IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

HARSHIKESH PANCHAL,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	
	)	C.A. No. N24C-05-267 EMD CCLD
v.	)	
	)	
XO ENERGY WORLDWIDE LLLP,	)	
	)	
Defendant/Counterclaim Plaintiff.	)	

Submitted: May 20, 2026
Decided: August 25, 2026

Upon Plaintiff/Counterclaim-Defendant's Motion to Dismiss Counterclaims
GRANTED IN PART AND DENIED IN PART

Upon Plaintiff/Counterclaim-Defendant's Cross-Motion for Summary Judgment
DENIED

Upon Defendant/Counterclaim-Plaintiff's Cross-Motion for Summary Judgment
GRANTED IN PART AND DENIED IN PART

Daniel C. Herr, Esquire, Law Office of Daniel C. Herr LLC, Wilmington, Delaware. *Attorney for Plaintiff/Counterclaim Defendant, Harshikesh Panchal*.

Jennifer C. Wasson, Esquire, Tyler E. Cragg, Esquire, Potter Anderson & Corroon, Wilmington, Delaware. *Attorneys for Defendant/Counterclaim Plaintiff, XO Energy Worldwide LLLP*.

DAVIS, P.J.

I. INTRODUCTION

This is a civil action assigned to the Complex Commercial Litigation Division of the Court. Plaintiff Harshikesh Panchal has moved to dismiss the counterclaims of Defendant XO Energy Worldwide LLLP ("XO"). The parties have also filed cross-motions for summary judgment. Mr. Panchal seeks summary judgment in his favor on two of the four claims in his amended complaint. For its part, XO seeks summary judgment against all four of Mr. Panchal's claims.

Mr. Panchal is a former XO employee. Mr. Panchal claims that XO breached the Employment Agreement by failing to pay him the remaining $3,778,235[1] in incentive Profit Shares for his performance in both 2021 and 2022. Mr. Panchal also claims that XO breached the Employment Agreement by refusing to pay $31,715 for 74.97 unused vacation days. XO contests Mr. Panchal's characterization of the Employment Agreement. XO contends that the Profit Shares were discretionary, Mr. Panchal had no absolute right to them, and Mr. Panchal forfeited any rights to the Profit Shares through his own actions.

For the reasons stated below, the Court **GRANTS** in part and **DENIES** in part the competing motion to dismiss and cross-motions for summary judgment.

II. RELEVANT FACTS

A. THE PARTIES

Mr. Panchal is a resident of Pennsylvania.[2] Mr. Panchal is a former employee of XO and began working for the company on April 22, 2013, as a "Transmission/Congestion Analyst."[3] On May 9, 2024, Panchal resigned from his position at XO.[4]

XO is a limited liability partnership organized under the law of the United States Virgin Islands.[5] XO is in the business of energy trading and risk management, and its principal place of business is St. Thomas, Virgin Islands.[6]

[1] Using "$3.778 million" as a shorthand.
[2] *See* First Amended Complaint ¶ 1 (hereinafter "FAC") (D.I. 25).
[3] FAC ¶ 2 (noting that Panchal signed the Employment Agreement on April 22, 2013); Ex. A (D.I. 25).
[4] *Id.* ¶ 29.
[5] *Id.* ¶ 2.
[6] *Id.* ¶¶ 2, 7.

B. RELEVANT FACTS FOR MR. PANCHAL'S MOTION TO DISMISS XO'S COUNTERCLAIMS

1. Employment Agreement

Section 4's Profit Shares provision states that at the end of each calendar year, XO will evaluate Mr. Panchal's performance and determine whether he is eligible for a Profit Share award.[7]

2. 2021 & 2022 Incentive Bonuses & Tax Implications

In 2021, XO determined that Mr. Panchal was potentially eligible for an incentive bonus of $3,148,869.[8] In 2022, XO again evaluated Mr. Panchal's trading performance and determined he was potentially eligible for an incentive Profit Share bonus of $1,029,366.[9] Before XO could award the incentive bonuses, Mr. Panchal elected not to accept the bonus in 2022.[10]

Mr. Panchal asked XO not to award the incentive bonuses and sought XO's help to qualify for the Virgin Islands' tax benefit programs because he lived in Pennsylvania and faced significant taxation.[11] These programs included the Economic Development Commission ("EDC"). The EDC provides certain tax benefits to eligible companies located in the Virgin Islands that provide employment to Virgin Island residents.[12] The other program, the Research Technology Park ("RT Park"), offers tax incentives to companies operating in the research, technology, and environmental sustainability sectors.[13]

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[7] Defendant XO Energy Worldwide LLLP's Answer to Complaint for Declaratory Judgment and Damages and Counterclaims ¶ 16 (hereinafter "Countercl.") (citing Ex. 1 § 4) (D.I. 12).
[8] *Id.* ¶ 16.
[9] *Id.*
[10] *Id.* ¶ 17.
[11] *Id.* ¶¶ 18-20.
[12] *Id.* ¶¶ 20-21 (noting that EDC participants could receive a 90 percent reduction in personal income tax).
[13] *Id.* ¶ 20 (including a 90 percent credit against personal tax income).

XO was a member of the RT Park program.[14] XO, reportedly at Mr. Panchal's request, agreed to help Mr. Panchal qualify for one of these tax programs.[15] Mr. Panchal allegedly agreed to repay XO for any expenses incurred in obtaining Mr. Panchal's tax benefits by deducting the amounts from incentive payments.[16]

In 2022, Mr. Panchal moved to the Virgin Islands to qualify for the RT Park and EDC programs.[17] As part this effort to assist Mr. Panchal, XO created 340 Worldwide LLP to participate in the EDC program, and expended approximately $250,000 to qualify Mr. Panchal to receive Class B Partner status in the program.[18] Eventually, the RT Park and EDC program denied Mr. Panchal's applications.[19] Mr. Panchal reportedly never repaid XO for the costs it expended.[20]

XO allegedly incurred $420,000–$450,000 in taxes on the incentive bonuses that Mr. Panchal deferred.[21] Throughout 2023 and 2024, Mr. Panchal asked XO to release his 2021 and 2022 Profit Shares.[22] XO informed Mr. Panchal he would not receive the full amount of the bonuses, and partially paid him $400,000 on February 7, 2024.[23] Sometime after this, Mr. Panchal gave XO until the end of May 2024 to pay him the full $4.2 million for his Profit Shares.[24] XO told Mr. Panchal that he was not entitled to that amount.[25] On May 9, 2024, Mr. Panchal resigned from his position at Worldwide and again demanded the $4.2 million.[26]

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[14] *Id.*
[15] Countercl. ¶ 21.
[16] *Id.*
[17] Countercl. ¶ 22.
[18] *Id.*
[19] *Id.*
[20] *Id.* ¶ 23.
[21] *Id.* ¶ 25.
[22] *Id.* ¶ 27.
[23] *Id.* ¶¶ 27, 29.
[24] *Id.* ¶ 30.
[25] *Id.* ¶ 31.
[26] *Id.* ¶ 32.

C. Undisputed Facts for the Cross-Motions for Summary Judgment

1. The Employment Agreement & Relevant Sections

The parties executed the Employment Agreement and Mr. Panchal became an XO employee in April 2013.[27] Section 4 of the Employment Agreement contains the provision regarding "*Incentive Compensation*":

> In addition to the Base Salary, [Mr. Panchal] may be awarded certain incentive compensation (Profits Share) as determined in the sole discretion of the [XO]. At the end of each calendar year, [XO] shall evaluate whether [Mr. Panchal] shall be awarded a share of Profits for the year then ending.[28]

Section 5(d)(i) sets out the "*Non-Competition*" obligations:

> [Mr. Panchal] shall not, during the Term and for a period of two (2) years following the expiration of the Term for any reason (the "Restricted Period"), directly or indirectly:
>
> (i) Be engaged, directly or indirectly, either as an agent, employee, consultant, partner, officer, director, stockholder, proprietor, owner, or otherwise of any person, firm, corporation or organization engaged or attempting to become engaged in a business that competes with the business of the [XO] or any of its subsidiaries or affiliates as it relates to the [XO]'s business (hereinafter, "Competitive Business"), including without limitation all existing and potential competitors and vendors of [XO], except for services rendered to [XO] or a successor of [XO]; provided, however, that nothing contained in this Section 5(d)(i) shall restrict [Panchal] from owning stock of a publicly held and traded utility company[.][29]

Section 5(g)(i) governs "*Breach; Enforcement*":

> Nothwithstanding any other remedy at law or in equity to which [XO] may be entitled or may pursue, in the event [Mr. Panchal] (a) breaches any of the covenants contained in this Section 5, (b) is terminated for Cause (as defined below), or (c) terminates his or her Employment without Good Reason (as defined below), he or she shall automatically forfeit any and all rights to any deferred Bonuses or other deferred incentive compensation (including without limitation any options relating to equity in [XO] or its affiliates), and any grant by [XO] of such remuneration shall be automatically void.[30]

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[27] Ex. B (D.I. 49); Ex. 1 (D.I. 50).
[28] Ex. B § 4 (D.I. 49); Ex. 1 § 4 (D.I. 50).
[29] Ex. B § 5(d)(i) (D.I. 49); Ex. 1 § 5(d)(i) (D.I. 50).
[30] Ex. B § 5(g)(i) (D.I. 49); Ex. 1 § 5(g)(i) (D.I. 50).

