reasonably certain and directly traceable to the breach***, not remote or the result of other intervening causes"

(*Kenford Co., Inc. v County of Erie*, 67 NY2d 257, 261 [1986] [emphasis added] [affirming vacation of award of lost profits as damages for failure to construct stadium]; *accord Ashland Mgt.. v Janien*, 82 NY2d 395, 403 [1993] [it is well settled that a "party may not recover damages for lost profits unless they … are capable of measurement with reasonable certainty" and to make this showing, a plaintiff is required to demonstrate that its damages are measurable "based upon known reliable factors without undue speculation"]).

In light of these rules, "[m]ost of the leading cases which have decided on claims of future lost profits have ruled that they are not recoverable" (*Great Earth Intl. Franchising Corp. v Milks Dev.*, 311 F Supp 2d 419, 432 [SD NY 2004] [granting summary judgment against claim for lost profits]; *see e.g. Olsenhaus Pure Vegan, LLC v Electric Wonderland, Inc.*, 116 AD3d 449, 450 [1st Dept 2014], *Digital Broadcast Corp. v Ladenburg, Thalmann & Co., Inc.*, 63 AD3d 647, 647-48 [1st Dept 2009]; *Awards.com, LLC v Kinko's, Inc.*, 42 AD3d 178, 185 [1st Dept 2007], *affd* 14 NY3d 791 [2010]; *Electron Trading LLC v Perkins Coie LLP*, 2019 NY Slip Op 33019[U], * 3-4 [Sup Ct, New York County, 2019]).

Likewise, here, Comptek has failed to provide any evidence substantiating the profit it would have earned from the project. Notably, Comptek was unable to specify when, if ever, the project was expected to become profitable (*see* Lockwood dep, at 297:4-25). Although, in opposition to the motion, Lockwood, on behalf of Comptek, claims, for the first time that, "the Pole project would have been profitable to Comptek between Poles 151 and 1,000" (Lockwood affidavit [NYSCEF Doc No. 216], ¶ 77), this unsupported and qualified statement fails to raise a genuine issue of material fact. Comptek has not offered any financial records or other evidence demonstrating that it would have earned a profit within the 1,000 pole exclusivity period. Moreover, when asked during deposition about Comptek's ability to earn a profit during the exclusivity, both Lockwood and Hoganson were unable to substantiate any damages (*see* Lockwood dep, at 298:14-21 [when asked when Comptek would break even on the project, Lockwood responded "I don't know"]; Hoganson dep, at 321:5-324:12 ["Q: Would Comptek have made any money on this deal? A: Almost impossible to say."]).

Indeed, any claim of profitability would be speculative, as the MSA does not obligate Boldyn to purchase any specific quantity of poles (*see* MSA, § 2.3). Instead, all purchases are

expressly conditioned on Boldyn's demand for pole production, making Comptek's claim entirely speculative. Accordingly, there is no genuine issue of material fact disputing that damages do not exist based on further revenue.

Additionally, Comptek's claims for the nonrecurring engineering and mobilization costs, as well as the $7.5 million lease payment, fail under the MSA for the same reason as each failed under the Partner Agreement. Simply put, the MSA does not obligate Boldyn to make those payments and, indeed, precludes them. The MSA bars: "INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND" (MSA, § 10.2 [emphasis in original]), and limits the potential liability of either party, stating that any liability would "NOT EXCEED THE TOTAL FEES PAID TO COMPTEK BY [BOLDYN] UNDER THIS [SUPPLY] AGREEMENT REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE" (*id.*). This broad damages clause precludes any possibility of proving Comptek's purported damages in this case.

Although Comptek also claims that Boldyn breached the MSA by failing to participate in the Cost Change Process as outlined in § 7.5 of the MSA, and agreeing to $4,399,890 in price increases (amended complaint, ¶ 364), the court rejects this argument. Under the express terms of the MSA, no such obligation existed until an agreement was reduced to writing and signed by both parties (*see* MSA, § 7.5).

Finally, Comptek claims that Boldyn breached the MSA by disclosing confidential information to third parties (amended complaint, ¶¶ 366-67). This argument is rejected for the same reasons that this claim failed with respect to the Partner Agreement.

Accordingly, the third cause of action for breach of the MSA must be dismissed.

Implied Covenant of Good Faith and Fair Dealing (Fourth Cause of Action)

In its fourth cause of action, Comptek alleges that Boldyn is in breach of the implied covenant of good faith and fair dealing implicit in the MSA, because it terminated Comptek's exclusive right to manufacture and sell poles to Boldyn and refused to participate in the Cost Change Process provided for in the MSA (amended complaint, ¶¶ 374-381).