Section 7(c) accounts for "*Termination by [Mr. Panchal*]":

> [Mr. Panchal] may terminate his or her employment under this Agreement with or without Good Reason (as defined below) by giving prior written notice to the [XO]. If [Mr. Panchal] terminates his or her employment without Good Reason, he...shall provide the [XO] with at least 30 days advance written notice of his intent to terminate his...employment. For purposes of this Agreement, [Mr. Panchal] shall have "Good Reason" to terminate his...employment upon: (i) the Employer's breach of a material provision of this Agreement, (ii) written notice to the [XO] describing the nature of the breach proving an intent to terminate the Agreement for Good Reason under this clause, and (iii) the [XO]'s failure to correct the breach within fifteen (l5) days following the written notice required in Section 7(c)(ii).[31]

Section 8(a) and (b) dictate "*Compensation Upon Termination*":

> (a) Compensation upon Termination for Any Reason. Subject to Section 5(g) of this Agreement, if [Mr. Panchal]'s employment under this Agreement is terminated for any reason, then [Mr. Panchal] shall be entitled to receive the following benefits (collectively, the "Standard Termination Benefits"): (i) the amount of his or her Accrued Obligations (as defined below), to be paid in a single lump sum cash payment within thirty (30) days of the date of termination, and (ii) any payments which [Mr. Panchal], his or her spouse, beneficiaries or estate may be entitled to receive pursuant to any employee benefits plan or program of the [XO]. As used in this Agreement, "Accrued Obligations" means, as of the date of termination, (A) any accrued but unpaid Base Salary, (B) any accrued and unpaid reasonable expense reimbursements, and (C) any accrued, but unpaid vacation.
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> (b) Additional Termination Compensation. If [XO] terminates [Mr. Panchal]'s employment without Cause, if [Mr. Panchal] terminates his or her employment for Good Reason, or if [Mr. Panchal]'s employment is terminated under Section 7(a) of this Agreement, [Mr. Panchal] (or in the case of his or her death, his or her estate or beneficiary, as the case may be) shall be entitled to receive, in addition to the Standard Termination Benefits set forth in Section 8(a) above, the following additional benefits (the "Additional Termination Benefits") within thirty (30) business days following his/her termination of employment:
>
> (i) a cash amount equal to two (2) months of the [Mr. Panchal]'s Base Salary as of the date of termination, payable in a lump-sum; and
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> (ii) a pro-rata amount of his or her target bonus earned in the year of termination.[32]

[31] Ex. B § 7(c) (D.I. 49); Ex. 1 § 7(c) (D.I. 50).

[32] Ex. B §§ 8(a)-(b) (D.I. 49); Ex. 1 §§ 8(a)-(b) (D.I. 50).

2. *XO's Evaluation of Mr. Panchal and the 2021 and 2022 Incentive Bonuses*

The parties agree that in 2021 and 2022, XO evaluated Mr. Panchal's performance and XO notified Mr. Panchal that he earned Profit Shares.[33] For 2021, XO stated that the Profit Share was $3,148,869.[34] For 2022, XO stated that the Profit Share was $1,029,366.[35]

3. *Failed Tax Benefits*

Mr. Panchal tried to avail himself of the Virgin Islands' tax benefits before having his Profit Shares released in 2021.[36] Specifically, Mr. Panchal sought approval under the EDC and RT Park programs.[37] Mr. Panchal moved to the Virgin Islands in June 2022 as part of the process for these programs.[38] As part of his RT Park program application, Mr. Panchal signed the Limited Liability Limited Partnership of XO Energy Worldwide, LLLP Agreement (the "LP Agreement") on June 25, 2022.[39] On June 23, 2023, as part of his EDC program application, Mr. Panchal became a Class B partner of a new entity, 340 Worldwide LLP.[40] Despite these efforts, Mr. Panchal's applications for the EDC and RT Park programs were denied, and Mr. Panchal never received the tax benefits under Virgin Islands law.[41]

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[33] Exs. C and J (providing the Excel spreadsheets announcing Panchal's 2021 and 2022 Profit Shares) (D.I. 49); Exs. 9 and 18 (providing the Excel spreadsheets announcing Panchal's 2021 and 2022 Profit Shares) (D.I. 50).
[34] Ex. C (D.I. 49); Ex. 9 (D.I. 50).
[35] Ex. J (D.I. 49); Ex. 18 (D.I. 50).
[36] FAC ¶ 16; *see* Exs. I, L, N (indicating that Panchal had not received his bonuses and was attempting to receive the tax benefits before accepting the funds) (D.I. 49); Countercl. ¶ 22; Ex. 13 (D.I. 50).
[37] *See* Ex. L (D.I. 49); *see* Ex. 8 ("Erwin Report") (D.I. 50).
[38] Ex. B at 98:8-99:15 (D.I. 49).
[39] Plaintiff Harshikesh Panchal's Motion for Summary Judgment at 13-14, 16 (hereinafter "Panchal's Mot. Summ. J.") (citing Ex. B at 78:15-79:9; Ex. E) (D.I. 49); XO Energy Worldwide LLLP's Motion for Summary Judgment at 9 (hereinafter "XO's Mot. Summ. J.") (citing Exs. 11 and 12) (D.I. 50).
[40] Panchal's Mot. Summ. J. at 17, 21 (citing Ex. K (D.I. 49)); *see* XO's Mot. Summ. J. at 14-18 (citing Ex. 3 at 152:21-153:6; Ex. 8 ¶ 7 (D.I. 50)).
[41] *See* Ex. 8 at 17, 28-34 (D.I. 50).

4. Mr. Panchal Starts Power Trader and Leaves XO

On June 30, 2023, Mr. Panchal started his own company, Power Trader LLC.[42] Mr. Panchal founded Power Trader to trade in energy markets.[43] The parties do not dispute that Mr. Panchal started the company while he was an XO employee.

In April 2024, Mr. Panchal gave XO an end-of-May deadline to receive his 2021 and 2022 incentive bonuses.[44] Mr. Panchal messaged XO's owner Shawn Sheehan on May 9, 2024, asking for an update on his 2021 and 2022 bonuses.[45] Mr. Sheehan responded, saying:

> May 31st is not going to happen....I realize that this is not what you want to hear but I only control what I can and this portion is out of my hands. As I mentioned before - happy to have a conversation and structure it as a loan until its paid off - happy to do a partial payment (but would need further analysis to come up with firm numbers)[.][46]

On May 9, 2024, Mr. Panchal terminated his position with XO via email.[47]

III. PROCEDURAL HISTORY

A. MR. PANCHAL'S ORIGINAL COMPLAINT

Mr. Panchal filed his Original Complaint on May 28, 2024, bringing claims against XO and two additional defendants, XO Energy LLC and Mr. Sheehan.[48] XO filed a motion to dismiss the Original Complaint. The Court held a hearing on January 7, 2025.[49] At the

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[42] Ex. 7 (D.I. 54).
[43] Ex. B at 281:12-284:2 (D.I. 49).
[44] *Id.* at 193:20-24; Ex. S (D.I. 49).
[45] Ex. S (D.I. 49).
[46] *Id.* (D.I. 49).
[47] Ex. B at 197:25-198:19; Ex. T (D.I. 49).
[48] *See* Original Compl. ¶¶ 1-4, 8-12 (D.I. 1).
[49] Superior Court Proceeding Sheet for Defendants' Motion to Dismiss, heard on January 7, 2025 (D.I. 10); Defendants XO Energy Worldwide LLLP, XO Energy LLC, and Shawn Sheehan's Motion to Dismiss (D.I. 7); Panchal's Answering Brief in Opposition to Defendants' Motion to Dismiss (D.I. 8); Defendants XO Energy Worldwide LLLP, XO Energy LLC, and Shawn Sheehan's Reply Brief in Support of Their Motion to Dismiss (D.I. 9); *see Panchal v. XO Energy Worldwide LLLP*, 2025 WL 1012925 (Del. Super. Mar. 31, 2025) (D.I. 11).

conclusion of the hearing, the Court dismissed Mr. Sheehan from this civil action for lack of personal jurisdiction.[50]

The Court also issued an Opinion on March 31, 2025, partially granting and partially denying the motion to dismiss' remaining claims.[51] The Court dismissed Mr. Panchal's claims against XO Energy because there was no agreement, express or implied-in-fact, between XO Energy and Mr. Panchal.[52] The Court also dismissed Mr. Panchal's Pennsylvania Wage Payment and Collection Law ("PWPCL") claim, holding that the Employment Agreement's Delaware choice-of-law provision barred that claim.[53] Finally, the Court denied the motion as to Mr. Panchal's breach of contract claims because both parties had reasonable interpretations of Section 4's language.[54]

B. PRESENTLY

1. Mr. Panchal's Motion to Dismiss XO's Counterclaims

On April 21, 2025, XO filed its Answer and Counterclaims to Mr. Panchal's surviving breach of contract claim.[55] XO asserted two counterclaims: (i) unjust enrichment; and (ii) setoff.[56] Mr. Panchal filed his motion to dismiss XO's counterclaims on May 12, 2025.[57] XO filed its answering brief in opposition on July 23, 2025.[58] Then on August 6, 2025, Mr. Panchal filed his reply brief in support of the motion to dismiss.[59]

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[50] Superior Court Proceeding Sheet for Defendants' Motion to Dismiss, heard on January 7, 2025 (D.I. 10); *see also* XO's Mot. Dismiss Original Compl. at 5-10; *see also Panchal*, 2025 WL 1012925, at *1.
[51] *Panchal*, 2025 WL 1012925, at *8.
[52] *See id.* at *12-15 (relating to Counts I and IV of the Original Complaint).
[53] *See id.* at *10-12 (relating to Count I of the Original Complaint).
[54] *See id.* at *6-9 (relating to Count II and V of the Original Complaint).
[55] *See generally* Countercl. (D.I. 12).
[56] *Id.* ¶¶ 34-46.
[57] *See generally* Panchal's Motion to Dismiss Worldwide's Counterclaims Pursuant to Rule 12(b)(6) (hereinafter "Panchal's Mot. Dismiss Countercl.") (D.I. 16).
[58] *See generally* Defendant XO Energy Worldwide LLLP's Opposition to Panchal's Motion to Dismiss Worldwide's Counterclaims Pursuant to Rule 12(b)(6) (hereinafter "XO Answer Opp'n Mot. Dismiss Countercl.") (D.I. 23).
[59] *See generally* Panchal's Reply in Further Support of His Motion to Dismiss Worldwide's Counterclaims (hereinafter "Panchal Reply Br. Mot. Dismiss Countercl.") (D.I. 30).

2. Mr. Panchal's First Amended Complaint

On June 6, 2025, Mr. Panchal sought the Court's leave to amend his Original Complaint.[60] The Court granted Mr. Panchal leave to amend his complaint on July 24, 2025, and Mr. Panchal filed his First Amended Complaint that same day.[61] In the First Amended Complaint, Mr. Panchal asserts four claims: (i) Breach of Contract (the Employment Agreement); (ii) Breach of the Implied Covenant of Good Faith and Fair Dealing; (iii) Violation of the Delaware Wage Payment and Collection Act ("DWPCA"); and (iv) Promissory Estoppel.[62]

In response, XO filed its partial motion to dismiss counts II, III, and IV of the First Amended Complaint on August 22, 2025.[63] The parties traded briefs in support of and opposition to XO's motion to dismiss the amended complaint; however, the Court did not hold a hearing on the pending motions to dismiss.[64]

3. Cross-Motions for Summary Judgment

On February 25, 2026, Mr. Panchal moved for summary judgment in his favor on Count I for breach of the Employee Agreement and Count II for breach of the implied covenant claim.[65] XO filed its opposition on March 18, 2026.[66] Mr. Panchal responded with his reply in support of summary judgment on April 3, 2026.[67]

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[60] Panchal's Motion for Leave to Amend His Complaint (D.I. 17).
[61] Order Permitting Plaintiff to File His First Amended Complaint (D.I. 24); *see* FAC.
[62] FAC ¶¶ 33-61.
[63] *See generally* Defendant XO Energy Worldwide LLLP's Partial Motion to Dismiss the First Amended Complaint (hereinafter "XO's Mot. Dismiss FAC") (D.I. 31).
[64] *See* D.I. 34 and D.I. 35.
[65] Panchal's Mot. Summ. J. (D.I. 49).
[66] XO Energy Worldwide LLLP's Answering Brief in Opposition to Harshikesh Panchal's Motion for Summary Judgment (hereinafter "XO Answer Opp'n to Mot. Summ. J.") (D.I. 54).
[67] Panchal's Reply Brief in Further Support of His Motion for Summary Judgment (hereinafter "Panchal Reply Br. Mot. Summ. J.") (D.I. 56).

XO filed its motion for summary judgment on all four of Mr. Panchal's causes of action on February 27, 2026.[68] In moving for summary judgment, XO states that all fact and expert discovery are complete and demands a jury trial of twelve.[69] Mr. Panchal submitted his opposition on March 18, 2026.[70] And finally, XO filed its reply in support of summary judgment on April 3, 2026.[71]

The Court held a hearing on the parties' cross-motions on May 20, 2026.[72] At the hearing, XO stated it was converting its pending motion to dismiss into a motion for summary judgment on all counts.[73] Mr. Panchal's motion to dismiss XO's counterclaims remains pending. At the conclusion of the hearing, the Court took all matters under advisement.

IV. STANDARD OF REVIEW

A. Civil Rule 12(b)(6): Motion to Dismiss for Failure to State a Claim

A motion to dismiss under Civil Rule 12(b)(6) requires the Court to: (i) accept well-pleaded factual allegations in the complaint as true, (ii) accept vague allegations as well-pled if they give the opposing party notice of the claim, (iii) draw all reasonable inferences in favor of the non-moving party, and (iv) only dismiss a case if the non-moving party would not prevail under any reasonably conceivable set of circumstances.[74] The Court must "ignore conclusory allegations that lack specific supporting factual allegations."[75]

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[68] XO's Mot. Summ. J. (D.I. 50).
[69] *Id.* at 3 n.2 (citing Super. Ct. Civ. R. 38 to support its claim that its request for a jury trial is timely).
[70] Panchal's Answering Brief in Opposition to XO Energy Worldwide's Motion for Summary Judgment (hereinafter "Panchal Answer Opp'n to Mot. Summ. J.") (D.I. 53).
[71] XO Energy Worldwide LLLP's Reply Brief in Further Support of Its Motion for Summary Judgment (hereinafter "XO Reply Br. Mot. Summ. J.") (D.I. 57).
[72] Superior Court Proceeding Sheet for Plaintiff's Motion to Dismiss and Cross-Motions for Summary Judgment, heard on May 20, 2026 (D.I. 60).
[73] *Id.*; Transcript - Motion for Summary Judgment before J. Davis on May 20, 2026, at 6:11-22, 7:9-12 (hereinafter "Oral Arg. Trans.") (D.I. 63).
[74] *Anderson v. State Farm Fire & Cas. Co.*, 2025 WL 2684094, at *5 (Del. Super. Sept. 19, 2025) (citing *Central Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 535 (Del. 2011)).
[75] *Id.*; *Murray v. Mason*, 244 A.3d 187, 192 (Del. Super. Dec. 16, 2020).

"Dismissal is warranted where the plaintiff has failed to plead facts supporting an element of the claim, or that under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted."[76] But if the Court applies this standard and finds that the claimant may recover, it must deny the motion to dismiss.[77]

The Court may not consider documents outside the complaint unless the documents are integral to the complaint or incorporated by reference.[78] A motion to dismiss becomes a motion for summary judgment if the Court considers matters outside the pleadings.

B. CIVIL RULE 56(C): CROSS-MOTIONS FOR SUMMARY JUDGMENT

Under Civil Rule 56(c), summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[79] The moving party bears the burden of establishing the non-existence of material issues of fact.[80] The Court must view the record in a light most favorable to the non-moving party.[81] Once the moving party meets its burden, the burden shifts to the non-moving party to establish material issues of fact.[82] If, however, the record reveals that material facts are in dispute, or if the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record, the Court will not grant summary judgment.

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[76] *Anderson*, 2025 WL 2684094, at *5; *Nat'l Amusements, Inc. v. Endurance Am. Specialty Ins. Co.*, 2023 WL 3145914, at *8 (Del. Super. Apr. 28, 2023).
[77] *Riverside Fund V, L.P. v. Shyamsundar*, 2015 WL 5004924, at *3 (Del. Super. Aug. 17, 2015); *Spence v. Funk & Commc'n Consultants, Inc.*, 396 A.2d 967, 968 (Del. 1978).
[78] *Murray*, 244 A.3d at 192-93.
[79] Del. Super. Ct. Civ. R. 56(c); *ET Aggregator, LLC v. PFJE AssetCo Holdings, LLC*, 2025 WL 2682583, at *5 (Del. Super. Sept. 9, 2025).
[80] *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).
[81] *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).
[82] *Moore*, 405 A.2d at 681.

This framework "is not altered" by the presence of cross-motions for summary judgment.[83] "[T]he presence of cross motions for summary judgment does not act *per se* as a concession that there is an absence of factual issues."[84] "Even when presented with cross-motions for summary judgment, the [C]ourt is not relieved of its obligation to deny summary judgment if a material factual dispute exists."[85] In determining whether material facts are in dispute, the Court evaluates each motion separately.[86] The Court will deny summary judgment and submit the case to a jury if "it is not reasonably certain that there is no triable issue" of fact.[87]

V. DISCUSSION

A. MR. PANCHAL'S MOTIONS TO DISMISS XO'S COUNTERCLAIMS.[88]

1. XO's Unjust Enrichment Counterclaim Fails.

A claim for unjust enrichment requires a plaintiff to show: (i) the defendant retained an enrichment, (ii) the plaintiff suffered an impoverishment, (iii) a relation between the enrichment and the impoverishment, and (iv) the absence of justification for the defendant to retain the benefit.[89] An enrichment requires the defendant to retain something of value.[90] Under Delaware law, when a contract governs the rights and obligations at the center of the plaintiff's claim, a party cannot recover under an unjust enrichment theory.[91]

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[83] *Humanigen, Inc. v. Savant Neglected Diseases, LLC*, 2021 WL 4344172, at *4 (Del. Super. Sept. 23, 2021), *as corrected* (July 12, 2021).
[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] In ruling on Panchal's motion to dismiss XO's pending counterclaims, the Court relied only on the claims provided in XO's Counterclaims. *See* Countercl. (D.I. 12).
[89] *See Yangaroo Inc. v. Digital Media Servs., Inc.*, 2024 WL 2791100, at *12 (Del. Super. May 30, 2024); *see also Nemec v. Shrader*, 991 A.2d 1120, 1130 (Del. 2010).
[90] *APEX Mech. & Fabrication, Inc. v. Milford Sch. Dist.*, 2025 WL 1412052, at *9 (Del. Super. May 14, 2025) (citing *Nemec*, 991 A.2d at 1130).
[91] *Palisades Collection, LLC v. Unifund CCR Partners*, 2015 WL 6693962, at *7 (Del. Super. Nov. 3, 2015).