"New York law implies a covenant of good faith and fair dealing, 'pursuant to which neither party to a contract shall do anything which has the effect of destroying or injuring the right of the other party to receive the fruits of the contract'" (*Thyroff v Nationwide Mut. Ins. Co.*, 460 F3d 400, 407 [2d Cir 2006] [citation omitted]). However, a claim for breach of the covenant of good faith and fair dealing will be dismissed as duplicative where, as here, it "arise[s] from the same facts" as a breach of contract claim (*MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 87 AD3d 287, 297 [1st Dept 2011]; *see e.g. New York Univ. v Continental Ins. Co.*, 87 NY2d 308, 320 [1995] [holding that the trial court erred in denying insurer's motion to dismiss claim based on breach of the implied covenant of good faith where that claim was predicated on the same facts that gave rise to claim for breach of the insurance policy]; *Brook v Peconic Bay Med. Ctr.*, 152 AD3d 436, 438 [1st Dept 2017] ["the cause of action for breach of the covenant of good faith and fair dealing was properly dismissed as it merely restates the breach of contract claim"]; *Amcan Holdings, Inc. v Canadian Imperial Bank of Commerce*, 70 AD3d 423, 426 [1st Dept 2010] [dismissing implied covenant claims as duplicative where they "arise from the same facts" and "seek the identical damages for each alleged breach" as plaintiffs' breach of contract claims]).

Comptek's good faith and fair dealing claim is duplicative of it claim for breach of the MSA. Both claims arise from the same facts—the termination of Comptek's exclusivity to manufacture and sell the first 1,000 poles, and the alleged refusal to participate in the Cost Change

Process. Because the good faith and fair dealing claim is premised on the same conduct as the breach of contract claim, it must be dismissed.

Unjust Enrichment (Fifth Cause of Action)

In its fifth cause of action for unjust enrichment, Comptek alleges that Boldyn was unjustly enriched by "inducing Comptek to ... expend large sums of Comptek's own money to engineer, design, develop and manufacture Poles" (amended complaint, ¶ 382). Specifically, Comptek claims it is entitled to approximately $10.3 million in additional costs to design and develop the Link5G poles, beyond the agreed to per-pole price set forth in the MSA, which is premised on three unpaid invoices: (1) the NRE invoice for $3.4 million; (2) the NRM invoice for $3.4 million; and (3) the recurring invoice for $3.5 million (plaintiff's opposition, at 15).

To succeed on a claim for unjust enrichment, Comptek must demonstrate that Boldyn was enriched at Comptek's expense, and that the principles of equity and good conscience necessitate Comptek's recovery (*Georgia Malone & Co., Inc. v Rieder*, 86 AD3d 406, 408 [1st Dept 2011]). Unjust enrichment "is an obligation the law creates in the absence of any agreement" (*Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 572 [2005]).

However, an unjust enrichment claim cannot stand as an alternate cause of action where, as here, a valid and enforceable contract governs the subject matter of the dispute (*Cox v NAP Constr. Co., Inc.*, 10 NY3d 592, 607 [2008] [stating "a party may not recover in quantum meruit or unjust enrichment where the parties have entered into a contract that governs the subject matter"]; *see also IDT Corp. v Morgan Stanley Dean Witter & Co.* (12 NY3d 132, 142 [2009]). Thus, unjust enrichment is available only "'*in the absence of an actual agreement*'" (*Pappas v Tzolis*, 20 NY3d 228, 234 [2012] [emphasis in original; citation omitted]; *see also Santander Bank, N.A. v. Rubin Trading Corp.*, 68 Misc 3d 1013, 1022 [Sup Ct, Kings County 2020] ["A plaintiff

may state alternative causes of action for breach of contract and unjust enrichment which are predicated on the same facts only where there is a bona fide dispute as to the existence of a contract or where the contract does not cover the dispute in issue."]).

Here, Comptek's claims for unjust enrichment and breach of the MSA rely on the same facts, and seek the same damages, i.e., the approximately $10.3 million in additional costs to design and develop the Link5G poles, beyond the agreed to per-pole price set forth in the MSA (*see* amended complaint, ¶¶ 365, 368 [alleging the Boldyn breached the MSA by failing to pay the outstanding invoices]).

Moreover, the terms of the MSA are clear, establishing a fixed per-pole price that encompasses all associated costs, including Boldyn's payments for long lead components, which are incorporated into the per-pole price (*see* MSA, exhibit B [setting forth a list of prices for various components, including mobile infrastructure, Verizon, AT&T and TMO carrier loadout kit, thermal divider, exhaust kit, TB shroud, and ducting kit]). The MSA also guarantees a two-year price freeze for any issued purchase orders (*see id.*, § 5.1). Thus, it is evident that all payments for Comptek related to the poles are explicitly addressed in the MSA, and that nothing in the MSA obligated Boldyn to make the $10.3 million in payments that Comptek now seeks.