Here, XO's unjust enrichment claim fails because it does not satisfy all the elements. In its counterclaims, XO alleges that Mr. Panchal was enriched when it expended $250,000 to help him relocate to the Virgin Islands for tax relief.[92] XO, however, fails to specify what enrichment Mr. Panchal retained.[93] The parties acknowledge that the efforts to qualify Mr. Panchal for the tax benefits were unsuccessful.[94] To sustain its unjust enrichment claim, XO must show that Mr. Panchal has retained something of value. Even accepting that XO spent $250,000 to assist Mr. Panchal in moving to the Virgin Islands, XO fails to plead how Mr. Panchal retained the benefit of its efforts, let alone that there was no justification.[95]

Moreover, even if XO could prove that Mr. Panchal retained the benefit of seeking tax benefits, its unjust enrichment claim would otherwise still fail. XO alleges in its counterclaims that there was an agreement between itself and Mr. Panchal, whereby Mr. Panchal would pay XO back for any expenses related to assisting Mr. Panchal with the tax programs.[96] While there is no evidence of this agreement other than XO's allegations, under Delaware law, a party cannot recover under an unjust enrichment theory if a contract governs that same dispute.[97] Accepting XO's pleadings as true under Civil Rule 12(b)(6), XO and Mr. Panchal have an agreement that requires Mr. Panchal to reimburse XO for the incurred expenses.[98] The existence of this agreement is fatal to XO's unjust enrichment claim as it governs the parties' relationship and Mr. Panchal's obligation to repay XO.[99]

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[92] Countercl. ¶¶ 37-39.
[93] Panchal's Mot. Dismiss Countercl. ¶¶ 12, 16-17.
[94] *Id.*; Countercl. ¶¶ 22-23; XO Answer Opp'n Mot. Dismiss Countercl. ¶¶ 4-5.
[95] *See APEX Mech.*, 2025 WL 1412052, at *9.
[96] Countercl. ¶ 21 ("Worldwide agreed to help Panchal to qualify for one of the tax programs and receive the tax benefits. As part of their agreement, Panchal would indirectly repay any costs or expenses directly and/or indirectly incurred in trying to help Panchal receive the tax benefits under the various Virgin Islands tax programs by allowing Worldwide to deduct the amounts from payments awarded to Panchal.").
[97] *Palisades Collection,* 2015 WL 6693962, at *7.
[98] Del. Super. Ct. Civ. R. 12(b)(6); Countercl. ¶¶ 19-24, 36-38.
[99] *Palisades Collection*, 2015 WL 6693962, at *7.

XO fails to establish the first element of its claim, that Mr. Panchal retained an enrichment. In addition, as XO alleges, the parties had an agreement for Mr. Panchal to repay XO. This agreement, and not an unjust enrichment theory, will govern the parties' dispute.

The Court **GRANTS** Mr. Panchal's motion to dismiss XO's unjust enrichment claim.

2. XO's Setoff Claim Fails in Part.

In the alternative, XO pleads a claim for setoff.[100] A setoff is "a counterdemand which a defendant holds against a plaintiff, arising out of a transaction extrinsic to plaintiff's cause of action.[101] Setoff is a mode of defense by which the defendant acknowledges the justice of the plaintiff's demand, but sets up a defense of his own against the plaintiff, to counterbalance it either in whole or in part."[102] But defendants may also raise setoff as an independent counterclaim seeking affirmative relief, rather than as a defense.[103]

Parties have no right to set off a possible unliquidated liability against a liquidated claim that is due and payable.[104] "Liquidated debts are certain and already determined or can be ascertained 'by mere calculation or computation.'"[105] Damages are unliquidated "when they have not been adjusted, [] settled, or agreed on by the parties."[106] Thus, if the amount due is genuinely in controversy, the demand is unliquidated.[107]

Here, if the Court finds that Mr. Panchal was awarded the Profit Shares, XO seeks a $1,100,000 setoff against the $4,178,235.[108] Mr. Panchal moves the Court to dismiss XO's

[100] Countercl. ¶¶ 42-46.
[101] *Alchemy LTD LLC v. Fanchise League Co., LLC*, 2023 WL 4670954, at *8 (Del. Ch. July 20, 2023).
[102] *Finger Lakes Capital Partners, LLC v. Honeoye Lake Acquisition, LLC*, 151 A.3d 450, 453 (Del. 2016).
[103] *CanCan Dev., LLC v. Manno*, 2011 WL 4379064, at *5 (Del. Ch. Sept. 21, 2011) (citing to 80 C.J.S. *Set–Off and Counterclaim* § 58 (2011)).
[104] *IronRock*, 2021 WL 3503807, at *8 (citing *CanCan Dev.*, 2011 WL 4379064, at *5).
[105] *Id.* (citing C.J.S. *Set-Off and Counterclaim* § 56 (2021)).
[106] *Id.*
[107] *Id.*
[108] Countercl. ¶¶ 41-46 (factoring in XO's allegation of $450,000 incurred in tax payments on the deferred bonuses because that figure is required to achieve the $1.1 million allegedly suffered by XO).

setoff counterclaim as an affirmative defense already pled.[109] Mr. Panchal concedes that XO can rely upon its setoff affirmative defense to lower any amount it owes to him, and thus the Court should dismiss its setoff claim.[110]

The Court is not persuaded by Mr. Panchal's argument that XO's setoff claim is improper. Under Civil Rule 8 and Delaware's public policy favoring deciding cases on their merits as opposed to pleading technicalities, the Court will not dismiss the setoff claim.[111] Civil Rule 8(c) allows parties to set forth any affirmative defenses, and "[w]hen a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation."[112] Civil Rule 8(e)(2) permits parties to plead alternative and inconsistent claims and defenses, preventing one alternative statement from invalidating another.[113] Under Civil Rule 13, setoff is a permissible counterclaim and Delaware courts have required parties to include it in their answers.[114] The Court will address each of XO's setoff requests.

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[109] *Id.* at 26 ("Fifth Affirmative Defense: Any damages allegedly suffered by [Panchal] are offset by the amount of costs, expenses, and legal fees [XO] has incurred."); Panchal's Mot. Dismiss Countercl. ¶ 18; *see also* Panchal Reply Br. Mot. Dismiss Countercl. ¶¶ 3-5.
[110] Panchal Reply Br. Mot. Dismiss Countercl. ¶ 5 (employing the same argument to dismiss XO's unjust enrichment claim).
[111] *See* Del. Super. Ct. Civ. R. 8 ("When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation."); *US Dominion, Inc. v. Newsmax Media, Inc.*, 2025 WL 1092289, at *43 (Del. Super. Apr. 9, 2025).
[112] Del. Super. Ct. Civ. R. 8(c).
[113] *See* Del. Super. Ct. Civ. R. 8(e).
[114] Del. Super. Civ. Ct. R. 13; *see, e.g., Burke v. Booth*, 53 A.3d 301, ¶¶ 1-8 (Del. 2012) (ORDER) ("In denying the Husband's request for a set-off, the Family Court reasoned that the Husband had not presented any evidence that his failure to include the counterclaim was due to oversight, inadvertence, or excusable neglect, or that consideration was required by the interests of justice.").

i. XO's setoff for $400,000 Profit Share paid to Mr. Panchal.

XO seeks a setoff of the $400,000 Profit Share it paid to Mr. Panchal on February 7, 2024.[115] Mr. Panchal acknowledges that XO paid him $400,000.[116] Mr. Panchal seeks only to receive the remaining approximate $3.778 million of the Profit Shares.[117] Because the $400,000 payment is not at issue, the Court **GRANTS** Mr. Panchal's motion to dismiss this portion of XO's setoff counterclaim.

ii. XO's setoff for $420,000–$450,000 in taxes paid on the 2021 and 2022 Profit Shares.

XO seeks to set off an additional $420,000–$450,000 for taxes it incurred when assuming the 2021 and 2022 Profit Shares.[118] In moving to dismiss, Mr. Panchal argues that setoff is not a proper offensive claim and is an affirmative defense already pled.[119] Mr. Panchal is correct that setoff, in certain circumstances, is a defense. As discussed above when reviewing Delaware law, the Court will not dismiss on this argument.

Still, the Court finds that XO's setoff claim for the $420,000-$450,000 fails as a matter of law for two reasons. First, this claim is unliquidated. For a valid setoff claim, the amount due must be already determined or can be ascertained by mere calculation or computation.[120] XO's claim is undetermined, and while it may be computable, XO failed to provide a specific amount to set off, leaving a $30,000 gap in potential damages.[121] A claim is unliquidated when the parties' mutual damages "have not been adjusted, or settled, or agreed on by the parties."[122]

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[115] Countercl. ¶¶ 27-29, 43 ("On February 7, 2024, [XO] awarded and paid the $400,000 Profits Share to Panchal.").
[116] Panchal's Mot. Dismiss Countercl. ¶¶ 4-5, 11, 13, 16.
[117] *Id.* ¶¶ 1-2; Panchal Reply Br. Mot. Dismiss Countercl. ¶ 1.
[118] Countercl. ¶¶ 44 (noting that XO states the amount of taxes is between $420,000 and $450,000, but its total setoff claim of $1.1 million requires factoring in $450,000).
[119] Panchal's Mot. Dismiss Countercl. ¶¶ 6, 9, 18-19.
[120] *See IronRock*, 2021 WL 3503807, at *8 (citing C.J.S. *Set-Off and Counterclaim* § 56 (2021)).
[121] *See* Countercl. ¶¶ 25, 42-46.
[122] *See IronRock*, 2021 WL 3503807, at *8.