Accordingly, plaintiff's unjust enrichment claim is barred as duplicative of claim for breach of the MSA, as it covers the same subject matter, and seeks the same damages, as in its breach of contract claim (*see Li v Navaretta*, 220 AD3d 758, 759 [2d Dept 2023] [unjust enrichment claim dismissed where contract existed covering payments to plaintiff]; *see also 850 Third Ave. Owner, LLC v Discovery Communications, LLC*, 205 AD3d 498, 499 [1st Dept 2022] [the claim for unjust enrichment "should have also been dismissed, as (it) cover(s) the same subject matter as the express contract (a lease) between the parties"] [citation, quotation marks and alteration omitted]).

The court also notes that Comptek neither invoiced nor otherwise sought these amounts until October 2022, well after Boldyn terminated Comptek's exclusivity (*see* Hoganson affirmation, ¶ 4), even though, as Comptek acknowledges, some of these invoices were expenses incurred as early as January 2022 (*id*., ¶ 17).

In addition, the unambiguous terms of the MSA preclude reliance on any prior understandings or agreements. Section 16.6 of the MSA states that:

> Entire Agreement. This Agreement, including all applicable provisions of the Partner Agreement, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. All Purchase Orders entered into hereunder are included in and made a part of this Agreement.

Thus, Comptek's claim that there was an agreement or understanding that these expenses would be covered is unenforceable. Neither agreement supports Comptek's claimed entitlement to these expenses, requiring the dismissal of this claim (*see e.g. Schron v Troutman Saunders LLP*, 97 AD3d 87, 93 [1st Dept 2012] ["the merger and integration clauses are explicit and therefore bar the use ... of any other agreements or understandings"]).

The unjust enrichment claim also fails because Comptek has offered no admissible proof of the claimed expenses. Comptek's primary evidence for its claim of $10.3 million in expenses is Hoganson's affirmation, which is self-serving, and lacks documentary evidence to substantiate the expenses detailed therein. Specifically, for the approximately $3.4 million in nonrecurring costs, the only proof provided is a spreadsheet created by Hoganson, itemizing $2,470,814.00 in labor and engineering costs (*see* engineering expenses spreadsheet [NYSCEF Doc No. 116]). This spreadsheet is unsupported by any documentation, and does not disclose the sources of the information, explain how these expenses were calculated, or otherwise demonstrate Hoganson's knowledge to attest to these facts.

Additionally, the sole evidence for $1,008,680.00 in NRE expenses is a PowerPoint presentation dated March 5, 2022 (NYSCEF Doc No. 117), also created by Hoganson. This presentation outlines a development cost schedule for certain engineering expenses (*see id*.). Similar to the spreadsheet, this presentation lacks corroborative support beyond Hoganson's conclusory statements. Importantly, this PowerPoint was presented mere weeks before the parties signed the MSA, which has a merger clause, and contains the full payment terms, thereby undermining the relevance of the spreadsheet.

Likewise, Comptek's claim for $3.4 million in NRM costs is unsubstantiated. Hoganson's evidence comprises only a self-prepared spreadsheet detailing various mobilization expenses, such as leasing and hiring costs (NYSCEF Doc No. 118). However, Hoganson fails to substantiate these expenses by any tangible evidence of the costs incurred.

Finally, Comptek's claim for $3.5 million in recurring costs lacks any probative value, as it relies solely on another spreadsheet created by Hoganson (NYSCEF Doc No. 119). Although Hoganson asserts that the spreadsheet represents a compilation of numerous business records supporting the claimed expenses, he does not provide copies.

Accordingly, Comptek's conclusory allegations that it is entitled to such expenses, based upon summary spreadsheets, without specificity or supporting documentation, are inadequate to create an issue of fact on this summary judgment motion.

Accordingly, Comptek's fifth cause of action for unjust enrichment is dismissed.

Accounting (Seventh Cause of Action)

Comptek claims that it is entitled to an accounting due to alleged breaches of the Partner Agreement and the MSA (amended complaint, ¶¶ 398-401). It also seeks an accounting in connection with its unjust enrichment claim (*see id*., ¶¶ 387). However, because this court has

determined that Boldyn did not breach either agreement, and that Comptek's claim for unjust enrichment fails, its cause of action for an accounting is moot, and must be dismissed.