There is no agreement between the parties that XO's allegation accurately depicts the damages it suffered, and the $30,000 gap remains far from settled.[123] Because the amount is not definite, the parties have not agreed to the amounts, and it remains in controversy, this claim is unliquidated and fails as a matter of law.[124]

The second flaw is that Delaware law requires a setoff claim to arise out of an extrinsic transaction to the one underlying the plaintiff's cause of action.[125] Even if XO's claim was liquidated, this setoff claim relates to the same transaction as Mr. Panchal's breach claim—the non-payment of the Profit Shares.[126] Here, Mr. Panchal claims XO breached by failing to pay him the Profit Shares, and XO claims it had to pay taxes on the Profit Shares because Mr. Panchal elected not to accept them.[127] Both claims arise out of the same transaction. Because this setoff claim is untethered to an extrinsic transaction, this portion of XO's claim fails as a matter of law.

Despite granting summary judgment on these this portion of XO's setoff claim, this ruling does not preclude recoupment or offset as a defense. Although analogous to setoff, recoupment is a type of defense that "goes to the reduction of the plaintiff's damages for the reason that he, himself, has not complied with the cross obligations arising under the same contract."[128] As plead and argued, XO's setoff claim seeks to reduce any recovery by Mr. Panchal and relates to the same transaction. As such, the Court will make the recoupment or offset defense available to XO going forward to trial.

The Court **GRANTS** Mr. Panchal's motion to dismiss this portion of XO's setoff claim.

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[123] *See* Panchal's Mot. Dismiss Countercl. ¶¶ 9-10 (disputing that XO is justified in reducing Profit Shares).
[124] *See IronRock*, 2021 WL 3503807, at *8.
[125] *CanCan*, 2011 WL 4379064, at *5 (quoting 80 C.J.S. *Set-off and Counterclaim* § 3 (2011)).
[126] Countercl. ¶¶ 25, 44.
[127] *Id.*
[128] *Finger Lakes Capital Partners, LLC v. Honeoye Lake Acquisition, LLC*, 151 A.3d 450, 453 (Del. 2016).

iii. XO's setoff for $250,000 related to assisting Mr. Panchal with obtaining the Virgin Islands' tax benefits.

In the last portion of the setoff claim, XO alleges it entered into an agreement with Mr. Panchal under which he agreed to repay XO for expenses incurred in assisting him with the Virgin Islands' tax programs.[129] Now, XO seeks to set off the $250,000 it claims it incurred.[130] Mr. Panchal does not dispute that XO incurred $250,000 in expenses.[131] Instead, Mr. Panchal repeats the argument that XO's setoff claim fails as it is an "offensive" claim, raised as an affirmative defense, and assumes liability for the Profit Shares.[132]

Civil Rule 12(b)(6) requires accepting XO's well-pled factual allegations as true.[133] This includes accepting XO's allegations regarding the repayment agreement with Mr. Panchal and that it incurred $250,000 assisting him.[134] Although vague, XO's allegations of the agreement between itself and Mr. Panchal are sufficient to put Mr. Panchal on notice of XO's claim against him.[135]

This portion of XO's setoff claim also survives as a matter of law. Here, this claim is a specific amount and relates to an agreement extrinsic to that underlying Mr. Panchal's cause of action.[136] Based on the facts alleged in its counterclaims, this portion of XO's setoff claim is liquidated.

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[129] *Id.* ¶¶ 21, 38-39.
[130] *Id.* ¶ 38.
[131] *See* Panchal's Mot. Dismiss Countercl. ¶¶ 5, 9-10, 18.
[132] *Id.* ¶ 18; Panchal Reply Br. Mot. Dismiss Countercl. ¶¶ 2-6.
[133] Del. Super. Civ. Ct. R. 12(b)(6); *Biglari Holdings, Inc. v. Funston*, 2025 WL 3443088, at *5 (Del. Super. Nov. 26, 2025) (citing *Price v. E.I. DuPont de Nemours & Co.*, 26 A.3d 162, 166 (Del. 2011)); *Wellgistics, LLC v. Welgo, Inc.*, 2024 WL 113967, at *3 (Del. Super. Jan. 9, 2024); *Saez v. Nephrology Associates, P.A.*, 2019 WL 5207918, at *4 (Del. Super. Oct. 16, 2019).
[134] Del. Super. Civ. Ct. R. 12(b)(6); *Biglari Holdings,* 2025 WL 3443088, at *5.
[135] *See Wellgistics*, 2024 WL 113967, at *3.
[136] *See IronRock*, 2021 WL 3503807, at *8; *see also CanCan*, 2011 WL 4379064, at *5.

Because XO brings a reasonably conceivable liquidated setoff counterclaim for the $250,000, the Court **DENIES** Mr. Panchal's motion to dismiss this portion of XO's setoff counterclaim.

B. THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

In moving for summary judgment, Mr. Panchal seeks judgment in his favor on Count I or Count II in the alternative.[137] In its cross-motion for summary judgment, XO asks the Court to enter judgment against all of Mr. Panchal's claims.[138]

1. Mr. Panchal's Breach of the Employment Agreement in Count I Fails.

Mr. Panchal's breach claim relies on two different Sections of the Employment Agreement—Section 4, which governs the Profit Shares and Section 8, which governs his unused vacation days.[139] A breach of contract claim requires: (i) a contractual obligation between two parties, (ii) a breach of that obligation, and (iii) damages.[140]

Here, the parties do not dispute the first and third elements of Mr. Panchal's breach claim. The Employment Agreement sets forth the parties' contractual obligations, satisfying the first element.[141] Mr. Panchal also satisfies the third element of damages by claiming XO owes him $3.778 million in bonus payments and $31,715 for his 74.97 unused vacation days.[142] The parties dispute whether XO breached the Employment Agreement by failing to pay Mr. Panchal the Profit Shares and for the unused vacation days.[143]

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[137] *See* Panchal's Mot. Summ. J. at 25-34; Oral Arg. Trans. at 27:22-23.
[138] *See* XO's Mot. Summ. J. at 20-33.
[139] FAC ¶¶ 33-38; Panchal's Mot. Summ. J. at 25-28.
[140] *Vituli v. Carrols Corp.*, 2015 WL 5157215, at *3 (Del. Super. May 1, 2015).
[141] *See id.*; FAC ¶¶ 24, 33-38 (citing Ex. A §§ 4, 8(a)-(b); Ex. H) (D.I. 25).
[142] *See Vituli*, 2015 WL 5157215, at *3; FAC ¶¶ 24, 33-38 (citing Ex. H) (D.I. 25); Ex. W (D.I. 49).
[143] Panchal's Mot. Summ. J. at 25-30 (citing Exs. C and J (D.I. 49)).

i. Mr. Panchal's argument for summary judgment.

Mr. Panchal claims XO breached Section 4 by not paying the $3.778 million in Profit Shares.[144] According to Mr. Panchal, Section 4 is unambiguous, as evidenced by the phrase "shall be awarded," which requires XO to pay the Profit Shares after determining that a bonus has been earned.[145] Mr. Panchal argues that XO has discretion in determining Profit Shares, but once it elects to award a Profit Share, it becomes payable and due, without the right to reverse or reduce it.[146]

Alternatively, if the Court were to find that Section 4 is ambiguous, Mr. Panchal contends that the extrinsic evidence confirms the parties understood that the Profit Shares were not discretionary after being awarded.[147] Mr. Panchal proffers that the parties' "overt statements and acts, as well as their course of performance both accepted and acquiesced by one another, establish the bonuses are due and owing."[148] Mr. Panchal claims that the only evidence supporting XO's position is Mr. Sheehan's deposition testimony.[149] Mr. Panchal maintains that Mr. Sheehan's testimony fails to shed light on the parties' interpretation because it only reflects his private, subjective feelings.[150]

ii. XO's arguments for summary judgment against Mr. Panchal.

XO maintains that it did not breach Section 4 by not paying the Profit Shares and provides four rationales to support its position. According to XO:

- Mr. Panchal had no entitlement to the Profit Shares, and Section 4 only requires XO to evaluate his performance;[151]

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[144] *See* FAC ¶¶ 5, 33-38; *see also* Panchal's Mot. Summ. J. at 25-27.
[145] Panchal's Mot. Summ. J. at 25-27 (referring to "shall" as an "obligatory term") (emphasis added).
[146] *Id.* at 28.
[147] *Id.* at 28-30.
[148] *Id.* at 29-30 (citing to Exs. C, F, J, L, O, P, Q, R, S (D.I. 49)).
[149] *Id.* 30 (citing to Ex. U at 141-42).
[150] *Id.* (citing *United Rentals, Inc. v. RAM Hldgs., Inc.*, 937 A.2d 810, 835 (Del. Ch. Dec. 21, 2007)).
[151] XO's Mot. Summ. J. at 20-21 (citing Ex. 1 § 4).

- Even if Section 4 required XO to pay the bonus, Mr. Panchal modified that obligation when he deferred the Profit Shares to take advantage of the tax programs;[152]

- Requiring XO to pay the bonuses as Mr. Panchal "demanded" could force it to violate contract and tax law;[153] and

- Regardless of the Virgin Islands' tax benefits, Mr. Panchal signed the LP Agreement, which prevented him from demanding payments from XO.[154]

XO further contends that even if Mr. Panchal has any rights to the Profit Shares these rights were forfeited due to Mr. Panchal's breaches of the Employment Agreement.[155]

Mr. Panchal's alleged breaches include:

- Violating the non-compete agreement in Section 5(d)(i) when (i) he created his own company, Power Trader LLC, and (ii) began working for XO's competitor, Tesla;[156]

- Violating Sections 5(g)(i)(c) and 7(c) by failing to terminate for "good reason" and not adhering to the enumerated steps for terminating his employment;[157] and

- Section 8 prohibits terminating employees from receiving additional unpaid compensation.[158]

iii. The motions for summary judgment fail as there are genuine issues as to material facts and the moving party is not entitled to judgment as a matter of law.

On Count I, the parties' cross-motions for summary judgment fail because there are genuine issues or disputes as to material facts. The Court previously held that both parties have a reasonable interpretation of Section 4.[159] A contract provision is ambiguous when it is

[152] *Id.* at 21-25 (citing Ex. 3 at 42:19-44:11; Ex. 5 at XOENERGY0001434; Exs. 6-7; Ex. 8 at 29; Ex. 11 (D.I. 50)).
[153] *Id.* at 25-26 (citing Ex. 5 at XOENERGY0001434; Ex. 8 at 23-24, 31; Ex. 32 at 59:8-13, 54:10-21; Ex. 34 (D.I. 50)).
[154] *Id.* at 27 (citing Ex. 8 at 17; Ex. 12 §§ 7.2, 7.4 (D.I. 50)).
[155] *Id.* at 27-30.
[156] *Id.* at 28-29 (citing Ex. 1 § 5(d)(i) and (g)(i); Ex. 3 at 26:18-28:2, 262:5-263:4 (D.I. 50)).
[157] *Id.* at 29 (citing Ex. 1 §§ 5(g)(i)(c) and 7(c) (D.I. 50)).
[158] *Id.* at 30 (citing Ex. 1 §§ 7-8(a)-(b) (D.I. 50)).
[159] *Panchal*, 2025 WL 1012925, at *4 (noting the Court's analysis on Defendants' motion to dismiss).

"reasonably [] susceptible to different interpretations."[160] The Court addressed the language of Section 4 in its Opinion, providing:

> The phrases "may be awarded" and "in the sole discretion of the employer" can only be read to establish that [XO] had full discretion regarding whether to grant Mr. Panchal a profit share. However, Section 4 also states [XO] "shall evaluate whether [Mr. Panchal] shall be awarded a share of Profits." This language appears to obligate [XO] to engage in some evaluation to determine if Mr. Panchal is entitled to a profit share payment.[161]

Here, both Mr. Panchal and XO present the same reasonable but conflicting interpretations of Section 4.[162] Because of the provision's ambiguity, "a factual dispute results and the factfinder must consider admissible extrinsic evidence."[163] The Court is not the finder of fact. A jury will have to weigh the extrinsic evidence and resolve the parties' factual disputes about XO's discretion in Section 4.

In moving for summary judgment against Mr. Panchal's breach-of-contract claim, XO provides several arguments regarding whether Mr. Panchal's actions excused XO from performing and paying the Profit Shares. The Court addresses each below.

a. XO's arguments against finding it breached the Employment Agreement.

First, XO claims it did not breach Section 4 because Mr. Panchal has no entitlement to any Profit Shares.[164] As explained, there are disputes of material fact about whether XO

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[160] *Id.*
[161] *Id.* (citing *Vanderbilt Income & Growth Associates, L.L.C. v. Arvida/JMB Managers, Inc.*, 691 A.2d 609, 613 (Del. 1996)).
[162] *See* Panchal's Mot. Summ. J. at 25-27 ("The word 'evaluate' is preceded by an obligatory term, 'shall'. This was sufficient for the Court to determine the evaluation process is obligatory….Likewise, the words 'be awarded' is preceded by the same obligatory term, 'shall'. As a result, should the mandatory evaluation process result in XO electing to award Panchal an incentive bonus, that award likewise becomes obligatory."); *see also* XO's Mot. Summ. J. at 20-21 ("[N]othing in the contract entitles him to any incentive compensation; Section 4 requires XO only to 'evaluate whether Employee shall be awarded a share of Profits for the year then ending.' The Employment Agreement gives XO the sole discretion to set the timing and manner of 'the award[.]'").
[163] *GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 783-84 (Del. 2012) ("Extrinsic evidence, such as prior communications and course of dealing, must be considered by the factfinder to resolve the ambiguity[.]").
[164] XO's Mot. Summ. J. at 20-21.

is bound by Section 4 to pay the Profit Shares after announcing them. Because Section 4 is ambiguous, XO's argument that Mr. Panchal has no entitlement to the Profit Shares fails.

Second, XO argues that Mr. Panchal's breach claim is barred because he modified any obligation XO had.[165] While XO is correct that the parties can modify an agreement through their mutual assent and course of conduct, XO's argument also fails.[166] "A party claiming modification faces a high evidentiary burden and must prove the terms of the modification are definite, certain, and intentional[.]"[167] Moreover, "although parties can modify a contract through the course of performance, the conduct relied upon must be unequivocal in character."[168]

Contrary to XO's argument, Mr. Panchal denies that there was any modification to the Employment Agreement.[169] Mr. Panchal maintains that any purported modification was uncertain because he received assurances from XO's agents that he would receive the Profit Shares before and during his attempts to receive the tax benefits.[170] Mr. Sheehan and other XO agents reportedly assured Mr. Panchal that the Profit Shares would be paid to him even if the tax programs were denied.[171] The assurances referenced by Mr. Panchal create a dispute of material fact as to whether any modification was unequivocal and definite enough to release XO from its obligation to pay the Profit Shares.

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[165] *Id.* at 21-25.
[166] *Id.* at 22-23.
[167] *Lennox Indus., Inc. v. All. Compressors LLC*, 2021 WL 4958254, at *9 (Del. Super. Oct. 25, 2021), *aff'd*, 282 A.3d 1053 (Del. 2022).
[168] *Id.*
[169] Panchal Answer Opp'n to Mot. Summ. J. at 23-24.
[170] *Id.* (citing to Ex. F (D.I. 49); Ex. 15 (D.I. 50)).
[171] *See* Ex. A at 127:12-128:23, 205:7-206:1 (D.I. 49); *see also* Ex. H (D.I. 49); *see also* Ex. L (D.I. 49); *see also* Ex. P (D.I. 49).

Third, XO claims that distributing the Profit Shares as Mr. Panchal requested could cause it to violate tax and contract law.[172] In Delaware, an illegal contract is not automatically void and may not be unenforceable.[173] For a partially illegal contract, the contract may be "divisible" by its lawful and unlawful terms and potentially enforceable on the lawful terms.[174] Whether a partially illegal contract is enforceable on its lawful terms requires resolving two preliminary issues: (i) whether the contract's illegal terms are so "central to the parties' agreement" that the plaintiff cannot prove its breach-of-contract claim without them, and (ii) then the Court must determine whether the parties intended the lawful terms to be "severable."[175]

Here, XO claims that Mr. Panchal could not convert his "provisional" Profit Shares into a Virgin Islands-sourced partnership distribution that qualified for either the RT Park or EDC benefits.[176] However, XO's argument for summary judgment fails because there is no evidence or argument that the Employment Agreement, particularly Section 4, is illegal. At oral argument, Mr. Panchal stated that he seeks only the principal $3.778 million in Profit Shares and will pay any federal and state taxes, absent any illegality related to the parties' Virgin Islands tax-benefit scheme.[177]

Fourth, XO maintains that the LP Agreement Mr. Panchal signed prevents him from demanding any distribution.[178] To be eligible for the RT Park or EDC tax benefits, Mr. Panchal needed to be a limited partner in a participating entity.[179] According to XO:

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[172] XO's Mot. Summ. J. at 25-26.
[173] *Balooshi v. GVP Glob. Corp.*, 2022 WL 576819, at *11 (Del. Super. Feb. 25, 2022), *aff'd*, 285 A.3d 839 (Del. 2022) (internal citations omitted).
[174] *Id.*
[175] *Id.* (noting "severable" means the lawful terms may be "enforced notwithstanding partial avoidance").
[176] XO's Mot. Summ. J. at 25.
[177] Oral Arg. Trans. at 11:9-15.
[178] XO's Mot. Summ. J. at 27 (citing Ex. 12 §§ 7.2, 7.4 (D.I. 50)).
[179] *Id.*

> When [Mr.] Panchal asked to sign and became a limited partner in XO, he voluntarily subjected any future compensation to the terms of the LP Agreement, changing XO's alleged obligation to pay and his own ability to claim breach, notwithstanding his abandonment of tax benefits.[180]

Section 7.2 of the LP Agreement states that Mr. Panchal may receive a distribution only when XO has sufficient cash flow.[181] Section 7.4 states that Mr. Panchal may not demand a distribution from the partnership.[182] XO argues that the Employment Agreement and LP Agreement exist in "parallel," and prescribe different rights and obligations.[183]

The Court will not grant summary judgment on this theory because there is a dispute about whether the LP Agreement's prohibition on partners demanding "distribution" encompasses Profit Shares provided in the Employment Agreement.[184] Under Delaware law, a contract with an integration clause supersedes the terms of any prior agreement covering the same subject matter.[185] Mr. Panchal contests XO's position, arguing that the LP Agreement did not modify the Employment Agreement and the Profit Shares are not within the subject matter of the LP Agreement.[186] Although XO claims the agreements exist in parallel, the Court notes that the fact that the agreements use different terminology and address different rights and obligations means there exists disputes as to material facts. In determining whether a material factual dispute exists, the Court "is not permitted to weigh the evidence or resolve conflicts presented by the pretrial discovery."[187]

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[180] *Id.*
[181] *Id.* (citing Ex. 12 § 7.2 (D.I. 50)).
[182] *Id.* (citing Ex. 12 § 7.4 (D.I. 50)).
[183] XO Reply Br. Mot. Summ. J. at 18 ("XO is not arguing that the LP Agreement superseded the Employment Agreement; the former concerns Panchal's rights/obligations as an employee, the latter concerns his rights/obligations as a partner.").
[184] *See* Ex. 12 (D.I. 50).
[185] *Diner v. Plume Design, Inc.*, 354 A.3d 968, 980 (Del. Super. Feb. 20, 2026) (noting that the LP Agreement is integrated under Section 13.6; Ex. 12 (D.I. 50)).
[186] Panchal Answer Opp'n to Mot. Summ. J. at 29-30.
[187] *Cercacor Labs., Inc. v. Metronom Health, Inc.*, 2025 WL 1180186, at *7 (Del. Super. Apr. 23, 2025).

b. XO's argument on why Mr. Panchal forfeited his right to any compensation.