Boldyn's Counterclaims

In support of its motion for summary judgment on the counterclaims, Boldyn argues that it is undisputed that it has suffered damages totaling at least $1,617,972.37, plus pre-judgment interest, resulting from Comptek's failure to fulfill its obligations under the MSA, Amendment No. 1, and the Purchase Order. According to Boldyn, these damages consist of: 1) $139,639.64 paid to Advantech, on Comptek's behalf, due to Comptek's failure to settle an outstanding balance; 2) $1,084,332.73 in Long Lead Component expenses that had not yet been credited back to Boldyn; and 3) $614,640.00 for the portion of the $1.7 million deposit that was not applied to the remaining poles that were not delivered, which amount is reduced by $220,640.00, reflecting the cost of the 8 kiosks that was not paid due to disputes at the time of delivery, for a total of $394,000 (*see* Boldyn memorandum of law [NYCEF Doc No. 199], at 24).

This court finds that Boldyn has presented undisputed evidence that it is entitled to damages on its counterclaims in the amount of $1,084,332.73 in Long Lead Component expenses, and $394,000 for the portion of the $1.7 million deposit that was not applied to the undelivered poles, for a total of $1,478,332.73 (*see* McKelvey aff, ¶¶ 6-11).

Indeed, Comptek does not dispute that Boldyn made a $1.7 million deposit for the manufacture and delivery of 150 poles, and it does not dispute that it pulled out of its obligation after delivering only 98 poles, leaving 52 poles undelivered (*see* Lockwood opposition aff [NYSCEF Doc No. 216], ¶¶ 72, 74). Accordingly, it is undisputed that only $1,158,360.00 of the deposit was applied, with $614,640.00 remaining unapplied for the poles that were never delivered. Although Comptek's argues that Boldyn is not entitled to a refund because these funds were used

to purchase components and build poles that Boldyn never received, this argument only underscores that Comptek failed to fulfill the terms of the purchase order by not delivering all 150 poles, thereby preventing Boldyn from receiving the full benefit of its deposit.

Likewise, Comptek does not dispute that Boldyn paid a total of $4,284,111.44 for long lead components intended to be credited over 150 poles (*see* Lockwood opposition aff, ¶¶ 72, 74). Because it is undisputed that Comptek terminated its obligations after delivering only 98 poles, it is clear that Boldyn did not benefit from the remaining $1,084,332.73 in long lead credits. Comptek's argument that the Long Lead Component Agreement does not obligate it to refund the long lead credits with respect to poles that it failed to deliver (*see* plaintiff's opposition, at 20-21) is without merit, as the Long Lead Component Agreement explicitly requires Comptek to incorporate these components into the poles sold, thereby reducing the price charged to Boldyn (*see* Long Lead Component Agreement, ¶ 5). Accordingly, Comptek's failure to fulfill this requirement, while still retaining the benefits from Boldyn's payments, runs counter to the parties' agreement.

However, this court finds that Boldyn is not entitled to damages in connection with computers that Advantech delivered to Comptek. The record reveals (during oral argument of this motion) that Comptek offered to have Boldyn pick up those computers and obtain ownership of them, because Comptek viewed those computers as belonging to Boldyn.

In its notice of motion, Boldyn also asks the court for attorneys' fees and costs "for having to defend against these claims" (NYSCEF Doc No. 121). However, Boldyn does not address this request in its motion papers or submit any support for this application. Thus, Boldyn's request for costs and attorneys' fees is denied.

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that the motion of defendant Boldyn Networks Infrastructure US LLC, f/k/a Zenfi Networks, LLC for summary judgment is granted in part and denied in part, as set forth below; and it is further

ORDERED that defendant's motion to summarily dismiss the amended complaint is granted in its entirety; and it is further

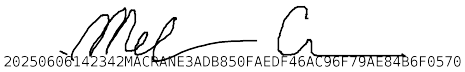
ORDERED, ADJUDGED, and DECLARED that (a) the Supply Agreement was not rescinded, and is neither null nor void; (b) defendant did not breach the Partner Agreement; (c) defendant did not breach the Statement of Work; (d) defendant did not breach the Supply Agreement; (e) defendant did not breach the covenant of good faith and fair dealing implied in the Supply Agreement; and it is further

ORDERED that defendant's motion for summary judgment on its counterclaims is granted in part, and the Clerk is directed to enter judgment in favor of defendant and against plaintiff Comptek Technologies, LLC in the amount of $1,478,332.73, with interest at the statutory rate from October 6, 2022 [the date of termination of the Supply Agreement], until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the remainder of defendant's motion is denied; and it is further

ORDERED that the parties must appear for a pre-trial conference over MS Teams/NY VCAP on **6/16/25 at 11:30 a.m.** The court will set an expedited pre-trial schedule for defendant's last remaining claims (the part of defendant's first and second causes of action relating to "remediation work"); and it is further

ORDERED that there shall be no further motion practice whatsoever in this case without a pre-motion conference with the court.



6/6/2025
DATE

MELISSA A. CRANE, J.S.C.

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