XO argues that summary judgment is appropriate here because Mr. Panchal forfeited any rights to the Profit Shares through his own breaches of the Employment Agreement.[188] XO claims Mr. Panchal breached the non-compete provision of Section 5(d)(i) by forming Power Trader LLC in June 2023 and by his current employment with Tesla.[189] Mr. Panchal disputes ever competing against XO.[190] Mr. Panchal insists that he started Power Trader knowing of his non-compete obligations and never engaged in any activity beyond setting up the company.[191] Mr. Panchal explains he had no intention of competing against XO until his non-compete was no longer effective and he received funds to begin trading.[192] The record indicates that Power Trader did no business and Mr. Panchal lacked intent to compete during the relevant contractual period. The Court finds this creates genuine factual disputes as to whether Mr. Panchal violated Section 5(d)(i).

XO argues that Mr. Panchal's employment with Tesla is a separate violation of his non-compete obligation under Section 5(d)(i).[193] XO contends that Mr. Panchal "participates in the same energy markets in which XO transacts" through Mr. Panchal's work with Tesla.[194] Again, Mr. Panchal denies that his role at Tesla competes with XO. Mr. Panchal testified that Tesla does not trade on the energy markets like XO and his role with Tesla consists of "identifying the best location for Tesla customers to purchase and install 'Megapack' batteries to get 'the best bang for your buck' when selling power to the grid."[195]

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[188] XO's Mot. Summ. J. at 27-30.
[189] *Id.* at 27-28.
[190] Panchal Answer Opp'n to Mot. Summ. J. at 21, 33.
[191] Ex. 3 at 285:3-5 (D.I. 50).
[192] *See id.* at 281:12-282:9, 283:17-284:2, 285:23-286:9 (D.I. 50).
[193] XO's Mot. Summ. J. at 28-29.
[194] *Id.* at 29; XO Reply for Mot. Summ. J. at 22 n.17 (relying on Panchal's own description of his role with Tesla, and comparing Ex. 30 (describing XO role), with Ex. 3 at 262:5-263:4 (describing Tesla role) (D.I. 50)).
[195] Panchal Answer Opp'n to Mot. Summ. J. at 21 (citing to Ex. A at 260:18-268:10 (D.I. 49)).

With this record, the Court has to find there are genuine disputes of material fact as to whether Mr. Panchal's current position with Tesla competes with XO.

Finally, XO submits that Mr. Panchal's breach of Section 7 and the express language of Section 8 preclude him from recovering any of the Profit Shares.[196] XO asserts that Mr. Panchal forfeited any rights he had to the Profit Shares and breached the Employment Agreement by failing to terminate with "Good Reason."[197] To have Good Reason to terminate under Sections 5(g)(i)(c) and 7, the Employment Agreement requires:

> (i) [XO]'s breach of a material provision of this Agreement, (ii) written notice to [XO] describing the nature of the breach proving an intent to terminate the Agreement for Good Reason under this clause, and (iii) the [XO]'s failure to correct the breach within fifteen (15) days following the written notice required in Section 7(c)(ii).[198]

Even if Mr. Panchal terminated his employment in accordance with Section 7, XO argues that he could not receive any Profit Shares because neither Section 7 nor 8 provides for unpaid incentive compensation.[199] XO contends that Section 8 bars any recovery of standard and additional benefits, including the $3.778 million in Profit Shares and the $31,715 for Mr. Panchal's unused vacation days.[200]

Despite XO's arguments, there are disputes of material fact. First, Mr. Panchal claims in his amended complaint that XO "constructively terminated" him, which is akin to

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[196] *See* XO's Mot. Summ. J. at 30 (noting that Panchal appears to invoke Sections 8(a)-(b) as the contractual basis for his breach claim in the FAC).
[197] *Id.* at 29 (claiming a breach of Sections 5(g)(i)(c) and 7(c)).
[198] *Id.*; Ex. 1 (D.I. 50).
[199] XO's Mot. Summ. J. at 30.
[200] *Id.*; XO Reply Br. Mot. Summ. J. at 1-3 (citing to §§ 8(a)-(b)); Ex. 1 §§ 8(a)-(b) (Section 8(a) provides "Standard Termination Benefits" which include "(i) the amount of his or her Accrued Obligations…" and "Accrued Obligations" include "as of the date of termination, (A) any accrued but unpaid Base Salary, (B) any accrued and unpaid reasonable expense reimbursements, and (C) any accrued, but unpaid vacation." Section 8(b) provides "Additional Termination Benefits" which includes "within thirty (30) business days following his/her termination of employment: (i) a cash amount equal to two (2) months of the Employee's Base Salary as of the date of termination, payable in a lump-sum; and (ii) a pro-rata amount of his or her target bonus earned in the year of termination.") (D.I. 49).

terminating him without cause.[201] In Delaware, "[a]n employee who resigns rather than being terminated may have a claim for constructive discharge if the employer's conduct forced them to resign."[202] Since Mr. Panchal terminated his own employment, he must demonstrate "working conditions so intolerable that a reasonable person would have felt compelled to resign."[203] Withholding compensation may satisfy a constructive termination claim if the withheld amount represents a significant portion of the employee's compensation.[204] Here, Mr. Panchal's annual compensation is $110,000.[205] The disputed $3.778 million in Profit Shares represents approximately 3,435% of Mr. Panchal's annual compensation. Given that Profit Shares at issue are substantially greater than Mr. Panchal's base compensation, a jury could reasonably find that Mr. Panchal was left with no choice but to resign. As such, there is a dispute of material fact as to whether Mr. Panchal resigned without Good Reason or was constructively terminated.

Because Section 4, as argued by the parties, is ambiguous and there are genuine disputes of material fact, the Court **DENIES** both Mr. Panchal's and XO's motions for summary judgment on Count I.

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[201] FAC ¶¶ 29, 37 (noting that XO does not provide this constructive termination argument throughout his filings).
[202] *See Troy Ventures, LLC v. Kosloski*, 2025 WL 1172758, at *5 n.55 (Del. Super. Apr. 21, 2025) (citing to *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004)).
[203] *See id.* at *5-6; *see also Conger v. Legg Mason, Inc.*, 2011 WL 5301787, at *2 (Del. Super. July 21, 2011).
[204] *See Troy Ventures*, 2025 WL 1172758, at *5; *see also Conger*, 2011 WL 5301787, at *2.
[205] Ex. B (D.I. 49).

2. Mr. Panchal's Breach of the Implied Covenant of Good Faith and Fair Dealing Claim in Count II.

In Count II, Mr. Panchal brings his claim for breach of the implied covenant of good faith and fair dealing.[206] As noted during oral arguments, Mr. Panchal pleads his implied covenant claim in the alternative to his breach of contract claim in Count I.[207]

To prove a breach of an implied covenant, the plaintiff must establish by a preponderance of the evidence (i) a specific, implied contractual obligation; (ii) a breach of that implied obligation; and (iii) a resulting damage.[208] The party asserting the implied covenant has the burden of proving "that the other party [] acted arbitrarily or unreasonably, thereby frustrating the fruits of the bargain that the asserting party reasonably expected."[209] "The Delaware Supreme Court recognized that the implied covenant can apply…when a party invokes the covenant to constrain a counterparty's exercise of contractual discretion."[210]

When a contract prescribes a discretionary right, the Court's analysis "need not look for a gap" because "[t]he discretionary right creates an inherent gap."[211] With this inherent gap, the Court must determine how the parties would have filled this gap in their original positions, "consistent[] with what reasonable parties would have agreed to at signing."[212] Parties to an agreement commit themselves to advancing a joint "common purpose," and "a party in the original bargaining position would expect that the counterparty would not use a discretionary

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[206] FAC ¶¶ 39-48.
[207] Oral Arg. Trans. at 27:22-23; *see* Panchal's Mot. Summ. J. at 30-32; *see also* Panchal's Answer Opp'n to Mot. Summ. J. at 35 (incorporating his arguments from his opening brief into his answer in opposition to XO's motion for summary judgment).
[208] *Earth Pride Organics, LLC v. Corona-Orange Foods Intermediate Holdings, LLC*, 2024 WL 5199391, at *9 (Del. Super. Dec. 20, 2024).
[209] *Baldwin v. New Wood Res. LLC*, 283 A.3d 1099, 1118 (Del. 2022).
[210] *Guilbeau v. Footprint Int'l Holdco, Inc.*, 358 A.3d 248, 264 (Del. Ch. Apr. 30, 2026) (citing *Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 253 (Del. 2026)).
[211] *Id.* at 277.
[212] *Id.*

right to destroy the contractual relationship maliciously and without any justification rationally related to the shared contractual purpose."[213]

Mr. Panchal satisfies the first and third elements for his implied covenant claim. For the first element, Mr. Panchal identifies a specific implied good faith obligation in the Employment Agreement.[214] Mr. Panchal relies on the Court's prior finding of contractual silence, while also arguing, though not explicitly, that XO is obligated to exercise its discretion in good faith.[215] Mr. Panchal satisfies the third element by establishing damages. To date, Mr. Panchal received only $400,000 in February 2024, and approximately $3.778 million in Profit Shares remain.[216]

The parties' dispute concerns the second element, which requires establishing that XO breached the implied obligation. Mr. Panchal's argument, although not stated as directly, is that XO breached its implied obligation to exercise its discretion in good faith.[217] In the First Amended Complaint, Mr. Panchal proffers that the Profit Shares were designed as an incentive for his successful performance; he engaged in an increased work rate to perform well enough to receive the Profit Shares; after evaluating his performance, XO communicated to Mr. Panchal several times that he would be awarded the Profit Shares; and XO first mentioned that it had the discretion to withhold the Profit Shares in its motion to dismiss filings.[218]

XO contends that Mr. Panchal's implied covenant claim fails for two reasons. First, XO contends that there is no gap in the Employment Agreement because Section 4 expressly governs

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[213] *Id.* at 279.
[214] *See* FAC ¶¶ 40-48; Panchal's Mot. Summ. J. at 31-33.
[215] *See* FAC ¶¶ 40-48; *see also* Panchal's Mot. Summ. J. at 31-32 (citing *Panchal*, 2025 WL 1012925, at *5 (D.I.)).
[216] *See* FAC ¶¶ 44-48; *see also* Panchal's Mot. Summ. J. at 30-33.
[217] *See* FAC ¶¶ 39-48; *see also* Panchal's Mot. Summ. J. at 32.
[218] *See* FAC ¶¶ 41-48; *see also* Panchal's Mot. Summ. J. at 31-32 (referring to Ex. A at 70:5-16, 92:22-97:24; Ex. C; Ex. F; Ex. J; Ex. N; Ex. S; Ex. R; Ex. U) (D.I. 49)).

incentive compensation.[219] Second, even if a gap exists, XO asserts that the implied covenant applies only if the parties *would* have agreed to the proposed term.[220] XO insists it would not have agreed to allow Mr. Panchal to reject the Profit Shares and then later accept them.[221]

The discretion prescribed to XO in Section 4 creates an inherent gap.[222] The Court finds that the Employment Agreement contains an implied obligation that XO will not exercise its discretion to award Profit Shares in bad faith.[223] A party with a discretionary right may breach the implied covenant by exercising that discretion in bad faith.[224] The term "bad faith" has been defined as:

> [N]ot simply bad [judgment] or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will….[I]n essence it means [] conduct "must be driven by an improper purpose.[225]

When faced with an implied covenant claim, Delaware courts adhere to the general rule that:

> A party has wide discretion within which to wield a discretionary right consistent with the parties' understandings from their original bargaining positions. A party obviously can wield a discretionary right to promote contractual goals []. Just as obviously, a party can wield a discretionary contractual right to protect its own interests. A party with a good faith basis for its determination cannot be held liable for the intent-based version of the implied covenant.[226]

Exercising a discretionary right "maliciously," absent a contractual justification, goes beyond self-interested action and "transcends situations involving efficient breach."[227]

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[219] XO states throughout its filings that it maintains discretion whether to award Profit Shares and retains this discretion until the compensation is paid out. *See* XO's Mot. Summ. J. at 20-22, 32-33; *see also* XO's Answer Opp'n to Mot. Summ. J. at 24-28.
[220] XO's Answer Opp'n to Mot. Summ. J. at 24 (emphasis added).
[221] *Id.* at 25.
[222] *Guilbeau*, 358 A.3d at 277.
[223] *See id.*
[224] *See id.* at 278-79 (citing *Baldwin*, 283 A.3d at 1118-19, 1122 nn.110 & 111).
[225] *New Wood Res. LLC v. Baldwin*, 2023 WL 4883924, at *8 (Del. Super. July 31, 2023), *aff'd*, 315 A.3d 445 (Del. 2024).
[226] *See Guilbeau*, 358 A.3d at 279-80 (citing *Baldwin*, 2023 WL 4883924, at *9).
[227] *Guilbeau*, 358 A.3d at 279.

The parties dispute whether XO was justified in withholding payment of the Profit Shares. XO posits that it had significant cash flow problems in 2023, which were further complicated by Mr. Panchal's signing of the LP Agreement, and prevented it from disbursing any Profit Shares until it had sufficient cash flow.[228]

Although Mr. Panchal provides examples that he alleges establish XO breached its implied obligation by withholding the Profit Shares in bad faith, this is a factual dispute for a jury to determine, not the Court.[229] From the evidence in the record, there is not enough for the Court to grant summary judgment for either party.

For the reasons provided above, the Court **DENIES** both parties' motion for summary judgment on Mr. Panchal's implied covenant claim in Count II. The implied covenant claim should proceed, and if the jury finds that XO did not breach the Employment Agreement, it should decide if XO acted in bad faith in withholding the Profit Shares.

3. XO's Remaining Motion for Summary Judgment on Counts III and IV.

i. Mr. Panchal's DWPCA Claim in Count III Fails as a Matter of Law.

The DWPCA applies only to employees in Delaware, and an "employee" is a "person suffered or permitted to work by an employer in [Delaware]."[230] Even if employed by a Delaware corporation, the DWPCA will not apply to an employee's claim if they performed their work entirely outside of Delaware.[231] Mr. Panchal never performed any work in Delaware. Therefore, his claim fails as a matter of law.

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[228] *See* XO's Mot. Summ. J. at 9, 16-17, 27 (citing Ex. 22 (D.I. 50)); *see also* XO Answer Opp'n to Mot. Summ. J. at 3-4, 7, 18.
[229] *See* FAC ¶¶ 41-48; *see also* Panchal's Mot. Summ. J. at 31-32 (referring to Ex. A at 70:5-16, 92:22-97:24; Ex. C; Ex. F; Ex. J; Ex. N; Ex. S; Ex. R; Ex. U) (D.I. 49)
[230] 19 *Del. C.* § 1101(a)(4); *Tidal Investments LLC v. Hofheimer*, 2024 WL 4224996, at *2 (Del. Super. Sept. 18, 2024).
[231] *Tidal Investments*, 2024 WL 4224996, at *2.

The Court **GRANTS** XO's motion for summary judgment on the DWPCA claim in Count III.

ii. Mr. Panchal's Promissory Estoppel Claim in Count IV Fails.

For a claim of promissory estoppel, a plaintiff must prove by clear and convincing evidence that: (i) a promise was made; (ii) it was the reasonable expectation of the promisor to induce action or forbearance on the part of the promisee; (iii) the promisee reasonably relied on the promise and took action to his detriment; and (iv) the promise is binding because only by enforcing the promise can the Court avoid injustice.[232] The promise at the center of the plaintiff's promissory estoppel claim "must be definite and certain."[233] Promissory estoppel does not apply where a fully integrated, enforceable contract governs the promise at issue.[234]

According to XO, Mr. Panchal's promissory estoppel claim is governed by Section 4 of the Employment Agreement.[235] Promissory estoppel does not apply when the contract governing the promise is enforceable and fully integrated.[236] Here, neither party disputes that Section 4 governs the Profit Shares. Moreover, Subsection 9(i) confirms the Employment Agreement is fully integrated.[237] Even if Mr. Panchal satisfies the elements for his promissory estoppel claim, the Employment Agreement governs XO's promises to pay Mr. Panchal the Profit Shares.

The Court **GRANTS** XO's motion for summary judgment on the promissory estoppel claim in Count IV.

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[232] *Windsor I, LLC v. CWCapital Asset Mgmt. LL*, 2019 WL 4733430, at *11 (Del. Super. Sept. 27, 2019), *aff'd* (Del. 2020).
[233] *Id.*
[234] *SIGA Techs., Inc. v. PharmAthene, Inc.*, 67 A.3d 330, 348 (Del. 2013).
[235] XO's Mot. Dismiss FAC at 8-9 (XO incorporates its arguments from its motion to dismiss Panchal's amended complaint (D.I. 31)).
[236] *SIGA*, 67 A.3d at 348.
[237] Ex. B (D.I. 49).

VI. CONCLUSION

For the reasons stated above, the Court **GRANTS IN PART AND DENIES IN PART** Mr. Panchal's Motion to Dismiss XO's Counterclaims. First, the Court **GRANTS** Mr. Panchal's Motion to Dismiss XO's unjust enrichment claim. Second, the Court **GRANTS** Mr. Panchal's Motion to Dismiss XO's setoff counterclaim as it relates to the $400,000 and $420,000–$450,000 (however, XO can pursue an affirmative defense of offset or recoupment); and **DENIES** his motion as it relates to XO's $250,000 setoff claim.

The Court **DENIES** Mr. Panchal's Motion for Summary Judgment for both his breach of the Employment Agreement in Count I and his breach of the implied covenant claims in Count II.

Finally, the Court **GRANTS IN PART AND DENIES IN PART** XO's Motion for Summary Judgment. The Court **DENIES** XO's Motion as it relates to the breach of the Employment Agreement in Count I and the implied covenant claim in Count II. The Court **GRANTS** XO's Motion for Summary Judgment regarding the DWPCA in Count III and the promissory estoppel claim in Count IV.

IT IS SO ORDERED.

August 25, 2026
Wilmington, Delaware

/s/ Eric M. Davis
Eric M. Davis, President Judge

cc: File&ServeXpress